



## Standard Terms and Conditions for the Provision of Lifeboat Inspections and Related Services

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 In these Conditions:

**"Applicable Laws"** means all national, supranational, foreign or local laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law in effect from time to time.

**"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday.

**"Certificate of Inspection"** means a certificate issued by the Company certifying that the LSA Equipment has been inspected by the Company and complies with the Standards.

**"Change of Control"** means that a person who had Controlled any person ceases to do so, or another person acquires Control of such a person.

**"Charges"** means:

- (a) the Company's rates for the provision of the Services as set out in the LIFA or, in the absence of a LIFA, as otherwise notified by the Company to the Customer Party; and
- (b) all fees, costs, surcharges, pass-through costs, out of pocket expenses, overtime charges, and the costs of waiting time, spare parts, replacements, hydrostatic tests, recharging of cylinders or extinguishers and transportation by road, barge, tender and any other expenses incurred by the Company in connection with the provision of the Services to the Customer Party.

**"Commencement Date"** has the meaning given to that term in Condition 2.5 (Basis of Contract).

**"Company"** means:

- (a) the entity (which shall either be Survitec Safety Norway AS or a member of Survitec Group Limited's Group) that is a party to the LIFA; or

- (b) where the parties have not entered into a LIFA, the entity (which shall either be Survitec Safety Norway AS or a member of Survitec Group Limited's Group) which is identified in the relevant acknowledgement of order.

**"Conditions"** means these standard terms and conditions for the provision of lifeboat inspections and related services and any special terms and conditions agreed between the Company and the Customer Party.

**"Confidential Information"** means the provisions of the LIFA and each Contract and all secret or confidential commercial, financial, marketing technical or other information, know-how, trade secrets and other information in any form or medium whether disclosed orally or in writing before or after the date of the LIFA (where a LIFA exists) or the date of the Contract (where no LIFA exists), together with any reproductions of such information in any form or medium or any part(s) of this information (and "confidential" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available).

**"Contract"** means any order and acknowledgment of order (whether formed under the LIFA or otherwise) between the Company and the Customer Party for the provision of Services, incorporating these Conditions.

**"Control"** means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares or power, ability to appoint directors, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly.

**"Customer"** shall have the meaning given to it in the LIFA.

**"Customer Party"** means the person(s), firm or company identified as the customer on the acknowledgement of order who purchases the Services from the Company and who may be either the Customer or a member of the Customer's Group.

**"Effective Date"** has the meaning given to that term in the LIFA.

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**"Force Majeure"** means any event outside the reasonable control of either Party preventing it from performing any of its obligations under the LIFA or the relevant Contract including any, Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the affected Party's own employees or others, default or delays of suppliers or sub-contractors, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services.

**"Group Company"** or **"Group"** means in relation to any company, that company and every subsidiary or holding company of that company or a subsidiary of such holding company or any such subsidiary or holding company (in each case from time to time) and the terms **"subsidiary"** and **"holding company"** shall have the meanings given to them by Section 1159 Companies Act 2006.

**"Inspection Chart"** means a report issued by the Company after a Lifeboat Inspection of the LSA Equipment specifying the Lifeboat Inspection has been carried out, actions taken and actions that may be required in the future in accordance with the Standards.

**"Inspection Ports"** means those ports where the Company will perform the Lifeboat Inspections as agreed in writing between the Customer (or the Customer Party, as applicable) and the Company and set out in the LIFA or in the relevant Contract. If no ports are set out in the LIFA or the relevant Contract, the Inspection Ports shall be those ports notified to the Customer or the relevant Customer Party (as appropriate) by the Company in advance of the relevant Lifeboat Inspection taking place.

**"Intellectual Property"** means any patent, copyright, database right, moral right, design right, registered design, trademark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right or other industrial or intellectual property right subsisting in any part of the world.

**"LIFA"** or **"Safety Inspection Fleet Agreement"** means, where applicable, the agreement with that title entered into between the Customer and the Company.

**"Lifeboat Inspection"** means an inspection of the LSA Equipment with related tests which may be undertaken on an annual basis or a five-yearly basis, as set out in the relevant Contract.

**"Lifeboat Inspection and Certificate of Inspection"** shall have the meaning given in Condition 4.1 (Provision of the Services).

**"LSA Equipment"** means the life-saving appliances (or LSA) equipment on-board the Ships upon which the Company shall perform the Lifeboat Inspections, such equipment to be agreed in advance between the Company and the Customer Party and set out in writing in either the LSA Equipment List which will form part of the LIFA or if there is no LIFA, in the Customer Party's order.

**"LSA Equipment List"** means a document specifying which LSA Equipment is installed or present on each relevant Ship.

**"LSA Repairs and Replacement"** shall have the meaning given in Condition 4.2 (Provision of the Services).

**"LSA Spares"** means those spare parts required for LSA Repairs and Replacement work as described in the relevant Inspection Chart.

**"Personnel"** means any person employed or engaged by the Company in providing the Services.

**"Safety Equipment Certificate"** means the relevant vessel's official safety equipment certificate issued by the relevant third party classification society with respect to the LSA Equipment's adherence to required standards.

