

Ship Shape Resources Terms of Business

1. DEFINITIONS

In these terms of business, the following definitions apply unless the context otherwise requires:

- 1.1 "Company" means Ship Shape Resources Limited, whose registered office is situated at 12 London Mews, London W2 1HY.
- 1.2 "Client" means the person, firm or corporate body to whom the Company is contracted to supply Operatives.
- 1.3 "End Hirer" means the ultimate user of the Operative supplied.
- 1.4 "Operative" means the skill-set supplied by the Company to the Client in the form of any individual (contracted to the Company as a sole trader or through a limited company contractor or as an employee under a contract of employment (which may or may not, at the election of the Client and with the agreement in writing of the Company, be a contract of employment which complies with Regulation 10 of the Agency Workers Regulations 2010). Individuals can be interchanged by the Company within an Assignment.
- 1.5 "Services" means works carried out by the Company via Operatives for the Client.
- 1.6 "Terms" means these terms of business.
- 1.7 "Assignment" means the period during which an Operative is supplied to provide Services for the Client.
- 1.8 "Assignment Confirmation" means the Client's confirmation, written or verbal, of an Assignment which shall be deemed bound by these Terms.
- 1.9 "Assignment Contract" means the contract incorporating these Terms between the Company and the Client for the supply of Services via Operatives for an Assignment to the Client.
- 1.10 "Engagement" means any use of an Operative on a permanent or temporary basis under a contract of employment and/or under a contract for services.
- 1.11 The headings contained in these Terms are for convenience only and do not affect their interpretation.
- 1.12 "Data Protection Legislation": (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) the Data Protection Act 1998 (iii) any successor legislation to the GDPR or the Data Protection Act 1998
- 1.13 "Data Controller", "Personal Data", "Data Subject," "Data Discloser", "Subject Access Request" and "Data Receiver" has the meanings as defined in the Data Protection Legislation.

2. GENERAL CONDITIONS OF SUPPLY

- 2.1 Operatives are not employed by the Client. For the avoidance of doubt, the parties acknowledge that the Client will not be responsible for the deduction and payment of PAYE and National Insurance contributions in respect of employed Operatives, nor of Construction Industry Scheme deductions in respect of self-employed Operatives or subcontractor companies.
- 2.2 The Client will satisfy itself as to the quality of an Operative's work and the Operative's suitability to meet the Client's requirements.
 - 2.2.1 The Client will inform the Company before the commencement of each Engagement whether the Operative will be working under the supervision, direction or control of the Client. Should the need for, or ability to provide, supervision direction or control change during an engagement the Client will inform the Company immediately.
 - 2.2.2 The Client will inform the Company before the commencement of each Engagement should the Operative be supplied to an End Hirer who places (or has the right to place) the Operative under supervision, direction or control during the Engagement
 - 2.2.3 For the avoidance of doubt the Client or End Hirer will not supervise, direct or control the Operative and has no right to attempt to supervise, direct or control the Operative without informing the Company, where these conditions were not prescribed, as this may alter employment status of the operative.
 - 2.2.4 The Client or End Hirer will not remove supervision, direction and control where these conditions were prescribed, without informing the Company, as this may have health and safety implications, or require operatives with more experience to be supplied.
- 2.3 The Client will comply with all statutes, regulations (including, for the avoidance of doubt but without prejudice to the generality of the foregoing, the Working Time Regulations 1998 and the Agency Workers Regulations 2010), by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff and/or otherwise (excluding the obligation outlined in clause 3.1 above), including adequate Employer's and Public Liability Insurance cover for the Operative during all Assignments.
- 2.4 The Client will notify the Company and the Operative in writing of any special health and safety matters, requirements or qualifications in relation to the Assignment. Should those factors alter the need for supervision, direction or control of the operatives set out in the assignment confirmation, the Client will inform the Company.
- 2.5 The Client shall be responsible for the health and safety of the Operative during the Assignment in accordance with the statutory duty of care required by The Health and Safety at Work etc Act 1974.
- 2.6 The Company does not accept responsibility for the collection from Operatives of amounts due for any facilities or services provided to them by the Client or any other third parties.
- 2.7 The Client shall inform the Company in writing of any claim or threatened claim under the Agency Workers Regulations 2010 from the Operative which comes to the notice of the Client as soon as possible but no later than 7 calendar days from the day on which any such claim or threatened claim comes to the notice of the Client.
- 2.8 If the Operative brings, or threatens to bring, any claim under the Agency Workers Regulations 2010, the Client undertakes to take such action and to give such information and assistance as the Company may request, and within any timeframe requested by the Company and at the Client's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such claim and to appeal against any judgment given in respect thereof.
- 2.9 The Client shall indemnify the Company for any liability, cost, claim, award or any other expense incurred by it arising out of a breach or alleged breach by the Client of the Agency Workers Regulations 2010.
- 2.10 If at the beginning or end of the Assignment Contract there is a transfer of any Operative pursuant to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") the Client undertakes to take such action and to give such assistance as the Company may request, and within any timeframe requested by the Company and at the Client's own cost, to ensure that the Company can discharge its obligations under TUPE.
- 2.11 Where the Operative is an employee of the Company, any charges not explicitly covered by upfront fees to the Client in the commercial agreement, designed to keep Client costs minimised but then subsequently paid out by the Company to the Operative, or in fines or charges, for employee rights such as holidays, sick-leave, redundancy, pensions, maternity, paternity, paid periods under agreed Swedish Derogation (Agency Workers Regulations 2010 regulation 10 & 11) contracts or under TUPE etc will be charged on to the Client at cost.
- 2.12 For the purposes of compliance with the Agency Workers Regulations 2010 the Client will inform the Company where it believes there is a credible potential of comparable employees at the Client's client on more favourable terms. For Operatives working at these clients of the Client the Company will inform the Client via email of any Operative who has been on Assignment with the Client for 8 weeks of that fact, and of the specific pay rates and terms for that Operative. The Client will inform the Company whether these rates and terms are less favourable than those offered to comparable direct employees at the Client's client and if so will propose a commercial remedy by week 10 such that the Company can offer the Operatives rates and terms that comply with the Agency Workers Regulations 2010 from week 12 onwards.

