

Macduff Ship Design Ltd

Low Shore Macduff, AB44 1RE

Standard Terms and conditions

All services undertaken by Macduff Ship Design Ltd are subject to these terms and conditions:

1. The Client contracts with Macduff Ship Design Ltd for the purpose of obtaining services in accordance with the following terms and conditions.
2. Unless otherwise agreed in writing, fees payable by Client for work performed by Macduff Ship Design Ltd shall be £95 per hour. All rates are VAT exclusive. All rates may be increased by five percent (5%) in each twelve-month period from the 1 January 2022
3. Client will pay reasonable and necessary direct costs and expenses, in addition to the above rates, incurred by Macduff Ship Design Ltd in association with the provision of the professional service, including but not limited to communications, travel, printing/copying and other costs as appropriate. Macduff Ship Design Ltd shall be solely responsible for arranging all required travel and accommodation unless agreed by Client and Macduff Ship Design Ltd.
4. The client shall undertake to gross up the payment of all fees for any Withholding Tax, Value Added Tax, Income Tax and any additional taxes, which may be withheld regarding this transaction and these taxes will be deducted from the payment directly. This shall mean that you shall make a net payment equivalent to the value of the supply as if no taxes or other duties had been withheld.
5. Client will render full payment in response to Macduff Ship Design Ltd invoices within 30 days of receipt of the invoice regardless of the fee payment arrangement between Client and any other party. Interest will accrue on all invoiced amounts which have not been paid at 8% above the Base Lending Rate of the Bank of England prevailing at the time of default.
6. This Agreement is governed by the laws of Scotland. Any dispute, controversy or claim arising out of, or relating to or in connection with this Agreement shall exclusively be resolved in Edinburgh, Scotland by arbitration in accordance with the Arbitration (Scotland) Act 2010 and the Rules of LMAA from time to time in force. Any dispute under (GBP30,000) will be referred to the LMAA Small Claims Procedure. The language of the arbitration will be English.
7. The parties will be bound by this Agreement. For the avoidance of doubt, acceptance of and commencement of work and/or payment of the deposit by the Client, without signing this agreement, will constitute the Client's agreement and acceptance to these terms and conditions in full. Macduff Ship Design Ltd is bound to use reasonable efforts to commence the works upon execution of the agreement, acceptance of quotation or request to start works.
8. The services to be performed are to be agreed between both parties in writing, any subsequent changes or additions must be agreed by both parties in writing.

The scope of any survey work will be set out in writing by the client. Macduff Ship Design Ltd will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions.
9. During all surveys Macduff Ship Design Ltd shall use reasonable care and skill in the performance of the services in accordance with sound marine surveying/consulting practice.
10. Following any survey Macduff Ship Design Ltd shall submit a final written Report to the Client following completion of the agreed Services describing the 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.

11. Macduff Ship Design Ltd 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 Macduff Ship Design Ltd to continue its involvement with the appointment. The Client shall be responsible for payment of all Fees up to the date of notification.

12. Client acknowledges that estimates, whilst being a reasonable estimate of the total work costs are not binding. The actual total fees and expenses may exceed the estimate for a number of reasons, such as, but not limited to; (a) the scope of work is undefined at the time of executing this Agreement, or (b) if not all information requested is supplied initially, or (c) if anomalies or variants are discovered during assessment, or (d) a change of project scope is requested after the Agreement has been executed. Where an anomaly occurs or a project scope change is requested after executing the Agreement, where practical any work will cease and a new written estimate will be issued. However, should a new estimate not be produced Macduff Ship Design Ltd fees will be invoiced to the Client as per clause 2 of this agreement.

13. Macduff Ship Design Ltd is not responsible for and accepts no liability for any error, inaccuracy or negligence in the manufacture of the vessel or object that is the subject of this Agreement, or where the building has not been in accordance with the drawings prepared. Macduff Ship Design Ltd is not responsible for and accepts no liability for any error, inaccuracy or negligence in the design or performance or manufacture of the vessel or object that is not of Macduff Ship Design Ltd design, that is the subject of this Agreement, or where the building has not been in accordance with the drawings prepared.

