



LIVETT'S LAUNCHES LIMITED ("The Company")

BOOKING FORM

(Please use BLOCK CAPITALS throughout)

Boat:.....

Hirer (full names):.....Company Name:

Business Address: Purchase Order (if applicable):
.....

Postcode:

Telephone No:

Mobile No.:.....

Date(s) of Hire Period:

Nature of charter:

Number of passengers:

Embarkation Point:.....

Embarkation Time:

Disembarkation Point:

Disembarkation Time:

Special Instructions (is any):
.....
.....

Other Details:
.....

THE TERMS AND CONDITIONS OF HIRE AS STATED ABOVE AND OVERLEAF ARE ACCEPTED BY THE HIRER (AS DEFINED OVERLEAF)

Hirer Signature: Print Name:

Position: Date:

LIVETT'S LAUNCHES LIMITED GENERAL TERMS & CONDITIONS

1. INTERPRETATION

1.1 Definitions.

In these Terms and Conditions [hereafter "Conditions"], the following definitions apply:

Barecon Terms: means the Barecon 89 Standard Bareboat Charter terms and conditions issued by The Baltic and International Maritime Council.

Bargehire Terms: means the Bargehire 2008 Standard Barge Charter Party terms and conditions issued by The Baltic and International Maritime Council.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Cargo: means the cargo belonging to or under the control of the Client and which is the subject of the Services.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5.

Conditions: these General Terms and Conditions as amended or varied from time to time in accordance with clause 10.8.

Consultancy Services: means consultancy services provided to the Client by or on behalf of the Supplier.

Contract: the contract between the Supplier and the Client for the supply of Services in accordance with and including these Conditions and any Special Terms appended to these Conditions.

Customer Client: the person who purchases Services from the-Supplier.

Order: the Client's order for Services as set out in the Client's purchase order form, or the Client's written acceptance of a quotation for the Services by the Supplier, as the case may be, and appended to these Conditions.

Services: any or all of the following services supplied by the Supplier to the Client as set out in the Contract:

- Barge, pontoon and boat or vessel hire services
- Hire of plant and machinery
- Cargo towage services
- Personnel supply services
- Consultancy services
- Use of or access to/from Durham Wharf

Special Terms: means the Barecon Terms, the Bargehire Terms, the Towcon Terms and/or the UK Conditions as may be applicable to the Services and as referred-to in the Contract.

Supplier: Livett's Launches Limited trading as Livett's Launches registered in England and Wales with company number 3113932 and having its registered office at PO Box 288, Chislehurst, Kent, BR7 5PG.

Towcon Terms: means the Towcon 2008 International Ocean Towage Agreement (Lump Sum) issued by The Baltic and International Maritime Council.

UK Conditions: means the UK Standard Conditions for Towage and other Services (Revised 1986)

1.2 **Construction.**

In these Conditions, the following rules apply:

- (a) words and expressions defined in the Special Terms shall have the same meaning in these Conditions unless specified otherwise;
- (b) a reference to the Special Terms in these Conditions is a reference to the Special Terms as varied from time to time;
- (c) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (d) a reference to a party includes its successors or permitted assigns;
- (e) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (f) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (g) a reference to writing or written includes but not faxes.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 The Supplier shall specify in the Contract which Special Terms if any shall apply to the Services.
- 2.5 If there is an inconsistency between any of the provisions of the Contract, these Conditions and the Special Terms respectively, the provisions of the Contract shall prevail in preference to these Conditions and the Special Terms, and save for clause 10.9 herein the provisions of the Special Terms shall prevail over the provisions of these Conditions.
- 2.6 These Conditions and the Special Terms apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an indication of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue unless stated otherwise in the Contract.

3. **SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Client in accordance with the Contract in all material respects.

- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services unless expressly otherwise stated in the Contract.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client of any such change(s) in any such event.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Contract or otherwise are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its servants, agents, consultants and subcontractors, with access to the Cargo, Client's goods, equipment, premises, and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) obtain and maintain at their sole risk all necessary licences, permissions and consents which may be required before the date on which the Services are to start and during the period that the Services are performed; and
- (f) indemnify the Supplier in respect of any liability whatsoever of the Supplier for loss or destruction of, or damage to, Cargo. If required by the Supplier to do so, the Client shall maintain insurance on terms current in the market for such risks and if so requested provide the Supplier immediately with evidence of the same.
- (g) ensure that all its employees, servants and agents are made aware of and comply with the Durham Wharf Regulations

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation Client Default):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be as set out in the Contract.

5.2 The Supplier shall invoice the Client on the terms stipulated in the Contract.

5.3 The Client shall pay each invoice submitted by the Supplier:

- (a) within 7 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

5.4 All amounts expressed to be payable by the Client under the Contract are exclusive of any amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.5 Without limiting any other right or remedy of the Supplier, if the Client fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounded quarterly.

5.6 The Client shall pay all amounts due under the Contract in full and without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

5.7 The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

6. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its servants, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its servants, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such servants, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 6 shall survive termination of the Contract.

7. LIMITATION OF LIABILITY

7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its servants, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

7.2 Subject to clause 7.1:

- (a) the Supplier shall not be liable to the Client whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract including any losses that may result from a deliberate breach of the Contract by the Supplier, its servants, agents or subcontractors; and
- (b) the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed the Charges, save that if the Services are Consultancy Services the Supplier's total liability shall not exceed four times the Charges or £250,000 whichever is the lesser sum.

7.3 Except as set out in these Conditions or the Special Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.4 This clause 7 shall survive termination of the Contract.

8. TERMINATION

8.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding-up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1(b) to clause 8.1(i) (inclusive);

- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

8.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 8.1, or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

10. GENERAL

10.1 Force majeure:

- (a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 7 days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

10.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

10.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email to the other party's letterhead email address.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred-to above or, if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next Business Day after transmission.
- (c) This clause 10.3 shall not apply to the service of any proceedings or other documents in any legal action.

10.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

10.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

10.6 No partnership:

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

10.7 Third parties:

A person who is not a party to the Contract shall not have any rights under or in connection with it.

10.8 Variation:

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing by the Supplier.

10.9 Governing law and jurisdiction:

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims or claims arising out of or in connection with any Special Terms incorporated into the Contract), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.