



These Terms and Conditions shall be valid and binding for all Work Orders, offers, quotations, prices, and/or deliveries made by San Jac Marine, LLC (the "Company") on or after October 10, 2019. These Terms and Conditions may also be incorporated by reference to the Company's website at <http://www.sanjacmarine.com>, where they are available, without it being necessary to be duplicated in a standard form writing.

TERMS AND CONDITIONS

1. Services. All services rendered by the Company shall be rendered pursuant to these Terms and Conditions unless the Company agrees otherwise, in a writing, signed by all parties thereto prior to commencement of the services rendered. Arrival of the Customer's Vessel and/or other equipment at the Shipyard shall be conclusive evidence of the acceptance of these Terms and Conditions.
2. Definitions.
 - (a) "Company" means San Jac Marine, LLC.
 - (b) "Customer" means the owner and/or operator and/or charterer and/or master and/or representative requesting that the Company provide services and/or provide supplies and equipment to a Vessel.
 - (c) "Shipyard" means the premises, including the docks, dry dock, and facilities of the Company.
 - (d) "Contract" means the agreement between the Company and the Customer for services to be carried out/supplies or equipment to be furnished by the Company to the Vessel.
 - (e) "Vessel" means any vessel, ship, tug boat, barge, and/or any other watercraft and/or structure.
 - (f) "Work Order" means work order, purchase order, quotation, invoice, and/or any other communication between the parties, including, but not limited to, written, e-mail, and/or oral, which identifies requests for work, supplies/equipment and/or services; and/or identifies work, supplies/equipment and/or services to be provided to the Vessel; and/or identifies work, supplies/equipment and/or services rendered to the Vessel.
3. Applicability. These Terms and Conditions are paramount and supersede any provisions to the contrary contained in any invitation to bid, instructions, purchase orders, or other documentation. Except as may be mutually agreed in writing by the Company and the Customer, these Terms and Conditions apply to all Contracts between the Company and the Customer, including but not limited to, repairs, conversions, maintenance, upgrades, spares, replacement parts, consumable supplies, equipment, and generally all works and materials related to or incident thereto and shall be deemed acknowledged and accepted by the Customer or on its behalf. Agreements varying these Terms and Conditions must be in writing and signed by both parties.
4. Quotations. All quotations and bid proposals shall be valid for fifteen (15) days from date provided to the Customer unless otherwise specified in writing by the Company. Company quotations and bid proposals are subject to drydock availability, which will be reserved for the Customer offering the earliest firm commitment in writing. The quoted prices and rates are for work performed on straight time and are subject to adjustment for any overtime authorized by Customer in writing. Straight time work is performed during one regular 8-hour shift per day, 5-days per week. Weekends and off-shift work is performed at the then applicable overtime rate. Prices exclude any clean up, abatement, or disposal of any hazardous materials which require special handling or disposal.
5. Payment/Lien. Except as otherwise specified in writing by the Company, all payment terms are net, due in full immediately upon completion of work and receipt of invoice. Work scheduled for more than 30-days may require progress payments. Past due charges are subject to a finance charge equal to the lesser of two percent (2.0%) per month or the then current maximum rate of interest allowed in the State of Texas from date of completion of work until paid. Invoices are payable, in United States funds only, to San Jac Marine, LLC to the account information specified on the invoice. The Customer shall be responsible for applicable sales taxes. The Customer agrees that the services and any supplies/equipment provided hereunder are "necessaries" of the Vessel, and that the Company shall have a lien on any Vessel for all charges which may accrue for work done under these Terms and Conditions and/or any Contract. The Customer represents and warrants to the Company that it is either the owner of the Vessel or is authorized to accept and/or approve Work Orders for and on behalf of the owner of the Vessel, incur charges

therefor, and to authorize a lien on the Vessel on behalf of the owner of the Vessel. In the event the charges hereunder shall not be paid in accordance with agreed upon terms, the Customer and/or owner of the Vessel shall pay all expenses of collection, including reasonable attorney's fees and interest. Nothing herein shall be deemed to constitute waiver of any maritime lien of the Company against a Vessel.