**"Services"** means the Lifeboat Inspection, Lifeboat Inspection and Certificate of Inspection, the LSA Repairs and Replacement and any other services which may be agreed by the Company and set out in the relevant Contract.

**"Ship"** means the ships identified in the LIFA (or if no LIFA exists, identified in the relevant Contract) on-board which the LSA Equipment is installed and which are either administered or owned by the Customer Party. The term "Ships" shall be construed accordingly.

**"Standards"** means Safety of Life at Sea (SOLAS) Chapter III, 1974 with 1996 amendments Regulation 20 and IMO Regulation MSC 1/ Circ 1206 Rev. 1 and MSC / Circ 1277.

**"Year"** means a period of 12 months commencing on the Effective Date and each successive anniversary of the Effective Date and ending on the day before each successive anniversary of the Effective Date.

## 1.2 Drafting Conventions

- (a) References to a gender include every gender, reference to persons includes an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity and reference to the singular include the plural and vice versa as the context admits or requires.
- (b) Headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of these Conditions.
- (c) References to a Condition is, unless otherwise provided, reference to a clause of these Conditions. Reference to a Clause is, unless otherwise provided, reference to a clause of the LIFA.
- (d) Any reference to any statute or statutory provision shall be deemed to include (i) any subordinate legislation made under it; and (ii) any amendments, re-enactments or replacements of such statute or legislation.
- (e) The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

## 2 BASIS OF CONTRACT

- 2.1 Subject to any variation under Condition 2.2, the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer Party purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 2.2 Any variation to these Conditions and any representations about the Services shall have no effect unless such variation is expressly agreed in writing by the Company, refers specifically to the Contract and is executed by a duly authorised representative of the Company.
- 2.3 Any quotation or estimate made by the Company (including without limitation any quotation or estimate provided in a company catalogue, company brochure or internet website) is given subject to these Conditions. Without prejudice to the Company's right not to accept an order, quotations and/or estimates that are expressly given by the Company to the Customer Party shall be valid for fourteen (14) days from date of issue.

2.4 Each order for Services submitted by the Customer Party to the Company shall be deemed to be an offer by the Customer Party to purchase Services subject to these Conditions.

2.5 No order placed by the Customer Party shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company commences performance of the Services (in whole or in part, or whether by the Company or a third party). Any order shall be accepted entirely at the discretion of the Company, at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

2.6 The Customer Party shall provide any orders to the Company with at least ten (10) calendar days' notice in advance of the date on which the Services are required. Without prejudice to the foregoing notice period, the Company may accept orders from the Customer Party with a shorter notice period but shall be under no obligation to do so.

2.7 It is the Customer Party's obligation to ensure that the terms of its order and any applicable design, drawings, specification and any other data (whether or not supplied by the Company or the Customer Party) in relation to the Services are complete and accurate.

2.8 The Company reserves the right without liability to the Customer Party to make any changes in the specification of the Services which are required to conform with any applicable statutory or EC requirements or which do not materially affect the quality or performance of the Services.

2.9 The Customer Party can only cancel an order (or any part of an order) which the Company has already accepted, with the Company's prior written agreement. The Company is not bound to agree to any such cancellation and may complete such order even if the Customer Party purports to cancel it.

2.10 If the Company's performance of the Contract is suspended or delayed through the Customer Party's default (including, without limitation, lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the LSA Equipment), the Company shall be entitled to and the Customer Party shall immediately make payment in accordance with the Contract for any part of the Services which has already been performed prior to the suspension or delay and for any other additional costs that the Company incurs including storage,

insurance and interest as a result of such suspension or delay.

**3 DESCRIPTION OF THE SERVICES**

3.1 The quantity, quality, description of and any specification for the Services shall be set out in the Company's acknowledgement of order or, in its absence, any written quotation or estimate expressly sent by the Company to the Customer Party.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues, brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Services described in them and they will not form part of the Contract unless otherwise agreed in writing by the Company.

3.3 The Company's employees or agents are not authorised to give any advice, recommendations or representations concerning the Services which are not made in any visual or written sales literature issued by the Company (including any literature published on the internet) unless confirmed by the Company in writing. In entering into the Contract the Customer Party acknowledges that it does not rely on any such advice, recommendations and/or representations which are not so confirmed.

3.4 The Customer Party acknowledges that from time to time the Customer Party may supply the Company with designs, drawings, specifications and other data to enable the Company to perform the Services, and that the Company places particular reliance upon such designs, drawings, specifications and data.

3.5 Therefore, in addition to any other remedy available to the Company, the Customer Party irrevocably and unconditionally agrees to indemnify the Company, its employees, sub-contractors and agents in full and on demand (and keep them so indemnified) against all claims, demands, actions, proceedings and all direct and indirect damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees) and any consequential loss made against or incurred or suffered by any of them and whether wholly or in part resulting directly or indirectly from the matters listed below:

- (a) the performance of the Services by the Company in accordance with the Customer Party's designs, drawings, specifications or other data or information furnished or

instructions given by the Customer Party; and/or

- (b) any claims that any Intellectual Property or Confidential Information or other exclusive right of any third party has been infringed through the performance of the Services (save to the extent the same have been supplied in accordance with specifications or designs of the Company).

