

TERMS & LIMITATIONS, August 1st 2020

LIMITATIONS

A condition survey provides an opinion on the structural condition of all visible and significant aspects of the structure of the vessel as presented for the survey, with particular reference to hull condition.

Machinery, masts, spars, rig and sails, ancillary equipment, gas, electrical, electronic, pumping and plumbing equipment, sewage treatment plant, refrigeration equipment, air conditioning, navigation aids, other sundry services and tankage are inspected only for visual appearance and installation standards, without dismantling or specific test. Where a mast is stepped, only those parts of the mast and rig up to head height are inspected in detail.

Hull condition is assessed by general non-destructive examination and by assessment of the condition of sample areas only. Where hulls carry heavy layers of paint, pitch or epoxy finishes the condition of all areas of the substrate cannot be guaranteed. The survey does not provide an opinion on condition of areas not presented visible, for example behind linings or insulation, beneath fixed flooring etc. unless these are accessible through visible portable traps, and should not be taken to preclude completely the existence of isolated damage or deterioration concealed by paint, fillers or other means.

In the case of metal or timber vessels there may be damage caused as a result of weaknesses in the hull and may be highlighted as a result of survey techniques, the surveyor is not liable for any such damage or the cost of any remedial works undertaken as a result.

In areas where pitting is present it is impossible to ascertain the full extent of the pitting and once a vessel is shot blasted or needle gunned further issues may be uncovered and we cannot be held liable for any such defects.

We cannot be held liable for any corrosion caused as a result of incorrect anodes being used or as a result of them not having been renewed regularly.

Any survey "afloat" or "In the mud" restricts access to the underwater and above water surfaces of the hull and the surveyor shall not be held liable for any subsequent defects found in these areas.

Any engine and generator installations are inspected visually, and (where possible if presented in commission,) the engine is run to assess its general running characteristics, vibration levels etc. No dismantling of the engine or associated equipment is carried out within the scope of a condition survey so no detailed comment upon the condition of internal parts is possible without separate full strip down and mechanical survey.

Electrical, plumbing, heating and other services are inspected where visible but not operated unless presented in commission. Electrical wiring is inspected visually (only) in all cases.

Any portable gas installation is inspected visually only and pressure tests are not undertaken within the scope of the survey. All gas systems should be regularly tested as part of a normal preventative maintenance routine.

Tanks are inspected where visible but not internally, and are not pressure tested.

Windows, hatches and external doors are not tested for water tightness. Hull fastenings and skin fittings are not withdrawn for inspection.

No Liability may be taken by the Surveyor for an inadequate Survey Report resulting from poor survey preparation.

It is the Client's responsibility to ensure the Dry Dock / Boatyard Facilities are adequate to ensure a full examination.

Any estimate of valuation provided is based on known average retail values achieved by craft of similar type and condition in the same location and should therefore not be confused with replacement value, which may be substantially higher, particularly in the case of rare or unusual boats.

Particulars such as registration number, tonnage, build year and dimensions are normally stated as advised or as exhibited aboard the ship, and are not authenticated. Dimensions, if measured are by means of steel tape measure and should not be relied upon as to total accuracy. This survey does not seek to establish that clear title to the vessel exists or that it is being offered for sale free from all debts and encumbrances.

Unless specifically instructed to the contrary the inspection, and any comments made relative to design, performance or suitability of the vessel, are based on the assumption that the vessel will be used as a private pleasure boat in the waters for which it was designed.

Unless specifically stated to the contrary this inspection and report does not seek to address compliance with any national or international codes, standards or regulations.

Our liability shall expire 12 months after completion of our services in respect of which liability is alleged to arise and we shall thereafter have no liability in respect of those services and/or any alleged default in connection with the provision thereof; under no circumstances shall our liability exceed the market value of the vessel.

This report is prepared solely for the benefit of the client to whom it is addressed and by whom it was commissioned and no responsibility is accepted to any third party to whom the report may be passed or sold. This survey contract shall be governed by and construed in accordance with German law. Any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the Courts of Germany. No responsibility is accepted for any consequential losses arising, including but not limited to loss of profit, loss of use or business interruption.

TERMS OF BUSINESS

The Surveyor shall perform the Scope of Work (to include the carrying out of any survey and the production of any survey or valuation report) subject to the following terms:

1. LIMITATIONS OF LIABILITY

1.1 The Surveyor shall undertake the services to which these terms relate with all reasonable care, skill and diligence.

1.2 The Surveyor shall not be liable under this Agreement for any loss or damage caused in circumstances where there is no breach of a legal duty of care owed to the Client by the Surveyor or where, notwithstanding any such breach, any loss or damage is not a reasonably foreseeable result of such breach.

1.3 All services and reports are provided for the Client's use only. No liability of any nature is assumed towards any other party and nothing in these terms, or the relationship between the Surveyor 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.

