

MARINE LEASING LIMITED – STANDARD TERMS – HIRE AND MAINTENANCE AGREEMENT

1 Agreement

- 1.1 The Agreement is made between the Owner and the Hirer whereby the Owner agrees to let to the Hirer and the Hirer agrees to take on hire the Goods described overleaf on the terms set out below and overleaf for the period specified in Key Financial Information (“Rental Period”) commencing on the date of the delivery of the Goods.

2 Payments

- 2.1 The Hirer shall pay to the Owner the advance hire payments and the monthly hire payments and the other payments on the terms stated in Key Financial Information and in the Agreement (all the “Payments”). The hire payments shown are inclusive of VAT at the prevailing rate when the Agreement was prepared, if payable. VAT shall be payable by the Hirer on Payments at the prevailing rate from time to time, where subject to VAT. In return, the Hirer shall have the right to enjoy the hire of the Goods for the Rental Period, subject to the terms of the Agreement, free from third party encumbrances and claims attributable to the Owner.
- 2.2 The Hirer shall make punctual payment (without previous demand unless otherwise indicated in the Agreement) to the Owner of all Payments by their due dates and pay all other sums payable under this Agreement, without deduction, counterclaim or set-off to the Owner at the address stated overleaf, or such other address as the Owner shall reasonably direct. Time is of the essence. Regular payments shall be made by standing order and the Hirer will be required to set up a regular standing order mandate, unless the Owner agrees in writing to an alternative form of payment. Any payment made by post shall be at the Hirer’s risk.

3 Delivery and Installation

- 3.1 The Goods shall be delivered to the Hirer by the Owner delivering the Goods to a place agreed by the Owner and the Hirer.
- 3.2 Risk in the Goods shall pass to the Hirer (a) in the case of Goods to be delivered at the Owner’s premises at the time when the Owner has notified the Hirer that the Goods are ready for collection; or (b) in the case of Goods to be delivered otherwise than at the Owner’s premises to a location in the United Kingdom, at the time of delivery; or (c) if the Hirer wrongfully fails to take delivery of the Goods, at the time when the Owner has tendered delivery of the Goods. The Goods shall remain at the sole risk of the Hirer during the Rental Period and any further term during which the Goods are in the possession or control of the Hirer until such time as the Goods are redelivered to the Owner.
- 3.3 In the event that the Owner arranges delivery of the Goods to the Hirer, no additional delivery charges shall be payable by the Hirer.
- 3.4 The Owner shall not be responsible to the Hirer for losses, financial or otherwise, resulting directly or indirectly from any delay in the delivery of the Goods or any part of the Goods on the date agreed or failure to deliver the Goods. If the Owner fails to deliver Goods within a reasonable time of the agreed delivery date, the Hirer may cancel this Agreement by notice in writing and will be entitled to a refund of any Payments made.

