



TERMS & CONDITIONS FOR USE OF BURGESS MARINE SYNCRO-LIFT

AT TRAFALGAR WHARF, PORTCHESTER, UK

REV 3 – 13th July 2015

www.burgessmarine.co.uk

1. **DEFINITIONS**

1.1. In these terms and conditions, the following definitions apply:

Client means the person, firm or company who owns or manages the Vessel and engages the Company to perform the Services.

Company means Burgess Marine Ltd registered in England and Wales with company number 5675410 whose registered office is at 37 St. Margaret's Street, Canterbury, Kent, CT1 2TU and its agents to whom the application for Lifting-out and Re-floating is made.

Contract the contract between the Company and the Client for the supply of Services in accordance with these Lift Conditions together with the Quotation (if applicable), the Company's General Conditions, any special terms and conditions and any other documents agreed in writing between the Company and the Client.

Docking Plan means the drawings and/or information provided by the Client to the Company which will also include details of the Vessel's draft, strong points, fuel level, ballast level and stability prior to the date of the Contract.

General Conditions means the Company's standard terms and conditions as amended from time to time.

Lift Conditions means these terms and conditions as amended from time to time.

Lift-Out means the lifting out of the Vessel on the Syncrolift. 'Lifted' and 'Lifting' shall be construed accordingly.

Lift-Out Date means the date specified and agreed in writing by the Company and the Client for the Lift-Out of the Vessel.

Method Statement of Work shall mean the specification provided by the Client to the Company prior to the commencement of the Services detailing the work to be carried out on the Vessel, how such work will be undertaken, the processes undertaken to restrict any contamination to the Working Area, and the process for cleaning up after completion of the work.

Order means the Client's written acceptance of the Quotation.

Premises mean the Syncrolift and the surrounding premises and wet berths at Trafalgar Wharf.

Price means the estimated price for the Services detailed in the Company's Quotation or cost estimate, subject to the provisions detailed in clause 7.

Quotation the written quotation or cost estimate for the provision of Services to be supplied by the Company to the Client.

Re-Float means the re-float of the Vessel into the water on the Syncrolift. 'Re-Floating' and 'Re-Floated' shall be construed accordingly.

Re-Float Date means the date specified and agreed in writing by the Company and the Client for the Re-Float of the Vessel.

Services mean the Lift-Out of the Vessel, traversing the Vessel to the working area, blocking up, traversing and Re-Floating the Vessel.

Syncrolift means the ship-lift and transfer system used in the performance of the Services.

Trafalgar Wharf means Trafalgar Wharf, Portchester.

Vessel means the Vessel specified within these Lift Conditions.

Working Area means the space allocated to the Vessel whilst it is ashore being maintained, repaired or stored.

- 1.2. In these Lift Conditions, the following rules apply:
- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;
 - 1.2.3. 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; and
 - 1.2.4. a reference to "writing" means any communication consisting of words in any legible or visible form, including words produced by any form of electronic or mechanical means and in typed or printed format as well as in manuscript.

2. BASIS OF CONTRACT

- 2.1 The Order Constitutes an offer by the Client to purchase the Services in accordance with these Lift Conditions, the General Conditions and where applicable, the Quotation.
- 2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order or the Company commences the supply of Services 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, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4 These Lift Conditions together with General Conditions 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. If there is an inconsistency between any of the provisions of these Lift Conditions and the General Conditions, the terms of the General Conditions shall prevail.
- 2.5 A Quotation shall not constitute an offer and is only valid for a period of 60 business days from the date of issue.

3. THE SERVICES

- 3.1 It is hereby agreed that the Company will lift the Vessel out of the water, where applicable, block, traverse the Vessel to and from its Working Area and store, then Re-Float the Vessel. These Services will all be performed strictly according to these Lift Conditions.
- 3.2 All ship repair services, maintenance etc., performed by the Company on the Vessel whilst it is berthed alongside or situated ashore in the Work Area will be performed strictly according to the Company's General Conditions, a copy of which is provided with the Quotation and is always readily available upon request.

4. LIFT-OUT OF THE VESSEL

- 4.1 The Client is responsible for ensuring that the Vessel arrives at Trafalgar Wharf for Lift-Out at the appointed time as agreed with the Company. Late arrival may result in missing a tide and incur additional costs which will be for the Client's account.
- 4.2 The Client shall advise the Company as soon as is reasonably practicable and in any event upon arrival, if the Vessel varies in any way from the Docking Plan provided by the Client.
- 4.3 The Company shall carry out a preliminary inspection of the Vessel, having regard to the Docking Plan as soon as possible after the Vessel has arrived at Trafalgar Wharf to ensure, so far as is possible, that the Vessel accords with the Docking Plan. In the event of any discrepancies between the condition of the Vessel and the Docking Plan, the Lift-Out Date shall be delayed until the Vessel is in a suitable condition to be lifted out. In this event, the Client shall be liable for all additional costs.
- 4.4 On the Lift-Out Date, the Company shall take control of the Vessel solely for the purposes of moving the Vessel on to the Syncrolift and traversing the Vessel to the Working Area. The Company shall maintain adequate ship repairers' liability insurance cover up to £10 million for the Vessel during this period. The Company takes no responsibility, nor accepts any liability for the Vessel whilst it is sailing on the approach to the Syncrolift or sailing away from the Syncrolift whether with the assistance of tugs or not. The Company takes no responsibility for the Vessel whilst it is waiting, moored alongside or situated in the adjacent wet dock.
- 4.5 The Client shall ensure that adequate insurance cover for the Vessel is maintained at all times including the voyage and approach to the Syncrolift and departure there from.

