

**CRINAN BOATYARD LTD (incorporating SKIPNESS ENGINEERING)**

**GENERAL TERMS OF BUSINESS**

**1. APPLICATION**

1.1 These Terms of Business shall apply to all contracts for work, goods and services undertaken, and facilities provided, by Crinan Boatyard Ltd (incorporating Skipness Engineering) a company registered in Scotland under number 201048 and having its registered office at Crinan, Lochgilphead, Argyll PA31 8SW to its customers from and after 1<sup>st</sup> March 2012

**2. INTERPRETATION**

2.1 Unless the context otherwise requires, each reference in these Terms of Business to

"Customer" shall mean the individual person or Business Customer (as defined in Clause 11.1 hereof) that engages us, Crinan Boatyard Ltd (incorporating Skipness Engineering), to carry out work, on their behalf, to their vessel, gear, equipment or other property and/ or to provide them with other services or goods or facilities.

2.2 Words imparting the singular number shall include the plural and vice versa.

2.3 References to any gender shall include the other.

2.4 The headings of each paragraph in these Terms of Business are for convenience only and shall not affect their interpretation.

**3. LIABILITY**

3.1 We shall not be liable for any loss or 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 a third party's property); this exclusion extends to loss or damage to a customer's vessel, gear, equipment or other property left with us for work or storage, wherever situated, and whether ashore or afloat, and harm caused to persons entering our premises or using any of our facilities or equipment.

3.2 We shall take reasonable care 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 insurance adequately cover such risks.

3.3 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.

3.4 Customers themselves may be liable for any loss or damage caused by them, their crew or their vessels while they or their vessel or other property are on our premises, moorings or pontoon or their vessel or other property is being worked on by us on our premises, moorings, pontoon or elsewhere; therefore, they shall be obliged to maintain adequate insurance including cover for Third Party liability of not less than £2,000,000 and, where appropriate, Employer's Liability cover in respect of any employee. Customers shall be obliged to produce satisfactory evidence (as to which matter we shall be the sole judge) of such insurance cover within 7 days of receiving a request from us to do so.

**4. PRICES AND ESTIMATES**

4.1 In the absence of express agreement to the contrary, our price for work shall be based on labour and materials expended and services provided.

4.2 We will exercise reasonable skill and judgement when we give an estimate or an indication of the price for our services. However, such estimates shall always be subject to the accuracy of the information provided by the customer and are usually based on a superficial and non-destructive examination and, therefore, will not include either the cost of any emergent work which may be necessary to the customer's vessel, gear, equipment or other property or the cost of any extension to the work comprised in the estimate.

4.3 If the cost of the work specified in the estimate increases, due to any other factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates then we reserve the right to increase our estimated price.

4.4 We will inform the customer promptly of (1) any additional work required under sub-clause 4.2 hereof and the estimated cost thereof and/or (2) of any increase in the estimated price under sub-clause 4.3 hereof and will only proceed with the approval of the customer. The customer shall remain responsible for the cost of services (labour and materials) already supplied by us or remaining to be supplied by us and which are not affected by the proposed increase in the price under sub-clauses 4.2 and/or 4.3 hereof.

4.5 All estimates provided by us are exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the work, goods or services supplied by us and which the customer shall be also be liable to pay to us.

**5. DELAYS AND FORCE MAJEURE**

5.1 Any time given by us for completion of our services is given in good faith but is not guaranteed.

5.2 We shall not be liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond our reasonable control. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is

## **6. VESSEL MOVEMENTS**

6.1 We reserve the right to move any vessel, gear, equipment or other property belonging to a customer at any time for reasons of safety, security or the good management of our business and premises.

## **7. PAYMENT**

7.1 Payment for all work, goods and services shall be due no later 14 days after the date of our invoice or otherwise in accordance with any credit terms agreed between us and the customer

7.2 We have the right to charge interest on any sum outstanding for more than 30 days (except in the case of a reasonable and proportionate retention agreed by us and the customer of any amount genuinely in dispute between us and the customer) on the outstanding balance at 4% above the Bank of England Bank Rate in force from time to time.

7.3 We reserve the right to exercise a right of lien in respect of a customer's vessel, gear, equipment or other property pending settlement by the customer of all sums which may be due to us by him. We shall be entitled to charge the customer, at our normal daily rate, for the storage of his vessel, gear, equipment and other property on our premises or moorings if any, and any other services provided by us, until all sums due to us have been paid in full and his vessel, gear, equipment and other property, if any, have been removed from our premises.

