

TERMS & CONDITIONS

BRAEMAR TECHNICAL SERVICES LTD: STANDARD TERMS AND CONDITIONS OF CONTRACT

1. Definitions

1.1 "Agreement" means the Client communication in respect to these Terms and Conditions

"Client" means the principal instructing party at whose request, or on whose behalf the Company shall perform the Services.

"Company" means any/or relevant entities of Braemar who's trading Style is Braemar (including the Salvage Association) that will perform the Services, and as made clear to the Client at the time the instruction is confirmed.

"Disbursements" means the cost of all reasonable incidental expenses incurred by the Company in connection with the Agreement.

"Fees" means the fees payable by the Client to the Company, including any value added tax or local tax equivalent where applicable and any Disbursements.

"Parties" means the Company and the Client.

"Pre-purchase Survey" means a vessel inspection and/or survey conducted by the Company pursuant to which a Report is produced by the Company which is to be used, or relied upon, in order to make a decision on or to provide money for, the purchase of any vessel. The survey does not include any valuation of the vessel.

"Report" means any report, advice or written statement supplied by the Company in performance of the Services.

"Services" means the services to be carried out by the Company as agreed between the Parties and set out in writing in accordance with Clause 3.

"Warranty Survey" means any service where the Company in

the course of the Services conducts an evaluation of operational risks relating to any shipyard, vessel or other project by performing technical reviews and on-site inspections and provides a report and / or certificate(s) containing recommendations and attesting that the assured has complied with the warranty imposed by the Client and / or policy to which the project relates.

"Third party" shall mean any party which is not a member of the Company or the Client

2. Application

2.1. Subject to agreement as to the Services, as set out in Clause 3 below, the following terms and conditions, together with any written Confirmation of Instruction provided by the Company and any scope of work document(s) shall constitute the entire terms and conditions between the parties hereto (hereunder called the "Agreement").

2.2. The Company shall perform the Services solely in accordance with the terms and conditions of the Agreement. In the event of conflict between the Agreement and any other terms and conditions (whether from the Client or otherwise), the former shall prevail unless expressly agreed by the Company in writing.

2.3. The Agreement shall take effect on the earliest of the following events:-

i. when the Client provides written confirmation of the instruction in an appropriate format, accepting the agreed scope of work and these Terms and Conditions; or

ii. when the performance of the work has commenced by the

Company, unless the Client objects to these Terms and Conditions within 24 hours of the Company starting to perform the Services.

iii in the event of continuing instructions to the Company from the Client.

3. Services

3.1. For Warranty Surveys and Pre-purchase Surveys, the Agreement shall take effect once a Confirmation of Request Form is signed and returned to the Company, or in the event of continued instructions to the Company from the Client. The Company shall have the right to refuse to commence the Services until such document is signed by the Client. The scope of Services will be in accordance with the Clients instructions and/or set out within insurers' policies or Joint Hull Committee specific survey criteria for the particular survey service being provided by the Company. Surveyors recommendation are to be complied with fully and within the allocated time period otherwise the warranty will be deemed as void on default

3.2 The Company and the Client will agree in writing the Services which the Company is to provide. The Company shall not undertake any testing procedures for JH143 shipyard risk assessment work, or in the case of undertaking a Pre purchase survey, will not provide specific Vessel valuations to the Client.

3.3 The Company will be entitled to act upon the instructions of any of the Client's authorised employees, affiliates or agents and rely upon any information supplied by the Client in connec-

tion with the Services.

3.4 The Services shall be performed by the Company for the benefit of the Client only. The Company does not accept any responsibility or liability to any third party for the Services performed for the benefit of the Client only unless the Company has expressly agreed in writing. Any assessment in respect to a warranty or pre purchase survey will be made solely on the basis of the information provided to the Company, the documents examined, and the observations of the surveyor at the time of our attendance(s) at the Shipyard, site or onboard the vessel

3.5 Any Report issued to the Client shall be for the Client's benefit only and shall not be disclosed to any third party without the express written consent of the Company. Any disclosure of a Report to a third party shall be strictly subject to the Client or any such third party complying with any additional requirements of the Company in respect of such disclosure.

3.6 Once the Company and the Client have agreed what Services are to be performed, any subsequent variations to the Services must be promptly agreed in writing between the Parties, specifying any variation to the agreed work scope, delivery date and/or the deliverables as well as any additional costs involved.