14. Where Macduff Ship Design Ltd relies upon drawings and/or information provided by third parties (for example, but not limited to, the Client, a ship yard, a third-party designer), Macduff Ship Design Ltd is not responsible for any errors and inaccuracies in drawings, measurements and/or any other base data provided. Macduff Ship Design Ltd is entitled to reasonably rely on the accuracy of such documents. Unless otherwise stated, Macduff Ship Design Ltd will not review the consistency of the information on the certificate of compliance with any other material, plans, documentation or certificates of compliance. Each certificate of compliance is limited to the verification of the specific plans and/or documentation as stated on each particular certificate.

15. Macduff Ship Design Ltd shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of Macduff Ship Design Ltd or any of its employees or agents or sub-contractors.

16. In the event that the Client proves that the loss, damage, delay or expense was caused solely by the negligence, gross negligence or wilful default of Macduff Ship Design Ltd aforesaid then, save for where loss, damage, delay or expense has resulted from Macduff Ship Design Ltd personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, Macduff Ship Design Ltd liability (both directly and indirectly) for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of ten times Macduff Ship Design Ltd charges or GBP100,000, whichever is the higher.

17. In respect to clause 15 and 16 above, Macduff Ship Design Ltd hereby excludes all liability for consequential loss. Loss of profit is always to be considered as non-consequential loss, whether it is direct or indirect.

18. Macduff Ship Design Ltd 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.

19. Macduff Ship Design Ltd shall be discharged of all liability in respect of any claim for loss, damage, delay or expense suffered by Client (or alleged to be suffered by Client) unless, within 12 months from the date on which Consultant submits a final report to Client (or, if no report is issued, the date on which the report would have been issued or if no report is required, the date of the Consultant's final invoice) formal arbitration proceedings are commenced pursuant to Clause 6 by Client against Macduff Ship Design Ltd.

20. Client hereby undertakes to keep Macduff Ship Design Ltd 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 Macduff Ship Design Ltd may suffer or incur (either directly or indirectly) in the course of performing the services under this Agreement, unless such costs, loss, damages and expenses (including legal costs) arise solely as a result of Macduff Ship Design Ltd negligence, gross negligence or wilful misconduct. The loss need not occur before Macduff Ship Design Ltd may rely on this indemnity.

21. Neither Macduff Ship Design Ltd nor Client shall, except as otherwise provided in these Agreement, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God (including, but not limited to earthquake, flood, tsunami, volcano, hurricane, tropical storm, cyclone, blizzard or other similar event), act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people or any other usual force majeure type event. Following a force majeure event either party may serve notice on the other to terminate the agreement.

22. Macduff Ship Design Ltd shall have the right to sub-contract or assign 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 subcontract the Surveyor/Consultant shall remain fully liable for the due performance of its obligations under these Conditions.

23. All materials supplied by Client to Macduff Ship Design Ltd and all communications between them shall be considered confidential, not disclosable by Macduff Ship Design Ltd without prior written permission of Client, unless necessary for the provision of the service or required by law.

24. All intellectual property created by virtue of Macduff Ship Design Ltd carrying out the works under this Agreement, is owned by Macduff Ship Design Ltd, with Client receiving a non-exclusive royalty-free licence to use the intellectual property created by Macduff Ship Design Ltd under this Agreement, for the purposes referred to in this Agreement.

25. This Agreement sets forth the entire understanding of the parties in respect of their respective rights and obligations relating to the subject matter of this Agreement, and supersedes all prior agreements or understandings of the parties with respect thereto.

26. Nothing contained in this Agreement shall be construed to create any partnership, joint venture, or franchise relationship between the parties hereto. The parties are independent persons, and neither shall be construed as the agent, employee, nominee, or representative of the other. No party shall have the authority to act for, or to incur obligations on behalf of, any other party except as provided by this Agreement.

27. The jurisdiction clause in this Agreement is purely for the benefit of Macduff Ship Design Ltd and Macduff Ship Design Ltd shall be entitled to commence an action against the Client for unpaid fees or monies owed in any relevant and/or convenient jurisdiction for Macduff Ship Design Ltd.

28. Macduff Ship Design Ltd shall effect and maintain, at no cost to the Client, Professional Liability Insurance for such loss and damage for which Macduff Ship Design Ltd may be held liable to the Client under these terms and conditions.

29. No provision of this Agreement shall be enforceable under Macduff Ship Design Ltd (Rights of Third Parties) Act 1999 by a person who is not party to it.

30. Either party may terminate this Agreement by providing the other party with 30 days prior written notice. The rights and obligations referred to in Clauses 3, 4, 5, 23, 24, 25 and 26 of this Agreement survive termination of this Agreement.