

PAC CAPTAIN SERVICES, LLC

STANDARD TERMS & CONDITIONS

A. Terms & Conditions Applicable to All Services. The following terms and conditions shall apply to any and all services provided by PAC Captain Services LLC by and through its principal surveyor, Anthony Capriccio (collectively Surveyor), including without limitation all agreements for the provision of marine surveys for any purpose, captain-for-hire services, instructional services, and Contracts for Vessel Berthing Inspections, which agreement(s), as supplemented by these Standard Terms & Conditions, may be referred to herein as the “Agreement” or “Agreements.” The party engaging Surveyor’s services shall be referred to herein as the “Client.”

- 1. Limitation of liability & Indemnity.** Client acknowledges and agrees that Surveyor’s engagement for marine survey services is to provide Surveyor’s good faith opinions as to the apparent condition and value of any vessel subject to survey, and that Surveyor’s opinions and representations of any nature relating to a vessel shall not constitute a warranty or guaranty as to any aspect of a vessel. Surveyor’s services as a Captain-for-Hire or for instructional services shall extend to Surveyor providing Surveyor’s services on a best-efforts basis only, relying upon Surveyor’s training, experience and best judgement. Surveyor’s services are provided at the rates indicated in the Agreement on the basis of limited liability and indemnification of Surveyor as provided herein. Surveyor shall have no liability in any way arising from Surveyor’s services except as may be caused solely by Surveyor’s gross negligence or intentional wrongful acts, and in no event shall Surveyor’s liability exceed ten times the amount paid to Surveyor for Surveyor’s services. In no event shall Surveyor be liable for consequential or punitive damages, and Surveyor’s liability shall not exceed ten times the amount paid for Surveyor’s services under the Agreement. Client agrees to indemnify and hold Surveyor harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against Surveyor or incurred or suffered by Surveyor, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Surveyor may suffer or of any claims for property damage or personal injury in any way pertaining to the vessel that is the subject of Surveyor’s services.
- 2. Insurance.** All policies of insurance pertaining to any vessel that is the subject of Surveyor’s services shall provide for a full waiver of subrogation as against Surveyor and shall be primary as to any of Surveyor’s insurance.
- 3. Captions and Headings.** The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

4. **Authority and Obligations of Signers for Legal Entities.** The Parties each represent and warrant that they have full power and actual authority to enter into the Agreement and to carry out all actions required of them by this Agreement. All persons executing this Agreement in representative capacities represent and warrant that they have full power and authority to bind their respective entities. Any and all persons entering into the Agreement on behalf of any Client that is a legal entity shall also be a co-obligor as to all obligations of the legal entity under the Agreement.
5. **Law & Dispute Resolution.** The agreement for Surveyor's services shall be subject to and construed exclusively under the general maritime law of the United States and shall not be supplemented by any state laws, but in the event there is not an established rule of law as to any issue California law as to such issue may apply. Any and all disputes arising from Surveyor's services shall be subject to binding arbitration conducted pursuant to the JDR, Inc. arbitration rules (but not before JDR, Inc.), before a single arbitrator experienced in maritime law, which arbitration hearing shall be conducted in San Francisco, California, or other agreed location, which shall be the exclusive forum and venue for resolution of any and all disputes.
6. **No Third Party Beneficiaries.** Surveyor's services are provided exclusively for the benefit Client and are not intended to be for the benefit of any third party, and no person or entity not a party to the Agreement shall have any third party beneficiary or other rights whatsoever hereunder.
7. **Severability.** It is agreed that if any provision of the Agreement shall be determined to be void or unenforceable for any reason by any court (or other tribunal) of competent jurisdiction, then such determination shall not affect any other provision in the Agreement, and the court or tribunal shall reform the provision in such a manner to make it enforceable while accommodating the Parties' original intent to the full extent possible.
8. **Counterparts.** The Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature delivered by facsimile transmission or other electronic means shall be deemed the equivalent of an original signature for all purposes.
9. **Additional Documents.** The parties agree to execute any documents necessary or convenient to complete the transactions contemplated herein and to accomplish the intent of the parties.
10. **Entire Agreement.** The Agreement constitutes the entire agreement of the parties on all subjects. The Agreement may not be modified, interpreted, amended, supplemented, waived or revoked orally, but only by a writing signed by all parties.

The Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects, all of which are merged into, and superseded by, the Agreement. No party is entering into the Agreement in reliance upon any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in the Agreement.

B. Captain-For-Hire and Instructional Services –

Additional Terms. The following additional terms shall also apply to any Agreement for Captain-For-Hire, Instructional Services, and Vessel Delivery Services.

1. **Insurance.** The Client shall procure and maintain a policy or policies of insurance upon the vessel providing liability, first party property damage, and pollution liability coverage, and shall cause PAC Captain Services, LLC and its principal surveyor to be named as an additional assured on all applicable liability insurance coverages pertaining to the vessel, and to procure full waivers of subrogation as against PAC Captain Services LLC on all policies of insurance pertaining to the vessel.

C. Marine Surveys – Additional Terms. The following additional terms shall also apply to any Agreement for marine surveys.

1. **Circumstances and Scope of Survey.**
 - a. Machinery, tanks, belts, hoses, and piping are visually inspected where normally accessible. No disassembly, sampling, analysis, compression testing, or pressure testing will be performed except as requested by client. PAC Captain Services, LLC does not accept any responsibility for damage or deterioration not found or discovered during the course of the Survey, nor for consequential damage, deterioration or loss due to any error or omission. The survey does not include a mechanical inspection. Any vessel rigging will be inspected where accessible from the deck of the vessel. Machinery and equipment are not inspected while operating except where specifically noted in the Survey Report. The Survey Report is composed of information that is believed to be true after reasonable investigation and inquiry but is not warranted to be so. The Survey will be conducted without drilling, diving, ultrasonics, cleaning or opening up to expose parts. Locked compartments or otherwise inaccessible areas will not be inspected. The Survey will be conducted without removal of any parts, including fittings, tacked carpets or liner materials, screwed or nailed boards or panels, anchors and chain, fixed partitions, instruments, clothing, spare parts and miscellaneous materials in the bilges and lockers, or other fixed or semi-fixed items.

- b. No determination of stability characteristics or inherent structural integrity will be made and no opinion will be expressed thereto. The Survey Report represents the condition of the vessel on the date(s) specified above, and is the unbiased opinion of the Surveyor, but is not to be considered an inventory or a warranty, either specified or implied.
 - c. The Client hereby undertakes to keep the Surveyor indemnified and to hold him harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against him or incurred or suffered by him, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Surveyor may suffer or incur (either directly or indirectly) in the course of the services under these Conditions.
2. **Standards.** The mandatory standards promulgated by the United States Coast Guard (USCG), under the authority of Title 46, United States Code (USC); Title - 33 and Title 46 Code of Federal Regulations (CFR) and the voluntary standards and recommended practices developed by the American Boat and Yacht Council (ABYC), have been used as guidelines in the conduct of this report, but complete compliance with all such standards is not guaranteed.
3. **Valuation.** The valuation provided in any report is based on the vessel's apparent condition on the date of Survey and assumes that the vessel's engines and other installed equipment not proven during the Survey are in fact operational. Discoveries made as a consequence of recommended additional testing/inspection procedures may significantly lower the valuation. Also, there is no warranty given or implied, for the future use or life of the engines or machinery described in the Survey Report. Valuations are developed using some or all of the following resources: commercially published used boat price guides (BUC, NADA, Sold Boats, Workboat, Boats 'n Harbors, Waterways Journal) etc., commonly accepted marine depreciation schedules, and consultations with knowledgeable boat brokers.