

**Mariana Marine Ltd**  
**Terms and Conditions of Business**

Terms and Conditions

IT IS AGREED that:

- A. These MMA Terms of Business forms part of the Agreement between MMA and the Client; and
- B. MMA shall perform the Scope of Work as set out in the Agreement subject to the following terms:

**1. Definitions**

**1a)** The "Contract" shall be defined as:

these Terms of Business and the Additional Terms of Business, which shall be included in the definition of Contract and one of the following:

- i. the Contract Summary Sheets (if these are issued by MMA and are agreed by the Client); or
- ii. the confirmation of the engagement issued by MMA; or
- iii. (where neither the Contract Summary Sheets nor a confirmation of the engagement are issued by MMA) any additional documentation issued by MMA confirming the Specification and the Scope of Services, the Commencement Date and the Estimated Completion Date for the Services, the Fees payable by the Client to MMA, the Deliverables (if any) and the Special Conditions (if any).

**1b)** The terms of the Contract (as defined above) comprise the entire agreement between the Client and MMA relating to its subject matter and will supersede and replace all previous proposals, correspondence, understandings, contracts or other communications, including the Client's standard terms. Neither the Client nor MMA will be liable in contract, tort or otherwise for any representation that is not specified in this Contract (other than a fraudulent misrepresentation on which a party can be shown to have relied). MMA and the Client both represent that they have not misled or been induced to enter into this Contract by a statement or representation made by the other party other than those specified in this Contract.

**1c)** "MMA" means Mariana Marine Ltd including its employees, members of the board, management; all third parties who have been or will be instructed by MMA; any possible beneficiaries of wills and legal successors of the parties and their Insurers mentioned in article 1c; and MMA legal entity defined on the Contract Summary Sheets or the MMA legal entity which has sent the Client the confirmation of the engagement or the MMA legal entity which has sent the Client the additional documentation referred to this article above. Notwithstanding this, the MMA legal entity must be one of those legal entities referred to above and it shall not mean any other company.

**1d)** "Client" is the party at whose request or on whose behalf MMA provides services.

**1e)** "Report" means any report or statement supplied by MMA in connection with instructions received from the Client.

**1f)** "Disbursements" means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where lodging is necessary.

**1g)** "Fees" means the fees charged by MMA to the Client including any value added tax where applicable and any Disbursements

**1h)** "Engagement" means everything mentioned under article 2a.

**1i)** "Services" means all services described either in the confirmation of engagement issued by MMA and/or on the Contract Summary Sheets issued by MMA and/or the applications/work as described in article 2a.

## **2. Scope**

MMA shall provide its services solely in accordance with these terms and conditions.

Unless explicitly agreed otherwise in writing by MMA, these Terms of Business shall apply to the following:

**2a)** all contracts entered into with MMA; all services rendered by MMA; all work carried out by MMA; all products or goods provided by MMA; all offers and quotations made by MMA; all courses and trainings offered by MMA; anything resulting from or in connection with the aforementioned Contracts, services, work, products or goods, offers and quotations, including, but not restricted to, future engagements and/or amended engagements.

**2b)** Anyone (whether a legal person, private person or company) granting an engagement to MMA will hereafter also be referred to as the "Client". Any legal person granting the engagement to MMA on behalf of another party is required to immediately advise on whose behalf the engagement is granted and submit a copy of these Terms of Business to that other party.

**2c)** In the event of possible deviations or discrepancies between these Terms of Business and those of the Client, then these Terms of Business shall prevail to the exclusion of the Client's terms of business.

**2d)** In the event of deviations between the English text of these Terms of Business and any translation thereof, the English text takes precedence.

**2e)** In the event that MMA deviates from any stipulation in these Terms of Business which only MMA is permitted to do for a justified reason after contact with the client or the client's representative/agent, then the remaining Terms of Business continue to apply in full. If any of these Terms of Business is lawfully declared completely or partly null and void or unlawful, then the remaining terms of business continue to apply in full.

## **3. Work**

**3a)** The Client will set out in writing the services which it requires MMA to provide. MMA will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions. Once MMA and the Client have agreed what services are to be performed any subsequent changes or additions must be agreed by both parties in writing.

**3b)** All engagements will be accepted and carried out exclusively by MMA (or by any person instructed by MMA in accordance with article 1c). This also applies when it is the explicit or implied intention of the Client that the engagement is to be carried out by a particular person. The Client confirms that the definition and scope of the Services is sufficient to meet its needs. MMA shall be entitled to act upon the instruction of any of the Client's employees or agents.

**3c)** An engagement granted to MMA is to be considered as accepted by MMA only if this has been confirmed in writing by MMA or when MMA has commenced with the execution of the engagement. Unless otherwise agreed in writing by a Director of MMA, any acceptance shall always take place (or be deemed to have taken place) on the basis that these Terms of Business apply.