6. Change in Scope. The Company and the Customer have jointly reviewed the services to be carried out onboard the Vessel and any supplies/equipment to be provided by the Company to the Vessel, which is as described in the Work Order. The price in the Work Order excludes, any additional costs and/or expenses and/or additional labor and/or materials that may be required to perform additional work over and above the scope of the work described in the Work Order, but discovered once the Company commences the work. By way of example only and not by way of limitation, such additional work may include dismantling for purposes of making areas accessible where work is to be performed; cleaning and/or gas freeing; and/or disposal of waste materials in compliance with applicable laws and/or regulations. All such additional work will be charged as extra and shall be payable by the Customer, together with the price noted in the Work Order and any other additional costs. If, in the course of performing the agreed work noted in the Work Order, the Company discovers items of work that are outside the original scope of work, the Company may, but is not obligated to, bring them to the attention of the Customer to request an amendment of the Work Order to expand the scope of the work and increase the price accordingly. If the Customer does not agree to an amendment within 48 hours of notice, the Company will not be required to perform such additional work, and the Company will be entitled to perform only the work as described in the Work Order.
7. Customer Responsibility.
- (a) The Vessel shall arrive at the Shipyard with minimal fuel, ballast, and other liquids, in a clean and gas free condition, unless otherwise specified and agreed in advance. Any costs to discharge liquids, for tank cleaning, for marine chemist services, etc. are for the Customer's account.
 - (b) The Customer will furnish all special tools and connecting fittings in good working order. The Customer assumes responsibility for delays to work schedule and associated costs, if tools are not present and in good working order upon the Vessel's arrival to the Shipyard.
 - (c) Unless otherwise specified in the Work Order, the Customer shall furnish any technical supervisor required. The Customer's technical supervisor shall specify methods and materials to be used in repairs or overhauls and to be responsible for inspection and approval. The Customer's technical supervisor shall also be responsible for coordinating inspections by applicable regulatory bodies.
 - (d) All fees and costs associated with any classification societies or regulatory bodies are to be for the Customer's account.
 - (e) Prior to drydocking of any Vessel, a detailed Customer-furnished docking plan will be required to confirm capability of drydock or mobile boat hoist and to determine block locations and/or sling placement.
 - (f) The Customer shall notify the Company of Vessel's intent and shall receive Company approval prior to shifting ballast, fuel, etc. while on blocks in drydock or on land. The Customer assumes responsibility for delays to work schedule and associated costs if the Vessel must shift ballast during docking or undocking operation.
 - (g) Unless otherwise specified in the Work Order, the cost of any harbor tugs and divers shall be for the Customer's account.
 - (h) All paint, thinners and paint manufacturer's representatives to be for the Customer's account. All Customer furnished coatings must meet the regulated limits of allowable volatile organic compounds in 40 CFR Part 63 Subpart II. All coatings applied by the Customer and/or its subcontractors must be in compliance with 40 CFR Part 63 Subpart II. All coatings applied at the Shipyard must have a Certificate of Compliance on file prior to commencement of work.
 - (i) Customer shall maintain the Vessel in good operating condition in accordance with all applicable federal, state and local laws, ordinances, regulations, rules and orders. Except as set forth in the scope of work described in the Work Order and as set forth in these Terms and Conditions and/or the Contract, the Company shall have no responsibility with respect to the maintenance and repair of such Vessel.
 - (j) Work on any Vessel in the Shipyard will be performed only by the Company's employees, subcontractors or agents unless otherwise agreed in writing. Proposed work to be accomplished by Customer's crew, other contractors, or subcontractors is subject to the review and approval of Company management, and any such individuals will comply with Company insurance, environmental permits, and safety requirements. Notwithstanding anything in the foregoing to the contrary, all work performed by crew members, employees, other contractors, subcontractors, agents, or otherwise of either the Vessel or the Customer, whether or not agreed to in writing, are the responsibility of the Vessel and Customer, and the Company shall NOT be responsible to the Vessel or the Customer in any manner for any damages resulting therefrom. The Customer shall take proper precautions to protect Company personnel when the Customer, its employees, Vessel crewmembers, contractors, subcontractors, agents, or their employees are performing work, especially with regard to hazardous materials. The Customer, Vessel, its owners, and all parties in interest shall indemnify and hold the Company harmless from all liability

to any party arising from such work, including but not limited to non-compliance with any federal, state, and local regulations or statutes.

