

L H MORGAN & SONS (MARINE) LIMITED TERMS OF BUSINESS

1. Definitions

1.1 "Morgan" means L.H. Morgan & Sons (Marine) Limited of The Boatyard, Shipyard Estate, Brightlingsea, Essex, CO7 0AR.

1.2 "Customer" means the person to whom Morgan may agree to sell goods or supply services.

1.3 "Goods" means equipment, gear, vessels or parts supplied by Morgan to the Customer.

1.4 "Services" means the supply of services including mooring, storage, launching and yard services or performance of works including repair works by Morgan to the Customer.

2. General

2.1 These terms and conditions shall form part of and govern every contract between Morgan and the Customer for the supply of Goods and Services. By entering into a contract with Morgan for the supply of Services the Customer agrees they are the owner of the equipment, gear or vessel or are duly authorised by the owner to enter into a contract with Morgan under these terms.

2.2 The acceptance by the Customer of a quotation by Morgan or the placing of an order by the Customer for the supply of Goods and/or Services shall include acceptance by the Customer of these conditions which shall supersede all previous negotiations and representations.

2.3 Quotations shall remain valid for a period of 30 days from the date of Quotation ("the Quotation Period").

2.4 Goods are offered subject to availability and to them being unsold. No contract shall arise between Morgan and the Customer until a firm order by the Customer has been accepted in writing by Morgan.

2.5 No Terms and Conditions imposed by the Customer and no addition or variation of these Conditions shall have effect save to the extent that they are expressly agreed in writing and signed by a duly authorised representative of Morgan.

3. Price

3.1 The price of the Goods and/or Services shall be in accordance with Morgan's current price list for such Goods and Services ruling at the date of delivery or in accordance with the Quotation (as varied in accordance with sub-clause 3.2 below) if a firm order is received within the Quotation Period.

3.2 The price stated in the Quotation is subject to variation at the sole discretion of Morgan at any time before delivery in accordance with clause 5.1 below if there is any increase in the cost to Morgan of labour, materials or overheads required for the provision of Services or any increase in the cost to Morgan of the purchase, importation or manufacture of the Goods or any part thereof or if Morgan would otherwise suffer loss as a result of currency fluctuations. Any such variation shall not be made to solely meet increased costs which would not have occurred but for the failure of Morgan to proceed.

3.3 Quotations cover only the work and/or items thereon, and all additions, alterations, waiting time and any additional costs due to modified instructions shall be charged to the Customer at ruling prices. If, in the course of executing any work, Morgan finds any defect in a vessel and/or its gear that in Morgan's reasonable opinion should be rectified without delay, and before the Customer's consent can be obtained, Morgan reserve the right to carry out such necessary repair at Morgan's discretion and to charge the same to the Customer. Notice of any rectification will be forwarded to the Customer as soon as is reasonably possible.

4. Payment

4.1 All invoices are due on delivery in accordance with clause 5 and all payments shall be made in sterling to Morgan at its address as stated above unless otherwise agreed in writing and signed by a duly authorised officer of Morgan.

4.2 Morgan reserves the right, without prejudice to any other rights which it may have, to charge interest at the rate of 3 per cent above the base rate for the National Westminster Bank Plc per annum from time to time in force on overdue accounts, such interest to run from day to day and to accrue after as well as before any judgment and/or to suspend or terminate the supply of Goods or provision of Services.

4.3 The Customer shall not withhold any payment for any reason nor may any counterclaim of the Customer be set-off against any payment due under the contract without written consent of a duly authorised officer of Morgan.

5. Delivery

5.1 Unless otherwise agreed in writing delivery shall take place when the Customer collects or accepts delivery of the Goods or other vessel or property belonging to the Customer upon which Services have been performed at the yard located at the above address or the water adjacent thereto or if some other place for delivery is agreed by Morgan delivery of the Goods or vessel or property belonging to the Customer to that place or Morgan have provided facilities for mooring or storage as contracted with the Customer.

5.2 Any delivery date requested by the Customer or estimated by Morgan are approximate only and time of delivery shall not be deemed of the essence of the contract.

5.3 On receiving notification from Morgan the Goods or said property or vessel of the Customer are ready for delivery, the Customer shall arrange to take delivery thereof. If the Customers fails to take delivery of the said Goods, vessel or property or fails to give Morgan adequate delivery instructions when Morgan notifies the Customer the Goods or said property or vessel is ready for delivery Morgan reserves the right without prejudice to any other rights which it may have to make reasonable mooring and/or storage charges and any such Goods shall be at the Customer's risk.

