

**1 DEFINITIONS**

“**Client**” is the party at whose request or on whose behalf Marsh Maritime Pty Ltd undertakes surveying services.

“**Consultant**” is the person employed or engaged by Marsh Maritime Pty Ltd to undertake the services requested by the Client. The “Consultant” may be a range of professions, including but not limited to: Marine Surveyor, Naval Architect, Marine Engineer, Structural Engineer, Draftsman, Master Mariner.

“**Contract**” means the contract for the provision of services by Marsh Maritime Pty Ltd pursuant to these 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 Marsh Maritime Pty Ltd to the Client and excluding any taxes (including but not limited to goods and services tax, value added tax, local taxes or any withholding taxes) where applicable.

“**Marsh Maritime Pty Ltd**” is the Company trading under these conditions.

“**Report**” means any report or statement supplied by the Consultant in connection with instructions received from the Client.

**2 SCOPE**

Marsh Maritime Pty Ltd shall provide its services solely in accordance with these terms and conditions and to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted by the Client, or any such order is made or purported to be made by the Client.

**3 WORK**

The Client will set out in writing the services, which it requires Marsh Maritime Pty Ltd to provide. Marsh Maritime Pty Ltd will provide a quote or cost estimate for performance of the services and confirm in writing that it accepts those instructions or specify what services it will perform in connection with the Client’s instructions. Any quote or cost estimate provided by Marsh Maritime Pty Ltd incorporates these terms and conditions to the exclusion of any other terms and conditions imposed by the Client. Once Marsh Maritime Pty Ltd and the Client have agreed what services are to be performed the Client must provide Marsh Maritime Pty Ltd with a purchase order and Marsh Maritime Pty Ltd is to issue an order acknowledgement. Any subsequent changes or additions to the agreed scope of works after the order acknowledgment is issued must be agreed by both parties in writing as to scope and pricing.

**4 PAYMENT TERMS**

Unless otherwise agreed between the parties in writing the Client shall pay Marsh Maritime Pty Ltd Fees, Disbursements, goods and services tax and other taxes within 30 days of the date of the invoice and otherwise in accordance with the Conditions shown on the invoice. If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to Marsh Maritime Pty Ltd, Marsh Maritime Pty Ltd is entitled to:

- a. charge the Client interest on the amount unpaid at 4% above the Base Lending Rate of the Westpac Bank prevailing at the time of default to be calculated from but excluding the due date until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
- b. charge the Client the cost of recovery of any unpaid amount including any legal costs, disbursements and bank charges incurred.

**5 OBLIGATIONS AND RESPONSIBILITIES**

**5.1 CLIENT**

The Client undertakes to ensure that full instructions are given to Marsh Maritime Pty Ltd and are provided in sufficient time to enable the required services to be performed effectively and efficiently and to procure all necessary access for Marsh Maritime Pty Ltd to goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions.

The Client agrees to comply in all respects with all laws and regulations and provide a safe environment in which the Consultant may perform the agreed services and shall establish procedures under, and comply with, all requirements from time to time in force under the Work Health and Safety (National Uniform Legislation) Act 2011, the Work Health and Safety (National Uniform Legislation) Regulations 2011 and any other applicable health and safety laws.

Marsh Maritime Pty Ltd shall not be liable for the consequences of (including late performance of the obligations of Marsh Maritime Pty Ltd) late, incomplete, inadequate, inaccurate or ambiguous instructions provided by the Client or any third party acting on instruction from the Client.

**5.2 CONSULTANT**

Marsh Maritime Pty Ltd Consultants shall use reasonable care and skill in the performance of the services in accordance with sound marine surveying/engineering practice.

Other than as expressly provided in these conditions, and except where the services are provided by Marsh Maritime Pty Ltd to a person dealing as a consumer (within the meaning of the National Consumer Credit Protection Act (Cth)), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**5.3 REPORTING**

Marsh Maritime Pty Ltd shall submit a Preliminary Report (if requested) and Progress Advices (where applicable) and a Final Report to the Client following completion of the agreed services describing the Consultant’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.

**5.4 CONFIDENTIALITY**

Marsh Maritime Pty Ltd 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; or
- except to a related body corporate (within the meaning of section 50 of the Corporations Act 2001 (Cth)) of Marsh Maritime Pty Ltd; or
- save where required to do so by an order of a competent court of law; or
- except to professional advisors (including lawyers, accountants and other advisors) engaged by Marsh Maritime Pty Ltd.

Marsh Maritime Pty Ltd 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 or where Marsh Maritime Pty Ltd is required to

report the findings to a government or other authority by law.

5.5 PROPERTY

The right of ownership in respect of all original work created by Marsh Maritime Pty Ltd remains the sole property of Marsh Maritime Pty Ltd and shall not be passed on to third parties without the written consent of Marsh Maritime Pty Ltd.

5.6 CONFLICT OF INTEREST/QUALIFICATION

Marsh Maritime Pty Ltd 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 Marsh Maritime Pty Ltd to continue its involvement with the appointment. The Client shall be responsible for payment of Marsh Maritime Pty Ltd Fees up to the date of notification.

6 LIABILITY

This Clause 6 is subject to the provisions of the National Consumer Credit Protection Act (Cth) to the extent that those provisions apply.

