



TERMS AND CONDITIONS FOR WORKSHOP SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF clause 7.

1. INTERPRETATION

1.1. Definitions:

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

BWML: British Waterways Marinas Limited, registered in England and Wales with company number: 04930453, whose registered office address is at First Floor North Station House, 500 Elder Gate, Milton Keynes, MK9 1BB.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.5.

Contract: the contract between BWML and the Customer for the supply of Services in accordance with these Conditions.

Customer: the independent person or Insurance Customer who purchases Services from BWML.

Customer Default: has the meaning set out in clause 4.2.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Insurance Customer: means the insurance firm, business or company, purchasing Services from BWML on behalf of its client who is the owner of the Vessel.

Order: the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by BWML, or overleaf, as the case may be.

Satisfaction Note: means the note signed by the Customer (or in the case of an Insurance Customer, its client), confirming that the Services have been carried out in full and that they are accepted by the Customer (or in the case of an Insurance Customer, its client).

Services: the services supplied by BWML to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by BWML to the Customer.

Vessel: means the vessel on which BWML is providing the Services.

1.2. Interpretation:

(a) 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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT AND QUOTES

2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when BWML issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3. Any samples, drawings, descriptive matter or advertising issued by BWML, and any descriptions or illustrations

2.4. contained in BWML's catalogues, brochures or website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They are for illustrative purposes only and shall not form part of the Contract or be legally binding.

2.5. These Conditions apply to the Contract 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.

2.6. Any quotation given by BWML:

(a) shall not constitute an offer, and is only valid for a period of one calendar month from its date of issue

(b) is provided as an estimate only and is subject to the cost of labour and materials remaining at the same level and price as those prevailing at the time the estimate was provided by BWML. In the event that the Customer accepts BWML's quote and BWML carries out the Services for the Customer, if the overall cost of carrying out such Services is in excess of the price quoted by BWML in its quotation (e.g. due to an increase in overheads, labour and/or materials), the Customer shall pay such increased cost to BWML, upon demand; and

(c) shall only cover the Services specified on it. Accordingly, all and any additions, alterations, waiting time and other costs that are not specified on the quotation, but are incurred by BWML as a result of the Customer changing its initial instructions, shall be charged to the Customer at BWML's standard prices in force at the time and become payable by the Customer on demand.

3. SUPPLY OF SERVICES AND WARRANTY

3.1. BWML shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2. BWML shall use all reasonable endeavours to meet any performance dates specified by the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3. BWML shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and BWML shall notify the Customer in any such event.

3.4. BWML warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5. BWML shall have the right to move any Vessel and/or gear where this is required by BWML to provide the Services (or any part of them).

3.6. During the course of providing the Services, if BWML uses any materials (such as paint) as part of the Services, such materials shall carry the benefit of the manufacturer's warranty only. Where they do not carry a manufacturer's warranty, no warranty shall be provided by BWML in relation to such materials.

3.7. BWML provides no warranty to the Customer, whether express or implied, in relation to the fitness for purpose (other than the purpose expressly made known by BWML to the Customer) or quality of the Services provided. The Customer is therefore required to, prior to entering in to the Contract, satisfy itself, using its own skill and judgment, that the Services are fit for the purpose that the Customer requires them for.

- 3.8. Where the Customer requires BWML to fit a part to the Vessel as part of the Services, BWML shall use all commercial reasonable endeavours to ensure that such part is fitted in accordance with its applicable manufacturer's guidelines and, in the absence of such guidelines, in accordance with good industry practice. For the avoidance of doubt, BWML shall accept no responsibility or liability for the part itself, or any damage caused to it (or any part of it) during the course of fitting it to the Vessel, or at any time after it has been fitted to the Vessel.
- 3.9. If in the course of providing the Services BWML finds a defect in the Vessel and/or its gear, which, in BWML's reasonable opinion should be rectified immediately without delay, BWML shall have the right to carry out such necessary repair and/or modification at its sole discretion, without obtaining the Customer's prior consent. For the avoidance of doubt, BWML shall notify the Customer of any rectification it has made and any costs and/or expenses associated with such rectification shall be charged to the Customer and become due upon demand.
- 3.10. BWML shall not under any circumstance be responsible for or accept liability for any fault or defect in the Vessel that the Customer alleges to have arisen as a direct result of the Services carried out (**Defect**), unless BWML is given a reasonable opportunity to inspect such alleged Defect.
- 3.11. Where BWML inspects an alleged Defect in accordance with clause 3.9 and determines, in its sole and reasonable discretion, that the alleged Defect is not directly attributable to the Services carried out by BWML, in the absence of manifest error, BWML's decision shall be final and the Customer shall be entitled to no remedy in accordance with the provisions of clause 3.11.
- 3.12. Where BWML inspects an alleged Defect in accordance with clause 3.9 and determines that the alleged Defect has resulted due to a direct action of BWML in providing the Services, the Customer's sole remedy shall be for BWML to, as soon as reasonably practicable, remedy and/or replace such Defect.
- 4. CUSTOMER'S OBLIGATIONS**
- 4.1. The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with BWML in all matters relating to the Services;
 - (c) provide BWML, its employees, agents, consultants and subcontractors, with access to the Customer's Vessel (or in the case of an Insurance Customer, it's client's Vessel) as reasonably required by BWML;
 - (d) provide BWML with such information and materials as BWML may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) prepare the Customer's Vessel (or in the case of an Insurance Customer, it's client's Vessel) for the supply of the Services (for example, ensuring that any property kept on the Vessel is adequately stored or removed from it, prior to BWML commencing the Services);
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - (g) complete, sign and return to BWML, the Satisfaction Note prior to making arrangements to collect the Vessel; and
 - (h) comply with any additional obligations as set out in the Specification.
- 4.2. If BWML's performance of any of its obligations under the Contract is prevented or delayed by any

