



## FENDERCARE TERMS AND CONDITIONS OF HIRE

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### 1. DEFINITIONS

Unless stated otherwise herein, the defined terms used in these terms and conditions shall have the meanings as set out in the HIRE CONTRACT.

### 2. HIRE OF EQUIPMENT

The OWNER has agreed to hire the EQUIPMENT and provide any ADDITIONAL SERVICES to the HIRER on the terms and conditions as set out herein. Notwithstanding the foregoing, if, for whatever reason, the HIRE CONTRACT is not signed prior to commencement of the proposed HIRE PERIOD, the Company by accepting the EQUIPMENT nonetheless unconditionally agrees, or shall be deemed to unconditionally agree, by conduct and is bound to the provisions and conditions of such agreement as fully as if such Agreement had been signed.

### 3. DELIVERY / HIRE PERIOD

- 3.1 Delivery of the EQUIPMENT will take place at the OWNER base.
- 3.2 The period of hire for the EQUIPMENT shall be deemed to commence on the agreed day of delivery or up-lift of the EQUIPMENT from the OWNER base, whichever is the earlier, and shall terminate on the day of unloading the EQUIPMENT at the designated PLACE OF RETURN, both days to count as full working days (the "HIRE PERIOD"). In the event of the OWNER requesting return to a different base from uplift, the HIRER will be charged no more than the costs would have been to return the EQUIPMENT to the place of uplift.
- 3.3 The HIRER shall be responsible for and for all costs associated with collection and transport of the EQUIPMENT and shall be responsible for loading the EQUIPMENT onto the delivery vehicle at the beginning of the HIRE PERIOD and the same for re-delivery and unloading at the end of the HIRE PERIOD.
- 3.4 Unless previously agreed otherwise, a minimum notice of forty-eight (48) hours is required to be given to the OWNER for mobilisation and demobilisation of the EQUIPMENT.
- 3.5 The OWNER will use all reasonable endeavours to ensure that the EQUIPMENT is delivered or available for collection on time, however, unless agreed otherwise, any dates agreed between the parties are intended to be an estimate only and time shall not be of the essence. If no dates are specified, delivery will be in a reasonable time.

### 4. PRICE

- 4.1 During the HIRE PERIOD the HIRER shall pay the HIRE CHARGES and COSTS for the hire of the EQUIPMENT and any ADDITIONAL SERVICES as set out in the HIRE CONTRACT.
- 4.2 All charges are exclusive of Value Added Tax (VAT) and, where applicable, VAT will be added at the prevailing rate.
- 4.3 In addition to these charges, the costs of any on/off-hire survey reports performed outside the OWNER base on behalf of the HIRER or otherwise in connection with this agreement will be for the HIRER's account.

### 5. PAYMENT

- 5.1 The OWNER shall invoice the HIRER for the MINIMUM HIRE PERIOD on uplift of the EQUIPMENT and thereafter monthly in arrears.
- 5.2 Each invoice shall be paid in full with no deductions or set-off within thirty (30) days of the date of the invoice unless otherwise agreed in writing.
- 5.3 Upon completion of the HIRE PERIOD the OWNER shall invoice the HIRER for the final costs of demobilisation and return to the OWNER base or other designated base(s) of all hired EQUIPMENT.
- 5.4 Should any invoice remain unpaid, wholly or partly, after the expiration of the thirty (30) days payment period the OWNER shall without prejudice to any other remedies it may have available be entitled to recover possession of the EQUIPMENT hired pursuant to this agreement (at the cost of the HIRER) and to interest on the sum unpaid at the rate of four percent (4%) above the National Westminster Bank base rate at the time of such default for payments in pounds sterling, and at four percent (4%) above the (Libor) for payments in US Dollars.

### 6. OPERATORS

- 6.1 Where a qualified operator is required, the OWNER shall supply a person who it considers to be competent in operating the EQUIPMENT and the HIRER shall not permit any other person to operate the EQUIPMENT without obtaining prior written consent from the OWNER.
- 6.2 Any operator of the EQUIPMENT supplied by the OWNER shall be under the exclusive control of the HIRER and the HIRER shall not be entitled to make any claim against and shall indemnify and hold the OWNER harmless against all claims arising out of any such operator's act, accident, negligence, default or omission whilst under the HIRER's exclusive control.