7.4 Notwithstanding the generality of Clause 7.3 hereof, where a reasonable and proportionate retention has been agreed by us and the customer, then the customer shall be entitled to remove his vessel, gear, equipment and other property from our premises subject to him providing us with proper and sufficient security (as to which matter we shall be the sole judge) for the amount of that retention.

7.5 Nothing in this clause shall be construed as limiting or excluding our right to exercise any other right or remedy which may be available to us in law to recover any sums due to us by the customer.

## **8. RISK AND RETENTION OF TITLE**

8.1 The risk of damage to, or loss of, goods, gear, equipment or materials supplied by us shall pass to the customer at the time of their delivery to the customer or to the customer's vessel or, if not delivered to the customer or to his vessel then at the time that we notify the customer that the goods, gear, equipment or materials are available for collection by him.

8.2 Notwithstanding delivery and the passing of risk in the goods, gear, equipment or materials, legal and beneficial title in them shall not pass to the customer until we have been paid in full for them.

8.3 The customer shall not be entitled to pledge, or in any way charge by way of security for any indebtedness, any goods, gear, equipment or materials supplied by us and in which we retain legal or beneficial ownership but if he should do so all sums due by him to us shall (without prejudice to any other right or remedy available to us) forthwith become due and payable.

8.4 We reserve the right to repossess any goods, gear, equipment or materials in which we retain legal or beneficial ownership. In such event, the customer shall deliver up to us all such goods, gear, equipment or materials in which legal or beneficial ownership has not passed to him.

8.5 The customer's right to possession of the goods, gear, equipment or materials in which we retain legal or beneficial ownership shall be terminated with immediate effect if the customer becomes subject to a bankruptcy order or takes advantage of any statutory provision for the relief of insolvent debtors.

## **9. CONSUMER RIGHTS**

9.1 Nothing in these Terms of Business shall affect the customer's statutory rights as a consumer.

## **10. GUARANTEE**

10.1 In addition to the statutory rights provided by Scottish 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 and may not be assigned by the customer to another party. We shall only be liable under this guarantee for defects which appear during the 12 month period from the completion of the work and which are promptly notified to us, in writing, at our registered office. The geographical area within which this guarantee will be honoured is restricted to the United Kingdom.

10.2 On the 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 employ contractors to do so. Any remedial work which is put in hand by the customer directly, without first notifying us of the defect and allowing us a reasonable opportunity to inspect it and agree such work and its cost will invalidate this guarantee in respect of such a defect.

## **11. BUSINESS CUSTOMERS**

11.1 Where we supply goods or services to a partnership or a company or to a customer who is acting in the course of a business or a commercial operation (a "Business Customer") then;

11.1.1 No article supplied by us to such 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 of the article, 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.

11.1.2 No proprietary article specified by name, size or type by a Business Customer shall carry any such express or implied term but will assign to the Business Customer any rights which we may have against the manufacturer or importer of that article.

11.1.3 We accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other party may sustain in the consequence of the failure of any faulty or unfit article supplied by us.

## **12. QUALITY STANDARDS**

12.1 We will complete our work to the agreed specification and, in the absence of any other contractual terms as to quality, to a satisfactory quality.

### 13. ACCESS TO PREMISES/WORK ON VESSEL

13.1 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 or his regular crew.

13.2 It is an absolute condition of these terms that all work carried out by the customer or his regular crew is carried out in full compliance with our Health and Safety, environmental and access policies and that it does not cause any nuisance or annoyance to us or to any other customer or person residing in the vicinity. We shall be entitled to demand the immediate cessation of any work which, in our opinion, does not comply with these requirements.

13.3 We shall not be responsible to customers or third parties for the consequences of any person's failure to comply with any part of this condition

### 14. RIGHT OF SALE

14.1 Maritime Law entitles us, in certain circumstances, to bring an 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. This right of arrest and sale may continue against a vessel after a change of ownership. The sale of a vessel or other property may also occur after the enforcement of a court order or decree.

### 15. SUBCONTRACTING

15.1 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 conditions, and of all limitations and exclusion 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.

### 16. NOTICES

16.1 Notice to a customer shall be sufficiently served 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 registered address.

### 17. LAW AND JURISDICTION

17.1 These Terms of Business (including any non contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Scotland

17.2 Any dispute, controversy, proceedings or claim between us and a customer relating to these Terms of Business (including any non contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of Scotland.

I acknowledge to have received the foregoing Terms of Business of which this is a copy

Signed.....

Name.....

Date.....

Company registered in Scotland No. 201048

V. A.T. No. 743 0327 60

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