act or omission by the Customer or failure by the Customer (or in the case of an Insurance Customer, it's client) to perform any relevant obligation (**Customer Default**):

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

- 4.3. The Customer shall be solely responsible for obtaining and maintaining in force adequate insurance with a reputable insurance company (including without limitation, product liability insurance and third party insurance) to cover the risks and/or liabilities that may arise under or in connection with the Contract. BWML shall assume no responsibility and/or liability for any damage caused to the Customer's (or in the case of an Insurance Customer, it's client's) Vessel and/or any other property contained on the Vessel during the course of providing the Services, unless such damage is caused directly as a result of BWML's negligence. For the avoidance of doubt all and any Services carried out by BWML on the Vessel (e.g. repair work) shall be carried out at the sole risk of the Customer.

5. CHARGES AND PAYMENT

- 5.1. The Charges for the Services shall be on a time and materials basis and shall be, notwithstanding the provisions of clause 2.5, in accordance with the quotation provide by BWML for the Services carried out.
- 5.2. BWML shall invoice the Customer on completion of the Services or, where otherwise agreed with the Customer, in instalments during the course of providing the Services.
- 5.3. The Customer shall pay each invoice submitted by BWML upon the date of the invoice and in full and in cleared funds to a bank account nominated in writing by BWML. For the avoidance of doubt, BWML shall not return the Vessel to the Customer, until such time as the Customer has settled all and any invoices of BWML relating to the Services and the Satisfaction Note has been completed, signed and returned to BWML. All and any costs and expenses incurred by BWML for storing the Vessel, due to the Customer delaying collection of it shall be charged to the Customer at cost, and shall become due in full to BWML upon demand.
- 5.4. Time for payment shall be of the essence of the Contract.
- 5.5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by BWML to the Customer, the Customer shall, on receipt of a valid VAT invoice from BWML, pay to BWML 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 Customer fails to make any payment due to BWML under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above National Westminster's 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. The Customer shall pay the interest together with the overdue amount.
- 5.7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). BWML may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by BWML to the Customer.
- 6. INTELLECTUAL PROPERTY RIGHTS**
- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by BWML.
- 6.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on BWML obtaining a written licence from the relevant licensor on such terms as will entitle BWML to license such rights to the Customer.
- 7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 7.1. Nothing in the Contract shall limit or exclude BWML's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its 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) or any other liability which cannot be limited or excluded by applicable law.
- 7.2. Subject to clause 7.1, BWML shall not be liable to the Customer (and for the avoidance of doubt, in the case of an Insurance Customer, its client), whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill;
- (g) loss of enjoyment of the Vessel;
- (h) any indirect or consequential loss.
- 7.3. Subject to clause 8.1, BWML's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total Charges paid under the Contract.
- 7.4. 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 the Contract.
- 7.5. This clause 7 shall survive termination of the Contract.
- 8. TERMINATION**
- 8.1. Without limiting its other rights or remedies, BWML may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer (or in the case of an Insurance Customer, its client) commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;
- (b) the Customer 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;
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- (d) the Customer's financial position deteriorates to such an extent that in BWML's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (e) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified to make such payment.
- 8.2. Without limiting its other rights or remedies, BWML may suspend provision of the Services under the Contract or any other contract between the Customer and BWML if the Customer becomes subject to any of the events listed in clause 8.1(b) to clause 8.1(d) or BWML reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9. CONSEQUENCES OF TERMINATION**
- 9.1. On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to BWML all of BWML's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, BWML shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.
- 10. GENERAL**
- 10.1. **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2. **Assignment and other dealings.**
- (a) BWML may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of BWML, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 10.3. **Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or BWMLs of the other party, except as permitted by clause 10.3(b).
- (b) Each party may disclose the other party's confidential information:
- (i) 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 Contract. 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 10.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10.4. **Entire agreement.**
- (a) This 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.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 10.5. **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.6. **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.
- 10.7. **Severance.** If any provision or part-provision of the Contract 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 Contract.
- 10.8. **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 10.9. **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 10.10. **Governing law.** The Contract, 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 governed by, and construed in accordance with the law of England and Wales.
- 10.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.