

MOUNT BATTEN BOATHOUSE TERMS OF BUSINESS

THESE TERMS OF BUSINESS APPLY TO ALL CONTRACTS FOR WORK AND FACILITIES OR GOODS UNDERTAKEN BY US ON OR AFTER
16th FEBRUARY 2011

1. LIABILITY

- 1.1. We shall not be liable for any loss of damage caused by events or circumstances beyond our reasonable control (such as severe weather conditions, the actions of third parties not employed by us or any defect in a customer's or third party's property); this extends to loss or damage to vessels, gear, equipment or other property left with us for work or storage, and harm to persons entering our premises or using any of our facilities or equipment
 - 1.2. We shall take reasonable and proportionate steps having regard to the nature and scale of our business to maintain security at our premises, and to maintain our facilities and equipment in reasonably good working order; but in the absence of any negligence or other breach of duty by us vessels and other property are left with us at the customer's own risk and customers should ensure that their own personal and property insurance adequately covers such risks.
 - 1.3. We shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of any defect in the vessel or property concerned unless we have been expressly engaged to do so by the customer on commercial terms. Similarly we shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of an accident which has not been caused by our negligence or some other breach of duty on our part. However we reserve the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where we do so we shall be entitled to charge the customer concerned on a normal commercial basis.
 - 1.4. Customers may themselves be liable for any loss or damage caused by them, their crew of their vessels and while their vessel or other property is on our premises or is being worked on by us they shall be obliged to maintain adequate insurance, including third party liability cover for not less than £2,000,000, and, where appropriate, Employers' Liability cover in respect of any employee. Customers shall be obliged to produce evidence of such insurance to us within 7 days of a request to do so.
 - 1.5. Nothing in these Terms shall limit or exclude our liability for:
 - 1.5.1. death or personal injury caused by our negligence or that of our servants, agents or employees;
 - 1.5.2. fraud or fraudulent misrepresentation;
 - 1.5.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 1.5.4. defective products under the Consumer Protection Act 1987;
 - 1.5.5. any matter in respect of which it would be unlawful for us to exclude or restrict liability; or
 - 1.5.6. any deliberate breaches of these Terms by Us that would entitle the customer to terminate the contract between us and the customer ("the Contract").
 - 1.6. Subject to Clause 1:
 - 1.7. Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract between us and the customer shall be limited to the purchase price of the Goods and value of the services provided to the customer, and
 - 1.8. We shall not be liable to the customer, whether in contract, tort (including negligence or breach of statutory duty), or otherwise, for any loss of profit or indirect or consequential loss whatsoever (howsoever caused) arise out of or in connection with the Contract including in connection with third party contractors.
 - 1.9. The customer will indemnify us in respect of any liability, loss, claim or proceeding whatsoever arising whether under Statute or at Common Law in respect of any damage to property or the death of or injury to any person caused by or by the use of any Goods sold by Us to the customer unless in the cases of death or personal injury only, such death or injury shall be proved to have been caused by our negligence or that of our employees.
- ## 2. PRICES AND ESTIMATES
- 2.1. In the absence of express agreement to the contrary our price for work shall be based on labour and materials expended and services provided.
 - 2.2. We will exercise reasonable skill and judgement when we give an estimate or indication of price. However such estimates are always subject to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any emergent work which may be necessary to the vessel, gear or equipment nor the cost of any extensions to the work comprised in the estimate.
 - 2.3. We will inform the customer promptly of any proposed increase in estimated process and the reasons for it and will only proceed with the work or supply with the approval of the customer. The customer shall remain responsible for the cost of labour and materials already supplied which are not affected by the proposed increase in price.
