

## TERMS OF BUSINESS

### BMT NETHERLANDS B.V. and BMT BELGIUM NV (hereafter referred to as "BMT")

#### ARTICLE 1 – GENERAL

- a) The "Contract" shall be defined as:-
- these Terms of Business; and
  - the Additional Terms of Business, which shall be included in the definition of Contract if, but only if, the Services are, or include, pre-risk Services or pre-insurance Services described on page ATB1. For the sake of clarification, the Additional Terms of Business shall be automatically included in the definition of "Contract" if Services which do not initially include pre-risk Services or pre-insurance Services evolve so as to include such pre-risk and pre-insurance Services; and one of the following:-
    - i. the Contract Summary Sheets (if these are issued by the Company and are agreed by the Client); or
    - ii. the confirmation of the engagement issued by the Company; or
    - iii. (where neither the Contract Summary Sheets nor a confirmation of the engagement are issued by the Company) any additional documentation issued by the Company confirming the Specification and the Scope of Services, the Commencement Date and the Estimated Completion Date for the Services, the Fees payable by the Client to the Company, the Deliverables (if any) and the Special Conditions (if any).
- b) The terms of the Contract (as defined above) comprise the entire agreement between the Client and the Company relating to its subject matter and will supersede and replace all previous proposals, correspondence, understandings, contracts or other communications, including the Client's standard terms. Neither the Client nor the Company will be liable in contract, tort or otherwise for any representation that is not specified in this Contract (other than a fraudulent misrepresentation on which a party can be shown to have relied). The Company and the Client both represent that they have not relied on or been induced to enter into this Contract by a statement or representation made by the other party other than those specified in this Contract.

#### ARTICLE 2 - DEFINITIONS

"Client" means the party at whose request or on whose behalf the Company provides services.

"Company" means the BMT legal entity defined on page CSS 1 of the Contract Summary Sheets or the BMT legal entity which has sent the Client the confirmation of the engagement or the BMT legal entity which has sent the Client the additional documentation referred to in Article 1 a) above. Notwithstanding this, the BMT legal entity must be one of those legal entities referred to in Article 3.1 (a) below and it shall not mean any other company.

"Disbursements" means the cost of photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary. Office charges are scaled to invoice value.

"Engagement" means everything mentioned under Article 3.1, sub-Articles (a) to (f) inclusive.

"Fees" means the fees charged by the Company to the Client and shall be invoiced together with any value added tax or equivalent where applicable and any Disbursements.

"Report" means any report, statement and/or certificate issued and/or supplied by the Company in connection with instructions received from the Client.

"Services" means all services described either in the confirmation of engagement issued by the Company and/or on the Contract Summary Sheets issued by the Company and/or the applications/work as described in article 3.1 a) up to and including f).

## **ARTICLE 3 – APPLICATION OF TERMS OF BUSINESS**

### **Article 3.1**

Unless explicitly agreed otherwise in writing by the Company ("the Company") these Terms of Business apply to the following:

(a) all Contracts entered into with the following companies:-

- BMT Netherlands B.V. (including any trading name registered under this company)
- BMT Belgium NV
- BMT UK2 Limited

(b) all services rendered by the Company ;

(c) all work carried out by the Company ;

(d) all products or goods provided by the Company ;

(e) all offers and quotations made by the Company ;

(f) all courses and trainings offered by the Company ;

(g) anything resulting from or in connection with the aforementioned Contracts, services, work, products or goods, offers and quotations, including, but not restricted to, future engagements and/or amended engagements.

### **Article 3.2**

Anyone (whether a legal person, private person or company) granting an engagement to the Company will hereafter also be referred to as the "Client". Any legal person granting the engagement to the Company on behalf of another party is required to immediately advise on whose behalf the engagement is granted and submit a copy of these Terms of Business to that other legal person.

### **Article 3.3**

In the event of possible deviations or discrepancies between these Terms of Business and those of the Client, then these Terms of Business shall prevail to the exclusion of the Client's terms of business.

### **Article 3.4**

In the event of deviations between the English text of these Terms of Business and any translation thereof, the English text takes precedence.

### **Article 3.5**

In the event that the Company deviates from any stipulation in these Terms of Business which only the Company is permitted to do, then the remaining Terms of Business continue to apply in full. If any of these Terms of Business is lawfully declared completely or partly null and void or unlawful, then the remaining terms of business continue to apply in full.

## **ARTICLE 4 - PERSONS WHO CAN BENEFIT FROM THESE TERMS OF BUSINESS**

The stipulations in these Terms of Business have been made on behalf of:

- a) the Company including its employees, members of the board, management and persons working in whichever capacity for the Company;
- b) all third parties who have been or will be instructed by the Company;
- c) anybody through whose actions or negligence the Company has been or will be held liable;
- d) all former employees, members of the board, management of the Company and/or any other persons previously having worked in any other capacity for the Company;
- e) any possible beneficiaries of wills and legal successors of the parties mentioned here above under (a) up to and including (d) of this Article 4.

## **ARTICLE 5 – SERVICES, ACCEPTANCE AND COMMENCEMENT**

### **Article 5.1**

All engagements will be accepted and carried out exclusively by the Company (or by any person instructed by the Company in accordance with Article 4). This also applies when it is the explicit or implied intention of the Client that the engagement is to be carried out by a particular person. The Client confirms that the definition and scope of the Services is sufficient to meet its needs. The Company shall be entitled to act upon the instruction of any of the Client's employees or agents.

### **Article 5.2**

An engagement granted to the Company is to be considered as accepted by the Company only if this has been confirmed in writing by the Company or when the Company has commenced with the execution of the engagement. Unless otherwise agreed in writing by a Director of the Company, any acceptance shall always take place (or be deemed to have taken place) on the basis that these Terms of Business apply.

