

## TERMS OF BUSINESS

1. **Definitions:** Blue Peninsula Marine Limited, hereinafter referred to as the Company, trades under these conditions.

"Surveyor/Consultant/Employee/Maritime and Coastguard Agency (MCA) Small Commercial Vessel (SCV) Code of Practice Compliance Examiner" means the

Surveyor/Consultant/Employee/MCA SCV Code Compliance Examiner employed by the Company. Client means the Party at whose request or on whose behalf the Company undertakes surveying/consultancy/MCA SCV Code Compliance work.

"Conditions" means these Terms of Business and/or the Survey Contract (appended hereto) or any variation of them agreed in writing between the parties. "Consequential Loss" means loss of profits or loss of use, loss of revenue, loss of goodwill, loss of opportunity or of business; loss or damage arising from loss of use of equipment or associated equipment in connection with the Vessel or premises including increased costs and expenses of charter parties, salvage, towage, crew wages, dry docking or general average expenses; including pre-contract expenditure, and loss, damages or expenses, whether direct or indirect, consequent upon any defect or accident whether or not the same was foreseeable at the date of this agreement. "Disbursements" means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary. "Fees" means the fees charged by the Company to the Client and includes any value added tax where applicable and any Disbursements. "Force Majeure Event" means, an event which directly causes a Party to be unable to comply with all or a material part of its obligations under this agreement; and is beyond the reasonable control of or not reasonably foreseeable by either Party (excluding any strike, lockout or industrial action involving that Party's employees), and in particular and without prejudice to the generality of the foregoing is as a direct consequence of any of these causes: acts of God, engagement in war or other hostilities or preparations therefore, civil war, civil commotions, riots or insurrections; requirements of civil or military authorities; sabotage; earthquake; landslide; flood; fire; explosion; and reasonable delays of any Regulatory Authorities; damage to the Company's premises which constitute a partial loss and is payable by insurance; prolonged failure, shortage or restriction of electricity and or gas. "Intellectual Property" means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. "Latent Defect" means any defect, damages, imperfection etc in the Vessel, its equipment or gear, which are hidden or apparently unnoticeable following a reasonable and careful inspection. "Parties" or "Party" means either or both of the Company and/or Client. "Report"

means a written report or written statement supplied by the Company in connection with instructions received from the Client.

"Work" means the matters referred to in Clause 3, below.

2. **Scope:** The Company shall undertake its Work solely in accordance with the Conditions.

3. **Work:** The Client will set out in writing the services which it requires the Company to undertake (the "Work"). The Company will confirm in writing that it accepts those instructions alternatively the Work it will perform in connection with the Client's instructions. Once the Company and the Client have agreed the Work to be performed any subsequent changes or additions to the Work must be agreed by both parties in writing.

4. **Payment Terms:** The Client shall pay the Company's Fees punctually in accordance with these Conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. Any delay in payment shall entitle the Company to interest at 4% above the Base Lending Rate of HSBC Bank Plc prevailing at the time of default.

5. **Obligations and Responsibilities** (a) **Client:** The Client undertakes to ensure that full instructions are given to the Company and are provided in sufficient time to enable the required work to be performed effectively and efficiently and to procure all necessary access for the Company to goods, premises, the Vessel or any ancillary vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions. The Company shall not be liable for the consequences of late, incomplete, inadequate, inaccurate, fraudulent or ambiguous instructions; (b) **Company:** The Company shall use reasonable care and skill in the performance of the Work in accordance with sound marine surveying/consulting practice; (c) **Reporting:** The Company shall submit a final written Report to the Client following completion of the Work describing the Company's findings and the condition and/or quality of the object and/or purpose of the assignment, unless otherwise expressly instructed by the Client not to do so; (d) **Confidentiality:** The Company undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission or save where required to do so by law or an order of a competent court of law ;(e) **Intellectual Property:** The right of ownership in respect of all Intellectual Property created by the Company remains the property of the Company; (f) **Conflict of Interest/Qualification:** The Company shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for the Company to continue its involvement with carrying out the Work. The Client shall be responsible for payment of the Company's Fees up to the date of notification.

