

## **AGREED TERMS AND CONDITIONS FOR SERVICES**

**As set forth in the following terms and conditions, (hereafter “Agreement”):**

**“Customer”** refers to the entity or individual identified in the Quote and Invoice under “Bill To”, who is the owner of the vessel, or, has been authorized by the owner, manager, captain, or other authorized representative of the Vessel to contract for the services to be rendered and actually rendered by Southshore Marine Diesel, Inc. (hereafter “Southshore”). Customer may not be the owner of the Vessel but Customer represents that the terms and conditions set forth herein have been read and agreed to and are binding on Customer, Owner of the Vessel, and the Vessel.

**“Services”**, except where otherwise specifically noted as being separate and distinct terms, includes repairs, labor, parts, materials, dockage, utilities and other necessities required by Southshore to perform the work that has been contracted.

**This Agreement is incorporated and made a part of the Quote and Invoice issued by Southshore to Customer**

**1. PAYMENT TERMS:** Customer agrees to pay Southshore for all services provided in connection with the ordered work as follows: A deposit of one-half the amount of the quote shall be made for the commencement of the work described in the quote. Thereafter Southshore will invoice at periodic (monthly intervals) until the work is completed. Unless otherwise agreed, payment shall be due upon receipt of invoice. **ALL CHARGES MUST BE PAID IN FULL BEFORE VESSEL SHALL BE LAUNCHED OR RETURNED TO CUSTOMER.** Should Customer fail to make the appropriate payments when due, Southshore may in its sole discretion, immediately cease any and all work on the Vessel until it receives payment. Any amount more than Ten days past due shall be subject to interest charges at the rate of 1.5% per month. Any grant(s) of extension of time for payment will not be deemed a waiver of Southshore’s rights or Customer’s obligations. In the event Southshore deems it necessary to retain counsel and/or a collection agency to collect any unpaid invoices, Customer agrees to pay Southshore's reasonable costs of collection, including without

limitation, attorney fees, other collection costs and collection agency fees. Customer acknowledges and agrees the services provided by Southshore entitle it to a maritime lien against the Vessel under the Federal Maritime Lien Act and that release of the Vessel without full payment shall not constitute a waiver or release of that lien.

**2. QUOTES ARE NOT GUARANTEES:** When requested by Customer, Southshore will provide cost and completion date estimates. Any such estimates will be made honestly and in good faith based on Southshore's knowledge and experience. Customer acknowledges that boat repair work cannot always be accurately estimated in advance; that once work begins, unforeseen conditions or problems frequently arise; and other factors can affect estimated costs and completion dates including, war, riots, disturbances, weather, flood, fire, delays in delivery of supplies or materials, failure of subcontractor to complete work, strikes, labor disturbances, public health crises, and governmental directives, orders and regulations. Customer understands this and agrees that any estimates furnished are to be used as guidelines only and are not binding on Southshore.

**3. PAYMENT OF UNDISPUTED AMOUNTS:** In the event of a dispute or claim with respect to any item(s) of the agreed work, Customer shall pay promptly on a timely basis the agreed charges for all other items of the work not in dispute.

**4. THIRD PARTY CHARGES:** Any third party fees including but not limited to freight, shipping and delivery charges, parking fees, dockage/marina fees or travel expenses incurred in connection with the services described shall be the exclusive responsibility of, and shall be paid by Customer.

**5. DORMANCY:** Customer agrees to keep in contact with Southshore and be responsive to emails/phone calls regarding job status and payment. If no response is received in 10 (ten) days from Southshore's inquiries to Customer, then Southshore, in its sole discretion will have the right to cease all services, cancel all further services, and issue a final invoice for services rendered up to that date. Any equipment and parts in the possession of Southshore after

the cessation of services, or after the cancelation of services, and up until the date that the equipment and parts are returned to Customer, shall be subject to a storage charge on a per monthly basis of \$250.00, without any pro-ration based on the actual number of days in storage.