3. CHARGES

- 3.1 The Client agrees to pay the Company's charges as agreed at the commencement of the contract plus VAT.
- 3.2 Charges are invoiced to the Client on a weekly basis (unless otherwise requested in writing) plus VAT.
- 3.3 Where all invoices are within terms and terms are immediate, the Company will distribute payment to Operatives immediately that funds have been paid by the Client for the Services as declared by remittance advice or other proof of transfer. That is, the Company will not wait for cleared funds, but rather rely on proof of transfer to pay Operatives.
- 3.4 Where immediate payment terms are in place the Client warrants they will never provide a remittance advice or other proof of payment or advice of payment before actually transferring those funds; nor take any action to withdraw or cancel such transaction after remittance advice or other proof of transfer or advice has been provided, and that should any of these circumstances arise the Client will be liable to pay interest on the amount of funds advised but not successfully transferred and cleared at the rate of 30% p.a. calculated daily until the full amount and the interest has been actually remitted. This interest rate reflects the fact that the Company makes very low margins relative to the payroll; that the Company pays the full payroll immediately on proof of payment, ahead of cleared funds; that the Company does not have the facility to carry the weight of the payroll if Client invoices are not paid immediately; and will therefore suffer damaging business disruption where such Client payment has not occurred or has been cancelled or retracted.
- 3.5 Where delayed payment terms are in place The Company reserves the right to charge interest on any overdue amounts (whether before or after judgement) at the rate of 13% per annum calculated daily from the due date until the date of payment.
- 3.6 Invoices shall be paid without any deduction, set-off or counterclaim whatsoever.
- 3.7 The Company reserves the right to allocate payments received from the Client to any invoices that are out of terms on the Client's account.
- 3.8 30 days' prior written notice shall be given to the Client prior to any revision of the Company rates.
- 3.9 Without prejudice to any other rights or remedies which the Company may have, any breach of this clause 4 by the Client shall entitle the Company to terminate or suspend every agreement it has with the Client, including (without prejudice to the foregoing) the withdrawal of Operatives, without notice and without giving any right to compensation and / or damages to the Client.

