



# FATHOMS Limited GTC's (2009)

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## **Introduction**

These are the General Terms and Conditions ("*Terms*") of Fathoms Limited ("*Fathoms*"), and which govern any agreement or contract made or being negotiated with Fathoms, and any use by you of the Fathoms website ("*the Site*") at [www.fathoms.co.uk](http://www.fathoms.co.uk).

These Terms contain important information about your legal position under the applicable law and regulations whenever and wherever you use this website, or contract with Fathoms.

Please therefore read these Terms very carefully, since by accessing the Site, or contracting with Fathoms, you agree to be bound by these Terms, as amended from time to time. It is also your responsibility to bring these Terms to the attention of anyone else who may view the material on the Site through yourself.

## **Amendments**

Fathoms shall have the right at any time in its sole discretion to make modifications, additions or deletions to the Site, interactive areas, and to the Terms, in future. Any changes or alterations to the Terms will be formally notified by publication on the Site.

## **Definitions:**

"*Client*" means any company or individual who contracts or negotiates with Fathoms.

"*Contract Product*" means any original survey report, professional opinion by Fathoms, or other deliverable required by a contract with Fathoms.

"*Day Rates*" mean all or part of a calendar day, running from midnight to midnight

"*Levies, Taxes and Dues*" include all charges and taxes due and owing at the rate in operation, at relevant tax point date, for the relevant contract with the Client, including VAT.

"*Purchase Order*" means a contract or agreement for services to be provided by Fathoms.

"*Quotation*" means an offer of services by Fathoms and an estimate of those works requested.

"*Services*" means those works contacted for, and agreed to, by Fathoms, which form part of a Quotation provided by Fathoms; as amended, if required.

## **Disclaimer**

Fathoms shall not be liable in contract, tort, negligence, breach of statutory duty, or otherwise, for any loss or damage, costs or expenses of any nature whatsoever incurred or suffered by a Client of Fathoms; including without limitation any economic loss or other loss of turnover, profits, business or goodwill and in any event any such liability is expressly subject to the liability insurance cover of Fathoms, copies of which can be made available for inspection on request.

## **Force Majeure**

Fathoms shall not be liable for any failure or delay in the performance of any contractual agreement, which is caused by circumstances beyond the reasonable control of Fathoms; including any Act of God,

war, strike, lockout, industrial action, fire flood, drought, storm or tempest.

### **Health, Safety and Environment**

Health, Safety and Environmental issues (“HSE”) are of prime concern to Fathoms and are covered by the HSE Policy Document of Fathoms; copies of which are available on request. Accordingly,

- (a) The Services provided are limited to those in the relevant quotation, and are designed only for the stated purpose, the particular Client, and the area described in the Quotation. Fathoms will not be held liable for any other applications or interpretations of these services
- (b) The Services provided in the Purchase Order relate specifically to the time and techniques used when the works were due to be performed. Fathoms will not be liable for any changes in interpretation by the Client arising out of the following; for example, the use of alternative technology, work being carried out at a different time, work carried out under different physical conditions, or the use of other external information by the Client.
- (c) The Quotation, or offer of services for work to be carried out by Fathoms, is necessarily subject to resource availability at the time of the acceptance and award of the contract.
- (d) A Purchase Order, or agreed contract for specific services, must be documented, signed and received by Fathoms prior to any mobilisation of equipment and personnel.

### **Insurance**

Where the Client provides a vessel (or other equipment) for Fathoms to employ or to use, “new for old” insurance must be provided by the Client to cover any loss of damage while in the possession or control of Fathoms, who shall be a notified party to any such insurance cover, which shall in any event include “door to door” cover to Langport/Wick (to be advised). Fathoms reserves the right to inspect such insurance certificates and policies so as to ensure that sufficient cover is available and to charge for any additional premium for “top-up” cover, which might reasonably be required.

### **Intellectual Property Rights**

Fathoms and its Clients jointly agree not to cause or permit anything which may damage or endanger respective intellectual property rights (“IPR”), or title to any such IPR, of the other party, or to assist or allow others to do so.

### **Limitation of Liability**

To the extent permitted by law, Fathoms shall not be liable for any consequential or incidental loss or damage (including but not limited to any financial loss and loss of business or profits) or of any failure to meet any duties or obligations even if Fathoms and its representatives have been advised of the possibility of such loss or damage occurring.

In the unlikely event of any loss or damage arising out of your agreement with Fathoms, or your use of the Site, it is agreed that any such loss or damage shall be limited to the lower of the following: the sum of £50,000, or such sum as is covered by the relevant liability underwriters of Fathoms.

### **Payment Terms**

All Invoices will be rendered in Pounds Sterling and all payments are to be made in Pounds Sterling. Interest on overdue invoices rendered by Fathoms shall accrue from the date when payment becomes due, 30 days after the invoice is dated and sent until the date when payment is received at a rate of 2% above Bank of England Bank Base Rate from time to time, and shall accrue until judgment is obtained or settlement reached. Time for payment is agreed to be of the essence.



In the event that any items on an invoice are disputed, then the remaining items (the undisputed balance) shall be payable within 30 days of the invoice date. Any Contract Product remains the property of Fathoms until all invoices are paid in full.

### **Privacy & Confidentiality**

Neither Fathoms nor its Client shall disclose to any third party details of their agreement(s), or any other information of a confidential nature which was obtained during the course of any agreement, Purchase Order or Quotation, without the prior written consent of the other party, unless reasonably required in law to do so.

### **Proper Law & Jurisdiction**

These Terms shall be governed and construed in accordance with the laws of England and Wales, and by accessing the website of Fathoms, or entering into an agreement with Fathoms, you agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

### **Quotations & Estimates**

Any Quotation or estimate issued by Fathoms is on the basis of current UK legislation. In the event that there is any alteration or change in UK legislation which affects the contractual arrangements, including working conditions, Fathoms reserves the right to amend a quotation or estimate in order to meet any such new requirements of any new UK or EU legislation or regulations, and to make an appropriate charge, if required.

All quotations and offers of service are subject to resource availability at time of award.

### **Severability**

If any term or provision in any agreement with Fathoms shall in whole or part be held to any extent to be illegal or unenforceable, that term or part shall to that extent be deemed not to form part of any agreement with Fathoms, and the enforceability of the remainder of the contract shall be unaffected.

### **Termination**

Fathoms may determine any contractual agreement forthwith in the unlikely event that a Client is in breach of these Terms, which the parties agree are fundamental terms, breach of which would go to the root of the contract, including any material misrepresentation by a Client to Fathoms. Termination of any agreement with Fathoms shall not however affect the accrued rights of the parties prior to the date of termination.

### **Waiver**

No failure or delay by any party to exercise any right, power or remedy shall operate as to a waiver. Nor shall any partial exercise preclude further exercise of the same or some other right or power. Any waiver in order to be effective must be in writing.

### **Warranties**

Any Client of Fathoms warrants and undertakes that the Client is not aware, at the date of any agreement made with Fathoms, of anything within its reasonable control which will or might adversely affect the ability of Fathoms to fulfil its contractual obligations; including health and safety certification, audits and equipment in operation, where Fathoms reserves the right to inspect equipment and any such relevant documentation, copies of which should promptly be made available to Fathoms on written request.