

# Standard Marine Survey Trading Terms

## Definitions

Agreed Indemnity Limit:	In the amount of ten times the quoted, agreed or charged Survey Fee, or £100,000, whichever the lesser. This is the maximum limit of our liability to the Client, under any circumstances.
Client:	The party at whose request and/or on whose behalf we undertake the Survey
Disbursements:	All reasonable costs incurred in the execution of Scope of Work including, but not restricted to air fares, mileage, hotel, refreshments, photographic and reproduction of drawings, etc, electronic transmission fees where appropriate.
Scope of Work:	The nature of survey that will be conducted upon receipt of instructions given by, but not limited to, letter, fax, electronic mail, telephone.
"Survey" and "Survey Report":	The survey and the survey report that form the subject matter of this Agreement.
Survey Fee:	The agreed amount, <b>not</b> including disbursements, which will be charged in addition in accordance with clause 4 of the terms below.

This Agreement is made subject to the following terms:

## 1. Limitations of liability

- 1.1 All services and reports are provided for the named Client's use only. No liability of whatever nature is assumed towards any other party and nothing in these terms, or the relationship between us and the Client, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement and any person who is not a party to the Agreement shall have no right under that Act to enforce any term(s) of the Agreement.
- 1.2 We shall undertake the services to which these terms relate with reasonable care, skill and diligence. Notwithstanding any other provision of these terms or any other agreement reached between the Parties we shall not be liable under the Agreement for any loss or damage caused in circumstances:
  - 1.2.1 Where there is no breach of a legal duty of care owed to the Client by us or those for whom we are responsible or
  - 1.2.2 Where, notwithstanding any breach as aforesaid, any loss or damage is not a reasonably foreseeable result of any such breach.
- 1.3 We shall not be responsible for loss or damage or any increase in loss or damage resulting from any material breach by the Client of any term of the Agreement.

- 1.4 Any claim by the Client in respect of any breach of our obligations hereunder must be notified to us as soon as is reasonably practicable after the Client becomes aware of the breach but no later than 6 months from submission of the report. Where any breach is capable of remedy, we must be afforded a reasonable opportunity to put matters right at our expense.
- 1.5 The Client covenants with us and our servants and agents that no such servant or agent shall in any circumstances whatsoever be under any liability for any loss arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing, every exemption, limitation and condition herein contained and every right, exemption and limitation of liability applicable to us or to which we are entitled hereunder shall also be available to protect every such servant or agent acting as aforesaid and for the purpose of the foregoing provisions we are or shall be deemed to be acting as agents or trustees on behalf of and for the benefit of all persons who are or might be our servants or agents from time to time and all such persons shall to this extent be or be deemed to be parties to these terms.
- 1.6 The Client acknowledges and agrees that, for reasons of commercial practicality, it is necessary for us to limit our potential liability in respect of loss or damage suffered by the Client as a result of any breach by us of any of our obligations under the Agreement. As such, the Client acknowledges and agrees that no liability howsoever arising whether under the Agreement or otherwise shall attach to us except insofar as such liability is covered by any professional indemnity insurance referred to at paragraph 1.7 that we may hold from time to time and the aggregate amount of such liability shall in any event be limited to the Agreed Indemnity Limit.
- 1.7 We shall from time to time and as appropriate maintain professional indemnity insurance in the amount of the Agreed Indemnity Limit throughout the period of the performance of our duties hereunder provided that such insurance shall remain available at reasonable market rates.
- 1.8 Our liability shall not extend to particulars, data and other information given to us by others or obtained from outside sources, publications and the like reasonably relied upon by us, including but not restricted to Class records, registry details or other such information and no assurances can be given regarding the accuracy of the same.
- 1.9 Unless otherwise stated in writing, all services and reports are provided on the basis that they carry no guarantee regarding ownership or title, freedom from mortgages or, charges, debts, liens or other encumbrances, or vessel stability, performance or design.
- 1.10 The Client shall be responsible for any losses, expenses or other costs reasonably incurred by us that are caused by a breach of the Client's obligations to us hereunder.
- 1.11 We shall not be liable in respect of any breach of our obligations hereunder resulting from unforeseeable causes beyond our reasonable control.