6. **Liability**(a) Without prejudice to Clause 7, the Company shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Company or any of its employees or agents or sub-contractors; (b) In the event that the Client proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Company aforesaid, then, save where loss,

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damage, delay or expense has resulted from the Company's employees' act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Company's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of **ten times the Company's charges or £5,000 whichever is the greater.** (c) Without prejudice to the provisions of sub-clauses 6(a) and 6(b) the Company shall have no liability whatsoever for any Consequential Loss nor any loss or damage caused by a failure to observe a Latent Defect in the Vessel, its gear or equipment. (d) The Company shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

(e) The Company shall not be liable for any loss (including Consequential Loss) or damage caused by any event or circumstance beyond The Company's reasonable control (including but not limited to a Force Majeure Event, extreme weather conditions, the actions of third parties not employed by the Company or any defect in any part of the Vessel or a third party's vessel); this extends to loss or damage to the Vessel or other vessels, gear, equipment or other goods left with the Company for Survey, repair or storage, and harm to persons entering the Company's premises, vehicles or vessels or using any of the Company's facilities or equipment.

(f) The Company shall take all reasonable and proportionate steps having regard to the nature and scale of its business to maintain security at its premises, vehicles or vessels and to maintain its facilities and equipment in reasonably good working order. Subject to this and in the absence of any negligence or other breach of duty by the Company the Vessel or any vessels, gear, equipment or other goods are left with the Company at the Client's own risk and Clients should ensure that their own personal and property insurance covers such risks. (g) The Company shall not be under any duty to salvage or preserve the Vessel or other property from the consequences of any defect in the Vessel or property concerned. Similarly the Company shall not be under any duty to salvage or preserve the Vessel or other property from the consequences of an accident.

**7. Indemnity:** Except to the extent and solely for the amount therein set out that the Company would be liable under Clause 6, the Client hereby undertakes to keep the Company and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Company may suffer or incur (either directly or indirectly) in the course of the work under these Conditions.

**8. Force Majeure:** Neither the Company nor the Client shall, except as otherwise provided in these Conditions, be responsible for any Force Majeure Event.

**9. Insurance:** The Company shall where reasonably practicable to do so, at reasonable cost, effect and maintain, at no cost to the Client, appropriate insurance for such loss or damage for which the Company may be held liable to the Client under these terms and conditions.

**10. Company's Right to Sub-contract:** The Company shall have the right to sub-contract any of the work provided under the Conditions, subject to the Clients right to object on reasonable grounds. In the event of such a sub-contract the Company shall remain fully liable for the due performance of its obligations pursuant to these Conditions. Any such sub-contractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, contained in these Conditions.

**11. Time Bar:** the Company shall have no liability whatsoever or howsoever arising in respect of any claim or potential claim unless written notice of the same is provided to the Company within one year of the date of submission of the Report to the Client (or verbal confirmation of its findings if instructed by the Client not to provide a Report); for the avoidance of doubt any claims against the Company by the Client (or anyone seeking to claim through them) shall be deemed to be waived and absolutely **time barred upon the expiry of one year from** the submission date of the Report to the Client (or verbal confirmation of its findings if instructed by the Client not to provide a Report), **and the Client hereby agrees that it considers the limitation period set out in this clause to be reasonable pursuant to the provisions of the Unfair Contract Terms Act 1977.**

**12. Jurisdiction and Law:** These Conditions shall be governed by and construed in accordance with the laws of England and Wales and any proceedings shall be subject to the exclusive jurisdiction of the English Courts.

**13. Disputes:** the parties shall seek to resolve any dispute between them arising from these Conditions or the Work as soon as possible by way of negotiation between them; if such negotiation is unsuccessful in resolving the dispute the parties shall refer the matter to mediation, and in default of agreement as to a mediator, shall request the ADR Group (IDR Europe Limited) to appoint a suitable mediator.

**14. Rights of Third Parties:** the Client and the Company agree that no term of these Conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this agreement.