YDSA Surveyors Standard Terms of Business (June 2024)

1. **The Surveyors obligations**
    a. The surveyor will provide the services within the commissioning contract as agreed in the timescale(s) specified in the contract (or if no timeframe is agreed, within a reasonable time) on the terms set out, and subject to the exclusions set out in this agreement;
    b. The surveyor will carry out the services with reasonable care and skill;
    c. Unless otherwise stated in writing, the surveyors' opinions are given without the benefit of running equipment, opening up or other dismantling, to include interior linings, machinery, or other items, including all systems, which in the case of electrical installations and equipment, are switch tested only and not assessed for functionality.

2. In carrying out the services, the surveyor will inspect the vessel as thoroughly as is practicable; this will be subject to being able to gain access to various parts of the boat. A report on the condition of the vessel will be provided based on the time of the survey, included will be comments on matters which, in the surveyor's reasonable opinion, will have a significant effect upon the open market value of the vessel, or are likely to give rise to, or require considerable expense. The surveyor will not comment upon every minor matter defect.

3. The surveyor will report on the condition of the hull(s), superstructure, and fixtures (if any) of the vessel so far as can reasonably be ascertained from a visual inspection, at its location at the time of survey. The survey report(s) will not cover hidden, unexposed, or inaccessible areas of the vessel, nor will the surveyor investigate areas that they reasonably believe to be inaccessible at the time of inspection. The surveyor has no liability in areas which are not accessible.

4. In carrying out the services, the surveyor is entitled to assume the accuracy of any documents or information you provide, or by which the surveyor obtains from, or is provided by others, such as class records, registry details, and any other documents or information the surveyor reasonably relies upon.

5. In every case, it is recommended that a survey of a vessel includes an inspection of the vessel both in and out of the water:

    a. Where the surveyor agrees to survey a vessel solely based on an inspection out of the water, they provide no opinion as to the condition of the equipment requiring the vessel to be afloat or watertight integrity;

    b. Where the surveyor agrees to survey a vessel solely based on an inspection in the water, they provide no opinion as to the condition of the hull, keel, topsides, skin fittings, underwater stern gear, or rudders.

6. Unless otherwise stated in writing, the services and report provided do not include any opinion, guarantee, or assurance regarding ownership or title, freedom from mortgages or charges, debts, liens or other encumbrances, or vessel stability, performance, or design.

7. Unless otherwise stated in writing, the services do not include any opinion on faulty design, latent defects, or the suitability of the vessel or part thereof, for any particular purpose, or on the vessel's compliance with any specific local, national or international requirement or code.

8. **Valuations:** If the services include a valuation of the vessel, the opinion of the value of the vessel is based on the inspection within the limitations of the survey and or the information you provide (as applicable), assuming a willing buyer and willing seller at that time, and subject to any market conditions expressly referred to. Valuations are not representations of fact, nor do they carry any guarantee of the particulars or information on which our opinion is based.

9. **Insurance Cover:** The surveyor shall maintain professional indemnity insurance in the amount specified by the condition of membership to the Yacht Designers and Surveyors Association throughout their performance of the services.

10. **Your obligations -** You must:
    a. Give the surveyor full instructions and all relevant and accurate information relating to the vessel in a reasonable time to enable them to carry out the services;
    b. Co-operate with the surveyor in all matters relating to the services;
    c. In consultation with the surveyor, procure all necessary access to premises and the vessel and make the vessel available for inspection at the agreed time and location (including lift-out, relocation, removal of covers, trials, facility for inspection ashore and afloat as appropriate) to enable them to carry out all proper inspections and tests in connection with the services. The surveyor will not be obliged to carry out work such as removal covers or relocation of the vessel to enable them to carry out the services;
    d. Ensure that all proper safety measures are taken to provide the surveyor with safe and secure working conditions;
    e. Ensure that you obtain permission from the vessel's owners or representatives to allow the surveyor to function and test all equipment and systems onboard;
    f. Ensure that you obtain the relevant permissions from the vessel's owners or representatives to allow the surveyor to remove sample areas of annual applied antifouling compounds so that an assessment of the underlying hull material can be undertaken.

