

TERMS OF ENGAGEMENT

This document sets out the terms and conditions upon which International Nautical Services (Pty) Ltd with its registered address at 41, Porterfield Road, 7441 Table View Capetown South Africa (“**INS**”) has agreed to provide its services to you, as the Client. Your acceptance of any INS proposal and/or payment of a deposit for services indicates your explicit and/or tacit acceptance of the terms of engagement listed below, and any annexures included therewith (“**Terms**”).

1. RELATIONSHIP OF THE PARTIES

- 1.1. INS is a service provider and has no employment relationship with the Client. Nothing contained in these Terms shall be deemed to constitute a partnership, joint venture, employer/employee agreement or the like between them. INS shall not, by reason of the actions of any of the other parties, incur any personal liability as co-partner to any third party.
- 1.2. Unless otherwise agreed between the parties, INS is not required to provide its services exclusively for the Client, as long as the services rendered to third parties does not detract and interfere with the quality and/or efficiency of the services it provides to the Client.

2. THE SERVICES

- 2.1. INS will provide the Client with Maritime and technical inspection, Cargo Survey, Expertise and Superintendent- Maritime survey services] (“**the Services**”) as detailed in a specific proposal prepared by INS for the Client (“**Proposal**”).
- 2.2. Once a Proposal has been accepted by the Client and a deposit (as included within a Proposal), where necessary, is paid by the Client for the Services, INS will begin providing the Services to the Client on the date provided for in the Proposal concerned.
 - 2.2.1. INS reserves the right to reschedule the date on which the Services will be carried out to a mutually convenient alternative date and time, if circumstances out of its control or unexpected circumstances, render the date of performance impossible. Any rescheduling of the Service date shall not constitute a breach of these Terms nor a ground upon which these Terms may be cancelled, and the Client shall therefore not be entitled to any refund for such rescheduling.
 - 2.2.2. It is the duty of the Client to ensure that INS personnel can commence with the Services of all compartments of the vessel/object on the agreed upon date. All dismantling of any part of the vessel/object is to be carried out by and at the risk of the Client and for its account.
- 2.3. Where it is not possible for INS to undertake the Services or where the vessel/object on which the Services are to be carried out is not accessible for any reason (including due to any strikes, war, government embargo etc.) the Client remains liable for INS’ Fees incurred in travelling to and from the inspection location.
- 2.4. Circumstances where compartments of the vessel/object cannot or can only partly be inspected as part of the Services, shall not constitute a ground for cancellation of the Services.
- 2.5. The Client understands that INS will require certain information from the Client and/or its contracted third-party service providers to properly render the Services. Failure or delay by the Client in providing this information will lead to delays in provision of the Services for which INS will not be liable.
- 2.6. In the event of a conflict between these Terms and any Proposal, the Proposal will prevail.
- 2.7. Service Disclaimer
 - 2.7.1. All Services are carried out to the best our knowledge, experiences and abilities but we cannot accept liability for any defects present whether latent or patent.
 - 2.7.2. All Service inspections are visual inspections unless otherwise agreed between INS and the Client. Accordingly, the testing of any engines, auxiliaries, working equipment, etc are always carried out visually and INS cannot be held liable in case of latent failures of such equipment post-inspection.

- 2.7.3. All INS findings refer only to outcomes concluded at the place and time of the inspection. INS does not take any responsibility for any changes on an object due to personal, natural or other influences and any such changes cannot dismiss the Client from their obligations.
- 2.7.4. When a vessel/object is relocated or nautical assistance is provided, the Client remains responsible for all applicable legal requirements regarding the vessel/object and its navigation. The Client accordingly warrants that it has all required insurance in place to appropriately insure its vessel/object.
- 2.7.5. The Client utilises our Services at their own risk which Services as provided "as is".
- 2.7.6. The Client remains responsible for any and all damage on the vessel/object or with respect to any third parties which occur during the provision of the Services, unless gross misconduct or gross negligence can be proved on the part of INS.
- 2.7.7. All recommendations or advice (including but not limited to repair advice, valuations, analyses and audits) provided as part of the Services is the opinion of INS and is given to the best of its knowledge and expertise but is not to be relied on as expert or legal advice and is not subject to revert by the Client.

2.8. Dissatisfaction

- 2.8.1. If the Client is dissatisfied with any aspect of the Services, the Client shall notify INS in writing within 7 (seven) calendar days of becoming aware of the issue, providing reasonable details of the dissatisfaction. INS will be afforded a reasonable opportunity to investigate and, where appropriate, to remedy the matter within a further reasonable period. If the Client remains dissatisfied after INS's response or remedial action, the parties shall seek to resolve the matter in good faith in accordance with the dispute resolution provisions of these Terms.

