

## 1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:

“**Additional Works**” means all work, in any, in addition to or modification of the Specification Works which are to be described on a Work Variation Form

“**Assignment**” means the period during which the Worker is supplied to render services to the Client;

“**Client**” means the person, firm or corporate body to whom the Workers are supplied under this contract;

“**Contract**” means the agreement between the Client and the Employment Business for services as outlined in the Specification and governed by these Terms of Business

“**The Employment Business**” means Clever Marine Services Ltd, Isle of Man

“**Engagement**” means the authorized employment of the Worker for services pursuant to the Specification;

“**Workers**” means the individual or individuals whose services are supplied by the Employment Business to the Client;

“**Parties**” means the Employment Business and the Client;

“**Reductions**” means all deletions, if any, to the Specification Works, which are to be recorded on a Works Variation Form;

“**Specification Works**” means the work to be carried out under this Contract described in the Specification as attached to this Contract;

“**Vessel**” means the vessel for which services are to be provided to according to the Specification;

“**Works**” mean the Specification Works, as may be amended by any Additional Works and/or Reductions.

1.2 Unless the context otherwise requires, references to the singular include in the plural and references to the masculine include the feminine and vice versa.

1.3 The headings contained in these Terms are for convenience only and do not affect their interpretation.

## 2. THE CONTRACT

2.1 These Terms govern the supply of the Worker's services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for engagement of the Employment Business and/or acceptance of the Specification Works in writing.

2.2 No variation or alteration to these Terms shall be valid unless approved by the Employment Business in writing.

2.3 Unless otherwise expressly agreed in writing by the Employment Business, these Terms prevail over any terms of business or purchase conditions proffered by the Client.

## 3. PERFORMANCE AND APPROVAL OF THE WORK

### 3.1 Performance of Works

- i) The Workers shall perform the Works in accordance with the provisions of this Contract and to the reasonable satisfaction of the Client
- ii) The Works shall be performed in accordance with best local practice and, unless otherwise agreed, within normal working hours.
- iii) In the event of Additional Works or Reductions, the price shall be adjusted by agreement between the Parties and recorded on a Works Variation Form.
- iv) Suitable materials, parts, tools and equipment necessary to perform the Works shall be supplied by the Client, except for as stated in the Specification. The Employment Business and Workers will not be liable for any delays or economic losses resulting from the failure of the Client to provide the agreed suitable materials, parts, tools and equipment, and any waiting times and incidental expenses of the Workers as a result thereof will be chargeable in accordance to the Specification.
- v) The Clients shall grant the Workers reasonable access to the Vessel's workshops and tools in order for them to carry out the Works, if required, provided that the Workers will remain responsible for all of their actions and that such actions do not interfere with or delay normal Vessel operations.

### 3.2 Approvals and Certificates

The Clients shall be responsible for obtaining and maintaining any approvals or certificates relating to the Vessel and the Works as required by the Clients regulatory bodies. The Employment Business shall provide any reasonable assistance that may be required in this respect.

#### **4. SUPERVISION**

##### **4.1 Clients' Representative**

- i) The supervision of the Works shall be carried out by Clients' Representative as stated in the Specification. The Client shall have at least one representative present throughout the Works. The Clients' Representative(s) shall be authorized to act on behalf of the Client in respect of all matters relating to the Works, including but not limited to the approval of plans, drawings, calculations, and documents, and agreeing and signing Work Variation Forms and invoices.
- ii) The Clients' Representative(s) shall at all times provide reasonable assistance to facilitate timely and efficient completion of the Works
- iii) Subject to Sub-clause 4.2, the Vessel's Master shall be the Clients' Representative unless otherwise stated in the Specification.

##### **4.2 Supervision Services**

In the case that the Engagement is for the provision of supervision services to the Client, the Worker assigned to provide the supervision services will act as the Clients' Representative.

#### **5. CHARGES**

- 5.1 The Client agrees to pay the hourly/monthly charges of the Employment Business as notified in the Specification and as may be varied from time to time during the Assignment. The charges are calculated according to the number of hours worked by the Worker (to the nearest hour), meals, coffee breaks will not be deducted from the working hours. The charges are comprised mainly of the Worker's remuneration but also include the Employment Business's commission, and any travel, hotel or other expenses as may have been agreed with the Client, if there is no such agreement, such expenses as are reasonable.
- 5.2 Unless otherwise provided in the Specification, the charges will be invoiced to the Client on completion of the Assignment. The charges shall be payable by the Client free of all taxes, bank charges, exchange control regulations, in the currency stated on the invoice, in accordance with the payment terms stated on the invoice, usually 30 days from completion of Assignment.
- 5.3 The Employment Business reserves the right to charge interest on any overdue amounts at the rate of 5% per annum above the generally accepted base interest rate of the invoice currency from time to time from the due date until the date of payment.