**4 PROVISION OF THE SERVICES**

**Lifeboat Inspection and Certificate of Inspection**

4.1 If, pursuant to Condition 2 (Basis of Contract) above, the Company agrees to provide a Lifeboat Inspection, the Company shall:

- (a) perform a Lifeboat Inspection;
- (b) issue a new or update the existing Inspection Chart; and
- (c) issue a Certificate of Inspection provided that any repairs or replacements of the LSA Equipment which were identified during the Lifeboat Inspection and set out in the relevant Inspection Chart (if any) have been completed in accordance with the requirements and recommendations set out in the Inspection Chart,

hereinafter referred to as a "**Lifeboat Inspection and Certificate of Inspection**".

**LSA Repairs and Replacement**

4.2 If, pursuant to Condition 2 (Basis of Contract) above, the Company agrees to undertake repairs to, or replace all or part of, the LSA Equipment, the Company shall undertake the repairs to or replace the LSA Equipment in accordance with the requirements and recommendations set out in the relevant Inspection Chart hereinafter referred to as the "**LSA Repairs and Replacement**" work.

4.3 Where LSA Spares are required to carry out the LSA Repairs and Replacement work, the Customer Party shall either:

- (a) provide the required LSA Spares to the Company; or
- (b) place a separate order to purchase the LSA Spares from the Company, which shall be subject to the Company's terms and conditions of sale for the supply of products and form a separate contract.

**Inspection Ports**

4.4 The Company shall carry out the Services at the relevant Inspection Port(s). The

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Company has no obligation to complete the Services in one Inspection Port. If the relevant Services have not been completed in one Inspection Port, the Company shall perform the Services in the next available Inspection Port (as nominated by the Company).

#### **Additional Services**

4.5 The Company shall perform any other services as may be agreed between the Customer Party and the Company and set out in the relevant Contract.

4.6 Any additional requirements from the Customer Party in relation to the Services must be specified by the Customer in writing and set out in its order and are subject to the Company's prior written agreement at all times.

#### **General**

4.7 Where the Company is to perform the Services on-board the Ship or at the Customer Party's premises, the Customer Party shall:

4.8 procure safe and unhindered access to the Ship and/or premises for all the Personnel to carry out the Services at all relevant times;

(a) ensure that all consents, permissions, or licences required to allow the Services to be provided are in place;

(b) ensure the provision of adequate power, lighting, heating and other such facilities or supplies required for the provision of the Services;

(c) provide adjacent to where the Services are to be provided storage for the materials required for the Services;

(d) ensure that the site where Services are to be provided are adequate for that purpose, clear and free from all health and safety hazards and possesses such facilities for the Personnel to comply with any Applicable Laws and as the Company shall reasonably require; and

(e) be responsible for the Personnel's death or personal injury or damage to or loss of the Company's (and subcontractors and Personnel's) property whilst on-board the Ship or on the Customer Party's premises except to the extent any such death or personal injury results from the negligence of the Company or its subcontractors.

4.9 The Company shall provide all Services using reasonable care and skill.

4.10 The Services will be deemed to be completed:

(a) when the Company issues a written notice to the Customer Party confirming such completion; or

(b) if the Company is available to perform the Services but is prevented from doing so by reason of:

(i) the lack of appropriate assistance from the Customer Party (such as lack of availability of test components or parts or from the Customer Party); and/or

(ii) the condition of the Ship, Customer Party's premises or site at which the Services are to be performed and/or the facilities at or the services available therein at the time agreed for the provision of the Services.

4.11 Any dates for the performance of the Services are intended to be an estimate only and time for performance shall not be of the essence. If no dates are so specified, performance of the Services shall be within a reasonable time.

4.12 In performing the Services, the Company shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Customer Party.

4.13 The Company may sub-contract performance of any of the Services (or part thereof) to any person, firm, corporation or organisation provided that the Company shall remain responsible to the Customer Party for the performance of such Services in accordance with the terms of the Contract.

4.14 The Company reserves the right to amend the scope of the Services as set out in the Contract and described in this Condition 4 if necessary to comply with Applicable Law, or if the amendment will not materially affect the nature or quality of the Services to be performed, and the Company shall notify the Customer Party in any such event.

## **5 PAYMENT TERMS**

5.1 The Company may issue an invoice for the Charges on or at any time after performance of the Services.

5.2 Unless otherwise agreed in writing by the Company, the Customer Party shall pay all invoices in full and cleared funds without any

