

**Boat Electrics & Electronics Limited ("BEE")**

**&**

**[INSERT ENTITY NAME] ("The Client")**

**BUSINESS2BUSINESS CONTRACT**

**CONFIDENTIAL**



## **Index**

Please find enclosed:

Schedule 1: Scope

Schedule 2: Invoice

Schedule 3: Variation Order

Schedule 4: Terms and Conditions

### **Contact Details:**

#### **Boat Electrics & Electronics Limited**

sales@boatelectrics.com

**[INSERT COUNTERPARTY ENTITY NAME IN FULL AND EMAIL ADDRESS(ES)]**

**Schedule 1: Scope/Demarcation Schedule**

[INTENTIONALLY LEFT BLANK]

**Schedule 2: Invoice**

[INTENTIONALLY LEFT BLANK]

**Schedule 3: Variation Order**

<b>Contract No./Name:</b>  [INSERT NO./Name]	<b>Variation No.:</b>  CONTRACT [VO NUMBER]	<b>Date:</b>  [DATE]
<b>Party seeking variation:</b>  [INSERT PARTY NAME]		
<b>Requested by:</b>  [INSERT NAME OF INDIVIDUAL WHO HAS REQUESTED THE VARIATION]	<b>Variation Value:</b>  Cumulative Total Estimate: [INSERT AMOUNT] GBP; to be invoiced in monthly	
<b>Variation Time:</b>  Cumulative Total Time Estimate: [INSERT TIME IMPACT]		
<b>Clause No.:</b>  [INSERT RELEVANT CLAUSE NO.]  (Answer could be n/a)	<b>Variation Description</b>  [IDENTIFY CHANGE]  - SCOPE OF SUPPLY CHANGE  - TERMS AND CONDITIONS CHANGE]	
Except as modified by the terms of this Variation, all terms and conditions of the Contract as adjusted shall remain in full force and effect.		
Signed by _____ duly authorised for and on behalf of Boat Electrics & Electronics Limited  .....  Date:.....	Signed by [INSERT FULL NAME OF INDIVIDUAL] duly authorised for and on behalf of [CLIENT NAME]  .....  Date:.....	

#### **Schedule 4: Terms and Conditions**

- 1.1 The Parties hereby agree to be bound by these Terms and Conditions upon the earlier of:
  - 1.1.1 the Contract being signed by both Parties;
  - 1.1.2 payment of any sort by the Client to BEE;
  - 1.1.3 the issuance of purchase order, quotation, anything in writing or any instruction by the Client; or
  - 1.1.4 BEE undertaking any Scope on behalf of the Client.
- 1.2 These Terms and Conditions shall apply to the provision of any Goods or Services by BEE to the Client and to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 Unless the Parties have agreed otherwise in writing, these Terms and Conditions shall also apply to any other goods or services of whatever nature which may be provided by BEE to the Client.
- 1.4 In the event of any conflict between these Terms and Conditions and any other document relied upon by either Party in relation to the Contract, these Terms and Conditions shall prevail.

#### **2 DEFINITIONS**

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

**"Business Days"** means days that the Bank of Scotland is open;

**Boat Electrics & Electronics Limited "BEE"** is the Service and Goods provider;

**"Contract"** means the Scope Schedule (Schedule 1), any quotation issued by BEE, and BEE's Terms and Conditions (Schedule 4);

**"Client"** means any partnership, firm, entity or corporate body (which expression shall, where the context so admits, include its successors) which purchases/utilises the Goods and/ or Services from BEE;

**"Deliver", "Delivered" or "Delivery"** means the act of: (i) delivering or making available the Services or Goods or (ii) where assembly, installation, erection or commissioning of the Services or Goods at site or otherwise is required, BEE declaring that the Services or Goods are ready for acceptance.

**"Goods"** means any goods which BEE is to supply in accordance with the Contract;

**"Gross Negligence"** shall mean any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action and which is in reckless disregard of or conscious indifference of a risk known, or so obvious that it should have been known, and so great as to cause harm to people, property or the environment.

"Gross Negligence" expressly excludes an act, omission, error of judgment or mistake made in the exercise in good faith of any function, authority or discretion vested in or exercisable

by such person or entity and which in the exercise of such good faith is justifiable by special circumstances, including safeguarding of life, property or the environment and other emergencies.

**"Parties"** means BEE and the Client. **"Parties"** means both of them;

**"Scope"** means the scope of the Services and/or Goods to be provided by BEE to the Client, as agreed between the Parties and/or evidenced in the Scope and/or Demarcation Schedule 1 and documents (including any quotation or invoice) which accompany these Terms and Conditions. If any section of the Scope is left blank, the Parties agree that the exact scope of work shall be determined by BEE during the project and thereafter confirmed to the Client. **"Services"** means the provision of work and/or other services which are the subject of the Contract, or agreed during a project, that may (without limitation) comprise and relate to installation of the Goods or any parts of them in accordance with these Terms and Conditions; and

**"Variation"** is any variation from the initial Scope agreed between the Parties in accordance with clause 11, and which is recorded by way of a Variation Order, a pro-forma copy of which is attached at Schedule 3 to these Terms and Conditions.

