

## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

- "Client" is the party at whose request or on whose behalf the Company performs services.
- "Company" means Hunter Marine Surveyors Pty Ltd (ABN 95 107 166 469).
- "Conditions" means these Standard Terms and Conditions.
- "Disbursements" means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating, telephone calls and facsimile transmissions (local, STD, ISD and mobile), and where applicable, electronic transmission fees and all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary.
- "Fees" means the fees charged by the Company to the Client, including any applicable tax.
- "Force Majeure" means an act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or semi-governmental intervention, direction or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining Governmental Agency approvals, consents, permits, licences, authorities or allocations, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the Party affected.
- "Government Agency" means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, legislative, parliamentary, public, municipal, local or judicial entity, agency, instrumentality or authority.
- "GST" means goods and services tax charged on the supply of most goods, services and other things as required in the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)*;
- "GST Rate" means the rate of goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999(Cth)*, as amended from time to time.
- "Intellectual Property Rights" means all copyright and neighbouring rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know-how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- "Party" means a party to all resulting contracts, agreements and other arrangements.
- "Report" means any report or statement supplied by the Contractor in connection with instructions received from the Client.

**2. SCOPE**

- 2.1 The Company shall provide its services solely in accordance with these Conditions.
- 2.2 Unless otherwise specifically agreed in writing the Company undertakes services in accordance with these Conditions and accordingly all offers or tenders of service are made subject to these Conditions.
- 2.3 All resulting contracts, agreements and other arrangements will in all respects be governed by these Conditions, except only to the extent that the laws of New South Wales preclude any of the Conditions and in such case such New South Wales law shall prevail, but only to the extent that, it is at variance with these Conditions.

**3. WORK**

- 3.1 The Client will set out in writing the services, which it requires the Company to provide. The Company will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions.
- 3.2 The Company will also set out in writing the applicable Fees and likely Disbursements that will apply in relation to providing the services confirmed in writing by the Company and any Fee estimate will be based on the assumption that the Company will receive co-operation and timely instructions from the Client's employees.
- 3.3 Once the Company and the Client have agreed what services are to be performed (and the applicable Fees) any subsequent changes or additions must be agreed by both the Company and the Client in writing and any agreed variations will be subject to payment of reasonable additional Fees and a reasonable additional period to provide any additional services.

**4. FEES AND PAYMENT TERMS**

- 4.1 The Client shall pay any Fees and Disbursements due to the Company punctually in accordance with these Conditions and in any event not later than 30 days following the relevant invoice date, or in such a manner as may have been agreed in writing between the Company and the Client.
- 4.2 Time for payment of Fees and Disbursement shall be of the essence and any delay in payment shall entitle the Company to interest on outstanding amounts at the rate fixed 4% above the cash rate published by the Reserve Bank of Australia on the day payment becomes due, or if no published cash rate on that day the next published day cash rate, calculated from the date the outstanding amount is due for payment until the date that it is paid.
- 4.3 Fees (which unless otherwise specified are in Australian dollars) are exclusive of GST, unless otherwise stated. In addition to the Fees the Client must pay GST Rate on those amounts, if applicable. The Company will provide a tax invoice setting out details of GST charged.

## OBLIGATIONS AND RESPONSIBILITIES

### 5. CLIENT

- 5.1 The Client undertakes to ensure that full instructions are given to the Company and are provided in sufficient time to enable the required services to be performed effectively and efficiently and to procure all necessary access for the Company to goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions.
- 5.2 The Client shall supply, if required, any special equipment and personnel necessary for the performance of the required services.
- 5.3 The Client shall take all necessary steps to eliminate or remedy any obstruction to or interruptions in the performance of the required services.
- 5.4 The Client shall inform the Company in advance of any known hazards or dangers, actual or potential, that the Company may encounter when providing the services including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons.

### 6. COMPANY

- 6.1 The Company shall exercise due care and skill in the performance of its services.
- 6.2 The Company shall submit such Reports and progress advices to the Client as may be required which describe the Contractor's findings and the condition and/or quality of the object and/or purpose of the assignment, unless otherwise expressly instructed by the Client not to do so, but the Company is under no obligation to refer to or report upon any facts or circumstances which are outside the specific instructions received.
- 6.3 The Client agrees that no reliance shall be placed on draft reports, draft conclusions or draft advice, whether oral or written, issued by the Company as they may be subject to further work, revision and other factors which may mean that such drafts are substantially different from any final report or advice issued.
- 6.4 Where the Company provides a draught survey report for the purpose of quantifying the total tonnage loaded or discharged at the time of a survey the Client agrees and accepts that any representations or statements in the draught survey report about hatch quantity proportions is a pro rata calculation based on shore scale error, any cargo names or cargo grades are as provided by the terminal or Client information to the Company, and are not binding on or representations by the Company as to the accuracy or their correctness.
- 6.5 Any advice given or report issued by the Company is provided solely for the Client's use and benefit and only in connection with the purpose for which the services are provided. Unless required by law, the Client agrees not to provide such reports to any third party or refer to the Company or the services without the Company's prior written consent. The Company assumes no responsibility to any third party to which any advice or report is disclosed or otherwise made available. No copy, extract or quote from it may be made available to any other party without the Company's prior written consent. The Client may provide a copy, extract or quote from the report:

- (i) to its advisers and consultants;
- (ii) as required by law; or
- (iii) for the purpose of giving evidence in Court proceedings or any arbitration or mediation (with the consent of the Company which shall not be unreasonably withheld).

**7. CONFIDENTIALITY**

- 7.1 The Company undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law.
- 7.2 The Company undertakes not to release any reports or findings of contracted work to any other party than the Client, unless given express permission by the Client.

