

Thursday, 30 April 2009

Terms and Conditions

1. DEFINITIONS

1.1 The Client:

The company, firm or person with whom the agreement is made.

1.2 The Vessel:

The motor yacht or sailing yacht or ship with whom the agreement is made.

1.3 The Consultant:

International Superyacht Management Limited (ISM Ltd).

1.4 The Agreement:

The Agreement between 'International Superyacht Management Limited and 'The Client' constituted by the attached fax/letter/purchase order/electronic mail and incorporating inter alia these Terms and Conditions.

2. SERVICES

2.1 International Superyacht Management Limited provides a personalized service that deals with all aspects of the marine world whilst specialising in Superyacht and Defence industries.

3. ASSIGNMENT

3.1 Neither party shall transfer or assign its rights or obligations under The Agreement without the prior written consent of the other party provided that:

3.2 The Client may transfer any or all of its rights under The Agreement to any of its affiliate companies, in which case The Client shall procure the acceptance by the assignee of the terms, conditions, exceptions and exemptions of The Agreement.

4. DELEGATION

4.1 If International Superyacht Management Limited considers it more efficient or convenient, International Superyacht Management Limited may in its discretion procure advice, assistance and services, which it renders under The Agreement, from other persons and may in its discretion delegate performance of one or more of its obligations under The Agreement.

4.2 International Superyacht Management Limited may sub-contract all or part of the work entrusted by The Client, on terms that any such sub-contractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, contained in these Terms and Conditions.



5. CONFIDENTIALITY

5.1 International Superyacht Management Limited will not divulge or allow to be divulged to any party or person (other than those who out of necessity to complete any instruction under The Agreement require to be informed of) any confidential information of or belonging to The Client. Confidential information includes, but is not limited to, information relating to any affairs of any client or customer, information related to products, services, processes, trade secrets, market opportunities, operations, documentation, techniques, procedures, designs, specifications, research, development, accounting, engineering, marketing, pricing, selling, and lists of employees and customers.

5.2 The Client shall extend the same courtesy to International Superyacht Management Limited as laid down in paragraph 5.1 of these Terms and Conditions.

5.3 The Client undertakes to keep confidential any confidential information disclosed to it by International Superyacht Management Limited and not to disclose the same either complete or in part to any third party (including subsidiary companies, holding companies or associate companies) without International Superyacht Management Limited prior written approval, such undertaking to continue notwithstanding the expiry or termination of The Agreement for so long as the information in question has not; become part of the public knowledge or literature without default on the part of The Client, or, been disclosed to The Client by the third party (other than one disclosing on behalf of International Superyacht Management Limited) whose possession of such information is lawful and who is under no secrecy obligation with respect to the same, or, for a period of 15 years from the date The Agreement terminates, whichever is the sooner.

6. PRICES AND QUOTATION

6.1 Any quotation is valid for a period of 30 days unless otherwise agreed by International Superyacht Management Limited. If after the quotation has been agreed our prices are increased then these prices may be carried forward to The Client following a period of 30 days notice. Unless otherwise indicated all prices are excluding VAT.

7. PAYMENT

7.1 If any payments to be made under The Agreement shall be subject now or in the future to taxes, levies or charges of whatever kind in the country in which International Superyacht Management Limited is incorporated and/or operating and which The Client or International Superyacht Management Limited is required to pay or which International Superyacht Management Ltd is required to withhold, The Client shall pay such sums as shall yield to International Superyacht Management Limited after payment or withholding of such taxes, levies or charges the full amounts payable to International Superyacht Management Limited under The Agreement as if such taxes, levies or other charges were not paid or withheld.

In this clause The Client shall include any assignee of any of its rights hereunder.

7.2 The Client shall pay to International Superyacht Management Limited in consideration for services provided; such fees shall be confirmed in writing to The Client and may, at the discretion of International Superyacht Management Limited, be invoiced for in staged payments.

7.3 When giving an estimate or indication of price – in writing or orally – International Superyacht Management Limited will exercise skill and judgement in doing so. Such estimates are subject to the accuracy of the information supplied by The Client and hence estimates may be amended.

7.4 Unless otherwise agreed by International Superyacht Management Limited payment is due immediately from invoice date.

7.5 The Client shall pay to International Superyacht Management Limited for any services provided such fees as shall be confirmed under The Agreement. In addition to fees payable, International Superyacht Management Limited shall be reimbursed by the client for all costs and expenses incurred whilst under the provision of the consultancy service provided without limitation.

7.6 If International Superyacht Management Limited arranges or is involved during the brokering process including sale or purchase of any motor yacht or craft or item of equipment, The Client shall pay to International Superyacht Management Limited a fixed sales commission of 5% of the sales price.

7.7 If International Superyacht Management Limited arranges any charters or equipment, sub-contracts, fuel, repairs or other supplies or services to The Client; The Client shall pay to International Superyacht Management Limited a management fee of 5%.

7.8 The fees specified in paragraphs 7.6 and 7.7 of these Terms and Conditions, shall be payable to International Superyacht Management Limited should The Client enter into agreement or contract with a third party, having been introduced by International Superyacht Management Limited, for the sale, purchase or charter for services specified therein.

8. LIABILITY AND INDEMNITY

8.1 International Superyacht Management Limited shall dedicate such time, attention and skill as may be reasonably necessary for the proper performance of the obligations under this agreement.

8.2 In this clause Delegate(s) means:

Employees and agents of International Superyacht Management Limited. Any person to whom performance of work or services under The Agreement is delegated or sub-contracted by International Superyacht Management Limited any such person's employees and agents.

8.3 International Superyacht Management Limited or any delegate shall not be liable to The Client for any loss, liability, damage, cost, claim or expense suffered or incurred by The Client in connection with or arising from the services provided by International Superyacht Management Limited.

8.4 It is assumed that The Client undertakes to name International Superyacht Management Limited or any such delegate as an additional insured under any third party liability insurances throughout the duration of which any services are provided.

9. FORCE MAJEURE

9.1 Neither party to The Agreement shall be in breach of any obligation hereunder (other than the obligations of The Client to make payment of any monies due to International Superyacht Management Limited) insofar as performance thereof has been delayed hindered, interfered with or prevented by any circumstances beyond its reasonable control.

10. APPLICABLE LAW AND ARBITRATION

10.1 The proper law of this Agreement is English Law and English Law shall be used in interpreting The Agreement and for resolving all claims or disputes arising out of or connected with The Agreement (whether based on contract, tort or any other legal doctrine). Any such claim or dispute not settled by negotiation shall be settled by arbitration in London under the rules of the London Court of International Arbitration. The language of the Arbitration shall be English.

11. WAIVER

11.1 There shall be no forgoing, waving or varying of any Terms and Conditions by or on behalf of International Superyacht Management Limited unless confirmed in writing by International Superyacht Management Limited. Nor shall The Client be entitled to rely on any promise or indication that such a written confirmation will be forthcoming. Any variation of these Terms and Conditions shall not be binding unless set out in writing and signed by representatives of each parties.