8. Warranties. The Company will repair or replace without charge at its Shipyard or in the field, at its option, workmanship or material furnished by it which proves defective under normal service conditions, provided written notice of the defect is received by the Company within 30 days after departure of the Vessel from the Shipyard. In consideration of the foregoing undertaking, the Customer agrees that the Company's liability for defective workmanship or material shall be limited solely to such repair or replacement, and that the Company shall have no liability of any kind to the parties at interest for damages of any nature whatsoever, consequential, economic, compensatory or punitive, whether past, present or future, directly or indirectly caused by negligence, omission, and/or defective workmanship or material including, but not limited to, faulty or negligent design or manufacture, delay, loss of revenue, detention, demurrage, tug expense, pilotage, crew wages, salvage, and loss of use. The Company specifically disclaims any and all implied and/or express warranties, including warranties of workmanlike services or performance, merchantability and fitness for intended services, except as set forth above.
9. Indemnity and Limitation of Liability. Charges for work to be performed by the Company are based the allocation of risk set forth in these Terms and Conditions being applicable in lieu of any other liability or implied and/or express warranties, including warranties of workmanlike services or performance, merchantability and fitness for intended services. The Company's aggregate liability, directly or indirectly, to the Customer, Customer's employees, invitees, contractors, subcontractors, or the employees of such subcontractors or invitees and/or any and all third parties, for any claims for personal injury, or death of an individual, or loss or damage to the Vessel, its equipment, or other property, or any other property, or timeliness of completion of the work, howsoever caused, shall in no event exceed the total sum of the contract price or \$200,000.00, whichever is less, with respect to any one Vessel. THE CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD THE COMPANY HARMLESS WITH RESPECT TO ALL LIABILITIES OF EVERY KIND AND CHARACTER EXCEEDING THE TOTAL SUM OF THE CONTRACT PRICE OR \$200,000.00 WHICHEVER IS LESS, WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF ANY PERSON OR ENTITY (INCLUDING THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR FAULT OF THE COMPANY, COMPANY'S EMPLOYEES, INVITEES, CONTRACTORS, SUBCONTRACTORS, OR THE EMPLOYEES OF SUCH CONTRACTORS OR INVITEES ON ANY THEORY), ANY THEORY OF STRICT LIABILITY, ANY DEFECT OF PREMISES, OR THE UNSEAWORTHINESS OF ANY VESSEL (WHETHER OR NOT PREEXISTING THE DATE OF THESE TERMS AND CONDITIONS), BROUGHT BY THE CUSTOMER, CUSTOMER'S EMPLOYEES, INVITEES, CONTRACTORS, SUBCONTRACTORS, OR THE EMPLOYEES OF SUCH SUBCONTRACTORS OR INVITEES AND/OR ANY AND ALL THIRD PARTIES.

In the event of personal injury or death, or any loss or damage to the Vessel or any other property, the Customer agrees that the Company shall be liable only for damages affirmatively proven to have been caused by sole negligence of the Company or its employees, limited in amount as set forth above.

The Customer and Vessel shall indemnify and hold the Company harmless from any liability for environmental pollution attributable to the Vessel, and any costs, disbursements and attorney fees attendant thereto incurred by the Company. For any Vessel required by size to have a valid FMC Certificate of Responsibility (Water Pollution), the Customer and other parties in interest warrant that the Certificate will be kept in force at all times while the Vessel is located in the Shipyard or while the Company is performing work on it.

The Company does not agree to the accident, indemnity and insurance provisions, if any, contained in any invitation to bid or specifications, relating to Company's liability for death or personal injury, and in such cases the Company accepts only liability as is imposed upon on it by law. Different or more extensive liabilities will be accepted by the Company only if an agreement in writing between the Company and the Customer stating the nature and extent thereof is entered into before the Vessel enters the Shipyard or work is commenced, whichever first occurs, and if the price of the work is adjusted accordingly.

10. Risk and Insurance. The Customer shall have and maintain at its sole cost and expense:
- (a) Hull and Machinery Insurance: in an amount not less than the fair market value of the Vessel, under the American Institute Tug Form (towing vessels), American Institute Hull Clauses (non-towing vessels), or equivalent, including sufficient cover for all costs for salvage and wreck removal.
 - (b) Comprehensive General Liability Insurance: in an amount not less than \$5,000,000 any one accident or occurrence, including comprehensive form, products and completed operations (minimum 180-day discovery period), broad form contractual liability, independent contractors, broad form property damage, personal injury, blanket waiver of subrogation, blanket additional insured (for the Company, its parent, affiliates, and any subsidiaries), and sudden and accidental pollution.

- (c) Automobile Liability Insurance: in an amount not less than \$1,000,000 any one accident or occurrence.
- (d) Pollution Insurance: in an amount not less than \$10,000,000 for any one accident or occurrence, on WQIS form or equivalent coverage for clean-up and third party liabilities.
- (e) Workers' Compensation Insurance/Employer's Liability Insurance: Statutory Workers' Compensation insurance fully complying with the laws of the state in which work is performed. Employer's Liability in an amount not less than \$1,000,000 each accident/each person or the maximum required by law, whichever is greater, including Longshore and Harbor Workers' Compensation Act Endorsement, Maritime Employer's Liability Endorsement, and Alternate Employer endorsement, stating that a claim brought against one party by an employee of the other party as a borrowed servant will be treated as a claim against the party by whom the person is actually employed.
- (f) Marine Liability Insurance: in an amount not less than \$10,000,000 any one accident or occurrence, including protection and indemnity per SP-23 Form or equivalent, collision liability/tower's liability (unless covered by hull and excess coverages up to protection and indemnity limit), marine contractual liability, and crew liability.

