Salterns Marina Limited

GENERAL TERMS OF BUSINESS (APPLICABLE TO ALL GOODS AND SERVICES)

1.PRELIMINARY PROVISIONS AND DEFINITIONS

1.1 These Terms of Business form an integral part of all quotations and contracts provided by the Company. They consist of these general terms and the special terms at the end which apply to the Work that the Customer has ordered. Please read these terms carefully before you submit any order to the Company because once the Company accepts an order you will be bound by these terms.

1.2 If the Customer is a Business then these Terms of Business apply 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.

1.3 To the extent that the Company has expressly agreed to terms that contradict these Terms of Business in an Order then the terms set out in the Order shall prevail.

1.4 In these Terms of Business:

'Applicable Laws on Consumer Rights' means all applicable laws, rules, regulations, instruments and provisions in force from time to time relating to consumer protection, including but not limited to the Consumer Rights Act 2015.

'Business' means any Customer that is not a Consumer.

'Company' means Salterns Marina Limited a limited company registered in England with registered number 00957868 whose registered office is at Midland House, 2 Poole Road, Bournemouth, Dorset, BH2 5QY and whose registered VAT number GB 355 7532 37. Salterns Marina Limited also trades as Salterns Marina; Golden Arrow Marine; Salterns Brokerage; Salterns Chandlery; Salterns Boatyard; Offshore Performance and 'Company' shall also refer to these trading names or parties undertaking the Work, as well as any authorised member, agent, employee or representative of the Company as appropriate.

'Consumer' means a Customer who is an individual, and is purchasing any Work from the Company wholly or mainly for their personal use (rather than for use in connection with their trade, business, craft or profession).

'Customer' means the party or parties with whom the Company agrees to perform the Work and shall include the legal owner of any relevant Vessel, any parent or associated company and/or firm, as well as any authorised member, agent, employee or representative of any Business Customer. Where the Vessel is under demise charter and the agreement is with the demise charterer, the Customer shall also include the demise charterer. In the event that the Company enters into an agreement with more than one party, the obligations of these parties shall be joint and several (meaning the parties will be responsible for one another's actions and failure to act), unless otherwise agreed in writing.

'Order' means the Customer's order for the Work, as set out in the Customer's order form, or the Customer's written acceptance of the Company's quotation, or the order form overleaf, as the case may be.

'Parties' means the Company and the Customer; each a Party and collectively the Parties.

'Vessel' means any vessel or a floating craft of any nature (or part thereof), or any other comparable object such as a yacht, a lighter, a barge, a pontoon, a tug, a drilling-platform, a rig, any off-road vehicles, snow mobiles as well as any other object entrusted to the Company for the Work to be undertaken.

'Work' means the goods and services supplied to the Customer and/or work undertaken by the Company pursuant to these Terms of Business as set out in the Order.

2.THE CONTRACT

2.1A contract will come into existence between the Company and the Customer when the Company accepts the Customer's Order in writing (or the Company otherwise expressly accepts the Customer's Order).

2.2 If the Company is unable to accept an Order, it will inform the Customer of this and will not charge for the Work. This might be because a product is out of stock or because of unexpected limits on the Company's resources.

3.LIABILITY (This clause is subject to Clause 15)

3.1 Where the Customer is a Business, the Company shall not be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage, caused by or arising from events or circumstances beyond its reasonable control (which includes, without limitation, acts of God, wars (whether declared or not), riots, civil commotions, malicious damage, embargoes, compliance with any law or governmental order, rule, regulation or direction, breakdown of plant or machinery, fire, flood, accidents, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other Party), failure of a utility service or transport network, unusually severe weather conditions, default of suppliers or subcontractors or the actions of third parties not employed by the Parties).

3.2 The Company shall take reasonable steps to maintain security at its premises, and to maintain its facilities and equipment in reasonably good order and condition.

3.3 Notwithstanding Clause 3.2, any property of the Customer left at the Company's premises (including any Vessel), is at the Customer's own risk where the Customer is a Business. Where the Customer is a Consumer then Clauses 15.3 and 15.5 shall apply.

3.4 The Company may need certain information from the Customer so that it can carry out or supply the Work. If so, the Company will ask for this information from the Customer. If the Customer does not give this information within a reasonable time of the Company asking for it, or if the Customer gives incomplete or incorrect information, the Company may either end the contract or make an additional charge of a reasonable sum to compensate the Company for any extra work that is required as a result. The Company will not be responsible for carrying out or supplying the Work late or not performing or supplying any part of them if this is caused by the Customer not giving the information needed within a reasonable time of being asked for it.