5. TRAVERSING AND LAND BLOCKING OF THE VESSEL

- 5.1 Where applicable, with the Client's permission, the Company shall take control of the Vessel after the Lift-Out and transfer the Vessel to the Working Area, also blocking the Vessel where appropriate.
- 5.2 The Client shall ensure that adequate insurance cover for the Vessel is maintained throughout including the period prior to the Company taking control of the Vessel and whilst the Vessel is held in the Working Area.

6. RE-FLOAT OF THE VESSEL

- 6.1 The Client shall ensure that the Vessel is seaworthy prior to the Re-Float Date.
- 6.2 If the Client becomes aware that the Re-Float Date may be delayed for any reason, it must inform the Company immediately in writing and advise the Company when the Vessel will be ready to be Re-Floated.
- 6.3 The Company will notify the Client of the first alternative date for Re-Float as soon as possible after receiving notice under clause 6.2.
- 6.4 The Client will be liable to pay the current daily rate for each additional day the Vessel remains in the Working Area or on the Syncrolift up to and including the date the Vessel is Re-Floated.

- 6.5 On the Re-Float Date, the Company shall take control of the Vessel for the purposes of moving the Vessel out of the Working Area to the Syncrolift (where applicable) and manoeuvring and mooring the Vessel alongside (where applicable).
- 6.6 Once moored alongside, the Client and the Company shall undertake a joint inspection of the Vessel to ensure the integrity of the Vessel. The Client shall take delivery of the Vessel upon completion of the inspection.

7. PRICES AND QUOTATIONS

- 7.1 The estimated price provided by the Company shall be based on time, services, expenses and materials solely expended on, or used in connection with (where applicable) the Lifting-Out, maintaining, repairing, storing and Re-Floating of the Vessel.
- 7.2 The Company shall exercise reasonable skill and judgment in providing a Quotation for the price but the Company will not be precluded from exceeding that Quotation where it is necessary for the performance of the Services.
- 7.3 Quotations are subject always to the accuracy of the information provided by the Client and are based on the Docking Plan and Method Statement of Work. Quotations will not include the costs of any emergent work, including but not limited to the Re-Floating of the Vessel during a Lift-Out due to blocking wrongly placed because of an inaccurate Docking Plan supplied by the Client.
- 7.4 The Company will inform the Client as soon as reasonably possible of any proposed increases in Quotations found to be necessary and the reasons for them.
- 7.5 If the Client postpones the performance date for the provision of the Services or the Company is otherwise unable to perform the Services as a result of the Client's failure or delay in performing its obligations, then except where such failure is caused by a force majeure event as referred to in the General Conditions or the Company's failure to comply with its obligations under the Contract, the Company reserves the right to charge the Client for all related costs and expenses.
- 7.6 The Client shall pay for all utilities used whilst the Vessel is in the Working Area, such as water and electricity, on a metered basis per the prices detailed in the Quotation.
- 7.7 All prices and Quotations provided by the Company are exclusive of VAT, unless otherwise stated.

8. PAYMENT

- 8.1 Upon placing an order for Services, the Client shall pay the Company a non-refundable deposit to secure the booking. The amount of the deposit shall be agreed between the parties but shall not be less than the amount of the Vessel Lift-Out charge outlined in the Company's Quotation.
- 8.2 Payment for all Services and materials provided by the Company including the charge to Re-Float the Vessel shall be paid by the Client prior to the departure of the vessel unless otherwise agreed in writing.
- 8.3 If payment is not received within 30 days of the due date daily, interest shall become due and payable by the Client from the due date until the date of actual payment at the rate of 4% p.a. above the Bank of England's current base rate.

- 8.4 In the case of invoices not paid in accordance with clause 8.3 above, the Company has the right to discontinue the provision of the Services to the Client whether or not the unpaid invoice relates to the provision of such Services.
- 8.5 The Company has the right to exercise a general lien upon the Vessel, and/or its gear and equipment and/or any goods while upon the Premises pending payment in full of all sums due to it.
- 8.6 The Company reserves the right to continue to charge the Client for storage, hard standing or berthing at its usual commercial rates during the period of the exercise of the lien.
- 8.7 The terms of these Lift Conditions are subject to the provisions of the Torts (Interference with Goods) Act 1977 (Act) and for the purposes of this Act it is hereby expressly agreed that the Company's obligations to the Client as custodians of the Vessel terminate upon the expiry or lawful termination of the Contract or upon the Client's failure to meet the Company's payment terms as per clause 8.3 above. Pursuant to this Act the Company has a right of sale exercisable in certain circumstances. Such sale will not take place until the Company has given notice to the Client in accordance with the Act.

