

Broad Reach Marine PTY LTD Standard Terms and Conditions\_Version 1\_May 2017

## 1. Definitions

"Surveyor"/"Consultant" is the Surveyor/Consultant trading under these conditions.

"Client" is the party at whose request or on whose behalf the Surveyor/Consultant undertakes surveying services.

"Report" means any report or statement supplied by the Surveyor/Consultant in connection with instructions received from the Client.

"Disbursements" means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating 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 Surveyor/Consultant to the Client and including any goods and services tax where applicable and any Disbursements. All Fees are quoted in Australian Dollars.

## 2. Scope

**(a)** The Surveyor/Consultant shall provide its services solely in accordance with these conditions.

**(b)** The parties will be bound by this Agreement upon the Client's acceptance of the Surveyor/Consultant's quote in writing, or by the commencement of any work by the Surveyor/Consultant, or by payment of the deposit or invoice by the Client.

**(c)** This Agreement sets forth the entire understanding of the parties in respect of their respective rights and obligations relating to the subject matter of this Agreement, and supersedes all prior agreements or understandings of the parties with respect thereto.

**(d)** Nothing contained in this Agreement shall be construed to create any partnership, joint venture, or franchise relationship between the parties hereto. The parties are independent persons, and neither shall be construed as the agent, employee, nominee, or representative of the other. No party shall have the authority to act for, or to incur obligations on behalf of, any other party except as provided by this Agreement.

## 3. Work

**(a)** The Client will set out in writing the services which it requires the Surveyor/Consultant to provide. The Surveyor/Consultant will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions. Once the Surveyor/Consultant and the Client have agreed what services are to be performed (the Services) any subsequent changes or additions must be agreed by both parties in writing. For the avoidance of doubt, if the instructions are not provided in writing but the surveyor

nevertheless confirms their acceptance of these, or offers services in the form of a quote, the services will be provided in accordance with these conditions.

**(b)** Where the Surveyor/Consultant provides approved plans, either to the Surveyor/Consultant's design or Client's design, they are to be used by the client for one vessel build only, unless a new quote and contract are entered into for subsequent builds.

#### **4. Payment Terms**

**(a)** The Client shall pay the Surveyor/Consultant's Fees punctually in accordance with these conditions and in any event not later than 14 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. Any delay in payment shall entitle the Surveyor/Consultant to interest at 8% above the Base Lending Rate of Westpac Banking Corporation prevailing at the time of default. Payments are to be made in Australian Dollars via EFT into the Surveyor/Consultant's nominated Australian bank account.

**(b)** Client acknowledges that the actual total fees and expenses may exceed the quoted estimate if the total work scope is undefined at the time of executing this Agreement, or if not all information requested is supplied initially, or if anomalies are discovered during assessment, or a change of project scope is requested after the Agreement has been executed. Where an anomaly or a project scope change request is received after executing the Agreement, any work will cease and a new written estimate will be issued.

**(c)** Client will pay reasonable and necessary direct costs and expenses incurred by Consultant in association with the provision of the professional service, including but not limited to communications, travel, printing/copying and other costs as appropriate. Consultant shall be solely responsible for arranging all required travel and accommodation.

**(d)** The client will pay \$130 per hour above quote for plan review after the second review. The designer will notify the client of this before undertaking further review after the second review.

**(e)** The Client acknowledges that the surveyor/consultant reserves the right to reissue quotes after 1 year in the event that a project runs over its expected duration significantly.

#### **5. Obligations and Responsibilities**

**(a)** Client: The Client undertakes to ensure that full instructions are given to the Surveyor/Consultant in writing 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 Surveyor/Consultant 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 Surveyor/Consultant shall not be liable for any loss or damage, resulting from late, incomplete, inadequate, inaccurate or ambiguous instructions.

**(b)** Surveyor: The Surveyor/Consultant shall use reasonable care and skill in the performance of the Services in accordance with sound marine surveying/consulting practice.

**(c)** Reporting: The Surveyor/Consultant shall submit a final written Report to the Client following completion of the agreed Services describing the Surveyor's/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.

