

# SUFFOLK MARINE SAFETY LIMITED

## TERMS AND CONDITIONS

### FOR THE PROVISION OF SERVICES RELATING TO

### THE REPAIR, SERVICE & MAINTENANCE OF MARINE SAFETY EQUIPMENT

Suffolk Marine Safety Limited (company number 3947682) of Unit 75, Claydon Business Park,  
Gt Blakenham, Ipswich, Suffolk IP6 0NL. Tel: [01473 833 010](tel:01473833010)

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## 1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means the agreement to undertake repair and maintenance services generally but not exclusively to life rafts and marine safety equipment in accordance with these Terms and Conditions together with any special terms or inclusions detailed on any applicable Job Card;
- 1.2 "Customer" means the organisation or person who purchases Services from the Provider;
- 1.3 "Detailed Quotation" means a quotation provided by the Provider after the Equipment has been un-packaged at the request of the Customer to enable a closer up front inspection;
- 1.4 "Job Card" is a document issued by the Provider detailing the Equipment to be repaired/requiring maintenance, a brief description of the Services to be performed, the Provider's job reference number, reference to the rates applicable, and a description of any special conditions or requirements relating to the Services;
- 1.5 "Equipment" means the marine safety equipment (eg life rafts, life jackets, inflatable dan buoys, safety related electronic equipment etc) forming part of the Services;
- 1.6 "Provider" means Suffolk Marine Safety Limited (company number 3947682) of Unit 75, Claydon Business Park, Gt Blakenham, Ipswich, Suffolk IP6 0NL.
- 1.7 "Service Report" means the document completed by the service technician confirming the works that have been carried out as part of the Services. The service technician signs, dates and stamps this document to confirm that the Services have been completed;
- 1.8 "Services" means the services provided by the Provider as described on the Job Card and on the Provider's web site. In the event of any ambiguity, the description on the Job Card shall take precedence.

## 2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the provision of Services by the Provider to the Customer.
- 2.2 Before the commencement of the Services the Provider shall submit to the Customer a copy of a Job Card which shall specify any special services or provisions. The Customer shall notify the Provider immediately if the Customer does not agree with the accuracy of the Job Card. All Services shall be subject to these Terms and Conditions.
- 2.3 The Provider shall use all reasonable endeavours to provide the Services within estimated time frames but time shall not be of the essence in the performance of any Services.

### **3 PRICE AND PAYMENT**

3.1 The price for the provision of Services is as quoted by the Provider. If the quote has been provided on a Detailed Quotation basis and the Customer decides not to accept the Detailed Quotation, then the Customer shall be liable for either the cost of disposing the Equipment (£35.00) or alternatively they shall accept responsibility for re-packaging the Equipment at their own cost.

3.2 The Provider shall invoice the Customer prior to collection or receipt by the Customer of the Equipment.

3.3 Invoiced amounts shall be due and payable prior to receipt by the Customer of the Equipment following completion of the Services, or within 30 days of receipt of invoice if the Customer has a credit account. The Provider shall be entitled to charge interest on overdue invoice from the date when payment becomes due from day to day until the date of payment at a rate of 10 percent per annum above the base rate of the Bank of England.

3.4 The Provider shall be entitled to refuse to hand over the Equipment back to the Customer until such time as the Customer has paid for the Services. Such circumstances shall not affect or prejudice any other right, responsibility or provision afforded to either party under this Agreement.

### **4 SPECIFICATION OF THE SERVICES**

All Services shall be required only to conform to the specification detailed on the Job Card together with the Provider's web site. For the avoidance of doubt no description, specification or illustration contained in any pamphlet or other sales or marketing literature of the Provider and no representation written or oral, correspondence or statement shall form part of the contract.

### **5 CUSTOMER'S OBLIGATIONS**

5.1 To enable the Provider to perform its obligations under this Agreement the Customer shall:

5.1.1 co-operate with the Provider;

5.1.2 provide the Provider with any information reasonably required by the Provider in a timely fashion;

5.1.3 obtain all necessary permissions and consents which may be required before the commencement of the Services; and

5.1.4 comply with such other requirements as may be set out in the Job Card or otherwise agreed between the parties.

5.2 The Customer shall be liable to compensate the Provider for any expenses incurred by the Provider as a result of the Customer's failure to comply with Clause 5.1.

5.3 Without prejudice to any other rights to which the Provider may be entitled, in the event that the Customer unlawfully terminates or cancels the Services, the Customer shall be required to pay to the Provider as agreed damages and not as a penalty the full amount of any third party costs to which the Provider has committed and in respect of cancellations on less than five working days' written notice the full amount of the Services contracted, and the Customer agrees this is a genuine pre-estimate of the Provider's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 5.1 may be deemed by the Provider at any time to be a cancellation of the Services and subject to the payment of the damages set out in this clause.

