

STANDARD TERMS & CONDITIONS

Definitions

These Definitions apply to these Terms & Conditions unless the context requires a different interpretation:

“Business Day”	Means a day that is not a Saturday, Sunday, public holiday, or bank holiday in any State or territory in Australia.
“Client”	<p>“Client” includes any Person who:</p> <ul style="list-style-type: none"> (a) is or was a Person to whom the Company provides Services; or (b) has entered into discussions or negotiations with the Company, at either the Person’s own initiative or at the initiative of the Company, with a view to receiving such Service(s).
“Confidential Information”	Means all information about the party to these Terms & Conditions without limit. It excludes information that is already in the public domain. It includes among other things information about party’s staff, businesses, and methods of doing business, future plans, policies, suppliers, customers and the intellectual property. It includes information about the suppliers, agents, distributors, or customers of the parties.
“Company”	Means and includes AIS Marine & Offshore Pty Ltd ACN 621 181 271, the Company as specified in these Terms & Conditions and all its employees, agents, sub-contractors and licensees.
“Commencement Date”	Means the date the Client confirms the Quotation and/or Job Order specifying the works to be carried out.
“Completion Date”	Means the date or dates the final statement, service report, timesheet and/or inspection report is signed by the Shipping Agent, Captain, Chief Engineer, Chief Officer, Second Engineer, Duty Officer and/or Duty Engineer.
“Client”	Means and includes the individual and/or representatives which have executed these Terms & Conditions, whether in their personal capacity or on behalf of their entity.
“Estimated Time of Arrival”	Means the date that is confirmed by the Client and/or Shipping Agent.
“Force Majeure Event”	Means any of the following circumstances : act of God, act of war declared or undeclared, emergency, accident, fire, explosion, epidemic, pandemic, including COVID- 19 Government restrictions, public disorder, riot, civil disturbance, insurrection, rebellion, sabotage or act of terrorists, flood, earthquake, hail, lighting, severe weather conditions or other natural calamity, strike boycott or other labour disturbance, non-availability of materials or labour, damage or destruction to a material part of the Client’s premises or any other circumstance beyond the reasonable control of the Company.
“GST”	Means the goods and services tax payable under the GST Legislation.
“Invoice”	Means a valid Tax Invoice that complies with the requirements of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (“GST Act”).
“Invoice Date”	Means the due date stipulated on the Invoice.

“Price”	Means the prices as set out in the Quotation and/or Invoice as issued by the Company, including any variations.
“Shipping Agent”	Means the party representing the Ship’s Owner, Charterer (the Principal) and/or the Client at the port.
“Service(s)”	Means the services to be provided by the Company and/or any subcontractor which was nominated by the company to the Client as described in the Statement, Service Report, Certificate and/or Inspection Report and the Company’s other obligations under these Terms & Conditions.
“Terms & Conditions”	Means this document together with any schedules and any annexures.
“The Vessel”	Means the Vessel that is the subject of these Terms & Conditions and any parts thereof.
“The Work”	Means the works contracted to be performed by the Company and/or any subcontractor which was nominated by the company pursuant to these Terms & Conditions and any variation thereto pursuant to the terms of these Terms & Conditions.

1. Interpretation

In these Terms & Conditions, unless the context clearly indicates another intention:

- 1.1. reference to one gender includes all other genders,
- 1.2. reference to the singular includes the plural and vice versa,
- 1.3. reference to a paragraph, schedule or party is a reference to a paragraph of or a schedule or party to these Terms & Conditions,
- 1.4. obligations undertaken by more than a single person or company are joint and several obligations,
- 1.5. reference to a document is a reference to that document as from time to time supplemented or varied,
- 1.6. reference to writing includes fax, e-mail and similar means of communication,
- 1.7. a reference to a statutory provision is a reference to that provision as modified, amended, re-enacted, replaced, and includes any subordinate legislation issued under it,
- 1.8. any reference to a person includes natural persons and partnership firms and other such unincorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted.
- 1.9. references to a party are intended to bind their executors, administrators and permitted transferees; and
- 1.10. obligations under these Terms & Conditions affecting more than one party bind them jointly and each of them severally.

2. Purpose of these Terms & Conditions

- 2.1. The purpose of these Terms & Conditions is to regulate the relationship between the Client and the Company in connection with the Services to be provided.
- 2.2. These Terms & Conditions shall be read in conjunction with any other Terms & Conditions imposed by the Company, including but not limited to any Terms and & Conditions attached to a Quotation and/or Invoice.
- 2.3. Any amendment to these Terms & Conditions or the alteration in the scope of the Service(s) shall not be binding unless agreed in writing between the parties to these Terms & Conditions.
- 2.4. Unless otherwise expressly stated in these Terms & Conditions, neither party shall be entitled to assign these Terms & Conditions nor all or any of their rights and obligations hereunder without the prior written consent of the other party. The benefit and obligations of these Terms & Conditions shall be binding on any successor in title.
- 2.5. These Terms & Conditions shall be binding upon the parties, their successors, assigns and personal representatives.

