

Harlyn Solutions Ltd: Conditions of Business – Consultancy Dated: 08/12/2021

1 AGREEMENT

These Conditions of Business constitute the entire agreement between the Consultant and the Client to the exclusion of all other representations, statements, conditions, terms, warranties whether express, implied, statutory or otherwise except any implied by law or statute which cannot by law be excluded. While the parties hereto believe (in all of the circumstances known to them at the date of entering into this agreement) that the provisions hereof are reasonable as to all of their terms; if a court shall determine that any one or more of the provisions here unenforceable for any reason, such provisions shall be deemed to be severed from the body of these conditions such that the remaining provisions shall continue to stand and be enforceable between the parties hereto.

2 ASSIGNMENT

Neither party shall, without the consent in writing of the other, assign or purport to assign, or make over or dispose of in any way whatsoever any of its rights or obligations contained herein or resulting here from. The Consultant shall however be entitled to sub-contract the duties to be undertaken hereunder but on the understanding that the Consultant shall remain responsible for the carrying out of such duties and shall be liable for the actions of the parties employed by it in accordance with the terms hereof.

3 SCOPE OF WORK

The scope of work to be performed by the Consultant will be as described in the Consultant's order acknowledgement and any supporting documents. Any variations to this work are to be agreed in writing via email with written confirmation by a part of the client constituting approval to perform the work and accept the charges.

4 VARIATIONS

These Conditions of Business shall prevail notwithstanding any variance or conflict with the conditions sought to be imposed by any other party. Variation or changes shall only be effective if made in writing specifically for such purpose, and signed by a duly authorised representative of both parties.

5 Working Hours

It is assumed that site work, unless otherwise stated is completed within 1 x 10 hour day. Excess hours or days as a result of changes in schedule with less than 4 days' notice or delays out of the control of the consultants will result in charges and variation under clause 4. The stated rates on the quotation will stand for all changes with days charged onsite at 10 hours minimum.

6 TAXES

Prices and rates quoted in proposals or Order Acknowledgements comprise the net amounts to be received after payment of any sales or value added taxes, withholdings, customs duties or any other taxes or duties whether similar or dissimilar to the foregoing (which taxes or duties shall be payable by the Client in addition to the Consultant's prices and rates).

7 TERMS OF PAYMENT

Payment of the price or fees and expenses shall be made within 14 days from the date of invoicing. Failing such, interest at the maximum rate permissible for late payment under the Late Payment of Commercial Debts (Interest) Act 1998 will be chargeable on the outstanding balance until such time as it is paid in full.

8 EXPENSES AND DISBURSEMENTS

All expenses and disbursements incurred in carrying out the work will be charged at cost plus 15% any equipment or supplies purchased on behalf of the client are provided as agents only and supplied without warranty.

9 TERMINATION

Either party may terminate this agreement at any time by giving 30 days' notice in writing to the other party. Either party may terminate this agreement immediately by giving written notice to the other party if the other party either: (a) commits a material breach not capable of remedy or, if capable of remedy, fails to remedy such breach within 14 days of notice to do so; or (b) becomes insolvent, goes into liquidation, compounds with its creditors or has a receiver, administrator or similar functionary appointed over the whole or any part of its assets or makes a winding-up order or suffers any similar process under the law of its domicile or place of its jurisdiction. In the event of termination the Consultant shall be paid all fees and costs incurred up to the date of termination, together with all costs of settlement of any outstanding obligation.

10 FORCE MAJEURE

Any delay or failure in the performance by a party hereto of any obligation hereunder necessarily arising from an event not reasonably foreseeable by and beyond the control of the said party shall be deemed not to be a breach of Agreement. If the delay or failure shall continue for a period of 30 days either party shall be entitled to terminate this agreement by giving seven days written notice to the other party. The Consultant shall continue to be entitled to all fees and costs incurred up to the date of termination.

11 INDEMNITY

(a) The Consultant Group hereby accepts liability for and indemnifies the Client Group against any and all claims, losses, damages, costs or liabilities of any sort in respect of or arising out of:

(i) death, sickness or injury to any employee, officer or agent of any member of the Consultant Group;
OR

(ii) damage to or loss of any property or equipment owned by any member of the Consultant Group, regardless of cause including the sole or contributory negligence of any member of the Client Group or by any of their respective servants, officers or agents.

(b) The Client Group hereby accepts liability for and indemnifies the Consultant Group against any and all claims losses, damages, costs or liabilities of any sort in respect of or arising out of:

(i) death, sickness or injury to any employee, officer or agent of any member of the Client Group;
OR

(ii) damage to or loss of any property or equipment owned by, leased or belonging to any third parties or member of the Client Group and used by any member of the Consultant Group or Client Group, regardless of cause including the sole or contributory negligence of any one or more of any member of the Consultant Group or any of their respective servants, agents or employees.