3. VARIATION TO THE PROPOSAL

- 3.1. If the Client seeks to change the scope of work or manner of execution of any Services being delivered, the Client will provide INS with written details of the requested change.
- 3.2. Within a reasonable time after receipt of the Client's request, INS will provide the Client with a written estimate of:
 - 3.2.1. the estimated time required to carry out the amended Proposal; and
 - 3.2.2. the effect of the change on the fees charged in relation to the specific Proposal (if any).
- 3.3. No changes to a Proposal or the Services shall be effective unless consented to by both parties in writing.
- 3.4. Should INS request a change to the Services rendered to comply with any legislative, regulatory, or industry requirement, and such change does not materially affect the nature, scope, or fees for the Services, the Client will not unreasonably withhold or delay consent for INS to carry out such change.

4. PAYMENT TERMS

- 4.1. As consideration for the Services, the Client will pay all fees as set out in a Proposal in accordance with the payment terms therein ("**Fee/s**").
- 4.2. To commence with the Services, INS may request that the Client pay a deposit. If a deposit is requested, the balance shall be paid upon completion of the Services in accordance with an invoice provided to the Client.
- 4.3. The Fees do not include value added tax, any other taxes, licensing fees, disbursements, or any fees necessary or incidental to INS's provision of the Services. Any such additional taxes, costs or fees shall be for the Client's account. However, INS shall consult with the Client prior to the incurrence of such additional taxes, costs or fees.
- 4.4. INS shall not provide a reduction of the Fee in circumstances where compartments of the vessel/object cannot or can only partly be inspected. neither can this lead to the cancelling of our order.

Variations

- 4.5. The Fees are subject to change, should the requested Services be altered in any way by the Client after commencement of a Proposal. INS will provide an amended Proposal and/or invoice including updated Fees. If the Client does not accept the updated proposal or invoice, INS is not obliged to carry out any additional services.
- 4.6. If disbursements require upfront payment, the Client will be required to pay the costs before INS carries out the additional services.
- 4.7. The Fees based on occasional or regular work are given only for the intended period of time and are without written notice adapted each year to the evolution of the inflation costs as calculated for the past year by the authorities / National Bank or other price calculation institute.

Payment Delays

- 4.8. Should an invoice remain unpaid for more than 7 (seven) calendar days following the due date for payment as indicated on an invoice –
 - 4.8.1. Without notice a cost of 10% of the invoice with a minimum of 4000 ZAR shall be due for every overdue invoice
 - 4.8.2. Interest will be charged on any outstanding amounts at a rate of 12% per annum. The Client undertakes to pay any such interest along with the Fee, where necessary.
 - 4.8.3. INS reserves the right to suspend provision of its Services until such time as the invoice and the applicable interest thereon are paid in full.
- 4.9. The Client acknowledges and agrees that it is not a valid reason to withhold payment of any Fees due to the Client not being paid by a third party, and accordingly, the Client will pay the Fees timeously, regardless of whether it has been paid by a third party or not.
- 4.10. If the invoice remain unpaid and juridical action is required, INS remain the right to ask to the Client to reimburse INS for the costs made.

5. OBLIGATIONS OF THE CLIENT

- 5.1. The Client undertakes to INS, in relation to the Services that it will:
 - 5.1.1. pay each invoice issued under a Proposal timeously and in full;
 - 5.1.2. provide INS with clear, timeous, and reasonable instructions and directions where necessary;
 - 5.1.3. use the Services for the purpose for which it was provided, and comply with any laws or regulations in force where the Services will be used and/or implemented; and
 - 5.1.4. not do anything or allow any act to be done which does or is reasonably and foreseeably likely to prejudice the good name and reputation of INS.

6. GENERAL OBLIGATIONS OF INS

- 6.1. INS undertakes to the Client in relation to the Services that it:
 - 6.1.1. will render the Services in accordance with these Terms, and the Proposal and with good industry practice, exercising due care, diligence, and skill;
 - 6.1.2. will act in a manner as it reasonably considers to be most beneficial to the interests of the Client;
 - 6.1.3. will provide the Client with any information and reports reasonably requested by the Client in connection with the Services;
 - 6.1.4. is extensively experienced, organised, financed, equipped, staffed, qualified and able to render the Services in each and every respect; and
 - 6.1.5. will not do anything or allow any act within its reasonable control which does or is reasonably and foreseeably likely to prejudice the good name of the Client.

7. INTELLECTUAL PROPERTY

7.1. General

- 7.1.1. Each party will retain ownership of their respective intellectual property created and owned prior to the commencement of these Terms.
- 7.1.2. Should any intellectual property be created through the provision of the Services, ownership and copyright in such intellectual property will remain INS's property until the Fees have been paid in full. Upon full and final payment being made by the Client, INS will assign ownership of any intellectual property created as a result of the provision of the Services to the Client.
- 7.1.3. The Client understands and agrees that it will have no rights, title, or interest to any of the know-how, processes, contact details, information, or databases, which INS utilises to provide the Services, such information will at all times remain the intellectual property of INS.