### **Article 5.3**

The Company will normally commence performance of the Services on the date specified in the confirmation of the engagement or, if not specified there, on the Contract Summary Sheets or as otherwise agreed in writing. If, at the request of the Client and subject to the prior agreement of the Company, this date is changed for any reason, the Company reserves the right to amend the fees specified by the Company to cover any further costs and/or expenses incurred by the Company, as a result of such delay.

### **Article 5.4**

The Company shall not be responsible for any failure to advise on or comment upon any matter which falls outside the scope of the Services (as indicated on the confirmation of the engagement, or on the Contract Summary Sheets or in any other documentation) and the Client shall be responsible for determining whether the Scope of Services is sufficient for the Client's/Client company Group's purposes; if the Scope of Services is not sufficient or if the Scope of Services is unclear, then the Client shall be responsible for reverting promptly to the Company to ensure that the Scope of Services is altered.

## **ARTICLE 6 – CLIENT'S PROVISION OF PROPER AND TIMELY INFORMATION**

The Client shall, at the time of granting the engagement, and immediately when further information becomes available to the Client which is relevant to the performance of the Services, furnish the Company free of charge with all data and information which are necessary in order to carry out the engagement adequately. The Company shall be entitled to rely upon such data and information. The Client guarantees that all data and information provided is correct and complete. The Company is entitled to suspend the commencement and/or execution of the engagement so as to verify the accuracy of the data and information provided. In any event, the Company shall not be liable in whole or in part for any damage which is attributable, in whole or in part, to the data and/or information provided by the Client or for his account and which is shown to be incorrect, or incomplete, not supplied at all or not supplied in a timely manner.

## **ARTICLE 7 – ORDER PROCESS AND CONTRACTING**

### **Article 7.1**

When carrying out the engagement the Company will exercise the reasonable due skill and care of a good provider of services.

### **Article 7.2**

The execution of an engagement will be for the account and risk of the Client.

### **Article 7.3**

The Company is authorised to take or refrain from taking any measures which in its view are necessary in the interests of the engagement and such for the account and risk of the Client.

### **Article 7.4**

The Company is entitled to decide which employee(s) or person(s) working otherwise for the Company is to actually/also carry out the engagement.

### **Article 7.5**

The Company is entitled within the scope of the engagement and the execution thereof to instruct third parties, whereby the Company is free in its choice as regards the identity of the third party involved. The Company shall, when choosing the third party, exercise the care of a good provider of services when making such choice.

### **Article 7.6**

The Client declares hereby unconditionally and irrevocably that the Company has the authority, either in its own name or in the name of the Client, to contract with third parties under acceptance of and/or applicability of the standard terms and conditions employed by those third parties, even when such standard terms and conditions include a stipulation which completely excludes the liability of the third party or (excessively) limits liability, contains a jurisdiction clause (whether arbitral or not), a choice of law clause and/or an indemnity clause. All clauses including those limiting, excluding or establishing liability that third parties can invoke, within the framework of the engagement granted, against the Company, can also be invoked by the Company against the Client.

### **Article 7.7**

Third parties are instructed for the account and risk of the Client. The Company shall not be liable or responsible for shortcomings of third parties nor shall the Company be liable or responsible for non-functioning (or not correctly functioning) equipment used, or to be used, by the Company or by third parties.

This exclusion of liability for shortcomings and equipment shall include, but not be limited to, software, databases, registers or other matters. If the Company is found legally liable for such matters then its liability will always be limited as provided for in these Articles, including in particular, Article 11. iv).

## **ARTICLE 8 – CHANGES & VARIATIONS**

Should the Client require any additional services, the Company will be pleased to discuss any request with the Client in order to meet the Client's requirements. Details of the Contract Variation may include the effect upon the Fees, Disbursements etc. and upon the estimated Completion Date; where practical, then such details shall be agreed in writing prior to the Contract variation being carried out; where prior agreement is not practical then the Contract variation may be executed subsequently on reasonable terms. The Company shall be entitled to refuse to provide the additional services for its own reasons which might include lack of time or lack of competence in a particular area. Such refusal shall have no effect on the original engagement.

## **ARTICLE 9 - FORCE MAJEURE**

### **Article 9.1.1**

The Company will not be responsible for any delay or other consequences or liability resulting from:

- i. any failure by the Client or a third party to perform the Client's obligations pursuant to this Contract (including, but not limited to, failing to provide timely information, supplying incomplete or defective information, delaying commencement of the Services or failing to provide any materials or facilities required by this Contract); or
- ii. any other delay caused by the Client's or any third parties acts or omissions, or the acts or omissions of the Client's respective employees, agents or subcontractors, or
- iii. any delay caused by circumstances beyond the Company's reasonable control, including, without limitation, a failure by any government body, agent or regulator to grant relevant approvals, strikes, lock-outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, adverse weather conditions or prolonged power failure ("Force Majeure").

#### **Article 9.1.2 - Government or Regulatory Authority Action**

The Company will have no liability for any acts, decrees or restraints of any Government institution or regulatory body or for any changes in any such regulatory rules or regulations such as the rules or regulations of a Classification Society, a marine safety agency or a quality assessment certification body introduced subsequent to the signature of this Contract.

#### **Article 9.1.3 - Reliance upon Information Received**

In conducting any survey, the Company is allowed to rely in good faith upon any information with which the Company is provided by the Project(s) owner(s), Project(s) crew(s), ships broker, yacht broker, insurer or prospective insurer and/or any Classification Society or bona fide third party body and/or upon the instructions and information received from any apparently authorised employees or agents of the Client and the Company shall not be liable in respect of any act or omission or failure to advise or comment upon any matter which falls outside the Scope of Services or for any recommendation based upon the information or instructions with which it has been provided directly or indirectly by the persons or organisations referred to above.