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- 6.3 The HIRER shall be responsible for ensuring that all operators supplied by the OWNER have a safe place of work and are given adequate training and instructions to ensure their safety and well-being at the HIRER's worksite and/or premises.
- 6.4 The HIRER shall be responsible for the OWNER's costs, charges and expenses relevant to the provision of any such operators.

### 7. HIRER OBLIGATIONS

- 7.1 During the HIRE PERIOD the HIRER shall, at its own expense:
- comply with all laws and regulations relating to the use of the EQUIPMENT including health and safety requirements and shall use the EQUIPMENT in accordance with all relevant operating and safety instructions;
  - ensure that the EQUIPMENT is operated properly and safely with due care and skill at all times by suitably competent, qualified, experienced personnel and in accordance with all instructions given by the OWNER;
  - fully acquaint itself with the appropriate manufacturer's guidelines and not use or permit the use of the EQUIPMENT for any purpose beyond its capacity or in a manner likely to result in excessive wear or strain;
  - ensure the EQUIPMENT at all times remains safe, clean and well-maintained;
  - ensure that, dependent on the type of EQUIPMENT hired, the correct levels of lubricants and other fluids are used and that all such lubricants and fluids used are of suitable grade and quality for use with the EQUIPMENT.
- 7.2 In addition to the obligations contained in clause 7.1 above, the HIRER shall:
- ensure that the intended place of operation or location is suitable for the positioning and/or operating of the EQUIPMENT;
  - not make any alterations to the EQUIPMENT;
  - ensure that when and if the EQUIPMENT requires the fitting or re-fitting of any accessory, that only accessories supplied or approved by the OWNER are utilised and that any such accessory is correctly fitted or re-fitted in a manner so as not to damage the EQUIPMENT;
  - immediately notify the OWNER of any malfunctioning of the EQUIPMENT;
  - not carry out any repair to the EQUIPMENT without obtaining prior written authorisation from the OWNER;
  - immediately notify the OWNER if the EQUIPMENT is involved in any incident or accident resulting in damage to the EQUIPMENT or to other property or injury to any person and immediately cease using the EQUIPMENT if there is any possibility that the EQUIPMENT or any defect relating to it was the cause of such incident or accident;
  - ensure that the OWNER, and any person authorised by it, shall at all reasonable times have full access to the EQUIPMENT and any related facilities for inspecting, testing, auditing, repairing or replacing the same;
  - not remove, deface or cover up any name-plate or identification mark or number on the EQUIPMENT nor put any mark on the EQUIPMENT which might indicate or suggest that the EQUIPMENT is not the property of the OWNER;
  - not sell, mortgage, charge, pledge, part with possession of, or otherwise deal with the EQUIPMENT except with the prior written consent of the OWNER; and
  - protect the EQUIPMENT against and claims or seizure from any third parties.
- 7.3 The HIRER shall indemnify the OWNER against any loss or damage to the EQUIPMENT or otherwise which it may suffer as a result of the HIRER failing to comply with the provisions of this clause 7 (HIRER OBLIGATIONS).

### 8. TITLE, RISK, DAMAGE AND LOSS

- 8.1 The EQUIPMENT is deemed to be the HIRER's responsibility throughout the HIRE PERIOD and without limiting its responsibilities under this agreement, the HIRER shall insure against any damage, loss or injury which may arise during the HIRE PERIOD to any property including the EQUIPMENT or any person.
- 8.2 Notwithstanding clause 8.1 above, at no time shall any title or right in the EQUIPMENT pass to the HIRER.
- 8.3 The OWNER or its appointed agent shall carry out a full pre-hire survey of the EQUIPMENT prior to despatch and a further off-hire survey shall be carried out upon the return of the EQUIPMENT to the said OWNER base or designated base(s) agreed as aforesaid.
- 8.4 Fair wear and tear excepted, the HIRER shall be responsible for and shall reimburse the OWNER in respect of any damage caused to or suffered by any items of EQUIPMENT during the HIRE PERIOD.
- 8.5 In the event of breakdown of the EQUIPMENT otherwise than as a result of breach by the HIRER of its obligations under this agreement, no HIRE RATES will be payable by the HIRER from the time when the HIRER first notifies the OWNER that such a breakdown has occurred and for the time the EQUIPMENT is not operational or the HIRER is without suitable replacement EQUIPMENT.
- 8.6 In the event that the EQUIPMENT is damaged during the HIRE PERIOD, the HIRE CHARGES shall continue to be payable during any period of repair or if repair is not possible until such time as replacement EQUIPMENT is available to the OWNER.
- 8.7 In the event that the EQUIPMENT is lost, stolen or damaged beyond economic repair during the HIRE PERIOD, the HIRER shall pay to the OWNER the full current price of the EQUIPMENT.
- 8.8 In the event that the EQUIPMENT or any part thereof has been contaminated, be it by chemicals, oil products or sewage or any other contaminant, the HIRER will ensure that the EQUIPMENT is adequately cleaned prior to demobilisation and return to the OWNER designated base. The



