



Terms and Conditions of Services

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF **CLAUSE 8 (LIMITATION OF LIABILITY & INDEMNITY)**.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5, including but not limited to service fees, Storage Charges, costs and expenses for materials or parts.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions, together with the Order.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: the person or firm who purchases Services from the Supplier.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.]

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

GDPR: General Data Protection Regulation ((EU) 2016/679).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade

secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

Order: the order produced by the Supplier detailing the Services to be provided, Charges (and any deposit) and Specification and Deliverables as agreed, signed and accepted by the Customer.

Parties: the Supplier and the Customer or, individually each a “**Party**”.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer as set out in the Order.

Storage Charge: the storage fee for storage of the part(s) and/or vessel(s) of the Customer for the purpose of these Conditions which shall be the prevailing rate at any time plus an administration fee of 25% of the total storage fee.

Supplier: Arthur Marine Services Limited with its registered office at Bermuda Hythe Road, Marchwood, Southampton, England, SO40 4WU registered in England and Wales with company number **11719542**.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email but not fax.

2. Basis of contract

- 2.1** The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2** The Order shall only be deemed to be accepted when the Customer and Supplier confirm written acceptance of the Order or, the Supplier commences the work at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3** Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5** Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of [20] Business Days from its date of issue.

3. Supply of Services

- 3.1** The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.2** The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3** The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5** Any parts or materials supplied to the Customer or fitted into the Customer's vessel(s) shall be owned with full title by the Supplier until such time as the Supplier has received payment in cleared funds from the Customer for all outstanding Charges including any interest payments. On receipt of such payments in cleared funds the title in the parts shall pass in full to the Customer.
- 3.6** The Supplier can at its sole discretion at any time refuse to provide the Services to the Customer for any reason.
- 3.7** The Customer accepts that "**Customer Property**" (i.e. vessel(s), part(s) and/or any other property) will unless otherwise agreed in writing be stored in premises that although enclosed or partially enclosed are not at all times locked and secured. The Supplier will not be responsible for theft or damage to the Customer Property unless caused directly by its negligence.
- 3.8** The Customer can inspect the Customer Property at any time on reasonable notice at a time agreed as suitable with the Supplier. The Supplier can inspect Customer

Property at any time during the Contract and open any packages it reasonably believes is related to the Customer's Property or delivered to it in connection with the Services required under this Contract.

4. Customer's obligations

4.1 The Customer shall:

- (a) Ensure that the terms of the Order and any information it provides in the Specification or otherwise are complete and accurate;
- (b) Co-operate with the Supplier in all matters relating to the Services;
- (c) Provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) Provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) Obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (f) Comply with all applicable laws, including health and safety laws; and
- (g) Comply with any additional obligations as set out in the Order.

4.2 The Customer warrants it has full authority to enter into this Contract and either owns the vessel(s) and any/parts which it may provide to the Supplier in relation to this Contract or has full authority to engage the Supplier for the services contemplated by this Contract. The Supplier can suspend, delay or refuse Services if it suspects the Customer does not have full title to the Customer Property. The Customer will be required to indemnify the Supplier in full in respect of any third party claims relating to title of the Customer Property.

4.3 The Customer agrees to act in good faith and respond to the Supplier's requests, queries and instructions in relation to this Contract promptly and without delay.

4.4 In the event the Customer Property of the Customer passed to the Supplier in connection with this Contract) includes asbestos or other nuclear or radioactive material the Customer shall give the Supplier full details and the International Maritime Organisation requirements for handling or storage of the Customer Property. The Supplier may without liability refuse to proceed with the Contract on such notification by the Customer. The Supplier will have no liability in relation to the Customer's Property which may be contaminated as described in this clause and the Customer shall indemnify the Customer in full for any claims in relation to the Customer Property in respect of any claims which may arise from any third party of otherwise in respect of the Customer Property.

- 4.5** The Customer will present Customer Property in a condition suitable for storage which complies with all applicable laws and regulation and packed, stowed and stored in accordance with the International Maritime Dangerous Goods Code. If the Customer's property requires any special treatment the Customer will make this clear to the Supplier. The Customer will comply with the International Maritime Dangerous Goods Code in respect of any dangerous Customer Property.
- 4.6** The Customer is required to pay for any necessary, licences and permits required in connection with the Customer Property and the Services carried out under this Contract.
- 4.7** The Customer shall at its own expense insure all Customer Property against all insurable risk, physical loss, damage to the full replacement value, the cost of arranging insurance of any tow in connection with any Services shall be the sole responsibility of the Customer.