- 2.2 Any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended, unless expressly stated otherwise, shall be at the time in force.
- 2.3 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neutral genders, and vice versa. Words importing a person shall include a firm and any entity having legal capacity.
- 2.4 Unless the context otherwise requires:
  - 2.4.1 the headings in the Contract are inserted for convenience of reference only and shall not be taken into consideration in the interpretation or construction of the Contract;
  - 2.4.2 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and without limitation and the words following any of those terms shall not limit the sense of the words preceding those terms; and
  - 2.4.3 reference to any document or agreement shall be construed as reference to the same as it may have been, or may from time to time, be amended or modified in accordance with the Contract.
- 2.5 References in these Terms and Conditions to "holding company" and "subsidiary" shall have the same meanings as ascribed to them in section 1159 of the Companies Act 2006.

### **3 THE SCOPE, SERVICES AND GOODS**

- 3.1 In consideration of the fees being paid by the Client to BEE, BEE shall provide the Services and Goods to the Client as outlined in the Scope.

3.2 BEE shall use its reasonable care and skill in the performance of the Scope and compliance of all of its contractual obligations. The Scope is provided by BEE exclusively to the Client. BEE does not accept any responsibility or liability to any third party for the Scope, Services and/or Goods which it provides to the Client unless expressly agreed in writing.

3.3 The quantity, quality and description of and any specification for the Services and Goods shall be those set out in Schedule 1. BEE reserves the right to make any changes in the specification of the Services or Goods which are required to conform to any applicable statutory requirements or, where the Services or Goods are to be supplied to Client's specification, which do not materially affect their quality or performance.

3.4 In the event of any inconsistency between these Terms and Conditions and other documents forming part of the Contract, the following order of priority shall apply (with the first taking precedence):

- 3.4.1 These Terms and Conditions;
- 3.4.2 Schedule 1;
- 3.4.3 any written agreement between the Parties where the Parties agree that any of the provisions in the Contract should be superseded; and
- 3.4.4 BEE's quotation and documents (if any) incorporated by express reference on the face of the quotation.

#### **4 TERMS OF PAYMENT**

4.1 BEE shall issue the Client with invoices for all of the Services undertaken and Goods provided by BEE.

4.2 Unless the invoice specifically states a different date for payment of the invoice, in which case the due date on the invoice shall be the applicable due date, the Client shall pay BEE's invoice in full and final settlement, without set-off, deduction or withholding within 30 days of receipt of the invoice.

4.3 Every invoice shall be paid in the currency stated in the invoice in cleared funds to BEE's bank account as set out in the invoice.

4.4 Time is of the essence in relation to every invoice payment. If the Client fails to make any payment in accordance with the Contract and/or invoice, BEE shall, without prejudice to any right which BEE may have pursuant to any statutory provision in force, have the right to charge the Client interest on a daily basis at an annual rate equal to the base rate of The Bank of Scotland plus three percent (3%) from time to time on any sum due and not paid on the due date. Such interest shall be calculated compounding on a daily basis from the due date until payment of the overdue sum, whether before or after judgment.

4.5 If the Client reasonably believes that an incorrect invoice has been issued by BEE, they shall notify BEE promptly in writing, but in any event no later than four days after receipt of the invoice, specifying the reason for disputing the invoice. The Client shall pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed amount. BEE shall be entitled to charge interest at an annual rate equal to the base rate of The Bank of Scotland plus three percent (3%) on such disputed amounts where resolved in favour of BEE. The balance payment (together with the applicable interest) shall be received

by BEE within five (5) Banking Days after the dispute is resolved. Should the Client's claim be valid, a corrected invoice shall be issued by BEE.

4.6 At any time while any sum due and payable by the Client to BEE is outstanding, BEE shall be entitled to suspend the performance of any or all of their obligations under this Contract.

## **5 CLIENT RESPONSIBILITIES**

5.1 The Client undertakes and shall use its best endeavours to:

- 5.1.1 provide full, accurate and complete information to BEE in sufficient time to enable the Services and Goods to be performed effectively and efficiently by BEE;
- 5.1.2 procure all necessary accesses for BEE's representatives to everything required to carry out the Services, not limited to necessary information, goods, premises (including all stores on or offsite during working hours), vessels, installation and transport;
- 5.1.3 ensure the working environment is safe and adequate in relation to facilities and arrangements for BEE's representatives, where it has control of the relevant working environment;
- 5.1.4 procure that it shall, on reasonable notice (and in any event not more than 24 hours after notice is given), make its project management team available to BEE for any purpose deemed necessary by BEE including, but not limited to, meetings, discussions and taking necessary steps to resolve problems that may delay provision of the Services or Goods;
- 5.1.5 inform BEE at the earliest opportunity of any possible delays of any nature including, but not limited to those that occur due to vessel availability, labour relations, production problems, design problems, or financial problems or any other risk of delay whatsoever;
- 5.1.6 supply BEE with water and sufficient electrical power to enable BEE to provide the Services and Goods;
- 5.1.7 be fully responsible to BEE for ensuring the accuracy of the terms of Schedule 1, any quotation and any applicable specification;
- 5.1.8 take out necessary insurance policies in respect of the Goods and BEE staff; and
- 5.1.9 comply with each and every obligation it has under the Contract.

