

TERMS AND CONDITIONS OF BUSINESS

1. Definitions and interpretation

1.1 In this Agreement the following expressions shall have the following meanings:

“Agreement”	these terms and conditions and the associated Order Form which specifically describes the Services;
“Client”	the person or corporate entity that is purchasing the Services from Myrcator pursuant to the terms of this Agreement;
“Commencement Date”	the earlier of the date of acceptance of this Agreement by the Client or the first date of the provision of the Consultancy Services by Myrcator;
“Fees”	means the fees payable by the Client to Myrcator for the provision of Services as stated in the Order Form or, if not stated in the Order Form, in accordance with the Myrcator Hourly Rates or such other amount as was specifically agreed between the parties;
“Myrcator”	means Myrcator Marine & Cargo Solutions FZE a company whose registered office is at P1-ELOB Office No. E-33F-02, Hamriyah Free Zone, Sharjah, United Arab Emirates;
“Myrcator Hourly Rates”	means the Myrcator hourly rates chargeable for the provision of the Services and any additional services that may be required as stated in Clause 6.4;
“Myrcator Daily Rates”	means the Myrcator daily rates chargeable for the provision of the Services and any additional services that may be required as stated in Clause 6.4;
“Performance Location”	means the location set out in the Order Form at which Myrcator shall supply or procure the supply of the Services;
“Services”	the marine consultancy services provided to the Client by Myrcator as detailed in the Technical Proposal.

1.2 This Agreement shall apply to the provision of Services by Myrcator and shall also apply to any other services of whatever nature that may be provided by Myrcator to the Client in the future.

1.3 In the event of conflict between this Agreement and any other terms and conditions (of the Client or otherwise), this Agreement shall prevail.

1.4 A reference to this Agreement includes its schedules, appendices and annexes (if any).

1.5 A reference in this Agreement to a party shall mean Myrcator or the Client and when referred to collectively they shall be the parties.

2. Commencement and term

- 2.1 This Agreement commences on the Commencement Date and shall continue until the Services have been completed (the “**Term**”).

3. Performance of the Services

- 3.1 Myrcator shall perform the Services at the Performance Location and the Client shall make such premises available for Myrcator.
- 3.2 Myrcator shall perform the Services in accordance with any commencement or end dates specified for performance in the Order Form. Services which do not have specified commencement or end dates shall be performed by Myrcator as soon as possible but, in any event, within a reasonable period of time.

4. Myrcator obligations

- 4.1 During the Term, Myrcator agrees to supply, and the Client agrees to purchase, the Services on the terms set out in this Agreement.
- 4.2 Myrcator shall:
- 4.2.1 at all times and in all respects, perform the Services in accordance with the terms of this Agreement;
 - 4.2.2 co-operate with the Client in matters arising under this Agreement or otherwise relating to the performance of the Services;
 - 4.2.3 use reasonable endeavours to complete its obligations under the Agreement; and
 - 4.2.4 use reasonable care and skill in performance of the Services.
- 4.3 The Services are being provided by Myrcator exclusively to the Client. Myrcator does not accept responsibility to any third party for the Services.

5. Client obligations

- 5.1 The Client shall:
- 5.1.1 Take such steps as it reasonably can to procure all necessary access for Myrcator's personnel to the Performance Location or relevant premises, vessels and transport;
 - 5.1.2 Ensure that full accurate and complete information and instructions are given to Myrcator in sufficient time to enable the Services to be performed effectively and efficiently; and
 - 5.1.3 Take such steps as are necessary to ensure that the working environment where the Services are to be performed is safe and without risk.

6. Fees

- 6.1 The Client agrees to pay to Myrcator the Fees in consideration for the provision of the Services.
- 6.2 Further to Clause 6.1, Myrcator shall be entitled to recover from the Client its reasonable incidental expenses in connection with the provision of the Services, including travel expenses.
- 6.3 The Client shall pay Myrcator for any additional services that are provided to the Client but are not stated in the Order Form and the Client shall be charged for such additional services in accordance with the Myrcator Hourly Rates. Any charge for additional consultancy services will be supplemental to the amounts that are stated in the Order Form.
- 6.4 The Myrcator Hourly Rates are as specified in the Commercial Proposal.
- 6.5 The Myrcator Daily Rates are as specified in the Commercial Proposal.