1.4 The Surveyor 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 this Agreement.

1.5 Any claim by the Client in respect of any breach of the Surveyor's obligations under this Agreement must be notified to the Surveyor as soon as is reasonably practicable after the Client becomes aware of the breach. Where any breach is capable of remedy, the Surveyor must be afforded a reasonable opportunity to put matters right at his expense. No claim can be made against the Surveyor in respect of:

- i. Defects of which the client has already been notified.
- ii. Any financial loss, where the Client has failed to re-negotiate the purchase price to take account of notified defects.
- iii. Any defects whatsoever, where the Client has proceeded with a purchase prior to receiving and reading the full written report.

1.6 The Client agrees that, for reasons of commercial practicality, it is necessary to limit the Surveyor's potential liability in respect of loss or damage suffered by the Client as a result of any breach by the Surveyor of any of the Surveyor's obligations under this Agreement. As such, the Client agrees that no liability howsoever arising whether under this Agreement or otherwise shall attach to the Surveyor except insofar as such liability is covered by the professional indemnity insurance referred to at paragraph 1.7 and the aggregate amount of such liability shall in any event be limited to the agreed indemnity limit of €250,000 ("the agreed indemnity limit") including all claim defence costs and disbursements, or such higher sum as the parties shall agree in writing prior to commencement of the services to which these terms relate. The Agreed Indemnity Limit represents the upper limit of the Surveyor's potential liability to the Client, under any circumstances.

1.7 The Surveyor shall maintain professional indemnity insurance in the amount of the Agreed Indemnity Limit throughout the period of the performance of the Surveyor's duties hereunder provided that such insurance shall remain available at reasonable market rates.

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

1.9 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.

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

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

Business or Commercial Operations

1.12 Notwithstanding any other provision of this Agreement, where the Client is acting in the course of a business or commercial operation:

- a. The Surveyor's liability shall expire twelve months after the Survey Report is delivered to the Client and the Surveyor shall thereafter have no further liability whether in contract, tort or otherwise; and
- b. The Surveyor shall have no liability whether in contract, tort or otherwise for:
 - i. Any consequential or economic loss or for loss of profit or turnover or loss of use suffered by the Client howsoever arising, whether under this Agreement or otherwise, and without prejudice to the generality of the foregoing the Surveyor shall not be liable for any consequences of late performance of any survey and/or late delivery of any survey report;
 - ii. Any breach of his 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;
 - iii. Any loss, injury or damage sustained as a result of any defect in any material or workmanship, or the act, omission or insolvency of any person other than the Surveyor; the Surveyor shall have no liability to indemnify the Client in respect of any claim made against the Client for any such loss, injury or damage.

1.13 Notwithstanding any other provision of this Agreement:

- a. Unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or of suitability of any 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.
- b. The Surveyor 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.

2. SURVEYS

2.1 The Client's instructions, and the scope of the Surveyor's services hereunder, are as defined in the Scope of Work. Any subsequent changes or additions to the Scope of Work must be agreed in writing by the Parties.

2.2 The Client undertakes to:

- a. Ensure that full instructions are given to the Surveyor 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 all relevant information of which they have knowledge, or to which they have access, in relation to the vessel to be surveyed;
- b. In consultation with the Surveyor, 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
- c. Ensure that all appropriate safety measures are taken to provide safe and secure working conditions. In the event of any breach of the requirements of these clauses causing any failure on the Surveyor's part to undertake the Scope of Work, the Client shall be responsible for all consequential costs incurred by the Surveyor and in respect of any element of the Scope of Work undertaken.

d. In the case of a pre-purchase survey, ensure that the vendor in no way hinders the conduct of the survey. Any distraction, hindrance or denial of access will result in immediate termination of the Survey. The Client is very welcome to attend the survey, but should arrive at least 3 hours after commencement (usually after midday), to allow the Surveyor time to make an initial assessment without any outside influence.

2.3 Pursuant to the Scope of Work, the Surveyor will inspect the vessel as thoroughly as is practicable and endeavour to comment on the more important items where, in the Surveyor's reasonable opinion, major costs consequences are considered likely to arise. It follows that the Surveyor cannot comment on every minor matter but the Surveyor will try to point out where small factors may become more serious.

2.4 The Surveyor's intention is to report on the condition of the hull, superstructure and fixtures (if any) of the vessel so far as can reasonably be ascertained from a visual inspection of the vessel at its location at the time of survey. The Client accepts that the Surveyor's report cannot cover hidden, unexposed or inaccessible areas of the vessel, neither can the Surveyor undertake to investigate areas that the Surveyor believes to be inaccessible at the time of inspection. Where the Surveyor is unable to gain access to areas commonly accessible, the Surveyor will endeavour to point this out.

2.5 In every case, the Surveyor recommends a full survey of a vessel, to include inspection of the vessel while lifted out and while in the water. Where the Surveyor accepts instructions to survey a vessel solely on the basis of an inspection of the vessel out of the water, the Surveyor makes no representation and gives no warranty as to the watertight integrity or buoyancy of the vessel and likewise if the vessel is only seen afloat the surveyor accepts no responsibility for any subsequent defects found on areas below the waterline.

2.6 Where the Client is not able to attend a survey, the Surveyor will endeavour to contact them within 12 hours of completion, to confirm that it has taken place, and to give an indication of the condition of the vessel. In a pre-purchase survey, this indication shall not be considered as a Report, and the Surveyor will not be held liable for any decision to purchase on the basis of such information. The Client should await the full written report, thereafter allowing sufficient time to fully read and understand it and, where necessary, seek quotes for any rectifying work, prior to re-negotiation and possible purchase.