3. Terms of the Service(s)

- 3.1. The engagement of the Company commences on the date of these Terms & Conditions.
- 3.2. The Company shall be responsible for the completion of the Service(s), which may be varied as circumstances dictate.
- 3.3. The Client undertakes to fully cooperate with the Company so as to enable it to provide a fair quote for the Price and carry out the Service(s) as per the terms of these Terms & Conditions.
- 3.4. The Client will supply all necessary information free of charge and give all necessary approvals / decisions to the Company for the proper and timely performance of the Service(s). If instructions are not forthcoming the Company cannot be held responsible for resulting delays and costs. Free access to the site is essential to ensure that the Service(s) are performed diligently and as per the agreed standard.
- 3.5. Upon receipt of a mutually agreeable quotation, the Company shall begin furnishing the Service(s) according to the specifications and requirements of these Terms & Conditions and the quotation.
- 3.6. The Company agrees to provide Service(s) with due care, skill, and diligence in professional manner for the purpose of these Terms & Conditions.
- 3.7. The Client agrees that in the event the Vessel fails to arrive on or before the Estimated Time of Arrival, the Company shall be entitled to increase the Price by an amount sufficient to cover the waiting period of the Company's contractors, at the rates prevailing at the time, together with any expenses incurred by the Company's contractors.
- 3.8. The Completion Date may be varied by the Company by notice to the Client if there are delays which are beyond the Company's control such as, but not limited to, delays by third party suppliers, sub-contractors and/or delays in the delivery of materials required to complete the Service(s).
- 3.9. Where it is agreed between the parties that the Client is to deliver materials prior to the commencement by the Company of all or any of the works then the agreed time for delivery of such material is to be strictly complied with. In the event that the Client fails to meet such time limits, the Company may extend the time agreed to conduct the works by the time equivalent to such time delay.

- 3.10. The Company shall prepare and provide to the Client a quotation to carry out any additional works for the price set out or as otherwise agreed in writing as a Contract Change Proposal ("CCP"). Any estimate by the Company to the Client for additional service does not constitute an offer, and the Company reserves the right to withdraw or revise the same at any time prior to the Company's acceptance of the Client's such request for additional work beyond the scope of Service(s) referred to in these Terms & Conditions.
- 3.11. Where appropriate, the Company reserves the right to review and increase, by issuing a CCP, its fees in case of any delay and variations initiated by the Client, or others outside the Company's control, to the agreed original scope of the Service(s).
- 3.12. The Company may, at its discretion, send a substitute, delegate, or any other employee to perform the Service(s). This right to send a substitute, delegate, or any employees in substitute shall be without the written authorisation or prior approval of the Client.
- 3.13. The Company reserves the right to alter the requirements of the Service(s) should this at any time become necessary. In the event of any alteration of the contractual requirement, payment under these Terms & Conditions shall be subject to fair and reasonable adjustment to be agreed between the parties and recorded in writing.
- 3.14. The Company shall at all times maintain its usual standards of practice but shall, where possible, comply with the reasonable requests of the Client with respect to the Service(s) undertaken by the Client and the materials used to carry out the Service(s).
- 3.15. The Company may engage sub-contractors to provide any of the Service(s). In such circumstances the Company shall ensure that:
 - 3.15.1 the sub-contractors so engaged are suitably qualified, hold all necessary licences, and are able to perform the Service(s) in a proper and workman-like manner.
 - 3.15.2 the sub-contractors so engaged do not by act or omission do or do not do anything that would if don't or not done by the Company, be a breach of any terms of these Terms & Conditions; and
 - 3.15.3 the sub-contractors so engaged have current and necessary insurances.
- 3.16. The Company may engage any other contractor on the request of and at the cost of the Client. The Company will take reasonable care but will not be responsible in any way for the competence and performance of any such third-party contractor and their services.
- 3.17. The Company agrees that whilst engaged in any Service(s), it will comply with:
 - 3.17.1 all laws and regulations.
 - 3.17.2 the reasonable instructions of the Client to the extent they do not contradict these Terms & Conditions.
- 3.18. The Client shall be liable to pay for the repair or replacement of any plant, vehicles, equipment, or materials belonging to the Company that the Client or any of its representatives/employees/visitor may damage.
- 3.19. The Client hereby consents to allow the use of its contact details and description of the Service(s) as reference for advertisement by the Company from time to time and in any way that the Company wants.

4. Price and payment

- 4.1. In consideration of the Company's proper performance of the Service(s) in accordance with these Terms & Conditions, the Client shall pay the Price in accordance with these Terms & Conditions.

