

The Marine & Property Group Ltd: Lifting Agreement: Terms and Conditions

1. GENERAL

1.1. All contracts for the lift of vessels by crane/hoist/Sealift/forklift/contract lift/plant shall be subject to the following terms and conditions. The terms and conditions contained herein constitute the entire agreement between you ("the Owner") and The Marine & Property Group Ltd ("TMPG") and all of its subsidiary companies, its employees, agents and contractors with respect to the lifting of your vessel ("the Vessel").

1.2. These Lifting terms and conditions run in conjunction with TMPG's standard Boatyard Agreement Terms and Conditions and Berthing Agreement Terms and Conditions.

1.3. The terms and conditions set out below shall become binding on the parties by signature of the Owner.

2. LIFT IN / LIFT OUT DATE

2.1. The scheduled date of the lift/ transit/repair is approximate and is subject to change due to inclement weather conditions, failure or maintenance of equipment, or for any other operational reason.

3. TITLE AND RISK OF LOSS

3.1. All title and risk of loss in respect of the Vessel shall remain the Owner's.

3.2. The Owner shall not have any claims against TMPG for any loss or damage whatsoever and howsoever occurring during the lift of the Vessel and indemnifies TMPG in full against any such claims in terms of Clause 6.

4. INSURANCE

4.1. The Owner shall ensure that he has suitable insurance policies covering public liability and property damage in respect of all claims which may foreseeably arise out the activities envisaged in this agreement, and in particular:

4.1.1. the Vessel shall be comprehensively insured with a minimum indemnity liability limit of £3,000,000 for third party liability and property damage. A copy of the Owners current fully comprehensive insurance policy will be provided with this signed agreement;

4.1.2. The onus shall rest on the Owner to notify his Vessel's insurer of the intended lift of the Vessel;

4.1.3. TMGP is not required to insure any Vessel for any lift, transit, hard stand or repair.

5. LIMITATION OF LIABILITY

5.1. Subject to clause 3 of these terms and conditions, the Owner or his employees, agents, suppliers, contractors or guests will not have any claim of any nature whatsoever against TMPG for any loss, damage or injury which any of them may directly or indirectly suffer for any reason.

5.2. In particular, but not limited to, the Owner shall not have any claim for any direct, indirect or consequential or other damages by reason of:

5.2.1. any delay in the lifting of the Vessel; or

5.2.2. any latent or patent defect in the premises of and equipment utilised by TMPG, in particular, but not limited to, any latent or patent defect in the lifting equipment

5.2.4. any act or omission, or the failure of any material or equipment, committed or used by any of the Owner's employees, agents or contractors;

5.2.5. the crane, forklift, quay, hard stand or work shed at the premises of TMPG not being suitable for lifting, hard standing or repairing the Vessel;

5.2.6. any unreasonable act or omission by any other owner of any other vessel docking or mooring at TMPG;

5.2.7. any failure or interruption for whatsoever reason in the amenities and services provided by TMPG;

5.2.8. any accident, loss, injury or damage sustained at the premises of TMPG, to the Vessel, the Owner, his employees, agents, suppliers, contractors or guests;

5.2.9. consequential loss however caused, including but not limited to any loss of use, loss of income, business use, revenue, profit or goodwill;

5.2.10. any damages which occur due to deterioration during the period which the Vessel is at the premises of TMPG.

6. INDEMNITY

6.1.1. The Owner hereby indemnifies TMPG and holds TMPG harmless from and against all claims, actions, damages, liability and expense in connection with any loss of life, personal injury and/or damage to property arising from and out of any occurrence in or on the premises of TMPG, the quay, or the Vessel by the use of the Owner of the premises and services of TMPG, or occasioned wholly or in part by any act or omission of the Owner, employees, agents, suppliers, contractors or guests.

6.1.2. The indemnity contained herein shall apply regardless of whether any claims, actions, demands or causes of action are based or alleged to be based on breach of contract, negligence, breach of implied warranty, strict liability, or reckless or intentional conduct.

6.1.3. In the event that TMPG shall, without fault on its part, be made a party to any litigation commenced by or against the Owner, then the Owner shall indemnify TMPG and hold it harmless against all claims and shall pay all costs, expenses and legal fees (including legal and own client fees) reasonably incurred or paid by the Owner in connection with such litigation.

7. SUB-CONTRACTORS

Should there be any:

7.1. Any Sub-Contractor employed by the Owner to perform any maintenance or other work on the Vessel, while the Vessel is at the premises or moored at the quayside or moorings or hard stand of TMPG, shall be required to sign acceptance of these standard terms and conditions prior to commencing any work on the Vessel.

7.2. The Owner shall ensure that such Sub-Contractor has adequate insurance in respect of the work to be undertaken on the Vessel at TMPG and ensure any such Sub-Contractor has signed and paid in full for the relevant permit to work.

8. MOORING/HARDSTAND

8.1. The Owner shall:

8.1.1. Comply with all statutes, regulations and by-laws that may be applicable to TMPG, and accordingly shall abide by all marina regulations as drawn up by the local governing Harbour Authority;

8.1.2. exercise proper control over all employees, contractors and guests at all times;

8.1.3. ensure that the Owner, his employees, contractors and guests park their motor vehicles in parking areas designated by TMPG and do not obstruct or interfere in the day to day operations of TMPG;

9. FORCE MAJEURE

9.1. TMPG shall not be liable for delays, failures in delivery or performance, damage to property or persons, due to acts of God, governmental authority or public enemy, fire, flood, strike, labour disturbance, epidemic, war, riot, civil disturbance, power failure, embargoes, shortages in materials, components or service, boycotts, transportation delays or any other cause beyond TMPG's control, or any actions taken by TMPG to mitigate the effect or prevent any of the aforesaid.

9.2. In the event of such failure or delay, the contract shall not terminate, but the date of performance shall be extended for a period of time equal to the time lost by reason of the delay.

10. PAYMENT TERMS

10.1. Terms of payment are:

10.2. Payment in full before the lift of the vessel.

11. SEVERABILITY

11.1. These terms and conditions shall be deemed severable and if any clause or part thereof is held to be invalid for any reason, the remainder shall not be deemed invalid but shall remain in full force and effect.

12. GOVERNING LAW

12.1. This agreement shall be governed by the Laws of England and Wales.

13. ACCEPTANCE

13.1. This agreement constitutes the entire agreement between the Owner and TMPG and no alteration, cancellation or variation hereof shall be of any force or effect unless it is in writing and signed by both parties, who hereby acknowledge that no representations or warranties have been made by either of them, nor are there understandings or terms other than those set out herein.

13.2. No relaxation or indulgence shown by either party shall in any way prejudice its rights hereunder.

Name of vessel:

Owner/Agent of vessel - As Owner and/or as agent for the Owner I hereby confirm safe receipt of these terms and conditions and confirm I have understood and accepted the same. In particular I have noted the requirements for the Owner of the Vessel to have insurance in place as per clauses 4 and any sub-contractor as per clause 7, the exclusion of liability on the part of TMPG under clause 3 and limitation of liability of TMPG under clause 5.

Signed _____

Print Name: _____

Date: _____

Signed on behalf of

TMPG: _____

Print Name: _____

Position _____

Date: _____