2.7 As author, the Surveyor will initially hold copyright on any Reports of Survey produced. Unless agreed with the Client, the Surveyor will not copy or transmit the contents of a Report to any Third Party. The copyright will transfer to the Client when full payment has been received. Unless agreed with the Surveyor, the Client may not copy or transmit the contents of a Report before full payment has been made.

3. VALUATIONS

3.1 All valuation work undertaken shall be in accordance with the Scope of Work and, unless other-wise stated in writing, such work relates solely to the date and place referred to and therefore the surveyor cannot be held liable for any loss of value thereafter. Valuations are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars or information on which opinions are based. Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation or such other date as is expressly referred to. The surveyor cannot accept liability for any deviation in value based on deterioration of the vessel or lack of maintenance.

4. FEES

4.1 The fee agreed between the Surveyor and the Client for the services to be provided by the Surveyor under this Agreement ("the Survey Fee") shall not include the costs of travel, subsistence and accommodation which will be charged in addition and in accordance with this Clause 4, unless the Surveyor and the Client agree on a flat fee including all costs.

4.2 The Survey Fee and all expenses shall become due and payable on such terms and in such amounts as shall be agreed from time to time. Invoices will be submitted in respect of all fees and expenses when due and the amount of each invoice shall be settled prior to submission of any report.

Cancellations & Rescheduling: Please note that if the survey is cancelled by the customer for any reason after the instruction has been agreed, the customer will be liable to pay 25% of the original quote less any travel costs. In the event that the survey is required to be rescheduled then the deposit will be held over until the survey is carried out.

4.3 In the event of persistent non-payment, 28 days after issue of a Final Demand, the matter will be referred to a professional debt collection agency without further warning, with the following surcharges:

a. Interest shall be payable on all sums owing and unpaid at a rate of 8% over Deutsche Bank AG (Frankfurt) base rate, backdated to the original invoice date.

- b. All charges and costs related to the collection of the debt, including agency fees and cost of previous correspondence.

5. LAW AND DISPUTES

5.1 Any contract or series of contracts made subject to these terms shall be subject to and governed by German law and:

- a. In the case of a Client acting in the course of a business or commercial operation any dispute arising shall be submitted to the exclusive jurisdiction of the Courts of Germany;
- b. In the case of a Client who is a consumer or who is not contracting in the course of business any dispute shall be submitted to the non-exclusive jurisdiction of the Courts of Germany.

6. MISCELLANEOUS

6.1 The Surveyor may terminate the appointment forthwith if the Client fails for more than 28 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 28 days' formal notice of such failure, without prejudice to the Surveyor's accrued rights.

6.2 Without prejudice to the accrued rights of the other party, either party may terminate the appointment forthwith by notice if the other party shall become bankrupt or insolvent, or make any arrangement or composition for the benefit of creditors, 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.

6.3 No exercise or failure to exercise or delay in exercising any right or remedy vested in either party shall be deemed to be a waiver of that party of that or any other right or remedy.

6.4 Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.

6.5 In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation, such provision shall be deemed to be deleted from these terms and shall be of no force or effect and these terms shall remain in full force and effect as if such provision had not been contained herein. Notwithstanding this, in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of an acceptable alternative provision.

6.6 Except where expressly stated to the contrary in a written document signed by the Parties on or after the date hereof, these terms form the entire agreement between the Parties and supersede all previous agreements and understandings between the Parties, and no warranty, condition, description, term or representation is given or to be implied by anything said or written in negotiations between the Parties or their representatives prior to the communication of these terms.

6.7 References to "the Surveyor" include the Surveyor's employees and persons, firms and companies appointed or engaged by the Surveyor as the Surveyor's agents for carrying out any work or services under these terms, all persons, firms and companies to whom performance of any work or services under these terms is sub-contracted or delegated by the Surveyor, and all agents and employees of persons, firms and companies referred to in this clause.

6.8 Any communication required to be given under these terms by either party shall be in writing and shall be sufficiently given either by letter, fax or electronic mail (provided the same is capable of being recorded by the recipient in durable form) sent to the other at the contact details previously notified and any such notice shall be deemed to have been given at the time at which it would in the ordinary course of transmission have been received.

6.9 Each party undertakes to maintain the confidentiality of all information supplied by the other and not to divulge such information to third parties without the prior written authority of the other.

7. COMMUNICABLE DISEASE EXCLUSION

7.1 The surveyor is not liable for:

- 1) any loss, damage, liability, cost, or expense directly arising from the transmission or alleged transmission of a Communicable Disease or from any fear or threat of a Communicable Disease

2) any liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for a Communicable Disease

3) any liability for or loss, cost or expense arising out of, any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of a Communicable Disease or the fear or the threat of a Communicable Disease. As used in this Endorsement, a Communicable Disease means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:

(i) the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and

(ii) the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and

(iii) the disease, substance or agent may, acting alone or in conjunction with other comorbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

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