- deduction, withholding or set-off within thirty (30) days of the date of the invoice.
- 5.3 The Charges are applicable only for the agreed Inspection Port and any Charges for Services to be performed outside of these Inspection Ports are available on request.
- 5.4 The Company shall be entitled to charge the Customer Party for any expenses reasonably incurred by its Personnel including travelling expenses, hotel costs, subsistence and any associated expenses, and if agreed in advance between the parties, for the cost of services provided by third parties and required by the Company for the performance of the Services.
- 5.5 All sums payable under the LIFA and each Contract are exclusive of value added tax or any other applicable tax or duty which must be paid in addition at the rate and in the manner prevailing at the relevant tax point.
- 5.6 All payments shall be in the currency set out in the LIFA or relevant Contract and made by electronic transfer to such bank account as the Company may from time to time notify the Customer Party with any applicable charges on such payments being at the Customer Party's expense.
- 5.7 The Company reserves the right to increase the Charges on each anniversary of the Commencement Date to reflect any increase in the consumer price index as published from time to time by the Organisation for Economic Co-operation and Development (OECD) in its 'Total OECD Inflation' figures. The Company shall give the Customer Party not less than one (1) month's written notice of any increase to the Charges.
- 5.8 The Customer Party represents and warrants that it shall comply with all applicable taxation laws, and shall not commit an offence of cheating the public revenue or an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by itself or any other person. The Customer Party shall be liable to pay any tax, duty, levy or charge of any kind imposed by any state or state authority by reason of the Company's provision of the Services (other than tax on the Company's overall net income imposed in a state in which the Company is based for tax purposes). Where the Company incurs expenses or is subject to any claims in relation to such payments, the Customer Party shall at all times fully indemnify the Company and hold it harmless in respect of all penalties, claims, damages, losses, costs and expenses (including but not limited to legal expenses) whatsoever arising incurred in connection with such taxes, duties, levies, charges or similar items of expenditure.
- 5.9 All payments payable by the Customer Party to the Company under the LIFA and each Contract shall become due immediately on termination of the LIFA or the relevant Contract.
- 5.10 If Contract is entered into by the Customer Party as an agent for a principal (disclosed or undisclosed) then the Customer Party shall be jointly and severally liable with such principal for the payments of all amounts (including the Charges) due to the Company in connection with the performance of the Services.
- 6 DELAYED PAYMENT**
- 6.1 If any sum payable under the LIFA or a Contract is not paid when due then, without prejudice to the Company's other rights under these Conditions, the Customer Party shall interest of four percent (4%) per annum above the base rate of Barclays Bank plc from time to time on any overdue payment from the due date until payment in full is received by the Company (before as well as after judgment) and the Company shall be entitled to suspend performance of its obligations under the relevant Contract until the outstanding amount has been received by the Company from the Customer Party.
- 6.2 If any sum is overdue, the Company is entitled to claim and recover full compensation from the Customer Party for collection of cost and expenses in and out of court and all legal costs and expenses on a full indemnity basis.
- 7 REMEDIES FOR BREACH**
- 7.1 The Company shall provide the Services in accordance with the provisions of the LIFA (if any) and the relevant Contract. Subject to Condition 10 (Exclusion and Limitation of Liability), if the Customer Party can prove to the Company's reasonable satisfaction that, due to the Company's own act or omission, the Company has failed to perform the Services in accordance with the LIFA (if any) and/or the relevant Contract, then the Company shall at its option remedy such breach:
- (a) by re-performing the relevant part of the Services free of charge up to the amount of the Charges received by the Company for the provision of such Services (exclusive of any value added tax); or

(b) by repaying or crediting the Customer Party that part of the Charges paid by the Customer Party to the Company relating to the provision of the relevant part of the Services (exclusive of any value added tax).

7.2 Subject to Condition 10 (Exclusion and Limitation of Liability), the remedies set out in Condition 7.1 shall only apply if the Customer Party notifies the Company in writing of any default within thirty (30) calendar days after any such default is discovered by the Customer Party or should have been discovered by the Customer Party. Following such thirty (30) calendar days period, the Company shall have no liability to re-perform the relevant Services or to provide a refund for the relevant Services but may do so at the Company's sole discretion. Where re-performance or a refund is provided by the Company then, to the extent permitted by law, such re-performance or refund will constitute the Customer Party's sole and exclusive remedy in relation to such breach.

## 8 RECORDS

The Company shall keep records of the Inspection Chart and Certificate of Inspection relevant to each Ship covered by the LIFA and each Contract for a period of time as required by local law in each Inspection Port.

## 9 THE CUSTOMER'S OBLIGATIONS

9.1 If requested by the Company, the Customer Party shall (within a reasonable time period and in any event no later than seven (7) calendar days in advance of the Company performing the Services) supply all drawings, technical documents, data and specifications necessary to allow the Company to perform the Services ("**Documentation**"). Following the receipt of such Documentation from the Customer Party, the Company may, in its sole discretion, delay the performance of the Services if the Documentation contains requirements that involve additional preparation time (including, by way of an example only, a requirement for additional parts that need to be ordered in advance).

9.2 Subject to Condition 4.4 (Provision of the Services), the Customer Party shall confirm in writing to the Company the agreed Inspection Port and agreed date for the Services to be carried out for each relevant Ship, no later than 10 calendar days prior to date on which the Services are to be performed.

9.3 The Customer shall ensure that the relevant Ship is available at the agreed Inspection

Port and agreed date for the Services to be carried out.

9.4 Unless otherwise agreed between the parties and where required by the Company (as notified by the Company in writing before the performance of the Services), the Customer Party shall (at its sole cost, expense and risk):

(a) transport the LSA Equipment from the Ship to a suitable land-based location as agreed between the parties;

(b) supply all cranes, lifting equipment and personnel required for such transportation,

prior to the carrying out of the Services by the Company. The Customer shall ensure that all LSA Equipment is securely supported either on-board the Ship and/or in the land-based location prior to the Company carrying out the Services.