**6. CUSTOMER'S CANCELLATION OF ORDERED SERVICES:**

In the event Customer elects to cancel all or part of the services that were ordered as set forth in the estimate, Customer shall pay Southshore in full as of the date of cancelation for (1) all services performed by Southshore or its subcontractors, and (2) all other expenses and charges incurred relating to the job. The cancelation of the specific services must be in writing. **No warranties, whether express or implied, shall be applicable to the services rendered up to the date of cancelation.**

**7. ADDITIONAL WORK AND CHANGE ORDERS:** During the course of services, it may be determined that additional services are necessary beyond the scope of the work identified in the quote, or, that Customer requests that additional services be performed. Any such additional services shall require the agreement of Customer and Southshore, and if agreed to, shall be subject to a written change order. The written change order shall be subject to the terms and conditions of this Agreement.

**8. LIMITED WARRANTY, DISCLAIMERS, EXCLUSIVE REMEDIES:**

**A. LIMITED WARRANTY – LABOR EXCLUDING PARTS**

Southshore warrants that all labor and repairs to be free of defect for a period of twelve (12) months, or 500 engine hours, whichever comes first, starting from the date that Southshore has completed its work which shall be considered to be the date that Southshore issues its final invoice. **THIS LIMITED WARRANTY DOES NOT INCLUDE ANY DEFECT IN PARTS OR ANY REPAIRS REQUIRED AS A RESULT OF ANY DEFECT IN THE PARTS SOLD AND INSTALLED BY SOUTHSORE AS PART OF THE SERVICES. ANY WARRANTY ON THE PARTS ARE THOSE OF**

**THE MANUFACTURER(S) ONLY. ON REQUEST OF CUSTOMER, SOUTHSORE SHALL PROVIDE CUSTOMER WITH THE WARRANTY PROVIDED BY THE MANUFACTURER(S).**

**B. EXCLUSIONS TO LIMITED WARRANTY**

The Limited Warranty provided by Southshore (A. above) does not cover or include any damage, loss, malfunction or breakdown caused in whole or in part, and arising from (1) neglect, (2) lack of maintenance, (3) misuse, (4) abuse, (5) accident or casualty, (6) repair or alteration made by anyone other than Southshore, (7) actions and omissions of owner and third parties, (8) unseaworthy conditions of the Vessel, (8) structural deficiencies or damages to other appurtenant parts and equipment of the Vessel, (9), weather and environmental events and occurrences, including but not limited to hurricanes, tornados, tropical storms, floods, earthquakes, (10) acts of war, armed conflict, (11) confiscation and detention of the Vessel by governmental agencies or those acting on their behalf whether in time of war or peace, (11) acts of civil disturbance, rioting, and (12) any other cause not solely due to the labor and repairs performed by Southshore.

**C. REMEDIES AND OBLIGATIONS OF LIMITED WARRANTY**

1. Southshore must be notified in writing (email, text) and verbally as soon as reasonably possible of any issue – damage, loss, malfunction, breakdown - that may involve the services performed and which may be covered under the Limited Warranty.

2. Absent exigent circumstances to save the Vessel from loss and/or destruction, or the protection from bodily injury or death of persons, no repairs by owner or third person shall be undertaken without Southshore first having the opportunity to have an authorized representative inspect the Vessel.

3. Southshore shall be provided records of all maintenance, repairs to the Vessel, between the date of the start of the Limited Warranty and the date of the damage, loss, malfunction or breakdown.

4. In the event of the exigent circumstances described

above that require repairs prior to Southshore first having an opportunity to inspect the Vessel, photographs of the damaged parts, equipment and damaged areas of the Vessel shall be taken, all parts and equipment removed from the Vessel shall be preserved in safe keeping, and any inspection report, estimate and invoice shall be made available to Southshore. In the event the photographs, parts and equipment, inspection report, estimate and invoice are not made available to Southshore or are not sufficient for Southshore to reasonably determine the cause of the damage, loss, malfunction or breakdown and need for repairs, the Limited Warranty shall not apply.

4. Absent the exigent circumstances described above, in the event repairs are made to the vessel without Southshore first having an opportunity to inspect the vessel, the LIMITED WARRANTY SHALL BE VOID AND OF NO EFFECT.

