

# DAMCO



## DAMCO SURVEY AB

Marine / Non-Marine / Cargo  
P & I Surveyors / Consulting Engineers  
Claims Adjusters / Settling and Recovery Agents



- Hull & Machinery
- On/Off-Hire Condition, Bunker
- Towage Approvals
- Salvage Surveys
- Repair work Superintendency
- General Condition, Valuation Surveys
- Yacht Damage, Condition Surveys
- Cargo Damage Investigations
- Loss – Prevention
- Pre-Loading Condition Surveys
- Lashing/Securing of Project Cargoes
- Draft-Surveys
- Fresh Fruit Quality Control Inspections
- P&I Surveys, Investigations
- Pre-Entry Condition Surveys
- Non-Marine Machinery Damage Inspections
- Container, Trailer, Cargo Handling
- Equipment surveys

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## General Terms & Conditions

### 1 Definitions

”Surveyor”/”Consultant” is the Surveyor/Consultant trading under these conditions. “Client” is the party at whose request or on whose behalf the Surveyor/Consultant undertakes surveying/consultancy services, claims settling and recovery work “Report” means any report or statement supplied by the Surveyor/Consultant in connection with instructions received from the Client. “Disbursements” means the cost of all reasonable 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. “Fee” means the fees charged by the Surveyor/Consultant to the Client and including any value added tax where applicable and any Disbursements.

### 2 Scope

The Surveyor/Consultant shall provide its services solely in accordance with these terms and conditions.

### 3 Work

**3.1** The Client will set out in writing the services which it requires the Surveyor/Consultant to provide. The Surveyor/Consultant will confirm in writing that it accepts those instructions alternatively what services it will perform in connection with the Client’s instructions. Once the Surveyor/Consultant and the Client have agreed what services are to

be performed any subsequent changes or additions must be agreed by both parties in writing.

### **3.2** The Client undertakes to:

**3.2.1** ensure that full instructions are given to the Surveyor/Consultant and are provided in sufficient time to enable the required services to be performed effectively and efficiently. The Client agrees to disclose to the Surveyor/Consultant all relevant information of which they have knowledge, or to which they have access, in relation to the vessel or other object to be surveyed; and

**3.2.2** procure all necessary access to premises and vessels (including lift-out, trials and facility for inspection ashore and afloat as appropriate) for no less than such a time as shall in each particular circumstance be reasonable, to enable all appropriate inspections and tests to be undertaken or performed, and to secure working conditions, provided always that in the event of any breach of these requirements causing any failure on the Surveyor's/Consultant's part to undertake the scope of work the Client shall be responsible for all consequential costs incurred by the Surveyor/Consultant and in respect of any element of the scope of work undertaken.

**3.3** To the extent that the Surveyor/Consultant are so instructed, he/she will inspect the vessel/object as thoroughly as is practicable and will endeavour to comment on the more important items where, in the Surveyor's/Consultant's reasonable opinion, major cost consequences are considered likely to arise. It follows that the Surveyor/Consultant cannot comment on every minor matter but the Surveyor/Consultant will try to point out where small factors may become more serious. The Surveyor's/Consultant's intention is to report on the integrity of the main structural or physical elements of the vessel/object so far as can reasonably be ascertained from a visual inspection of the vessel/object at its location at the time of survey. The Client accepts that the Surveyor's/Consultant's survey report(s) cannot cover hidden, unexposed or inaccessible areas of the vessel/object, neither can the Surveyor/Consultant undertake to investigate areas that the Surveyor/Consultant believe to be inaccessible at the time of inspection. Where the Surveyor/Consultant are unable to gain access to areas commonly accessible, the Surveyor/Consultant will endeavour to point this out.

**3.4** In every case, the Surveyor/Consultant recommend a full survey of a vessel, to include inspection of the vessel while lifted and while in the water. Where the Surveyor/Consultant accept instructions to survey a vessel solely on the basis of an inspection of the vessel while located out of the water, the Surveyor/Consultant make no representation and give no warranty as to the watertight integrity of the vessel.

#### **4 Payment Terms**

The Client shall pay the Surveyor/Consultant's Fees and all expenses punctually in accordance with these Terms and Conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. VAT or other EU equivalent shall be payable, if applicable, in addition to all fees and expenses. Any delay in payment shall entitle the Surveyor/Consultant to interest at the statutory rate applicable (or, in the absence of any such statutory rate, 10 per cent) from the due date until receipt of payment.