#### **Article 9.1.4 - Entitlements**

Where delays are caused by the circumstances specified above, the Company will be entitled to (i) the reimbursement of any costs and/or expenses the Company incur as a result of the delay, including, any fees owing to a third party such as a subcontractor or an employment agency together with loss of profits; (ii) re-schedule the Services in order to avoid a conflict of interest with services being performed for other clients; and (iii) redeploy any of the Company's staff to work for other clients and/or at Company's expense, to lay off and then re-hire staff to work on the re-scheduled Services.

#### **Article 9.2**

The Company is authorised to declare force majeure when the execution of the engagement is partly or in whole – whether or not temporarily – prevented or hampered by circumstances beyond its reasonable control, including, - but not limited to - governmental measures, fire, weather circumstances, the (temporary) non-delivery of goods or services by the client or third parties, operational breakdowns, labour strikes, illness, etc.

#### **Article 9.3**

In the case of force majeure on the side of the Company its obligations will be suspended for the length of the force majeure. Should the Company invoke force majeure for a period longer than a month then both the Company and the Client shall be entitled to annul the part of the engagement not yet executed by means of a written notice to the other party without being liable for compensation for damages.

### **ARTICLE 10 - REPORTS, STATEMENTS AND CERTIFICATES**

Following the completion of the engagement the Company will issue a written report, statement or certificate of its findings to the Client. Furthermore, also at the request of the Client, the Company can issue an interim report to the Client. Such report is intended for the Client only, but the Company will not unreasonably withhold its consent to the Client disclosing any report(s) to a

named third party. Where the Client has agreed to allow a third party to take cognizance of the content of the work performed by the Company for the Client or of any written report, the Client shall in advance of releasing any report immediately provide the third party with a copy of the complete Contract documents and also ensure that all terms of such Contract documents are also accepted by the third party before the report is released, such procedures to take place in order to ensure that any possible liability of the Company towards such third party (including its underwriters) will never exceed any possible liability of the Company vis-à-vis its Client. The Client indemnifies and holds harmless the Company and all parties mentioned in article 4, paragraph a) up to and including e) against claims by third parties (and their underwriters) who claim to have suffered damage as a result of or in connection with the work carried out by the Company on behalf of the Client or as a result of or in connection with any written report.

## **ARTICLE 11 – LIMITATION OF THE COMPANY’S LIABILITY**

The following limitation of the Company’s liability shall apply:

### **i) Standard of Care**

When providing the Services and preparing any Report(s), the Company will use reasonable due skill and care.

### **ii) Client’s Acknowledgement**

The Client accepts that it is neither in its interest nor that of Company for the Company to accept unlimited liability since such a demand would place an unfair (and potentially uninsurable) burden on the Company such that it would be uneconomic for the Company to be able to offer the Services at a reasonable price.

### **iii) Indemnity for persons covered under Article 4 of the Terms of Business**

The Client indemnifies and hold harmless parties mentioned in Article 4 paragraph a) up to and including Article 4 paragraph e) of the Terms of Business against claims from third parties.

### **iv) General Exclusion of Liability**

a) The Company’s total liability arising out of or relating to the Services and/or a Contract whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise will not exceed:-

- five times the amounts paid (or payable) to the Company for the engagement in question (excluding VAT); or
- EUR 50,000 (fifty thousand Euros)

whichever is the lesser.

If however, these Terms of Business form part of an enabling (or call-off) contract with the Client, then the Company’s total liability arising out of or relating to the Services and/or a Contract whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise will not exceed:-

- five times the amounts paid (or payable) to the Company for the specific task (or vessel) called up under such enabling contract (excluding VAT); or
- EUR 50,000 (fifty thousand Euros)

whichever is the lesser and the Client shall only be entitled to claim once in respect of any cause of liability.

b) The client confirms and warrants that it shall not, and the Client shall procure that all third parties to whom the Client may supply (subject to the Company's written permission) a copy of the Company's Report(s) shall not bring any legal action against the Company in any court or legal forum in the world for any amount which exceeds the caps on the Company's liability as stated in this sub-clause paragraphs a) above (the "EXCESS") and if and to the extent that the Client or a third party shall do so, the Client shall ( without prejudice to the provisions of Article 10 above) indemnify and hold the Company harmless in respect of the EXCESS.

**v) Exceptions for Dutch and Belgium companies regarding Limitation of Liability to the General Exclusion of Liability in sub-clause iv) above**

a) The exclusions and caps stated in sub-clause iv) above shall not apply to the Company, if established in the Netherlands, if damage and/or liability results from the Company's own act or negligence done either with the intention to cause that damage and/or that liability, or done recklessly and with the knowledge that said damage would probably be the result; however this exception shall only be triggered in the case of intentional or reckless behaviour (i.e. with the knowledge that damage would be the result) of the Company's senior management.

b) The exclusions and caps stated in sub-clause iv) above shall not apply to the Company, if established in Belgium, to the extent that such liability may not be so limited or excluded by virtue of statute or other law of Belgium.

**vi) Specific Exclusion of Liability for Certain Items**

The Company will not be liable to the Client or any other person for:

a) loss of profit, business, contracts, goodwill, revenue or anticipated savings; or

b) any indirect or consequential loss or damage or consequential damage of whatsoever nature and howsoever caused, including but not limited to loss of profits, business interruption, business damage, not being able to enter into or continue with agreements, the missing out on income, goodwill damage, time loss, loss of hire, cleaning costs, punitive and administrative measures and costs, imposed fines and charges and taxes, and other forms of indirect damage. Where the Company is however found liable in respect of such costs or damage such liability is always subject to the restrictions in this letter, among which is sub-clause iv) above; or

c) any fines, penalties, punitive, exemplary or non-compensatory damages, however expressed or described.

**vii) Proportionate Liability**

Subject always to the cap on the Company's liability under sub-clause iv) above, the extent to which any loss or damage will be recoverable from the Company by the Client will also be limited so as to be in proportion to the Company's contribution to the overall fault for such loss or damage, taking into account any contributory negligence by the Client, the Client's assureds, the Client's other consultants and/or other advisers and/or any other third parties responsible to (or who contract with) the Client and/or liable in respect of such loss.