3.7 Any such variations to the Services shall not take effect until the Parties have agreed the variations in writing.

4. Fees

4.1. The Client shall pay the Fees in accordance with the terms of Clause 5. The Fees payable shall be communicated in writing to the Client and based on the Services to be performed.

4.2. The Company's fees are normally charged on a time basis, unless otherwise agreed, plus any applicable disbursements, relevant VAT, sales tax or any other taxes payable, at cost. The Company reserves the right to increase its standard charge-out rates at any time.

4.3. Any fee estimates provided shall not be binding and shall be issued in good faith on the basis of the information provided by the Client at the time of providing the estimates.

4.4. If practical, the Company may agree at the outset a fixed fee (net of VAT and disbursements) with the Client.

4.5. Where it is necessary to extend the Services beyond the time specified or originally anticipated for reasons beyond the Company's control, then the cost of the Services charged to the Client may be increased at the appropriate fee rate.

5. Payment Terms

5.1. The Client shall, or will procure, that a mutually agreed third party shall pay the Company's Fees and Disbursements (together with any associated bank charges and VAT) punctually and in any event not later than 30 days following the relevant invoice date.

5.2. The Company reserves the right to request part or full payment upfront before performing the Services. In such circumstances the Company will only commence performance of the Services upon receipt of the required payment. The Company shall be entitled to terminate the Agreement if the required payment is not received within 7 working days of the date of the Company's written confirmation to perform the Services in accordance with Client instructions.

5.3. If any part of an invoice is genuinely in dispute, the Client shall notify the Company immediately upon receipt of invoice as to any part of the invoice which is in dispute giving full reasons as to why a portion of the invoice is disputed and nevertheless pay the undisputed part within 30 days of the invoice date. The parties shall endeavour to resolve the disputed portion without delay. The Company shall be entitled to charge interest on a daily basis at the rate of 4% above the Bank of England annual rate per month on any overdue invoice or on any undisputed part thereof as appropriate. In any case where an invoice is more than 25 working days overdue, the Company reserves the right to suspend performance of the Services, withhold any Reports, or stop work without incurring liability.

5.4. Without prejudice to any rights of recovery which the Company might have against a third party the Company shall treat the Client as the person responsible for paying for the Services. Therefore, the Company shall not need to be concerned as to whether the Client considers itself to be principal or acting as agent only nor shall the Company need to concern itself as to whether the Client is, or is not, paid by a third party.

5.5. If the Services relate to a claim or a defence which may result in protracted discussions and/or litigation or any other protracted matter, the Company will submit interim invoices or pro forma invoices at regular intervals.

5.6. Unless the Client can clearly show that the Company has performed its duties or the Services negligently, the Client must pay all invoices issued by the Company in full.

6. Obligations and Responsibilities

6.1. Client

6.1.1. The Client is solely responsible for determining whether the Services are sufficient for its requirements.

6.1.2. The Client undertakes in sufficient time to enable the Services to be performed effectively and efficiently to:

- i. ensure that all information which is or hereafter becomes available to it which is relevant to the performance of the Services is supplied to the Company;
- ii. procure all necessary access for the Company's staff to goods, premises, vessels, installations and transport; and
- iii. ensure that all appropriate safety measures are taken to provide safe and secure working conditions.

6.1.3. If the Client becomes aware of any claim or circumstances which might involve litigation or arbitration concerning or connected with the subject matter of the Agreement, the Client shall inform the Company immediately.

6.1.4. Prior to the commencement by the Company of any Warranty Survey or Pre-purchase Survey the Client undertakes to ensure that any third parties on whose behalf the Client is acting are notified of and bound by the provisions of Clause 7 (Limitation and Exclusion of Liability) to the extent that the maximum liability limits referred to therein shall apply in the aggregate to all claims made by the Client and any such third parties arising out of the liability of the Company in respect of any one event.

6.1.5. Except to the extent and solely for the amount therein set out that the Surveyor/Consultant would be liable under Clause 7, the Client hereby undertakes to keep the Surveyor/Consultant

and its employees, agents and sub-contractors indemnified and to hold them 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, but not limited to, legal costs and expenses on a full indemnity basis) which the Surveyor/Consultant may suffer or incur (either directly or indirectly) in the course of the Services under these conditions.

6.2. Company

6.2.1. Staff: The Company shall procure that its staff shall use reasonable care and skill in the performance of the Services in accordance with good marine reporting, inspection, surveying and consulting practice.

