

IT IS AGREED that the Surveyor shall perform the Scope of Work (to include the carrying out of any survey and the production of any survey or valuation report) subject to the following terms:

1. Surveys

1.1 The Client's instructions, and the scope of the Surveyor's services hereunder, are as defined in the Scope of Work. Any subsequent changes or additions to the Scope of Work must be agreed in writing by the Parties.

1.2 The Client undertakes to:

1.2.1 ensure that full instructions are given to the Surveyor and are provided in sufficient time to enable the required services to be performed effectively and efficiently. The Client agrees to disclose to the Surveyor all relevant information of which they have knowledge, or to which they have access, in relation to the vessel to be surveyed;

1.2.2 in consultation with the Surveyor, procure all necessary access to premises and vessels (including lift-out, trials and facility for inspection ashore and afloat as appropriate) for no less than such a time as shall in each particular circumstance be reasonable to enable all appropriate inspections and tests to be undertaken or performed; and

1.2.3 ensure that all appropriate safety measures are taken to provide safe and secure working conditions provided always that in the event of any breach of the requirements of this Clause 1.2. by the Client, the Client shall be responsible for all consequential costs incurred by the Surveyor in respect of any element of the Scope of Work undertaken.

1.2.4 Pay the agreed fee within the time stipulated above and on the invoice.

1.3 Pursuant to the Scope of Work, the Surveyor will inspect the vessel as thoroughly as is practicable and endeavour to comment on the more important items where, in the Surveyor's reasonable opinion, major costs consequences are considered likely to arise. It follows that the Surveyor cannot comment on every minor matter but the Surveyor will try to point out where small factors may become more serious.

1.4 The Surveyor's intention is to report on the condition of the hull(s), superstructure and fixtures (if any) of the vessel so far as can reasonably be ascertained from a visual inspection of the vessel at its location at the time of survey. The Client accepts that the Surveyor's survey report(s) cannot cover hidden, unexposed or inaccessible areas of the vessel, neither can the Surveyor undertake to investigate areas that the Surveyor believes to be inaccessible at the time of inspection. Where the Surveyor is unable to gain access to areas commonly accessible, the Surveyor will endeavour to point this out.

1.5 In every case, the Surveyor recommends a full survey of a vessel, to include inspection of the vessel while lifted out and while in the water. Where the Surveyor accepts instructions to survey a vessel solely on the basis of an inspection of the vessel out of the water, the Surveyor makes no representation and gives no warranty as to the watertight integrity, stability or buoyancy of the vessel.

2. Valuations

2.1 All valuation work undertaken shall be in accordance with the Scope of Work and shall be on terms that, unless otherwise stated in writing, such work relates solely to the date and place referred to. Valuations are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars or information on

which opinions are based. Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation or such other date as is expressly referred to.

3. Limitations of liability

3.1 The Surveyor shall undertake the services to which these terms relate with reasonable care, skill and diligence. The Surveyor shall not be liable under this Agreement for any loss or damage caused in circumstances (i) where there is no breach of a legal duty of care owed to the Client by the Surveyor or (ii) where, notwithstanding any such breach, any loss or damage is not a reasonably foreseeable result of such breach.

3.2 All services and reports are provided for the Client's use only. No liability of whatever nature is assumed towards any other party and nothing in these terms, or the relationship between the Surveyor and the Client, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and any person who is not a party to this Agreement shall have no right under that Act to enforce any term(s) of this Agreement.

3.3 The Surveyor shall not be responsible for loss or damage or any increase in loss or damage resulting from any material breach by the Client of any term of this Agreement. Cancellations or postponements will, at the surveyor's discretion, incur a charge. The amount will depend on the notice given and the circumstances. In general every effort will be made to accommodate delays for reasons beyond the client's control, but cancellations with little or no notice may, at the surveyors discretion, be charged the full fee.

3.4 Any complaint by the Client in respect of the Surveyor's obligations under this Agreement must be notified to the Surveyor as soon as is reasonably practicable after the Client becomes aware of the alleged problem. Where any complaint is capable of remedy, the Surveyor must be afforded a reasonable opportunity both to inspect the subject matter of the complaint, and if necessary, remedy it.

3.5 Without prejudice to the above, the Surveyor/Consultant 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 Surveyor/Consultant or any of its employees or agents or sub-contractors,

3.6 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 Surveyor/Consultant aforesaid, then, save where loss, damage, delay or expense has resulted from the Surveyor's/Consultant's personal 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 Surveyor's/Consultant'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 Surveyor's/Consultant's charges or £125,000 whichever is the greater.

3.7 The Surveyor/Consultant 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.

3.8 The Surveyor shall maintain professional indemnity insurance in the amount of the Agreed Indemnity Limit throughout the period of the performance of the Surveyor's duties hereunder.

3.9 The Surveyor's liability shall not extend to particulars, data and other information given to the Surveyor by others or obtained from outside sources, publications and the like reasonably relied upon by the Surveyor, including Class records, registry details or other such information and no assurances can be given regarding the accuracy of the same.