1.12 Notwithstanding any other provision of the Agreement, where the Client is acting in the course of a business or commercial operation:

1.12.1 Our liability shall expire six months after the date of the Survey Report and we shall thereafter have no further liability whether in contract, tort or otherwise;

1.12.2 We shall have no liability whether in contract, tort or otherwise:

1.12.2.1 In respect of any consequential or economic loss or for loss of profit or turnover or loss of use suffered by the Client howsoever arising, whether under the Agreement or otherwise, and without prejudice to the generality of the foregoing we shall not be liable for any consequences of late performance of the Survey and/or late delivery of the Survey Report;

1.12.2.2 In respect of any breach of our obligations hereunder of which written notification shall not have been given within 7 days of the date on which the Client ought reasonably to have become aware of the existence of such breach;

1.12.2.3 In respect of any loss, injury or damage sustained as a result of (i) any defect in any material or workmanship, or (ii) the act, omission or insolvency of any person other than ourselves, and we shall have no liability to indemnify the Client in respect of any claim made against the Client for any such loss, injury or damage;

1.12.2.4 Our liability shall be limited to the amount for which we would have been liable but for the application of this paragraph less such sum(s) as would have been recovered by us (ignoring the operation of this paragraph) from any other adviser or contractor pursuant to the Civil Liability (Contribution) Act 1978 had we brought proceedings thereunder against such parties (they being deemed to have undertaken liability in no less onerous terms in favour of the Client than those contained herein) for a contribution or indemnity awarded in those proceedings.

1.13 Notwithstanding any other provision of the Agreement:

1.13.1 All survey work undertaken hereunder shall be on terms that, unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or of suitability of the vessel or other item for any particular purpose or of compliance with any particular local, national or international requirement or code, and opinions are given without the benefit of running of machinery or opening up or other dismantling whether of interior linings, machinery or other items or systems. Such survey conditions, reservation and restrictions will be specifically stated Survey Reports.

1.13.2 We shall have no liability whether in contract, tort or otherwise in respect of the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions, or the non-disclosure by the Client of relevant information.

## **2 Surveys**

2.1 The Client's instructions received either by electronic means, including but not limited to email, telephone, etc or in writing, and the scope of our services hereunder, are as defined in the Scope of Work. Any subsequent changes or additions to the Scope of Work must be agreed in writing by the Parties.

2.2 The Client undertakes to:

2.2.1 Ensure that full instructions are given to us and are provided in sufficient time to enable the required services to be performed effectively and efficiently. The Client agrees to disclose to us all relevant information of which they have knowledge, or to which they have access, in relation to the vessel to be surveyed; and

2.2.2 Procure all necessary access to premises and vessels (including lift-out, trials and facility for inspection ashore and afloat as appropriate) for no less than such a time as shall in each particular circumstance be reasonable, to enable all appropriate inspections and tests to be undertaken or performed, and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions, provided always that in the event of any breach of these requirements causing any failure on our part to undertake the Scope of Work the Client shall be responsible for all consequential costs incurred by us and in respect of any element of the Scope of Work undertaken.

2.3 To the extent that we are so instructed, we will inspect the vessel as thoroughly as is practicable and will endeavour to comment on the more important items where, in our reasonable opinion, major costs consequences are considered likely to arise. It follows that we cannot comment on every minor matter but we will try to point out where small factors may become more serious. Our intention is to report on the integrity of the main structural or physical elements of the vessel so far as can reasonably be ascertained from a visual inspection of the vessel at its location at the time of survey. The Client accepts that our survey report(s) cannot cover hidden, unexposed or inaccessible areas of the vessel; neither can we undertake to investigate areas that we believe to be inaccessible at the time of inspection. Where we are unable to gain access to areas commonly accessible, we will endeavour to point this out.

2.4 In every case, we recommend a full survey of a vessel, to include inspection of the vessel while lifted and while in the water. Where we accept instructions to survey a vessel solely on the basis of an inspection of the vessel while located out of the water, we make no representation and give no warranty as to either its watertight integrity, fitness for purpose or seaworthiness.