- 4.2. The Price set out in the quotation is exclusive of GST however the Client acknowledges and agrees that should it be an Australian based company, GST will be applicable to any invoice issued by the Company to the Client.
- 4.3. The Client acknowledges and agrees that if it is utilising the Service(s) of the Company for the first time, an advance payment is required prior to any works commencing.
- 4.4. The Client acknowledges and agrees that:
 - 4.4.1 In the event the Company incurs any additional expense other than that specified in these Terms & Conditions, including but not limited to fees paid for tugs, pilotage, mooring the Vessel, transportation costs, cramage charges and other similar disbursements, then the Client agrees to reimburse the Company upon receipt of the CCP. The Client may give the Company notice of any objection the Client may have to the expenses incurred in accordance with this Clause, and such objection must be made within 12 hours of receipt by the Company of the charge and failing which, the Client shall be deemed to have accepted the additional expense.
 - 4.4.2 In the event of a cancellation of the Service(s) by the Client following confirmation, a cancellation fee equivalent to 30% of the total quoted amount shall be charged and payable by the Client.
 - 4.4.3 The Company's normal hours are denoted as 8-hour days. Any hours exceeding this will be charged at an overtime rate as set out on the Company's quotation and/or invoice.
 - 4.4.4 Any continuous working hours with less than 8 hours rest will be considered as overtime.
 - 4.4.5 Stand-by hours will be charged at the standard working rates and shall not exceed 10 hours per day. For the avoidance of doubt, the standard stand-by working rates shall apply once the Company's team arrives on site and/or the terminal.
 - 4.4.6 The Company shall not be liable for any delays in attending the site and/or the terminal due to changes to the Vessel's schedule and/or arrival date.
 - 4.4.7 The Company has a minimum call out fee of 4 hours on weekdays and 6 hours on weekends and public holidays.
 - 4.4.8 The cost of removal and reinstatement of any necessary parts is an additional cost to the Price, and which shall be borne by the Client.
 - 4.4.9 In the event a launch and/or helicopter service is required by the Company, the Client shall arrange this service and the cost of which shall be paid for by the Client.
 - 4.4.10 Any charges incurred by the Company including, but not limited to, airfares, car hire and travel expenses, shall be charged at cost price plus a 10% support service fees. In the event a hotel charge exceeds \$250.00 Australian Dollars per night, the actual charge shall be payable by the Client together with an additional 10% support service fee.
 - 4.4.11 Any additional work or change in the scope of work ordered by the Captain onboard will become part of the Work(s) and the client will be liable to pay for the additional work.
 - 4.4.12 Flight charges are subject to change and in the event the charges exceed the quoted price, the Client shall pay the actual charge in addition to a 10% support service fee.
- 4.5. If GST is payable on any supply made by a party under or in connection with these Terms & Conditions, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the "GST Amount").
- 4.6. The party making the supply must provide a tax invoice or receipt, for any supply for which the party making the supply may recover GST.
- 4.7. If a party incurred a cost on which GST is payable, that party may claim the cost, plus GST, unless the party is entitled to an input tax credit in respect of such GST.
- 4.8. Each Tax Invoice raised by the Company shall be due and payable by the Client within fourteen (14) days of the date of the Tax Invoice.

- 4.9. Unless otherwise required by the Company, payments will be made by the Client in Australian dollar by direct transfer to the Company's bank account as notified to the Client or by a cheque drawn on any bank with an office in Sydney New South Wales as may be specified by the Company.
- 4.10. The Client agrees that the Price of any quotation provided by the Company may be increased in the same proportion as the average increase in the costs of the Company during the period the Works are being performed.
- 4.11. The Tax Invoice shall include in addition to the price, whatever reasonable expenses the Company has incurred in working on any Service(s) provided such expenses have been approved in advance by the Client and are evidenced by the corresponding receipts or vouchers.
- 4.12. The Company reserves the right to charge the Client interest in respect of the late payment of any money due under these Terms & Conditions (both before and after judgment) from the due date until receipt of payment at the rate of 10% per annum.
- 4.13. Notice of any dispute by the Client of any amount in a Tax Invoice or in relation to the provision of the Service(s) must be given to the Company within 14 days of the date of the Tax Invoice.
- 4.14. The Client shall also be responsible for any and all debt collection costs and legal costs incurred by the Company if payments are not made in accordance with these Terms & Conditions.
- 4.15. The Client by these Terms & Conditions applies for credit and agrees to complete the Credit Application Form attached to these Terms & Conditions when signing these Terms & Conditions.
- 4.16. The Client acknowledges that the Company will conduct enquiries regarding its credit standing and can terminate these Terms & Conditions in accordance with Clause 15 if the outcome of those enquiries is not satisfactory to the Company.
- 4.17. The Client acknowledges and agrees that the Company may to the extent allowed by any relevant privacy legislation:
 - 4.17.1 Disclose information about the Client and these Terms & Conditions to a credit reporting agency.
 - 4.17.2 Obtain from a credit reporting agency or other credit provider a credit report containing personal credit information about the Client to assess the Client's credit-worthiness or in relation to collection of any overdue payments; and
 - 4.17.3 Give to and seek from other credit providers information about the Client's credit arrangements including information about its credit-worthiness, history or capacity.
- 4.18. In the event that any amount due and payable under these Terms & Conditions is unpaid, the Company has the right to list a default against the Client with any credit reporting agency.
- 4.19. The Client acknowledges and agrees that the Manufacturer's guidelines shall be complied with and the warranty shall only apply to the parts and/or spares supplied to the Client by the Company.

