

Stone Marine Shipcare - Terms and Conditions for Provision of Services

1. Definitions

“Services Conditions” means these Terms and Conditions for the provision of Services.

“SMS” means Stone Marine Shipcare Ltd and (where appropriate) its officers, employees and agents.

“the Customer” is the person, firm or company ordering the Services from SMS.

“the Services” are all and any of the services, carried out by SMS or contracted personnel, including (without limitation) assembly, fitting and repair installation to be provided by SMS and also goods and components.

“the Order” means the Customer’s instructions to SMS to provide the Services.

“the Acknowledgement of Order” means the written confirmation by SMS of the Order.

“the Contract” means the contract for the provision of the Services made between SMS and the Customer incorporating the Services Conditions.

2. Acceptance of Order

(a) An Acknowledgement of Order shall be in writing transmitted by electronic Email.

(b) An Order is accepted by SMS exclusively upon these Services Conditions and no other conditions, terms, provisions or other representations whatever whether referred to in negotiations or set out in the Order or otherwise shall be incorporated into the Contract unless the Customer and SMS expressly so agree in a written memorandum which shall refer to the Contract and be annexed to the Acknowledgement of Order.

3. Travelling Expenses

The Customer shall reimburse SMS in respect of all travelling and transport costs (including but not limited to the cost of insurance and costs of carriage of personal luggage and tools) incurred by SMS its employees, sub-contractors or agents in connection with the provision of the Services.

4. Prices

(a) The price(s) payable for the Services shall be calculated in accordance with SMS’s current man/hour rates unless a fixed rate or sum has been agreed.

(b) If by reason of any law, governmental order or regulation the price and/or terms of payment hereunder or any increase change or variation thereto or the right of SMS to require or receive any such payment shall be altered, prohibited or hindered in any way SMS may forthwith thereupon terminate the Contract by notice to the Customer.

(c) All prices are exclusive of VAT which shall be added at the rate in force at the appropriate time. The Customer shall be liable to pay (or if paid by SMS shall reimburse SMS in respect of) all taxes, duties and fees payable in connection with the supply of the Services hereunder.

5. Payment

(a) The price, including, where applicable, travelling and carriage charges and any disbursements by SMS personnel shall be paid on the due date which (in the absence of any agreement to the contrary) is 30 days from the date of SMS’s invoice.

(b) The Customer shall in no circumstances be entitled to make any deduction from the price payable by way of set-off or otherwise in respect of any claim or counterclaim which it may have against SMS.

(c) If the Customer shall default in payment of the price on the due date without prejudice to any other of SMS's rights interest shall accrue thereafter from day to day (as well before as after judgement) on any sums outstanding until payment is made at an annual rate of 16% or 3% above the Lloyds Bank plc base lending rate for the time being in force (whichever is greater).

(d) If the Customer shall at any time default in payment of the price on the due date or if the Customer's credit standing is at any time in the opinion of SMS impaired for any other reason SMS shall in addition and without prejudice to any other of its rights, have the right:-

(i) to demand forthwith payment for all services provided to the Customer whether or not any such payment is due; and/or

(ii) to supply services on a cash-in-advance basis or require the Customer to provide security for future payments satisfactory to SMS.

6. Hours of Work

(a) SMS shall attempt (so far as possible) to comply with any normal hours or work established by the Customer.

(b) The Customer shall certify on SMS's standard form the hours actually worked by SMS's personnel as well as the work carried out by them.

(c) Reasonable travelling time (as well as the time spent performing the Services) will be charged to the Customer as if such time was expended performing the Services.

(d) Waiting time, time expended searching for accommodation and time expended reporting to any relevant authorities shall also be charged as working time, in so far as working time is lost thereby.

7. Safety Regulations

(a) SMS's employees, sub-contractors and agents are instructed to comply with any safety regulations in force.

(b) The Customer shall take all necessary measures for the protection of persons and property at the place where the Services are to be performed. The Customer shall fully inform SMS in advance of all existing safety regulations and shall notify SMS of any and all breaches of such regulations by its employees, sub-contractors or agents. In the case of serious breaches the Customer can (if SMS agrees) refuse the relevant person(s) admittance to the place for performance of the Services.