**3d)** MMA will normally commence performance of the Services on the date specified in the confirmation of the engagement or, if not specified there, on the Contract Summary Sheets or as otherwise agreed in writing. If, at the request of the Client and subject to the prior agreement of MMA, this date is changed for any reason, MMA reserves the right to amend the fees specified by it to cover any further costs and/or expenses incurred by MMA, as a result of such delay.

**3e)** MMA shall not be responsible for any failure to advise on or comment upon any matter which falls outside the scope of the Services (as indicated on the confirmation of the engagement, or on the Contract Summary Sheets or in any other documentation) and the Client shall be responsible for determining whether the Scope of Services is sufficient for the Client's/Client company Group's purposes; if the Scope of Services is not sufficient or if the Scope of Services is unclear, then the Client shall be responsible for reverting promptly to MMA to ensure that the Scope of Services is altered.

**3f)** The Client shall, at the time of granting the engagement, and immediately when further information becomes available to the Client which is relevant to the performance of the Services, furnish MMA free of charge with all data and information which are necessary in order to carry out the engagement adequately. MMA shall be entitled to rely upon such data and information. The Client guarantees that all data and information provided is correct and complete. MMA is entitled to suspend the commencement and/or execution of the engagement so as to verify the accuracy of the data and information provided. In any event, MMA shall not be liable in whole or in part for any damage which is attributable, in whole or in part, to the data and/or information provided by the Client, his agent, employee, subcontractor, representative or for his account and which is shown to be incorrect, or incomplete, not supplied at all or not supplied in a timely manner.

#### **4. Payment Terms**

**4a)** MMA may at any time send an (interim) invoice. Settlement of the invoices of MMA and other costs connected to this contract should, without any right to postponement or set-off, take place within 10 working days following the date of the invoice, unless MMA explicitly and in writing has agreed to a different time of payment or MMA, in the relevant matter, unilaterally employs and/or stipulates a different term.

**4b)** In all cases in which agreed or invoiced amounts are invoiced exclusive of taxes, levies or governmental surcharges, including VAT, MMA still has the right to invoice such amounts subsequently to the Client; this shall also apply in cases where, on the invoices from MMA or in correspondence sent with an invoice, it is stated that the invoice is a final invoice.

**4c)** All costs in connection with payments to be made to MMA, such as banking costs, are always for account of the Client.

**4d)** The Client should lodge any possible objections to the amount charged within 5 working days of the invoice date in writing to the Managing Director of MMA. Failing this, the Client will be deemed to have accepted the amount charged as due, whilst disputing the indebtedness of the amount payable is thereafter no longer possible.

**4e)** In the event that the Client has not complied with the aforementioned terms of payment without prior written notice, then it is in default and MMA shall be entitled to charge a delayed payment compound interest of 1.5% a week (whereby a part of a week shall be counted as a whole week).

**4f)** MMA is at all times entitled to request from the Client (because of MMA's motivating reasons) an advance payment in part or in whole as well as to request suitable security being put up for the payment obligation. An applicable term of payment or credit limit does not alter this authority.

**4g)** In addition to invoiced fees and expenses, all (extra) judicial costs in connection with collection of fees and expenses incurred by MMA for amounts invoiced and/or amounts to be invoiced (with a minimum of 20% of the amount to be received) are always for account of the Client.

**4h)** Without prejudice to any rights of recovery which MMA might have against a third party, MMA shall treat the Client identified in the Contract as the person responsible for paying for the Services performed, therefore MMA shall not need to be concerned as to whether the Client considers itself to be principal or agent nor shall MMA need to concern itself as to whether the Client is, or is not, paid by a third party.

## **5. Obligations and Responsibilities**

### **5a) Client**

The Client undertakes to ensure that full instructions are given to MMA and that they are provided in sufficient time to enable the required services to be performed effectively and efficiently and to procure all necessary access for MMA to information, goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions.

MMA shall not be liable for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions.

In conducting any services required by the client, MMA is allowed to rely in good faith upon any information with which it is provided by the client's representatives including the project(s) owner(s), crew(s), ships broker, yacht broker, insurer or prospective insurer and/or any Classification Society or any bona fide third party body and/or upon the instructions and information received from any apparently authorized employees or agents of the Client and MMA shall not be liable in respect of any act or omission or failure to advise or comment upon any matter which falls within the scope of services or for any recommendation based upon the information or instructions with which it has been provided directly or indirectly by the persons or organizations referred to above.