5. Commencement of Works

- 5.1. The Company shall not be required to commence the Work(s) until such time as the Client has met its obligations under these Terms & Conditions, including but not limited, to the obligation to make payments.
- 5.2. In the event the Client fails to meet its obligations, the Company shall be entitled to extend the agreed Commencement Date of the works without any liability for any damage, loss or harm suffered to the Client or the Vessel arising therefrom, such extension to be until such time as the Client complies with its obligation.

- 5.3. If the Company deems to be unreasonable any delay that is experienced by it, then the Company may terminate these Terms & Conditions forthwith.

6. Delays

- 6.1. The Company shall not be liable for any delays experienced beyond the control of the Company including but not limited to Force Majeure Events and upon such delays being experienced, the Company shall notify the Client of such delay and the time for completion of the works shall be extended to the extent of such delay.
- 6.2. In the event of any delay for any reason whatsoever, the Company shall not be liable for any loss or damage suffered by the Client as a result of such delay including without limiting the generality of the foregoing, any damages, penalties or demurrage incurred by reason of such delay (even if the Company is responsible for such delay).
- 6.3. All or any costs incurred by the Company arising out of the delays outlined in Clause 6.1 shall be borne by the Client.

7. Variations

- 7.1. In addition to Clauses 3.10 and 3.11, in the event that the Client requires the works to be varied in any way, then the Client shall give to the Company written notice of such variation. The Company shall then provide the Client with a CCP, and the Client shall be liable for any additional costs incurred by the Company for labour or materials, including but not limited to instances where the variation causes a halt to the Work the Client shall be responsible for any costs incurred by the Company for it being idle.

8. Inspection and Damage or Destruction of Work

Inspection

- 8.1. The Client or its agents or servants shall, after reasonable notice to the Company, be entitled to inspect the works being carried out from time to time.
- 8.2. Subject to Clause 14.1, if the Company accepts the Client's claim for defects in workmanship, the Company agrees to repair the Vessel or the Company may at its option, pay to the Client an amount equal to the cost of repair or replacement of the defective workmanship.
- 8.3. Immediately upon the completion of the Works by the Company and where no claim for defects has been made in accordance with Clause 8.2 and 14.1, then the Client shall be deemed to have accepted the works and the Client is hereby precluded from making any further claim against the Company with respect to the Vessel.

Damage or Destruction of Work

- 8.4. In the event that the Work already carried out by the Company under these Terms & Conditions are destroyed or damaged but the Terms & Conditions are not, by such event, frustrated or otherwise impossible of performance then the Client shall pay to the Company in addition to the Price the actual cost (including overhead costs) of making good the works destroyed or damaged less the sum (if any) assessed as damage which shall have been caused by the negligence of the Company.

9. Frustration

- 9.1. Where the Terms & Conditions becomes frustrated or otherwise impossible of performance the Company shall be discharged from further performance of the Terms & Conditions from the date of written notice (the time of discharge) by the Company to the Client and the Client shall be required to pay to the Company, the amount by which the actual cost (including overhead costs) of the works done and materials Purchased before the time of discharge (the actual cost) exceeds the aggregate of:-
- 9.1.1 all moneys paid by the Client to the Company prior to the date of discharge; and
- 9.1.2 all costs incurred by the Company; and

- 9.1.3 the value of any materials or goods, having a value to the Company for other purposes, not fitted to the Vessel and remaining in the control of the Company after the time of discharge, which amount shall become payable from the time of discharge and recoverable as the Price.
- 9.2. In the event that the actual cost is less than the aggregate of the costs set out in Clauses 9.1.1 to 9.1.3 inclusive, then the Company shall repay the difference to the Client within 30 days of the time of discharge.
- 9.3. Nothing in this Clause 9 shall prejudice any right of either party to claim damages on account of any breach or default hereunder by the other party.

10. Intellectual property rights

- 10.1. The Company does not give to the Client any right or interest in any patent, trademark, copyright, drawings, specification, designs or other intellectual property rights in any text, images, compilations or other works relating to the Service(s) nor does the Company give any right to reproduce the same in any form.
- 10.2. Nothing in these Terms & Conditions shall prevent the Company using any design or any element of a design for other clients or from publishing any event, photographs of its work in any magazine, newspaper or other medium, including in a website or over the Internet.
- 10.3. The Client agrees to inform the Company if at any time it discovers or suspects any infringement of the Intellectual Property rights of the Company during the term of these Terms & Conditions. The Client agrees to assist the Company in maintaining the validity and enforceability of the intellectual property rights.