6.2.2. Communications: The Company will not be deemed to have notice of any other information relating to the performance of Services that is not provided by the Client directly to those of its staff who are responsible for preparing the Company's Report(s).

6.2.3. Reporting:

(i) The Company shall submit interim Report Advices, a final Report and an Addendum report to the Client during and following completion of the agreed Services describing the findings and assessments of all surveys and inspections relating to the purpose of the Client's instruction, unless otherwise expressly instructed by the Client not to do so. (ii) The Company shall endeavour to submit its Reports, results and related Services to the Client within reasonable agreed timescales. Where such timescales are agreed between the Company

and the Client in writing, the Client accepts that such timescales are necessarily an estimate only and are not guaranteed unless expressly stated in writing as such.

6.3. Confidentiality

6.3.1. Both parties undertake not to disclose any information (including but not limited to Reports, advices, recommendations and any contract) provided in confidence by the other party to any third party (including but not limited to any of their subsidiaries or affiliates) and the receiving party shall not permit access to such information by any third party unless the disclosing party expressly grants permission in writing save where required to do so by an order of a competent court of law.

6.4. Indemnity

6.4.1. In the event that any information or documentation generated by the Company in accordance with the Agreement or performance of the Services is disclosed to any other individual or company (including but not limited to any of the Client's subsidiaries or affiliates), other than where there is an obligation to disclose the same in legal proceedings, the Client will indemnify the Company against all claims losses or damages whatsoever caused directly or indirectly by any such disclosure.

6.4.2 Except to the extent and solely for the amount therein set out that the Surveyor / Consultant would be liable under Clause 7, the Client hereby undertakes to keep the Surveyor / Consultant and its employees, agents and sub-contractors indemnified and to hold them 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 but not limited to, legal costs and expenses on a full indemnity basis) which the Surveyor / Consultant may suffer or incur (either directly or indirectly) in the course of the Services under these Conditions.

6.5. Performance

6.5.1. The Company's performance of the Services is dependent on the Client, its employees, affiliates and / or agents providing the Company with the requested information and / or access to a vessel, shipyard and / or, site.

6.5.2. The Company shall not be liable for any delays incurred in performance of the Services due to items including but not limited to:

- i. late provision or access to data, information, vessel(s), shipyard(s) and/or site(s);
- ii. any errors or omissions in the data or information provided.

6.5.3. The Client acknowledges that where data and / or information is incomplete, the Company shall necessarily have to use its skill and judgement in making reasonable assumptions in order to perform the Services.

6.5.4. Any timetable or dates specified by the Company and agreed by the Parties for the performance of the Services is necessarily an estimate only and is not guaranteed, unless otherwise agreed by the Company in writing. Accordingly, whilst the Company will use reasonable efforts to comply with such dates, the Client will have no right to terminate the Agreement for any failure to meet these dates and acknowledge that the Company's performance is entirely dependent on the Client comply-

ing with its responsibilities as set out in the Agreement.

6.5.5 Reliance should only be placed on information and comments set out in the Company's final written Report(s) produced pursuant to the Services. The Company has no responsibility to update its Report(s) for events that take place after the final Report(s) have been issued.

6.6. Intellectual Property

6.6.1. Ownership rights to intellectual property resulting from the performance of the work created by the Company shall vest in and remain the property of the Company. The Client acknowledges and agrees that the Company's working papers and other internal documentation are confidential to the Company and accordingly, will not be disclosed to the Client unless otherwise agreed by the Company in writing.

6.6.2. The Client acknowledges that nothing agreed between the Parties will affect the Company's or its licensors' rights in respect of any intellectual property rights held prior to the commencement of the Services or otherwise developed outside the agreed scope of work or Services (including any modifications or amendments thereto).

6.6.3. Subject to payment of all amounts due under or in connection with the Agreement, the Client will have a non-exclusive, non-transferable right to use the final version of any Report(s) solely for the purposes for which they are delivered.

6.6.4. The Client grants to the Company and its subcontractors a non-exclusive and royalty-free right to use any materials supplied by the Client in connection with the Services for the purposes of performing those Services.

7. Limitation and Exclusion of Liability

7.1. Nothing in the Agreement excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or the negligence of its employees acting in the course of their employment and/ or any fraudulent pre-contractual misrepresentations made by the Company.

7.2. The Company's total maximum liability arising out of or relating to the performance of the Services whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise shall be the greater of ten (10) times the Fees paid (or payable) by the Client or £200,000.

