

## **Terms and Conditions**

### **1. INTRODUCTION**

- 1.1 These Terms and Conditions shall govern all work undertaken by Mercator Marine Consultancy Limited (MMC) and shall supersede and over-ride all other warranties, representations and terms and conditions, whether express or implied, including Clients' Standard Terms, unless otherwise agreed in writing by a Director of MMC.
- 1.2 No employee, associate or agent of MMC has authority to vary these Terms and Conditions, orally or in writing.
- 1.3 Continuing with Instructions in a matter will amount to acceptance by the Client of these Terms and Conditions. The Client acknowledges and agrees that the Engagement of the Consultant constitutes a binding contract ("the Contract") between the Client and the Consultant in accordance with these Terms and Conditions.

### **2. DEFINITIONS**

- 2.1 CLIENT — means the person, firm or body corporate engaging the Consultant.
- 2.2 CONSULTANT – means Mercator Marine Consultancy Limited Registered in England and Wales, Company No. 14205768.
- 2.3 INSTRUCTIONS – means the written statement of services required by the Client from the Consultant; written includes electronic methods. Where litigation is anticipated, the Instructions should provide sufficient details of the relevant issue to enable the expert to comply with the Civil Procedure Rules and any order of the Court. When a Consultant is required to act on the basis of Oral Instructions, due to pressures of time, particularly for urgent response to an incident, the Client should provide written instructions as soon as possible.
- 2.4 ACCEPTANCE — means MMC's written statement of agreement to undertake the services required in the Clients' Instructions, or those within its areas of expertise and capability. This is evidence of a formal agreement between MMC and the Clients only, and cannot be assigned to any Third Party, without the written agreement of both parties.
- 2.5 TIMETABLE — means the agreed duration of the services required by the Client. This will include the dates of key stages, e.g. attendance to investigate an incident, attendance at meetings, presentation of reports, court/arbitration appearances, etc.
- 2.6 FEES — means the sums charged by MMC for its services, which are based on hourly rates. For attendance on site, a daily rate applies based on a capped 8-hour day. Non-binding estimations of fees can be provided on request. MMC will not undertake work on a contingency-fee basis.
- 2.7 EXPENSES — means the cost of all reasonable disbursements incurred in discharging the Clients' instructions.
- 2.8 INVOICES — means the formal request to the Client for payment of services undertaken by MMC, the total of Fees plus Expenses. The Client will settle invoices within one month of their presentation.

### **3. MMC's OBLIGATIONS**

- 3.1 MMC will always act with Confidentiality, Independence and Integrity, providing objective and impartial advice to Clients.
- 3.2 MMC will ensure that they do not accept instructions from new Clients that may conflict with the interests of present Clients.
- 3.3 MMC will use reasonable endeavours to maintain the confidentiality of all material and information related to the Instructions. No information, or access, will be provided to Third Parties, unless expressly permitted by the Client or required by an apparently bona-fide Officer of the Law.
- 3.4 Subject to agreement with the Client, MMC retains the right to sub-contract any of the services provided in the Agreement but will remain liable for the proper performance of its obligations under these Terms and Conditions.

- 3.5 MMC will keep the Client informed of the progress of the Client's work on a regular basis.
- 3.6 MMC will only accept Instructions where it has relevant expertise and will use all reasonable skill and care in the performance of its services.
- 3.7 MMC will advise the Clients whenever it becomes aware that alternative courses of action would be in the best interests of the Clients. MMC will advise the Client of any and all additional work, actions, services, evidence, etc. that is considered necessary for Client to obtain in order to further their interests.
- 3.8 Where a Consultant is appointed as a Mediator, Arbitrator, or Single Joint Expert, all Clients shall agree to a single set of instructions. The apportionment of Fees must be agreed in advance. When acting in such role, the Consultant will adhere to the principles of fairness and transparency.
- 3.9 MMC undertakes to retain all documents and other material related to the services provided under the Agreement which they generate for a period of ten years after completion of all services. MMC may, at its own discretion, retain all documents electronically. On completion of all services, MMC will contact the Client to offer to return all documents supplied by the client, before disposing of them in a secure manner.
4. LIABILITY
- 4.1 MMC shall be under no liability whatsoever to the Clients for any loss, damage, delay, expense or costs, directly or indirectly and howsoever arising out of the Instruction. MMC's maximum liability for professional negligence shall be limited to ten times the Consultants' fees for each incident or series of incidents giving rise to a claim. MMC shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client, however such loss or damage occurs.
- 4.2 MMC shall not be liable to Third Parties; the Clients will indemnify MMC against all such claims. The Clients will hold MMC harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which MMC may suffer or incur (either directly or indirectly) in the course of the services rendered to Clients under these Terms and Conditions.
- 4.3 Force Majeure. Except as otherwise provided in these Terms and Conditions, MMC, its employees, associates, agents or sub-contractors shall not be under any liability to the Client whatsoever for any loss, damage, delay or non-performance (including part, delayed or defective performance) of any service that is caused (directly or indirectly) by any circumstance beyond its reasonable control. This includes, but is not limited to, acts of God, war or terrorism, seizure under legal process, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of rulers or peoples.
5. CLIENT'S COMMITMENTS
- 5.1 The Client shall set out their requirements for the services of MMC in a written Letter of Instructions. These Instructions shall include all the details necessary for MMC to be able to undertake the services required. They shall be provided in sufficient time to enable the required services to be undertaken effectively and efficiently. Changes to the Instructions, including additions, shall be made in writing to MMC as soon as they arise.
- 5.2 The Client shall keep MMC updated with respect to changes in the Timetable and key target dates.
- 5.3 The Client shall provide the Case Handler with copies of all relevant documents in their possession.
- 5.4 The Client shall ensure that all necessary access is provided to relevant premises, installations, vessels, etc.. The Client will arrange permits/passes and ensure that appropriate safety measures are taken to provide safe working conditions.

5.5 The Client shall be responsible for settling all invoices for services undertaken.

6. DISPUTES

6.1 These Terms and Conditions and all Agreements between MMC and Clients shall be governed by and construed in accordance with English Law and any disputes shall be handled the Courts of England and Wales.

6.2 Any claims against MMC shall be deemed to be waived and absolutely time-barred upon the expiry of two years from the submission of the substantive report to the Client.