- ## 3. DELAYS
- 3.1. Any time for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our wilful acts of omissions or from our negligence.
- ## 4. VESSEL MOVEMENTS
- 4.1. We reserve the right to move any vessel, gear, equipment or other property at any time for reasons of safety, security or good management of our business and premises.
- ## 5. PAYMENT
- 5.1. Unless otherwise agreed between us payment for all work, materials, goods ("Goods") and services shall be due immediately on invoice date. Payment shall be deemed to have been made when we receive cash or cleared funds at our bank. Time for payment shall be of the essence.
 - 5.2. We reserve a general right ("a general lien") to detain and hold onto a customer's vessel or other property pending payment by the customer of all sums due to us. We shall be entitled to charge the customer for storage and the provision of any ongoing services at our normal daily rates until payment (or provision of security) by the customer and removal of the vessel or property from our premises. The customer shall be entitled to remove the vessel or other property upon providing proper security, for example a letter of guarantee from a Bank reasonably acceptable to us or lodgement of a cash deposit with a professional third party agent, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for our prospective legal costs. This right does not affect the customer's entitlement to withhold a proportionate part of the price in respect of alleged defects but where that amount is in dispute between us the customer shall be required to provide security for the full amount pending resolution of the dispute.
 - 5.3. The customer's attention is drawn also to the note at Clause 10.2 of these Terms of Business regarding other rights which exist at law.
 - 5.4. Unless otherwise agreed by us in writing, the price for the Goods shall be the price set out in our price list published on the date of delivery or deemed delivery.
 - 5.5. All payments payable to us under any contract between us shall become due immediately on its termination despite any other provision. The customer shall not be entitled to withhold payment of any sums after they become due by reason of any right of set-off or counter claim which the customer may have or allege to have or for any other reason whatsoever. We may at any time, without limiting any other rights or remedies it may have, set off any amount owing to us by the customer against any amount payable by us to the customer.
 - 5.6. If the customer fails to pay us any sum due pursuant to the Contract We shall reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. If the customer purchase is not connected with a business, The customer shall be liable to pay interest to Us on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- ## 6. RETENTION OF TITLE / RISK
- 6.1. If we supply Goods to the customer other than where we fit them to a vessel, the Goods will be the customer's responsibility from the time of delivery.
 - 6.2. Ownership of the Goods will only pass to the customer when we receive in full payment (in cash or cleared funds) of all sums due for the Goods or any other products and all other sums which are or which become due to us on any account.
 - 6.3. Until ownership of the Goods has passed to the customer, the customer shall:
 - 6.4. hold the Goods on a fiduciary basis as our bailee;
 - 6.5. store the Goods (at no cost to us) separately from all other goods of the customers or any third party in such a way that they remain readily identifiable as our property;
 - 6.6. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 6.7. maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request the customer shall produce for us the policy of insurance.
 - 6.8. The customer may resell the Goods before ownership has passed to the customer solely on the following terms:
 - 6.9. any sale shall be effected in the ordinary course of the customer's business at full market value and the customer shall hold such part of the proceeds of sale as represent the amount owed by the customer to us on behalf of us and the customer shall account to us accordingly; and
 - 6.10. any such sale shall be a sale of our property on the customer's own behalf and the customer shall deal as principal when making such a sale.
 - 6.11. 6.5 The customer's right to possession of the Goods shall terminate immediately if.
 - 6.12. The customer has a bankruptcy order made against him or the customer makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation

- for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the customer or notice of intention to appoint an administrator is given by the customer or the customer's directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the customer or for the granting of an administration order in respect of the customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the customer; or
- 6.13. The customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of the customer's business.
 - 6.14. The customer suffers or allows any execution, whether legal or equitable, to be levied on the customer's property or obtained against the customer, or fails to observe or perform any of the customer's obligations under the Contract or any other contract between us and the customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the customer ceases to trade; or
 - 6.15. The customer encumbers or in any way charges any of the Goods.
 - 6.16. The customer (being an individual) dies or, by reason of illness or incapacity, is incapable of managing the customer's own affairs or becomes a patient under any mental health legislation.
 - 6.17. 6.6 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.
 - 6.18. 6.7 The customer grants us, our agents and employees an irrevocable licence at any time to access and enter any premises where the Goods are or may be stored in order to inspect them, or, where the customer's right to possession has terminated, to recover them.
 - 6.19. 6.8 Where we are unable to determine whether any Goods are the goods in respect of which the customer's right to possession has terminated, the customer shall be deemed to have sold all goods of the kind sold by us to the customer in the order in which they were invoiced to the customer.
 - 6.20. 6.9 On termination of the Contract, howsoever caused, our (but not the customer's) rights contained in this condition shall remain in effect.
- ## 7. GUARANTEE
- 7.1. Advice on whether a customer is "a consumer" or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of Solicitors (who may charge). Online guidance may be obtained at www.consumerdirect.gov.uk
 - 7.2. A customer who is a consumer has certain minimum statutory rights regarding the return of defective goods and claims for losses. These rights are not affected by these terms.
 - 7.3. In addition to the statutory rights provided by English law we guarantee our work for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials supplied by us. This guarantee applies only to the customer to whom the work or materials were supplied. We shall be liable under this guarantee only for defects which appear during this 12 month period and which are promptly notified to us in writing at our trading address or registered office set out on our letterhead. The geographical area within which this guarantee will be honoured is restricted to the United Kingdom.
 - 7.4. On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other contractors to do so. Any remedial work which is put in hand by the customer directly without first notifying us and allowing us a reasonable opportunity to inspect and agree such work and its cost will invalidate this guarantee in respect of those defects.
 - 7.4.1. No article supplied by us to a Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply the Business Customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgement.
 - 7.4.2. No proprietary article specified by name, size or type by a Business Customer shall carry any such express or implied term but we will assign to the Business Customer any rights we may have against the manufacturer or importer of that article.
 - 7.4.3. We accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied by us.
- ## 8. QUALITY STANDARDS
- 8.1. We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.
- ## 9. ACCESS TO PREMISES/WORK ON THE VESSEL
- 9.1. No work or services shall be carried out on a vessel, gear equipment or other property on our premises without our prior written consent except for minor running repairs or minor maintenance of a routine nature by the customer with our Health and Safety, environmental and access policies and that it does not cause any nuisance or annoyance to us, any other customer or person residing in the vicinity and which does not interfere with our schedule of work or the good management of our business. We shall not be responsible to customer or third parties for the consequences of any person's failure to respect any part of this condition but we shall be entitled to demand the immediate cessation of any work which in our view breaks these requirements.
 - 9.2. While we or our subcontractors are working on a customer's vessel or equipment the customer shall not have access to it except by prior arrangement. We will agree reasonable access when it is safe to do so and when it will not interrupt or interfere with our work schedule.
- ## 10. RIGHT OF SALE
- 10.1. We accept vessels, gear, equipment and other property for repair, refit, maintenance or storage subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on us in circumstances where the customer fails to collect or accept re-delivery of the goods (which includes a vessel and any other property). A sale will not take place until we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
 - 10.1.1. Goods for repair or other treatment are accepted by us on the basis that the customer is the owner of the goods or the owner's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
 - 10.1.2. Our obligation as custodian of goods accepted for storage ends when we give notice to the customer;
 - 10.1.3. The place for delivery and collection of goods shall normally be at our premises.
 - 10.1.4. Advice regarding the Act and its effect may be obtained from any of the sources referred to at Clause 7.1 above.
 - 10.2. Maritime Law entitles us in certain circumstances to bring action against a vessel to recover a debt or damages. Such action may involve the arrest of the vessel through the Courts and its eventual sale by the Court. This right of arrest and sale may continue to exist against a vessel after a change of ownership. Sale of a vessel or other property may also occur through the enforcement of a court order or judgement.
- ## 11. SUBCONTRACTING
- 11.1. We may subcontract all or part of the work entrusted to us by the customer, on terms that any such subcontractor shall have the protection and benefit of all rights and condition, and of all limitations and exclusions of liability, which exist for us under these Terms of Business. Where we exercise this right we shall remain responsible to the customer for the performance of our subcontractor.
- ## 12. NOTICES
- 12.1. Notice to a customer shall be sufficiently serviced if personally given to him or if sent by first class post to the customer's last known address. Notices to us should be sent by first class post to our principal trading address or registered office.
- ## 13. LAW AND JURISDICTION
- 13.1. Any contract or series of contracts made subject to these terms shall be subject to and governed by English law and
 - 13.2. in the case of Business Customers any dispute arising under them shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.
 - 13.3. In the case of customers who are customers or who are not contracting in the course of business any dispute shall be submitted to the non-exclusive jurisdiction of the Courts of England and Wales.
- ## 14. DISPUTE RESOLUTION
- 14.1. The BMF and the RYA recommend that disputes arising under a contract which is subject to these terms shall, when they cannot be resolved by negotiation, with the written agreement of the parties be submitted to mediation or failing that to arbitration under the BMF's Dispute Resolution Scheme, which is approved by the RYA.
 - 14.2. Details of the mediation scheme operated by the BMF are available at www.britishmarine.co.uk/mediation.
 - 14.2.1. Matters suitable for arbitration shall be submitted to a single Arbitrator in accordance with the BMF's Dispute Resolution Scheme. The provisions of the Arbitration Act 1996 shall apply.