7. Payment

- 7.1 Myrcator shall issue its invoice for the Services upon completion of the Services.
- 7.2 The Client shall pay the invoice within 30 days of receipt of the invoice.
- 7.3 Where sums due under this Agreement are not paid in full by the due date:
 - 7.3.2 Myrcator may, without limiting its other rights, charge interest on such sums at four percentage points a year above the base rate of the Bank of England from time to time in force; and
 - 7.3.3 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

8. Limitation of liability

- 8.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Clause 8.
- 8.2 Myrcator's maximum liability under the provisions of this Agreement shall be limited to the Fees paid in consideration of the Services and any claims against Myrcator shall be deemed to be waived and absolutely time barred upon the expiry of one year from the completion of the Consultancy Services.
- 8.3 In the event that the Services involve the survey of a vessel or any work or services to or containing a product or article any of which contain latent defects which were not apparent at the time that the vessel was surveyed and could not reasonably have been expected to have been discovered by such survey (either by reason of lack of access to a vessel part, limited availability of time or otherwise) then Myrcator shall have no liability therefor.

- 8.4 Neither party shall be liable for consequential, indirect or special losses.
- 8.5 Neither party shall be liable for any of the following (whether direct or indirect):
- 8.5.1 Loss of profit;
 - 8.5.2 Loss or corruption to data;
 - 8.5.3 Loss of use;
 - 8.5.4 Loss of production;
 - 8.5.5 Loss of contract;
 - 8.5.6 Loss of opportunity;
 - 8.5.7 Loss of savings discounts or rebate; and
 - 8.5.8 Harm to reputation or goodwill.
- 8.6 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
- 8.6.1 death or personal injury caused by negligence;
 - 8.6.2 fraud or fraudulent misrepresentation;
 - 8.6.3 any other losses which cannot be excluded or limited by applicable law; and
 - 8.6.4 any losses caused by wilful misconduct.

9. Termination

- 9.1 All or any part of the Services may be terminated at such time or times as Myrcator and the Client may mutually agree.
- 9.2 Myrcator may terminate the agreement forthwith in the event that:
- 9.2.1 The Client is in breach of any of its obligations under this Agreement; or
 - 9.2.2 the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or
 - 9.2.3 the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts; or
 - 9.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client; or
 - 9.2.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client; or
 - 9.2.6 a floating charge holder of the assets of the Client has become entitled to appoint or has appointed an administrative receiver; or

9.2.7 any circumstances whatsoever beyond the reasonable control of Myrcator that necessitate the termination for whatever reason of the provision of Consultancy Services.

9.3 In the event of termination Myrcator shall retain any sums already paid to it by the Client without prejudice to any other rights either party may have whether at law or otherwise.

10. Subcontractors

10.1 Myrcator may sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the Client. Where Myrcator sub-contracts the performance of any of its obligations under this Agreement to any person, Myrcator shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of Myrcator itself.

11. Confidentiality

11.1 Both parties undertake not to disclose any information provided in confidence by the other party to any third party and the receiving party shall not permit access to such information by any third party unless the disclosing party expressly grants permission save where required to do so by an order of a competent court of law.

12. Intellectual Property

12.1 No Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.

13. Severance

13.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

14. Waiver

14.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

15. Assignment

15.1 The Client shall not assign, subcontract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights under this Agreement, in whole or in part, without the Myrcator's prior written consent.

16. Notice

- 16.1 Any notice or other communication given by a party under this Agreement shall be:
- 16.1.1 in writing and in English;
 - 16.1.2 signed by, or on behalf of, the party giving it; and
 - 16.1.3 sent to the relevant party at the address.
- 16.2 Any notice or information given by post in the manner described above which is not returned to the sender as undelivered shall be deemed to have been given on the third day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

17. Third party rights

- 17.1 A person or corporate entity who is not a party to this Agreement shall have not have any rights to enforce any of the provisions of this Agreement.

18. Force Majeure and suspension

- 18.1 In this Agreement, **force majeure** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement. Inability to pay is not force majeure.
- 18.2 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- 18.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 18.2.2 uses reasonable endeavours to minimise the effects of that event.
- 18.3 If, due to Force Majeure, a party:
- 18.3.1 is unable to perform a material obligation; or
 - 18.3.2 is delayed in or prevented from performing its obligations for a continuous period of more than 180 business days.
- 18.4 In the event of a suspension of this Agreement for reasons of breach by the Client, force majeure or for the convenience of the Client, Myrcator shall be entitled to payment by the Client of Myrcator's loss of profit under this Agreement for the period of suspension and any costs irrevocably committed related to the period of suspension.

19. Variation

19.1 No variation of this Agreement shall be valid unless expressly agreed in writing by Myrcator.

20. Governing Law

20.1 This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of the United Arab Emirates.

21. Jurisdiction

21.1 The parties irrevocably agree that the courts of the United Arab Emirates shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).