3.5 Each Business Customer shall effect and maintain, at no cost to the Company, liability insurance providing cover for any loss or damage for which the Customer may be liable under these Terms of Business (including third party liability cover and, where appropriate, employer's liability cover in respect of any of its employees).

3.6 The Company shall have in place, at no cost to the Customer, liability insurance for such loss or damage for which the Company may be held liable under these Terms of Business.

3.7 Each Party shall produce copies of insurance policies as evidence of cover, immediately and (in any case within seven (7) days) upon request by the other Party.

3.8 Where the Customer is a Business each Party accepts responsibility and liability for:

3.8.1 death or personal injury caused by its negligence or the negligence of its employees, agents or sub-contractors;

3.8.2 fraud or fraudulent misrepresentation; or

3.8.3 any other reason where it would be illegal to exclude liability.

3.9 Subject to Clause 3.8:
3.9.1 the Company shall under no circumstances whatsoever, be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms of Business; and
3.9.2 the Company's liability to the Customer for all other losses arising under or in connection with any contract between the Customer and the Company, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to 110% per cent of the total sums paid by the Customer for the Work under such contract unless otherwise agreed between the parties in writing,
where the Customer is a Business.
3.10 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms of Business where the Customer is a Business.
3.11 Where the Customer is a Business it is responsible for any damage or loss caused directly or indirectly from any breach of its obligations under these Terms of Business.
3.12 The Customer shall take all necessary precautions to avoid pollution of the environment and where it is a Business it shall indemnify the Company for any loss or damage suffered by the Company arising from any pollution of the environment by the Customer or its representatives.
3.13 The Customer shall comply with all reasonable instructions given by the Company or any of its representatives in connection with all matters relating to the safe and efficient operation of Salterns Marina.

4.THE WORK

4.1 The images of any products on the Company's websites are for illustrative purposes only. Although the Company has made every effort to display colours accurately, it cannot guarantee that a device's display of the colours accurately reflects the colour of the products. Products may vary slightly from those images.
4.2 If the Company is making any item to any specification that the Customer has provided the Customer is responsible for ensuring that the specification is correct. The Customer may contact the Company if it has any questions about this.

5.CHANGES

5.1If the Customer wishes to make a change to the Work it has ordered it should contact the Company. The Company will let the Customer know if the change is possible and (if it is possible) about any changes to the price of the Work, the timing of supply or anything else which would be necessary as a result of the requested change and ask the Customer to confirm whether it wishes to go ahead with the change.
5.2 The Company may change the Work to reflect changes in relevant laws and regulatory requirements and/or to implement minor technical adjustments and improvements. These changes will have minimal, if any, affect upon the Customer's use of the Work.
5.3 If the Company wishes to make more significant changes to the Work it will notify the Customer and the Customer may either accept these changes or end the contract before the changes take effect and receive a refund for any Work that it has paid for but not received.

6.QUOTES AND ESTIMATES

6.1 The Company shall confirm the price for the Work ("Price") or, where the Company is unable to pre-estimate the price, an estimate for the Work to the Customer, for example in the Order. If no price or estimate is quoted for the Work, the price will be determined based upon the labour and materials expended and services provided in accordance with the Company's usual tariff at the time when the Work was performed, as duly invoiced to the Customer. If an estimate is given the Company where reasonably possible provide a Price once it has had the opportunity to scope out the Work (for example once it has inspected the Vessel or part that the Customer wants to be repaired, customised or otherwise worked on as part of the Work) and obtain the Customer's approval to the Price before carrying out the Work. The Price shall include VAT (where VAT is applicable) unless expressly stated otherwise.
6.2 Unless otherwise agreed in writing, the Price will not include expenses reasonably incurred for pilotage, salvage, tugs, harbour dues and similar charges which shall be invoiced separately to the Customer
6.3 The Company will exercise reasonable skill and judgment when giving an estimate or indication of Price. However, estimates are always subject to the accuracy of information provided by the Customer, are often based on a superficial examination and do not include the cost of any emergent work which may be necessary nor the cost of any extensions to the Work. The Company reserves its right (subject to Clause 6.5) to (a) increase the rates under its usual tariff and/or (b) increase the Price for the Work.
6.4If the rate of VAT changes between the date an Order is placed and the date the Work is supplied, the Company reserves the right to adjust the rate of VAT that the Customer pay, unless the Customer has already paid for the Work in full before the change in the rate of VAT takes effect.
6.5The Company will inform the Customer of any proposed increase in the estimated Price or increase in its rates relating to any Order that has already been placed, together with the reasons for such increase, and will only proceed with the Work after having obtained the Customer's approval (such approval not to be unreasonably delayed or withheld where the Customer is a Business). The Customer shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied which are not affected by the proposed increase in the Price or rates.