5. Charges and payment

- 5.1** The Charges for the Services shall be as follows:
- (a) As set out in the Order (if none are specified then charges shall be on a time and materials basis at the Supplier's standard rates applicable at the time obtainable on request from the Supplier);
 - (b) Any additional costs which the Supplier may charge the Customer including for any costs or expenses reasonably incurred and costs for any materials or parts (the Supplier will endeavour where possible to inform the Customer in advance of such costs and expenses prior to these being incurred to the extent that these fall outside of those listed in the Order); and
 - (c) Any Storage Charges which may be incurred by the Supplier howsoever arising in connection with the Contract, including but not limited to for any delay incurred by the Customer, breach by the Customer, unavailability of parts, a dispute arising between the Parties, a delay in collection of Customer Property by the Customer.
- 5.2** The Supplier may require the Customer to pay a deposit in respect of the Charges for part payment upfront. This deposit will be set-off in any final invoice for payment against the balance of Charges due from the Customer. The Supplier may acting reasonably and at its sole discretion elect to retain the deposit in the event of a breach by the Customer and/or if there is a dispute and/or if all Charges or other payments due have not been paid in full.
- 5.3** The Supplier shall invoice the Customer on completion of the Services or as otherwise agreed in the Order between the Parties.
- 5.4** The Customer shall pay each invoice submitted by the Supplier:

- (a) within 7 days of the date of the invoice or, in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.5** The Supplier has a right of lien over the Customer's Property and may alternatively sell, transfer, assign or otherwise create a charge over or dispose of the Customer's Property and/or use the proceeds of any sale or other transaction against the balance of any unpaid Charges and interest and the costs incurred by the Supplier in the effecting the sale, transaction, removal or disposal of the Customer's Property.
- 5.6** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7** If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Supplier may in addition or as an alternative suspend any Services until payment is received and seek to recover all costs from the Customer it has incurred in seeking to recover payment.
- 5.8** Subject to clause 5.2, all amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

- 6.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2** The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. Data protection and data processing

- 7.1** Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. In this clause 7, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 7.2** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 7.3** Without prejudice to the generality of clause 7.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (d) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data.
- 7.4** If the Supplier appoints any third-party processor of Personal Data under the Contract, the Supplier will ensure that it will incorporate terms which are substantially similar to those set out in this clause 7 into a written agreement with the processor. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.
- 8. Limitation of liability and Indemnity: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 8.1** The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000.00 per claim. The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.3** Subject to clause 8.2, the Supplier's total liability to the Customer shall not exceed the value of the total Contract net Charges for the Contract year in which the breach occurs. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 8.4** This clause 8.4 sets out specific heads of excluded loss:
- (a) Subject to clause 8.2, the types of loss listed in clause 8.7(c) are wholly excluded by the Parties.
 - (b) If any loss falls into one or more of the categories in clause 8.7(c) then it is not excluded.
 - (c) The following types of loss are wholly excluded:
 - (i) Loss of profits

- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

8.5 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.6 The Customer agrees to indemnify and shall keep the Supplier indemnified on demand from and against all loss, injury, damage or liability sustained and all fees, costs and expenses incurred by the Supplier resulting from incorrect or inaccurate information provided to the Supplier by the Customer or a breach by the Customer of the Contract including any act, neglect, omission or fault by the Customer, its employees or agents and any fault or defect in the Customer's Property.

8.7 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 The Supplier shall acting reasonably be entitled to refuse to continue providing Services and/or terminate the Contract immediately or on such other notice as the Supplier may indicate to the Customer, at any time at its sole discretion (whether for convenience, inability to complete the Services due to delayed or unavailable parts, Customer's non-compliance with this Contract, force majeure, or any other reason).

9.2 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within [30] days of that Party being notified in writing to do so;
- (b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- (d) the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3** Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment
- 9.4** Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 10. Consequences of termination**
- 10.1** On termination or expiry of the Contract:
 - (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Supplier shall inform the Customer of convenient time(s) for the Customer to collect any Customer property from the Customer's premises and the Customer shall endeavour to do so promptly without delay.
- 10.2** In the event the Customer fails to not fully pay any of the invoices from the Supplier, the Supplier shall have full title of the Customer's Property until payment is received in cleared funds.
- 10.3** In the event the Customer fails to collect any of its Customer Property, the Storage Charges will apply from the date on which the customer fails to collect all Customer Property, in addition, the Supplier will have the right to do the following:
 - (a) To carry out any actions as owner of the items and to sell, lease or create a charge over the Customer Property; and/or
 - (b) To organise for the delivery of the Customer Property to the Customer and then charge the Customer for all the costs of delivery and an appropriate administration fee; and/or
 - (c) To destroy or otherwise dispose of the Customer Property.

The Supplier can pass on the charges related to exercising these rights to the Customer.
- 10.4** Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry,

including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 10.5** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

- 11.1 Force majeure.** Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract [without the prior written consent of the Supplier.

11.3 Confidentiality.

- (a) Each Party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 11.3(b).
- (b) Each Party may disclose the other Party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each Party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.]

11.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

11.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.8 Notices.

- (a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or or sent by email to the address specified in the Order Form.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm

Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9 Conflict. In the event of a conflict between the Conditions and the Order the terms within these Conditions shall prevail.

11.10 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the Parties to rescind or vary the Contract are not subject to the consent of any other person.

11.11 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.12 Jurisdiction. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