7.3 The Company gives no warranty, express or implied, as to the fitness for purpose or suitability of the Services or Results and the Client waives any terms, conditions or warranties otherwise incorporated or implied by law to the fullest extent permitted by law. There can be no guarantee that errors or irregularities, if present at the shipyard, will be detected by the Company in the course of performing a JH143 Shipyard Assessment. Similarly, the pre purchase survey does not warrant the seaworthiness of the vessel but attests the vessel's condition at the time of the survey. The prospective Buyer of the vessel should satisfy themselves by further inspection/examination of the Vessel's Class records.

7.4 The Company will not be liable to the Client for, or in respect of, the following resulting from or arising out of in any way the Company's performance of the Services:

- i. any claims, losses, loss of profit, damage, off-hire, delay or

expense of whatsoever nature, business, contracts, goodwill, revenue or anticipated savings or

- ii. any indirect or consequential loss or damage; or
- iii. any fines, penalties, punitive, exemplary or non compensatory damages, however expressed or described,
- iv. any latent defect which was not apparent at the time of the inspection or survey and which could not reasonably have been expected to have been discovered by such inspection or survey (either by reason of lack of access to the shipyard, a vessel or to part of a vessel, or by limited availability of time or otherwise); or
- v. any failure to advise or comment upon any matter which falls outside of the scope of the Services; or
- vi any delay in or failure by any third party to fulfil its obligations in relation to the vessel, shipyard, project or venture to which the Agreement relates, including but not limited to any failure by the third party and / or its representatives to follow its own policies and work/operational procedures; or
- vii any delay in performance, or failure to perform the Services or any of the Company's obligations if the delay or failure to perform was due to any reason beyond the Company's reasonable control, unless the above is proved to have resulted solely from the negligence, gross negligence, or wilful default, of the Surveyor/Consultant or any of its employees, agents or subcontractors.

7.5 The Client acknowledges and agrees that the limits of liability as agreed between the Parties apply in the aggregate. To the extent permitted by law, all warranties, conditions, representations or terms other than those expressly agreed by the Parties are excluded,

including but not restricted to, all implied and statutory warranties and conditions.

7.6 The Client's relationship is solely with the Company. No company representatives have any personal liability to the Client whether in contract or tort (including negligence) or otherwise. The fact that any representative of the Company signs in his or her name any document or email in the course of carrying out the consultancy service does not give rise to any personal legal liability separate to that of the Company.

7.7 Each of the foregoing paragraphs in this Clause 7 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said paragraphs is held inapplicable or unreasonable in any circumstances whatsoever) and will remain in force notwithstanding termination of the performance of Services by the Company to the Client.

7.8 The Client will inform the Company of any alleged act, statement, omission or negligence on the Company's part in connection with or in relation to the performance of the Services in respect of which the Company may be legally liable to the Client as soon as practicable after becoming aware of the same, and the Client will afford the Company, if the Company so desires, the reasonable opportunity to correct any deficiency in the Services provided.

7.9 The Client acknowledges and agrees by entering into any agreement with the Company that the above limitations and exclusions of liability are fair and reasonable in the circumstances.

8. Time Bar

8.1. Any claims against the

Company (whether in contract or in tort) shall be deemed to be waived and absolutely time barred upon the expiry of one year from the submission date of the final Report to the Client.

9. Delay and Force Majeure

9.1. The Company will not be liable or responsible for any delay or other consequences resulting from:

- i. any failure by the Client to perform its obligations pursuant to the Agreement in respect of the performance of Services (including, but not limited to delaying commencement of the Services or failing to provide full, complete and accurate information, any materials or facilities required in connection with the performance of the Services) or
- ii. any third parties' acts or omissions, or the acts or omissions of the Client's respective employees, affiliates agents or subcontractors; or
- iii. any delay caused by circumstances beyond the Company's reasonable control, including, without limitation, a failure by any government body, agent, classification society or regulator to grant relevant approvals, strikes, lock-outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, adverse weather conditions or prolonged power failure ("Force Majeure"). Following a force majeure event continuing for a period of 30 days or more, either party may serve notice on the other to terminate the Agreement

10. Suspension

10.1. The Company shall be enti-

tled to suspend its performance of the Services for reasons of breach of the Agreement by the Client, Force Majeure or following a request from the Client, in which case the Company shall be entitled to payment by the Client of the following costs:

i. the full costs of laying off (and re-hiring if necessary) any employees and consultants employed or subcontractors hired specifically for the purposes of the performance of Services to include any costs which the Company has necessarily paid to an employment agent