Prior to the commencement of the services, the Customer shall, to the extent of the liabilities assumed by it hereunder, procure from each of its insurers, rated at A- or greater by S&P or AM Best, the insurance required herein. Upon request, the Customer shall provide evidence of such insurance to the Company.

11. Force Majeure. If, because of force majeure, either party hereto is unable to carry out any of the obligations under a Contract, other than the obligations to pay money due thereunder, and if such party promptly gives to the other party hereto written notice of such force majeure, then the obligations of the party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided that the party giving such notice shall use its best efforts to remedy such force majeure insofar as possible with all reasonable dispatch. The term "force majeure" as used herein shall mean acts of God, acts of public enemy, insurrections, riots, strikes, lockouts, labor disputes, accidents, fires, explosions, floods, breakdowns or damage to plants, equipment or facilities, embargoes, orders, or acts of civil or military authority, or other causes of a similar nature which are beyond the reasonable control of the party affected thereby. Upon the cessation of the force majeure event, the party that had given original notice shall again promptly give notice to the other party of such cessation.

12. Law and Dispute Resolution.

- (a) These Terms and Conditions and/or any Contract shall be governed and construed in accordance with the General Maritime Law of the United States to the extent applicable and otherwise by the law of the State of Texas, except the law of conflicts of such state. In the event that either party shall institute an action in connection with any claim against the other party arising under these Terms and Conditions and/or any Contract or to enforce any provision thereof, the parties hereby agree that the venue for such action shall be in a court of competent jurisdiction in Harris County, Texas, or in the United States District Court for the Southern District of Texas, Houston Division, and that each party waives any objections as to jurisdiction or venue of these courts. In any action to enforce any provision of these Terms and Conditions and/or any Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses from the non-prevailing party.
- (b) Notwithstanding anything to the contrary herein, and without prejudice to any rights or remedies otherwise available to the Company, by receiving goods, services, or repair work supplied to the Vessel, or by its accepting these Terms and Conditions, the Customer expressly authorizes the Company to arrest the Vessel, or attach any other Vessel owned and operated and/or managed by the Customer, in any competent jurisdiction, as security for the obligations of Customer. Any costs or expenses of whatsoever kind incurred by the Company in respect of such arrest, including but not limited to attorney fees, legal representative fees, and all legal costs whatsoever will be added to the claim for which arrest is made and will be recoverable to the Company.

13. Waivers/Severability.

- (a) Failure by the Company at any time, or from time to time, to enforce any of the terms, provisions or conditions of these Terms and Conditions and/or any Contract shall not constitute a waiver by the Company of a breach of any such terms or provisions and shall not affect or impair such terms or provisions in any way or the right of the Company at any time to avail itself of rights or remedies as it may have at any time. No waiver by the Company of any of these Terms and Conditions and/or of any Contract shall be enforceable against the Company unless said waiver shall be in writing and signed by an authorized officer of the Company.

- (b) Customer and the Company agree that if any court construing these Terms and Conditions and/or any Contract shall determine that any provision thereof is inconsistent with or contrary to any applicable law, statute, code, rule, or regulation, said provision shall be deemed to be modified to the extent required to comply with such law, statute, code, rule, or regulation, and these Terms and Conditions and/or any such Contract, shall remain in full force and effect.
- (c) Customer and the Company agree that if any court construing these Terms and Conditions and/or any Contract shall determine that any provision thereof is unenforceable or void as contrary to law or public policy, then such provision shall be deemed severed therefrom without affecting any remaining provisions thereof.

14. Notices. All notices required under these Terms and Conditions and/or any Contract shall be in writing and shall be effective upon receipt if delivered to the party entitled to receive same by hand, facsimile, or the U.S. Mail addressed to each party at the address set forth below:

TO: San Jac Marine, LLC
17112 Market Street
Channelview, Texas 77530
Attention: Vice President

TO: Customer - At the address provided by the Customer in the
Work Order or otherwise.

With a copy to:
San Jac Marine, LLC
55 Waugh St, Ste 1000
Houston, Texas 77007
Attention: General Counsel

15. Assignment. The Customer may not assign a Contract without the written consent of the Company.

16. Paragraph Headings. All paragraph headings used are for the convenience of the parties only and shall not be considered a part of these Terms and Conditions nor used to interpret or construe the intent of the parties hereunder.