### **5b) Service Delivery**

i) MMA shall use reasonable care and skill in the performance of its services as a good provider of services;

ii) The execution of an engagement will be for the account and risk of the Client;

iii) MMA is authorized to take or refrain from taking any measures which in its view are necessary in the interests of the engagement and such for the account and risk of the Client.

iv) MMA is entitled to decide which employee(s) or person(s) working otherwise for it is to actually/also carry out the engagement.

v) MMA is entitled within the scope of the engagement and the execution thereof to instruct third parties, whereby MMA is free in its choice as regards the identity of the third party involved. MMA shall, when choosing the third party, exercise the care of a good provider of services when making such choice.

vi) The Client declares hereby unconditionally and irrevocably that MMA has the authority, either in its own name or in the name of the Client, to contract with third parties under acceptance of and/or applicability of the standard terms and conditions employed by those third parties, even when such standard terms and conditions include a stipulation which completely excludes the liability of the third party or excessively limits liability, contains a jurisdiction clause (whether arbitrational or not), a choice of law clause and/or an indemnity clause. All clauses including those limiting, excluding or establishing liability that third parties can invoke, within the framework of the engagement granted against MMA, is hereby also invoked by MMA against the Client.

vii) Third parties are instructed for the account and risk of the Client. MMA shall not be liable or responsible for shortcomings of third parties nor shall MMA be liable or responsible for non-functioning (or not correctly functioning) equipment used, or to be used, by MMA or by third parties.

This exclusion of liability for shortcomings and equipment shall include, but not be limited to, software, databases, registers or other matters. If MMA is found legally liable for such matters then its liability will always be limited as provided for in these articles, including in particular, article 6.

viii) Should the Client require any additional services, MMA will be pleased to discuss any request with the Client in order to meet the Client's requirements. Details of the contract variation will include the effect upon the fees, disbursements etc. and upon the estimated completion date; such details shall be agreed in writing prior to the contract variation being carried out. MMA shall be entitled to refuse to provide the additional services for its own reasons which might include lack of time or lack of competence in a particular area. Such refusal shall have no effect on the original engagement.

### **5c) Reporting**

MMA shall submit a final written Report to the Client following completion of the agreed services describing the findings and the condition and/or quality of the object and/or purpose of the assignment, unless otherwise expressly instructed by the Client not to do so.

Following the completion of the service(s), MMA will issue a written report, statement or certificate of its findings to the client. Such report is intended for the client only, MMA will however not unreasonably withhold its consent to the client disclosing any report(s) to a named third party. Where the client has agreed with MMA to allow a third party to take cognizance of the content of the work performed by MMA for the client or of any written report, the client shall in advance of releasing any report provide the third party with a copy of the complete contract documents and also ensure that all terms of such contract documents are also accepted by the third party before the report is released, such procedures to take place in order to ensure that any possible liability of the company towards such third party (including its underwriters) will never exceed any possible liability of MMA vis-à-vis its client. The client indemnifies and holds harmless MMA and all parties mentioned in article (1c) against claims by third parties (and their underwriters) who claim to have suffered damage as a result of or in connection with the work carried out by MMA on behalf of the client or as a result of or in connection with any written report.

## **5d) Confidentiality**

MMA undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law.

Each Party also agrees to comply with legislation designed to protect personal information and data relating to individuals as well as website requirements relating to the use of cookies. The Client also confirms that it has obtained any consents necessary for MMA to gain access to any personal data which MMA need for carrying out the services and providing report(s) which are the subject of the contract.

## **5e) Intellectual Property**

MMA will retain ownership in any deliverables or other materials or work products created pursuant to a Contract. Subject to payment by the Client of any amounts due under or in connection with a Contract, the Client will have a non-exclusive, non-transferable right to use the final version of any deliverables specified in the Contract Summary Sheets for the Client's internal purposes only and then solely for the purposes for which they are delivered but the Client must not provide these deliverables or copies of them to any third party other than as specified in Contract Summary Sheets or as may otherwise be agreed between MMA and the Client in writing.

Nothing in a Contract will affect MMA's (or MMA's licensors) rights in respect of any intellectual property rights held prior to the commencement of the Services or otherwise developed outside of this engagement (including any modifications or amendments thereto).

The Client grants to MMA and its subcontractors a non-exclusive and royalty-free right to use any information/materials supplied by the Client in connection with the Services for the purposes of performing those Services. The Client will indemnify MMA and keep MMA indemnified against any infringement by the Client, or any member of the Client Group of any third party intellectual property rights.

The Client acknowledges and agrees that MMA's working papers and other internal documentation are confidential to MMA and accordingly, will not be disclosed to the Client unless otherwise agreed in writing.

Nothing in a Contract will prevent or otherwise restrict MMA from developing or using any techniques, ideas, concepts, information or know-how relating to methods or processes of general application.

While the right of ownership to information and photos contained in reports remain that of the client, the right of ownership to original work as well as intellectual property shall remain that of MMA.

MMA shall be entitled to keep records of all reports, photographs and other materials used for delivery of services. Such records shall be maintained in accordance with 5(d).

## **5f) Conflict of Interest / Qualification**

MMA 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 MMA to continue its involvement with the appointment. The Client shall be responsible for payment of MMA fees up to the time of notification. The Client agrees that MMA may reserve the right to act, whilst performing the Services, for other clients whose interest are, or might be, adverse to those of the Client, subject to Article 5d (Confidentiality) and activating appropriate barriers which will be duly noted and approved by the Client (such approval not to be unreasonably withheld or delayed).

