

MARINE & TOWAGE SERVICES GROUP LIMITED

1 INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

“**Business Day**”: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

“**Charges**”: the charges payable by you for the supply of the Services in accordance with clause 5;

“**Commencement Date**”: has the meaning set out in clause 2.2;

“**Conditions**”: these terms and conditions as amended from time to time in accordance with clause 9.8;

“**Contract**”: the contract between us and you for the supply of Services in accordance with these Conditions;

“**Order**”: your order for Services;

“**Services**”: the services supplied by us to you as set out in the Order or as otherwise agreed in writing by us with you;

“**we**” or “**us**”: Marine & Towage Services Group Limited (199014), a company incorporated in England and Wales whose registered office is at Lowin House, Tregolls Road, Truro, Cornwall TR1 2NA; and

“**you**”: the person or firm who purchases Services from us.

1.2 Rules of interpretation

In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by you to purchase Services from us in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when we issue a written acceptance of the Order at which point and on which date the Contract shall come into existence (“**Commencement Date**”).
- 2.3 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise or representation made or given by us or on our behalf which is not set out in the Contract. Any descriptive matter or advertising issued by us, and any descriptions or illustrations contained in our 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 any other contract between us for the supply of the Services.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 SUPPLY OF SERVICES

- 3.1 You agree to appoint us as your agent in respect of the Services to be provided by us, with the authority to contract on your behalf.
- 3.2 We shall supply the Services to you in accordance with the Order in all material respects.
- 3.3 We shall use 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.
- 3.4 We shall have the right to:
- (a) make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall use reasonable endeavours to notify you in any such event;
 - (b) refuse to provide Services in connection with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants, or such other items as specified by us in writing to you from time to time; and

- (c) move any vessel, gear, equipment or other property at any time for reasons of safety, security or good management of our business and premises.

3.5 We warrant to you that the Services will be provided using reasonable care and skill.

4 YOUR OBLIGATIONS

4.1 You shall:

- (a) ensure that the terms of the Order and any information you provide to us are complete and accurate;
- (b) co-operate with us in all matters relating to the Services;
- (c) provide us, our employees, agents, consultants and subcontractors, with access to your vessels, premises, office accommodation and other facilities as reasonably required by us;
- (d) provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.

4.2 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation ("**Your Default**"):

- (a) we shall, without limiting our other rights or remedies, have the right to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations to the extent Your Default prevents or delays our performance of any of our obligations;
- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 4.2; and
- (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

5 CHARGES AND PAYMENT

5.1 The Charges for the Services shall be on a time and materials basis:

- (a) the Charges shall be calculated in accordance with our standard fee rates, as set out in our confirmation of your Order; and

- (b) we shall be entitled to charge you for any expenses incurred by the individuals whom we engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Services, and for the cost of any materials.
- 5.2 We shall invoice you as stated in our confirmation of your Order.
- 5.3 You shall pay each invoice submitted by us:
- (a) in accordance with the timescales specified by us in our confirmation of your Order; and
- (b) in full, in the currency specified by us and in cleared funds to a bank account nominated in writing by us,
- and time for payment shall be of the essence of the Contract.
- 5.4 You shall immediately pay to our bank account such sums as we may request as an advance on port disbursements which we estimate will be incurred whilst your vessel is in our agency. If you fail to make any such payments we may, without prejudice to any other rights or remedies that we have, immediately terminate the Contract.
- 5.5 We shall be entitled to retain and be paid all customary brokerages, commission, allowances and other remuneration.
- 5.6 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (“VAT”). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us 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 Without limiting any other right or remedy we may have, if you fail to make any payment due to us under the Contract by the due date for payment (“**Due Date**”), we shall have the right to charge interest on the overdue amount in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.8 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without

limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

6 LIMITATION OF LIABILITY

6.1 Nothing in these Conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation.

6.2 Subject to clause 6.1:

- (a) we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract, including any losses that may result from our a deliberate breach of the Contract by us, our employees, agents or subcontractors; and
- (b) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the amount of the Charges.

6.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6.4 This clause 6 shall survive termination of the Contract.

7 INDEMNITY

You shall indemnify us, and keep us indemnified, from and against all costs, claims, demands, liabilities, expenses, damages and losses (including all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us arising out of or in connection with:

- (a) any breach of this Contract by you; and
- (b) our performance of our obligations as your agent.

8 TERMINATION

8.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:

- (a) commits a breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within five (5) Business Days of being notified in writing of the breach; or
- (b) enters into a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (whether voluntary or compulsory) or goes bankrupt or has a receiver appointed over some or all of its assets, or is already in this situation at the commencement of this agreement; or
- (c) suspends or ceases, or threatens to suspend or cease, to carry on its business.

8.2 Without limiting our other rights or remedies, we:

- (a) shall have the right to suspend provision of the Services under the Contract or any other contract between us if you become subject to any of the events listed in clause 8.1, or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment; and
- (b) may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due to us in any respect (whether under this Contract or any other contract between us) on the due date for payment.

8.3 On termination of the Contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

9 GENERAL

9.1 **Force majeure:**

- (a) For the purposes of this Contract, “**Force Majeure Event**” means an event beyond our the reasonable control including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving our workforce or the workforce of any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order,

rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- (b) We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents us from providing any of the Services for more than eight weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

9.2 Assignment and subcontracting:

- (a) We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent.
- (b) You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract.

9.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 9.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "**writing**" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

9.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that

or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

9.5 **Severance:**

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

9.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

9.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

9.8 **Variation:** Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by us.

9.9 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.