- 3.10 Unless otherwise stated in writing, all services and reports are provided on the basis that they carry no guarantee regarding ownership or title, freedom from mortgages or charges, debts, liens or other encumbrances, or vessel stability, performance or design.
- 3.11 The Client shall be responsible for any losses, expenses or other costs reasonably incurred by the Surveyor that are caused by a breach of the Client's obligations to the Surveyor hereunder. This shall include charges for the time and costs required to recover unpaid fees.
- 3.12 The Surveyor shall not be liable in respect of any breach of his obligations hereunder resulting from unforeseeable causes beyond the Surveyor's reasonable control.
- 3.13 Notwithstanding any other provision of this Agreement:
- 3.13.1 unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or as to the suitability of any vessel or other item for any particular purpose or of any vessel's compliance with any particular local, national or international requirement or code, and opinions are given without the benefit of running of machinery or opening up or other dismantling whether of interior linings, machinery or other items or systems;
 - 3.12.2 the Surveyor shall have no liability whether in contract, tort or otherwise in respect of the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions or the non-disclosure by the Client of relevant information; and
 - 3.12.3 the payment of all sums due and owing to the Surveyor pursuant to this Agreement shall be a pre-condition to any liability of the Surveyor hereunder.

BUSINESS OR COMMERCIAL OPERATION

- 3.14 Notwithstanding any other provision of this Agreement, where the Client is acting in the course of a business or commercial operation:
- 3.15 the Surveyor's liability shall expire twelve months after the final survey examination performed by the Surveyor in performing the Scope of Work and the Surveyor shall thereafter have no further liability whether in contract, tort or otherwise; and
- 3.15.1 the Surveyor shall have no liability whether in contract, tort or otherwise for:
 - 3.15.1.1 any consequences of late performance of any survey and/or late delivery of any survey report;
 - 3.15.1.2 any breach of his obligations hereunder of which written notification shall not have been given, any consequential or economic loss or for loss of profit or turnover or loss of use suffered by the Client howsoever arising, whether under this Agreement or otherwise, and, without prejudice to the generality of the foregoing, the Surveyor shall not be liable if notification shall not have been given within 14 days of the date on which the Client ought reasonably to have become aware of the existence of such breach;

3.15.1.3 any loss, injury or damage sustained as a result of

- (i) any defect in any material or workmanship, or
- (ii) the act, omission or insolvency of any person other than the Surveyor; the Surveyor shall have no liability to indemnify the Client in respect of any claim made against the Client for any such loss, injury or damage.

4. Law and disputes

4.1 Any contract or series of contracts made subject to these terms shall be subject to and governed by English law and:

4.1.1 in the case of a Client acting in the course of a business or commercial operation any dispute arising shall be submitted to the exclusive jurisdiction of the Courts of England and Wales; or,

4.1.2 in the case of a Client who is a consumer or who is not contracting in the course of business any dispute shall be submitted to the non-exclusive jurisdiction of the Courts of England and Wales.

5. Miscellaneous

5.1 The Surveyor may terminate the appointment forthwith (without prejudice to the Surveyor's accrued rights) if: (i) the Client fails for more than 28 days to pay any sum due in respect of or arising from the Surveyor's appointment when demanded; or (ii) the Client fails to respond promptly to requests for information and/or instructions and fails adequately to respond to 28 days' formal notice of such failure.

5.2 Without prejudice to the accrued rights of the other party, either party may terminate the appointment forthwith by notice if the other party shall become bankrupt or insolvent, or make any arrangement or composition for the benefit of creditors, or have anything analogous to any of the foregoing under the laws of any jurisdiction occur to it, or cease (or threaten to cease) to carry on business.

5.3 No exercise or failure to exercise or delay in exercising any right or remedy vested in either party shall be deemed to be a waiver by that party of that or any other right or remedy.

5.4 Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.

5.5 In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation, such provision shall be deemed to be deleted from these terms and shall be of no force or effect and these terms shall remain in full force and effect as if such provision had not been contained herein. Notwithstanding this, in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of an acceptable alternative provision.

5.6 Except where expressly stated to the contrary in a written document signed by the Parties on or after the date hereof, these terms form the entire agreement between the Parties and supersede all previous agreements and understandings between the Parties, and no warranty, condition, description, term or representation is given or to be implied by anything said or written in negotiations between the Parties or their representatives prior to the communication of these terms.



5.7 References to “the Surveyor” include the Surveyor’s employees and persons, firms and companies appointed or engaged by the Surveyor as the Surveyor’s agents for carrying out any work or services under these terms, all persons, firms and companies to whom performance of any work or services under these terms is sub-contracted or delegated by the Surveyor, and all agents and employees of persons, firms and companies referred to in this clause.

5.8 Any notice required to be given under the terms of this Agreement must be given in writing and communicated by letter or email. The notice must be sent to the address or email address previously provided by the receiving Party. Notices sent by first class post will be deemed to have been received two Working Days after posting; faxes and emails sent before 5pm on a Working Day will be deemed to have been received on the day of sending provided the sender has confirmation of transmission; and emails sent after 5pm or on a day other than a Working Day will be deemed received on the next Working Day provided the sender has confirmation of transmission. In this Clause “Working Day” means any day on which banks are open in England (excluding weekends).

5.9 Words denoting the masculine include the feminine and neuter and vice versa.

6 Glossary

The use of the word appears/appeared indicates that a very close inspection of that component/system/area was not possible due to constraints imposed upon the surveyor (e.g. no power available, inability to remove panels).

The use of the word serviceable/adequate indicates that a particular system, component or item is sufficient for a specific requirement.

The use of the word good condition indicates that the component /system is nearly new with only minor cosmetic or structural discrepancies noted.

The use of the word fair indicates that the component/system is functional as is, with minor repairs and should be monitored often to see if its condition deteriorates.

The use of the word poor indicates that the component/system is unsuitable as is, and will need to be replaced or repaired for it to be considered functional.

Readily accessible means capable of being reached for operation, inspection or maintenance without removal of any craft structure or use of any tools or removal of any item.