## **5g) Suspension**

MMA shall, at its discretion, be entitled to postpone the execution of the engagement or to annul the engagement either in part or in whole without sending to the Client any formal written declaration notifying the Client that the Client is in default and/or notify the Client of its decision to postpone or to annul the engagement in whole or in part if:

- i) MMA shall be of the opinion that the engagement cannot be satisfactorily carried out without risk or danger to property or persons (the degree of risk and/or danger always being unilaterally assessed by MMA);
- ii) the Client fails to fulfil any of its obligations in a timely, complete or proper manner;
- iii) there is reason to believe that the Client will not be able to fulfil any of its obligations either at all or in a timely, manner complete or proper manner;
- iv) the Client is declared to be in a state of bankruptcy;
- v) bankruptcy proceedings have been instigated against the Client;
- vi) the Client has suspended or threatened to suspend payment to its creditors;
- vii) the Client is in liquidation proceedings (whether voluntary or compulsory);

Any such postponement or annulment of the engagement shall be without prejudice of the accrued rights of MMA as regards compensation for costs, damages and interest and the Client shall have no right to any costs or damages or compensation for or in respect of any such postponement or annulment.

## **5h) Termination**

MMA may, without prejudice to any other rights and remedies MMA has pursuant to a Contract or otherwise and without incurring liability to the Client, terminate a Contract (in whole or in part) by giving notice in writing to the Client, and except where otherwise stated, such notice shall have immediate effect:

- i) if the Client commits any material or persistent breach of a Contract which is either not capable of being remedied or which the Client has failed to remedy to MMA's satisfaction within 10 working days of receiving written notice of the breach; or
- ii) in the event of war, hostilities, civil war, rebellion, revolution, insurrection or other disturbance occurring in the country and/or in the territorial waters of the country in which the services are being delivered or in the place the Client is otherwise domiciled and in all other cases of Force Majeure, the circumstances giving rise to the Force Majeure persists for a period of 20 working days; or
- iii) if the Client compound with or negotiate for any composition with MMA's creditors generally or permit any judgment against the Client to remain unsatisfied for 20 working days; or
- iv) being a company, the Client calls a meeting of MMA's creditors or has a receiver appointed over all or any of the Client's assets or enters into any liquidation or be subject to an administrative order, administrative receivership, a winding up order or similar event; or
- v) if, being an individual, the Client shall die or have a receiving order made against the Client or the Client becomes bankrupt; or

vi) if the Client or any member of the Client Group becomes involved, or is likely to become involved, in giving evidence in any litigation or arbitration proceedings affecting the subject matter of a Contract or any matter connected or arising from a Contract which would result in a conflict of interest between MMA and the Client. If such circumstances arise or come to MMA's notice during the currency of a Contract, MMA will be entitled to discontinue performance of the Services and will forthwith be released from all liability to the Client, but nothing will prejudice any claim of MMA against the Client or any other third party. If, during the currency of a Contract the Client become aware of any circumstances concerning litigation or arbitration proceedings as aforesaid, the Client must notify MMA without undue delay; or

vii) if at any time MMA believes that MMA's performance of the services or any aspect of a Contract results in or might result in MMA's breaching any legal, regulatory or independence requirement in any jurisdiction; or

viii) if at any time the Client suffers a "change in control". By change in control MMA means that the ownership of the Client changes so that a different party than the owners at the time of the initial contract acquire at least half of the nominal value of its equity share capital, or so that a different member (than that at the date of initial Contract) is able to control the composition of the board of directors of Client; or

ix) if there is violence or a threat of violence against any of MMA's employees or against any contractors, consultants or third parties instructed by MMA; or

x) if the working environment where the services are to be performed is or becomes or may become unsafe; or

xi) if the Client does not, will not, or intends not to pay in full its invoice(s) for the Services or its invoice(s) for previous services; or

xii) in the case of a call off contract, MMA may terminate such Contract by 30 days' notice in writing without the necessity of giving a specific reason(s) for the termination.

xiii) if prior to or during the execution of Services, there appears to be a (potential) conflict of interest.

With regard to paragraphs (ix), (x) and (xiii) above, the judgment of MMA as to whether there is a threat of violence and/or whether the working environment is or becomes unsafe and / or there will be a (potential) conflict of interest shall be final and binding upon the Client.

If MMA terminates a Contract for any of the above reasons then without prejudice to any other rights and remedies MMA may have, the Client will on demand pay MMA's fees and disbursements in respect of all Services performed up until the date of termination and save in respect of termination arising as a result of part (vi) above, for all costs irrevocably incurred as a result of the termination and for loss of profits.

Should MMA choose not to terminate a Contract then MMA 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.



## **6. Liability**

**6a)** The Client accepts that it is neither in its interest nor that of MMA for MMA to accept unlimited liability since such a demand would place an unfair (and potentially uninsurable) burden on MMA such that it would be uneconomic for MMA to be able to offer its services at a reasonable price.