(c) By reason of the disproportionate nature of the potential losses when measured against the fees payable by the Client to the Consultant, it is hereby agreed that maximum aggregate liability of the Consultant Group to the Client Group under or in connection with the project to be undertaken by the Consultant Group for the Client Group, whether such liability arises in contract, tort (including negligence) or otherwise and including (without limitation) any type of liability arising from any type of claim specified in sub-clause (d) below, shall be limited to the lesser of:

(i) the value of the fees payable to the Consultant under such project; or

(ii) £100,000 (one hundred thousand pounds sterling).

(d) The Client shall indemnify the Consultant Group against any and all claims, losses, damages, liabilities, costs or expenses arising from any claim by a third party against any member of the Consultant Group under or in connection with the project to be undertaken by the Consultant for the Client including (without limitation) any claim arising in relation to the negligence of any member of the Consultant Group or arising out of any of:

(i) loss of or damage to any vessel, installation, pipeline, equipment or property not dealt with under (a) or (b) above; or (ii) pollution on the sea, seashore or seabed and the costs of cleaning up and removing the same, together with any associated fines or penalties.

(e) Neither party shall be liable to the other in contract, tort (including negligence) or otherwise for loss of profit, loss of use, loss of business, loss of goodwill or loss of data or for consequential or indirect loss.

(f) Advice and information, in whatever form it may be given, is provided by the Consultant for the Client only and the Client shall indemnify and defend the Consultant against any liability, claims, loss, damage, costs or expenses arising as a result of any other person relying upon such advice or information. Advice and information which is not required by this Agreement is provided gratuitously and will not subject the Consultant to any liability, whether based on contract, warranty, tort (including negligence) or other grounds.

(g) Neither party excludes liability which cannot be excluded by law.

(h) Any claims against the Consultant by the Client shall be deemed to be irrevocably waived and absolutely time barred upon the expiry of one year from the submission date of the Consultant's report or invoice, whichever is the earlier, to the Client in relation to the project undertaken hereunder.

12 INSURANCE

The Client hereby undertakes to name the Consultant as co-assured in any policy of property damage or liability insurance relevant to the Consultant's scope of work, to procure that its insurers waive all rights of subrogation against the Consultant and any member of the Consultant Group which may assist the Consultant in undertaking the work and agree that such insurance shall be deemed primary and first to react ahead of any equivalent insurance covering the same risks maintained by the Consultant.

13 WAIVERS

In the event that the Consultant shall at any time expressly or by implication waive any of its rights contained herein, such waiver shall not be deemed to prejudice in any way the enforcement of such right on a subsequent occasion.

14 RIGHTS OF THIRD PARTIES ACT

All rights to be indemnified, exceptions, limitations and other benefits given to Consultant Group and/or Client Group shall be enforceable by any member of Client Group and/or Consultant Group (as the case may be) in accordance with the Contracts (Rights of Third Parties) Act 1999 but no other person who is not a party to this Agreement shall have any right to enforce the terms of this Agreement whether under such act or otherwise.

15 GOVERNING LAW

This Agreement shall be governed by and construed and interpreted in accordance with English law. All claims and disputes hereunder shall exclusively be determined by arbitration under the Rules of London Maritime Arbitrators Association ("LMAA"). The arbitral tribunal shall comprise three arbitrators (who shall be members of the LMAA), save that the arbitral tribunal shall comprise a sole arbitrator if the value of this Agreement does not exceed EUR2,500,000 or equivalent. The appointment of the arbitral tribunal and the conduct of the arbitration shall be governed by the provisions of the Arbitration Act 1996 or any statutory modification in force from time to time.

16 Port Captaincy

The consultant will operate in the function of port captain. In the offering of this service the consultant undertakes to provide engineering support for the engineering of seafastenings and supervision of the lashing. Assessment of the deck strength, stability of the vessel and other engineering checks are not included in scopes as standard unless state on the quotation and these are the responsibility of the master/owners/operators. Any provision of lashing, securing or dunging materials is without warranty and is provided as agent only.

17 DEFINITIONS

"Client" means the entity named in the accompanying order acknowledgement, bid or proposal document. "Client Group" means the Client and any subsidiary, affiliate and holding company of the Client and any subsidiary of such holding company (as such terms are defined in the Companies Act 1985 (as amended)), and any co-venturer or partner of the Client for all of whom the Client is acting as agent and trustee. "Consultant" means Harlyn Limited. "Consultant Group" means the Consultant and any subsidiary, affiliate and holding company of the Consultant and any subsidiary of such holding company (as such terms are defined in the Companies Act 1985 (as amended)), their respective subcontractors and the directors, officers, employees and agents of each of the foregoing, for all of whom the Consultant is acting as agent and trustee.