7.2. Promotional Marketing

Unless otherwise agreed between the parties, the Client provides INS with the right to use and display, in perpetuity, a portion of the outcome of the Services (where appropriate) or any Client testimonial or review for its own promotional or marketing purposes in any medium or public space (including its website and social media). It is the responsibility of the Client to inform INS if any part of the displayed information is confidential or will have a detrimental effect on the Client if used by INS for promotional or marketing purposes.

8. CONFIDENTIALITY

- 8.1. Neither party shall during or after the provision of the Services use to the prejudice or detriment of the other party, or divulge to any person any material, trade secret or any other confidential information concerning the business affairs of the other party which may have come into its possession or knowledge during the course of these Terms or pursuant to the provision of the Services.
- 8.2. For the duration of these Terms, with respect to the Services, INS shall –
 - 8.2.1. treat the Client's instructions, personal information, and incidental information provided to INS as strictly confidential and will not disclose any confidential information or knowledge obtained as a result of provision of the Services to any third party without consent;
 - 8.2.2. protect the information provided to it with appropriate technical and organisational measures; and
 - 8.2.3. advise the Client if there is a material conflict of interest between the Client and another client who INS provides services for and take the appropriate steps to ensure the conflict is resolved.

9. DATA PROCESSING

Each of the parties warrants to and in favour of the other party that they shall each adhere to the roles and responsibilities applicable to them in relation to the processing of any personal data belonging to the other party in accordance with any applicable data processing legislation, including Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) and/or the South African Protection of Personal Information Act 4 of 2013, as amended.

10. CANCELLATION

- 10.1. These Terms shall be terminated and the Services cancelled:
 - 10.1.1. At the end of the notice period where the Client has provided INS with 7 (seven) calendar days' written notice of its intention not to proceed with the Services and exercise the cooling off period in accordance with consumer protection laws;
 - 10.1.2. Automatically on completion of the Services; or
 - 10.1.3. Mutually, where the parties agree to end the business relationship; or
 - 10.1.4. Subject to an unremedied breach of these Terms in accordance with clause 12 below.
- 10.2. Without prejudice to its other rights and remedies, INS will have the right to cease work and/or terminate any Proposal by giving the Client reasonable notice by email, should INS determine in its sole discretion that it is not able to properly perform the Services or instruction, or should the Client fail to pay its account or provide INS with the necessary information which it requests to undertake the Services.
- 10.3. INS will review the refunding of any Fees following termination in terms of this clause 10.2 on a case-by-case basis.
- 10.4. Should the Services be terminated by INS in accordance with clause 10.2 above, the Client grants INS the right to retain possession of any documentation, goods or material owned by the Client until their account is settled in full.

11. LIABILITY AND INDEMNIFICATION

- 11.1. Each party warrants to the other that any information, including but not limited to, images, copy, software, documents or designs provided to a party in connection with the Services is free from any copyright and/or does not infringe upon any rights of any third party to which the information belongs or all fees, royalties and payments have been made to and permissions granted from the lawful copyright owner.
- 11.2. Apart from instances of gross misconduct or gross negligence, INS shall not be liable for:
 - 11.2.1. any loss or damage caused by any delay in the completion of the Services;
 - 11.2.2. any loss of profits suffered by the Client or a third party in connection with the Services;
 - 11.2.3. any indirect or consequential loss of whatever nature;
 - 11.2.4. any loss arising directly or indirectly due to any negligence on the part of INS, its employees or agents; or
 - 11.2.5. any third-party liability.
- 11.3. **In any circumstances of proven gross misconduct or gross negligence, to the maximum extent permitted by applicable law, neither party may be held liable under these Terms for any amount exceeding the amount paid by a Client to INS for its Services during the preceding twelve (12) months.**
- 11.4. The Client agrees to indemnify and hold harmless INS, its shareholders, directors, employees and contractors against any losses, expenses or claims including in respect of consequential, indirect or special losses and/or damages (including loss of profits) suffered by the Client or any third party arising as a result of the provision of the Services.
- 11.5. The Client acknowledges and agrees that the use of the Services is based on the information that the Client provides and is at its own risk. Neither INS nor its employees, and/or licensors warrant that the Services will result in the Client's desired outcome. INS does not make any warranty as to the outcome of the Services and the Services are made available to the Client on an "as-is" and "as-available" basis without warranties of any kind, either express or implied.