5.2 Any information provided by the Client which subsequently is confirmed by BEE as incorrect, incomplete and/or defective, shall be corrected by BEE at the sole risk and expense of the Client. The Client hereby agrees to indemnify BEE for any costs incurred dealing with Client's incorrect, incomplete and/or defective information.

## **6 TERM AND TERMINATION**

6.1 This Contract applies to the Services and Goods whenever performed for the Client.

6.2 The Contract or any part of the Services and Goods under the Contract may be terminated upon the written agreement by both Parties.

6.3 Without affecting any other right or remedy available to it, either Party may terminate the Contract immediately if:

- 6.3.1 the other Party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five (5) Business Days after being notified in writing to do so; or
- 6.3.2 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or
- 6.3.3 the other Party is a company or limited liability partnership, is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986; or
- 6.3.4 the other Party is a partnership, has any partner to whom any of the foregoing apply; or
- 6.3.5 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 6.3.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party; or
- 6.3.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice or intention to appoint an administrator is given or if an administrator is appointed over the other Party; or
- 6.3.8 a floating charge holder of the assets of the other Party has become entitled to appoint or has appointed an administrative receiver; or
- 6.3.9 a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the other Party; or
- 6.3.10 any event occurs or proceeding is taken with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6; or

6.4 Without affecting any other right or remedy available to it, BEE may terminate the Contract immediately if:

- 6.4.1 the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than five (5) Business Days after being notified in writing to make such payment(s);
- 6.4.2 the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

6.4.3 any circumstances whatsoever beyond the reasonable control of BEE that necessitates the termination for whatever reason for the provision of Services or Goods.

6.5 In the event of termination under Clause 6.3 or 6.4, BEE shall retain any sums already paid to it by the Client without prejudice to any other rights either party may have whether at law or otherwise. BEE shall also be entitled to invoice the Client for all works undertaken and costs incurred up to the date of termination.

6.6 Either party may terminate this Contract by providing the other party with 30 days prior written notice.

6.7 The provisions of this Contract that give either BEE or the Client rights or obligations beyond its termination shall continue indefinitely following the termination of this Contract.

## **7 FEES**

7.1 The Client shall pay BEE for all Services and Goods and all professional fees and reasonable and necessary additional costs and expenses, in the opinion of BEE, that it incurs carrying out the Services and Goods (for example: travel and accommodation insurance, packaging, printing/copying, communications, additional work and Services). BEE shall be responsible for booking all required travel and accommodation unless otherwise agreed in writing between the Parties.

7.2 The Client hereby acknowledges that the total costs and expenses incurred during the Contract may exceed BEE's estimate(s). For example, BEE's estimate(s) are likely to be incorrect if any of the following circumstances arise:

7.2.1 the exact scope is undefined at the time of executing the Scope or is only determined during the project; or

7.2.2 all of the relevant and required information requested is not supplied by the Client when it is requested/required; or

7.2.3 if anomalies in information provided by the Client or in the Services are discovered during the Contract; or

7.2.4 there is any change to the project as set out in the Scope or in discussions between the Parties.

7.3 If any of the eventualities listed in clause 7.2 or similar scenarios occur, BEE may at any time, in its reasonable discretion, suspend Services and Goods and issue a new Scope or a Variation Order. All Services and Goods provided by BEE up to the date of the suspension shall be paid in accordance with the Contract.

BEE may charge additional professional fees if events beyond BEE's control (including your acts or omissions) affect our ability to perform the Services and Goods as originally planned or if you ask us to perform additional tasks.

7.4 Unless stated within Schedule 1, for the provision of Services or Goods at the site, the price shall exclude any incidental costs incurred by BEE for the purposes and in the course of providing the Services and Goods. Any estimate quoted for the installation of Services and Goods are for BEE's company engineers services only and do not include storage, shipyard

charges, shipwright charges or any other charges whatsoever incurred in relation to the transportation, handling and/or installation of the Goods.

- 7.5 The price is exclusive of any applicable goods and services taxes, VAT or other government charge or duty, which the Client shall be additionally liable to pay at the rate and in the manner from time to time prescribed by law or set out in BEE's invoice.
- 7.6 BEE shall be entitled to adjustment of the price (to be mutually agreed in writing) in the event of changes in law or engineering standards applicable to or affecting the Services or Goods after the execution of this Contract.
- 7.7 The risk and legal title to any Goods provided and /or supplied by BEE to the Client under this Contract shall only transfer to the Client when all invoices issued by BEE, up to and including the final invoice, have been paid in full by the Client and BEE has received remittance of such sums into the account specified on the invoice issued to the Client. This includes payment of any sums that are disputed.
- 7.8 Until such time as the title in the Goods transfers from BEE to the Client, BEE shall be entitled at any time to require the Client to deliver up the Goods immediately to BEE. If the Client fails to so deliver up the Goods on BEE's request within 48 hours from BEE's notice, BEE or BEE's agent may enter any premises of the Client, or any premises where the Goods are located, and repossess the Goods. The fact that the title to the Goods shall not pass to the Client until complete and final payment has been made of all invoices issued by BEE to the Client shall not in any way affect the Client's liability to make payment for the Goods.
- 7.9 Pending transfer in title of the Goods from BEE to the Client, the Client shall keep the Goods (or procure that that the Goods are kept);
  - 7.9.1 fully insured against fire, theft and accidental damage; and
  - 7.9.2 clearly identifiable as BEE's Goods and stored separately.