11. Confidentiality

- 11.1. The parties are aware that in the course of these Terms & Conditions, they will each have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions, and affairs, all of which information is or may be confidential.
- 11.2. The parties undertake that both during and after completion:
- 11.2.1 they will not divulge to any person whatever or otherwise make use of (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information except as required in these Terms & Conditions.
- 11.2.2 both the Company and the Client hereby undertake to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by those people with these provisions.

12. No competition

- 12.1. The Client agrees that during the period that the Vessel is in control of the Company for the purpose of carrying out the works, the Client shall not cause any other party or person to carry out any works on the Vessel without the prior written consent of the Company, and in the event that any such works are carried out by any party, the Client is to pay to the Company a surcharge as agreed between the Company and Client at the time of giving of such consent.
- 12.2. Where written consent is given in accordance with Clause 12.1 above, then, the Client shall identify the Company from any damage, action or claim for damage or negligence or any costs incurred by the Company in respect thereto. It is the responsibility of the Client to ensure that any such other party or person complies with all safety requirements and other practices maintained by the Company or any insurance requirements imposed by any insurance maintained by the Company and any other local government or statutory requirements imposed from time to time.

12.3. The Client agrees that the provisions of this paragraph are fair and reasonably required for the protection of the Company's business.

13. Agents

13.1. Where the Client executes these Terms & Conditions by an agent, then such agent warrants that he has authority to execute these Terms & Conditions on behalf of the person whom he stipulates as the Client under these Terms & Conditions. Where no such agency is disclosed to the Company, then the person signing as the Client warrants that he personally bears all obligations and liabilities of the Client under these Terms & Conditions.

14. Warranty and Limitation of liability

14.1. The Company provides a 30-day warranty period only with respect to any defects in workmanship.

14.2. Where the Client makes a claim for defective materials, and such materials have been supplied to the Company by a supplier, then, the Client shall only be entitled to such benefits as the Company is entitled to receive pursuant to any Supplier's Warranty.

14.3. It is agreed that all terms, conditions and warranties implied by law, equity or statutes of the Commonwealth or the States or Territories other than expressly included herein are excluded from these Terms & Conditions so far as they are capable at law of exclusion.

14.4. If it is established that the Company has breached a condition or warranty (including a condition or warranty implied by law which is not expressly excluded by the provisions of Clause 14.2) of these Terms & Conditions, the Company's liability to the Client shall (if permitted by law) be limited to:

14.4.1 In the case of Service(s) any one of the following the Company in its sole discretion may determine:

14.4.1.1 the supplying of the services again; or

14.4.1.2 the payment of the cost of having the Service(s) supplied again.

14.5. Subject to the provisions of Clauses 14.1, 14.2 and 14.3 and to any mandatory force of law, the Company shall not be liable to the Client and any persons claiming through the Client and/or any person whatsoever for any loss or damage suffered by one or more of them howsoever caused including but not limited to loss or damage caused by the negligence of the Company its employees, servants or agents relating to the carrying out of the Works. The Client hereby indemnifies the Company and shall keep the Company indemnified and saves harmless the Company at all times for all loss, damage, costs and expenses arising from any claims, actions, suits or demands of any nature including but not limited to loss of profit or consequential loss, damage to property, death or injury.

14.6. In the event Clause 14.5 does not or cannot apply the following provisions will apply:

14.6.1 The total liability of the Company in any action shall be limited to an amount no greater than the Price;

14.6.2 The Company will not be liable in any circumstances whatsoever for any loss suffered by the Client for the loss of use of the Vessel, or loss of profit or any other consequential loss suffered by the Client with respect to the Vessel;

14.6.3 Where the Vessel is tested or moved for any reason then it shall be at the sole risk of the Client and no liability whatsoever shall accrue to the Company;

14.6.4 In the event that crew members or other persons remain on the Vessel while the Works are being carried out by the Company, then provided there has not been any negligence on the part of the Company, no liability whatsoever shall accrue to the Company for any death, injury or disease sustained by the crew members or other persons remaining on the Vessel or for the failure of the Client or the Vessel's crew to observe all local government and statutory requirements as to safety which are required of the Company.

- 14.7. The Client acknowledges that it has considered the limitation of liability of the Company contained in these Terms & Conditions and acknowledges further that is reasonable in the circumstances of the works to be performed by the Company.
- 14.8. These Terms & Conditions constitute the entire agreement relating to its subject between the Company and the Client and the Client acknowledges that it does not rely on any representation or warranty made by or on behalf of the Company other than as may be expressly set out herein.
- 14.9. Notwithstanding anything else herein contained, where the Client has supplied materials to the Company, the Client agrees that it shall have no claim against the Company for any damage that the Client may suffer as a result of any defect in those materials.
- 14.10. The Client indemnifies the Company against all liabilities, actions, claims, demands, special indirect or consequential losses (whether or not the Client was aware that such loss was possible or otherwise foreseeable), costs and suits (including legal costs to or by any person or entity) for any breach by the Client of these Terms & Conditions and any matter or thing arising during the term of these Terms & Conditions.
- 14.11. The Client will indemnify the Company against claims made by any third party arising from the enforcement of the Company's rights under these Terms & Conditions.
- 14.12. The Client shall be liable and agrees to indemnify the Company for any damage caused to the Company's tools and/or equipment, whether on board the Vessel and/or on the wharf.
- 14.13. The Company shall not be liable to the Client in respect of any loss of property (movable or immovable), profits, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Client as a result of an action brought by a third party) resulting from or in course of performing the Service(s) due to any reason even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Client incurring the same.
- 14.14. The Company shall not be liable to the Client for loss arising from or in connection with any representations, agreements, statements, or undertakings made prior to the date of these Terms & Conditions.
- 14.15. The Client shall be responsible for the provision and control of a safe working environment on board.
- 14.16. The Client agrees to give the Company not less than 28 days in which to remedy any breach.
- 14.17. Nothing in this Clause 14 shall confer any right or remedy upon the Client to which it would not otherwise be legally entitled.