7.PAYMENT

7.1 Unless otherwise agreed between the Parties in writing, payment for all Work provided shall be due immediately upon receipt of the Company's invoice. Payment shall be deemed to have been made when received by the Company in cash or cleared funds at the Company's nominated bank account. All Credit and Debit card transactions carried out through the Company's website shop shall be debited at the point the Customer places an order by checking out their basket through the website.
7.2 If the Customer fails to make any payment due to the Company by the due date for payment, the Company has the right to charge interest on the overdue amount at the rate of four percent (4%) above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
7.3 If the Customer does not pay when it is supposed to and still does not make payment within 5 days of the Company reminding it that payment is due, the Company may suspend supply and/or delivery of the Work until the Customer has paid the outstanding amounts. The Company will contact the Customer to tell them of the suspension. The Company will not suspend the Work where the Customer disputes an unpaid invoice.
7.4 The Customer shall pay all amounts due under these Terms of Business in full without any set-off, counterclaim, deduction or withholding except as required or permitted by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer where the Customer is a Business.
7.5 To the extent permitted by law, the Customer hereby grants to the Company a lien and a continuing security interest, and, where applicable, a maritime lien, over the Vessel as security for payment of the Price until full payment of the Price by the Customer, or until the Customer has given security to the Company in a form and substance acceptable to the Company (for example a letter of guarantee from a bank reasonably acceptable to the Company or lodgement of a cash deposit with a professional third party agent reasonably acceptable to the Company). The security provided shall be sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for the Company's prospective legal costs and expenses.
7.6 The Company shall be entitled to charge the Customer for storage and the provision of any ongoing services at the Company's normal daily rates until full payment (or provision of security) by the Customer and removal of the Vessel from the Company's premises. The Customer shall be entitled to remove the Vessel upon providing proper security.

8.DELIVERY

8.1 During the order process the Company will let the Customer know when it will provide the Work.

8.2 If the Customer is a Business then:

8.2.1unless otherwise agreed in writing by the Parties, time estimates given for completion of the Work are given in good faith and without guarantee; and

8.2.2 the Company shall not be liable for any failure or delay in the performance or completion of the Work, or for any such loss or damage resulting therefrom, unless the Company has expressly guaranteed completion by a specific date in writing, or the delay arises from its wilful acts or omissions or negligence.

8.3 If the Customer is a Consumer then, if the Company's supply of the Work is delayed by an event outside of the Company's control then it will notify the Customer and take steps to minimise the effect of the delay. Provided the Company does this it will not be liable for delays caused by the event, but if there is a risk of substantial delay the Customer may contact the Company to end the contract and receive a refund for any Work it have paid for but not received.

8.4 If the Customer does not allow the Company access to its Vessel to perform the Work as arranged (and the Customer does not have a good reason for this) the Company may charge additional costs incurred by the Company as a result. If, despite the Company's reasonable efforts, it is unable to contact the Customer or re-arrange access the Company may end the contract.

9.TITLE AND RISK

9.1 Any goods, equipment and material that are to be provided as part of the Work will be the Customer's responsibility from the time they are delivered to the address agreed by the Customer or the Customer or any party organised by the Customer collect them from the Company.

9.2 The Customer shall own any goods that are to be provided as part of the Work once the Company has received payment in full.

10.GUARANTEE

10.1 The Company guarantees that, for a period of twelve (12) months from completion of the Work (the "Warranty Period"), the Work will be free of defects in material and workmanship and in conformity with the agreed specification. The Customer shall give notice in writing to the Company of any such defects in material or workmanship ("Defective Work") which may become apparent and shall provide the Company with sufficient evidence so as to establish the nature and extent of the Defective Work. This guarantee applies only to the Customer: a person who is not a Party to these Terms of Business shall not have any rights to enforce these Terms of Business.

10.2 On notification by the Customer of the Defective Work, the Company will be given a reasonable opportunity to inspect the Defective Work and if it is the Company's responsibility, the Company shall repair or reperform, in whole or in part, at its discretion, the Defective Work. Delivery of repairs or re-performance under this guarantee will be made in accordance with these Terms of Business.

10.3 The Customer shall, immediately after the discovery of any Defective Work, take all appropriate steps to mitigate any loss or damage and to prevent any Defective Work becoming more serious.