- 7.10 If the Goods to which BEE has title are sold, lost or damaged or indistinguishable from the goods to which BEE does not have title, the Client shall upon demand fully indemnify and hold harmless BEE for the cost of the Goods and any costs incurred due to the Client's inactions/actions.

## **8 SUBCONTRACTING**

BEE has the right to sub-contract or assign any of its obligations under the Contract.

## **9 DELIVERY AND INSTALLATION**

- 9.1 Unless otherwise agreed in writing, Services and Goods shall be delivered ex works.
- 9.2 Partial delivery/performance of Services and Goods ordered is permissible. Where the Services and Goods are to be delivered/Performed in instalments, each delivery/performance shall constitute a separate contract and failure by BEE to deliver/perform any one or more of the instalments in accordance with the Contract or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the whole Contract as having been repudiated.
- 9.3 Where in relation to the delivery/provision of Services and Goods, the Client shall at its own costs and expense, take all necessary measures, to prepare the site and ensure

that the site is suitable and ready for the commencement of the works, Services or Goods.

- 9.4 Where Services and Goods are supplied to the Client and no assembly, installation, erection and commissioning is required, Clause 21.1 applies from the date of Delivery.
- 9.5 Where Services and Goods are supplied to the Client and assembly, installation, erection and commissioning is required, Clause 21.1 applies from the date of completion or when BEE declares that the Services or Goods are ready for acceptance.
- 9.6 The Client shall not be entitled to withhold acceptance for;
  - 9.6.1 defects which do not materially affect the usage of the Services or Goods;
  - 9.6.2 minor deviations or deficiencies which do not materially affect the functioning of the Services or Goods;
  - 9.6.3 defective installation or erection not carried out by BEE; or
  - 9.6.4 reasons which are not within the reasonable control of BEE.
- 9.7 As long as defects are capable of being remedied and BEE has not refused in writing to undertake the required remedial efforts, acceptance of the Goods and/or Services shall be deemed to have taken place upon completion of remedial efforts by BEE.
- 9.8 If the Goods or Services or any portion thereof is ready for delivery or performance and cannot be delivered or performed for reasons beyond BEE's control, acceptance shall be deemed to have taken place upon BEE's notification to the Client of readiness for delivery or performance.
- 9.9 Any costs and expenses related to the inspection and/or acceptance of the Services or Goods shall be borne by the Client.

## **10     THIRD PARTIES**

No provision of this Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to it.

## **11     LIMITATIONS ON LIABILITY**

- 11.1 BEE is not responsible for and accepts no liability whatsoever for any losses, damage, delay or expense arising from or in connection with any error, inaccuracy, negligence and/or non-compliance with any drawings, information or technical specifications in the design, performance, manufacturing and/or installation of any object that is not of solely BEE's design and that is the subject of this Contract.
- 11.2 Where BEE is reliant upon drawings and/or information provided by the Client and/or any third party, BEE is not responsible for any losses, damage, delay or expense arising from or in connection with errors and inaccuracies in the information, drawings, measurements and/or other base data provided in relation to the Contract. Unless otherwise expressly stated in the Scope, BEE will not review the consistency and/or accuracy of any provided information or any information on the certificate of compliance with any other material(s), plan(s), documentation or certificate(s) of compliance. Each certificate of compliance is

limited to the verification of the specific plans and/or documentation as stated on each particular certificate.

- 11.3 BEE shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of any nature, howsoever arising unless liability is solely a result of BEE's Gross Negligence under the Contract.
- 11.4 Any claims against BEE in relation to this Contract shall be deemed to be waived and absolutely time barred upon the expiry of one year from the date of Delivery.
- 11.5 The Client shall indemnify, defend, and hold harmless BEE, its officers, employees, agents, and subcontractors from and against all claims, liabilities, damages, losses, costs, and expenses (including reasonable legal fees) arising out of or in connection with any claim arising from the provision of the Services or Goods arising as a result of the Client.
- 11.6 BEE shall not be liable for any loss of or damage to equipment and any other items placed at its disposal by or on behalf of the Client however such loss or damage occurs. This includes but is not limited to damage caused by fire, sinking, partial or total loss of the equipment.
- 11.7 BEE shall not be liable for any loss or damage to property owned by the Client or put at BEE's disposal by or on behalf of the Client. This includes but is not limited to damage caused by fire, sinking, partial or total loss of the Client's property, or damage to machinery.
- 11.8 The Client undertakes that it shall not hold BEE liable for late completion of provision of the Services and Goods to the Client or any associated losses, damages or expense arising from or in connection with the late delivery of the Services and Goods, where BEE has varied the deadline for provision of the Services by completion of a Variation in accordance with clause 12 below.
- 11.9 The Client undertakes that it shall not hold BEE liable for injury to its staff, agents, third parties or person related to the Client with whom BEE interacts in relation to the provision of the Services and Goods unless such injury is caused by BEE's Gross Negligence.
- 11.10 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.
- 11.11 Neither party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss or damage, including but not limited to loss of profit, loss of business, loss of revenue, loss of anticipated savings, or loss of goodwill, loss of information or data, loss from any third party contracts, loss due to business interruption, loss of interest, loss of power, cost of purchased or replacement power, contractual claims from third parties, arising out of or in connection with this Contract, even if such loss or damage was foreseeable or the party was advised of the possibility of such loss.
- 11.12 Subject to clause 11.13, the maximum aggregate overall liability of BEE (including any costs payable to the Client) under or in connection with the Contract shall not exceed the value paid by the Client to BEE at the date the liability arose for the Services and Goods, even where it is alleged or established that such liability arose from BEE's default,

negligence, breach, or non-performance. This limitation shall apply in an absolute manner and shall apply in contract, at law, in tort or in any other legal proceedings or otherwise.