4 Use and maintenance of the Goods

- 4.1 The Hirer must ensure that the Goods are used in a skilful and proper manner, by persons who are competent operators and must provide supplies and accessories to operate the Goods in accordance with the manufacturer’s recommendations.
- 4.2 Subject to the provisions contained in clause 4.9 below, the Hirer must maintain the Goods in good order and condition, at the Hirer’s expense. The Hirer is responsible for all loss or damage to the Goods, except for any due to fair wear and tear, even if caused by acts or events outside the Hirer’s control.
- 4.3 The Hirer must not make any material alterations or additions to the Goods.
- 4.4 The Hirer must keep the Goods on the vessel stated overleaf, or at such location as the Owner may from time to time approve in writing, and detached from the premises or vessel where they are situated.
- 4.5 The Hirer may not pledge the Owner’s credit, permit any lien to arise over the Goods or use the Goods as security for any of the Hirer’s obligations.
- 4.6 The Hirer must allow the Owner to inspect the Goods at any time and to affix nameplates to them.
- 4.7 The Hirer may not sell or part with possession of the Goods except for temporary possession for the purpose of their maintenance or repair.
- 4.8 The Hirer must conform with all legal requirements relating to the Goods, comply with the instructions of the manufacturers or suppliers, and ensure that the Goods are safe and without risk to health.
- 4.9 The Owner through a dealer nominated by it (“the Authorised Dealer”), shall maintain the Goods at its own cost in efficient working order subject to the following conditions:
- 4.9.1 The Hirer shall timeously and without unreasonable delay notify the Owner or the Authorised Dealer of any maintenance required to be carried out to the Goods;
- 4.9.2 Any date or time quoted by the Owner or Authorised Dealer for the carrying out of any maintenance is an estimate only and neither the Owner nor the Authorised Dealer shall be liable for any failure to meet any such estimate nor for any loss whether financial or otherwise resulting directly or indirectly therefrom;
- 4.9.3 Maintenance will only be carried out whilst the vessel in which the Goods are installed is at any UK mainland port and safe and reasonable access to the vessel and all parts thereof is provided;
- 4.9.4 Nothing contained herein shall make the Owner liable to perform any maintenance work that is necessary because of any breach of the Hirer’s obligations hereunder and/or abuse of the Goods and/or any defect in any other equipment;
- 4.9.5 Nothing contained herein shall make the Owner liable for the free replacement of underwater transducers and associated parts for echo sounding fish finding and sonar equipment;
- 4.9.6 Maintenance will be limited to routine matters of maintenance and in particular, will not cover major overhaul of the Goods or the making good of damage caused by external factors including without limitation where this arises as a result of risks insured under the Agreement;
- 4.9.7 Any replacement parts added to the Goods shall belong to and become the property of the Owner and shall be surrendered to the Owner together with the Goods upon the expiration or sooner termination of the Agreement;
- 4.9.8 The Hirer shall be responsible for arranging at his own expense for the following:
- 4.9.8.1 The provision and maintenance of proper accommodation for the Goods;
- 4.9.8.2 All costs and expenses incurred in the slipping of the vessel, the use of divers or cranes and related contractor’s fees;
- 4.9.8.3 Accommodation, supports, furniture, fitting, and fixtures to comply with any applicable statutory or other requirements, cupboards, mechanical and electrical screenings, seatings, bulkheads suitably finished and set out for housing and securing the Goods and any spare;
- 4.9.8.4 Any drilling, tapping welding or other work on the structure or fittings of the Vessel including electrical wiring and conduit and troughing, such as wires to machine batteries and charging resistances, remote control bells and indicators and aerials, oscillators, microphones and loudspeakers and any other wiring normally carried out by shipyard electricians;
- 4.9.8.5 Masts, block, tackle, halyards with safety links and other gear and devices for hoisting and supporting the aerials and the insulation of staves, lanyards and other conductors affecting the Goods and also earthing points wherever necessary;
- 4.9.8.6 A battery box or locker with suitable shelves, packing, lead lining and ventilation and proper sealing;
- 4.9.8.7 The mains electrified supply for the Goods and at sea and in port the supply at all times, except when laid up, of electrical energy of the correct polarity and voltage and in sufficient quantity for operating and testing the Goods and for charging the batteries at regular intervals in accordance with the manufacturer’s instructions;
- 4.9.8.8 Such assistance as may be reasonably required in the way of carpenters, electricians, riggers, and fitters labour for installation and maintenance of the Goods from time to time and all necessary labour and machinery for safely shipping cased or uncased Goods spares and parts thereof;
- 4.9.8.9 Taking all reasonable steps to suppress electrical interference with the Goods of which the Owner or its Authorised Dealers shall have notified the Hirer. The Owner and/or Authorised Dealer however shall act only as consultants to the Hirer in this regard and financial responsibility for the suppression of any such interference shall be borne by the Hirer;
- 4.9.8.10 Providing safe and reasonable access to the vessel at all reasonable times (including provision of launch where necessary for men and goods) and providing facilities to the Owner and/or its Authorised Dealer for carrying out its obligations and enforcing its rights under this Agreement;
- 4.9.8.11 Making ready and providing for safe entry and working on the vessel and within the ship’s tanks or other spaces within the Vessel;
- 4.9.8.12 Requisite internal and external electrical charging supplies to the batteries where motor lifeboat or emergency radio or similar equipment is fitted;
- 4.9.8.13 Calibrating radio direction finding or any equipment requiring calibration including where necessary incurred payment of fees for suitable radio transmissions and engineers time and travel;
- 4.9.8.14 Keeping the Owner informed of the whereabouts of the Goods.