(c) It is the right of SMS's employees, sub-contractors or agents to refuse to work in an area they deem unsafe.

8. Technical Assistance

(a) The Customer shall provide technical assistance at its own cost and in particular (without limitation) shall:

(i) provide all necessary suitable assistants including (without limitation) carpenters, fitters, staging builders and such other skilled workers and assistants as may be required for the provision of Services for the duration of the Services. Such assistants shall comply with all reasonable instructions of SMS. Any loss or damage whatsoever caused either directly or indirectly by such assistants shall be the sole responsibility of the Customer and

SMS accepts no such liability whatsoever howsoever arising from any damage loss or injury caused by such assistants howsoever arising;

(ii) Undertake staging work including the procurement of the necessary construction materials;

(iii) provide, according to SMS's specification, a suitable working platform or pontoon, as the case may be, for outboard work. A motor boat shall remain in constant readiness in the immediate vicinity of the place of work;

(iv) provide all necessary heavy appliances and equipment and tools (for example lifting appliances), as well as the necessary requisite materials (for example wood or scaffolding for staging, Sealing materials and lubricants);

(v) provide heating/cooling, lighting, power current and compressed air, including all necessary connections;

(vi) provide rooms needed for the safekeeping of tools. Such rooms shall be dry and capable of being locked;

(vii) transport to the place of work for articles required for the Services that have been delivered in advance. The Customer shall protect such articles required for the Services against injurious influences of all kinds and clean the articles required for the work;

(viii) provide suitable safe and theft proof rest rooms (with heating, lighting, washing facilities and sanitary equipment);

(ix) provide such materials and take all other actions that are necessary for the installation and/or adjustment of the object of supply and for the carrying out of a test as provided for in the contract.

(b) The technical assistance shall also be such as to ensure that the Services can be commenced immediately after SMS's arrival. So far as special drawings or instructions are required from SMS, SMS shall use its reasonable endeavours to make these available to the Customer in good time.

(c) If the Customer fails to fulfil its obligations under this Condition, SMS shall have the right to carry out such obligations at the Customer's cost.

9. Extent of Services

SMS shall advise the Customer of the extent of the Services. It is agreed that SMS shall be entitled to rely on the opinion of a classification society or of its authorised representative. The Customer shall, however, itself make the decision on the extent and practicality of the Services and to that extent assume the risk for such decision.

10. Time Limit for provisions of the Services

All statements on any time limit for provision of the Services are approximate only. SMS shall be under no liability for any loss, injury, damage or expense whatsoever consequent upon any delay from whatever cause including (without limitation) SMS's negligence. Delay shall not entitle the Customer to cancel the Contract.

11. Inspection and Rejection

The Customer shall inspect the work affected by the Services as soon as the Customer receives notice that the Services have been completed and that any test which may have been specified in the Contract has been carried out. Such inspection shall be deemed to constitute acceptance by the Customer unless the Customer notifies SMS of any defect

within seven (7) days of the date of receipt by the Customer of notice that the Services have been completed.

12. Force Majeure

SMS shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of the Services by SMS being directly or indirectly prevented, hindered or delayed by reason of any circumstances outside the control of SMS and affecting the provision of all or any part of the Services by SMS's normal means, or other circumstances whatsoever, including (without limitation) any act of God, war (whether declared or not), riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, failure or shortage of power supplies, fire, flood, drought, explosion, difficulty in obtaining workmen, materials or transport, refusal of any license or permit or any other sanction or request of any Government or government authority. In the event of any such circumstances SMS shall have the option (exercisable by notice to the Customer) to terminate the Contract (whereupon both SMS and the Customer shall be relieved of all liabilities under the Contract) in all cases without incurring any liability for any loss or damage suffered by the Customer as a result.

13. Termination

If the Customer shall fail to make any payment when it becomes due, or shall default in the due performance or observance of any other obligation under the Contract, or shall enter into any composition or arrangement with creditors, or shall pass a resolution or the Court shall make an order that the Customer shall be wound up (otherwise than for the purpose of amalgamation or reconstruction), or if a receiver shall be appointed over any of its assets or undertakings, or (being a natural person) if a receiving order is made against him or he shall be adjudged bankrupt or if the Customer shall take or suffer any similar action in consequence of debt, SMS may cancel further provision of Services and by notice in writing to the Customer may forthwith determine the Contract, without prejudice to its rights under the Contract and otherwise at law.