10.4 The Company shall not be liable for any Defective Work if the defect arose as a result of: (a) the Customer's failure to follow the Company's oral or written instructions; (b) the Company following any drawing, design or specifications supplied by the Customer; (c) fair wear and tear, wilful damage, negligence or abnormal working conditions; (d) changes made to ensure compliance with applicable statutory or regulatory standards and/or (e) any changes, repairs or works carried out by anyone other than the Company or the Company's authorised representatives.

10.5 Where the Customer is not a Consumer:

10.5.1these Terms of Business do not contain any express or implied term as to quality or fitness for any particular purpose, unless, prior to the Work being performed, the purpose has been clearly identified in writing to the Company and the Customer has stipulated that it is relying upon the Company's skill and judgment to ensure this purpose has been met; and

10.5.2 the Company accepts no liability to the Customer in respect of any loss of profit or turnover which the Customer or its customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied to the Customer by the Company.

10.6 The Company shall assign to the Customer any and all of its rights against the manufacturer or supplier of any particular article used in the Work or supplied to the Customer as part of the Work.

11.QUALITY STANDARDS

11.1The Company will exercise reasonable care and skill in the performance of the Work in accordance with the provisions of these Terms of Business, the requirements of any relevant regulatory bodies and, in the absence of any other contractual term as to quality, to a satisfactory standard.

12.CUSTOMER CANCELLATION

12.1The Customer may end the contract for any reason set out below in which case the contract will end immediately and it will refund the Customer in full for any products which have not been provided and the Customer may also be entitled to compensation. The reasons are:

12.1.1 the Company has told the Customer about an upcoming change to the product or these terms which the Customer does not agree to;

12.1.2 there is a risk that supply of the products may be significantly delayed because of events outside the Company's control;

12.1.3 the Customer has a legal right to end the contract because of something the Company has done wrong.

12.2 If the Customer is a Consumer then for most products bought online, by telephone or by exchange of emails they have a legal right to change their mind within 14 days and receive a refund. This right does not apply in respect of:

12.2.1 services, once these have been completed, even if the cancellation period is still running;

12.2.2 customised, bespoke or personalised products; and

12.2.3 any products which become mixed inseparably with other items after their delivery.

12.3 The 14 day cancellation period is calculated as follows:

12.3.1 for services, the Customer has 14 days after the day the Company emails to confirm that it accepts the Order. However, once the services have been completed the Customer cannot change their mind, even if the period is still running. If the Customer cancels after the Company has started the services, the Customer must pay for the services provided up until the time they tell the Company that they have changed their mind.

12.3.2 for goods, the Customer has 14 days after the day they (or someone they nominate) receives the goods, unless the goods are split into several deliveries over different days. In this case the Customer has until 14 days after the day they (or someone they nominate) receives the last delivery.

12.4 Even if the Company is not at fault and the Customer has no right to cancel under Clause 12.2 the Customer can still end the contract before it is completed by notifying the Company if it is a Consumer. The contract will end immediately and the Company will refund any sums paid by the Customer for products not provided but it may deduct from that refund (or, if the Customer has not made an advance payment, charge the Customer) reasonable compensation for the net costs the Company will incur as a result of their ending the contract.

12.5 If the Customer ends the contract for any reason after products have been dispatched to it or it has received them, they must return them to the Company. The Customer must either return the goods in person, post them back to the Company at the address the Company specifies or (if they are not suitable for posting) allow the Company to collect them from them. If the Customer is a Consumer exercising their right to change their mind they must send off the goods within 14 days of telling the Company they wish to end the contract.

12.6 The Company will pay the costs of return:

12.6.1 if the products are faulty or misdescribed; or

12.6.2 if the Customer is ending the contract because the Company has told the Customer of an upcoming change to the product or these terms, a delay in delivery due to events outside its control or because the Customer has a legal right to do so as a result of something the Company has done wrong; or

12.6.3 if the Customer is a Consumer exercising their right to change their mind.

In all other circumstances the Customer must pay the costs of return.

12.7 If the Customer is responsible for the costs of return and the Company is collecting the product, it will charge the Customer the direct cost to the Company of collection.

12.8 If the Customer is entitled to a refund under these terms the Company will refund the Customer the price paid for the products including delivery costs, by the method the Customer used for payment subject to the deductions below.

