

BOSSS LIFEBOAT & LIFESAVING SERVICES CC

CK No. 2002/086438/23

STANDARD TRADING TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 The headings to the clauses are for reference purposes only and shall not be used to interpret the clauses to which they relate.
- 1.2 Unless the context clearly indicates otherwise, references to one gender shall include the other, the singular includes the plural and vice versa, and all terms shall apply equally to natural persons, juristic persons and other associations.
- 1.3 "**Authority**" means any duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.
- 1.4 "**Company**" means BOSSS Lifeboat & Lifesaving Services CC, registration number 2002/086438/23 or any of its subsidiary and affiliated companies.
- 1.5 "**Customer**" means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or services.
- 1.6 "**Services**" means lifeboat and davit service & testing, liferaft sales & servicing, lifesaving equipment sales & servicing, fire equipment sales & servicing, load testing and any other work performed or advice given by the Company.

2. APPLICATION OF TRADING TERMS AND CONDITIONS

- 2.1 Unless otherwise provided herein, all and any business undertaken or advice, information or Services provided by the Company, whether gratuitous or not, is undertaken or provided subject to these trading terms and conditions.
- 2.2 These trading terms and conditions shall prevail over those of any Customer with whom the Company contracts, even if any applicable terms and conditions contain a clause similar in meaning and intention to this one.

3. APPLICABLE LEGISLATION

- 3.1 To the extent that any of these trading terms and conditions are repugnant to or in conflict with any law, they are deemed to be amended to comply with that law, and any

such amendment shall not in any way affect the remaining provisions of these trading terms and conditions.

- 3.2 If any provision of these trading terms and conditions is unenforceable, then the Company shall be entitled to elect, at any time, that such provision shall be severed from the remaining provisions of these terms and conditions, so as to allow the remaining provisions to remain of full force and effect.

4. **INSTRUCTIONS**

- 4.1 The Customer's instructions to the Company shall be in writing and be precise, clear and comprehensive.
- 4.2 If owing to the urgency of the situation it is not practicable to give instructions in writing, instructions shall be given orally and thereafter confirmed in writing as soon as reasonably practicable.
- 4.3 Instructions given by the Customer shall be recognised by the Company as valid only if timeously given specifically in relation to a particular matter in question.
- 4.4 Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.

5. **DISCRETION OF THE COMPANY IN THE ABSENCE OF INSTRUCTIONS BY THE CUSTOMER**

- 5.1 In the absence of specific instructions given timeously in writing by the Customer to the Company:
- 5.1.1 It shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any or all of the Services which may be necessary or requisite for the discharge of its obligations to the Customer;
- 5.1.2 The Company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the Services it has agreed to perform.

6. COMPANY'S GENERAL OVERRIDING DISCRETION

- 6.1 If at any time the Company should consider it to be in the Customer's interest or for the public good to depart from any of the Customer's instructions, or if required to do so by any Authority, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 6.2 If events or circumstances come to the attention of the Company, its agents, servants or sub-contractors which, in the opinion of the Company in its sole discretion, make it wholly or partially impossible or impracticable for the Company to comply with a Customer's instructions, the Company shall take reasonable steps to inform the Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing, the Company shall, at its sole discretion, be entitled to take any such action as it deems appropriate in the circumstances, and the Customer shall indemnify the Company and hold it harmless for any claims arising therefrom.

7. OBLIGATIONS OF CUSTOMER

- 7.1 The Customer warrants that:
- 7.1.1 He is authorised to agree to these trading terms and conditions on behalf of any person he represents;
- 7.1.2 If the Customer is a close corporation or limited liability company, then its members and/or directors personally guarantee, jointly and severally, the due performance of all the obligations of the Customer to the Company and the representative of the Customer warrants that he is duly authorised to bind such members and/or directors and to act as the Customer's agent in all his dealings with the Company;
- 7.1.3 All information provided is accurate and comprehensive, no necessary or pertinent information has been withheld, and the Customer indemnifies the Company against all claims, penalties, fines, damages and expenses arising as a result of any breach of this undertaking;

- 7.1.4 Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement governed by these terms and conditions;
- 7.1.5 In the rendering of any Services to the Customer, the Company may make reasonable use of the Customer's equipment, free of expense;
- 7.1.6 He will be liable to reimburse the Company for all costs in respect of gear, equipment, portable equipment, materials and stores which are lost, damaged or consumed in the course of rendering the Services, provided that such loss or damage does not arise as a result of negligence on the part of the Company, its agents, servants or sub-contractors.

8. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

- 8.1 The Company makes no warranties and representations to the Customer save as may be specifically provided for herein or as notified in writing by the Company to the Customer from time to time.
- 8.2 The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for and on behalf of the Company, whether negligently or otherwise, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the Board of Directors of the Company.

9. INSURANCE

- 9.1 The Customer warrants to the Company that he has adequate and sufficient insurance cover for the nature of the Services to be rendered by the Company.
- 9.2 The Customer shall furnish the Company with copies of its insurance policies upon request.

