



NEWMAN GILES PAINES & COMPANY LTD

CONSULTING MARINE ENGINEERS & SHIP SURVEYORS

**STANDARD TERMS AND CONDITIONS OF BUSINESS FOR
EXPERT WITNESS AND OTHER CONTENTIOUS MATTERS**

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1. Definitions

"Expert" is the Expert/ Newman Giles Paines & Co. Ltd. (NGP), hereinafter the "Expert" trading under these conditions.

"Client" is the party at whose request or on whose behalf the Expert undertakes the Services. This may on occasion be the "Solicitor" or "Insurer" or other instructing party.

"Solicitor" is the firm of solicitors and/or individual solicitor appointed by or acting on behalf of the Client. The Solicitor may be the Client.

"Insurer" is the insurer of the Client who may appoint the Expert directly or indirectly. The Insurer may be the Client.

"Report" means any report or statement supplied by the Expert in connection with the Services requested by the Client.

"Disbursements" means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including, but not limited to, reasonable travel, refreshments and hotel accommodation where an overnight stay is necessary. All "Disbursements" will be charged at cost with supporting invoices. For flights exceeding 3 (three) hours duration, we generally will fly business class for comfort and flexibility.

"Fees" means the fees charged by the Expert to the Client for the Services excluding any Disbursements and value added tax where applicable.

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Registered in England No: 05241012, VAT No: 853 5776 88

Fees and disbursement are billed in Pounds Sterling, unless another currency has been agreed at the time of appointment.

2. Scope

The Expert shall provide its services solely in accordance with these terms and conditions (“Conditions”).

3. Services

The Expert will act as an expert witness in relation to a claim or dispute involving the Client. The expert, if required, will provide written reports, witness statements and oral testimony in a court or other tribunal. The expert may also, if required, attend settlement meetings and/or mediations. The Client, either directly or via their Solicitor or Insurer, will set out in writing the exact services it requires the Expert to provide. Where possible, the Expert will confirm these in writing or alternatively the Expert will advise what services it will perform in connection with the Client's instructions. Once the Expert and the Client have agreed what services are to be performed (“the Services”) any subsequent changes or additions must be agreed by both parties in writing.

4. Payment

- (a) Where it is agreed that the Client shall pay the Expert's Fees and Disbursements: The Client will pay in accordance with these Conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. Any delay in payment shall entitle the Expert to interest at 4% above the Base Lending Rate of HSBC Bank Plc prevailing at the time of default or the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 applicable at the time of default, at the discretion of the Expert.
- (b) Where it is agreed that the Insurer shall pay the Expert's Fees and Disbursements: The Insurer will pay in accordance with these Conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. Any delay in payment shall entitle the Expert to interest at 4% above the Base

Lending Rate of HSBC Bank Plc prevailing at the time of default or the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 applicable at the time of default, at the discretion of the Expert.

- (c) Where it is agreed that the Solicitor shall pay the Expert's Fees and Disbursements: The Solicitor, when in receipt of the Expert's invoice will promptly send a disbursement invoice to the Client. The Solicitor shall pay the Expert within 14 days of receiving funds from the Client. Any delay in payment by the Solicitor shall entitle the Expert to charge interest on the Fees and Disbursements to the Solicitor at 4% above the Base Lending Rate of HSBC Bank Plc prevailing at the time of default or the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 applicable at the time of default, at the discretion of the Expert. It is understood that the Solicitor is usually the agent of the Client in the appointment of the Expert and therefore, the Solicitor will have no direct liability for the Expert's fees UNLESS the Expert is acting directly for the Solicitor or the Solicitor has agreed to be responsible for paying the Fees and Disbursements.
- (d) The current fee rate, which is subject to review from time to time is £ 220.00/hour.