5.4 Without prejudice to the provisions of this paragraph Morgan reserves the right to sell or otherwise dispose of the Goods in the event that the Customer does not accept delivery of them and to sell or otherwise dispose of other vessels or property belonging to the Customer upon which Services have been performed and payment has not been received.

6. Property and Risk

6.1 Goods are at the Customer's risk upon delivery in accordance with clause 5.1.

6.2 Vessels or other property upon which Morgan provides Services shall be at the sole risk of the Customer and it is the responsibility of the Customer to ensure that the vessels and/or other property are fully insured for all risks including third party risks arising out of the Customer's liability for damage caused by the Customer's vessels, property, themselves or their crew whilst on or about the premises of Morgan.

6.3 The Goods shall remain the property of Morgan until such a time as payment in full has been received by Morgan for the Goods together with any interest payable under clause 4.2 above and any other sum payable in respect of the Goods under the contract. Where the payment is tendered by cheque or other negotiable instrument Morgan shall not have been paid the amount tendered until the cheque or other instrument has been honoured and the amount credited to Morgan's bank account. The Customer acknowledges that until such time it is in possession of the Goods solely as bailee for Morgan and that the Goods are at its risk. For the purpose of recovery of the Goods Morgan may enter upon any premises where they are situated or are reasonably thought to be situated and may repossess the same.

6.4 Subject to any agreement to the contrary Morgan have the right to exercise a general lien upon any vessel and/or its gear and equipment whilst in or upon Morgan's premises or afloat on any of Morgan's moorings until such time as any monies due to Morgan in respect of such vessel and/or its gear whether on account of storage or mooring charges, work done or otherwise shall be paid.

6.5 Acceptance of goods (including vessels and/or their engines, gear and equipment) for repair or other treatment or for mooring or storage are subject to the provisions of the Torts (Interference with Goods) Act 1977, which confers on Morgan as bailee a right of sale exercisable in certain circumstances such sale will not take place until Morgan has given notice to the Customer in accordance with the said Act it is hereby recorded that -

(a) Vessels or property for Services including repair or other treatment are accepted by Morgan on the term that the Customer shall take delivery of the goods in accordance with Clause 5.1 of these conditions when the repair or other treatment has been carried out and

(b) Morgan's obligation as custodian of the Goods except for mooring and storage ends upon the expiry or lawful termination of the grant to the Customer of facilities for mooring or storage.

7 Warranty

7.1 Morgan shall use all reasonable commercial endeavours to supply the goods or complete the provision of Services at a time or date agreed with the Customer. In the event of Morgan's failure to meet such date for any reason it shall not be liable for any resultant loss or damage suffered by the Customer nor shall this constitute a breach or repudiation of the contract.

7.2 Goods shall be supplied with the benefit where the same is applicable of the manufacturer's warranty.

7.3 Where the Goods supplied consist of a second-hand vessel or vessels or second-hand inboard or outboard marine engines these shall have the benefit of Morgan's warranty that the engine and drive only shall be reasonably free from defects in materials and workmanship for a period of 3 months from the date of invoice to the Customer and where the same is applicable of the manufacturer's warranty provided that Morgan's warranty shall not apply in the circumstances set out in clause 7.5 below.

7.4 Where Morgan has supplied Services to the Customer Morgan warrants that such Services have been supplied with reasonable care and skill and that with respect only to the Services provided the Goods shall be reasonably free from defects in materials and workmanship for a period of 3 months from the date of the invoice to the Customer provided that this warranty shall not apply in the circumstances set out in clause 7.5 below.

7.5 The warranties given by Morgan under sub-clauses 7.3 and 7.4 above shall not apply to the extent that -

(a) damages caused by accident or normal wear and tear or by any act default or misuse of the Goods by the Customer or any third party or by failure to follow any instructions supplied with the Goods.

(b) since delivery the Goods have been altered, modified or repaired other than at Morgan's premises or by a third party expressly nominated or approved in writing by Morgan.

7.6 Subject to paragraph 7.2, 7.3, 7.4 and 7.5 above all Goods to be supplied shall be supplied with the benefit where the same is applicable of Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982 and all Services shall be provided with the benefit where the same is applicable of Section 13 of the Supply of Goods and Services Act 1982 but such Goods and Services are otherwise not supplied with, or subject to, any condition, warranty or other term whether expressed or implied unless specifically agreed by the parties in writing or in these conditions.

7.7 In no circumstances except in respect of -

(a) death or personal injury arising from the negligence of Morgan or

(b) any liability arising under Part 1 of the Consumer Protection Act 1988 shall Morgan's liability (in contract or in respect of negligence or otherwise) to the Customer arising under or out of or in connection with any contract for Goods supplied or Services provided hereunder exceed the cost to Morgan of repairing or replacing such Goods or re-providing such services at Morgan's premises and Morgan shall not be liable for consequential, economic or other direct or indirect loss suffered by the Customer arising therefrom, even if brought to Morgan's attention.