11. **The surveyor may charge you if you don't provide them with the information they need, or do the preparatory work as agreed with them.** This can happen if you don't provide the surveyor with the information they have requested concerning access to the vessel, or any part thereof in connection with the scope of work; or if you do not do the preparatory work as agreed

12. **Payment and Payment Terms:** The fee payable for the services shall be set out in the commissioning contract, or such other fees as may be later agreed upon between them in writing. You must pay the fee and expenses in full and with cleared funds in the surveyors nominated bank account. VAT is payable, if applicable, in addition to the fee and expenses.

13. **The surveyor may charge interest on overdue payments:** If the surveyor is unable to collect any payment you owe them, they may charge interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate. This interest accrues daily from the due date until payment of the overdue amount. Interest is payable together with any overdue amount.

14. **The surveyor will pass on increases in VAT:** If the rate of VAT changes between the date this agreement is entered into and the date they supply the service, the surveyor will adjust the rate of VAT that you pay, unless you have already paid in full before the change in the rate of VAT takes effect. Talk to SJ can we combine this into 12?

15. **The surveyor is not responsible for delays outside their control:** If surveyors supply of the service is delayed by an event outside their control, they will contact you as soon as possible to let you know what can be done to reduce the delay. The time for the performance of services will be extended for as long as the delaying event continues. They won't compensate you for the delay as long as they do this. Still, the period of delay continues for 12 weeks. Don't understand this sentence **Ask Tim**? In that case, you can end the contract by giving 14 days' notice to them in writing and receive a refund for any part of the services you have paid for in advance, but not received, less reasonable costs they have already incurred. 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.

16. **If you are a consumer and entered into this agreement online or over the telephone, you have a legal right to change your mind.**

17. **Your legal right to change your mind:** If the agreement was concluded online or over the telephone, you have a legal right to change your mind within 14 days of entering into this agreement (by letting the surveyor know you have changed your mind) and to receive a refund of any monies paid less any non-refundable expenses. However, you cannot change your mind if the services have already been performed.

18. **When and how they refund you:** The surveyor will refund you as soon as possible within 14 days of you telling them you have changed your mind. They will refund you only by the method you used for payment. They will not charge a fee for the refund.

19. **If you are a Consumer, you have rights should there be something wrong with the service:** The surveyor will honour their legal duty to provide you with services under this agreement and all the requirements imposed by law. Your legal rights are covered by the Consumer Rights Act 2015. These are subject to certain exceptions.

20. **If a performance time has not been agreed upon upfront, t**he service must be carried out within a reasonable time.

21. **The surveyor can change the services and these terms -** The surveyor can always change the services and the terms to reflect any changes in relevant laws and regulatory requirements.

22. **Ending this Agreement:** The surveyor can end this agreement, claim any compensation due to them and render any services already carried out null and void, if:
    a. You do not make any payment to them when it is due and you still do not make payment within 28 days of them reminding you that payment is due;
    b. You do not, within 28 days of us asking for it, provide them with information, cooperation or access that they need to provide the service;
    c. Either party can end this agreement if the other becomes 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. Should it be associated with it? Ask TB

23. **The surveyor's liability to consumers:** The Surveyor is not responsible for losses you suffer caused by-
    a. **Unexpected:** It was not apparent that it would happen and nothing you said to them before they accepted your order meant they should have expected it (so, in the law, the loss was unforeseeable);
    b. **Out of control**: They are not responsible for delays outside their control;
    c. **Avoidable:** Something you could have avoided by taking reasonable action;
    d. **A business loss:** Their liability for any loss you suffer with your trade, business, craft or profession is limited, as described in their liability to businesses**.**

24. **The surveyor's liability to consumers is subject to the following limitations:**
    a. The surveyor's total liability for all losses arising under or in connection with any agreement between you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the amount of indemnity specified by the YDSA membership requirements of £250,000 in the annual aggregate. The total liability limit will include all claim, defence, and disbursement costs.
    b. Unless you notify them that you intend to claim in respect of an event within the notice period, they shall have no liability for that event. The notice period for an event shall start on the day you become, or ought reasonably to have become, aware of grounds to make a claim in respect of the event and shall expire 14 days from that date. The notice must be in writing, and the event and the grounds for the claim must be identified in reasonable detail.