5. Obligations and Responsibilities

- (a) Client: The Client undertakes to ensure that full instructions are given to the Expert, either directly or via their Solicitor and/or Insurer, and are provided in sufficient time and good order to enable the Services to be performed. The Client must procure all necessary access for the Expert to any goods, cargo, premises, vessels, installations and/or transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions where appropriate. The Expert shall not be liable for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions. It is understood by the Client that the Expert's overriding duty is to the Court or Tribunal.
- (b) Expert: The Expert shall use reasonable care and skill in the performance of the Services in accordance with sound practice. The Expert's overriding duty is to the Court or Tribunal.
- (c) Report: The Expert shall submit a written Report to the Client following completion of the agreed services providing the Expert's opinion, unless otherwise expressly instructed by the

Client (directly or via their Solicitor and/or Insurer) not to do so. The Report will contain a Statement of Truth, the wording which shall be agreed with the Solicitor.

- (d) **Attending Hearings:** The Expert, where necessary, will attend at court or other equivalent hearing (i.e. arbitration). The Expert may also attend mediations or settlement meetings if requested to do so and the date is acceptable and agreed by all parties.
- (e) **Confidentiality:** The Expert understands that the information provided by the Client may be subject to confidentiality and agrees not to permit access to such information to any third party unless the Client expressly grants permission. This obligation will not however extend to information which (i) was already or becomes known to the Expert through other sources not subject to such an obligation of confidentiality (ii) is or becomes known to the public generally other than as a result of a breach of this obligation or (iii) which the Expert is obliged to disclose pursuant to an order of a court or other such authority. In all cases such obligation of confidentiality shall be deemed to end 3 years after the end of performance of the Services. The end of Services shall be the date of the Expert's final invoice.
- (f) **Intellectual Property:** The right of ownership in respect of all original work created by the Expert remains the property of the Expert. The Expert will provide a licence for the Client (and/or the Solicitor and/or the Insurer) to use the work for all reasonable uses.
- (g) **Conflict of Interest/Qualification:** Throughout the period during which the Expert is engaged, the Expert shall promptly notify the Client of any conflict of interest or lack of suitable qualifications and experience, which would, in the opinion of the Expert, render it undesirable for the Expert to continue its involvement with the appointment. The Client shall be responsible for payment of the Surveyor/Consultant's Fees up to the date of notification.

6. Liability

- (a) Without prejudice to Clause 7, the Expert shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Expert or any of its employees or agents or sub-contractors.

- (b) In the event that the Client proves that any direct loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Expert aforesaid, then, save where such loss, damage, delay or expense has resulted from the Expert's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Expert's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of ten times the Expert's total fees for the Service or £125,000 whichever is the greater. The Expert shall not be liable for any indirect or consequential loss at all, however arising. The Expert shall also not be liable for damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

7. Indemnity

Except to the extent and solely for the amount therein set out that the Expert would be liable under Clause 6, the Client hereby undertakes to keep the Expert and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against by any party (including, but not limited to, the Solicitor and Insurer) and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Expert may suffer or incur (either directly or indirectly) in the course of providing the Service under these Conditions.

8. Force Majeure

Neither the Expert nor the Client shall, except as otherwise provided in these Conditions, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

9. Insurance

The Expert shall effect and maintain, at no cost to the Client, Professional Liability Insurance for such loss and damage for which the Expert may be held liable to the Client under these Conditions.

10. NGP Right to Sub-contract

NGP shall have the right to sub-contact any of the services provided under the Conditions, subject to the Client's right to object on reasonable grounds. In the event of such a sub-contract NGP shall remain fully liable for the due performance of its obligations under these Conditions.

11. Time Bar

Any claims against the Expert by the Client shall be deemed to be waived and absolutely time barred upon the expiry of one year from the submission date of the final invoice to the Client.

12. Severance

If a court finds that any provision of these terms and conditions is invalid, illegal or unenforceable, that provision shall, to the minimum extent required, be deemed deleted and the validity, legality and enforceability of the remainder of that and all other provisions of these terms and conditions shall not be affected.

13. Jurisdiction and Law

These Conditions shall be governed by and construed in accordance with the laws of England and Wales and any dispute shall be subject to the exclusive jurisdiction of the English Courts.