



**FALMOUTH
HARBOUR**

UK's Atlantic gateway.

**FALMOUTH
HAVEN**

TERMS OF BUSINESS

THESE TERMS OF BUSINESS APPLY TO ALL CONTRACTS FOR WORK AND FACILITIES OR GOODS UNDERTAKEN BY FALMOUTH HAVEN ON OR AFTER 1 APRIL 2022.

The Organisation: Falmouth Harbour is a Trust Port - created by an Act of Parliament "The Falmouth Harbour Order 1870", which created the body corporate of Falmouth Harbour Commissioners to run and manage the Harbour. Falmouth Harbour continues to be managed by a Board of seven commissioners and a CEO. FHC operates under a trading name of "Falmouth Harbour" and has two trading subsidiaries: Falmouth Haven and Falmouth Pilot Services.

1 LIABILITY

- 1.1 The Organisation we shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (which includes, without limitation, severe weather conditions, the actions of third parties not employed by us or any defect in a customer's or third party's property); this extends to loss or damage to vessels, gear, equipment or other property left with us for work or storage, and harm to persons entering our premises or using any of our facilities or equipment.
- 1.2 We shall take reasonable and proportionate steps having regard to the nature and scale of our business to maintain security at our premises, and to maintain our facilities and equipment in reasonably good working order; but in the absence of any negligence or other breach of duty by us vessels and other property are left with us at the customer's own risk and customers should ensure that their own personal and property insurance adequately covers such risks
- 1.3 We shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of any defect in the vessel or property concerned unless we have been expressly engaged to do so by the customer on commercial terms. Similarly we shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of an accident which has not been caused by our negligence or some other breach of duty on our part. However, we reserve the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where we do so we shall be entitled to charge the customer concerned on a normal commercial basis.
- 1.4 Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels and while their vessel or other property is on our premises or is being worked on by us they shall be obliged to maintain adequate insurance, including third party liability cover for not less than £3,000,000, and, where appropriate, Employer's Liability cover in respect of any employee. Customers shall be obliged to produce evidence of such insurance to us within 7 days of a request to



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do so.

- 1.5 Nothing in these Terms of Business shall limit or exclude our liability for death or personal injury caused by our negligence or the negligence of our employees, agents or sub-contractors; for fraud or fraudulent misrepresentation; or otherwise to the extent that it would be illegal for us to exclude or attempt to exclude liability.
- 1.6 Subject to Clause 1.5, We shall under no circumstances whatsoever be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss of profit, or indirect or consequential loss arising under or in connection with these Terms of Business.

2 PRICES AND ESTIMATES

- 2.1 In the absence of express agreement to the contrary our price for work shall be based on labour and materials expended and services provided.
- 2.2 We will exercise reasonable skill and judgment when we give an estimate or indication of price. However, such estimates are always subject to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any emergent work which may be necessary to the vessel, gear or equipment nor the cost of any extensions to the work comprised in the estimate.
- 2.3 We will inform the customer promptly of any proposed increase in estimated prices and the reasons for it and will only proceed with the work or supply with the approval of the customer. The customer shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied which are not affected by the proposed increase in price.

3 DELAYS

- 3.1 Any time given for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our wilful acts or omissions or from our negligence.

4 VESSEL MOVEMENTS

- 4.1 We reserve the right to move any vessel, gear, equipment, or other property at any time for reasons of safety, security or good management of the companies business and premises.



5 PAYMENT

- 5.1 Unless otherwise agreed between us payment for all work, goods and services shall be due immediately on invoice date. Payment shall be deemed to have been made when we receive cash or cleared funds at our bank. Time for payment is of the essence.
- 5.2 We have the right to charge interest on any sum outstanding for more than 30 days (except in the case of a reasonable and proportionate retention by the customer of any amount genuinely in dispute between us and the customer) on the outstanding balance at 4% above Bank of England base rate which may be calculated daily up to the date of actual payment. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after actual judgment. In the case of business customers this rate will be substituted with the current rate applicable under late payment legislation.
- 5.3 To the extent permitted by law, the customer here by grants us a lien and a continuing security interest and where applicable, a maritime lien, over the vessel a security of payment by the customer. Therefore, we can detain and hold onto a customer's vessel or other property pending payment by the customer of all sums due to us. We shall be entitled to charge the customer for storage and the provision of any ongoing services at our normal daily rates until payment (or provision of security) by the customer and removal of the vessel or property from our premises. The customer shall be entitled to remove the vessel or other property upon providing proper security, for example a letter of guarantee from a Bank reasonably acceptable to us or lodgement of a cash deposit with a professional third-party agent reasonably acceptable to us, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for our prospective legal costs. This right does not affect the customer's entitlement to withhold a proportionate part of the price in respect of alleged defect but where that amount is in dispute between us the customer shall be required to provide security for the full amount pending resolution of the dispute.
- 5.4 Our customers' attention is drawn also to the note at Clause 10.2 of these Terms of Business regarding other rights which exist at law.
- 5.5 The customer shall pay all amounts due under these Terms of Business in full without any set off, counter claim, deduction or withholding except as permitted by law. We may, without limiting our other rights or remedies, set off any amount owing to it by the customer against any amount payable by us to the customer.



6 RETENTION OF TITLE / RISK

- 6.1 Title to all goods, equipment and materials supplied by us to a customer shall remain with us until full payment has been received by us.
- 6.2 Risk in all goods, equipment and materials supplied by us to a customer shall pass to the customer at the time of supply to the customer.