9.5 Unless otherwise agreed between the parties and where required by the Company (as notified by the Company in writing before the performance of the Services), the Customer Party shall (at its sole cost, expense and risk):

(a) transport the LSA Equipment from the land-based location to the Ship;

(b) supply all cranes, lifting equipment and personnel required for such transportation,

on completion of the Services by the Company.

9.6 Unless otherwise agreed in writing between the parties, the Customer Party shall be responsible for providing any equipment required for the load test as part of the five-yearly Lifeboat Inspection.

9.7 The Customer Party shall, at all times, comply with any warnings, instructions or safety rules provided to it by the Company from time to time.

9.8 The Customer Party shall, at all times, comply with and apply best industry practice at all times in relation to storage, handling and use of all the LSA Equipment.

9.9 The Customer Party shall inform the Company and keep the Company informed of any Applicable Laws in connection with the performance or receipt of the Services.

9.10 The Customer Party shall take all necessary steps to ensure that it is safe on board the Ship for the Company to perform the Services.

- 9.11 Unless otherwise agreed between the parties, the Customer Party shall (at its sole cost and expense):
- (a) arrange all local transfers required to ensure the Personnel are at the relevant Inspection Port on the agreed date and at the agreed time for the performance of the Services; and
  - (b) arrange, where required, the attendance of the relevant classification society to witness the performance of the Services.
- 10 EXCLUSION AND LIMITATION OF LIABILITY**
- 10.1 This Condition 10 sets out the entire liability of the Company arising under or in connection with the LIFA (if any) and the Contracts.
- 10.2 Nothing in the LIFA, any Contracts or these Conditions shall exclude or limit either party's liability to the other for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or any liability which cannot legally be limited or excluded.
- 10.3 Subject to Condition 10.2, the Company shall not be liable to the Customer or any Customer Party under or in relation to the LIFA or any Contract (whether in contract, misrepresentation (whether tortious or statutory), tort (including negligence or breach of statutory duty) or otherwise):
- (a) in the event that a Lifeboat Inspection was not carried out prior to the expiry date of the relevant Ship's Safety Equipment Certificate due to:
    - (i) the relevant Ship not being made available to the Company at the agreed date and time and at agreed Inspection Port; or
    - (ii) the relevant Ship not being made available to the Company in sufficient time to allow the Company to complete the Lifeboat Inspection at such agreed date and time and at agreed Inspection Port;
  - (b) for any loss or damage to the Ship, the LSA Equipment or other property belonging to or in the possession of the Customer or the Customer Party arising due to:
    - (i) incorrect information being provided by the Customer or the Customer Party to the Company;
    - (ii) incorrect information contained within the LSA Equipment List, previous records of Lifeboat Inspections, safety certificates, Safety Equipment Certificates, Documentation or other information provided to the Company;
- (iii) any defects within LSA Equipment which could not have been reasonably discovered by the Company when providing the Services; or
  - (iv) any failure by the Customer or the Customer Party to implement the findings of any Lifeboat Inspection and Certificate of Inspection or any other recommendation of the Company;
- (c) for any loss or damage to the Customer's or the Customer Party's property (including the Ship and the LSA Equipment) or damage suffered by individuals during the transportation of the LSA Equipment from the Ship to the land-based location (and vice versa) in accordance with Condition 9 (The Customer's Obligations);
  - (d) for any defective LSA Parts installed by or on behalf of the Company as part of the LSA Repairs and Replacement work which have not been purchased from the Company;
  - (e) for any loss or damage suffered or incurred by the Customer or the Customer Party or any third person as a result of:
    - (i) any failure to provide the Services in accordance with the LIFA or the relevant Contract unless the Customer or the Customer Party notifies the Company in writing of such a claim (with detailed particulars of the circumstance giving rise thereto) within three (3) months of such failure coming to the Customer's or the Customer Party's notice; or
    - (ii) any failure to provide the Services in accordance with the LIFA and/or the relevant Contract as a result of any act or omission of the Customer or the Customer Party or its employees; or
    - (iii) any failure to provide the Services in accordance with the LIFA and/or the relevant Contract as a result of the Company's compliance with any instruction or direction given by the Customer or the Customer Party if the Company has informed the Customer or the Customer Party before it complies therewith