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OWNER reserves the right to refuse to accept EQUIPMENT so polluted but if the OWNER accepts the EQUIPMENT, any cleaning and disposal of pollutant if undertaken by the OWNER will be solely for HIRER's account.

- 8.9 The HIRER shall advise the OWNER immediately of any known damage to the EQUIPMENT. Any necessary repairs are to be carried out by the OWNER or its appointed agent unless otherwise agreed between the HIRER and the OWNER.
- 8.10 The OWNER reserves the right to inspect the EQUIPMENT at any time.

### 9. WARRANTIES, REPRESENTATIONS AND RISK

- 9.1 Unless agreed otherwise in writing, no warranties or representations are given or made by the OWNER as to the availability, durability, use, storage, effectiveness, quality, suitability or fitness for any purpose of the EQUIPMENT supplied hereunder.
- 9.2 All conditions or warranties implied or imposed by operation of law are to the extent permissible by law hereby excluded.

### 10. LIABILITY

- 10.1 As the conditions in which the EQUIPMENT is to be used are known to the HIRER and are outside the control of the OWNER, the HIRER accepts full responsibility for the suitability and fitness of the EQUIPMENT for the use intended and warrants that the EQUIPMENT is fit for the use intended. If the HIRER intends to use the EQUIPMENT for ship to ship transfer work (STS), then attention is drawn to OCIMF that publishes guidelines regarding suitable equipment and procedures to perform STS operations. A copy of these guidelines is available on request.
- 10.2 From the time of mobilisation of the EQUIPMENT from the OWNER base or other designated base(s) until its return thereto, at all times the EQUIPMENT is under the control of the HIRER and, subject to clause 10.4 below, the OWNER shall not be liable to the HIRER or to any third party in respect of any claim of whatsoever nature and howsoever arising for loss or damage to property, or for personal injury or fatal injury arising from or connected with the use of the EQUIPMENT. The HIRER shall defend and keep the OWNER fully indemnified against all and any claims brought against the OWNER and/or the HIRER (whether jointly or severally) by any third party of whatsoever nature and howsoever arising for loss or damage to property, or for personal injury or fatal injury arising out of or connected with the use of the EQUIPMENT hired pursuant to this agreement or otherwise in relation to the EQUIPMENT whilst hired to the HIRER during the HIRE PERIOD.
- 10.3 The OWNER shall not in any event be liable to the HIRER for any (i) loss of profit, (ii) loss of revenue, (iii) loss of business, (iv) loss of use or for any consequential or indirect loss or damage whatsoever or howsoever arising.
- 10.4 Subject to clause 10.5 below, the OWNER's liability to the HIRER under this agreement for any loss or damage whatsoever and howsoever arising including any loss or damage arising from negligence and/or any act or omission of any personnel supplied shall not exceed the total price of the HIRE CHARGES.
- 10.5 Nothing excludes or limits the liability of the OWNER for death or personal injury caused as a result of its negligence or for fraudulent misrepresentation.
- 10.6 The OWNER will not be liable for any losses caused directly or indirectly due to any delay in the delivery of the EQUIPMENT (even if caused by the negligence of the OWNER, its employees, servants or agents), nor will any delay entitle the HIRER to terminate any HIRE CONTRACT unless such delay exceeds thirty (30) days.