5. In the event that the damage, loss, malfunction or breakdown is determined to have been solely caused by the labor and repairs performed by Southshore and covered by the Limited Warranty, Southshore shall make all necessary and reasonable repairs at its sole cost and expense at its designated location. If circumstances dictate that repairs be performed at a location that would make it impracticable for Southshore to perform the repairs, Southshore shall agree to pay a third-party repair facility to make the repairs, but at a cost that does not exceed the normal and customary charges of Southshore for performing the same repairs. THE FOREGOING IS THE SOLE AND EXCLUSIVE REMEDY UNDER THE Limited Warranty.

6. Any and all expenses to be incurred for travel, fuel, lodging, shipping to perform the covered repairs shall be paid by the owner.

7. Under no circumstances does the Limited Warranty include or cover any consequential and incidental loss, expense, cost, and damage, including but not limited to loss of use, loss of profits or revenue, crew wages, towing, salvage, wreck removal, storage, dockage, fuel, utilities, inspection and survey fees, attorney fees.

8. Completion of the necessary and reasonable repairs in accordance with the Limited Warranty shall constitute full compliance on the part of Southshore and shall bar any and all future claims, under any legal theory, statute of common law, for non-

compliance.

**OTHER THAN THE EXPRESS LIMITED WARRANTY SET FORTH ABOVE, SOUTHSHORE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OF WHATSOEVER NATURE, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND THE IMPLIED WARRANTY OF WORKMANLIKE PERFORMANCE.**

**D. NO WARRANTY FOR PARTS AND MATERIALS**

Southshore does not provide any warranties, either express or implied, with respect to any parts and materials sold and/or installed as part of the services provided. Any and all warranties provided with respect to the parts and materials are those of the manufacturer(s) only.

**9. LIMITATIONS/EXCLUSIONS TO LIABILITY:**

A. SOUTHSHORE SHALL NOT BE LIABLE, AT LAW OR IN ADMIRALTY, FOR LOSS OR DAMAGE TO THE VESSEL OR OTHER PROPERTY, REAL OR PERSONAL, UNLESS SUCH LOSS OR DAMAGE WAS CAUSED BY THE SOLE NEGLIGENCE OF SOUTHSHORE IN WHICH CASE SOUTHSHORE'S LIABILITY SHALL BE LIMITED TO AND SHALL NOT EXCEED THE AMOUNT INVOICED FOR THE SERVICES RENDERED AND PAID FOR.

B. SOUTHSHORE NOT BE LIABLE FOR ANY CONSEQUENTIAL AND INCIDENTAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF REVENUE, LOSS OF PROFITS, CREW WAGES, TOWING OR SALVAGE CHARGES, DELAY DAMAGES, ATTORNEY FEES.

C. Southshore shall not be responsible for any loss, damage

or delay caused by and resulting from force majeure, acts of war, strikes, riots, civil commotions, weather events such as hurricanes, tornados, tropical storms, floods, fire, explosion, delay and/or cancelation of shipping and delivery of supplies, materials, parts, and orders, edicts and ordinances of the government or its agencies.

#### **10. TIME LIMIT FOR FILING CLAIMS/ADVERSE PRESUMPTION:**

Other than the provisions relating to the Limited Warranty, in the event that a claim for loss or damage to the Vessel, equipment, appurtenant parts, as well as to personal property and other property is not presented in writing to Southshore within six (6) months from the date that the final invoice for services is issued, it shall be presumed that any such loss or damage was not due to any negligence, gross negligence, willful conduct, breach of contract, or other wrongdoing of Southshore. Owner shall have the burden to rebut this presumption.

#### **11. HOLD HARMLESS AND INDEMNITY:**

A. Southshore shall defend, indemnify, and hold harmless Customer against any and all claims of subcontractors retained by Southshore for services rendered.

B. Customer shall defend, indemnify and hold harmless Southshore (its owners, employees, subcontractors) from and against any claim, demand, suit and legal proceeding brought by or on behalf of Customer's employees, agents, subcontractors, the vessel owner, vessel's crew, employees, invitees and passengers, Southshore's employees, agents and subcontractors, and any other third persons, alleging loss or damage to property, personal injury, occupational sickness, disease or death caused in whole or in part by (1) the actions and omissions and arising out of the operations of Customer or owner; (2) unsafe, unfit, dangerous conditions in and of the Vessel; (3) negligence, gross negligence, willful misconduct and other actions and omissions of Customer or owner. **The obligation to defend, indemnify and hold harmless Southshore (its owners, employees, subcontractors) as set forth above applies even if**