**6b)** Without prejudice to Clause 7, MMA shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising, unless same is proved to have resulted solely from the negligence, gross negligence or willful default of MMA or any of its employees or agents or sub-contractors.

**6ci)** MMA's total liability arising out of or relating to the services and/or a contract whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise will be the sum that makes good the damages to the client but not exceed:

- ❖ two times the amounts paid (or payable) to MMA for the engagement in question (excluding VAT); or
- ❖ NGN 1,000,000.00 (1 million Naira). If however, these Terms of Business form part of an enabling (or call-off) contract with the client, then MMA's total liability arising out of or relating to the services and/or a contract whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise will not exceed;
- ❖ two times the amounts paid (or payable) to MMA for the specific task (or vessel) called up under such enabling contract (excluding VAT); or
- ❖ NGN 1,000,000.00 (1 million Naira) and the client shall only be entitled to claim once in respect of any cause of liability.

**6cii)** The client confirms and warrants that it shall not, and the client shall procure that all third parties to whom the client may supply (subject to MMA's written permission) a copy of MMA's Report(s) shall not bring any legal action against MMA in any court or legal forum in the world for any amount which exceeds the caps on MMA's liability as stated in this sub-clause paragraphs 6ci) above (the "EXCESS") and if and to the extent that the client or a third party shall do so, the client shall (without prejudice to the provisions of article 5c above) indemnify and hold MMA harmless in respect of the EXCESS.

### **6d) Specific Exclusion of Liability for Certain Items:**

MMA will not be liable to the client or any other person for:

- i) loss of profit, business, contracts, goodwill, revenue, savings, anticipated savings; or
- ii) any indirect or consequential loss or damage or consequential damage of whatsoever nature and howsoever caused, including but not limited to loss of profits, business interruption, business damage, not being able to enter into or continue with agreements, the missing out on income, goodwill damage, time loss, loss of hire, cleaning costs, punitive and administrative measures and costs, imposed fines and charges and taxes, and other forms of indirect damage. Where MMA is however found liable in respect of such costs or damage such liability is always subject to the restrictions in this contract including sub-clause 6ci); or
- iii) any fines, penalties, punitive, exemplary or non-compensatory damages, however expressed or described.

#### **6e) Proportionate Liability**

Subject always to the cap on MMA's liability under sub-clause 6ci) above, the extent to which any loss or damage will be recoverable from MMA by the client will also be limited so as to be in proportion to MMA's contribution to the overall fault for such loss or damage, taking into account any contributory negligence by the client, the client's assureds, the client's other consultants and/or other advisers and/or any other third parties responsible to (or who contract with) the client and/or liable in respect of such loss.

#### **6f) Client acting as Agent**

Should MMA discover that the client is/was acting for someone else, or if the client discloses to MMA that the client is/was acting for someone else, then MMA reserves the right to continue treating the client as "principal" and also reserves the right not to provide or to stop providing services to the client or to that person. If the client fails to make such a disclosure to MMA, then MMA shall not be liable to the client or to that other person for any damage arising, directly or indirectly, in connection with any services provided by MMA to the extent that damage arises as a result of the client acting on behalf of that other person or relates to damage suffered by that other person.

#### **6g) Aggregate Limit and Exclusion of all other warranties, conditions, representations or terms**

The client acknowledges and agrees that the limits of liability specified in this contract apply in the aggregate to the services and/or to this contract. To the extent permitted by law, all warranties, conditions, representations or terms other than those expressly set out in this contract are excluded, including but not restricted to all implied and statutory warranties and conditions.

#### **6h) Separate Limitation**

Each of the foregoing paragraphs in this article 6 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said sub-clauses is held inapplicable or unreasonable or unenforceable in any circumstances) and will remain in force notwithstanding termination of this Contract.

#### **6i) Client's Duty to Inform**

The client will inform MMA of any act, statement, omission or negligence on MMA's part in connection with or in relation to this contract in respect of which MMA are or may be legally liable to the client or any other party whether in contract or in tort as soon as practicable after becoming aware of the same, and the client and such third party will afford MMA (if MMA so desire) the reasonable opportunity to correct any deficiency in MMA's Services.

#### **6j) Time Limit for Claims, Evidence and Investigations**

MMA will be discharged from all and any liability in respect of any claim arising out of or in connection with the services and/or this contract (subject to these terms) whether in contract or in tort (including negligence) or otherwise, unless written notification of a claim is given within 12 months of the confirmation of the engagement. Any notification must be made in writing to the Managing Director of MMA and shall be followed as soon as practicable by a dossier sent by the client to MMA containing all material facts, documents and evidence relating to the claim, and MMA shall have the opportunity to conduct its own investigations and to consider first hand evidence failing which MMA shall have no liability. If the duration of the services is longer than 12 months however, then written notification of the claim must be given within 12 months of the date of the event giving rise to the cause of the claim.