10. AGENT OF CUSTOMER LIABLE IF CUSTOMER DOES NOT PAY

If any Customer acted as agent on behalf another party, and that other party failed to pay any amounts due to the Company, the Company may recover such amounts directly from the Customer.

11. COMPANY ENTITLED TO AT AS AGENT OR PRINCIPAL IN CONTRACT

11.1 Unless otherwise agreed in writing, the Company shall be entitled to act either as agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.

11.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not in itself determine whether such task is to be arranged by the Company acting as agent for and on behalf of the Customer or as the principal.

11.3 The Customer acknowledges that when the Company, as agents for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party.

11.4 Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deemed necessary or requisite for the fulfilment of the Customer's instructions.

12. SUB-CONTRACTING

12.1 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant Services, or by the Company employing the services of third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Services, or such part thereof as they may be employed to carry out;

12.2 Where the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to the Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party

charges; but the Company shall, if suitably indemnified against all costs (including attorney and own client costs) which may be incurred by or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may direct.

13. TERMS AND CONDITIONS OF AGENTS AND SUB-CONTRACTORS

The Customer agrees that any business entrusted by the Customer to the Company may be dealt with by the Company on the terms and conditions, whether or not inconsistent with these trading terms and conditions, stipulated by the third parties to whom such business has been entrusted.

14. PAYMENT BY THE CUSTOMER

- 14.1 Unless otherwise specifically agreed by the Company in writing, the Customer shall pay to the Company in cash immediately upon presentation of invoice, all sums due to the Company.
- 14.2 All sums due to the Company shall be paid by the Customer without deduction or set-off and payment shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.
- 14.3 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Company, the Customer agrees to pay, and shall be liable to pay, all legal costs on the attorney and own client scale, including collection charges and tracing agents fee incurred by the Company in recovering any such amount from the Customer.
- 14.4 The Company may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Company, irrespective of when it arose, or to interest only, or to legal or other costs, or to any such combination of principal debt, interest and costs as it may in its sole discretion determine, irrespective of any purported allocation or appropriation being made by the Customer at the time of payment or at any other time.
- 14.5 The Company reserves the right to withdraw any credit facilities afforded to the Customer at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion.

14.6 In the event that the Company withdraws any credit facilities afforded to the Customer, all amounts owed to the Company shall immediately become due and payable.

14.7 The Company shall have the right to, at any time, request security for any amounts owed to the Company, or for payment in respect of any Services to be rendered to the Customer, in which event the Customer shall immediately furnish the Company with such security.

15. **LIEN**

15.1 All goods and documents relating to Services rendered to the Customer by the Company, including but not limited to survey and inspection reports of whatever nature and in whatever form, shall be subject to a special and general lien and pledge either for monies due in respect of services rendered by the Company in respect of such documents or for other monies due to the Company from the Customer.

15.2 If monies due in respect of services rendered by the Company are not paid within 14 days of the Customer being given notice to do so, the Company may, at its absolute discretion and without notice to the Customer or an order of a court, sell, abandon or otherwise dispose of such goods solely at the risk and expense of Customer, the proceeds of which shall accrue to the Company without recourse to the Customer in any manner whatsoever.

16. **QUOTATIONS**

16.1 The Company shall be entitled by notice to the Customer to cancel or resile from any quotation within 10 days in circumstances where it becomes either impracticable or uneconomical for the Company to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling or resiling from the quotation.

16.2 All quotations and agreements are subject to revision without notice having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the Company to third parties including, without limitation, insurance premiums, equipment rental, labour and the cost of fuel, which charges and upward movements take place after quotation. Any revision of rates as

aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

17. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claims shall be made against any director, servant, employee or agent of the Company in their respective personal capacities which imposes or attempts to impose upon them any liability in connection with the rendering of any Services which are the subject of these trading terms and conditions or any act or omission arising during the course and scope of their employment and hereby waives all and any such claims.

18. VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation of these trading terms and conditions, including this clause, shall be binding on the Company unless embodied in a written document signed by a duly authorised member of the Company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these trading terms and conditions by the Customer.

19. NON WAIVER

No extension of time or waiver or relaxation of any of these trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.

20. GOVERNING LAW

Regardless of the place at which the agreement has been concluded for the performance of the Services, or the place at which the Services are performed, or the domicile of the Customer, these trading terms and conditions and all agreements entered into between the Company and the Customer pursuant thereto and the terms thereof shall be governed by and construed in

accordance with the laws of the Republic of South Africa which are in force at the time when any dispute arising out of or in any way related to these trading terms and conditions arises.

21. **SUBMISSION TO JURISDICTION**

The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions, or any Services rendered by the Company, shall be brought in the Durban and Coast Local Division of the High Court of South Africa, exercising its Admiralty Jurisdiction, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court.

