



## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

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The Standard Terms and Conditions deal with the following matters:

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7	Limitation of Liability		

We draw the Client's attention particularly to the limitation of liability provisions, which may limit our overall liability to the Client, set out in clause 7 of these terms.

### 1 Interpretation

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

#### 1.1 Definitions:

**Agreement:** the Agreement between bMC and the Client for the supply of Services in accordance with these Conditions and the Engagement Letter.

**bMC:** brand MARINE CONSULTANTS (UK) Limited

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

**Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 5 and the Engagement Letter.

**Client:** the entity identified as such in the Engagement Letter.

**Client Default:** has the meaning set out in clause 4.2.

**Commencement Date:** the date of the Engagement Letter issued by bMC, on which date the Agreement shall come into existence.

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

**Control:** shall be as defined in Section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Deliverables:** the deliverables set out in the Engagement Letter and/or Scope of work.

**Employees:** has the meaning set out in clause 8.

**Engagement Letter:** the letter accompanying or incorporating by reference these Conditions whereby bMC agrees to provide the Services for the Client.

**Intellectual Property Rights:** Include, but are not restricted to; patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms

of protection which subsist or will subsist now or in the future in any part of the world.

**Scope of work:** the description or scope of the Services provided by bMC to the Client in the Engagement Letter.

**Services:** the services, including the Deliverables, supplied by bMC to the Client as set out in the Scope of work.

- 1.2 A reference to a company shall include any individual, company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.4 Any words following the terms "including", "include", "in particular", "for example" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and those in the plural shall include the singular.
- 1.6 A reference to "writing" or "written" includes fax and email.

### 2 Basis of Agreement

- 2.1 Unless specifically set out in the Engagement Letter, any drawings, descriptive matter or advertising issued by bMC, and any descriptions or illustrations contained in bMC's literature, are issued or published for the sole purpose of giving an approximate indication of the Services described in them. They shall not form part of the Agreement.
- 2.2 To the extent allowed by law, these Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 3 Supply of Services

- 3.1 bMC shall use reasonable skill and care to supply the Services to the Client in accordance with the Scope of work in all material respects.
- 3.2 bMC shall use reasonable endeavours to meet any performance dates specified in the Engagement Letter, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Services are provided exclusively to the Client, bMC does not accept responsibility to any third party for the Services which it provides to the Client unless bMC has agreed with the Client in writing that bMC shall accept such liability.
- 3.4 bMC reserves the right to amend the Scope of work if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and bMC shall notify the Client in any such event.

### 4 Client's Obligations

- 4.1 The Client shall:
  - (a) ensure that complete and accurate information and instructions are provided to bMC and in reasonable time to allow bMC to perform the Services effectively and efficiently;

- (b) co-operate with BMC in all matters relating to the Services;
- (c) provide BMC, BMC's Employees, agents, consultants and sub-contractors, with access to the Client's vessel(s), installations, premises, office(s), transport and other facilities as reasonably required by BMC;
- (d) provide BMC with such information and materials as BMC may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (f) comply with all applicable laws, including health and safety laws;
- (g) comply with any additional obligations as set out in the Scope of work.

**4.2** If BMC's performance of any of BMC's obligations under the Agreement are prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

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

## 5 Charges and Payment

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

- (a) the Charges shall be calculated in accordance with BMC's fee rates, as set out in the Engagement Letter. Unless otherwise stated in the Engagement Letter, the daily and/or hourly rates given will apply to each individual engaged on the matter, according to the time actually worked;
- (b) daily fee rates will apply, including but not limited to, instances wherein individuals are working away from BMC's normal premises, they will apply for each individual and will be calculated on the basis of the daily rate as stated in the Engagement letter;
- (c) in addition to the charges referred to in clause 5.1(a) and (b) above, BMC shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom BMC engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by BMC for the performance of the Services, and for the cost of any materials.

**5.2** BMC reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase may take effect on the first anniversary of the Commencement Date and shall be the latest available figure for the percentage increase in the Retail Prices Index.

**5.3** BMC shall invoice the Client as set out in the Engagement Letter. If nothing is set out in this regard in the Engagement Letter, BMC shall invoice the Client monthly, or at other reasonable intervals.

**5.4** The Client shall pay each invoice submitted by BMC:

- (a) as per the payment terms noted in the Engagement letter, following receipt of electronic invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by BMC, and time for payment shall be of the essence of the Agreement.

**5.5** All amounts payable by the Client under the Agreement are exclusive of amounts in respect of value added tax (VAT) chargeable from time to time. Where any taxable supply for VAT purposes is made under the Agreement by BMC to the Client, the Client shall, on receipt of a valid VAT invoice from BMC, pay to BMC 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.

**5.6** If the Client fails to make a payment due to BMC under the Agreement by the due date, then, without limiting BMC's remedies under any other clause of this Agreement, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause (5.6) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

**5.7** All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6 Intellectual Property Rights

The Client shall give BMC full written details of all works embodying Intellectual Property Rights made wholly or partially by them at any time during the course of the Services. The Client acknowledges that all Intellectual Property Rights subsisting (or which may in the future subsist) in all such inventions and works shall automatically, on creation, vest in BMC absolutely. To the extent that they do not vest automatically, the Client holds them on trust for BMC. The Client agrees promptly to execute all documents and do all acts as may, in the opinion of BMC, be necessary to give effect to this Clause.