**6k)** In the event that the Client proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or willful default of MMA aforesaid, then, save where loss, damage, delay or expense has resulted from the Surveyor's / Consultant's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Surveyor's/Consultant's liability for each incident or series of incidents giving rise to a claim or claims shall be limited as per sub-clause 6ci above.

MMA shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

## **7. Indemnity**

Except to the extent and solely for the amount therein set out that MMA would be liable under Clause 6, the Client hereby undertakes to keep MMA 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 legal costs and expenses on a full indemnity basis) which MMA may suffer or incur (either directly or indirectly) in the course of the services under these Conditions.

## **8. Force Majeure**

**8a)** MMA will not be responsible for any delay or other consequences or liability resulting from:

- i. any failure by the client or a third party to perform the client's obligations pursuant to this contract (including, but not limited to, failing to provide timely information, supplying incomplete or defective information, delaying commencement of the Services or failing to provide any materials or facilities required by this contract); or
- ii. any other delay caused by the client's or any third party's or parties' acts or omissions, or the acts or omissions of the client's respective employees, agents or subcontractors; or
- iii. any delay caused by circumstances beyond MMA reasonable control, including, without limitation, a failure by any government body, agent 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, unrest, curfew, protest, war or civil war, adverse weather conditions or prolonged power failure.

**8b)** MMA will have no liability for any acts, decrees or restraints of any government, government institution or regulatory body for any changes in any such regulatory rules or regulations such as the conventions, rules or regulations of IMO, a Classification Society, a maritime/marine safety agency or a quality assessment certification body introduced subsequent to the signature of this contract.

**8c)** In performing its services, MMA is allowed to rely in good faith upon any information with which it is provided by the Project(s) owner(s), Project(s) crew(s), ships broker, yacht broker, insurer or prospective insurer and/or any Classification Society or bona fide third party body and/or upon the instructions and information received from any apparently authorized employees or agents of the Client and the

Company shall not be liable in respect of any act or omission or failure to advise or comment upon any matter which falls outside the Scope of Services or for any recommendation based upon the information or instructions with which it has been provided directly or indirectly by the persons or organizations referred to above.

**8d)** Where delays are caused by the circumstances specified above, MMA will be entitled to (i) the reimbursement of any costs and/or expenses it incurred as a result of the delay, including, any fees owed to a third party such as a subcontractor or an employment agency together with loss of profits; (ii) re-schedule the services in order to avoid a conflict of interest with services being performed for other clients; and (iii) redeploy any of MMA's staff to work for other clients and/or at MMA's expense, to lay off and then re-hire staff to work on the re-scheduled services.

**8e)** MMA is authorized to declare force majeure when the execution of the engagement is partly or in whole – whether or not temporarily – prevented or hampered by circumstances beyond its reasonable control, including but not limited to, governmental measures, fire, weather circumstances, the (temporary) non-delivery of goods or services by the client or third parties, operational breakdowns, labour strikes, illness, etc.

**8f)** In the case of force majeure on the side of MMA its obligations will be suspended for the length of the force majeure. Should MMA invoke force majeure for a period longer than a month then both MMA and the Client shall be entitled to annul the part of the engagement not yet executed by means of a written notice to the other party without being liable for compensation for damages.

Neither MMA nor the Client shall, except as otherwise provided in these Conditions, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

## **9. Client's Property & Right to Set-off**

Where MMA is instructed to sell and/or auction any property or goods, whether or not court permission has been obtained (by the Client), MMA shall make every effort to obtain a reasonable going-rate price, such taking into account the relevant circumstances such as the condition of the property and/or goods and the then current market prices etc. In such sales, MMA shall always act as agent to the Client. MMA shall be accountable to the Client for any realized proceeds. MMA shall have the right to settle any outstanding amount from the Client to MMA with the realized proceeds. This right to settlement also covers claims towards the Client which are not directly related to the present engagement and/or sale and/ or auction. The Client shall indemnify MMA against all liability, costs, charges, claims, assessments, fines, taxes, losses and charges of any sort which arise either directly or indirectly or are connected to the sale and/or auction.

## **10. Surveyor's / Consultant's Right to Sub-contract**

MMA shall have the right to sub-contract any of the services provided under the Conditions, subject to the Client's right to object on reasonable grounds.

In the event of such a sub-contract MMA shall remain fully liable for the due performance of its obligations under these Conditions.

## **11. Fees and Expenses**

Unless otherwise agreed, MMA's fees are based on the time MMA's staff (including any additional staff) will spend or have spent to complete the services multiplied by the applicable hourly rate. Where appropriate, MMA reserves the right to employ additional surveying staff in order to meet the scope of services requirement and resource to provide an efficient, cost-effective service to the client within any applicable time constraints.

The client will be responsible for the payment of MMA's fees and expenses in connection with the services in accordance with these Terms of Business.

MMA shall have no obligation to publish its fees or rates; it shall be the responsibility of the Client to make appropriate enquiries of the Company to establish the same.