- 11.13 Nothing in this Contract shall limit or exclude BEE's liability for any liability for which it would be unlawful to exclude or restrict liability (including but not limited to: (i) wilful default, (ii) death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977, (iii) fraud or fraudulent misrepresentation, (iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, and (v) any liability that cannot legally be limited).
- 11.14 If the Client is not or shall not be the sole end user and ultimate owner of the Services or Goods or beneficiary of the Services or Goods or is procuring them for any joint venture/partnership/consortium or equivalent, the Client shall include a clause in its contract with the end user, ultimate owner, joint venture participants or equivalent such that BEE is given the benefit of the indemnities, exclusions and limitations of liability in this Contract by all such users, owners or participants (which shall apply as if the user, owner or participant were the Client) and the Client shall indemnify and hold harmless BEE against claims by them or the third party to the extent that BEE would not be liable to the Client under this Contract if the claim had been made by the Client.

## **12 VARIATIONS**

- 12.1 Any Variation that may be required during the Contract shall be processed expeditiously and efficiently by BEE and the Client. A specimen copy of a Variation Order is included in Schedule 3 hereto.
- 12.2 The Client has the right to request BEE at any time to do any of the following:
  - 12.2.1 make any revision to the Services which may include additions, omissions, substitutions and changes in quality, form, character, kind, position, dimension, level or line and changes in any method of construction or installation specified by the Client;
  - 12.2.2 revise elements of the Services already completed in accordance with the Contract;
  - 12.2.3 after commencement of the Services, accelerate the Services or any part thereof in order to recover all or part of any delay in respect of which BEE would otherwise have been entitled to an extension of time; or
  - 12.2.4 re-programme the Services and reschedule its resources in order to complete the Services or any part thereof in accordance with any deadline the Client may request.
- 12.3 Unless such instruction by the Client is required as a result of a failure by BEE to comply with the Contract or any other negligent act or omission of BEE, an instruction under clause 12 will constitute a Variation.
- 12.4 If BEE considers that an instruction has been given or other event has taken place for which it is entitled to receive a Variation, BEE shall (and where practicable before proceeding with any work affected by such instruction) request that the Client accepts a Variation in respect of such instruction.

- 12.5 Any Variation request by BEE shall include details of the instruction, any relevant dates and the clause(s) of the contract under which BEE considers itself to be entitled to a Variation. BEE shall also provide both estimated cost and schedule impact associated with the Variation request.
- 12.6 All Variation requests shall be recorded in a Variation Order and submitted to the Client. The Variation Order should be signed and dated by the Client and returned to BEE within five (5) Business Days, unless otherwise agreed BEE. If the Client does not respond to a Variation request within five (5) Business Days, the Variation request is deemed to have been accepted and a Variation Order is deemed to have been issued and/or signed by the Client.
- 12.7 Subject to clause 12.6 above, no Variation shall become effective until the formal issue of a Variation Order is signed by BEE and authorised by the Client in accordance with clause 11.6 of these Terms and Conditions.
- 12.8 Subject to clause 12.6 above, the completed Variation Order signed by both Parties, or signed by BEE and authorised by the Client in accordance with clause 12.6, authorises BEE to proceed with such Variation.
- 12.9 Variations shall be paid by the Client as indicated in the Variation Order. Where no payment terms are indicated, Variations shall be paid in accordance with BEE's standard invoicing procedure.

### **13 APPLICABLE LAW AND JURISDICTION**

- 13.1 This Contract is governed by the laws of England and Wales.
- 13.2 Any dispute between BEE and the Client in connection with or arising out of the Contract shall be resolved by means of the following procedure:
  - 13.2.1 One Party shall serve a notice of dispute in writing on the other Party setting out (i) the background facts to the dispute, (ii) the contractual clauses relied upon by the Party initiating the dispute process and (iii) the value of the dispute with a detailed explanation of how the value of the dispute has been calculated by that Party ("Notice of Dispute").
  - 13.2.2 Within 10 Business Days of the Notice of Dispute being served on the other Party, the dispute shall be referred to the Client's representative and BEE's representative who shall discuss the matter, either in person or by telephone. The Parties' representatives shall make all reasonable efforts to reach an agreement. Each Party's representative for the purposes of the dispute process shall be an individual with the authority to deal with the dispute.
  - 13.2.3 If no agreement is reached under clause 13 or 10 Business Days have passed since the Notice of Dispute was served on the other Party, the Parties shall, acting in good faith, within 40 days from the date of the Notice of Dispute, attempt to resolve the dispute by attending mediation. The mediation shall be in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. The Parties shall exchange mediation papers (maximum 7 pages long) outlining their position five (5) Business Days in advance of the mediation. The mediation shall be conducted in Glasgow, United Kingdom.