**8. INTELLECTUAL PROPERTY**

- 8.1 Copyright and all other Intellectual Property Rights in documentation or products produced by the Company (or any of its contractors) relating to the services (including but not limited to copyright in all photos, documents, reports, charts, drawings, databases, software, source codes, DVDs, model systems, slides, tapes and specifications) vests in the Company.

**9. CONFLICT OF INTEREST/QUALIFICATION**

- 9.1 The Company shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for the Company to continue its involvement with the appointment. The Client shall be responsible for payment of the Company's Fees and Disbursements accrued up to the date of notification.

**10. LIMITATION OF LIABILITY**

- 10.1 To the extent permitted by law, the Company excludes all warranties, conditions or terms, other than those expressly set out in these terms and conditions including, but not limited to, all warranties, conditions or terms implied in fact or by law. Nothing in this Clause has the effect of excluding, restricting or modifying any non-excludable statutory condition, warranty, guarantee, right, remedy or other benefit that is preserved by the *Competition and Consumer Act 2010* (Cth) (or any other legislative provision).
- 10.2 Where the Company is not entitled to exclude a warranty, condition or term implied in fact or by law, and to the extent permitted by law, the Company's liability for breach of any such warranty, condition or term is limited to:
- (i) in the case of services, at the option of the Company, either the resupply of the services or payment of the reasonable cost of having the services resupplied; and
  - (ii) in the case of documentary deliverables or materials, at the option of the Company, either the resupply of the deliverables or materials or reasonable payment of the cost of having the deliverables or materials resupplied.

- 10.3 In all instances, other than as expressly set out in these terms, the total aggregate liability of the Company to the Client for loss or damage caused by, resulting from, or in relation to the services, including whether arising from breach of contract, negligence, or any other tort, in equity or otherwise, and whether or not the Company was advised of the possibility of such loss or damage, is limited (to the extent permitted by law) to an amount equal to the fees paid by the Client to the Company in respect of the Services or AUD\$5,000 whichever is the lesser provided however that the Company shall have no liability in respect of any indirect claims or consequential loss including loss of profit and/or loss of future business and/or loss of production and/or cancellation of contracts entered into by the Client.
- 10.4 The Client agrees that, where the *Professional Standards Act 1994 (NSW)* or similar legislation in any state or federally ("the Act") applies to limit the liability of the Company, it overrides any clause in these terms and conditions that provides for a limit of liability in excess of amounts provided by the Act, but does not override any clause that provides for a limit of liability below the amounts provided by the Act.
- 10.5 To the extent permitted by law and the terms of these Conditions, the Client agrees that where the Company provides trimming survey services, the Company shall not be liable for any liabilities, consequences, cost or damages whatsoever arising from any decision, omission or conduct of those who receive any advice, report, comment or statement of the Company during the supply of the trimming survey services. The Client further agrees to indemnify by the Company for any residual liabilities related or arising to from the operation of this clause in relation to trimming survey services.

## 11. TIME BAR

- 11.1 The Company shall be discharged from all liability to the Client for all claims for loss, damage or expenses unless suit is brought within 6 months after the date of the performance of the Company of the service which gives rise to the claim or in any event of alleged non-performance within 3 months of the date when such service should have been completed.

## 12. INDEMNITY

- 12.1 The Client shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents or subcontractors against all claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any services to the extent that the aggregate of any such claims relating to any one service exceed the limits mentioned in Condition 10.
- 12.2 Every officer, employee, agent or subcontractor of the Company shall have the benefit of the limitation of compensation and the indemnity contained in these Conditions and so far as relates to such limitations any contract entered into by the Company is entered into not only on its own behalf but also as agent and trustee for every such person aforesaid.

## 13. FORCE MAJEURE

- 13.1 A Party will not be liable for a failure to fulfil an obligation pursuant to these terms and conditions if

and to the extent to which fulfilment has been delayed, interfered with or prevented by Force Majeure provided always that this clause shall not apply to an obligation to pay money unless that obligation to pay money has been delayed, interfered with or prevented by the imposition of exchange controls or by the actions of a Governmental Agency.

13.2 A Party intending to seek relief under this clause will, before the occurrence of a circumstance of Force Majeure if it is predicted, and in any case as soon as reasonably practicable after learning of the happenings of a circumstance of Force Majeure:

- (i) warn the other Party of a predicted circumstance and notify them of the happening of an actual circumstance, and in each case furnish reasonably full particulars thereof; and
- (ii) give the other Party an estimate of the period of time required to enable it to resume full performance of its obligations.

13.3 A Party seeking to rely on Force Majeure must use reasonable endeavours in all the circumstances:

- (i) to eliminate the circumstance of Force Majeure relied on to enable it to resume full performance of its obligation; and
- (ii) to minimize the effects of the circumstances of Force Majeure,

provided however that the settlement of a strike or any other kind of labour dispute will be made by the Party concerned in its discretion.

#### **14. INSURANCE**

14.1 The Company shall effect and maintain professional indemnity insurance for such loss and damage for which the Company may be held liable to the Client under these Conditions.

#### **15. COMPANY'S RIGHT TO SUB-CONTRACT**

15.1 The Company shall have the right to sub-contract any of the services provided under these Conditions. In the event the Company enters into a sub-contract it shall remain fully liable for the due performance of its obligations under these Conditions.

#### **16. WAIVER**

16.1 No alteration, amendment or waiver of any of these Conditions shall have any effect unless made in writing and signed by an officer of the Company.

#### **17. LAW AND JURISDICTION**

17.1 These Conditions shall be governed by and construed in accordance with the laws of the State of New South Wales and any disputes arising shall be determined by the New South Wales courts.