**viii) Client acting as Agent**

Should the Company discover that the Client is/was acting for someone else, or if the Client discloses to the Company that the Client is/was acting for someone else, then the Company reserves the right to continue treating the Client as "principal" and also reserves the right not to provide or to stop providing services to the Client or to that person. If the Client fails to make such a disclosure to the Company, then the Company shall not be liable to the Client or to that other person for any damage arising, directly or indirectly, in connection with any services provided by

the Company to the extent that damage arises as a result of the Client acting on behalf of that other person or relates to damage suffered by that other person.

**ix) Aggregate Limit and Exclusion of all other warranties, conditions, representations or terms**

The Client acknowledges and agrees that the limits of liability specified in this Contract apply in the aggregate to the Services and/or to this Contract. To the extent permitted by law, all warranties, conditions, representations or terms other than those expressly set out in this Contract are excluded, including but not restricted to all implied and statutory warranties and conditions.

**x) Separate Limitation**

Each of the foregoing paragraphs in this Article 11 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said sub-clauses is held inapplicable or unreasonable or unenforceable in any circumstances) and will remain in force notwithstanding termination of this Contract.

**xi) Client's Duty to Inform**

The Client will inform the Company of any act, statement, omission or negligence on the Company's part in connection with or in relation to this Contract in respect of which the Company are or may be legally liable to the Client or any other party whether in contract or in tort as soon as practicable after becoming aware of the same, and the Client and such third party will afford the Company if the Company so desire the reasonable opportunity to correct any deficiency in the Company's Services.

**xii) Time Limit for Claims, Evidence and Investigations**

The Company will be discharged from all and any liability in respect of any claim arising out of or in connection with the Services and/or this Contract (subject to these terms) whether in contract or in tort (including negligence) or otherwise, unless written notification of a claim is given within 12 months of the confirmation of the engagement. Any notification must be made in writing to the Managing Director of the Company and shall be followed as soon as practicable by a dossier sent by the Client to the Company containing all material facts, documents and evidence relating to the claim, and the Company shall have the opportunity to conduct its own investigations and to consider first hand evidence failing which the Company shall have no liability. If the duration of the Services is longer than 12 months however, then written notification of the claim must be given within 12 months of the date of the event giving rise to the cause of the claim.

**ARTICLE 12- FEES & EXPENSES**

Unless otherwise agreed, the Company's fees are based on the time the Company's staff (including any additional staff) will spend or have spent to complete the Services multiplied by the applicable hourly rate. Where appropriate, the Company reserves the right to employ additional surveying staff in order to meet the Scope of Services requirement and resource to provide an efficient, cost-effective Service to the Client within any applicable time constraints.

The Client will be responsible for the payment of the Company's fees and expenses in connection with the Services in accordance with these Terms of Business.

The Company shall have no obligation to publish its fees or rates; it shall be the responsibility of the Client to make appropriate enquiries of the Company to establish the same.



## **ARTICLE 13 – INVOICES, INSOLVENCY, OVERDUE PAYMENTS, TAXES AND SECURITY**

### **Article 13.1**

The Company may at any time send an (interim) invoice. Settlement of the invoices of the Company and other costs connected to this Contract should, without any right to postponement or set-off, take place within 30 days following the date of the invoice, unless the Company explicitly and in writing has agreed to a different time of payment or the Company, in the relevant matter, unilaterally employs and/or stipulates a different term.

### **Article 13.2**

In all cases in which agreed or invoiced amounts are invoiced exclusive of taxes, levies or governmental surcharges, including VAT, the Company still has the right to invoice such amounts subsequently to the Client; this shall also apply in cases where, on the invoices from the Company or in correspondence sent with an invoice, it is stated that the invoice is a final invoice.

### **Article 13.3**

All costs in connection with payments to be made to the Company, such as banking costs, are always for account of the Client.

### **Article 13.4**

The Client should lodge any possible objections to the amount charged within thirty days of the invoice date in writing to the Managing Director of the Company. Failing this, the Client will be deemed to have accepted the amount charged as due, whilst disputing the indebtedness of the amount payable is thereafter no longer possible.

### **Article 13.5**

In the event that the Client has not complied with the aforementioned terms of payment without prior written notice, then it is in default and the Company shall be entitled to charge a delayed payment compound interest of 1.5% a month (whereby a part of a month shall be counted as a whole month).

### **Article 13.6**

The Company is at all times entitled to request from the Client (because of the Company's motivating reasons) an advance payment in part or in whole as well as to request suitable security being put up for the payment obligation. An applicable term of payment or credit limit does not alter this authority.

### **Article 13.7**

In addition to invoiced fees and expenses, all (extra) judicial costs in connection with collection of fees and expenses incurred by the Company for amounts invoiced and/or amounts to be invoiced (with a minimum of 20% of the amount to be received) are always for account of the Client.

### **Article 13.8**

Without prejudice to any rights of recovery which the Company might have against a third party, the Company shall treat the Client identified in the Contract as the person responsible for paying for the Services performed, therefore the Company shall not need to be concerned as to whether the Client considers itself to be principal or agent nor shall the Company need to concern itself as to whether the Client is, or is not, paid by a third party.