#### **5 Termination**

**5.1 Client default:** The Surveyor/Consultant may terminate the appointment forthwith if the Client fails for more than 21 days to pay any sum due when demanded, or if the Client fails to respond promptly to requests for information and/or instructions and fails adequately to respond to 21 days' formal notice of such failure, without prejudice to the Surveyor's/Consultant's accrued rights.

**5.2 Other defaults:** either party may terminate the appointment forthwith by notice if the other party shall: have a petition presented for its winding up or administration which is not discharged within 14 days of presentation or any other action is taken with a view to its winding up (otherwise than for the purpose of reorganisation or amalgamation without insolvency), or become bankrupt or commit an act of bankruptcy, or make any arrangement or composition for the benefit of creditors, or have a receiver or manager or administrative receiver or administrator or liquidator appointed in respect of any of its assets, or have anything analogous to any of the foregoing under the laws of any jurisdiction occur to it, or cease or threaten to cease to carry on business; without prejudice to the accrued rights of the other party.

#### **6 Communication**

The Surveyor/Consultant communicates with the Clients and other parties involved in a matter in a variety of ways, including through the Internet and by e-mail. Although these are effective means of communication, they involve security and confidentiality risks for which the Surveyor/Consultant cannot accept any responsibility. If the Client would prefer that the Surveyor/Consultant does not communicate through the Internet or by e-mail in relation to any particular engagement, please notify the Surveyor/Consultant. Our spam and virus filters and security arrangements may sometimes reject or filter

out legitimate e-mails. Accordingly, the Client should follow up important e-mails by telephone.

## **7 Limitations of liability**

**7.1** The Surveyor/Consultant shall undertake the services to which these terms relate with reasonable care, skill and diligence. Notwithstanding any other provision of these terms or any other agreement reached between the Parties the Surveyor/Consultant shall not be liable under these terms and conditions for any loss or damage caused in circumstances (i) where there is no breach of a legal duty of care owed to the Client by the Surveyor/Consultant or those for whom the Surveyor/Consultant are responsible or (ii) where, notwithstanding any breach as aforesaid, any loss or damage is not a reasonably foreseeable result of any such breach.

**7.2** The surveyor/Consultant shall not be responsible for loss or damage or any increase in loss or damage resulting from any material breach by the Client of any term of these Terms and Conditions.

**7.3** Any claim by the Client in respect of any breach of the Surveyor's/Consultant's obligations hereunder must be notified to the Surveyor/Consultant as soon as is reasonably practicable after the Client becomes aware of the breach. Where any breach is capable of remedy, the Surveyor/Consultant must be afforded a reasonable opportunity to put matters right at the Surveyor's/Consultant's expense.

**7.4** The Client covenants with the Surveyor/Consultant and the Surveyor's/Consultant's servants and agents that no such servant or agent shall in any circumstances whatsoever be under any liability for any loss arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing, every exemption, limitation and condition herein contained and every right, exemption and limitation of liability applicable to the Surveyor/Consultant or to which the Surveyor/Consultant are entitled hereunder shall also be available to protect every such servant or agent acting as aforesaid and for the purpose of the foregoing provisions the Surveyor/Consultant are or shall be deemed to be acting as agents or trustees on behalf of and for the benefit of all persons who are or might be our servants or agents from time to time and all such persons shall to this extent be or be deemed to be parties to these terms and conditions.

**7.5** The Client acknowledges and agrees that, for reasons of commercial practicality, it is necessary for the Surveyor/Consultant to limit his/her potential liability in respect of loss or damage suffered by the Client as a result of any breach by the Surveyor/Consultant of any

of the Surveyor's/Consultant's obligations under these terms and conditions. As such, the Client acknowledges and agrees that no liability howsoever arising whether under these terms and conditions or otherwise shall attach to the Surveyor/Consultant except insofar as such liability is covered by the professional indemnity insurance referred to at paragraph 7.6 and the aggregate amount of such liability shall in any event be limited to the Agreed Indemnity Limit – USD 250,000.

**7.6** The Surveyor/Consultant shall maintain professional indemnity insurance in the Agreed Indemnity Amount – USD 250,000 – throughout the period of the performance of the Surveyor's/Consultant's or his/her duties hereunder provided that such insurance shall remain available at reasonable market rates.

**7.7** The Surveyor's/Consultant's liability shall not extend to particulars, data and other information given to the Surveyor/Consultant by others or obtained from outside sources, publications and the like reasonably relied upon by us, including Class records, registry details or other such information and no assurances can be given regarding the accuracy of the same.

**7.8** Unless otherwise stated in writing, all services and reports are provided on the basis that they carry no guarantee regarding ownership or title, freedom from mortgages or, charges, debts, liens or other encumbrances, or vessel stability, performance or design.