12. BREACH

- 12.1. Either party ("**the innocent party**") shall have the right, at its election, to terminate these Terms by giving notice in writing to the other party ("**the breaching party**") in the event that:
 - 12.1.1. the breaching party commits any breach or permits the commission of any breach of any material obligation or warranty contained in these Terms and, in respect of such a breach capable of remedy, fails to remedy that breach within 10 (ten) business days after the giving of written notice to that effect by the innocent party; or
 - 12.1.2. the breaching party repeatedly breaches any of the terms and/or conditions of these Terms in such a manner as to justify the innocent party in holding that the breaching party's conduct is inconsistent with the intention or ability of the breaching party to carry out the provisions of the Terms.
- 12.2. The cancellation of these Terms will be without prejudice to any other rights or remedies the innocent party may have in law (including the right to claim damages).
- 12.3. In the event of cancellation of these Terms written notice will take effect on the giving of such notice.

13. DISPUTE RESOLUTION

- 13.1. Should any dispute, disagreement or claim arise between the Client and INS concerning the Services or anything related thereto, the parties shall endeavour to resolve the dispute amicably, by negotiation, and with the best interests of both parties in mind.
- 13.2. Should the parties fail to resolve such dispute in the aforesaid manner or within such further period as the parties may agree to in their negotiation, it shall be resolved with the assistance of an independent expert, or finally, by arbitration in Cape Town, South Africa, under the rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed by INS.
- 13.3. The parties both agree that in no circumstance will either party publicise the dispute on any media platform, including social media. The parties understand that any publicity of this nature can cause serious damage to the other party, which damage may result in a financial claim.

14. USE OF SUB-CONTRACTORS

INS will be entitled to utilise sub-contractors for any of the rights or obligations contained in these Terms. INS will ensure that its chosen sub-contractors are under obligations of confidentiality regarding the Services, which obligations of confidentiality will be no less stringent than those in these Terms. INS will be liable for the performance of its chosen sub-contractors.

15. NON-CIRCUMVENTION AND SOLICITATION

- 15.1. It is specifically provided that neither party shall be entitled to enter into any correspondence, negotiations, or contractual relationships with any of the other party's clients, partners, customers, suppliers or contractors in a manner that relates to the Services without the prior written consent of the other party in each instance, which consent shall not be unreasonably withheld.
- 15.2. For the duration of a Proposal and for one (1) year thereafter, neither party shall solicit or hire employees or contractors of the other party without prior written consent. Neither party shall circumvent this restriction by engaging such employees or contractors through an intermediary, affiliate, or related entity.
- 15.3. If a breach of clause 15.2 occurs, compensation may be payable to the other party to reasonably compensate for the loss incurred due to such breach, with such compensation being no less than an amount equal to one (1) times the annual salary or fees of the solicited employee or contractor.
- 15.4. This clause will survive termination of these Terms if cancelled or terminated for any reason.

16. FORCE MAJEURE

It is agreed that neither party shall be liable for delay or failure to perform any obligations contained herein if such delay is due to acts of God, fire, earthquake, labour dispute, war, martial law, interruption of transport, government order, electrical load-shedding or surges, riot, revolution, outbreak of epidemic, pandemic or other widespread diseases or any other cause beyond the reasonable control of the parties. If a force majeure event continues for more than 60 (sixty) days, either party may terminate the relationship upon written notice to the other party.

17. SERVICE ADDRESS

Each of the parties choose *domicilium citandi et executandi* for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from the Terms at their respective addresses as nominated to each other in writing from time to time.

18. GENERAL

- 18.1. **Survival of Rights, Duties and Obligations:** Termination of these Terms for any cause whatsoever shall not release either party from any liability which at the time of termination has already accrued to the other or which thereafter may accrue in respect of any act or omission prior to such termination.
- 18.2. **Entire Agreement and Variation:** These Terms contain the entire agreement between the parties and neither party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 18.3. **Indulgences:** No indulgence, leniency, or extension of time which any party (“**the grantor**”) may grant or show to the other shall operate as an estoppel or in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 18.4. **Governing Law:** These Terms shall be governed by and interpreted in accordance with the law of the Republic of South Africa. All disputes, actions, and other matters in connection with the Terms shall be determined in accordance with such law.
- 18.5. **Severability:** Each undertaking in these Terms shall be construed as a separate undertaking and if one or more of the undertakings contained in the Terms is found to be unenforceable or in any way unreasonable, the remaining undertakings shall continue to bind the parties. To the extent possible in any jurisdiction to which these Terms may apply or in which these Terms may be enforced, if any undertaking contained in these Terms is found to be void but would be valid if the period of application thereof were reduced or if some part of the undertaking were deleted, the undertaking in question shall apply with such modification as may be necessary to make it valid and effective.