13.2.4 In the absence of any agreement being reached at mediation or 40 days have passed since the Notice of Dispute, the dispute shall be finally settled by arbitration. The arbitration shall be conducted in accordance with London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to one arbitrator. If within 14 days of one Party calling for arbitration, the Parties have not agreed upon a sole arbitrator, either Party may apply in writing for the appointment of a sole arbitrator by the President of the LMAA. The award of the sole arbitrator shall be binding on both Parties as if he had been appointed by agreement. Section 69 of the Arbitration Act 1996, appeal on a point of law, is excluded and shall not apply to any arbitration under this Contract. The language of arbitration will be English. The seat of the arbitration shall be Glasgow.

13.3 Any dispute with a value of under £30,000 (Sterling) shall be referred to the LMAA Small Claims Procedure.

#### **14 CONFIDENTIALITY**

14.1 All pricing, drawings, intelligence, and any information contained within the Scope and technical information supplied by BEE shall be considered confidential.

14.2 All communications between the Parties shall be considered confidential.

14.3 Confidential information shall not be disclosed by either Party without prior written permission by the other Party.

14.4 All information provided by the Client which the Client wishes to remain confidential shall be clearly marked as confidential, provided always that any such information relating to the Client's trade secrets shall always be treated as confidential by BEE without the necessity on the part of the Client to clearly mark as such.

14.5 The provisions of clause 14 shall not apply to information which:

- 14.5.1 is part of the public domain;
- 14.5.2 was in the possession of BEE prior to the Contract and which was not subject to any obligation of confidentiality owed to the Client;
- 14.5.3 was received from a third party whose possession is lawful and who is under no obligation not to disclose; or
- 14.5.4 is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction over the Services or BEE.

#### **15 INTELLECTUAL PROPERTY**

15.1 All intellectual property created by virtue of BEE carrying out the Services and Goods under this Contract is owned by BEE. Unless otherwise expressly stated, the Client receives any intellectual property created during this Contract on a non-exclusive and royalty free license basis. If a license and/or royalty fee for the use of BEE's intellectual property is applicable, it shall be agreed between the Parties prior to commencement of each Service or Good undertaken under this Contract.

15.2 Subject to clause 15.1, neither the Client nor BEE shall have the right of use, other than for the purposes of this specific Contract, whether directly or indirectly, of any intellectual property right, patent, copyright, proprietary right or confidential know-how, trademark or process provided by the other Party and the intellectual property rights in such shall remain with the Party providing such patent, copyright, proprietary right or confidential know-how, trademark or process.

15.3 The Client shall release, defend, indemnify and hold harmless BEE from and against all claims, losses, damages, expenses (including without limitation legal costs and expenses and other costs of defence) and liabilities arising out of any alleged infringement of any patent or proprietary or protected right or any other claim relating to information supplied by the Client to BEE, arising out of or in connection with the performance of the obligations under the Contract.

## **16 RELEVANT REQUIREMENTS**

16.1 Nothing contained in this Contract shall be construed to create any partnership, joint venture, or franchise relationship between the Parties hereto. The Parties are independent persons, and neither shall be construed as the agent, employee, nominee, or representative of the other. No party shall have the authority to act for, or to incur obligations on behalf of, any other party except as provided by this Contract.

16.2 Any modification or amendment of this Contract shall be effective only if placed in writing and signed by both Parties.

16.3 Either Party corresponding under this Contract shall ensure such correspondence is effectively given and such correspondence shall be treated as received during BEE's office hours. If correspondence is sent outside BEE's office hours it shall be treated as received during BEE's next Business Day.

16.4 Each Party will not unreasonably withhold any information requested by the other Party and shall disclose to the other Party any information requested necessary by the other Party.

16.5 The Client's relationship is solely with BEE. No representative of BEE has any personal legal obligation and/or liability to the Client whether in contract, tort (including negligence) or otherwise. The fact that any representative of BEE signs any documentation, electronically or in writing, in his or her name in the course of carrying out the Services does not give rise to any personal legal liability separate to that of BEE.

## **17 ENTIRE CONTRACT**

17.1 This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, and may not be modified except by a written amendment signed by both parties. The provision of any other Terms and Conditions by any party and/or Client shall not bind BEE in any way.

17.2 Each Party acknowledges and agrees that, in entering into this Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, warranty, or understanding (whether made innocently or negligently) that is not expressly

set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.

## **18 WAIVER**

None of the Terms and Conditions of the Contract shall be considered to be waived by BEE unless a waiver is given in writing by BEE to the Client. No failure on the part of BEE to enforce any of the Terms and Conditions of the Contract shall constitute a waiver of such terms.

## **19 CONSEQUENTIAL LOSS**

Notwithstanding any provisions to the contrary elsewhere in the Contract, the Client shall release, defend, indemnify and hold harmless BEE from the Client's consequential loss and BEE shall release, indemnify and hold harmless the Client from BEE's consequential loss. Consequential loss shall mean any indirect or consequential loss howsoever caused whether by virtue of any fiduciary duty, in tort or delict (including negligence) as a consequence of breach of any duty (whether statutory, contractual or otherwise) or under any other legal doctrine or principle whatsoever whether or not recoverable at common law or in equity, arising from or related to the performance of the Contract and whether or not any such losses were foreseeable at the time of entering into the Contract.