## **ARTICLE 14 - SUSPENSION**

The Company shall, at its discretion, be entitled to postpone the execution of the engagement or to annul the engagement either in part or in whole without sending to the Client any formal written declaration notifying the Client that the Client is in default and/or notify the Client of its decision to postpone or to annul the engagement in whole or in part if:

- a) the Company shall be of the opinion that the engagement cannot be satisfactorily carried out without risk or danger to property or persons (the degree of risk and/or danger always being unilaterally assessed by the Company );

- b) the Client fails to fulfil any of its obligations in a timely, complete or proper manner;
- c) there is reason to believe that the Client will not be able to fulfil any of its obligations either at all or in a timely, manner complete or proper manner;
- d) the Client is declared to be in a state of bankruptcy;
- e) bankruptcy proceedings have been instigated against the Client;
- f) the Client has suspended or threatened to suspend payment to its creditors;
- g) the Client is in liquidation proceedings (whether voluntary or compulsory);

Any such postponement or annulment of the engagement shall be without prejudice of the accrued rights of the Company as regards compensation for costs, damages and interest and the Client shall have no right to any costs or damages or compensation for or in respect of any such postponement or annulment.

## **ARTICLE 15 – TERMINATION**

The Company may, without prejudice to any other rights and remedies the Company has pursuant to a Contract or otherwise and without incurring liability to the Client, terminate a Contract (in whole or in part) by giving notice in writing to the Client, and except where otherwise stated, such notice shall have immediate effect:

- a) if the Client commits any material or persistent breach of a Contract which is either not capable of being remedied or which the Client has failed to remedy to the Company's satisfaction within 10 working days of receiving written notice of the breach; or
- b) in the event of war, hostilities, civil war, rebellion, revolution, insurrection or other disturbance occurring in the country and/or in the territorial waters of the country in which the Services are being delivered or in the place the Client is otherwise domiciled and in all other cases of Force Majeure, the circumstances giving rise to the Force Majeure persists for a period of 30 working days; or
- c) if the Client compound with or negotiate for any composition with the Company's creditors generally or permit any judgment against the Client to remain unsatisfied for 20 working days; or
- d) being a company, the Client calls a meeting of Company's creditors or has a receiver appointed over all or any of the Client's assets or enters into any liquidation or be subject to an administrative order, administrative receivership, a winding up order or similar event; or
- e) if, being an individual, the Client shall die or have a receiving order made against the Client or the Client becomes bankrupt; or
- f) if the Client or any member of the Client Group becomes involved, or is likely to become involved, in giving evidence in any litigation or arbitration proceedings affecting the subject matter of a Contract or any matter connected or arising from a Contract which would result in a conflict of interest between the Company and the Client. If such circumstances arise or come to the Company's notice during the currency of a Contract, the Company will be entitled to discontinue performance of the Services and will forthwith be released from all liability to the Client, but nothing will prejudice any claim of the Company's against the Client or any other third party. If, during the currency of a Contract the Client become aware of any circumstances concerning litigation or arbitration proceedings as aforesaid, the Client must notify the Company without undue delay; or
- g) if at any time the Company believes that the Company's performance of the Services or any aspect of a Contract results in or might result in the Company's breaching any legal, regulatory or independence requirement in any jurisdiction; or
- h) if at any time the Client suffers a "change in control". By change in control the Company means that the ownership of the Client changes so that a different party than the current owners acquire more than half of the nominal value of its equity share capital, or so that a different member (than that current at the date of a Contract) is able to control the composition of the board of directors of Client; or
- i) if there is violence or a threat of violence against any of the Company's employees or against any contractors, consultants or third parties instructed by the Company; or
- j) if the working environment where the Services are to be performed is or becomes or may become unsafe; or

- k) if the Client does not, will not, or intends not to pay in full its invoice(s) for the Services or its invoice(s) for previous services; or
- l) in the case of a call off contract, the Company may terminate such Contract by 30 days' notice in writing without the necessity of giving a specific reason(s) for the termination.
- m) if prior to or during the execution of Services, there appears to be a (potential) conflict of interest.

With regard to paragraphs (i), (j) and (m) above, the judgment of the Company as to whether there is a threat of violence and/or whether the working environment is or becomes unsafe and / or there will be a (potential) conflict of interest shall be final and binding upon the Client.

If the Company terminates a Contract for any of the above reasons then without prejudice to any other rights and remedies the Company may have, the Client will on demand pay the Company's fees and disbursements in respect of all Services performed up until the date of termination and save in respect of termination arising as a result of part (f) above, for all costs irrevocably incurred as a result of the termination and for loss of profits.

Should the Company choose not to terminate a Contract then the Company shall still be entitled to claim from the Client compensation in respect of the breach and for additional costs incurred as a result thereof and an extension of time to complete the Services.

#### **ARTICLE 16 - INTELLECTUAL PROPERTY**

The Company will retain ownership in any deliverables or other materials or work products created pursuant to a Contract. Subject to payment by the Client of any amounts due under or in connection with a Contract, the Client will have a non-exclusive, non-transferable right to use the final version of any deliverables specified in the Contract Summary Sheets for the Client's internal purposes only and then solely for the purposes for which they are delivered but the Client must not provide these deliverables or copies of them to any third party other than as specified in Contract Summary Sheets or as may otherwise be agreed between the Company and the Client in writing.

Nothing in a Contract will affect the Company's (or the Company's licensors) rights in respect of any intellectual property rights held prior to the commencement of the Services or otherwise developed outside of this engagement (including any modifications or amendments thereto).

The Client grants to the Company and its subcontractors a non-exclusive and royalty-free right to use any materials supplied by the Client in connection with the Services for the purposes of performing those Services. The Client will indemnify the Company and keep the Company indemnified against any infringement by the Client, or any member of the Client Group of any third party intellectual property rights.

The Client acknowledges and agrees that the Company's working papers and other internal documentation are confidential to the Company and accordingly, will not be disclosed to the Client unless otherwise agreed in writing.

Nothing in a Contract will prevent or otherwise restrict the Company from developing or using any techniques, ideas, concepts, information or know-how relating to methods or processes of general application.