### 11. TERMINATION

- 11.1 Once the HIRE PERIOD has begun, the HIRER may terminate a HIRE CONTRACT at anytime and return the EQUIPMENT to the designated OWNER base in accordance with clause 3 above. The HIRER will pay the OWNER for all costs it has incurred together with any outstanding costs owed to the OWNER. The HIRER acknowledges that if it chooses to terminate a HIRE CONTRACT before the end of the MINIMUM HIRE PERIOD, it will have no claim against the OWNER for any HIRE CHARGES it has paid in relation to this period on the uplift of the EQUIPMENT or if such amounts in relation to the MINIMUM HIRE PERIOD have not been paid, such unpaid amount will become due immediately and shall be treated as a debt owed to the OWNER.
- 11.2 The OWNER may terminate any HIRE CONTRACT by immediate written notice upon occurrence of any of the following events:
- the HIRER commits an irremediable breach, persistently repeats a remediable breach or commits a remediable breach and fails or is unable to remedy it within seven (7) days of being notified to remedy the same;
  - the HIRER becomes insolvent or makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) or any other similar event occurs; or
  - the OWNER reasonably suspects that any event in sub-clause 11.2(b) has occurred or is likely to occur.
- 11.3 In the event that the OWNER is entitled to terminate any HIRE CONTRACT pursuant to the provisions of clause 11.2 above, the HIRER will immediately return the EQUIPMENT to the designated OWNER base and pay the OWNER for all outstanding costs and HIRE CHARGES.
- 11.4 Termination shall not affect any other rights or remedies of either party.



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### 12. GENERAL

- 12.1 The EQUIPMENT is hired by the OWNER to the HIRER for sole usage by the HIRER and may not be sub-let or assigned to any third party without prior and specific written authorisation from the OWNER.
- 12.2 No variation or addition to any HIRE CONTRACT shall be binding unless agreed in writing by the OWNER.
- 12.3 No payment accepted by the OWNER or any delay or failure by the OWNER to enforce any of these terms and conditions shall operate as a waiver of the OWNER's rights hereunder, unless in each case the OWNER expressly agrees so in writing.
- 12.4 These terms and conditions together with any HIRE CONTRACT or any CALL OFF AGREEMENT shall constitute the entire agreement between the OWNER and the HIRER and supersedes any previous oral or written statements or representations relating to the subject matter hereto.
- 12.5 The construction, validity and performance of these terms and conditions, any HIRE CONTRACT or CALL OFF AGREEMENT shall be governed by English Law and any dispute arising out of this agreement shall be subject to the exclusive jurisdiction of the English Courts. Nothing in this clause shall limit the right of the OWNER to take proceedings against the HIRER in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### 13. ANTI-BRIBERY

- 13.1 The HIRER shall:
- (i) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
  - (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (iii) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure its compliance with clause 13.1(i) and (iii) and will enforce them where appropriate;
  - (iv) promptly report to the Supplier any request or demand for any undue financial or other advantage of any kind received by the HIRER in connection with the performance of the Contract; and
  - (v) immediately notify the OWNER in writing if a foreign public official becomes an officer or employee of the HIRER or acquires a direct or indirect interest in the HIRER (and the HIRER warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).
- 13.2 The HIRER shall ensure that any person associated with the HIRER who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the HIRER in clause

### 14. FORCED LABOUR

- 14.1 The HIRER shall:
- (i) comply, and shall procure that each member of the HIRER Group shall comply, with all applicable laws, statutes regulations and codes relating to slavery, servitude, forced or compulsory labour and human trafficking including the Modern Slavery Act 2015;
  - (ii) undertake not to purchase any resource, materials or products from producers, suppliers or manufacturers using forced or compulsory labour in its operations or practices;
  - (iii) have and shall maintain in place throughout the term of the Contract its own policies and procedures to ensure its compliance with clause 14.1(i) and (ii) and will enforce them where appropriate;
  - (iv) immediately notify the OWNER in Writing if it becomes aware of any breach or alleged breach of this clause within its supply chain (and the HIRER warrants that has not been convicted of any offence involving slavery and human trafficking and, having made reasonable enquiries, to the best of its knowledge none of the members of the HIRER Group or their direct or indirect owners at the date of the Contract have been or are the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding an offence or alleged offence of or in connection with slavery and human trafficking),
- 14.2 The HIRER shall ensure that all members of the HIRER Group performing services or work in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the HIRER in this clause 14.