- that, in its opinion, that instruction or direction will inhibit performance of the Services; or
- (iv) the absence of any consent required to be obtained by the Customer or the Customer Party; or
  - (v) the incompetence of any consultant, professional adviser, contractor or person other than the Company and its Personnel employed by the Customer or the Customer Party to provide the Services at the Customer's or the Customer Party's specific request;
- (f) for any loss of profits, business, contracts, anticipated savings, goodwill or revenue, any wasted expenditure, any loss of market, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
  - (g) for any indirect or consequential loss or damage howsoever arising, even if the Company was aware of the possibility that such loss or damage might be incurred by the Customer Party.
- 10.4 Subject to Conditions 10.2 and 10.3 above, the total aggregate liability of the Company in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the LIFA (if any) and each Contract shall in no event exceed the greater of £250,000 or 125% of the Charges paid or payable (had the LIFA or the relevant Contract not been breached) under the LIFA and the Contracts.
- 10.5 To the extent permitted by Applicable Law, the Customer and each Customer Party will procure that any and all claims to be made against Survitec Safety Norway AS or any member of its Group arising under or in relation to the LIFA or any Contract will be made by the Customer or the Customer Party against the Company only and not by any other member of the Customer's or Customer Party's Group or by the owner of the relevant Ship or any other third party. For the avoidance of doubt any such claims will be subject to the exclusions and limitations on liability set out in these Conditions.
- 10.6 The Customer and the Customer Party acknowledges that the Company has calculated the Charges on the basis that the Company will exclude or limit its liability under the LIFA and the Contracts as set out in these Conditions and the Customer and the Customer Party agrees and warrants that:
- (a) the Customer and the Customer Party shall insure against or bear itself any loss for which the Company has excluded or limited its liability in these Conditions; and
  - (b) the Company shall have no further liability to the Customer or the Customer Party.
- 11 INDEMNIFICATION**
- 11.1 The Customer and the Customer Party:
- (a) acknowledges and agrees that the Services provided and supplied under the LIFA and each Contract are, or may be, hazardous to human health;
  - (b) shall ensure the safe and correct use of the LSA Equipment and assumes all risk and liability for the safe and correct use of the LSA Equipment;
  - (c) agrees that the Lifeboat Inspection and Certificate of Inspection are provided for the benefit of the Customer and the Customer Party only and shall procure that such Lifeboat Inspection and Certificate of Inspection is not relied upon by any third party or Group Company of the Customer or the Customer Party;
  - (d) shall familiarise itself and keep itself informed with respect to possible hazards to persons or property involved in the handling and use of the LSA Equipment; and
  - (e) shall advise its employees, independent contractors and others who handle LSA Equipment for the Customer or the Customer Party, and shall take such action as is reasonably necessary to advise others, who are foreseeable users of LSA Equipment of the suspected or proven hazards of LSA Equipment and the proper handling of the LSA Equipment.
- 11.2 In addition to any other remedy available to the Company, the Customer and the Customer Party shall indemnify, defend and hold harmless the Company, its Group Companies and their respective directors, officers and employees in full and on demand from and against all liabilities, penalties, interest claims, damages, demands, losses and costs and expenses (including reasonable legal and other professional adviser's fees and disbursements) arising, suffered or incurred by the Company or any of its Group Companies arising under or in relation to any breach by the Customer or Customer Party (as applicable) of its obligations under Conditions 10.5 (Exclusions and Limitations of Liability) and/or 11.1 above.

## 12 INSURANCE POLICIES

The Company shall maintain in force at its own cost such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the LIFA and each Contract and shall on the reasonable written request of the Customer Party from time to time allow the Customer Party to inspect and/or provide the Customer Party with copies of the full policy document for such policies and, on the renewal of each policy, the Company shall send a copy of the premium receipt to the Customer Party when requested to do so on reasonable notice in writing by the Customer Party.

## 13 SUB-CONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS

13.1 Neither the Customer nor any Customer Party shall be entitled to assign, charge, subcontract, transfer or otherwise dispose of all or any of its rights and responsibilities under the LIFA or any Contract or any part of either of them without the prior written consent of the Company.

13.2 The Company may assign, charge, subcontract or transfer any of its rights and obligations under the LIFA and any Contract or any part of either of them to any person.

13.3 No person who is not a party to the LIFA or a Contract (including any employee, officer, agent, representative or sub-contractor of either party to the LIFA or the relevant Contract) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provisions of the LIFA or a Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer or the Customer Party (as applicable) which agreement must refer to this Condition 13.3.

## 14 EXPORT TERMS

14.1 Where the Services are to be performed outside of the United Kingdom, the provisions of this Condition 14 shall apply notwithstanding any other provision of these Conditions.

14.2 The Customer Party shall be responsible for complying with any legislation or regulations governing the performance of the Services in the relevant country.

14.3 The Customer Party is solely responsible for complying with, and shall not do anything which would cause the Company to be in breach of, export control or sanctions laws, including without limit those of the U.S. and

the E.U. The Customer Party shall indemnify and hold harmless the Company against any and all damages arising from breach of any part of this Condition 14. The Company reserves the right to terminate the Contract in the event of such breach.

14.4 The Company shall not be obliged to perform any obligation under the Contract and shall have the right to terminate the Contract and/or the LIFA, without being liable for any damages or costs of any kind, if in its sole discretion it determines that such performance in full or in part would be in violation (including as a result of a delay in or refusal of any required licence) of any export control or sanctions laws, including without limit those of the U.S. and the E.U.

## 15 FORCE MAJEURE

15.1 A party shall not be in breach of the LIFA or any Contract nor liable for any failure or delay in performance of any obligations (except as to payment) under the LIFA or the relevant Contract (and the date for performance of the obligations affected will be extended accordingly) as a result of a Force Majeure, provided that such party complies with the obligations set out in this Condition 15. Save as provided in Condition, a Force Majeure will not entitle either party to terminate the LIFA or the relevant Contract.