12.9 If the Customer is exercising their right to change their mind:
12.9.1 the Company may reduce the refund of the price (excluding delivery costs) to reflect any reduction in the value of the goods, if this has been caused by the Customer's handling them in a way which would not be permitted in a shop. If the Company refunds the price paid before it is able to inspect the goods and later discover the Customer has handled them in an unacceptable way, the Customer must pay an appropriate amount.
12.9.2 the maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method the Company offers.
12.9.3 where the product is a service, the Company may deduct from any refund an amount for the supply of the service for the period for which it was supplied, ending with the time when the Customer told the Company they had changed their mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the contract.
12.10 The Company will make any refunds due as soon as possible. If the Customer is a Consumer exercising their right to change their mind then:
12.10.1 if the products are goods and the Company has not offered to collect them, the refund will be made within 14 days from the day on which the Company receives the product back from the Customer or, if earlier, the day on which the Customer provides evidence that they have sent the product back to the Company.
12.10.2 in all other cases, the refund will be made within 14 days of the Customer telling the Customer they have changed their mind

13.TERMINATION BY THE COMPANY

13.1 The Company may end the contract for a product at any time by writing to the Customer if:
13.1.1 the Customer does not make any payment to it when it is due and the Customer still does not make payment within 14 days of the Company reminding the Customer that payment is due;
13.1.2 the Customer does not, within a reasonable time of the Company asking for it, provide the Company with information that is necessary for the Company to provide the products;
13.1.3 the Customer does not, within a reasonable time, allow the Company to deliver the products to them or collect the products from the Company; or
13.1.4 the Customer does not, within a reasonable time, allow the Company access to their Vessel or any other item the Company requires to supply the services.
13.2 If the Company ends the contract in the situations set out in Clause **13.1** it will refund any money the Customer has paid in advance for products the Company has not provided but it may deduct or charge reasonable compensation for the net costs the Company will incur as a result of the Customer breaking the contract.

14.ASSIGNMENT AND OTHER DEALINGS

14.1 The Company may transfer its rights and obligations under these Terms of Business to another organisation. The Company will tell the Customer in writing if this happens and will ensure that the transfer will not affect the Customer's rights under the contract.
14.2 The Customer may only transfer its rights or obligations under these Terms of Business if the Company agrees to this in writing.

15.CONSUMER RIGHTS (this clause applies only where the Customer is a Consumer)

15.1 To the extent that these Terms of Business contradict with the Applicable Laws on Consumer Rights, the rights conferred on Consumers under the Applicable Laws on Consumer Rights remain unaffected.
15.2 Advice on whether a Customer is a Consumer or is otherwise protected by some or all of the Applicable Laws on Consumer Rights may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of solicitors practising in England and Wales.
15.3 The Company is responsible to Consumer Customers for foreseeable loss and damage caused by the Customer. If the Company fails to comply with these Terms of Business, it is responsible for loss or damage the Customer suffer that is a foreseeable result of the Company breaking this contract or failing to use reasonable care and skill but the Company is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both parties knew it might happen, for example, if it was discussed during the sales process.
15.4 The Company does not exclude or limit in any way its liability to the Customer where it would be unlawful to do so. This includes liability for death or personal injury caused by the Company's negligence or the negligence of its employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of the Customer's legal rights in relation to the Work; and for defective products under the Consumer Protection Act 1987
15.5 If the Company are carrying out Work on any item or property owned by a Consumer Customer, it will make good any damage to the property caused by the Company while doing so. However, the Company is not responsible for the cost of repairing any pre-existing faults or damage to the item or property that the Company discovers while providing the Work unless expressly agreed between the Company and the Customer.

16.PERSONAL INFORMATION

16.1 The Company will only use the Customer's personal information as set out in its privacy policy https://salterns.co.uk/privacy-policy/

17. THIRD PARTY RIGHTS

17.1 This contract is between the Company and the Customer. No other person shall have any rights to enforce any of its terms, except as explained in Clause 14.2 in respect of the guarantee. Neither party will need to get the agreement of any other person in order to end the contract or make any changes to these Terms of Business.

18.COMMUNICATION AND NOTICES

18.1 Customers can contact the Company by telephone, email or post (contact details are set out in the Order or on the Company's website). If the Company has to contact the Customer it will do so by telephone or by writing to the Customer at the email address or postal address it provided to in its Order.

19.SEVERANCE

19.1 Each of the paragraphs of these Terms of Business operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

20.WAIVER

20.1 If the Company does not insist immediately that the Customer does anything it is required to do under these Terms of Business, or if the Company delays in taking steps against the Customer in respect of the Customer's breaking this contract, that will not mean that the
20.2 not have to do those things and it will not prevent the Company taking steps against the Customer at a later date.