Risk

- 14.18. Risk of loss or damage passes to the Client on delivery and/or the provision of the Service(s) together with the materials supplied thereto.
- 14.19. The Company remains the legal owner of all materials, with full legal title and property to same, until full payment has been made by the Client to the Company.
- 14.20. If the Service(s) and/or any materials supplied thereto are sold by the Client prior to payment for such, then the proceeds of sale and any book debt resulting from such sale shall be the property of and shall be held in trust for the Company. The right to resell, title to which has not passed, may be revoked by the Company at any time.

- 14.21. The Client acknowledges that the agreement and these Terms & Conditions constitute a security agreement under the Personal Property Securities Act 2009 (PPSA), that the Company has a security interest in the Service(s) and materials provided together with any proceeds. The Company's rights in the Service(s) and/or materials established under this Clause 14 are a 'purchase money security interest' (PMSI) and the Company will have a PMSI in proceeds of same. The Client agrees to do anything required by the Company to enable the Company to register the security interest and to maintain the registration including by paying all costs, expenses and other charges incurred by the Company in preparing, lodging or registering any financing statement or financing change statement in relation to any such security interest, maintaining those registrations, and enforcing any security interests.
- 14.22. The Client agrees to the extent permitted under the PPSA, that the following provisions will not apply when enforcing the Agreement: s95, s130 and s157 to the extent it requires the Company to give a notice to the Client; s121(4); s132(3)(d); s132(4); s135; s142; and s143, unless otherwise agreed by the Company and the Client will not disclose, nor authorise the disclosure of, any information of the kind described in s275(1) to any person.
- 14.23. If the Client fails to comply with any provisions of these Terms & Conditions, the Client authorises the Company and any person authorised by the Company to enter premises where the materials may be located to take possession of the materials; the Company may retain, sell or otherwise dispose of those materials.

15. Termination

- 15.1. The Company may terminate its agreement with Client pursuant to these Terms & Conditions, without having to perform any of its obligations, immediately by notice to the Client should the Client:
- 15.1.1 breaches any clause of these Terms & Conditions and the breach is not remedied within 7 days of written notice to the Client;
 - 15.1.2 materially breaches these Terms & Conditions and the breach is incapable of remedy;
 - 15.1.3 have an unsatisfactory credit report in accordance with Clause 4;
 - 15.1.4 ceases business or becomes insolvent, or a liquidator, administrator, receiver or other controller is appointed over the Client and its assets, or the financial position of the Client, or some other fact or circumstance, leads the Company to believe on reasonable grounds that the Client is likely to materially fail to complete its obligations under these Terms & Conditions;
 - 15.1.5 is subject to a finding of guilt for a criminal or civil offence, other than an offence which, in the reasonable opinion of the Company, does not affect the Company's ability to perform their duties
- 15.2. Termination of the agreement between the Company and the Client shall not relieve the Client of:
- 15.2.1 its obligation to pay all money owed by it to the Company on any account whatsoever, and all monies shall be payable immediately notwithstanding the date for payment of the money which may not have arrived; and
 - 15.2.2 liability arising from any antecedent breach of the provision of these Terms & Conditions.
- 15.3. Upon termination of its agreement with the Client, the Company may:
- 15.3.1 retain any monies paid by the Client;
 - 15.3.2 demand immediate repayment of all credit then outstanding to the Company;
 - 15.3.3 retake possession of all unpaid material and/or goods in the possession of the Client; and
 - 15.3.4 pursue any additional or alternative remedies available at law.