5 Ownership of the Goods

The Goods shall remain the Owner’s property at all times and the Hirer shall have no right or interest in the Goods otherwise than as a hirer. The Hirer is not entitled to claim any writing down allowances in respect of the Goods.

6 Insurance of the Goods

- 6.1 The Hirer indemnifies the Owner on demand against any loss or damage to the Goods and against any loss, damage or injury caused by the Goods (except for any caused by the Owner’s own negligence and default) in so far as it is not covered by the insurance of the Goods.
- 6.2 The Hirer must insure and keep the Goods insured under a fully comprehensive policy at the Hirer’s expense to their full replacement value with a reputable insurer chosen by the Hirer, with the Owner’s consent, which consent may not be unreasonably withheld. Insurance must include cover against the risk of loss or damage by fire, theft, accident and other risks, including third party or public liability risks, as are normally insured against in the case of Goods of the type to which this Agreement relates or as are required by law.
- 6.3 The Hirer must have the Owner’s interest noted on the policy. The Hirer will produce to the Owner on demand evidence of the insurance cover and of the payment of premiums under the insurance policy.
- 6.4 The Hirer must notify the Owner promptly of any loss or damage to the Goods and hold any insurance monies received by the Hirer in trust for the Owner.
- 6.5 The Hirer irrevocably authorises the Owner to negotiate with the insurers to settle any insurance claim and to receive the insurance moneys.
- 6.6 The Owner shall apply the insurance moneys as follows:
- 6.6.1 in making good any damage to the Goods; or
- 6.6.2 in replacing the Goods with Goods of a similar type; and in either case
- 6.6.3 in compensating the Owner for any loss or damage which it may suffer or incur.
- The Hirer agrees to pay on demand to the Owner or make good in the purchase of replacement Goods or in repair of Goods any shortfall in the insurance moneys after application of the insurance moneys under clauses 6.6.1 to 6.6.3 above.
- 6.7 Any loss of or damage to the Goods shall not affect the continuance of this Agreement provided that if there is a total loss of the Goods (that is the Goods being damaged beyond repair, in the reasonable opinion of the Owner, or lost or stolen) then the Hirer may settle the hire agreement by making payment of insurance moneys (and any shortfall) on the basis set out in paragraph 6.6 above or failing which, settle all outstanding hire payments and terminate the Agreement.
- 6.8 If the Hirer fails to pay any insurance premium the Owner may, but shall not be obliged to, pay the same and the Hirer will reimburse the Owner on demand.

7 Default

- 7.1 The Hirer shall be in default of, and the Owner shall be entitled to terminate, the Agreement if the Hirer:
- 7.1.1 breaches any of the terms of the Agreement;
- 7.1.2 provides false information in connection with the entry into of the Agreement;
- 7.1.3 petitions for bankruptcy or suffers a bankruptcy petition to be presented against the Hirer;
- 7.1.4 enters into or takes steps to enter into a composition with creditors or calls a meeting of creditors;
- 7.1.5 in Scotland, becomes insolvent or suffers sequestration or a receiver, judicial factor or trustee is appointed over any of the Hirer’s estate or effects or arrestment, charge, or diligence is issued or levied on any of the Hirer’s estate or effects or the Hirer suffers any exercise or threatened exercise of a landlord’s hypothec, or (being a company or other body corporate goes into liquidation, administration or receivership or is wound up (otherwise for the purposes of amalgamation or reconstruction) or the equivalent of any of the foregoing in any jurisdiction; or
- 7.1.6 if an individual dies, or in the event of the Hirer being a partnership, is dissolved.
- 7.2 On the happening of any event referred to in Clause 7.1, the Owner may, after sending an appropriate default notice and compliance with any statutory requirements:
- 7.2.1 end the Agreement;
- 7.2.2 repossess the Goods and under an order of the Court or with the Hirer’s consent given at that time enter any premises where the Goods are or are believed to be; and
- 7.2.3 recover from the Hirer:

- 7.2.3.1 all arrears of Payments, interest and other sums payable under the Agreement up to the date of termination; and
- 7.2.3.2 all costs and expenses incurred in repossessing, repairing, storing, insuring and selling the Goods, delivering them to a buyer and any sales commission paid in connection with their sale; and
- 7.2.3.3 a sum equal to all rental payments that would have been payable but for termination from the date of such termination up to and including the last day of the Rental Period, the amount of each such rental payment being discounted at the rate of 5% per annum from the due date for payment to the date of termination.

8 Expenses and default interest

- 8.1 The Hirer must pay to the Owner any costs and expenses the Owner may incur in enforcing its rights under the Agreement.
- 8.2 If any sum payable under the Agreement is not paid by its due date, without prejudice to the Owner's other rights, the Owner may require the Hirer to pay to it default interest at the rate of 5% over the base lending rate of The Royal Bank of Scotland plc from time to time from the due date of payment until such sum is received by the Owner or if payment of interest is dependent on compliance with statutory requirements, from the due date those requirements have been met.

9 Obligations following termination

- 9.1 In addition to the Hirer's other obligations under this Agreement, the Hirer shall upon termination of this Agreement at the end of the Rental Period or howsoever caused or arising, forthwith notify the Owner of the exact location of the vessel in which the Goods are situated and the Hirer shall at its own cost and expense at the option of the Owner (such option to be exercised at the sole discretion of the Owner) either:
 - 9.1.1 Immediately return the Goods to the Owner at its address overleaf or such other address as the Owner may reasonably specify, in as good a state of repair and condition as the same was at the commencement of the Rental Period (fair wear and tear only accepted) provided always that:
 - 9.1.1.1 if the vessel is at a port in the United Kingdom, the Hirer shall afford the Owner every facility for dismantling and removing the Goods if the Owner so requests and the Hirer shall be liable for and forthwith on demand by the Owner pay, the reasonable costs of dismantling and removing the Goods to its premises;
 - 9.1.1.2 if the vessel is on passage to a port in the United Kingdom (in which case the Goods shall remain on the vessel and the rental shall continue to be payable and all the provisions of this Agreement shall continue to apply until the vessel arrive at such port and the Goods are delivered to the Owner in accordance with this Clause) on such arrival at a port in the United Kingdom the Hirer shall afford the Owner every facility for dismantling and removing the Goods if the Owner so requests and the Hirer shall be liable for and forthwith on demand by the Owner pay, the reasonable costs of dismantling and removing the Goods to its premises;
 - 9.1.1.3 if the vessel is not at or on passage to a port in the United Kingdom and is outside the United Kingdom the Hirer shall provide at its own expense for the proper dismantling, packaging, transportation and insurance of the Goods to such a place in the United Kingdom as the Owner shall request and payment of the rentals and all the provisions of this Agreement (insofar as appropriate) shall continue until the arrival of the Goods at such place.
 - 9.2 Act as the agent of the Owner to dispose of the Goods as the Owner shall require and account to the Owner for the proceeds.

10 Disposal of Vessel

- 10.1 In the event of the Hirer negotiating for the sale of the vessel, the Hirer shall inform the intending purchaser that the Goods are the property of the Owner and notify the Owner of the intended sale. Thereupon the Owner, at its sole discretion, may negotiate with the intended purchaser for the acceptance by the purchaser of the rights and obligations of the Hirer under the Agreement in respect of the Goods and in the event of the intending purchaser agreeing to accept those rights and obligations in writing, in a form acceptable to the Owner, the Owner shall, at the request of the Hirer and in compliance with any statutory requirements, terminate the Agreement in respect of the Goods. If the Owner does not negotiate or the intending purchaser does not agree to accept the rights and obligations as aforesaid, the Hirer shall either:
 - 10.1.1 at the Hirer's own cost, transfer the Goods to another vessel of the Hirer's fleet for the unexpired balance of the term in which event the Goods so transferred to such other vessel shall remain subject in all respects to the terms of the Agreement and such other vessel shall from the date of such transfer be deemed to be the vessel for the purposes of the Agreement; or
 - 10.1.2 settle all outstanding hire payments and terminate the Agreement in respect of the Goods and Clause 9 shall apply accordingly.
- 10.2 For the avoidance of doubt it is recorded that the Owner shall not be under any obligation to negotiate with any proposed purchaser and this Clause shall operate without prejudice to the other provisions hereof.
- 10.2 If the Hirer decides to scrap the vessel, the Hirer may exercise either of the options set out in clauses 10.1.1 and 10.1.2 above.