21.BREXIT

21.1 If a Brexit Trigger Event occurs and the Customer is a Business, the impacted party may:
21.1.1 require the other party to negotiate in good faith an amendment to this contract to alleviate the Brexit Trigger Event; and
21.1.2 if no such amendment is made to this contract within 30 days, terminate the contract by giving the other party not less than 30 days' written notice.
21.2 'Brexit Trigger Event' means any of the following events whenever occurring as a result of The UK ceasing to be a member state of the European Union:
21.2.1 a substantial adverse impact on a party's ability to perform the agreement in accordance with its terms and the law; or
21.2.2 an increase in the costs incurred by the Company in performing its obligations under the Contract since the price for the Work was last agreed;
21.2.3 the price of the Work under this contract is lower than the market value for similar products or services.
21.3 Save as expressly provided in this Clause 21, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) this contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of the contract, the provisions of this clause shall prevail.

22.GOVERNING LAW AND JURISDICTION

22.1 If the Customer is a Business these Terms of Business, as well as any contract(s) made subject to these Terms of Business, shall be governed by and construed in accordance with English law. All disputes arising out of or in connection with these Terms of Business shall be subject to the non-exclusive jurisdiction of the English courts.
22.2 If the Customer is a Consumer, these Terms of Business are governed by English law and the Customer can bring legal proceedings in respect of the Work in the English courts. If the Customer lives in Scotland they can bring legal proceedings in respect of the Work in either the Scottish or the English courts. If they live in Northern Ireland they can bring legal proceedings in respect of the Work in either the Northern Irish or the English courts.
22.3 Disputes arising out of or in connection with this Agreement, when they cannot be resolved by negotiation, may, with the written agreement of the Parties, first be submitted to mediation under British Marine's ("BM") Dispute Resolution Scheme. Details of the Scheme are available to current BM members on request from BM and/or online on BM's member website.

SPECIAL TERMS OF BUSINESS

23 .ADDITIONAL TERMS APPLYING TO VESSEL SERVICES

23.1 This clause applies to any services that the Company carries out on a Vessel belonging to the Customer, including maintenance services, repair services, boatyard services and customisation services.

23.2 During performance of the Work by the Company (and/or any of the Company's sub-contractors), the Customer shall not have access to the Vessel unless the Company's prior written consent has been obtained (such consent shall not be unreasonably withheld or delayed).

23.3 No work or services shall be carried out by the Customer on the Vessel or the Company's premises whilst it is under the Company's control or whilst the Company is carrying out the Work without the Company's prior written consent except for minor running repairs or minor maintenance of a routine nature. The Company's consent may be revoked with immediate effect in the event of any breach of these Terms of Business by the Customer, in which case the Company shall be entitled to demand the immediate cessation of any work.

23.4 The Customer shall ensure that it does not cause any nuisance or annoyance to the Company, any other customer or person present or residing in the vicinity and does not interfere with the Company's schedule for the Work and/or the good management of the Company's premises and business.

23.5 The Customer is subject to the Company's health and safety, environmental and access policies and shall further be obliged to comply with all laws and regulations relating to environmental protection and safety.

23.6 The Company shall not be under any duty to salvage or preserve the Vessel from the consequences of: (a) any defect in the Vessel and/or (b) an accident which has not been caused by the Company or its representatives. However, the Company reserves the right to salvage or preserve the Vessel, at its sole discretion, in appropriate circumstances and in particular where the safety of people, property or the environment is at risk.

23.7 The Company shall have the right to order such movements of the Vessel and such tests or trials it deems necessary in order to perform and determine the due completion of the Work and/or for reasons of safety, security or good management of the Company's business and premises.

23.8 The Customer shall pay the reasonable cost of such movements, trials and/or tests including the cost of any bunkers and/or consumables.

23.9 The Company shall (unless otherwise agreed between the Company and the Customer in writing) only be responsible for the areas of the Vessel in which it is carrying out any Work.

23.10 Where the Customer is a Business, it is solely liable for any damage caused to the Vessel under any sea trial or journey carried out by the Customer or on its instructions. Where the Customer is a Consumer Clause 15 applies.

23.11 The Customer shall be responsible at all times for insuring the Vessel, including when the Company is carrying out any Work.

24.RETURNS & EXCHANGES

24.1 This clause shall apply to any products provided by the Company as part of the Work.

24.2 Where the Customer is a Business the Company will accept stock items for exchange or refund within 7 days of receipt of goods provided that the item(s) are returned unused, in original packaging with the manufacturers tags still attached.

24.3 Incorrectly ordered goods, or stock items returned will be subject to a 20% restocking charge. Non-stock items or specially ordered items may not be returned unless specifically agreed by the Company beforehand and will be subject to a minimum 20% handling charge.