**7.9** The Client shall be responsible for any losses, expenses or other costs reasonably incurred by the Surveyor/Consultant that are caused by a breach of the Client's obligations to the Surveyor/Consultant hereunder.

**7.10** The Surveyor/Consultant shall not be liable in respect of any breach of the Surveyor's/Consultant's obligations hereunder resulting from unforeseeable causes beyond the Surveyor's/Consultant's reasonable control.

**7.11** Notwithstanding any other provision of these Terms and Conditions, where the Client is acting in the course of a business or commercial operation:

**7.11.1** the Surveyor's/Consultant's liability shall expire three months after the Survey Report is delivered to the Client and the Surveyor/Consultant shall thereafter have no further liability whether in contract, tort or otherwise;

**7.11.2** the Surveyor/Consultant shall have no liability whether in contract, tort or otherwise:

**7.11.2.1** in respect of any consequential or economic loss or for loss of profit or turnover or loss of use suffered by the Client howsoever arising, whether under these Terms and Conditions or otherwise, and without prejudice to the generality of the foregoing the Surveyor/Consultant shall not be liable for any consequences of late performance of the Survey and/or late delivery of the Survey Report;

**7.11.2.2** in respect of any breach of the Surveyor's/Consultant's obligations hereunder of which written notification shall not have been given within 14 days of the date on which the Client ought reasonably to have become aware of the existence of such breach;

**7.11.2.3** in respect of any loss, injury or damage sustained as a result of (i) any defect in any material or workmanship, or (ii) the act, omission or insolvency of any person other than the Surveyor/Consultant him/herself, and the Surveyor/Consultant shall have no liability to indemnify the Client in respect of any claim made against the Client for any such loss, injury or damage;

**7.12** Notwithstanding any other provision of these Terms and Conditions:

**7.12.1** all survey work undertaken hereunder shall be on terms that, unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or of suitability of the vessel or other item for any particular purpose or of compliance with any particular local, national or international requirement or code, and opinions are given without the benefit of running of machinery or opening up or other dismantling whether of interior linings, machinery or other items or systems.

**7.12.2** the Surveyor/Consultant shall have no liability whether in contract, tort or otherwise in respect of the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions, or the non-disclosure by the Client of relevant information.

**7.13** The Surveyor/Consultant shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

**7.14** All services and reports are provided for the named Client's use only. No liability of whatever nature is assumed towards any other party and nothing in these terms, or the relationship between the Surveyor/Consultant and the Client, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms.

**8 Reporting**

The Surveyor/Consultant shall submit a final written Report to the Client following completion of the agreed services describing the Surveyor's/Consultant's findings and the condition and/or quality of the object and/or purpose of the assignment, unless otherwise expressly instructed by the Client not to do so.

**9 Confidentiality**

The Surveyor/Consultant undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law.

**10 Property**

The right of ownership in respect of all original work created by the Surveyor/Consultant remains the property of the Surveyor/Consultant.

**11 Conflict of interest/Qualification**

The Surveyor/Consultant shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for the Surveyor/Consultant to continue its involvement with the appointment. The Client shall be responsible for payment of the Surveyor's/Consultant's Fees up to the date of notification.

**12 Indemnity**

Except to the extent and solely for the amount therein set out that the Surveyor/Consultant would be liable under Clause 8, the Client hereby undertakes to keep the Surveyor/Consultant and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands, or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Surveyor/Consultant may suffer or incur (either directly or indirectly) in the course of the services under these Conditions.



**13 Force Majeure**

Neither the Surveyor/Consultant nor the Client shall, except as otherwise provided in these Conditions, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

**14 Surveyor's/Consultant's Right to Sub-contract**

The Surveyor/Consultant shall have the right to sub-contract any of the services provided under the Conditions, subject to the Client's right to object on reasonable grounds. In the event of such a sub-contract the Surveyor/Consultant shall remain fully liable for the due performance of its obligations under these Conditions.

**15 Jurisdiction and law**

These Terms and Conditions shall be governed by and construed in accordance with the laws of Sweden and any dispute or difference arising, or claim made, between or by the Parties out of or in relation to or in connection with the provision of services to which these terms and conditions relate and which cannot be resolved by the Parties shall be finally settled by arbitration in accordance with the Rules of Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Stockholm, Sweden. The language to be used in arbitral proceedings shall be English unless the Surveyor/Consultant and the Client agree to use Swedish. Notwithstanding the above the Surveyor/Consultant shall be entitled to commence proceedings for the payment of any amount due in any court with jurisdiction over the Client and any of the Client's assets.