8 Assignment and Termination

8.1 The Customer may not assign the benefit or burden of this contract or any of its rights herein without the prior written consent of Morgan.

8.2 This contract may be terminated by Morgan (without prejudice to any other remedy it may have) forthwith by notice in writing to the Customer or if

(a) The Customer is in breach of the terms of these conditions and has failed to remedy such breach for 30 days after written notice of the breach has been given or

(b) the Customer (being an individual) dies or has a bankruptcy order made in respect of him or if the Customer (being a body corporate) goes into liquidation otherwise than by voluntary liquidation for the purpose only of amalgamation or reconstruction or shall enter into an arrangement or composition with its creditors or if a receiver, administrative receiver or a similar officer is appointed in respect of the Customer's assets or undertaking or any part thereof or

(c) the Customer has failed to pay any sum due hereunder to Morgan for a period in excess of 30 days from the date of the invoice.

8.3 Morgan may suspend performance of any contract for the sale of Goods or Services or supply of Services incorporating these terms in the event the Customer is in breach of any other contract with Morgan until such time as any breach has been remedied to the reasonable satisfaction of Morgan.

8.4 The Customer shall not be entitled to cancel any order accepted by Morgan without the consent in writing of Morgan and in the event of cancellation the Customer shall indemnify Morgan in full against all losses (including projected loss of profit) and all costs and expenses incurred by Morgan (including the cost of labour at usual rates) in dealing with the cancellation or attempting to mitigate any loss. Any deposit, down payments or stage payments are strictly non-refundable.

9. Representation

Descriptive matter published by Morgan relevant to the Goods or Services shall not form part of any contract for sale and the Customer agrees that it will indemnify Morgan against any such claim or any claim that the descriptive matter amounts to a misrepresentation.

10. Force Majeure

If Morgan is prevented or hindered from carrying out its obligations hereunder by circumstances beyond its reasonable control including (but not by way of limitation) any delays howsoever caused on the part of its suppliers or sub-contractors, Morgan may at its option at any time suspend performance until a reasonable time after the removal of the cause preventing or hindering performance or upon giving 30 days notice to the Customer terminate the contract without liability for damages or costs.

11. Conditions applying to Vessels or Property of the Customer

11.1 In the interests of safety or expedience Morgan reserves the right to move any vessel and/or gear belonging to the Customer at its discretion.

11.2 All persons using any part of Morgan's premises and/or facilities for whatever purpose whether by invitation or otherwise do so at their own risk, unless any damage to personal property sustained within the premises of Morgan and/or facilities was caused by or resulted from Morgan's negligence or deliberate act or that of Morgan's agents or employees.

11.3 (a) Subject to sub-paragraph (b) of this clause no work shall be done to the vessel whilst on Morgan's premises or moorings without Morgan's prior written consent other than minor running repairs or minor maintenance of a routine nature by the Customer, his regular crew, or members of his family not causing any nuisance or annoyance to any other users of Morgan's premises or moorings or any other person residing in the vicinity.

(b) Prior written consent for work to be carried out on Morgan's premises will not be unreasonably withheld where -

(i) the work to be carried out for which Morgan or Morgan's concessionaires or those who normally carry out work on Morgan's behalf would normally employ a specialist sub-contractor or

(ii) the whole of the work is being carried out under warranty by the manufacturer and/or supplier of the vessel or any part of the equipment to which the warranty relates.

11.4 Vessels stored at seasonal rates ashore or in mud-berths will be launched or put afloat as near the end of the seasonal period as in Morgan's reasonable opinion tide, weather conditions and available facilities permit and in such sequence as to avoid moving other vessels for this purpose and also so as to make the most economic use of the facilities at Morgan's disposal. At the Customer's request, Morgan will, if possible, launch the Customer's vessel at any suitable time and in suitable weather conditions, but the cost of moving other vessels for this purpose and/or any attendant expenses must be paid by the Customer. Moorings are at all times subject to River and Harbour Authority Rules and Regulations.

12 Notices

In all cases where a contract of hire or licence to occupy any moorings, berth, storage space, property or facilities may be lawfully terminated by notice the same shall be deemed to be lawfully served, if served personally or sent by first class post or recorded delivery service to the last known address in the United Kingdom of the hirer or licensee.

13 Except where notice is required to be given under clauses 3.3 and 6.5 and except as regards clause 6.3 the word "Customer" shall include Charterer, Master or Authorised Agent.

14 Law

These Conditions shall be construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.