#### **6. TIME SHEETS**

- 6.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less or is completed before the end of a week) the Clients Representative shall sign the Workers time sheet verifying the number of hours worked by the Worker during that week.
- 6.2 Signature of the time sheet by the Clients Representative indicates satisfaction with the services provided by the Worker and confirmation of the number of hours worked. Failure to sign the time sheets does not absolve the Client's obligation to pay the charges in respect of the hours worked.

#### **7. REMUNERATION**

- 7.1 The Employment Business assumes responsibility for payment of the Workers remuneration and expenses.

#### **8. LIABILITY**

- 8.1 Whilst every effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Workers and further to provide them in accordance with the Client's booking details, the Employment Business is not liable for any loss, expense, damage or delay arising from any failure to provide any Worker for all or part of the period of booking or from the negligence, dishonesty, misconduct or lack of skill of the Worker. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.
- 8.2 Workers are engaged by the Employment Business under contract for services. They are deemed to be under the

supervision, direction and control of the Client and/or the Clients' Representative from the time they report to take up duties and for the duration of the Assignment. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, by-laws, codes of practice and legal requirements to which the Workers would be ordinarily subject to at the location where the Assignment takes place. The Client shall also advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Worker.

8.3 The Employment Business shall supply Accidental Death & Dismemberment, Temporary Incapacity, Medical Evacuation & Repatriation and Life cover for the Workers during all Assignments by means of insurance policies.

8.4 Without prejudice to Sub-clause 8.7, the Employment Business shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect (including, but not limited to loss of profit arising out of or in connection with detention of or delay to the Vessel) and howsoever arising in connection with performance of the Contract UNLESS same is proved to have resulted solely from the negligence, gross negligence or willful default of the Employment Business or Workers employed by them in connection with the Works, in which case (save where loss, damage, delay or expense has resulted from the Employment Business's 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 Employment Business's for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of US\$ 1,000,000 (One Million United States Dollars)

8.5 Employees, Servants, Agents and Sub-contractors

The limitations on each party's liability in this Clause 8 (Liability) shall also apply to the liability of those for whom that party is responsible under this Contract. Each party further agrees that it will not, and will ensure that those for whom it is responsible do not, circumvent the aforesaid limitations and allocation of responsibility by taking legal proceedings against the employees, servants, Workers of the other party, and to this extent each party shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons.

8.6 Limitation

Nothing herein contained shall affect any right that the Parties may have to limit their liability under any statutory enactment for the time being in force.

8.7 Force Majeure

Neither Party shall be responsible for any loss, damage or delay due to any of the following force majeure events and/or conditions to the extent that the Party invoking force majeure is prevented or hindered from performing any or all obligations under the Contract, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such event and/or conditions:

- i) Acts of God;
- ii) Any government requisition, control, intervention, requirement or interference;
- iii) Any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy or the consequences thereof.
- iv) Riots, civil commotion, blockades or embargos;
- v) Epidemics;
- vi) Earthquakes, landslides, floods or other extraordinary weather or volcanic activities;
- vii) Strikes, lockouts or other industrial actions unless limited to the employees of the party seeking to invoke force majeure;
- viii) Fire, accident, explosion except where caused by the Party seeking to invoke force majeure; and
- ix) Any other similar cause beyond the reasonable control of either Party.

**9. TERMINATION**

9.1 The Client undertakes to supervise the Worker sufficiently to ensure the Client's satisfaction with the Worker's standard of workmanship. If the Client reasonably considers that the services of the Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Worker. The Employment Business may in such circumstances reduce or cancel the charges for the time worked by that Worker, provided that the Assignment terminates:

- i) Within four hours of the Worker commencing the Assignment where the booking is more than seven hours; or
- ii) Within two hours for booking of seven hours or less;

and also provided that notification of the unsuitability of the Worker is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

9.2 The Client or the Employment Business or the Worker may terminate an Assignment with one month's notice or any time at once with a two months (360hrs/month) compensatory wage at a charge rate stipulated on the cover page.

9.3 The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Worker fails to attend work or notifies the Client that he is unable to attend work for any reason.

## 10. LAW & DISPUTE

- 10.1 This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or reenactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to defer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$ 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- 10.2 Notwithstanding 10.1 above, the parties may agree at any time to refer to mediation for any difference and/or dispute arising out of or in connection with this Contract.

In the case of a dispute in respect of which arbitration has been commenced under 10.1 above, the following shall apply:

- i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.
- ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which upon application of either party a mediator will be appointed promptly by the Arbitration Tribunal (the "Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
- iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.
- iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.
- v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.
- vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.
- vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

## 11. NOTICES

- 11.1 All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Contract shall be in writing
- 11.2 For the purposes of this Contract, "in writing" shall mean any method of legible communication made in the English language. A notice may be given by any effective means including, but not limited to, cable, telex, fax, email, registered or recorded mail, or by personal service.