#### **ARTICLE 17 - CLIENT'S PROPERTY & RIGHT OF SET-OFF**

Where the Company is instructed to sell and/or auction any property or goods, whether or not court permission has been obtained (by the Client), the Company shall make an effort to obtain a reasonable going-rate price, such taking into account the relevant circumstances such as the condition of the property and/or goods and the then current market prices etc. In such sales, the Company shall always act as agent to the Client. The Company shall be accountable to the Client for any realised proceeds. The Company shall have the right to settle any outstanding amount from the Client to the Company with the realised proceeds. This right to settlement also covers claims

towards the Client which are not directly related to the present engagement and/or sale and/ or auction. The Client shall indemnify the Company against all liability, costs, charges, claims, assessments, fines, taxes, losses and charges of any sort which arise either directly or indirectly or are connected to the sale and/or auction.

## **ARTICLE 18– RETENTION OF MATERIAL AND / OR DOCUMENTS**

### **Article 18.1 - Samples & objects**

The Company can within the framework of the engagement, be it at the request of the Client or not, take into custody any samples or objects. The Company is free to refuse such a request to take such sample or object into its custody or to impose additional conditions related to such custody. After completion of the engagement the Company shall keep in custody any sample or object taken into custody for a period of six months, after which the sample and/or object will be destroyed. Should the Company explicitly agree to a request in this matter from the Client, then this term of storage of six months can be extended. The Company can at any time end the accepted engagement for storage (subject to giving a reasonable period of notice).

Any storage costs, destruction costs, fines and other related costs to the custody or destruction are for account of the Client.

Under no circumstance, can the Company be held liable for the loss of samples, documents, materials or other means of evidence.

### **Article 18.2 - Files**

Whilst certain documents may legally belong to the Client or a member of the Client Group, unless the Client tells the Company not to, the Company intends to destroy correspondence and other papers that the Company stores which are more than ten years old. If the Client wishes the Company to retain such correspondence and other papers for more than ten years then the Client must advise the Company of the applicable period for which it requires retention.

## **ARTICLE 19 – CONFLICT OF INTEREST**

The Company shall promptly notify the Client of any matter, including conflict of interest, which would render it undesirable for the Company to continue its involvement with the Contract. The Client shall be responsible for payment of the Fees due to the Company up the date of notification. The Client agrees that the Company may reserve the right to act, whilst performing the Services, for other clients whose interest are, or might be, adverse to those of the Client, subject to Article 20 (Confidentiality) and activating appropriate barriers which will be duly noted and approved by the Client (such approval not to be unreasonably withheld or delayed).

## **ARTICLE 20 - CONFIDENTIALITY**

Each Party undertakes not to disclose any information provided in confidence by the other party to any third party and the receiving party shall not permit access to such information by any third party unless the disclosing party expressly grants permission save where required to do so by an order of a competent court of law.

Each Party also agrees to comply with legislation designed to protect personal information and data relating to individuals as well as website requirements relating to the use of “Cookies”. The Client also confirms that it has obtained any consents necessary for the Company to gain access to any personal data which the Company need for carrying out the Services and providing Report(s) which are the subject of the Contract.

## **ARTICLE 21– PRIVACY OF CONTRACT**

### **Article 21.1**

Subject to Article 21.2, any Contract which is subject to these Terms of Business is intended to be a private contract between the parties hereto and it is not intended to confer any rights of

enforcement on any third party (other than on a permitted assignee to whom it is actually assigned) even if any of the Contract terms purport to confer a benefit on such a third party.

#### **Article 21.2**

The persons specified in Article 4 hereof shall have the right to enforce these Terms of Business and a Contract against any person bringing an action against it in accordance with the Contract.

#### **ARTICLE 22-NON-ASSIGNMENT BY CLIENT**

The Client is not entitled to assign, novate or otherwise transfer its rights and/or obligations (in whole or in part) under or in connection with a Contract to any third party.

#### **ARTICLE 23 – ALTERATIONS**

Any alteration to these Terms of Business (or the Additional Terms of Business) shall not be effective unless agreed in writing by the Managing Director of the Company.

#### **ARTICLE 24 – SEVERABILITY**

If any part of Terms of Business is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, then that provision will, to the extent required, be severed and will be ineffective, but will not affect any other provision of these Terms of Business which will remain in full force and effect.

#### **ARTICLE 25 -WAIVER**

No waiver by the Company of any breach of a Contract by the Client will be considered as a waiver of any subsequent breach of the same or any other provision.

#### **ARTICLE 26 -PUBLICITY**

Neither the Company nor the Client may refer to the Services and/or a Contract in any publicity material without the prior written consent of the other party (which must not be unreasonably withheld or delay) save that the Company may cite the Services as an indication of its experience.

#### **ARTICLE 27 – PRIVACY STATEMENT**

This Privacy Statement was formulated in order to meet the European legislation with regard to the processing of personal data, otherwise defined as the General Data Protection Regulation (hereinafter referred to as “GDPR”).

The contractor is the one responsible for the processing of personal data in function of all services and activities provided by them. This processing must be consistent with the GDPR. Safety, transparency and confidential collecting and processing are herewith of the utmost importance.

The principal declares to have taken note of the Privacy Statement and to accept its contents in full. Regarding processing of personal data under the terms of this agreement, the principal commits himself to taking all measures necessary to guarantee its privacy and protection.

#### Processing purposes – legal ground – which data

The contractor collects and processes personal data under the terms of the execution of the agreement, complying with statutory and regulatory obligations and the justified interest of the contractor. This concerns identity and contact data, technical information and other useful information necessary for conducting their activities. In addition to data of clients, suppliers/subcontractors and personnel, the contractor processes personal data of others, such as possible new clients/prospects, useful contacts within their field, network contacts, contacts of experts, etc.

The contractor does not collect personal data that is unnecessary for the execution of their activities.

Permission of the person involved will be asked at all times where direct marketing activities are concerned. This permission can be withdrawn at any time.

#### Protection and confidentiality of personal data

The contractor takes appropriate and reasonable technical and organizational measures to process personal data in accordance with an adequate level of safety and to protect this data from destruction, loss, forgery, alteration, unpermitted access or accidental notification of a third party, as well as all other non-permitted processing of this data.

