MYLOR YACHT HARBOUR LIMITED: TERMS OF BUSINESS

Edition 14

THESE TERMS OF BUSINESS APPLY TO ALL CONTRACTS FOR WORK AND FACILITIES OR GOODS UNDERTAKEN BY US ON OR AFTER 10 APRIL 2007

1 LIABILITY

1.1 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 third party's property); this extends to loss or damage to vessels, gear, equipment or other property left with us for work or storage, and harm to persons entering our premises or using any of our facilities or equipment.

1.2 We shall take reasonable 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 personal and property insurance adequately covers such risks.

1.3 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.

1.4 Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels and while their vessel or other property is on our premises or is being worked on by us they shall be obliged to maintain adequate insurance, including third party liability cover for not less than £2,000,000, and, where appropriate, Employers' Liability cover in respect of any employee. Customers shall be obliged to produce evidence of such insurance to us within 7 days of a request to do so.

2 PRICES AND ESTIMATES

2.1 I n the absence of express agreement to the contrary our price for work shall be based on labour and materials expended and services provided.

2.2 We will exercise reasonable skill and judgement when we give an estimate or indication of price. However such estimates are always subject to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any emergent work which may be necessary to the vessel, gear or equipment nor the cost of any extensions to the work comprised in the estimate.

2.3 We will inform the customer promptly of any proposed increase in estimated prices and the reasons for it and will only proceed with the work or supply with the approval of the customer. The customer shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied which are not affected by the proposed increase in price.

3 DELAYS

3.1 Any time given for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our wilful acts or omissions or from our negligence.

4 VESSEL MOVEMENTS

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

5 PAYMENT

5.1 Unless otherwise agreed between us payment for all work, goods and services shall be due immediately on invoice date. Payment shall be deemed to have been made when we receive cash or cleared funds at our bank.

5.2 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 by the customer of any amount genuinely in dispute between us and the customer) on the outstanding balance at 4% above Bank of England base rate which may be calculated daily up to the date of actual payment. In the case of business customers this rate will be substituted with the current rate applicable under late payment legislation.

5.3 'We reserve a general right ('a general lien') to detain and hold onto a customer's vessel or other property pending payment by the customer of all sums due to us. We shall be entitled to charge the customer for storage and the provision of any ongoing services at our normal daily rates until payment (or provision of security) by the customer and removal of the vessel or property from our premises. The customer shall be entitled to remove the vessel or other property upon providing proper security, for example a letter of guarantee from a Bank reasonably acceptable to us or lodgement of a cash deposit with a professional third party agent, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for our prospective legal costs. This right does not affect the customer's entitlement to withhold a proportionate part of the price in respect of alleged defects but where that amount is in dispute between us the customer shall be required to provide security for the full amount pending resolution of the dispute.

5.4 Our customers' attention is drawn also to the note at Clause 10.2 of these Terms of Business regarding other rights which exist at law.

6 RETENTION OF TITLE / RISK

6.1 Title to all goods, equipment and materials supplied by us to a customer shall remain with us until full payment has been received by us.

6.2 Risk in all goods, equipment and materials supplied by us to a customer shall pass to the customer at the time of supply to the customer.

7 GUARANTEE

7.1 Advice on whether a customer is 'a consumer' or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of Solicitors (who may charge). Online guidance may be obtained at http://www.consumerdirect.gov.uk/

7.2 A customer who is a consumer has certain minimum statutory rights regarding the return of defective goods and claims for losses. These rights are not affected by these terms.

7.3 In addition to the statutory rights provided by English 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. We shall be liable under this guarantee only for defects which appear during this 12 month period and which are promptly notified to us in writing at our trading address or registered office set out on our letterhead.

The geographical area within which this guarantee will be honoured is restricted to the United Kingdom.

7.4 On 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, at our option,

employ other contractors to do so. Any remedial work which is put in hand by the customer directly without first notifying us and allowing us a reasonable opportunity to inspect and agree such work and its cost will invalidate this guarantee in respect of those defects.
7.5 Where we supply goods or services to a partnership or company or to a customer who is acting in the course of a business or a commercial operation (a 'Business Customer') then:
7.5.1 No article supplied by us to a 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 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.
7.5.2 No proprietary article specified by name, size or type by a Business Customer shall carry any such express or implied term but we will assign to the Business Customer any rights we may have against the manufacturer or importer of that article.
7.5.3 We accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied by us.
8 QUALITY STANDARDS
8.1 We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.
9 ACCESS TO PREMISES/WORK ON THE VESSEL
9.1 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. It shall be an absolute condition that all work 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, any other customer or person residing in the vicinity, and does not interfere with our schedule of work or the good management of our business. We shall not be responsible to customers or third parties for the consequences of any person's failure to respect any part of this condition but we shall be entitled to demand the immediate cessation of any work which in our view breaks these requirements.
9.2 While we or our subcontractors are working on a customer's vessel or equipment the customer shall not have access to it except by prior arrangement. We will agree reasonable access when it is safe to do so and when it will not interrupt or interfere with our work schedule.
10 RIGHT OF SALE
10.1 We accept vessels, gear, equipment and other property for repair, refit, maintenance or storage subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on us in circumstances where the customer fails to collect or accept re-delivery of the goods (which includes a vessel and any other property). A sale will not take place until we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
10.1. 1 Goods for repair or other treatment are accepted by us on the basis that the customer is the owner of the goods or the owner's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
10.1. 2 Our obligation as custodian of goods accepted for storage ends when we give notice to the customer;
10.1. 3 The place for delivery and collection of goods shall normally be at our premises. Advice regarding the Act and its effect may be obtained from any of the sources referred to at Clause 7.1 above.
10.2 Maritime Law entitles us in certain circumstances to bring 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 by the Court. This right of arrest and sale may continue to exist against a vessel after a change of

ownership. Sale of a vessel or other property may also occur through the enforcement of a court order or judgement.

11 SUBCONTRACTING

11.1 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 exclusions 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.

12 NOTICES

12.1 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 principal trading address or registered office.

13 LAW AND JURISDICTION

13.1 Any contract or series of contracts made subject to these terms shall be subject to and governed by English law.

13.2 In the case of Business Customers any dispute arising under them shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.

13.3 In the case of customers who are consumers or who are not contracting in the course of business any dispute shall be submitted to the non-exclusive jurisdiction of the Courts of England and Wales.

14 DISPUTE RESOLUTION

14.1 The BMF and the RYA recommend that disputes arising under a contract which is subject to these terms shall, when they cannot be resolved by negotiation, with the written agreement of the parties be submitted to mediation or failing that to arbitration under the BMF's Dispute Resolution Scheme, which is approved by the RYA.

14.2 Details of the mediation scheme operated by the BMF are available at www.britishmarine.co.uk/mediation.

14.3 Matters suitable for arbitration shall be submitted to a single Arbitrator in accordance with the BMF's Dispute Resolution Scheme. Details of the arbitration scheme are available at www.britishmarine.co.uk/mediation. The provisions of the Arbitration Act 1996 shall apply.

Published by the British Marine Federation and approved by the RYA, who recommend that disputes are submitted to alternative
dispute resolution under the Marine Dispute Resolution Rules published by the British Marine Federation.

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