**(d)** Confidentiality: The Surveyor/Consultant 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. If information is provided by the Client in confidence the Client undertakes to make it clear in writing what information is provided in confidence. The Client acknowledges that the record keeping requirements of Marine Order 503 mean the Surveyor/Consultant is obliged to record and keep copies of all work, and this will mean the Surveyor/Consultant stores the IP of the Client on hard drives and in secure Cloud based back up.

**(e) Property:** The right of ownership in respect of all original work created by the Surveyor/Consultant remains the property of the Surveyor/Consultant.

**(f) Conflict of Interest/Qualification:** The Surveyor/Consultant 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 Surveyor/Consultant to continue its involvement with the appointment. The Client shall be responsible for payment of the Surveyor/Consultant's Fees up to the date of notification.

## **6. Liability**

**(a)** Without prejudice to Clause 7, the Surveyor/Consultant 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 UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Surveyor/Consultant or any of its employees or agents or sub-contractors.

**(b)** Where the Australian Consumer Law consumer guarantees do not apply and in the event that the Client proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Surveyor/Consultant aforesaid then, save for where loss, damage, delay or expense has resulted from the Surveyor's/Consultant's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Surveyor's/Consultant's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of ten times the Surveyor's/Consultant's charges or Australian \$100,000, whichever is the lesser.

**(c)** Notwithstanding anything set out in these conditions, they are subject to the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 if and to the extent consumer guarantees apply to this Contract and prevent the exclusion, restriction or modification of any such consumer guarantee. The liability of the Surveyor/Consultant, if any, for breach of any consumer guarantee which applies (other than where the Services are of a kind ordinarily acquired for personal, domestic or household consumption) shall be limited at the option of the Surveyor/Consultant to the supply of the Services again or the payment of having the Services supplied again.

**(d)** The Surveyor/Consultant 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.

**(e)** Consultant is not responsible for and accepts no liability for any error, inaccuracy or negligence in the manufacture of the vessel or object that is the subject of this Agreement, or where the building has not been in accordance with the drawings prepared. The Consultant is not responsible for and accepts no liability for any error, inaccuracy or negligence in the design or performance or manufacture of the vessel or object that is not of the Consultants design, that is the subject of this Agreement, or where the building has not been in accordance with the drawings prepared.

**(f)** Where Consultant relies upon drawings and/or information provided, Consultant is not responsible for any errors and inaccuracies in drawings, measurements and/or any other base data provided. Unless otherwise

stated, Consultant will not review the consistency of the information on the certificate of compliance with any other material, plans, documentation or certificates of compliance. Each certificate of compliance is limited to the verification of the specific plans and/or documentation as stated on each particular certificate.

## **7. Indemnity**

Except to the extent and solely for the amount therein set out that the Surveyor/Consultant would be liable under Clause 6, the Client hereby undertakes to keep the Surveyor/Consultant 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 the Surveyor/Consultant may suffer or incur (either directly or indirectly) in the course of providing the Services under these Conditions.

## **8. Force Majeure**

Neither the Surveyor/Consultant 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 princes, rulers or people.

## **9. Insurance**

The Surveyor/Consultant shall effect and maintain, at no cost to the Client, Professional Liability Insurance for such loss and damage for which the Surveyor/Consultant may be held liable to the Client under these terms and conditions.

## **10. Surveyor's/Consultant's Right to Sub-contract**

The Surveyor/Consultant shall have the right to sub-contract any of the services provided under these conditions, subject to the Client's right to object on reasonable grounds. In the event of such a sub-contract the Surveyor/Consultant shall remain fully liable for the due performance of its obligations under these conditions.

## **11. Time Bar**

The Survey/Consultant shall be discharged of all liability in respect of any claim for loss, damage, delay or expense suffered by the Client unless, within 12 months from the date on which the Surveyor/Consultant submits a final report to the client (or, if not report is issued, the date on which the report would have been issued), suit is brought against the Surveyor/Consultant in the proper forum and written notice thereof is received by the Surveyor/Consultant.

## **12. Jurisdiction and Law**

These conditions shall be governed by and construed in accordance with the laws of Australia and any dispute shall be subject to the exclusive jurisdiction of the Australian Courts.