

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

1. **Definitions**

1.1 In these terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Client” means the person, firm or company for whom Services are provided by SeaCom.

“Dollars” and “USD” means United States Dollars.

“SeaCom” means SeaCom Electronics Limited of Eaglehurst, Belmont Hill, Douglas, Isle of Man IM1 4NY, company number 115784C (IOM)

“Services” means the services provided for the Client by SeaCom.

“Proposal” means the quotation, letter, tender or other documents(s) submitted by SeaCom to the Client describing the Services to be provided and the fees and other sums payable in respect of such Services. A copy of the Proposal forms an integral part of this agreement. In the event of a conflict between these terms and conditions and the Proposal, the provisions hereof shall prevail.

“Variation” means a variation to the scope of the Services agreed in accordance with Clause 7.

1.2 Reference to clauses and sub-clauses are, unless otherwise stated, to clauses and sub-clauses of these terms and conditions.

1.3 Words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include bodies corporate or unincorporate.

1.4 Headings are inserted for convenience and shall not affect the interpretation of this Agreement.

2. **Provision of Services**

2.1 SeaCom shall exercise all reasonable skill, care and diligence in the provision of Services as agent for and on behalf of the Client.

2.2 SeaCom shall use all reasonable endeavours to perform the Services within any time periods indicated in the Proposal.

2.3 Where personnel are specifically nominated, SeaCom has the right to nominate alternative personnel of equal standing at any time with the consent of the Client which consent shall not be unreasonably withheld.

3. **Client Assistance and Liaison**

3.1 The Client shall provide SeaCom with all relevant data and information available to it without charge and within a reasonable time, shall give such assistance as SeaCom shall reasonably require to enable it to perform the Services and shall ensure that all appropriate safety measures are taken to provide safe and security working conditions.

- 3.2 The Client shall appoint a named representative who will be responsible for liaison between the Client and SeaCom.
- 3.3 The Client undertakes to ensure that all personnel supplied by SeaCom in order to carry out the Services are fully compliant with all applicable safety and quality procedures and requirements including, without limitation, those operated by the Client.
4. **Payment**
- 4.1 The Client shall pay SeaCom for the Services fees and other sums as provided in the Proposal.
- 4.2 Payment shall be made at the time or times stated in the Proposal and in any event within 30 days after receipt of an invoice from SeaCom. Late payments will carry interest at the rate of 4% over Barclays base rate as varied from time to time.
5. **Insurance**
- 5.1 The Client shall or shall procure that throughout the period of this agreement all personnel who are engaged by SeaCom in the provision of the Services, the details of whom shall be notified to the Client by SeaCom within a reasonable time prior to the commencement of the Services, shall be signed on as crew under the Ship's Articles/Crew List and shall be fully insured in respect of all protection and indemnity risks in accordance with the applicable rules of the Protection and Indemnity Association and shall provide SeaCom with written evidence thereof prior to the commencement of the Services. Without prejudice to the generality of clause 10.4 the Client undertakes to indemnify SeaCom against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising directly or indirectly from the failure by the Client to comply with the provisions of this clause 5.1 and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which SeaCom may suffer or incur (either directly or indirectly) in connection therewith.
6. **Equipment and materials**
- 6.1 Any equipment, materials or supplies required for the carrying out of the Services which the Client requests SeaCom to procure shall be procured by SeaCom as agent for and on behalf of the Client and SeaCom shall not be responsible for any defects in quality or condition or any failure to meet specification or fitness for purpose of any such equipment, materials or supplies. SeaCom shall not be responsible for any delay in delivery by third party suppliers.
7. **Variations**
- 7.1 The Client shall be entitled to request any Variation. All Variation requests shall be in writing and shall clearly define the nature and extent of the Variation requested.
- 7.2 No Variation shall be binding on SeaCom until it has been expressly accepted in writing and agreement has been reached with regard to additional payments and any revised time periods applicable.
8. **Termination**
- 8.1 The Client shall have the right to terminate the Services at any time upon 30 days written notice to SeaCom.