## 7 Limitation of Liability: THE CLIENT'S ATTENTION IS DRAWN PARTICULARLY TO THIS CLAUSE.

**7.1** Nothing in the Agreement shall limit or exclude BMC's liability for:

- (a) death or personal injury caused by BMC's negligence, or the negligence of BMC's employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) and section 12 of the Sale of Goods Act 1979 (title) or any other liability which cannot be limited or excluded by English law.

**7.2** Save as specifically maintained in Clause 7.1, any other liability, guarantee, warranty and/or condition imposed or implied by the law, customary, statutory or otherwise are, to the fullest extent permitted by law, excluded from the Agreement.

**7.3** Without prejudice to the generality of clause 7.2, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 and sections 13, 14 and 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.

**7.4** Subject to clause 7.1, BMC shall not in any circumstances be liable to the Client and/or any other person or entity, whether in Agreement, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

- (a) loss of profits or opportunities whether arising directly or indirectly;
- (b) loss of sales or business whether arising directly or indirectly;
- (c) loss of agreements or Agreements whether arising directly or indirectly;
- (d) loss of anticipated savings whether arising directly or indirectly;
- (e) loss of use or corruption of software, data or information whether arising directly or indirectly;
- (f) loss of or damage to goodwill whether arising directly or indirectly; and
- (g) without limitation, any indirect or consequential loss.

- 7.5 Subject to clause 7.1, bMC's total liability to the Client and/or any other person, whether in Agreement, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement and whether arising directly or indirectly shall in all circumstances be limited to an aggregate total of 4 million Euros for all such breaches taken together.
- 7.6 This clause 7 shall survive termination of the Agreement.
- 8 Claims against Employees**
- 8.1 No consultant, employee, subcontractor or other party employed by or on behalf of bMC (the "Employees") shall in any circumstances be under any personal liability whatsoever to the Client for any loss of whatsoever kind arising from any act, neglect or default on the Employees' part while acting in the course of or in connection with the performance of this Agreement. Any such claim shall be directed to bMC.
- 8.2 Without prejudice to the generality of the foregoing, all limitations, rights and defences applicable to bMC, including the right to enforce the jurisdiction provision contained herein at clause 13, shall also be available and shall extend to all the Employees.
- 8.3 The Client agrees that no claim or allegation purporting to impose upon the Employees any liability in connection with this Agreement, whether arising in Agreement, tort or otherwise, shall be made against any Employees.
- 9 Termination**
- 9.1 Without affecting any other right or remedy available to it, bMC may terminate the Agreement by giving the Client one month's written notice.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 9.3 Without affecting any other right or remedy available to it, bMC may terminate the Agreement with immediate effect by giving written notice to the Client if:
- the Client fails to pay any amount due under the Agreement on the due date for payment;
  - the Client commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 5 calendar days of being notified in writing to do so; or
  - the Client undergoes a change of control.
- 9.4 Without affecting any other right or remedy available to it, bMC may suspend the supply of Services under the Agreement or any other Agreement between the parties if the Client fails to pay any amount due under the Agreement on the due date for payment, the Client becomes subject to any of the events listed in clause (a) to clause (b), or bMC reasonably believes that the Client is about to become subject to any of them.
- 10 Consequences of Termination**
- 10.1 On termination of the Agreement:
- the Client shall immediately pay to bMC all of bMC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, bMC shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - the Client shall return all of bMC's Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then bMC may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them; and
  - where a fixed sum has been agreed for the provision of the Services, the full amount or amounts of all such fixed sums, whether payable in stages, on completion or, without limitation, in any other manner will become immediately due and payable by the Client to bMC, regardless of whether the relevant stage or completion has been achieved.
- 10.2 Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 10.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.
- 11 General**
- 11.1 Force Majeure**
- bMC shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 Assignment and Other Dealings**
- With the Client's consent (which will not be unreasonably withheld), bMC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of bMC's rights and obligations under the Agreement.
  - The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of the Client's rights and obligations under the Agreement without bMC's prior written consent, such consent not to be unreasonably withheld.
- 11.3 Confidentiality**
- Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party, except as permitted by clause (b).
  - Each party may disclose the other party's confidential information:
    - to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
    - as may be required by law, a court of competent jurisdiction, any governmental or regulatory authority, or auditors.
  - Except as envisaged by clause 11.3, neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 11.4 Entire Agreement**
- The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

#### 11.5 Variation

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

#### 11.6 Waiver

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

#### 11.7 Severance

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

#### 11.8 Notices

- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be:
- (i) delivered by hand or by delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by fax to its main fax number or sent by email to any member of the senior management of the relevant entity.
- (b) Any notice or other communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) if sent by delivery service, at the time recorded by the delivery service; or
  - (iii) if sent by fax or email, on the day of transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

#### 11.9 Third Party Rights

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

#### 11.10 No Partnership or Agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### 12 Time Limitation

Any right the Client may have to bring a claim against bMC, whether that right falls in Agreement or tort, shall expire 6 months after the occurrence of the incident subject to the claim.

#### 13 Governing Law and Arbitration

- 13.1 The Agreement shall be governed by and construed in accordance with the law of England and Wales, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.
- 13.2 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.
- 13.3 The reference shall be to three arbitrators. A party wishing to refer 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 a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.
- 13.4 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 13.5 In cases where neither the claim nor any counterclaim exceeds the sum of USD\$ 50,000.00 (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.
- 13.6 In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD \$400,000.00 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceeding are commenced.
- 13.7 Where the reference is to three arbitrators the procedure for making appointments shall be in accordance with the procedure for full arbitration stated above.
- 13.8 Notwithstanding the above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.