11. Termination

11.1. The Company may, without prejudice to any other rights and remedies it has pursuant to the Agreement or otherwise and without incurring liability to the Client, terminate the Agreement (in whole or in part) by giving notice in writing to the Client:

i. if the Client commits any material or persistent breach of the Agreement which is either not capable of being remedied or which the Client has failed to remedy to the Company's satisfaction within 10 working days of receiving written notice of the breach from the Company; or

ii. if the Client compounds with or negotiates for any composition with its creditors generally or permits any judgement against it to remain unsatisfied for 20 working days; or

iii. if being a company the Client calls a meeting of its creditors or has a receiver appointed over all or any of its assets or enters into any liquidation or is subject to an administrative order, administrative receivership, a winding up order or similar event; or

iv. if being an individual the Client shall die or have a receiving order made against them or be-

come bankrupt; or

v. if the Client becomes involved or is likely to become involved in giving evidence in any litigation or arbitration proceedings affecting the subject matter of the agreed terms and conditions in respect of the performance of Services or any matter connected or arising from the Agreement between the Parties which would result in a conflict of interest between the Company and the Client; or

vi. if at any time the Company believes that its performance of the Services or any aspect of the provision thereof results in or might result in the Company breaching any legal, regulatory or independence requirement in any jurisdiction; or

vii. if being a company at any time the Client's ownership changes so that a different party than the current owners acquire more than half of the nominal value of its equity share capital.

11.2. If the Company terminates the Agreement in respect of the performance of Services then without prejudice to any other rights and remedies the Company may have, the Client shall be liable on demand to pay the Company's Fees in respect of the work performed up until the date of termination and for all costs irrevocably incurred as a result of the termination and for loss of profits.

11.3. Should the Company choose not to terminate the Agreement with the Client then the Company shall still be entitled to claim from the Client compensation in respect of the breach and for additional costs incurred as a result thereof and an extension of time to complete the Services.

11.4. For the avoidance of doubt the Client shall have no right to

terminate the Agreement for any failure to meet any agreed timescales and acknowledges that the Company's performance is entirely dependent on the Client complying with its responsibilities as set out herein.

12. Insurance

12.1. The Company maintains normal insurance policies for the kind of risks and Services which it undertakes, appropriate to the size of the Company, including insurance required by law as well as Professional Indemnity Insurance for such loss and damage for which the Surveyor/Consultant may be held liable to the Client under these Terms and Conditions.

13. Sub-contracting and Assignment

13.1. The Company shall be entitled to sub-contract any aspect of the Services under this Agreement without the prior written consent of the Client. Notwithstanding the engagement of any sub-contractor the Company shall remain fully liable for the due performance of the Services.

13.2. The Client is not entitled to assign, novate or otherwise transfer its rights and/or obligations (in whole or in part) under or in connection with the Agreement to any third party.

14. Third Party Rights

14.1. A person who is not a party to the Agreement in respect of the performance of Services will have no rights under the Contracts (Rights of Third Parties) Act 1999 (or similar legislation in force outside of the United Kingdom) to enforce any of the terms and conditions in respect thereto.

15. Variations

15.1. These terms and conditions shall be varied to the extent set

out in any Confirmation of Request relating to the Services and signed by the Parties and/or any scope of work issued by the Company in connection with the Services.

15.2. Any other variation to these terms and conditions shall not be effective unless agreed in writing by both Parties.

16. Severability

16.1. If any part of the Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, then that provision shall, to the extent required, be severed and shall be ineffective, but shall not affect any other provision of the Agreement which shall remain in full force and effect.

17. Entire Agreement

17.1. The Agreement will be deemed to comprise the entire agreement between the Client and the Company and will supersede and replace all previous proposals, correspondence, understandings, contracts or other communications, including the Client's standard terms. Neither of the Parties will be liable in contract, tort or otherwise for any representation that is not specified in the Agreement (other than a fraudulent misrepresentation on which a party can be shown to have relied). The Parties represent that they have not relied on or been induced to enter into the Agreement by a statement or representation made by the other party other than those specified in the Agreement.

18. Waiver

18.1. No waiver by the Company of any breach of the Agreement by the Client will be considered as a waiver of any subsequent breach of the same or any other provision.

19. Governing Law

19.1. The Agreement will be governed by and construed in accordance with English law and the Parties hereby irrevocably agree to submit to the exclusive jurisdiction of the English High Court of Justice, Commercial Court in London.