Without prejudice to Clause 7, Marsh Maritime Pty Ltd shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising from information not made available, inaccessible or hidden at the time of survey or other services being provided pursuant to this Contract. Neither Marsh Maritime Pty Ltd nor the attending Consultant shall be held liable for any act, error, omission or default in connection therewith.

Marsh Maritime Pty Ltd shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

Nothing in these terms shall be taken as excluding the liability of Marsh Maritime Pty Ltd for death or personal injury arising as a result of its negligence.

In no circumstances will Marsh Maritime Pty Ltd be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, which arise out of or in connection with the supply of the services or their use by the Client for:

- a. any increased costs or expenses
- b. any loss of profit (whether of the Client or any other party);
- c. any loss of business, contracts, opportunity, revenues or savings;
- d. any anticipated loss of business, contracts, opportunity, revenues or savings;
- e. demurrage;
- f. losses, claims, liabilities, expenses, costs or damages which were not reasonably foreseeable by the parties or either of them at the time the order acknowledgement is provided by Marsh Maritime Pty Ltd; or
- g. any special, indirect or consequential damage of any nature whatsoever.

Without prejudice to any provision of these terms to the contrary, the liability of Marsh Maritime Pty Ltd to the Client with respect to any claims, losses or damages arising from or in connection with performance of the services (whether in contract, tort or otherwise) is limited to and shall not exceed for all claims, losses or damages the greater of:

- a. 100% of the Fees payable by the Client to Marsh Maritime Pty Ltd pursuant to the Contract; and
- b. \$25,000.00 Australian Dollars

7 INDEMNITY

The Client hereby undertakes to keep Marsh Maritime Pty Ltd and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which Marsh Maritime Pty Ltd may suffer or incur (either directly or indirectly) in the course of the services under these Conditions.

8 FORCE MAJEURE

Neither Marsh Maritime Pty Ltd nor the Client shall, except as otherwise provided in these Conditions, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of courts, rulers or people. Failure or delay in performance of the parties' obligations will entitle either party to terminate the Contract if the reason for the failure or delay persists for more than three months but the Client shall remain liable to pay the Fees to the extent of any services provided prior to the date of such cancellation.

9 INSURANCE

Marsh Maritime Pty Ltd shall effect and maintain Professional Indemnity Insurance in the amount of AUD\$1,000,000 or any other amount determined by Marsh Maritime Pty Ltd from time to time for such loss and damage for which Marsh Maritime Pty Ltd may be held liable to the Client under these terms and conditions.

10 GST AND TAX

10.1 EXPRESSIONS

Capitalised expressions which are not defined in this clause, but which have a defined meaning in the GST Law have the same meaning in this clause.

In this Contract:

**Payment** means a payment due under or in connection with this Contract, other than a GST Amount payable under this clause and includes, without limitation, a payment of the Fees and Disbursements;

**GST Amount** means, in relation to a payment, an amount arrived at by multiplying the payment (or the relevant part of a payment if only part of a payment is the consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced) or any lower rate notified from time to time by the person making the relevant Supply; and

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

10.2 PAYMENTS AND GST

The parties agree that:

- a. all Payments have been set or determined without regard to the impact of GST Law;
- b. if the whole or any part of a Payment is the consideration for a Taxable Supply, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
- c. the payee will provide to the payer a Tax Invoice at the same time at which any GST Amount is payable.

Despite any other provision of this Contract, if a Payment due under this Contract is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment shall exclude any GST forming part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.

statutory provision as amended, re-enacted or extended at the relevant time.

## 11 TERMINATION

This clause applies if:

- (1) the Client makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (2) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
- (3) the Client ceases, or threatens to cease, to carry on business; or
- (4) Marsh Maritime Pty Ltd reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly; or
- (5) the Client fails to make any payment under this Contract on the due date.

If any of clauses 11(1) to 11(5) apply then, without prejudice to any other right or remedy available to Marsh Maritime Pty Ltd, Marsh Maritime Pty Ltd is entitled to cancel the Contract or suspend performance under the Contract without any liability to the Client, and if the agreed service or services have been provided (either in whole or in part) but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12 GENERAL

Marsh Maritime Pty Ltd may perform any of its obligations or exercise any of its rights hereunder by itself or through any related body corporate (within the meaning of the Corporations Act 2001 (Cth)), provided that any act or omission of any such other member shall be deemed to be the act or omission of Marsh Maritime Pty Ltd.

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

No waiver by Marsh Maritime Pty Ltd of any breach of these Conditions by the Client will be considered as a waiver of any subsequent breach of the same or any other provision.

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question will not be affected.

The Contract is governed by and construed in accordance with the laws of Western Australia and the Client agrees to submit to the exclusive jurisdiction of the Western Australian courts. Marsh Maritime Pty Ltd has the right to administer proceedings or seek enforcement of any order in such foreign jurisdiction as it deems appropriate.

No variation to these Conditions will be binding unless agreed in writing between the authorised representatives of the Client and Marsh Maritime Pty Ltd.

Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.

Any reference in these Conditions to any statute or statutory provision shall be construed as a reference to that statute or