

Oref : 20001/AA(terms 2020)

Survey Terms and Conditions

All survey work is carried out according to the terms and conditions on the following pages. The Survey Work is defined in the quotation provided by email to the client. The terms and conditions are of standard type used by many surveyors.

The client is required to confirm written agreement with the terms and conditions prior to commencement of the survey.

Suitable written agreement would be for the client to say in the text of an email "I agree with your terms and conditions"



WALSH William Spencer

Yacht Surveyor

RYA British Flag Commercial Yacht Inspector (MCA Code) and Tonnage Measurer

BMSE Surveyor

Diploma in Small Craft Survey - International Boatbuilding Training College Lowestoft, UK



MCA Code
Small Craft Examiner (RYA)



British Marine Surveyors Europe
Member

IT IS AGREED that:

- A. These Terms of Business shall form part of the Survey Contract between the Surveyor and the Client; and**
- B. The Surveyor shall perform the Survey Work as set out in the Quotation subject to the following terms:**
- 1. Services**
 - 1.1 The Surveyor shall undertake the services to which these terms relate with reasonable care, skill and diligence.
 - 1.2 The Client's instructions and the scope of the Surveyor's services hereunder, are as defined in the Quotation. Any subsequent changes or additions to the Survey Work must be agreed in writing by the Parties.
 - 1.3 The Client undertakes to ensure that full instructions are given to the Surveyor and are provided in sufficient time to enable the required services to be performed effectively and efficiently. The Client agrees to disclose to the Surveyor all relevant information of which they have knowledge, or to which they have access, in relation to the Vessel to be surveyed including previous damage incidents.
 - 1.4 The Surveyor will inspect the Vessel as thoroughly as is practicable and endeavour to comment on the major items where, in the Surveyor's reasonable opinion, major costs consequences are considered likely to arise. The surveyor is not required to comment on minor items, minor cosmetics but may do so. The surveyor is not required to propose the typical annual and periodic maintenance. The survey is a general assessment of condition.
 - 1.5 The Surveyor's intention is to report on the condition of the hull(s), superstructure and fixtures (if any) of the Vessel so far as can reasonably be ascertained from a visual inspection of the Vessel at its location at the time of survey. The Client accepts that the Surveyor's survey report(s) cannot cover hidden, unexposed or inaccessible areas of the Vessel, neither can the Surveyor undertake to investigate areas that the Surveyor believes to be inaccessible at the time of inspection. The surveyor will not remove panelling secured by more than a few screws or secured with constructional sealant or other method that requires removals or damage to access. The surveyor will not remove large amounts of stores or equipment to gain access. The surveyor will not make damages or destructive testing.
 - 1.6 Tanks will not be opened by the surveyor for inspection. In case this is required the client must make prior arrangements with the seller.
 - 1.7 In every case, the Surveyor recommends a full survey of a Vessel, to include inspection of the Vessel while lifted out and while in the water and during sea trial. When the vessel is out of the water, the watertight integrity or buoyancy of the Vessel is not assessed. When a sea trial is not performed the engine(s) and stability is not assessed.
 - 1.8 If the engine is briefly run ashore it is a very basic test that cannot replace a sea trial.
 - 1.9 For rigging aloft inspection the surveyor requires two through the mast ropes, one of which to be without halyard block or join and two people to be provided to assist. In case this is not provided or the rigging is in poor condition, the surveyor has right to refuse to go aloft for safety reasons or to agree to make a partial inspection. The surveyor only has responsibility for inspection of items on the same side of the mast that he climbs. The rigging inspection by surveyor is a general inspection of condition to find major visible defects.
 - 1.10 For steel and aluminium yachts if both sides of the steel plating are not visible the surveyor cannot guarantee condition. If the surveyor is not allowed to heavily hammer the plating it is

possible that areas with serious diminution of thickness may not be found. Ultrasonic thickness survey is a general inspection that cannot find small areas of heavy diminution.