#### Passing on to a third party

As part of the execution of the agreement, in pursuance of a court order or in order to comply with a certain statutory obligation, or in case a legitimate interest exists, contractor shall pass certain personal data on to third service providers, subcontractors or the government. In that case, the contractor shall make reasonable efforts to inform the person concerned in advance. It is possible that one or more of the aforementioned third parties are situated outside the European Economic Area ("EEA"). These third parties and the possible service providers appointed by them must respect the confidential nature and the security of personal data and are only allowed to apply same for purposes under the terms of which they were provided by the contractor.

Under no circumstances shall the contractor sell personal data or put personal data at the disposal of direct marketing agencies or similar service providers for commercial purposes without prior permission of the person involved.

#### Duration of the processing

Maintenance of specific data may be necessary for one or several of the following reasons:

1. To fulfil statutory or otherwise regulatory requirements.
2. To prove events/agreements in case of a dispute.
3. To comply with our operational needs.

Personal data that has been collected but has never been used for any professional purpose will be checked and may be destroyed at the discretion of the contractor.

#### Rights

Within the limits of the law, the person concerned has the right to take note of his/her data, to correct same as the occasion arises, to oppose against its processing, the right to have the processing limited, as well as the right to have the data removed. In those cases it is possible that the contractor is unable to implement the agreement.

Should these rights be violated, the person involved can lodge a complaint with the qualified supervisory authority.

## **ARTICLE 28– LAW, ARBITRATION AND JURISDICTION**

### **Article 28.1**

Subject to the provisions of Article 28.2:-

it is hereby specifically agreed that any lawsuit / legal proceedings by the Client against BMT or any legal relation between the Client and BMT, and save as additionally provided below any lawsuit by BMT against the Client, shall be filed exclusively in the High Court of London, United Kingdom, and that the laws of England and Wales shall exclusively apply; and

the Client irrevocably agrees and confirms that it shall not institute a lawsuit/ legal proceedings in any other court or forum and/or jurisdiction nor shall it join BMT in a lawsuit/ legal proceedings in any other court or forum and/or jurisdiction. The Client agrees to be responsible for the reasonable legal expenses and costs of BMT in removing and/or challenging a lawsuit filed in any other court or forum and/or jurisdiction and in any case where it shall join BMT in a lawsuit/ legal proceedings

in any other court or forum and/or jurisdiction the Client shall indemnify BMT against all reasonable legal expenses, costs and damages resulting therefrom; and

the Client irrevocably waives any objection which it might otherwise have had (whether based upon the personal domicile or personal jurisdiction of the Client or otherwise) to any lawsuit / legal proceedings being held exclusively in the High Court of London, United Kingdom and to the exclusive application of the laws of England and Wales.

#### **Article 28.2**

In the case of any dispute relating to the payment of the invoices of BMT and/or any other sums due from/by the Client to BMT, BMT may, at its sole option and discretion, bring a lawsuit / legal proceedings against the Client in the forum specified in the first paragraph of this clause, or in any jurisdiction where the Client has a place of business or/and before a court domiciled in one of BMT's office locations.

#### **Article 28.3**

The Client shall not bring any legal action against a surveyor of the Company and all actions of the Client shall be brought against the Company.

#### **Article 28.4**

These Terms of Business were written in the English language. In the event that there is a difference in meaning imputed by any translation, then the English version shall prevail over any other version.

### **ADDITIONAL TERMS OF BUSINESS & PROCEDURES**

#### **ARTICLE 29 –APPLICATION OF THESE ADDITIONAL TERMS OF BUSINESS AND PROCEDURES**

These additional Terms of Business and Procedures shall apply in addition to the Terms of Business above where the Services are rendered, or become rendered, in connection with any of the following:-

- i. towage approvals including calculations, inspections of tow and to be towed object(s) etc. which the client and/or its insurer(s) requires to be conducted by a surveyor as a pre-condition to insurance cover in accordance with the applicable standards agreed between the Company and the Client prior to the engagement;
- ii. calculations and/or checking of the forces during loading and the checking of hooks, lifting slings and the like together with the calculation and checking of lashings relating to transshipments, load-ins or load-outs of valuable project cargo which the Client or the insurer(s) requires to be conducted by a surveyor as a pre-condition to insurance cover in accordance with the applicable standards agreed between the Company and the Client prior to the engagement;
- iii. ship condition surveys which the insurer(s) e.g. a P&I club requires to be conducted by a surveyor as a pre-condition of (or a continuation of) any insurance such as hull and machinery or P&I insurance cover either based on a checklist or not;
- iv. a JH143 shipyard risk assessment which the client and/or its insurer(s) requires to be conducted by a surveyor in accordance with the Services agreed between the Company and the Client prior to the engagement. Where the Client is a shipyard, such Services must also be agreed in advance between the Client and its proposed insurer as a pre-condition to insurance cover. In the event that the Client does not supply all necessary information to the Company for the Company to be able to determine with certainty the Services required then the Client shall be bound to accept the Company's professional interpretation as to exactly what Services are required and how they are to be performed;
- v. a 360 Quality Association inspection for ships (in accordance with a checklist maintained by the said Association);

- vi. the 360 Quality Association inspection checklist for terminals (in accordance with a checklist maintained by the said Association);
- vii. any other JH requirements to be conducted by a surveyor which the client and/or its insurer(s) requires to be conducted by a surveyor in accordance with the Services agreed between the Company and the Client prior to the engagement. Where the Client is a shipyard, such Services must also be agreed in advance between the Client and its proposed insurer as a pre-condition to insurance cover. In the event that the Client does not supply all necessary information to the Company for the Company to be able to determine with certainty the Services required then the Client shall be bound to accept the Company's professional interpretation as to exactly what Services are required and how they are to be performed;
- viii. any other Services involving a risk/safety assessment or a risk/safety estimation in accordance with the Services agreed between the Company and the Client prior to the engagement.