- 15.4. Notwithstanding Clause 15.3, the Client acknowledges and agrees that in the event that the Service(s) of the Company are terminated and/or cancelled following confirmation and the termination and/or cancellation occurs:
- 15.4.1 Within 12 hours of the scheduled commencement time on the Commencement Date, the Client agrees to pay a termination and/or cancellation fee equivalent to 70% of the Price in addition to any expense incurred by the Company;
- 15.4.2 More than 12 hours prior to the scheduled commencement time on the Commencement Date, the Client agrees to pay a termination and/or cancellation fee equivalent to 30% of the Price in addition to any expense incurred by the Company.
- 15.5. Notwithstanding this Clause 15, all the provisions that are intended to operate or have effect after termination or expiration shall continue in full force and effect.
- 15.6. Without regard to the reason why these Terms & Conditions ends, the Client will pay the Company for all the periodical costs and addition costs as agreed under these Terms & Conditions to the time including the full payment made to any third party and all losses and claims that Company may face due to such premature termination.
- 15.7. The Company shall not refund any sum received from the Client on premature termination of these Terms & Conditions for any reason by the Client. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.8. If the payment is made through cheque which is not honoured by the Client's bank and the Company incurs expenses as a result of it, the Client will reimburse these expenses to the Company on demand. Any expenses incurred by the Company for collecting late payments will be added to the Client's account.
- 15.9. The termination of the agreement between the parties is without prejudice to any rights which have accrued to a party before the date of termination.

16. Insurance

- 16.1. The Company shall obtain and maintain a Public & Products Liability Policy of Insurance for the duration of these Terms & Conditions.
- 16.2. The Company shall obtain, maintain and/or arrange all necessary insurance with respect to its employees and sub-contractors under the provisions of any relevant workers compensation law for the duration of these Terms & Conditions.
- 16.3. The Client shall keep the Vessel, its equipment and its crew adequately insured during the period that the Vessel is in the control of the Company, at its premises or any other premises where the Works are to be carried out at the direction of the Company.
- 16.4. The Client will obtain and maintain until such time the Company's Service(s) are completed any licences and registrations required for the Company or their employees or agents to perform the Service(s).

17. Entire Agreement

- 17.1. These Terms & Conditions constitutes the entire Agreement between the parties and supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by Statute or otherwise are excluded to the fullest extent permitted by law.

18. Severability

18.1. Each sub paragraph in these Terms & Conditions is independent and severable from each other paragraph and therefore separately enforceable. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

19. Miscellaneous

19.1. Both parties hereby acknowledge that they have had an opportunity to take independent legal advice before signing these Terms & Conditions. Both parties acknowledge that these Terms & Conditions is the whole Agreement governing the contractual relationship between them with the exception of any subsequent variations in writing.

19.2. The parties do hereby agree and intend to be bound by the foregoing Agreement.

19.3. The Client is required to comply with the relevant health and safety laws to maintain a safe and healthy workplace for the Company while providing services to them.

19.4. The Company reserves its right to exercise a duty of care to halt any unsafe work activity caused by the Client not upholding with the relevant health and safety laws. The Client agrees to remedy any unsafe practices or work activity at their own cost, to ensure health and safety compliance, before work is resumed by the Company.

19.5. Time is of the essence of these Terms & Conditions.

20. Headings

20.1. All headings in this document are for reference only.

21. Waiver

21.1. The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of these Terms & Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Terms & Conditions.

22. Force Majeure

22.1. Neither party shall be liable for any breach of these Terms & Conditions due to a Force Majeure event:

22.1.1 The parties hereby agree to give notice immediately to the other upon becoming aware of an event or force majeure and such notice shall contain details of the circumstances giving rise to it.

22.1.2 Neither party shall have any liability to the other in respect of the termination of these Terms & Conditions as a result of force majeure.

22.1.3 The Client must use its reasonable endeavours to remove the Force Majeure as soon as practicable if it is within the Client's control to do so.

23. Notices and Service

23.1. Any notice or other information required or authorised by these Terms & Conditions to be given by either party to the other may be given by hand or sent by first class pre-paid post, or electronic means to the other party at the address last provided for that type of communication.

23.2. Any notice or other information given by post shall be deemed to have been given on the fifth day after it was posted; and proof that the envelope containing any such notice or information was

properly addressed, pre-paid, registered and posted, or that it has not been so returned to the sender, shall be sufficient evidence that it has been duly given.

- 23.3. Any notice or other information sent by electronic means shall be deemed to have duly sent on the date of transmission.
- 23.4. Service of any legal proceedings concerning or arising out of these Terms & Conditions shall be affected by causing the same to be delivered to the party to be served at its main place of business or its registered office or to such other address as may from time to time be notified in writing by the party concerned.