## **12. Jurisdiction, Arbitration and Law**

**12a)** Subject to the provisions of article 12b;

i) It is hereby specifically agreed that any lawsuit / legal proceedings by the client against MMA or any legal relation between the client and MMA, and save as additionally provided below any lawsuit by MMA against the client, shall be filed exclusively in the High Court of London, United Kingdom, and that the laws of England and Wales shall exclusively apply; and

ii) The client irrevocably agrees and confirms that it shall not institute a lawsuit/ legal proceeding in any other court or forum and/or jurisdiction nor shall it join MMA in a lawsuit/ legal proceeding in any other court or forum and/or jurisdiction. The client agrees to be responsible for the reasonable legal expenses and costs of MMA in removing and/or challenging a lawsuit filed in any other court or forum and/or jurisdiction and in any case where it shall join MMA in a lawsuit/ legal proceedings in any other court or forum and/or jurisdiction the client shall indemnify MMA against all reasonable legal expenses, costs and damages resulting therefrom; and

iii) The client irrevocably waives any objection which it might otherwise have had (whether based upon the personal domicile or personal jurisdiction of the client or otherwise) to any lawsuit / legal proceedings being held exclusively in the High Court of London, United Kingdom and to the exclusive application of the laws of England and Wales.

12b) In the case of any dispute relating to the payment of the invoices of MMA and/or any other sums due from/by the client to MMA, MMA may, at its sole option and discretion, bring a lawsuit/ legal proceedings against the client in the forum specified in the first paragraph of this clause , or in any jurisdiction where the client has a place of business or/and before a court domiciled in one of MMA's office locations.

12c) The client shall not bring any legal action against a surveyor/staff of MMA. All actions of the client shall be brought against MMA.

12d) These Terms of Business were written in the English language. In the event that there is a difference in meaning imputed or implied by any translation, then the English version shall prevail over any other version.

### **13. Other Terms of Business**

#### **13a) Retention of Materials and/or Documents**

##### **i) Samples and objects**

MMA can within the framework of the engagement, be it at the request of the Client or not, take into custody any samples or objects. MMA is free to refuse such a request to take such sample or object into its custody or to impose additional conditions related to such custody. After completion of the engagement MMA shall keep in custody any sample or object taken into custody for a period of three months, after which the sample and/or object will be destroyed. Should MMA explicitly agree to a request in this matter from the Client, then this term of storage of three months can be extended. MMA can at any time end the accepted engagement for storage (subject to giving a reasonable period of notice).

Any storage costs, destruction costs, fines and other related costs to the custody or destruction are for account of the Client.

Under no circumstance, can MMA be held liable for the loss of samples, documents, materials or other means of evidence.

##### **ii) Files**

Whilst certain documents may legally belong to the Client or a member of the Client's Group, unless the Client tells MMA not to, MMA intends to destroy correspondence and other papers that MMA stores which are more than one year old. If the Client wishes MMA to retain such correspondence and other papers for more than one year, then the Client must advise MMA of the applicable period for which it requires retention.

#### **13b) Privity of Contract**

Any Contract which is subject to these Terms of Business is intended to be a private contract between the parties hereto and it is not intended to confer any rights of enforcement on any third party (other than on a permitted assignee to whom it is actually assigned) even if any of the Contract terms purport to confer a benefit on such a third party.

#### **13c) Non-assignment by Client**

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 a Contract to any third party.

#### **13d) Alterations**

Any alteration to these Terms of Business (or the Additional Terms of Business) shall not be effective unless agreed in writing by the Managing Director of MMA.

#### **13e) Severability**

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

### **13f) Waiver**

No waiver by MMA of any breach of a Contract by the Client will be considered as a waiver of any subsequent breach of the same or any other provision. All waivers must be given in writing by the Managing Director of MMA for it to be applicable.

### **13g) Publicity**

Neither MMA nor the Client may refer to the Services and/or a Contract in any publicity material without the prior written consent of the other party (which must not be unreasonably withheld or delayed) save that MMA may cite the Services as an indication of its experience.

### **13h) Privacy Statement**

This Privacy Statement was formulated in order to meet the European legislation with regard to the processing of personal data, otherwise defined as the General Data Protection Regulation (hereinafter referred to as "GDPR").

MMA is the one responsible for the processing of personal data in function of all services and activities provided by them. This processing must be consistent with the GDPR. Safety, transparency and confidentiality collecting and processing are herewith of the utmost importance.

The Client declares to have taken note of the Privacy Statement and to accept its contents in full. Regarding processing of personal data under the terms of this agreement, the client commits himself to taking all measures necessary to guarantee its privacy and protection.

Processing purposes – legal ground – which data

MMA collects and processes personal data under the terms of the execution of the agreement, complying with statutory and regulatory obligations and the justified interest of MMA. This concerns identity and contact data, technical information and other useful information necessary for conducting their activities. In addition to data of clients, suppliers/subcontractors and personnel, MMA processes personal data of others, such as possible new clients/prospects, useful contacts within their field, network contacts, contacts of experts, etc.