### **ARTICLE 30 – DEFINITIONS**

The definitions in Article 2 above shall also apply to these Additional Terms of Business & Procedures. In addition, all of the items referred to in Article 29 are hereinafter referred to as the "Project".

### **ARTICLE 31 – ADDITIONAL EXCLUSIONS OF LIABILITY**

In addition to the exclusions of liability under Article 11, but subject always to the liability caps under Article 11 iv) and subject to the other provisions of Article 11, the following exclusions of liability shall apply:

The Company shall not be liable for:

a) any claims, loss, damage or expenses caused by or relating to any latent defects which were not apparent at the time when the Company surveyed the Project(s) (or any product or article which the Company have inspected) and which could not reasonably have been expected to have been discovered by such survey (either by reason of lack of access to a Project part, including lack of access to a shipyard, vessel or part of a vessel, limited availability of time or otherwise)

b) any claims, losses, damage, or expenses caused by or relating to:

- events or occurrences which were not directly caused by the Company's breach of contract or the Company's negligence; or
- adverse weather conditions or weather conditions exceeding the calculation design criteria; or
- adverse sea state conditions or sea state conditions exceeding the calculation design criteria; or
- any claims relating to the Company's reliance on publically available data (including, but not limited to Lloyds casualty data or information about port state control inspections); or
- if and to the extent where the Company have specifically counselled (either verbally or in writing) against taking an action or actions which have caused or contributed to such loss; or
- any loss caused by the un-seaworthiness or cargo-worthiness of a vessel (which, for the avoidance of doubt, the Company do not warrant); or
- any loss caused as a result of a vessel's crew not properly maintaining and tightening lashings of a cargo or a Project which is to be transported following the Company's inspection of the lashings; or
- (in respect of the value of a vessel) any loss caused to the owner or to a third party financier or to a subsequent owner which is attributable to a fall in the market for such vessels generally (and the Client shall indemnify the Company against any loss in this regard); or



- the Client (and/or the Client's assured's) failure to update or abide by the Client's (or its) own policies and procedures including, for the avoidance of doubt, all health and safety and/or fire procedures and/or welding/hot work procedures; or
- the absence of appropriate fire extinguishers in places where they are required, or where they might reasonably be expected to be, nor for any extinguishers not in working order; or
- the absence of fire officers or supervisory staff in places where they are required or are specified as required in the Client's own or its assureds policies and procedures; or
- any failure to obtain a hot work risk permit when required; or
- for any failure to remove or keep to a minimum and under proper control, any combustible material within an area covered or which should be covered by a hot work permit; or
- any failure by the Client (if it is a shipyard) or by a shipyard to be insured by an insurer (if the insurer is the Client) to keep or restrain combustible material to the area outside of a potential fire hazard area; or
- any inaccuracy which is not related to the Company's Scope of Services; or
- any failure, negligence, absence or omission of the Client's (or the Client's assured's) crew, staff, officers, agents or subcontractors; or
- any failure on the Client's part or the Client's assured's part (and in particular any failure of any of a relevant shipyard's fire officers (if any)) to properly assess a risk and to put preventative measures or extra preventative measures in place where they are required; or
- the Client's failure or the Client's assured's failure to take notice of and / or abide by any manufacturer's, or seller's, or lessor's, or hiring company's, conditions or warranties or terms or procedures or guidance notes applicable to any plant and machinery or equipment or goods or products or associated items relating to the Project ( and in particular if the Project involves the inspection or survey of a crane); or
- any error or inaccuracy in information supplied to the Company nor where information is, or has been, misrepresented to the Company, or withheld or concealed from the Company; or
- any loss, damage or personal injury caused by compartments in an explosive or toxic atmosphere or by compartments in an atmosphere with insufficient oxygen; or
- the use, installation or presence of hazardous (including explosive or rotting) materials at the site of the Project (including a relevant shipyard) or in the hold of a vessel; or
- the Client's failure or the Client's assured's failure to comply with laws or regulations and /or the manufacturer's technical manual and/or guidelines regarding the maintenance and inspection of cranes. In this regard, it is agreed that the Client shall comply and procure that the Client's assured's shall comply with all laws and regulations relating to the maintenance and inspection of cranes including, for the avoidance of doubt, all health & safety regulations and any written schemes of examination relating thereto and the Client shall also comply with any dates specified or implied for such maintenance and/or inspection as well as complying with any frequency for such maintenance or inspection specified in such laws and regulations.
- any changes in the assumed conditions after the moment of inspection.

If and to the extent that the Company shall be found to be liable for any of the foregoing, the Client shall indemnify the Company in full for all liability, costs (including legal costs), damages and expenses which the Company incur or may incur in respect thereof in excess of the liability cap stated in Article 32 below.

## **ARTICLE 32**

With regard to pre-risk and/or pre-insurance Services as described in Article 29 above, and not in respect of any other type of Services, Article 11 iv) (General Exclusion of Liability) shall be deleted and replaced with the following:

"The Company's total liability arising out of or relating to the Services and/or this Contract whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise will not exceed:-

- seven times the amounts paid (or payable) to the Company for the engagement in question (excluding VAT); or

- EUR 250,000

whichever is the lesser.

If however, these Terms of Business form part of an enabling (or call-off) contract with the Client which involves pre-risk and/or pre-insurance Services, then the Company's total liability arising out of or relating to the Services and/or this Contract whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise will not exceed:-

- seven times the amounts paid (or payable) to the Company for the specific task called up under such enabling contract (excluding VAT); or
- EUR 250,000

whichever is the lesser and the Client shall only be entitled to claim once in respect of any cause of liability."

For the avoidance of doubt, other than the above alteration to Article 11 iv), Article 11 shall continue to apply in full to pre-risk and pre-insurance Services.