11 Acknowledgement and exclusions

- 11.1 The Hirer acknowledges that:
 - 11.1.1 the Goods were selected by the Hirer and acquired at the Hirer's request by the Owner from the supplier for the purposes of the Agreement;
 - 11.1.2 in selecting the Goods, the Hirer does not rely on the skill or judgement of the Owner. In so far as the Goods comprise or contain equipment which was not manufactured or produced by the Owner, the Hirer shall only be entitled to such warranty or other benefit as the Owner has received from the manufacturer;
 - 11.1.3 save as any statute may otherwise provide, the supplier is not the agent of the Owner;
 - 11.1.4 except to the extent specifically stated in this Agreement, the Owner does not make or give any representation, warranty, stipulation or undertaking, express or implied, written or oral and whether by statute, common law or otherwise in respect of the Goods or their maintenance other than the representations and warranties which are incapable of exclusion at law;
 - 11.1.5 acceptance of the Goods by the Hirer is conclusive evidence that the Hirer has examined the Goods and is satisfied that they are in proper working order and in good condition;
 - 11.1.5 the Hirer shall be obliged to maintain (but subject to the obligations of the Owner in terms of Clause 4.9) the Goods in terms of Clause 4 and insure the Goods in terms of Clause 6 and the Hirer not be entitled to any reduction in rental payments or payment whatsoever in respect of any period when the Goods for any reason are out of order and/or unusable and the Owner will not be obliged to supply any replacement Goods in any circumstances nor be liable for any loss of any description whatsoever suffered by the Hirer as a result of the Goods being out of order or unusable;
 - 11.1.6 except in respect of death or personal injury caused by the Owner's negligence, notwithstanding anything contained in the Agreement, in no circumstances shall the Owner be liable, in contract, delict or tort (including negligence), breach of statutory duty or otherwise howsoever, and whatever the cause thereof, (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special indirect or consequential damage or loss of any nature whatsoever; and the Owner's liability to the Hirer in respect of this Agreement (except in respect of death or personal injury), in contract, delict (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the aggregate Hire Payments over the fixed period of this Agreement.

12 Indemnity

- 12.1 The Hirer shall indemnify the Owner in respect of any and all losses, costs, charges, damages, expenses suffered or incurred by the Owner or in respect of claims made against the Owner by any third party in respect of or arising out of the state, condition or use of the Goods at any time during this Agreement or as returned to the Owner in accordance with Clause 9 or any breach of the obligations of the Hirer under this Hire Agreement provided that the Hirer shall not have any such liability to the extent that the liability is a direct result of a failure of the Owner to comply with its obligations under Clause 4.9.
- 12.2 The Hirer shall indemnify the Owner and keep it indemnified against any liability to value added tax and or custom duties and or any other levies and all duties which may be incurred by the Owner in respect of the Goods or the hiring hereunder. The hire payment included in the Hire Form is inclusive of VAT prevailing at the date when the Agreement was prepared, if VAT is payable.