## **20 SUSPENSION OF SERVICES**

- 20.1 BEE shall have the right, by giving notice to the Client, to suspend the Services or any part thereof, to the extent detailed in the notice, for any of the following reasons:
  - 20.1.1 if the Client is in breach of its obligations under the Contract or any other agreements between the Client and BEE;
  - 20.1.2 in the event that suspension is necessary for the proper execution or safety of the Services or persons;
  - 20.1.3 is deemed appropriate by BEE; or
  - 20.1.4 any of the circumstances listed in clause 7.2 arise.
- 20.2 All Services provided by BEE up to the date of the suspension shall be paid in accordance with the Contract.
- 20.3 BEE shall have the right, by notice to the Client, to recommence the Services or any part thereof, to the extent detailed in the notice. Following recommencement of the Services all Services shall be paid in accordance with the Contract.

## **21 WARRANTY**

- 21.1 The Client shall inspect the Goods and/or Services within two (2) Business Days of Delivery ("**Inspection Period**") and shall notify BEE in writing of any defects, non-conformities, or rejection within the Inspection Period, providing full details of the alleged issues.
- 21.2 If the Client fails to notify BEE of any defects, non-conformities, or rejection within the Inspection Period, the Goods and/or Services shall be deemed accepted in all respects.

21.3 BEE warrants that on Delivery, and for a period of 12 months from the date of Delivery (the "**Services Warranty Period**"), the Services shall:

- 21.3.1 be performed with reasonable skill and care;
- 21.3.2 be free from material defects in design, material and workmanship under normal use and service; and
- 21.3.3 confirm with the specification.

21.4 BEE warrants that the Goods supplied under this Contract shall benefit from the same warranty period and conditions provided to BEE by the manufacturer of the Goods (the "**Goods Warranty Period**"). BEE shall, upon request, provide the Client with details of the manufacturer's warranty period and conditions, where possible.

21.5 Subject to clauses 21.3 and 21.4 above, if the Client:

- 21.5.1 gives notice in writing to BEE during the Goods Warranty Period that some or all of the Goods do not comply with that warranty or gives notice during the Services Warranty Period that some or all of the Services do not comply with that warranty, within a reasonable time of discovery, not later than three (3) Business Days;
- 21.5.2 BEE is given a reasonable opportunity of examining such Goods and Services;
- 21.5.3 the Client (if asked to do so by BEE) returns such Goods or Services to BEE's place of business; and
- 21.5.4 BEE shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

21.6 BEE's sole liability shall be to repair or replace the Services or Goods (or the part in question) free of charge at BEE's sole discretion, or refund to the Client the price of the defective Services or Goods (or a proportionate part of the price). This Clause sets out the Client's sole and exclusive remedy for all warranty claims during the Services Warranty Period, Goods Warranty Period, Extended Services Warranty Period and Extended Goods Warranty Period.

21.7 Except as expressly provided in clauses 9.6 and 21, the Client shall have no right to reject the Goods and/or Services or claim any remedy for defects or non-conformities or breach of warranty.

21.8 BEE shall not be liable for the Goods' and/or Services' failure to comply with the warranties set out in clauses 21.3 and 21.4 in any of the following events:

- 21.8.1 the Client makes any further use of such Goods or Services after giving notice in accordance with clause 5;
- 21.8.2 the defect arises because the Client failed to follow BEE's oral and/or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or Services (if there are none) good trade practice regarding the same;
- 21.8.3 the defect arises as a result of BEE following any drawing, design or Specification supplied by the Client;

- 21.8.4 the Client alters or repairs such Goods or Services without the written consent of BEE;
- 21.8.5 if the total price for the Services and Goods has not been paid by the due date for payment;
- 21.8.6 if the Services or Goods have been used in a manner or under a circumstance or for a purpose not reasonably to be inferred by BEE or disclosed to BEE prior to making the Contract;
- 21.8.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or inappropriate storage or working conditions; or
- 21.8.8 the Goods or Services differ from their description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

21.9 Except as provided in this clause 21, BEE shall have no liability to the Client in respect of the Goods' or Services' failure to comply with the warranties set out in clause 21.3 and 21.4.

21.10 If the Services are repaired or replaced during the Services Warranty Period, the period of warranty for replacements shall run for six (6) months from the date of such repair or replacement but shall run at least until the expiry of the original Services Warranty Period as provided above and shall end at latest six (6) months after the end of the Services Warranty Period ("the **Extended Services Warranty Period**").

21.11 If the Goods are repaired or replaced during the Goods Warranty Period, the period of warranty for replacements shall be consistent with the warranty period and conditions for replacements provided to BEE by the manufacturer of the Goods ("the Extended Goods Warranty Period").

21.12 These terms shall apply to any repaired or replacement Goods supplied by BEE.

## **22 EXTREME WEATHER VARIATION**

If the performance of the Services or delivery of Goods is delayed or additional costs are incurred as a direct result of extreme weather conditions, BEE shall be entitled to an automatic Variation. Such Variation shall include a reasonable extension of time for performance and/or a reasonable adjustment to the Contract price to reflect any additional costs incurred due to the extreme weather. BEE shall promptly notify the Client in writing of any such delays or additional costs, providing reasonable details. The parties shall cooperate in good faith to document and implement the Variation as soon as practicable.