- 8.2 SeaCom shall have the right to terminate this agreement with immediate effect by notice in writing if the requirements of clause 5.1 are not complied with.
- 8.3 In the event of such termination the Client shall reimburse SeaCom for all work performed up to date of termination and all costs and expenses reasonably incurred by SeaCom as a consequence of such termination.
- 8.4 Without prejudice to clause 8.2, both SeaCom and the Client shall have the right to terminate this agreement with immediate effect by notice in writing if the other party is in material breach of its obligations hereunder, if the other party goes bankrupt or has a receiver, administrative receiver, liquidator or similar officer appointed to it.

9 **Communication by e-mail**

- 9.1 To facilitate the provision of Services SeaCom shall be entitled to communicate with the Client and other parties by e-mail notwithstanding that communications over the internet are not completely secure. If the Client does not wish any specific information or data to be communicated by e-mail, the Client shall provide full details thereof in writing to SeaCom.
- 9.2 SeaCom will take reasonable precautions to prevent viruses or similar harmful devices from being spread via e-mail communications by the use of a Firewall and virus checking software. It is understood that the Client will take similar reasonable precautions in any communications by e-mail sent by it to SeaCom.

10 **Liability**

- 10.1 Neither the Client nor SeaCom shall be under any liability for any failure to perform any of their obligations hereunder by reason of any cause whatsoever of any nature or kind beyond their reasonable control.
- 10.2 Without prejudice to clause 10.1, SeaCom shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit or other consequential or economic losses) and howsoever arising in the course of performance of the Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of SeaCom or its employees or agents or sub-contractors employed by them in connection with the Services, in which case (save where loss, damage, delay or expense has resulted from SeaCom's personal act or omission committed with intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result) SeaCom's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of either (a) ten times the fee (net of expenses) payable for Services or (b) USD1 million, whichever shall be the lower. SeaCom and the Client agree that having regard to the nature of the Services, the fees paid for such Services by the Client and all other circumstances known to the SeaCom and the Client relating to the Services, the forgoing limits of liability are fair and reasonable.
- 10.3 SeaCom 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.

- 10.4 Except to the extent and solely for the amount therein set out that SeaCom would be liable under clause 10.2, the Client hereby undertakes to keep SeaCom 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 out of or in connection with the performance of this agreement and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which SeaCom may suffer or incur (either directly or indirectly) in the course of the performance of this agreement.
- 10.5 **“Himalaya”**
- It is hereby expressly agreed that no employee or agent of SeaCom (including every sub-contractor from time to time employed by SeaCom and the employees or agents of such sub-contractor) shall in any circumstances whatsoever be under any liability whatsoever to the Client for any loss, damage or delay of whatsoever kind 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 provisions in this Clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability defence and immunity of whatsoever nature applicable to SeaCom or to which SeaCom is entitled hereunder shall also be available and shall extend to protect every such employee or agent of SeaCom acting as aforesaid.
- 10.6 Any claims against SeaCom shall be deemed to be waived and absolutely time barred upon the expiry of one year from the completion of the Services or the termination, for whatever reason, of this agreement.
- 10.7 The provisions of this clause 10 shall remain in force notwithstanding termination of this agreement.

11. **Third Party Rights**

- 11.1 Any person (other than SeaCom and the Client) who is given any rights or benefits under Clause 10 (a “Third Party”) shall be entitled to enforce those rights or benefits against SeaCom and the Client in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 11.2 Save as provided in Clause 11.1 above the operation of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.
- 11.3 SeaCom and the Client may amend vary or terminate these terms and conditions in such a way as may affect any rights or benefits of any Third Party which are directly enforceable against the parties under the Contracts (Rights of Third Parties) Act 1999 without the consent of any such Third Party.
- 11.4 Any Third Party entitled pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any rights or benefits conferred on it by these terms and conditions may not veto any amendment, variation or termination of these terms and conditions which is proposed by SeaCom and the Client and which may affect the rights or benefits of any such Third Party.

13. Law and Arbitration

- 13.1 These terms and conditions shall be governed by English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.
- 13.2 The arbitration shall be conducted in accordance with the London Maritime Arbitrators' (LMAA) Terms current at the time when the arbitration is commenced.
- 13.3 Save as aftermentioned, the reference shall be to three arbitrators, one to be appointed by each party and the third by the two so appointed. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment to the other party requiring the other party to appoint its arbitrator within 14 days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and give notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring the dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be as binding as if he had been appointed by agreement.
- 13.4 In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

14. General

- 14.1 By accepting the Proposal the Client agrees to be bound by these terms and conditions