9. DELAYS

- 9.1 The time for the provision of the Services is given in good faith but is an estimate only and is not of the essence or in any way guaranteed. The Company shall not be responsible for any delay in the provision of the Services or for the consequences of any such delay unless it arises from the negligence or deliberate act or wilful default of the Company, its servants or agents.
- 9.2 The Company shall retain the right at any time to postpone or cancel any slipping event for any reason. The Company shall not be liable for any loss or damage incurred by the Client in the event that the Lift-Out Date and/or Re-Float Date is delayed or cancelled for whatever reason.

10. VESSEL MOVEMENTS

Once the Vessel is ashore, the Company has the right to move the Vessel and/or its gear at its discretion for reasons of the safety of the Vessel, or the safety and/or convenience of other users of the Premises or for the safety of the Company's plant and equipment and the Client must pay the Company's reasonable charges for such work. Where any such movements are required by the Client, the Company shall provide the Client with an estimate of the likely costs and charges relating to such work prior to incurring them.

11. ACCESS TO PREMISES / WORK ON THE VESSEL WHILST THE VESSEL IS ASHORE

- 11.1 The Client shall notify the Company as soon as possible of any changes to the Method Statement of Work and shall not continue with or start the work without the written approval of the Company to the changes.
- 11.2 The Client shall ensure that the Work Area is properly cleared and cleaned on completion of the work to the Vessel.
- 11.3 The Client must ensure that the work does not generate a nuisance or annoyance to or in any way interfere with any person or Company using the premises / adjacent Work Areas.
- 11.4 All of the Vessel's crew and workers' cars must be parked in the correct car park. The Company will accept no responsibility for any damage howsoever caused to cars parked in the shipyard.

12. LIABILITY

- 12.1 The Company shall not be liable for the loss, theft, damage including consequential loss, whatsoever in respect of the Vessel and/or other property (whether insured or not) belonging to the Client or others claiming through the Client or for any delay arising from any cause whatsoever except to the extent that such loss, theft, damage or delay was caused by or resulted from the negligence or deliberate act of the Company or its servants or agents.
- 12.2 The Client shall indemnify the Company against any loss damage or costs reasonably incurred by, and all claims or proceedings instituted against the Company, its servants or agents which may be caused by the Vessel or the Client's servants, agents, crew, guests or workers except to the extent that such loss, damage, costs, claims or proceedings may be caused by an act or omission of the Company its servants or agents.
- 12.3 The Vessel and gear are moved, stored or otherwise managed and kept at the sole risk of the Client who shall ensure that the Vessel and/or its property is comprehensively insured against all loss or damage however caused, which insurance must include liability to third parties (including public liability and where relevant employers liability) in respect of the Client, the Vessel, the crew for the time being and the Client's agents, servants, visitors, guests and workers in a sum of not less than £5million in respect of each accident or damage.
- 12.4 All persons entering upon or using any part of the Premises, facilities or equipment do so at their own risk. All persons must make themselves aware of the Burgess Marine health and safety policy, site induction and ship's safety plan and agree to abide by these requirements. Any individuals partaking in the Syncrolift operations, traversing or blocking do so entirely at their own risk. In such cases, their details must be given to the Company's General Manager 24 hours prior to any movements. If the Client insists that any Company operative should wear soft (deck) shoes and not safety footwear whilst working on board their vessel, the Client will be liable for any compensation awarded to the operative arising from any injury that would have been prevented by wearing safety footwear.
- 12.5 Subject to clause 12.6, the Company shall accept no liability whatsoever in respect to injury or illness or death to the Company's employees, agents or representatives arising from or in connection with the Contract.
- 12.6 Nothing in these Lift Conditions shall limit or exclude the Company's liability for:
- 12.6.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 12.6.2 fraud or fraudulent misrepresentation; and
 - 12.6.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.7 Subject to clause 12.6:
- 12.7.1 the Company shall under no circumstances whatsoever, 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; and

12.7.2 the Company'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, shall be limited absolutely to reworking the defective part of the Services to a value not greater than the original price paid by the Client.

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

12.9 The Company reserves the right to require the Client to effect and maintain a policy or policies of insurance covering all matters which are the subject of the indemnities set out in this clause 12.

12.10 This clause 12 shall survive termination of the Contract.

13. AUTHORISATION

The Company will accept, and the Client will be bound by instructions for the Services if issued by the Client's appointed skipper, engineer, manager, surveyor or other professional representative purporting to act on the Client's behalf or with the Client's authority, or by the beneficial owner of the Vessel to which the Services relate, unless the Company has received prior written notice to the contrary.

14. GENERAL CONDITIONS

The Client agrees that it has had the opportunity to inspect (and shall be deemed to have notice of) and shall observe, perform, comply with and be bound by all the provisions of the General Conditions.