25. **The surveyor does not give business customers all the same rights as consumers:** You are considered a business customer if the vessel is used wholly or mainly in connection with your trade, business or profession, even if you are an individual.

26. **The surveyor's Liability business:**
    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 or tort;
    b. The surveyor shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or any indirect or consequential loss;
    c. The surveyor's total liability for all losses arising under or in connection with any agreement between you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the amount of indemnity specified by the YDSA membership requirements of £250,000 in the annual aggregate. The total liability limit will include all claim, defence, and disbursement costs;
    d. Unless you notify them that you intend to claim in respect of an event within the notice period, they shall have no liability for that event. The notice period for an event shall start on the day you become, or ought reasonably to have become, aware of grounds to make a claim in respect of the event and shall expire 14 days from that date. The notice must be in writing, and the event and the grounds for the claim must be identified in reasonable detail.

27. **Losses the surveyor never limit or exclude:** Nothing in these terms shall limit or exclude their liability for obligations that cannot legally be limited, including death or personal injury caused by negligence and fraud or fraudulent misrepresentation.

28. **Privacy Notice:** How the surveyor uses any personal data you give them is set out in their Privacy Notice, and a copy is available upon request to the surveyor.

29. **Applicable law and dispute resolution:** These terms are governed by English law. If you are a consumer then, wherever you live, you can bring claims against the surveyor in the English courts. If you live in Wales, Scotland, or Northern Ireland, you can also file claims against them in the courts of these countries. If you are a consumer, the surveyor can file claims against you in your country (the courts of England & Wales for consumers living in England or Wales). If you are a business, you irrevocably agree to submit all disputes arising out of or in connection with their contract with you to the exclusive jurisdiction of the courts of England and Wales.

30. **Other important terms:**
    a. **Neither party may transfer this agreement to another person:**
    Either party may not assign, replace or transfer any or all of its rights and obligations under the agreement without the prior written consent of the other;
    b. **Subcontracting of obligations under this Agreement is permitted:**
    The surveyor may subcontract any of its obligations under this agreement without the prior written consent of the other party. The subcontracting party shall be responsible for all acts and omissions of its subcontractors as if they were its own acts or omissions;
    c. **Each party must keep confidential information confidential:**
    Each party undertakes that it shall not disclose to any person any confidential information (whether disclosed or made available to it in writing, orally or by any other means) concerning the business, assets, affairs, pricing, customers, suppliers, plans, products or know-how of the other party, except: to its employees, officers, representatives, contractors, subcontractors or advisers who need to know that information to carry out the party's obligations under the Contract ("Representatives"). Each party shall ensure that its representatives to whom the other party's confidential information is made available in connection with the Agreement, are informed of its confidential nature and comply with these Terms & Conditions; and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority;
    d. **Confidential Information:**
    Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract;
    e. **Variations to this Agreement must be in writing:**
    Except as set out in this Agreement, any variation of the Agreement must be in writing and signed by the parties (or their authorised representatives);
    f. **Nobody else has any rights under this contract:**
    The services and reports are provided for your use only and may not be relied upon by anyone else. This contract is between you and the surveyor. Nobody else can enforce it, and neither party will need to ask anybody else to sign off on ending or changing it;
    g. **If a court invalidates some of this contract, the rest of it will still apply:**
    If a court or other authority decides that some of these terms are unlawful, the rest will continue to apply;

h. **If either party delays in enforcing this contract, it can still enforce it later:**
Either party might not immediately chase the other for not doing something (like paying) or for doing something it is not allowed to, but that does not mean the enforcing party cannot enforce it later;

i. **Notices to be given in writing:**
Any communication required to be given under these terms by either party shall be in writing and shall be sufficiently given either by letter 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 specified in the commissioning contract or as later 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.