24. Disputes Resolution

- 24.1. In the event of a dispute arising out of or in connection with these Terms & Conditions and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by the parties they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 24.2. The parties to these Terms & Conditions claiming that a dispute has arisen under or in relation to these Terms & Conditions must give written notice to the other party to these Terms & Conditions specifying the nature of the dispute.
- 24.3. On receipt of the said notice, both parties must endeavour to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation, determination, or similar techniques agreed by them.
- 24.4. In the event the parties are to resolve a dispute by way of mediation:
 - 24.4.1 If the parties do not agree within 7 days of receipt of the notice, or such further period as agreed in writing by them, as to the dispute resolution technique and procedures to be adopted, the timetable for all steps in those procedures and the selection and compensation of the independent person required for such technique, then they must mediate the dispute in accordance with the mediation rules of the recognised professional association for solicitors in New South Wales.
 - 24.4.2 The president of this professional association or the president's nominee will select the mediator and determine the mediator's remuneration.
- 24.5. In the event the parties are to resolve a dispute by way of arbitration:
 - 24.5.1 Subject to the provisions of these Terms & Conditions any arbitration shall be conducted according to the provisions of the Commercial Arbitration Act (NSW) 2010.
 - 24.5.2 Any dispute or controversy arising out of or in respect of these Terms & Conditions, including any question regarding its existence, validity, or termination, will be referred to and determined by arbitration in Sydney in the State of Queensland.
 - 24.5.3 The arbitral tribunal ("Tribunal") will comprise 3 arbitrators, appointed as follows: -
 - 24.5.3.1 Each party will nominate an arbitrator, and the 2 arbitrators so appointed will appoint a third arbitrator to act as president of the Tribunal.
 - 24.5.3.2 If either party fails to nominate an arbitrator within 30 days of receiving notice of the nomination of an arbitrator by the other party, the arbitrator will at the request of that party be appointed by the Secretary of the Institute of Marine Engineers Australian/New Zealand Division ("Appointing Authority").
 - 24.5.3.3 If the 2 arbitrators to be nominated by the parties fail to agree on a third arbitrator within 30 days of the appointment of the second arbitrator, the third arbitrator will be appointed on the nomination of the Appointing Authority at the written request of either party: and
 - 24.5.3.4 If a vacancy arises because any arbitrator dies, resigns, refuses to act, or becomes incapable of performing the arbitrator's functions, the vacancy will be filled by the method by which that arbitrator was originally appointed.

- 24.5.4 As soon as practicable after the nomination of the arbitrator to be nominated by the claimant, and in any event no later than 30 days after the Tribunal has been constituted, the claimant will deliver to the respondent (with copies to each arbitrator) a statement of its case containing particulars of its claims, written submissions in support thereof, and any documents on which it intends to rely.
 - 24.5.5 Within 30 days of the receipt of the claimant's statement of case, the respondent will deliver to the claimant (with copies to each arbitrator) a statement of case in answer, together with any counterclaims and any documents on which it intends to rely.
 - 24.5.6 Within 30 days of the receipt by the claimant of any statement of counterclaim by the respondent, the claimant may deliver to the respondent (with copies to each arbitrator) a reply to counterclaim together with any additional documents relied on.
 - 24.5.7 As soon as practicable after its constitution, the Tribunal will convene a meeting with the parties or their representatives. Not less than 7 days before the meeting, the parties will make written submissions to the Tribunal with regard to the procedure to be followed. To the extent that the parties are unable to agree on procedural matters, these will be determined by the Tribunal, subject to the following matters:
 - 24.5.7.1 the Tribunal will hold a hearing in relation to any preliminary issue if a hearing is requested by either party.
 - 24.5.7.2 the Tribunal will hold a hearing, or hearings, relating to substantive issues unless the parties agree otherwise in writing; and the Tribunal will issue its final award within 60 days of the last hearing of the substantive issues in dispute between the parties.
 - 24.5.8 If either party defaults in respect of any procedural order made by the Tribunal, the Tribunal will have power to proceed with the arbitration and to deliver its award.
 - 24.5.9 Any award or procedural decision of the Tribunal will if necessary be made by a majority and if no majority is formed, the presiding arbitrator's determination will prevail.
 - 24.5.10 The costs of the arbitration will be paid by the party determined by the Tribunal immediately upon the Tribunal making its final award and if there is no such final award then each party will bear the costs equally.
 - 24.5.11 Nothing in this Clause 24 shall apply to any claim by the Company for recovery of the whole or a portion of the Price unless the Client has, prior to filing of such a claim in a court, commenced arbitration proceedings upon grounds which would entitle the Client to withhold the Price or any part thereof in the event that the Client is successful in its claim. Sub-clause 24.3 shall not apply to such claims of the Company in any event.
 - 24.5.12 During conduct of the arbitration any document that comes into the possession of the parties through discovery or any other document that is tendered to the Tribunal in evidence shall not be used by any party or the members of the Tribunal for any other purpose other than the conduct of the arbitration.
 - 24.5.13 The arbitration hearing and any other preliminary or other conferences will be conducted in private, and information disclosed by any party will be used only for the purposes of the arbitration and any appeal therefrom and not otherwise disclosed to any other person.
- 24.6. If the mediation referred to above is not completed within four weeks of reference to a mediator, then either party may commence any court or arbitration proceedings relating to the dispute as they see fit.
- 24.7. The costs of the mediation or arbitration will be borne equally by the parties.

25. Jurisdiction

- 25.1. The validity, construction and performance of these Terms & Conditions shall be governed by the laws of the State of New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts and tribunals of the State of New South Wales in respect of all matters arising out of or relating to these Terms & Conditions, its performance or subject matter.