MMA does not collect personal data that is unnecessary for the execution of their activities.

Permission of the person involved will be asked at all times where direct marketing activities are concerned. This permission can be withdrawn at any time.

Protection and confidentiality of personal data

MMA takes appropriate and reasonable technical and organizational measures to process personal data in accordance with an adequate level of safety and to protect this data from destruction, loss, forgery, alteration, unpermitted access or accidental notification of a third party, as well as all other non-permitted processing of this data.

Passing on to a third party

As part of the execution of the agreement, in pursuance of a court order or in order to comply with a certain statutory obligation, or in case a legitimate interest exists, contractor shall pass certain personal data on to third service providers, subcontractors or the government. In that case, the contractor shall make reasonable efforts to inform the person concerned in advance. It is possible that one or more of the aforementioned third parties are situated outside the European Economic Area ("EEA"). These third parties and the possible service providers appointed by them must respect the confidential nature and

the security of personal data and are only allowed to apply same for purposes under the terms of which they were provided by the contractor.

Under no circumstances shall the contractor sell personal data or put personal data at the disposal of direct marketing agencies or similar service providers for commercial purposes without prior permission of the person involved.

Duration of the processing/Maintenance of specific data may be necessary for one or several of the following reasons:

1. To fulfil statutory or otherwise regulatory requirements.
2. To prove events/agreements in case of a dispute.
3. To comply with our operational needs.

Personal data that has been collected but has never been used for any professional purpose will be checked and may be destroyed at the discretion of the contractor.

Rights Within the limits of the law

The person concerned has the right to take note of his/her data, to correct same as the occasion arises, to oppose against its processing, the right to have the processing limited, as well as the right to have the data removed. In those cases it is possible that the contractor is unable to implement the agreement. Should these rights be violated, the person involved can lodge a complaint with the qualified supervisory authority.

## **ADDITIONAL TERMS OF BUSINESS APPLICABLE TO THE EEXI COMPLIANCE SERVICE**

### **EEXI TERMS OF SERVICE**

The MMA EEXI Service is for the production of an EEXI technical file based on data provided by the client. The service will include the issuance of an initial EEXI assessment report which will compare the attained EEXI with the required EEXI and provide the client with recommendations to compile with the required EEXI (in the case of the attained EEXI being > the required EEXI). On complying with MMA's recommendation or an equivalent standard ensuring the attained EEXI  $\leq$  the required EEXI, the final EEXI Technical file will be prepared and supplied to be placed onboard for verification by the attending class surveyor during the first annual, intermediate or renewal survey of the International Air Pollution Certificate (IAPP Certificate), whichever is the first, on or after 1 January 2023.

The service does not include an independent submission of the EEXI Technical File to the administration or any organization recognized by it by MMA on behalf of the client. The service does not include the implementation of the recommendations to ensure the attained EEXI  $\leq$  the required EEXI. The costs associated by these shall be borne by the client except where previously agreed in writing between MMA and the client.

EEXI compliance service is a payment in advance (PIA) service. Except where agreed in writing with a director of MMA, a 50% down payment is required before starting the service for a client.

Upon preparation of the EEXI assessment report, the client shall thoroughly verify the data used for the calculation and advise of any corrections to any data that needs to be amended. When a final EEXI Technical data has been prepared and submitted to the client, any further alterations to the data will attract an additional service charge based on the amount of time to be used for this correction.



Unless previously agreed in writing between MMA and the client, all reports will be produced in electronic (soft) copies and sent by electronic mail (e-mail) to the client via the supplied email address or that which is used for correspondent with the client. The client shall pay the charge of USD 5 per page plus the applicable courier fee if a report is required in hard copy.

The duration that an EEXI technical file will be ready will depend on the promptness of the client's payment for services, the accuracy of the supplied data, the promptness of the client's response to MMA requests, the client's promptness in implementing the recommendations in the initial EEXI assessment report. On average however, a period of two weeks to 1 month should be expected from the notification of successful supply of all required data to the final report being ready. The client shall make payment before the initial EEXI assessment report is supplied to the client.

In the event that the attained EEXI being > the required EEXI as per the EEXI assessment report and a period of three (3) months elapses where the recommendations of the report has not been implemented and communicated in writing to MMA, MMA reserves the right to cancel the preparation of the final EEXI Technical report and in any event, the quote for the service will be deemed invalid and must be revisited and reagreed in writing between MMA and the client before proceeding with same or any other service.

The EEXI assessment report and the EEXI Technical file is vessel specific and is prepared as such. Use of one EEXI assessment report or an EEXI technical file for sister vessel(s) or other fleet vessel(s) is prohibited. If after an investigation it has been established that the client has used a EEXI assessment report or EEXI technical file for vessel(s) other than the ship(s) stipulated in the job order, the client shall be liable to indemnify MMA to the full extent of the breach of contract.