7 GUARANTEE

- 7.1 Advice on whether a customer is “a consumer” or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of solicitors (who may charge). Online guidance may be obtained at www.adviceguide.org.uk.
- 7.2 A customer who is a consumer has certain minimum statutory rights regarding the return of defective goods and claims for losses. These rights are not affected by these terms.
- 7.3 The customer shall, immediately after the discovery of any defective work, take all appropriate steps to mitigate any loss or damage and to prevent the defective work becoming more serious.
- 7.4 On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other contractors to do so. Any remedial work which is put in hand by the customer directly without first notifying us and allowing us a reasonable opportunity to inspect and agree such work and its cost will invalidate this guarantee in respect of those defects.



- 7.5 We shall not be liable for any defective work if the defect arose as a result of:
- The customer's failure to follow our oral or written instructions;
 - Us following any drawing or specification supplied by the customer;
 - Fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or
 - Changes made to ensure compliance with applicable statutory or regulatory standards.
- 7.6 Where we supply goods or services to a partnership or Organisation or to a customer who is acting in the course of a business or a commercial operation (a "Business Customer") then:
- no article supplied by us to a Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply the Business Customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgement;
 - no proprietary article specified by name, size or type by a Business Customer shall carry any such express or implied term but we will assign to the Business Customer any rights we may have against the manufacturer or importer of that article; and
 - we accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied by us.
- 7.7 The customer is responsible for any damage or loss caused directly or indirectly from any breach of its obligations under these Terms of Business.
- 7.8 The customer shall take all necessary precautions to avoid pollution of the environment and shall indemnify us for any loss or damage arising from any pollution of the environment.
- 7.9 The customer shall ensure that it does not cause any nuisance or annoyance to us, any other person or customer in the vicinity and does not interfere with the Organisation scheduled for the work and/or the good management of the Organisation's premises and business.

8 QUALITY STANDARDS

- 8.1 We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.



9 ACCESS TO PREMISES/WORK ON THE VESSEL

- 9.1 No work or services shall be carried out on a vessel, gear, equipment or other property on our premises without our prior written consent (which consent shall not to be unreasonably withheld or delayed) except for minor running repairs or minor maintenance of a routine nature by the customer or his regular crew. It shall be an absolute condition that all work is carried out in full compliance with our health and safety, environmental and access policies and that it does not cause any nuisance or annoyance to us, any other customer or person residing in the vicinity, and does not interfere with our schedule of work or the good management of our business and our said consent to work or services being carried out may be revoke with immediate effect in the event of any breach of such conditions. We shall not be responsible to customers or third parties for the consequences of any person's failure to respect any part of this clause 9.1 but we shall be entitled to demand the immediate cessation of any work which in our view breaches the requirements of this clause 9.1.
- 9.2 While we or our subcontractors are working on a customer's vessel or equipment the customer shall not have access to it except by prior arrangement. We will agree reasonable access when it is safe to do so and when it will not interrupt or interfere with our work schedule.

10 RIGHT OF SALE

- 10.1 We accept vessels, gear, equipment and other property for repair, or edit, maintenance or storage subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on us in circumstances where the customer fails to collect or accept re-delivery of the goods (which includes a vessel and any other property). A sale will not take place until we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
- goods for repair or other treatment are accepted by us on the basis that the customer is the owner of the goods or the owner's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
 - our obligation as custodian of goods accepted for storage ends when we give notice to the customer;
 - the place for delivery and collection of goods shall normally be at our premises. Advice regarding the Act and its effect may be obtained from any of the sources referred to a Clause 7.1 above



- 10.2 Maritime Law entitles us in certain circumstances to bring action against a vessel to recover a debt or damages. Such action may involve the arrest of the vessel through the Courts and its eventual sale by the Court. This right of arrest and sale may continue to exist against a vessel after a change of ownership. Sale of a vessel or other property may also occur through the enforcement of a court order or Judgment.

11 SUBCONTRACTING

- 11.1 We may subcontract all or part of the work entrusted to us by the customer, on terms that any such subcontractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, which exist for us under these Terms of Business. Where we exercise this right we shall remain responsible to the customer for the performance of our subcontractor.

12 ASSIGNMENT AND OTHER DEALINGS

- 12.1 We may at any time assign, transfer or deal in any other manner with all or any rights under these Terms of Business and may sub-contract or delegate in any manner any or all of its obligations under these Terms of Business to a third party as noted above under Clause 11.
- 12.2 The customer shall not assign, transfer, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms of Business.

13 NOTICES

- 13.1 Notice to a customer shall be sufficiently served if personally given to him or if sent by first class post to the customer's last known address. Notices to us should be sent by first class post to our principal trading address or registered office.
- 13.2 All communications and notices given under these Terms of Business shall be in writing.

14 LAW AND JURISDICTION

- 14.1 Any contract or series of contracts made subject to these terms and any non-contractual obligations arising out of, or in connection, therewith shall be governed by and construed in accordance with English law.



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- 14.2 Each of the parties irrevocably agrees that any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with a contract or series of contracts subject to these terms shall:
- if one party acts as consumer (meaning a natural person acting for purposes outside of a trade, business or profession), be subject to the non-exclusive jurisdiction of the English courts; or
 - where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

15 THIRD PARTY RIGHTS

- 15.1 A person who is not a party to these Terms of Business shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce at any term of these Terms of Business.

16 SEVERANCE

- 16.1 If any provision of these Terms of Business is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant part-provision shall be deemed deleted. Any modification to or deletion of a part-provision under this Clause 16 shall not affect the validity and enforceability of the remaining provisions of these Terms of Business.

17 DISPUTE RESOLUTION SCHEME

- 17.1 The Yacht Harbour Association recommends that, before commencing legal proceedings, the parties to a dispute arising out of or in connection with the licence should endeavour to resolve their dispute by negotiation or, failing that, by mediation.