## **23 DATA PROTECTION**

23.1 "Data Protection Legislation" means the UK General Data Protection Regulation ((EU) 2016/679), together with all other applicable legislation relating to privacy or data protection and including any statute or statutory provision which amends, extends, consolidates or replaces the same. The terms "personal data", "data subject", "controller", "processor" and "process" (and their derivatives) shall have the meanings given to them in the Data Protection Legislation.

23.2 The Client (including its employees, officers, representatives or other agents) and BEE shall be considered to be a controller in respect of personal data disclosed to BEE by or on behalf of the Client or otherwise processed by BEE in connection with our work for the Client ("Personal Data"). Any controller under these Terms and Conditions or the Contract shall comply with the Data Protection Legislation in connection with such processing.

23.3 BEE shall process the Personal Data in accordance with our Client Data Protection Policy, a copy of which is available on request and the Client shall (and shall procure that any of your employees, officers, representatives or other agents) collect any necessary permission, provide any necessary notice and do all such other things as are required under the Data Protection Legislation in order for you to disclose Personal Data to us for the purposes described therein.

**24 SEVERANCE**

If by reason of any enactment or judgment any provision of this Contract shall be deemed or held to be illegal, void or unenforceable in whole or in part, all other provisions of this Contract shall be unaffected thereby and shall remain in full force and effect.

**25 NOTICES**

For the purposes of giving notices, the Parties contact details are as set out under the Index.

**26 EXPORT CONTROLS AND SANCTIONS**

26.1 The Client shall comply with all applicable export control, sanctions, and trade restriction laws and regulations, including those imposed by the United Kingdom, the European Union, the United States of America, and any other relevant jurisdiction. The Client shall not export, re-export, transfer, or otherwise make available any Goods, Services, or technical data provided under this Contract, directly or indirectly, to any country, person, or entity subject to export restrictions or sanctions without obtaining all necessary authorisations from the relevant authorities. BEE reserves the right to suspend or terminate the Contract immediately if it reasonably believes that performance would breach any applicable export control or sanctions laws.

26.2 If required to enable authorities or BEE to conduct export control checks, the Client, upon request by BEE, shall promptly provide BEE with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by BEE, as well as any export control restrictions existing.

26.3 The Client shall indemnify and hold harmless BEE from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any

noncompliance with export control regulations by the Client, and the Client shall compensate BEE for all losses and expenses resulting thereof.

26.4 BEE shall not be obligated to fulfil the Contract if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

**27 ANTI-BRIBERY AND CORRUPTION**

Each Party shall comply with all applicable anti-bribery and anti-corruption laws, including the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act, as well as any other relevant legislation. Neither Party shall, directly or indirectly, offer, promise, give, request, agree to receive, or accept any bribe or other improper advantage in connection with the performance of this Contract. Each Party shall promptly notify the other if it becomes aware of any breach of this clause. Either Party may immediately terminate this Contract if the other party is found to be in breach of this clause.

**28 HEALTH AND SAFETY COMPLIANCE**

Each Party shall comply with all applicable health and safety laws, regulations, and standards in connection with the performance and Scope of this Contract. The Client shall ensure that all sites, premises, and equipment provided for the performance of the Scope are safe and comply with all relevant health and safety requirements. Each Party shall promptly notify the other of any health and safety incidents or risks that may affect the performance of the Contract. Either party may suspend performance of the Contract if it reasonably believes that continuing would pose a material health and safety risk or breach of the applicable laws, regulations or standards.

**29 FORCE MAJEURE**

29.1 Neither party shall be liable for any failure or delay in performing its obligations under this Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event or circumstance beyond the reasonable control of the affected party, including but not limited to acts of God, war, terrorism, civil unrest, strikes, lockouts, epidemics, pandemics, natural disasters, governmental actions, or interruption or failure of utility services.

29.2 The party affected by a Force Majeure Event shall promptly notify the other party in writing, providing reasonable details of the event, its anticipated duration, and the obligations affected. Such notice shall be given as soon as reasonably practicable and in any event within five (5) Business Days of the affected party becoming aware of the Force Majeure Event.

29.3 The obligations of the affected party shall be suspended for the duration of the Force Majeure Event. The parties shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event and to resume the performance of their obligations as soon as reasonably possible.

29.4 If the Force Majeure Event continues for a period of thirty (30) consecutive days or more, either party may terminate this Contract by giving written notice to the other party. In such event, the Client shall pay BEE for all Goods and Services provided and costs incurred up to the date of termination.

29.5 Nothing in this clause shall excuse the Client from any payment obligations for Goods and Services delivered prior to the occurrence of the Force Majeure Event.

**Signed** by [insert full name of individual]  
duly authorised for and on behalf of [name of  
**Client**]

[Director] [Secretary] [Authorised Signatory]

**Date:** \_\_\_\_\_

**Signed** by [insert full name of individual]  
duly authorised for and on behalf of **Boat  
Electrics & Electronics Limited**

[Director] [Secretary] [Authorised Signatory]

**Date:** \_\_\_\_\_