**any such loss or damage is caused in part by the negligence of Southshore, its employees or subcontractors.**

**11. DEFAULT AND REMEDIES:** The occurrence of any of the following events shall constitute a default under this Agreement: (1) failure to make payments when due; (2) failure to provide Southshore and/or its subcontractors access to the Vessel; (3) filing of Bankruptcy; (4) transfer of ownership and/or management of the Vessel; (5) arrest of the Vessel by any third party; (6) subjecting the vessel to any lien or encumbrance that would be considered primary to or take precedence over any lien to which Southshore would be entitled; (7) any act or omission by Customer that would interfere with and preclude Southshore from performing the services. The failure to take any action upon the occurrence of a default shall not constitute a waiver of or preclude a subsequent action.

Upon any default by Customer, Southshore, in addition to and not to the exclusion of all other remedies under the law, may (1) suspend its performance or cancel all further services; (2) impose storage charges on the Vessel and its equipment and parts at current storage rates; (3) retain possession of the Vessel until all charges are fully paid; and/or (4) cause the arrest of the Vessel to enforce a maritime lien for necessaries.

**12. OTHER CONTRACTORS:** Customer may have other contractors perform work on the Vessel while the vessel is at Southshore's facilities, but subject to and conditioned upon the following restrictions: (1) Southshore shall be given prior notice to Southshore whenever such work is to be performed and by whom; (2) the contractor must have and produce proof of insurance for worker compensation (state and federal); (3) the contractor must have and produce proof of SRL and CGL insurance applicable to work at Southshore's facility with limits of no less than \$1 million with Southshore named as an additional insured; (4) the contractor shall not perform any work that Southshore has contracted with Customer to perform; (5) Southshore shall have no liability for or provide any warranty to Customer for any work performed by contractor; (6) contractor shall be liable to Southshore, its owners, employees and subcontractors for all damage it causes to property and personal



property of Southshore, its owners, employees and subcontractors; (7) contractor shall be liable for any damage to Southshore's work on the Vessel caused by contractor and that needs to be redone and/or repaired; (8) Southshore shall not be liable for any personal injury or death to contractor's employees or to third persons caused in whole or in part by the negligence of contractor; (9) contractor agrees to defend, indemnify and hold harmless Southshore, its owners, employees, subcontractors from and against any claim, demand, suit and legal proceeding brought by or on behalf of any person, alleging loss or damage to property, personal injury, occupational sickness, disease or death caused in whole or in part by unsafe, unfit, dangerous conditions in and of the Vessel, or, by the negligence and other wrongful and tortious conduct of contractor, even if caused in part by the negligence of Southshore, its employees or subcontractors; and, **(10) in the event contractor fails to comply with its obligations set forth in (6) through (9) above, Customer personally agrees to assume these obligations owed to Southshore.**

**13. POLLUTION:** The Vessel owner shall defend, indemnify and hold harmless Southshore from all liability and expense, including without limitation cleanup costs, fines, penalties, civil damages, assessments, costs, and reasonable attorney's fees, arising out of any environmental pollution attributable to Vessel, unless such pollution is affirmatively proved to have been caused by the sole negligence of Southshore or its employees.

**14. CHOICE OF LAW, JURISDICTION, ARBITRATION:** All claims and disputes arising under or relating to this Agreement, including any warranty claim and dispute, shall be governed by general maritime law and to the extent not inconsistent thereto, the law of the State of Florida. It is further agreed that all claims and disputes arising under or relating to this Agreement shall be arbitrated with the Miami Marine Arbitration Council. In the event that Court intervention is necessary to declare and/or enforce this Agreement, the sole and exclusive jurisdiction shall be the United States District Court for the Southern District of Florida, Miami Division.

**15. SEVERANCE:** Should any provision of this Agreement be deemed unenforceable for any reason, it is the parties intent and agreement that the remaining provisions, terms and conditions shall remain in full force and effect.

**16. MISCELLANEOUS:** This Agreement constitutes the complete Agreement of the parties, and may not be changed, modified or altered in any way except by a written instrument signed by the parties.