5.4 In the event that the Customer or any third party, not being a sub-contractor of the Provider, shall omit or commit anything which prevents or delays the Provider from undertaking or complying with any of its obligations under this Agreement, then the Provider shall notify the Customer as soon as possible and:

5.4.1 the Provider shall have no liability in respect of any delay to the completion of any project;

5.4.2 if applicable, the timetable for the project will be modified accordingly;

5.4.3 the Provider shall notify the Customer at the same time if it intends to make any claim for additional costs.

## **6 ALTERATIONS TO THE SERVICES**

6.1 The parties may at any time mutually agree to vary the specified Services. Any alterations in the scope of Services to be provided under this Agreement shall be detailed on the Job Card or by written agreement, which shall reflect the changed Services and price and any other terms agreed between the parties.

6.2 The Customer may at any time request alterations to the Services by notice to the Provider. On receipt of the request for alterations the Provider shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.

6.3 Where the Provider gives notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Provider by notice whether or not it wishes the alterations to proceed.

6.4 Where the Provider gives notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms that it wishes the alterations to proceed on those terms, the Job Card shall be amended to reflect such alterations and thereafter the Provider shall perform this Agreement upon the basis of such amended terms.

## **7 WARRANTY**

7.1 The Provider warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

7.2 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Services to be provided by the Provider.

## **8 INDEMNIFICATION**

The Customer shall indemnify the Provider against all claims, costs and expenses which the Provider may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement.

## **9 LIMITATION OF LIABILITY**

9.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Provider to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to the Provider for the Services to which the claim relates.

9.2 The Equipment shall continue to be covered by the Customer's insurance policies throughout the provision of the Services, and in the unlikely event that the Equipment is damaged or stolen by a third party during the provision of the Services then this will be a matter for the Customer to take up with their insurers. The Provider offers no guarantees as to the absolute safety of the Equipment other than as provided elsewhere in this Agreement.

9.3 In no event shall the Provider be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Provider had been made aware of the possibility of the Customer incurring such a loss.

## **10 TERMINATION**

Either party may terminate this Agreement forthwith by notice in writing to the other if:

10.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;

10.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

10.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

10.4 the other party ceases to carry on its business or substantially the whole of its business; or

10.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

## **11 EQUIPMENT TESTING**

11.1 Where the Services include for testing of the Equipment (eg pressure testing or electrical equipment testing) and

11.1.1 the Equipment either passes the testing criteria, or fails the testing criteria but is deemed by the Provider to be repairable, then the price chargeable shall be in accordance with the quoted rates as stated on the Job Card; or

11.1.2 the Equipment fails the testing criteria and is deemed by the Provider to be non-repairable, then the Provider shall be entitled to charge for 50% of the testing fee, plus disposal charge (£35.00) where applicable.

## **12 CUSTOMER'S FAILURE TO COLLECT OR ACCEPT RETURN OF THEIR PROPERTY**

In the event that a Customer does not collect the Equipment as agreed or is unable to accept delivery at the agreed location, the Provider may charge the Customer storage charges at the rate of £5.00 per week, together with any costs incurred in the re-arrangement of collection or return. If, despite its reasonable endeavours, the Provider is unable to obtain payment for a period of twelve weeks, or is unable to return or arrange collection with the Customer for a period of twelve weeks, then the Provider may sell or otherwise dispose of the Equipment. The Customer hereby acknowledges and accepts that under such circumstances they shall have no claim or entitlement whatsoever to any of the proceeds received by the Provider pursuant to the selling of the Equipment. Furthermore in the event that such proceeds do not cover the total price of providing the Services then the Provider may continue to pursue the Customer for payment of any such shortfall in financial recovery relating to the Services.

## **13 STATUTORY AND HEALTH & SAFETY LEGISLATION**

The Provider shall comply with all applicable statutory (including health and safety) legislation in respect to the Equipment during the course of the Services. The Customer shall be responsible for compliance with all such applicable legislation prior to handing over the Equipment to the Provider and also from the time of completion of the Services. Completion of the Services shall be deemed to be as described on the Service Report, in the form of a calendar date. All risk and responsibility for all matters relating to the Equipment shall pass back to the Customer at midnight on the date of completion of the Services, and for the avoidance of doubt this shall include, inter alia, responsibility for checking and maintaining any medical and other equipment on or forming part of the Equipment in accordance with the law. The Provider accepts no responsibility whatsoever for any failure by the Customer to maintain the Equipment or any equipment on or forming part of the Equipment (medical or otherwise) in accordance with any applicable legislation or Code of Practice after the date of completion of the Services.

## **14 FORCE MAJEURE**

The Provider shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or provision by third parties of equipment or services, and the Provider shall be entitled to a reasonable extension of its obligations after notifying the Customer of the nature and extent of such events.

## **15 INDEPENDENT CONTRACTORS**

The Provider and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Provider may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Customer and such engagement shall not relieve the Provider of its obligations under this Agreement or any applicable Job Card.

## **16 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Provider.

## **17 SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## **18 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## **19 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Job Card or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

## **20 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

## **21 NO THIRD PARTIES**

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

## **22 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.