13 Data protection

- 13.1 The Owner is registered as a data controller with the UK Information Commissioner in accordance with the Data Protection Act 2018. By entering into this Agreement, the Hirer agrees that the Owner can use, collect, store and process personal data and information provided by the Hirer or collected by the Owner for the purposes of the Owner performing its rights and obligations under this Agreement or otherwise to the extent necessary and as more particularly described in this Clause 13.
- 13.2 Application
 - To help the Owner decide whether to enter into this Agreement or any future agreement with the Hirer, the Owner may make use of the information provided to it by the Hirer and information received from enquiries made about the Hirer's performance of this and any other agreement which the Hirer has with the Owner. The Owner's enquiries may include searching the Hirer's record at one or more credit reference agencies ("the Credit Reference Agencies") who will keep details of the search. These details will be seen by the other organisations who make searches. Information held about the Hirer by the Credit Reference Agencies may be linked to records relating to one or more of the Hirer's partners. This is called an "association". For the purposes of this Agreement and the application, the Hirer may be treated as financially linked and assessed with reference to any associated records.
 - If this is a joint application or if the Owner is informed by the Hirer of a financial association with another person, the Hirer must ensure that he has the authority (i) to disclose information about the joint applicant and any such other person and (ii) to authorise the Owner to search, link or record information about the joint applicant or such other person, at one or more of the Credit Reference Agencies. An "association" will be created at the Credit Reference Agencies between the joint applicants and/or between the Hirer and any person with whom the Hirer has stated there is a financial relationship. This links together all the financial records, and unless a disassociation is successfully filed at the Credit Reference Agencies, all the financial records will be taken into account in any future applications by the joint applicants, whether such applications are made together, or separately. The Owner may also use a credit scoring system.

13.3 Use and disclosure

- 13.3 If the Owner enters into this Agreement with the Hirer, the Owner may disclose information about the Hirer, this agreement and the conduct of the Hirer's account (including payment record) to any of the Credit Reference Agencies.
- Such information may also be disclosed to third parties such as Echomaster Marine Limited, other lenders, the supplier, the insurer, and any other person or owner, which the Owner may select from time to time for the purposes performing its obligations under this Agreement and for the purpose of considering any future applications for finance and financial related services that may be made by the Hirer or any member of the Hirer's household, fraud prevention, tracing debtors and recovering debt, carrying out statistical analysis and administering the Hirer's account.

13.4 Marketing

- The information which the Owners holds about the Hirer may be used for the purpose of carrying out market research. The Owner may also provide the Hirer with information about the Owner's other products and services which may be of interest to you. For these purposes, the Owner may contact the Hirer by post, telephone, email, fax or other means. If the Hirer wishes to be contacted for this purpose he/she should contact the Owner's Customer Services Department or elect at the time of entering into the Agreement that he/she wishes to receive such information.

13.5 The Hirer's rights

- The Hirer has a right to receive a copy of the information held by the Owner relating to the Hirer. The Hirer should write to the Owner's Customer Services Department for this information.

14 Miscellaneous

- 14.1 Any notice under this Agreement may be given by delivery, post, email or facsimile addressed to the relevant party at such party's address stated in this Agreement or such party's last known address, email address or facsimile number. Notices sent by first-class post shall be deemed to have been received 48 hours after posting, and notices sent by email or facsimile on dispatch.
- 14.2 Either party shall immediately notify the other of a change of his address.
- 14.3 The Owner may assign its rights and transfer its obligations under this Agreement but not so as to affect any provision of this Agreement or any of the Hirer's rights to his detriment. With the exception provided for in Clause 10 of this Agreement, the Hirer may not assign his rights.
- 14.4 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 If any provision or part provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity or enforceability of the rest of this Agreement.
- 14.6 Where more than one person signed this Agreement as the Hirer, each shall be jointly and severally liable for the Hirer's obligations and liability under this Agreement. This means that each of the Hirers can be made fully liable for the other Hirer's indebtedness to the Owner under this Agreement.
- 14.7 No relaxation or indulgence which the Owner may grant the Hirer shall affect the Owner's rights under this Agreement.
- 14.8 The Agreement shall be governed by and construed in accordance with Scots Law and the parties hereto irrevocably submit to the exclusive jurisdiction of the Scottish Courts in respect of any dispute or matter arising out of or connected with the Agreement. For the exclusive benefit of the Owner the Owner reserves the right to commence proceedings in respect of any dispute or matter which arises out of or in connection with the Agreement in the courts of any place which have jurisdiction in that matter.