15.2 The party affected by Force Majeure shall immediately notify the Customer Party in writing of the matters constituting the Force Majeure and shall keep the Customer Party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.

15.3 The party affected by Force Majeure shall take all reasonable steps available to it to minimise its effects on the performance of its obligations under the LIFA and the relevant Contract.

15.4 If the Force Majeure continues for longer than thirty (30) days, then either party to the relevant Contract or either party to the LIFA may, whilst the Force Majeure continues, immediately terminate the relevant Contract and/or the LIFA by notice in writing to the other party.

## 16 TERMINATION

16.1 If the parties have entered into a LIFA, the provisions of the LIFA shall govern any termination of the LIFA.

16.2 Either party may immediately terminate the Contract by giving notice in writing to the other party if:

- (a) the other party commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - (b) the other party commits a material breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after sixty (60) days of having been required in writing to remedy or desist;
  - (c) the other party:
    - (i) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
    - (ii) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
    - (iii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
    - (iv) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
    - (v) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or
    - (vi) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security; or
    - (vii) has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged within seven (7) days of it being levied;
    - (viii) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 16.2(c); and/or
  - (d) the other party ceases to carry on all or a substantial part of its business.
- 16.3 The Contract may be terminated by the Company with immediate effect by giving notice in writing to the Customer Party if:
- (a) the Customer Party fails to pay any sum payable under the Contract on the due date for payment and remains in default not less than ninety (90) days after being notified in writing to make such payment; or
  - (b) the Customer Party has undergone a Change of Control (save for the purposes of a solvent voluntary reconstruction or amalgamation).
- 16.4 Termination of an individual Contract shall not affect this LIFA or any other current Contract.
- 17 CONSEQUENCES OF TERMINATION**
- 17.1 The termination of the LIFA or any Contract will be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 17.2 On termination of the LIFA and each Contract for any reason whatsoever:
- (a) subject to Condition 17.1, the relationship of the parties will cease and any rights or licences granted under or pursuant to the Contract will cease to have effect save as (and to the extent) expressly provided for in this Condition 17;
  - (b) the Customer Party shall (at its sole cost, expense and risk) be responsible for arranging the return of, and shall return, the LSA Equipment to the relevant Ship;
  - (c) subject to Condition 17.2(d) each of the parties shall immediately return to the other party (or, if the other party so requests by notice in writing, destroy) all of the other party's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information;
  - (d) if a party is required by any law, regulation or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy by Condition 17.2(c), it shall notify the other

party in writing of such retention, giving details of the documents or materials that it must retain; and

- (e) Company may submit invoices for any Services that it has supplied but for which no invoice has previously been submitted, and the Customer Party shall pay these invoices immediately on receipt.

17.3 The provisions of Conditions 1 (Definitions and Interpretation), 5.9 (Payment of sums due on termination), 10 (Exclusions and Limitation of Liability), 17 (Consequences of Termination), 18 (Notices), 21 (Confidentiality), 22 (General), 23 (Law and Jurisdiction) and any provision which expressly or by implication is intended to come into or remain in force on or after termination shall survive the expiration or earlier termination of the LIFA or the Contract.

## 18 NOTICES

18.1 All notices between the parties about a Contract must be in writing and delivered by hand or sent by pre-paid first class post or prepaid international air postal service:

- (a) (in case of notices to the Company) to its registered office or such other address as shall be notified to the Customer Party by the Company in accordance with this Condition 18; or
- (b) (in the case of the notices to the Customer Party) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer Party set out in any document which forms part of the relevant Contract or such other address as shall be notified to the Company by the Customer Party in writing.

18.2 Notices shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two (2) Business Days after posting (exclusive of the day of posting);
- (b) if sent by pre-paid international air postal service, five (5) Business Days after posting (exclusive of the day of posting); and
- (c) if delivered by hand, on the day of delivery provided delivery is between 9.00am and 5.00pm on a Business Day and in all other circumstances the first Business Day after delivery.

18.3 For the purposes of Condition 18.2 and calculating deemed receipt all reference to

time are to local time in the place of deemed receipt.

## 19 ANTI-BRIBERY

19.1 The Customer and each Customer Party shall:

- (a) comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under such Acts set out in Condition 19.1(a) or any other applicable anti-corruption legislation;
- (c) have and maintain in place throughout the term of the LIFA and each Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with any anti-bribery legislation; and
- (d) enforce the policies and procedures described in Condition 19.1(c)

19.2 The Company may terminate the LIFA and each Contract immediately upon written notice to the Customer and the Customer Party (as applicable) where the Company or a Group Company of Company determines in good faith that Customer or the Customer Party (as applicable) has breached this Condition 19, and the Customer and each Customer Party shall indemnify the Company and all Group Companies of Company from all damages, penalties, fines and/or costs of any kind arising from, or relating to, any breach of this Condition 19.

## 20 MODERN SLAVERY

20.1 The Customer and each Customer Party shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and will not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

20.2 The Company may terminate the LIFA and each Contract immediately upon written notice to the Customer and/or the relevant Customer Party where the Company or a Group Company of Company determines in good faith that Customer or the Customer Party (as applicable) has breached this

Condition 20, and the Customer and each Customer Party shall indemnify the Company and all Group Contract Companies of the Company from all damages, penalties, fines and/or costs of any kind arising from, or relating to, any breach of this Condition 20.

