



LIMITATIONS OF LIABILITIES

BELL MARINE SURVEYING
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LIMITATIONS OF LIABILITIES**AS INCLUDED IN THE TERMS AND CONDITIONS OF THE CONTRACT**

- 3.1.** The Surveyor shall undertake the services to which these terms relate with reasonable care, skill and diligence. The Surveyor shall not be liable under this Agreement for any loss or damage caused in circumstances **(i)** where there is no breach of a legal duty of care owed to the Client by the Surveyor or **(ii)** where, notwithstanding any such breach, any loss or damage is not a reasonably foreseeable result of such breach.
- 3.2.** All services and reports are provided for the Client's use only. No liability of whatever nature is assumed towards any other party and nothing in these terms, or the relationship between the Surveyor and the Client, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and any person who is not a party to this Agreement shall have no right under that Act to enforce any term(s) of this Agreement.
- 3.3.** The Surveyor shall not be responsible for loss or damage or any increase in loss or damage resulting from any material breach by the Client of any term of this Agreement.
- 3.4.** Any complaint by the Client in respect of the Surveyor's obligations under this Agreement must be notified to the Surveyor as soon as is reasonably practicable after the Client becomes aware of the alleged problem. Where any complaint is capable of remedy, the Surveyor must be afforded a reasonable opportunity both to inspect the subject matter of the complaint, and if necessary, remedy it.
- 3.5.** The Client agrees that, for reasons of commercial practicality, it is necessary to limit the Surveyor's potential liability to £250,000 in respect of loss or damage suffered by the Client as a result of any breach by the Surveyor of any of the Surveyor's obligations under this Agreement. As such, the Client agrees that no liability howsoever arising whether under this Agreement or otherwise shall attach to the Surveyor except insofar as such liability is covered by the professional indemnity insurance referred to in *Clause 3.6.* and the aggregate amount of such liability shall in any event be limited to the value of a similar vessel of a similar age to that affected by such breach, without the alleged problem but allowing for fair wear and tear based on a willing buyer and a willing seller ("the Agreed Indemnity Limit"). The Agreed Indemnity Limit represents the maximum amount of the Surveyor's liability to the Client, under any and all circumstances.
- 3.6.** The Surveyor shall maintain professional indemnity insurance in the amount of the Agreed Indemnity Limit throughout the period of the performance of the Surveyor's duties hereunder.
- 3.7.** The Surveyor's liability shall not extend to particulars, data and other information given to the Surveyor by others or obtained from outside sources, publications and the like reasonably relied upon by the Surveyor, including Class records, registry details or other such information and no assurances can be given regarding the accuracy of the same.
- 3.8.** Unless otherwise stated in writing, all services and reports are provided on the basis that they carry no guarantee regarding ownership or title, freedom from mortgages or charges, debts, liens or other encumbrances, or vessel stability, performance or design.
- 3.9.** The Client shall be responsible for any losses, expenses or other costs reasonably incurred by the Surveyor that are caused by a breach of the Client's obligations to the Surveyor hereunder.
- 3.10.** The Surveyor shall not be liable in respect of any breach of his obligations hereunder resulting from unforeseeable causes beyond the Surveyor's reasonable control.

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- 3.11.** Notwithstanding any other provision of this Agreement:
- 3.11.1.** unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or as to the suitability of any vessel or other item for any particular purpose or of any vessel's compliance with any particular local, national or international requirement or code, and opinions are given without the benefit of running of machinery or opening up or other dismantling whether of interior linings, machinery or other items or systems;
 - 3.11.2.** the Surveyor shall have no liability whether in contract, tort or otherwise in respect of the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions or the non-disclosure by the Client of relevant information; and
 - 3.11.3.** the payment of all sums due and owing to the Surveyor pursuant to this Agreement shall be a pre-condition to any liability of the Surveyor hereunder.

BUSINESS OR COMMERCIAL OPERATION

- 3.12.** Notwithstanding any other provision of this Agreement, where the Client is acting in the course of a business or commercial operation:
- 3.12.1.** the Surveyor's liability shall expire twelve months after the final survey examination performed by the Surveyor in performing the Scope of Work and the Surveyor shall thereafter have no further liability whether in contract, tort or otherwise; and
 - 3.12.2.** the Surveyor shall have no liability whether in contract, tort or otherwise for
 - 3.12.2.1.** any consequences of late performance of any survey and/or late delivery of any survey report;
 - 3.12.2.2.** any breach of his obligations hereunder of which written notification shall not have been given, any consequential or economic loss or for loss of profit or turnover or loss of use suffered by the Client howsoever arising, whether under this Agreement or otherwise, and, without prejudice to the generality of the foregoing, the Surveyor shall not be liable if notification shall not have been given within 14 days of the date on which the Client ought reasonably to have become aware of the existence of such breach;
 - 3.12.2.3.** any loss, injury or damage sustained as a result of **(i)** any defect in any material or workmanship, or **(ii)** the act, omission or insolvency of any person other than the Surveyor; the Surveyor shall have no liability to indemnify the Client in respect of any claim made against the Client for any such loss, injury or damage.