14. Warranty, Liability and Indemnity

(a) SMS warrants that it will exercise reasonable skill and care in executing the Services. If the Services do not conform to the warranty SMS shall take such steps as it deems necessary to rectify any defect

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SMS's liability shall in no event exceed the lesser of £100,000 or the total price(s) payable or paid by the Customer for the Services and performance of the above option (as limited by this provision) shall constitute an entire discharge of SMS's liability under the warranty.

(b) The foregoing warranty is conditional upon:-

(i) SMS receiving from the Customer within seven (7) days of discovery full details of any defect or deficiency, but in any case within one (1) month following completion of the service;

(ii) the Customer affording SMS reasonable opportunity to make its own inspection;

(iii) the Customer complying with any instructions or recommendations of SMS.

(c) If it is found in SMS's sole judgement that the alleged defect is not covered by the terms of the foregoing warranty or if the warranty claim is made outside of the relevant

warranty period the Customer shall pay all cost of repair at SMS's then current rates and all transportation costs from SMS's premises to the Customer's premises.

(d) Save as provided in condition 14a SMS shall have no liability to the Customer (except in respect of death or personal injury resulting from negligence) in respect of any deficiency in the Service or other breach of contract of whatsoever nature or other default or negligence on the part of SMS its employees sub-contractors or agents and all conditions warranties or other terms, whether expressed or implied, statutory or otherwise, in relation to the Services, their standard and fitness for any purpose are hereby excluded. Without limiting the foregoing:-

(i) SMS shall not be liable in respect of any loss or damage whatsoever arising from the claim of any person, firm or company against the Customer nor for any loss of profits, loss of business, economic loss or other consequential loss or damage suffered by the Customer;

(ii) All recommendations and advice given by or on behalf of SMS are given without liability on the part of SMS;

(iii) all drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like, contained in any literature or other material supplied by SMS under or in connection with the Contract or otherwise communicated to the Customer are provided or made by SMS in the belief that they are as accurate as reasonably possible but they shall not be taken as representation by SMS nor are they warranted to be accurate;

(iv) In respect of any error in any pattern, drawing, specification, manual, particulars or other information supplied by the Customer, SMS are not liable and the Customer will indemnify SMS against any liability or additional cost;

(e) The Customer shall indemnify SMS in respect of any loss or damage whatsoever arising from the claim of any person against SMS in relation to the Services;

(f) Our normal prices reflect these limitations on liability in our standard terms. If the Customer asks, SMS is prepared to negotiate other provisions, but these will increase SMS's price.

(g) The company shall have no liability should the full provision of the service not be carried out as a result of any Company engineer or representative being requested to be sent away from the customer's premises before the service is completed, without a written request from the company and acceptance thereof by the company.

15. Supervision

To avoid misunderstandings, it should be clearly understood by the Customer that a Supervisor's role is;

(a) to be present and possess specific technical knowledge,

(b) to act in a support role to the owner / shipyard,

(c) to respond to any questions or queries,

(d) to advise on work/time schedules,

(e) to ensure that correct OEM procedures are followed,

(f) to ensure that the appropriate skill set is applied to a specific task,

(g) to act as the liaison between owner and OEM.

With respect to item (f) above, if SMS have no information about the training level or suitability of the personnel the Customer or shipyard provide, SMS shall not be liable in respect of any loss or damage whatsoever arising from the claim of any person, firm or

company for any loss of profits, loss of business, economic loss or other consequential loss or damage suffered by the Customer as a result of the actions of these personnel.

A Supervisor's job is concerned with orchestrating and controlling work rather than performing it directly.

16. Validity

If any of these conditions is held to be invalid or unenforceable, that will not affect the validity and enforceability of the rest.

17. Jurisdiction

SMS's dealings with the Customer are governed by English Law and come within the jurisdiction of the English Courts.

As amended 09.09.2014