25.BROKERAGE TERMS (SELLER)

25.1 This clause shall apply to any brokerage services provided by the Company as part of the Work where the Customer is a seller of a Vessel.

25.2 The Customer hereby appoints the Company as its sole agent to sell the Vessel at the initial asking price agreed between the Customer and Company in writing or any subsequent final price negotiated between the Customer and purchaser by the Company. The Company hereby accepts the appointment in accordance with these Terms of Business.

25.3 The Customer shall not, during the continuance of this contract, appoint any other person, firm or company as its agent, or in any other capacity, including private sale, to sell the Vessel.

25.4 The Customer shall permit the Company access to the Vessel at any time and shall make keys available for the purpose of carrying out the brokerage services.

25.5 All physical items to be included as part of the Vessel in any sale shall be listed by the Customer and included on the Customer's inventory.

25.2 All defects relating to the Vessel or any item to be sold as part of the brokerage services known to the Customer shall be communicated to the Company in writing as soon as reasonably possible.

25.3 The Customer shall not be entitled to accompany the Company on any viewings or conduct viewings during the term of the contract without the Company's consent.

25.4 The Customer agrees with the Company during the term of the contract:

25.4.1 It is the owner of the Vessel and all items to be sold with the Vessel;

25.4.2 the Vessel will remain the property and responsibility of the Customer until the Vessel has been paid for in full, the correct documents have been signed, funds have cleared and the Company has changed title;

25.4.3 the Customer is responsible for all winterising, cleaning, maintenance, berthing, storage, securing and security of the Vessel pending its sale;

25.4.4 the Customer shall insure the Vessel against usual marine perils and third party risks and ensure that the Vessel remains licenced and insured until completion of a sale;

25.4.5 the Customer shall provide proof of ownership, a set of keys, certificates and manuals to the Company at the point of listing the Vessel for sale;

25.4.6 the Customer will not use the Vessel or allow the Vessel to be used during the terms of the contract (unless by prior agreement); and

25.4.7 the Customer shall be responsible for complying with the requirements of HMRC that VAT is paid in relation to the original sale of the Vessel within or importation to the EU including providing the necessary written evidence of the VAT Paid Status (VPS).

26.BROKERAGE TERMS (PURCHASE)AND SALE OF SECOND HAND VESSELS AND ITEMS

26.1 This clause shall apply to any brokerage services provided by the Company as part of the Work where the Customer is a seller of a Vessel, or where the Customer is purchasing second hand Vessels or items as part of the Work.

26.2 Whilst every care has been taken in its preparation, the correctness of any particulars or information provided about the Vessel or item is not guaranteed and are intended only as a guide. They do not constitute a term of any contract. The Customer is strongly advised to check the particulars, inspect the Vessel or item and where appropriate to have the Vessel or item inspected by a qualified marine surveyor.

27.BERTHING AND STORAGE TERMS

27.1 This clause shall apply to any berthing, storage or related services provided by the Company as part of the Work.

27.2 The Company and the Customer expressly agree that it is not the intention of the parties to create any relationship of landlord and tenant. The Customer shall not lend or seek to lend or transfer the berth provided by the Company ('Berth') to any other person.

27.3 The rights granted to Berth a Vessel relates to the particular Vessel described in the Order, or to any replacement Vessel which the Company has permitted the Customer to keep at its marina. The Customer shall not himself place, nor encourage or permit any other person to place, any vessel, craft or other item other than the Vessel in the Berth.

27.4 The Customer may only replace the Vessel with another vessel after obtaining the Company's prior written approval, which will not be unreasonably withheld. The Company may vary the terms of the contract (including the Berth and/or its fees) to take account of any change in the Vessel.

27.5 The Customer acknowledges and agrees that the Company shall have the right on reasonable notice to require the Customer to move and re-berth the Vessel or shall itself have the right to move and re-berth the Vessel to any new location within its marina if it is in the interests of the Company or the Customer or other marina users or visitors to do so. Nothing shall entitle the Customer to exclusive use of any particular Berth.

27.6 The Customer shall notify the Company prior to his departure from the marina together with the anticipated time and date of return to enable the Company to ensure that the Berth will be available to the Customer on his return to the marina.

27.7 The Company shall have the absolute right to allow another vessel temporarily to occupy the Berth when it is not occupied by the Vessel and the Company shall not be obliged to account to the Customer for any berthing fees received.