### 3 Valuations

- 3.1 All valuation work undertaken shall be in accordance with the Scope of Work and shall be on terms that, unless otherwise stated in writing, such work relates solely to the date and place referred to. Valuations are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars or information on which opinions are based. Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation or such other date as is expressly referred to. In the event that the valuation is a forecast of that which might obtain at some point in the future, such valuation carries no guarantee nor is there warranty of watertight integrity, fitness for purpose or seaworthiness.

### 4 Fees

- 4.1 The Survey Fee and all disbursements shall become due and payable on such terms and in such amounts as shall be agreed from time to time. VAT or other EU equivalent and bank charges shall be payable, if applicable, in addition to all fees and expenses. Invoices will be submitted in respect of all fees and expenses when due and the amount of each invoice shall be settled within the time period stated on the invoice and from the date of the invoice. Thereafter, interest shall be payable on all sums owing and unpaid at a rate of 4% over Royal Bank of Scotland base rate.

### 5 Default

- 5.1 Client default: we may terminate the appointment forthwith if the Client fails for more than 21 days to pay any sum due when demanded, or if the Client fails to respond promptly to requests for information and/or instructions and fails adequately to respond to 21 days' formal notice of such failure, without prejudice to our accrued rights.
- 5.2 Other defaults: either party may terminate the appointment forthwith by notice if the other party shall: have a petition presented for its winding up or administration which is not discharged within 14 days of presentation or any other action is taken with a view to its winding up (otherwise than for the purpose of reorganisation or amalgamation without insolvency), or become bankrupt or commit an act of bankruptcy, or make any arrangement or composition for the benefit of creditors, or have a receiver or manager or administrative receiver or administrator or liquidator appointed in respect of any of its assets, or have anything analogous to any of the foregoing under the laws of any jurisdiction occur to it, or cease or threaten to cease to carry on business; without prejudice to the accrued rights of the other party.

### 6 Law and disputes

- 6.1 These terms shall be governed by and construed in accordance with Scottish law and any dispute or difference arising, or claim made, between or by the Parties out of or in relation to or in connection with the provision of services to which these terms relate and which cannot be resolved by the Parties shall be submitted to the non-exclusive jurisdiction of the Courts of Scotland.

## **7 Miscellaneous**

- 7.1 No exercise or failure to exercise or delay in exercising any right, power or remedy vested in either party shall be deemed to be a waiver by that party of that or any other right, power or remedy.
- 7.2 Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.
- 7.3 In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation the same shall be deemed to be deleted from these terms and shall be of no force or effect and these terms shall remain in full force and effect as if such provision had not been contained therein. Notwithstanding the foregoing in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of an acceptable alternative provision.
- 7.4 Except where expressly stated to the contrary, in a written document signed by the Parties on or after the date hereof, these terms form the entire agreement between the Parties and supersede all previous agreements and understandings between the Parties, and no warranty, condition, description, term or representation is given or to be implied by anything said or written in negotiations between the Parties or their representatives prior to the communication of these terms.
- 7.5 References to "we", "us" and "our" include our employees and persons, firms and companies appointed or engaged by us as our agents for carrying out any work or services under these terms, all persons, firms and companies to whom performance of any work or services under these terms is sub-contracted or delegated by us, and all agents and employees of persons, firms and companies referred to in this clause.
- 7.6 Any communication required to be given under these terms by either party shall be in writing and shall be sufficiently given either by letter, fax or electronic mail (provided the same is capable of being recorded by the recipient in durable form) sent to the other at the contact details previously notified and any such notice shall be deemed to have been given at the time at which it would in the ordinary course of transmission have been received.
- 7.7 Each party undertakes to maintain the confidentiality of all information supplied by the other and not to divulge such information to third parties without the prior written authority of the other.
- 7.8 The report produced subsequent to survey is copyright of A . Adamson & Co. In the event that payment is not received under the provision of 4.1, copyright will be deemed withheld. The Clients may not use, copy, disseminate or action the content of the report until the sums agreed are remitted. A Adamson & Co retains the intellectual property rights of the report.
- 7.9 We shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for us to continue our involvement with the appointment. The client shall be responsible for payment of our fees and disbursements up to the date of notification.