

# Terms and Conditions

## Our standard trading terms:

### Liability and limitations

1. All services and reports are provided for our named Clients' use only. No liability of whatever nature is assumed towards any other party and nothing in these terms, or the relationship between us and our Clients, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms.

2. We shall undertake the services to which these terms relate with reasonable care, skill and diligence, but we shall have no responsibility or liability whatsoever except insofar as the Client suffers proven loss or damage in consequence of gross negligence or wilful default. Notwithstanding any other provision of these terms:

2.1 Our liability shall expire 12 months after completion of the part of the service in respect of which liability is alleged to arise and we shall thereafter have no liability in respect of that service and/or any alleged default in connection with the provision thereof;

2.2 We shall not be liable in respect of any breach of our obligations (1) for any loss, damage, delay or expense of whatever nature whether direct or indirect (including but not limited to loss of profit and loss of use) and howsoever arising or resulting whether directly or indirectly in the course of or as a result of the provision of our services, under these terms or otherwise, (2) of which written notification shall not have been given within 12 calendar days of the date on which the Client ought reasonably to have become aware of the existence of such breach, or (3) resulting from unforeseeable causes beyond our reasonable control;

2.3 The Client covenants with us and our servants and agents that no such servant or agent shall in any circumstances whatsoever be under any liability for any loss arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing, every exemption, limitation and condition herein contained and every right, exemption and limitation of liability applicable to us or to which we are entitled hereunder shall also be available to protect every such servant or agent acting as aforesaid and for the purpose of the foregoing provisions we are or shall be deemed to be acting as agents or trustees on behalf of and for the benefit of all persons who are or might be our servants or agents from time to time and all such persons shall to this extent be or be deemed to be parties to these terms;

2.4 Under no circumstances shall our liability exceed a total of six [6] times the fee received hereunder.

### Fees

3. Fees and expenses shall become due and payable on such terms and in such amounts as shall be agreed from time to time. VAT or other EU equivalent shall be payable, if applicable, in addition to all fees and expenses. Invoices will be submitted in respect of all fees and expenses when due and the amount of each invoice shall be settled within 14 calendar days of us sending by e mail or 16 days of sending by regular mail services. Interest shall be payable on all amounts owing and unpaid at a rate of 8% above the lending rate of Cater Allen Private Bank Limited, prevalent at the time.

### Default

4.1 Client default: We may terminate our appointment forthwith if the Client fails for more than 14 calendar days to pay any sum due when demanded, or if the Client fails consistently to respond promptly to requests for

information and/or instructions fails adequately to respond to 14 calendar days' formal notice of such failure, without prejudice to our accrued rights.

4.2 Other defaults: Either party may terminate our appointment forthwith by notice if the other party shall: have a petition presented for its winding up or administration which is not discharged within 14 calendar days of presentation or any other action is taken with a view to its winding up (otherwise than for the purpose of reorganisation or amalgamation without insolvency), or become bankrupt or commit an act of bankruptcy, or make any arrangement or composition for the benefit of creditors, or have a receiver or manager or administrative receiver or administrator or liquidator appointed in respect of any of its assets, or have anything analogous to any of the foregoing under the laws of any jurisdiction occur to it, or cease or threaten to cease to carry on business; without prejudice to the accrued rights of the other party.

## **Law and disputes**

5. These terms shall be governed by and construed in accordance with either United Kingdom law or Cook Island law, which is similar to English law and any dispute or difference arising, or claim made, between or by the parties out of or in relation to or in connection with the provision of services to which these terms relate and which cannot be resolved by the parties shall be submitted to the jurisdiction of the Court of the Cook Islands. Blue Ensign Ltd has the choice of which law method to best use in perseverance of its best interests.

## **Miscellaneous**

6. No exercise or failure to exercise or delay in exercising any right, power or remedy vested in either party shall be deemed to be a waiver by that party of that or any other right, power or remedy.

7. Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.

8. In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation the same shall be deemed to be deleted from these terms and shall be of no force or effect and these terms shall remain in full force and effect as if such provision had not been contained therein. Notwithstanding the foregoing in the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of an acceptable alternative provision.

9. These terms form the entire agreement between the parties and supersede all previous agreements and understandings between the parties, and no warranty, condition, description, term or representation is given or to be implied by anything said or written in negotiations between the parties or their representatives prior to the communication of these terms. It is the responsibility of the client or their agents to familiarise themselves with the terms and conditions of Blue Ensign Ltd, given and understood that these are freely available to read and print and to transmit to other persons connected to the work or employed by the owner, and it is not the responsibility of Blue Ensign Ltd to furnish the client separately with such information, although will freely do so when specifically requested by the owner or his appointed agent in connection with the work.