## 21 CONFIDENTIALITY

21.1 Subject to Condition 21.2, the Company and the Customer (and each Customer Party) agree to keep all Confidential Information confidential, not to use it for any purpose (other than in the context of the Services ) and not to disclose it without the prior written consent of the other party to any third party, unless:

- (a) the information was public knowledge at the time of the disclosure;
- (b) the information becomes public knowledge other than by breach of the confidentiality requirements set out in these Conditions;
- (c) the information subsequently comes lawfully into its possession from a third party; or
- (d) such disclosure is required pursuant to any mandatory laws or regulations to which the disclosing Party is subject.

21.2 Each party shall be entitled to disclose Confidential Information to its directors, shareholders, officers, employees, advisers and consultants having a need to know the same. The Company may disclose the Confidential Information to potential assignees or transferees and may disclose Confidential Information for the purposes of performing the Services (including disclosing information to any sub-contractors or representatives of the Company).

21.3 Neither the Company nor the Customer (including any Customer Party) shall make any announcement, statement or press release concerning the LIFA, these Conditions or any Contract without the prior written consent of the other party.

## 22 GENERAL

22.1 Any Intellectual Property created by the Company in the course of the performance of the LIFA or any Contract or otherwise in the provision of the Services shall remain the Company's property. Nothing in the LIFA or any Contract shall be deemed to have given the Customer or any Customer Party a licence or any other right to use any of the Intellectual Property of the Company.

22.2 The LIFA and each Contract is entered into in the English language and all amendments

to the LIFA and each Contract, all correspondence concerning or relating to the LIFA and each Contract and all notices given and all documentation to be delivered by either party to the other under the LIFA or these Conditions shall be in writing in the English language or shall be accompanied by an English translation prepared by such person or body as the Company shall have approved in advance.

22.3 Nothing in the LIFA or any Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

22.4 The rights and remedies of either party in respect of the LIFA or any Contract shall not be diminished, waived or extinguished by the granting by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of the LIFA or any Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

22.5 If at any time any part of the LIFA or any part of a Contract is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from the LIFA or the Contract and the validity and/or enforceability of the remaining provisions of the LIFA or the Contract shall not in any way be affected or impaired as a result of that omission.

22.6 The LIFA, each Contract and these Conditions sets out the entire agreement and understanding between the Company and the Customer (or the Customer Party, as applicable) in relation to their subject matter and supersede and replace all prior arrangements, understanding, written or oral agreements between the Company and the Customer (or the Customer Party, as applicable) in relation to such subject matter. The Customer and the Customer Party acknowledge that they place no reliance upon any statement or representation not contained in the LIFA or the relevant Contract and the Company shall have no liability for any pre-contractual statement or representation that is deemed to be a misrepresentation of the terms of the Contract. Nothing in this Condition 22.6 will exclude any liability in respect of misrepresentations made fraudulently.

22.7 Save as expressly provided in the LIFA or these Conditions, no amendment or variation

of the LIFA or any Contract shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

place in the English language in London, UK. The seat of arbitration shall be in England.

END.

22.8 The Customer and the Customer Party agree they shall not, without the prior written consent of the Company, either on its own account or otherwise, solicit or entice away (or, in each case, attempt so to do), either directly or indirectly, any employee of the Company. This Condition shall not prohibit the Customer or the Customer Party from employing Personnel who apply unsolicited to general recruitment advertisements. This provision shall apply for the duration of the LIFA and each Contract and for a period of six (6) months thereafter or, if earlier, in relation to a particular employee or contractor of the Company, for a period six (6) months after that employee or contractor ceases to be engaged or employed by the Company in connection with the provision of the Services.

22.9 The Customer Party shall comply at all times with the Data Protection Act 1998 (or analogous legislation in other jurisdictions) and shall ensure that it has all appropriate rights and consents to pass personal data to the Company for the Company to process in accordance with the terms of the LIFA, each Contract and these Conditions.

22.10 The express provisions of the LIFA, the Contract and these Conditions are in place of all warranties, representations, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose), all of which are hereby excluded by the Company to the maximum extent permitted by mandatory law.

### **23 LAW AND JURISDICTION**

23.1 The LIFA, the Contract, these Conditions and any issues, disputes or claims arising out of or in connection with any of them (whether contractual or non-contractual in nature such as claims in tort, from breach of statute, regulation or otherwise) shall be governed by and construed in accordance with English law.

23.2 All disputes or claims arising out of or in connection with the LIFA, each Contract and these Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. Such arbitration shall take

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## **Survitec**

Survitec Service & Distribution

Survitec House, Lederle Lane, Gosport, Hampshire PO13 0FZ, UK

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## ANNEX

### First Contract

***[Note: Form of first contract (i.e. order and acknowledgement of order) to be agreed and inserted.]***

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## Survitec

Survitec Service & Distribution

Survitec House, Lederle Lane, Gosport, Hampshire PO13 0FZ, UK

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