4. TIME SHEETS, WORK SHEETS & ACTIVITY STATEMENTS

- 4.1 According to the nature of the Services and terms agreed, time sheets detailing hours worked, work sheets detailing works finished satisfactorily, self-billing remittances or general activity statements will be used by the Client to inform the Company of progress of the Services for the purposes of raising invoices (for the purposes of this clause 5 all three documents will be referred to generically as "Activity Statements"). By themselves, Activity Statements do not indicate that the engager has a right of supervision, direction or control in any way over a worker and they do not infer that there was any obligation to attend during the hours stated.
- 4.2 An Activity Statement once signed or submitted online by or on behalf of the Client, may be acted upon by the Company and is therefore binding on the Client as conclusive evidence of the Client's satisfaction with the Services provided by the Operative and confirmation of the hours worked. The Client shall take all reasonable steps to avoid forgery of Activity Statements.

4.3 Failure to sign or submit online an Activity Statement does not absolve the Client of its obligation to pay the charges in respect of the hours worked and Services completed. In the absence of a signed Activity Statement the Company may notify the Client of the number of hours or Services completed advised by an Operative as the number of hours or completed Services pursuant to the Assignment. Once the invoice has been created and payment made to the Company it cannot guarantee that funds can be reclaimed should there be any changes to the hours or rates or that any overpayments can be reclaimed from future invoices.

4.4 Invoices shall be paid without any deduction, set-off or counterclaim whatsoever.

5 **LIABILITY**

5.1 Nothing in this clause 6 shall exclude or restrict the liability of the Company for death or personal injuries resulting from the negligence of the Company.

5.2 It is understood by the Company and the Client that Operatives are engaged by the Company under contracts of service as employees or under contracts for services and that:

5.2.1 The Client will decide whether or not to retain an Operative.

5.2.2 The Operative will be on the Client's premises or on premises designated by the Client.

5.3 The Company shall not be liable for any loss of goodwill or contracts, waste of Client or third party staff time or consequential loss of any sort whatsoever and howsoever caused.

5.4 While every effort is made by the Company, taking reasonable steps to ascertain the standards of skills, integrity and reliability of Operatives and to provide them in accordance with the Assignment Confirmation, the Company is not liable for any loss, expense, damage or delay arising from any failure to provide any Operative for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Operative. The Client agrees to be reasonable for all acts, errors or omissions of the Operatives, whether wilful, negligent or otherwise as though he was on the payroll of the Client.

5.5 The Client shall indemnify and keep indemnified the Company against any costs, claims or liabilities incurred by the Company as a result of any breach of these Terms by the Client and / or arising out of any Assignment.

5.6 The Client will inform the Company prior to the Assignment commencement where any Assignment requires any hazardous pursuits including but not restricted to rail work, hot working, working at height or at depth.

5.7 The aggregate liability of the Company to the Client for all breaches of contract and/or other liabilities (whether arising under contract, tort, statute or otherwise however) committed or arising in any one calendar year shall not exceed £1,000,000. (Provided always that this clause 5.7 does not imply that the Company accepts liability for any such claim).

5.8 If an Operative leaves an Assignment under circumstances where the Client wishes to intimate a claim, then the Client must notify the Company immediately by telephone, fax or acknowledged email, to enable the Company to consider whether or not it is entitled to deduct any amount from its final payment to that Operative to satisfy the Client's claim (Provided always that this clause 5.8 does not imply that the Company accepts liability for any such claim).

6 **TERMINATION**

6.1 The Company cannot guarantee the willingness of Operatives to complete an Assignment and the Company accepts no liability for the failure or refusal of an Operative to continue with an Assignment.

6.2 If the Client shall make, or offer to make, any arrangement with creditors or commit any act of bankruptcy, or if any petition or bankruptcy order shall be presented, or for an administration order in respect of the Client shall be passed or presented, or if the Company shall have any concern as to the financial position of the Client (including, but not limited to, inability to obtain satisfactory credit insurance) or if the Client shall commit any breach of its obligations hereunder, then and in any such case (and without prejudice to any other right or remedy of the Company and without prejudice to any accrued or continuing rights of the Company) the Company may suspend or determine all Assignment Contracts with the Client, or any unfulfilled part and withdraw all Operatives, without giving any right to compensation and / or damages to the Client.

7 **AGENCY REGULATIONS OPT OUT NOTICE**

7.1 Where the Company is supplying an Operative under an Umbrella contract, the Company and Operative opt out of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Operative has completed their own opt-out with this effect).