27.8 The Vessel shall be stored in the Berth allocated by the Company from time to time and shall not be stored elsewhere in the marina without the prior written agreement of the Company.
27.9 The Vessel shall be berthed by the Customer in such a manner and in such location as the Company may require. No Vessel shall be anchored in the marina nor moored in such a way as to cause any obstruction to the Company or any other user of the marina.
27.10 Vessels shall be moored in such a manner and within berths or such other position as the Company may reasonably require.
27.11 The Customer shall navigate and control the Vessel at all times in a reasonable manner so as not to cause wash and not to cause danger damage or inconvenience to any other person or vessel.
27.12 The Customer is responsible for the safe operation of the Vessel and any users or visitors on the Vessel. All users must proceed and navigate with due care and in accordance with any reasonable directions given by the Company.
27.13 The Customer shall observe and perform all statutes, rules, regulations and bye-laws affecting the marina.
27.14 The Company shall have the right to board, enter (by force if necessary), lift ashore, slip, move, moor, carry out work on or re-berth any Vessel, gear, equipment or other property of the Customer at any time for reasons of safety, security or emergency or to prevent or stop a nuisance or criminal offence, or carry out any emergency work on the Vessel without prior notice to the Customer if in the Company's opinion such work be necessary for the safety of the Vessel or the safety and or convenience of other users or visitors of the marina. The Customer shall deposit keys with the Company giving full access to the interior and lockers of the Vessel when it is not using the Vessel including engine keys.
27.15 No dangerous, inflammable, poisonous or noxious substances, spirits, oil or petrol or other inflammable fluid shall be brought into the marina or stored on the Vessel except in properly secured containers expressly designed to contain such substances against leakage.
27.16 The Customer must not use or permit any Vessel to be used at the marina for residential purposes without obtaining the Company's prior written consent, which may be withheld or withdrawn at its absolute discretion or granted on such terms as it shall see fit.
27.17 Except with the Company's written consent (which may be withheld at its sole discretion), no part of the Marina or any Vessel kept in or on the marina may be used by the Customer for any commercial purpose provided that the occasional use of the Vessel by a personal friend of the Customer's on payment to the Customer of a contribution towards the actual running costs of the said Vessel shall not be deemed a commercial purpose.
27.18 The Customer shall not do or cause, suffer or permit to be done at the marina any act or thing which does or may cause a nuisance, annoyance, damage or inconvenience to the Company, other users of the marina or residents living near to the marina.
27.19 On termination or expiry of this contract for any reason the Customer shall immediately remove the Vessel and any other items from the Berth. If a Customer fails to remove a Vessel within 60 days of the expiration or termination of this contract then the Company may:
27.19.1 move the Vessel to such location as the Company chooses and store it (at the Customer's cost and risk);
27.19.2 sell the Vessel or other property of the Customer left at the Berth. All Vessels and any other property of the Owner left at the Marina are subject to the Torts (Interference with Goods) Act 1977 which confers on the Company a right of sale of such property. Such sale will not take place until the Company has given written notice to the Customer in accordance with that Act; and/or
27.19.3 arrest a Vessel through the Admiralty Court to recover a debt or damages. Any costs involved in any legal action will be recovered from the Customer.

28.LIFTING TERMS

28.1 This clause applies to any lifting and related services provided as part of the Work.
28.2 Customers must ensure that all sails, awnings and spray hoods are removed prior to lift out.
28.3 Once a Vessel is ashore the boat stands, cradle arms or boat supports must not be tampered with in any way. These can only be altered by Company staff.
28.4 Should the Customer fail to arrive on time for lifting services the lift may be re-booked (subject to availability) and additional charges may apply.
28.5 Any hazardous waste resulting from work on any Vessel, gear, equipment or other goods whilst on marina premises must be disposed of in a safe and secure manner.
28.6 The Customer must ensure that the Vessel is watertight prior to launch.
28.7 Cradles, stands and supports will be provided by the Company. Cradles supplied by the Customer may not be used without the Company's prior written permission.
28.8 Customers are required to comply at all times with the Company's reasonable instructions.

29. CUSTOMISATION TERMS

29.1 This clause applies to any customisation services provided as part of the Work.
29.2 Where the Company has created, designed, drawn or written any design, specification or material for the Customer, then the intellectual property rights (including copyright) in those designs and drawings and documents shall remain vested in the Company, and shall only be used by the Customer at the Company's reasonable discretion unless expressly agreed otherwise between the parties.
29.3 If the Customer provides any instructions, designs or material as part of the customisation Work and it confirms that they will not cause the Company to infringe any intellectual property rights of any third party and (where it is a Business) the Customer shall indemnify the Company against any claim or action taken by a third party against the Company in respect of any such infringement.