22. **ARBITRATION**

22.1 The Company may in its sole discretion refer any dispute arising from or in connection with these trading terms and conditions to arbitration, which arbitration shall bind both the Company and the Customer.

22.2 For the purpose of arbitration, the parties shall jointly nominate and agree upon an arbitrator who shall be an Advocate of the High Court of South Africa of no less than 10 (ten) years standing. Should the parties fail to agree on the arbitrator to be appointed, he shall be appointed by the President from time to time of the Maritime Law Association of South Africa whose decision in this regard shall be final and binding on the parties.

22.3 The arbitration shall be subject to and conducted in accordance with the Rules for the Conduct of Arbitration ("the Rules") published from time to time by the Association of Arbitrators (Southern Africa) and then in force;

22.4 Subject to any rights of appeal contained in the Rules or the Arbitration Act No. 42 of 1955, all arbitration awards shall be final and binding upon the parties and capable of being made an order of any competent court of law.

23. **INDEMNITY BY THE CUSTOMER**

The Customer indemnifies and holds harmless the Company against all liability, damages, costs and expenses incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or implied instructions or the implementation by or on behalf of or at the instance of the Company, or any act or omission within the discretion of the

Company, in relation to any Services rendered by the Company to the Customer and in respect of any liability whatsoever.

24. EXCLUSION OF COMPANY'S LIABILITY

24.1 The Company shall not be liable for any claims, whether arising in contract or delict, which are in any way related or attributable to:

24.1.1 An agreed date or delivery time;

24.1.2 Any act or order of any Authority;

24.1.3 Direct, indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused;

24.1.4 Any act or omission of the Customer or any person acting on behalf of the Customer other than the Company, its servants, agents or sub-contractors;

24.1.5 Compliance with the instructions of any person or Authority entitled to give instructions;

24.1.6 Theft;

24.1.7 Fire, flood or storm;

24.1.8 A nuclear incident;

24.1.9 Any cause or event which the Company could not avoid or prevent by the exercise of reasonable diligence;

24.1.10 War (whether declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, riots, civil commotion, strikes, lockouts, labour disturbances, stoppages, terrorist act (or act by any person acting from political motives);

24.1.11 Piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;

- 24.1.12 Confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;
- 24.1.13 Mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not;
- 24.1.14 Injury or death suffered by the Customer or any person arising from any cause including but not limited to the Company's negligence, as a result of the Company's performance or attempted performance or non-performance of its obligations to the Customer and/or the Customer's requirements or mandate;
- 24.1.15 The failure or malfunction, for whatever reason, and regardless of negligence on the part of the Company or breach by it of these trading terms and conditions, of any of the Company's equipment or any equipment provided or operated by the Company or by any person with whom the Company conducts business, or any third party;
- 24.1.16 The provision by the Company to the Customer, in whatever manner or form, of incorrect information, including computer-generated data, where such incorrect information has been generated by and provided to the Company by any Customer or any third party;
- 24.1.17 Any loss of property, including theft.
- 24.2 The Company will not be liable to the Customer for any loss or damage to person or property howsoever arising while navigating any lifeboat through a harbour or waterway and the Customer acknowledges that the Customer carries all risk in this regard.
- 24.3 The Company will not be responsible, in any way, for removing or installing any liferafts and associated equipment on any vessel.

25. MONETARY LIMITATION OF LIABILITY OF THE COMPANY AND TIME WITHIN WHICH TO COMMENCE PROCEEDINGS

- 25.1 If, in spite of the exclusion of liability in these trading terms and conditions, the Company is found to be liable, its liability shall not exceed whichever is the lesser of the following respective amounts:

- 25.1.1 Double the amount of fees raised by the Company for its Services, but excluding disbursements and any amount payable to sub-contractors, agents and third parties;
- 25.1.2 USD 20,000.00 for any one occurrence.
- 25.2 Any claim which may arise out of or in connection with any of the Services performed under these trading terms and conditions shall be notified in writing to the Company within 3 months of completion or termination of the Services and summons or other proper process originating action shall be served on the Company within 9 months of the time when the cause of action first arose. If either of these conditions is not complied with, the Company shall be discharged from all liability whatsoever in respect of any claim of whatsoever nature.

26. **BREACH**

If the Company breaches any of these trading terms and conditions or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions and any agreement between the Customer and the Company.

27. **DOMICILIUM AND NOTICES**

- 27.1 The Customer's registered or physical address shall constitute the Customer's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by the Customer and the Company, unless the Customer provides an alternative *domicilium* by written notice to the Company.
- 27.2 The Company's registered or physical address shall constitute the Company's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by the Customer and the Company.
- 27.3 Notices given to the above addresses or by facsimile or electronic mail to the correct fax number or electronic mail addresses shall be deemed to have been duly given:
- 27.3.1 14 days after posting, if sent by registered post;

- 27.3.2 on delivery, if delivered by hand;
- 27.3.3 on dispatch, if sent by facsimile or electronic mail.