8 **DATA PROTECTION**

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is a Data Controller Company and the Company is a Data Controller.

9 **DATA SHARING**

9.1 In order for the Company to supply the Services, the Client may supply the Company with Personal Data relating to Operatives. Together with Personal Data supplied by the Operative themselves, this may be used to carry out a successful Engagement, including payment to the Operative for Services provided.

9.2 Employees of the Company may process this data for purposes including making payment to the Operative.

9.3 The Personal Data to be shared may include name, gender, address, age, mobile number, email, National Insurance, tax code, P45, P60, PAYE ref, Accounts ref, HMRC Gateway submission type, Frequency, First paid date of tax year, Holiday scheme(s), Pension scheme(s), Salary sacrifice scheme(s), Authorised contributors, Pay authoriser(s), bank account details.

9.4 The Data Discloser will ensure that Personal Data is correct. Where either party becomes aware of inaccuracies in disclosed Personal Data, they will notify the other Party.

9.5 Operatives have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. Operatives may also request rectification or erasure of their Personal Data – subject to clause 9.6.5 below:

9.6 The Company will not retain or process shared Personal Data for longer than is necessary. The Company will retain and delete Personal Data as follows:

9.6.1 If the Company has processed an Assignment or payment for the Operative it will retain related personal data for a period of seven years, at the end of which period it will be deleted from Company's systems.

9.6.2 If the Company has not processed an Assignment or payment for the Operative, but has been provided with their Personal data and they have accepted our privacy policy, the Company will retain the Operative's personal data for a period of two years, at the end of which period it will be deleted from the Company's systems.

9.6.3 If we have not processed an Assignment or payment for the Operative, but the Company has been provided with their Personal Data and the Operative has not accepted our privacy policy, we will retain related personal data for a period of six months, at the end of which period it will be deleted from the Company's systems.

9.6.4 If we have not processed an Assignment or payment for the Operative, but we received related personal data from the Client and the Operative has not accepted our privacy policy, we will retain related personal data for a period of one month, at the end of which period it will be deleted from the Company's systems.

9.6.5 Notwithstanding the other provisions of this Section, the Company may retain Operative's personal data where such retention is necessary for compliance with a legal obligation to which we are subject, or in order to protect the Client's vital interests or the vital interests of another natural person.

9.7 The Company has implemented appropriate technical and organisational measures to protect the Shared Personal Data in their possession against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure.

10 **THE CONTRACT**

10.1 These Terms govern the supply of Services by the Company to the Client.

10.2 The Assignment Confirmation and these Terms shall form the entire agreement between the parties and supersedes any previous agreement and representations oral or otherwise made by either of the parties. The parties warrant that they have not relied on any representation made by the other party in entering into this Agreement.

10.3 Failure by either party at any time to enforce any right claim or provision of the Assignment Contract or arising thereunder shall not be construed as a waiver of such right, claim or provision.

10.4 In construing these Terms the following provisions shall apply:

10.4.1 If the Client consists of more than one person, corporation or entity then their obligations hereunder shall be joint and several.

10.4.2 In the event of any conflict between these Terms and a written Assignment Confirmation the latter shall apply.

10.5 All notices given by either party shall be in writing and given to the other party at its address shown in the Assignment Confirmation or at such other address as that party may have nominated in writing for that purpose. All notices may be served by personal delivery, first class, registered or recorded delivery post, fax or acknowledged email. Any notice given shall be deemed to be received by the party to whom it was given 24 working hours after (excluding Saturday, Sunday, and UK bank and public holidays).

10.6 These Terms are governed by English law. The Client irrevocably agrees for the benefit of the Company to submit any dispute hereunder to the jurisdiction of the courts of England but nothing herein shall prevent the Company from taking proceedings to enforce any contract governed by these Terms in any other courts of competent jurisdiction.

10.7 Acceptance of these terms, which may be updated from time-to-time as found at www.shipshaperesources.com, is made by signature and return of this document, or by written or verbal confirmation of an assignment, or by paid consideration of the first or any subsequent assignment, or by acceptance or submission of a time sheet, work sheet or activity statement online, physically or by any other means.

I certify that I am a Director of the Client and am authorised by the Client to accept these terms on its behalf.

Client Company Name		Director Name	
Signature		Date	