10. References to "we" and "us" include our employees and persons, firms and companies appointed or engaged by us as our agents for carrying out any work or services under these terms, all persons, firms and companies to whom performance of any work or services under these terms is sub-contracted or delegated by us, and all agents and employees of persons, firms and companies referred to in this clause.

11. Any communication required to be given under these terms by either party shall be in writing and shall be sufficiently given either by letter, fax or electronic mail (provided the same is capable of being recorded by the recipient in durable form) sent to the other at the contact details previously notified and any such notice shall be deemed to have been given at the time at which it would in the ordinary course of transmission have been received. The client must confirm any important instruction by mail or fax or courier message. Receipt of e mail letters or voice messages is not guaranteed, and a record of communications is not guaranteed.

12. Both parties undertake to maintain the reasonable confidentiality of all information supplied by each other and not to divulge such information to third parties (including previously unknown agents acting for the client) without the prior verbal authority of the other.

### **Special conditions**

13. Where the services provided include the survey, examination or inspection or measurement of a vessel, or any part of her equipment, then special conditions relating to that work will be attached to the report (where provided) and not notified to the client beforehand, taking account that the circumstances of the limitations of the work may not be apparent prior to commencement of that work, which may result in failing to complete the work, through no fault of ours. In such circumstances, efforts would be made to complete any outstanding work, although this cannot be guaranteed, and the contract value of the work, whether completed or not, would still be liable for payment by the client, as well as any additional costs incurred by re- inspection. Where the item to be inspected is not reasonably accessible, or is not considered safe to operate or the Surveyor is unsure of such operation, or a dispute or hostile circumstances are encountered, then the work may be cancelled or re-scheduled at additional cost to the client. Any standard condition inspection will usually exclude items which cannot be properly examined or tested during the survey or inspection. Items specifically excluded are, electrical installations and appliances, electric or electronic equipment of any type, turbochargers, transmission and drive systems, exhaust systems, gas and air operated appliances and equipment, fire related systems, pumping and liquid transfer related systems, and the like, except where under specific detailed written instruction from the client. Whilst reasonable care will be taken during inspections and the provision of any services, Blue Ensign Ltd and their servants are not liable for any accidental damage or omissions, and any injuries or damages caused to Blue Ensign Ltd staff or servants, howsoever caused, would be compensated for by the client, in addition to reimbursing any costs related to or consequential to any such injury or damage.

14. Where information from other sources is used, this would normally not be verified, and we will not accept liability for errors or omissions in information supplied from any other sources, which includes information contained on drawings or specifications from any source. Usually, the source of any information from other sources is stated, but this cannot be guaranteed. No confirmation of taxes paid ( for example, VAT or Matriculation Tax ), is usually sought, and the client should request this from the other parties direct.

15. Where a vessel or item is inspected or is the subject of any "work" or discussion, we are not able to warrant the vessel or item as suitable for intended purpose, or free of lien, or establish ownership. No fitness for any purpose is made or implied of any part of the vessel or equipment, including where the client specifically requests such reporting, in writing, thus enabling that vessel or item to be specially considered for the required stated purpose.

16. Where a statement of value is made in connection with any vessel or item, this would normally be established by open market simple research of similar vessels available at that time, given a willing buyer and seller situation. It may not reflect the monies achieved if that vessel or item was to be re-sold, or replaced.

We are not tax experts, and any advice given must not be considered as competent tax advice. Clients must consult their own tax advisers in respect of any liability or savings, which will depend on their personal circumstances and flag regulations etc.

17 Where no written contract is made, then a verbal or faxed or e-mailed instruction will be considered a contract and binding to these terms and conditions.

18. Where inspections for charter certification are carried out, there is no guarantee that any vessel will pass such standards or receive certification. Where tonnage measuring is carried out, there is no guarantee that the vessel will comply with any desired regulations or dimensions, or that the any vessel can be registered.

19. These terms and conditions may be updated from time to time, and the client should download a copy prior to any "work" being started. On request, we will send current terms and conditions by e-mail, fax, or post to

clients where computer or printer access is not available. Use of this website assumes that these terms and conditions are accepted, unless the client notifies in writing to the contrary prior to commencement of any work.

20. Where any work involves in any form the Cook Islands Registry, their terms and conditions will also apply, which should be obtained via their e mail / website at [www.maritimcookislands.com](http://www.maritimcookislands.com) and subject to Cook Islands law. Where any other flag states, then the laws of that state will apply.

**Definitions:**

We, us, our:

Blue Ensign Limited, Cook Islands Registry, Maritime Cook Islands Limited, Jonathan Leach, Marine Surveyor, and all associated names, web sites, postal addresses, and e-mail addresses, used by any of the above trading names.

The Client:

Any person, company or organisation requesting services ( work ) offered by any of the above trading names.

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