2. Valuations

- 2.1. All valuation work unless otherwise stated in writing, relates solely to the date and place referred to. Valuations are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars or information on which opinions are based. Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation or such other date as is expressly referred to. Valuations are not for investment proposals.

3. Fees

The fee is payable according to the terms of the quotation. In case the surveyor is to purchase goods or services as part of the survey or on behalf of the client payment is required for these in advance. In case the surveyor is not paid he has no liability to the client whatsoever and the client may not use any of the information or reports provided by the surveyor.

Limitations

- 4.1 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.
- 4.2 All services and reports are provided for the Client's use only. No liability of any 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.
- 4.3 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.
- 4.4 Any claim by the Client in respect of any breach 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 breach. Where any breach is capable of remedy, the Surveyor must be afforded a reasonable opportunity to put matters right at his expense.
- 4.5 The Client agrees that, for reasons of commercial practicality, it is necessary to limit the Surveyor's potential liability 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 at paragraph 4.6 and such liability (including Claims Expenses) shall in any event be limited to £250,000 or such higher sum as the parties shall agree in writing prior to commencement of the services to which these terms relate (hereafter referred to as "the Agreed Indemnity Limit").
- 4.6 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 provided that such insurance shall remain available at reasonable market rates.
- 4.7 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.
- 4.8 Regarding CE conformity the surveyor is responsible for checking for CE plate affixed to the

vessel if it is required for the yacht to be CE marked. The surveyor is not responsible for checking conformity to the CE standards or searching for and checking CE documentation and certificates unless specifically instructed.

- 4.9 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. The client is responsible for appointing lawyer to check status of the vessel and the completeness of sales documentation and certificates to be provided as part of the sale.
- 4.10 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.
- 4.11 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

Business or Commercial Operations

- 4.12 Notwithstanding any other provision of this Agreement, where the Client is acting in the course of a business or commercial operation:
- 4.12.1 the Surveyor's liability shall expire twelve months after the Survey Report is delivered to the Client and The Surveyor shall thereafter have no further liability whether in contract, tort or otherwise; and
- 4.12.2 the Surveyor shall have no liability whether in contract, tort or otherwise for:
- 4.12.2.1 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 for any consequences of late performance of any survey and/or late delivery of any survey report;
- 4.12.2.2 any breach of his obligations hereunder of which written 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;
- 4.12.2.3 any loss, injury or damage sustained as a result of:
- i. any defect in any material or workmanship;
 - ii. an Act of God or other circumstances beyond the control of the Surveyor; or
 - iii. the act, omission or insolvency of any person other than the Surveyor;
- and 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;

- 4.13 Notwithstanding any other provision of this Agreement:
- 4.13.1 unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or of suitability of any vessel or other item for any particular purpose or of 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;
- 4.13.2 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

nondisclosure by the Client of relevant information.

5. Law and disputes

This Agreement shall be construed in accordance with and shall be governed by Greek law. All disputes arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Courts of Piraeus.

6. Miscellaneous

- 6.1 The Surveyor may terminate the appointment if the client does not pay according to the quotation and terms.
- 6.2 Without prejudice to the accrued rights of the other party, either party may terminate the appointment forthwith by notice if the other party shall become bankrupt or insolvent, or make any arrangement or composition for the benefit of creditors, 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.
- 6.3 No exercise or failure to exercise or delay in exercising any right or remedy vested in either party shall be deemed to be a waiver by that party of that or any other right or remedy.
- 6.4 Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.
- 6.5 In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation, such provision 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 herein. Notwithstanding this, 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.
- 6.6 Except where expressly stated to the contrary in a written document signed by the Parties on or after the date hereof, 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.
- 6.7 References to "the Surveyor" include the Surveyor's employees and persons, firms and companies appointed or engaged by the Surveyor as the Surveyor's 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 the Surveyor, and all agents and employees of persons, firms and companies referred to in this clause.
- 6.8 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.
- 6.9 Each party undertakes to maintain the confidentiality of all information supplied by the other and not to divulge such information to third parties without the prior written authority of the other.

Words denoting the masculine include the feminine and neuter and vice versa.