

## TERMS & CONDITIONS

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this Agreement, the following words have the following meanings:

**Agreement** means this document.

**Claims** means all demands, claims, proceedings, penalties, fines, and liability (whether criminal or civil, in contract, tort or otherwise).

**Commencement Date** means the date of this Agreement.

**Coastline Marine** means the company Coastline Victoria Pty Ltd ACN 166 998 447 and any of its employees, agents, subcontractors or related entities.

**Customer** means the person, firm, body corporate, association or company who, or on whose behalf, requests Coastline Marine to perform the Services.

**Consumer Guarantee** means a guarantee applicable to the supply of goods or services which is incorporated into this Agreement pursuant to division 1 part 3-2 of the Australian Consumer Law.

**Default Interest** means the rate equivalent to 2% greater than the rate fixed from time to time pursuant to the Penalty Interest Rates Act 1983 (Vic).

**Fees** means the amount detailed in Item 5.

**Force Majeure Event** means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under this Agreement and which is beyond the reasonable control of that Party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency.

**GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Losses** means all losses including financial losses, damages, legal costs, and other expenses of any nature.

**Parties** means the customer and Coastline Marine, and **Party** means either one of them.

**Personal Information** has the meaning as defined in any applicable Privacy Law.

**Project** means any marine or non-marine related Services described on any quotation, invoice, job sheet or other document issued by Coastline Marine to the Customer.

**Services** means all works carried out by Coastline Marine at the request of the Customer, including but not limited to all new builds, refits, repairs, maintenance, improvements, shipwright work, supply of machinery, parts, equipment, accessories, labour and specialized tools, the removal of any machinery, parts, materials, equipment or accessories and any operation, movement or storage of the Project.

#### 1.2 Interpretations

In this Agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies, and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- (e) reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation

or byelaw made under that enactment;  
and

- (i) the word “including” (and related forms including “includes”) shall be understood as meaning “including without limitation.”

## **2 Services**

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### **2.1 Services provided by Coastline Marine**

- (a) Coastline Marine will provide the Services to the Customer in consideration for the Customer paying the Fee to Coastline Marine, subject to the provisions of this Agreement.

### **2.2 Standard of services**

- (a) Coastline Marine must use reasonable endeavours to complete the Services.
- (b) The Services must be performed by such employees or agents that Coastline Marine may choose as most appropriate to carry out the Services as directed by the Customer.

## **3 Acceptance**

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Unless otherwise provided for in writing to the Customer by Coastline Marine, the following will apply:

- (a) the Customer must accept delivery of the Project upon Coastline Marine indicating in writing, by email or by other means to the Customer that the Project is completed (**accepting delivery**);
- (b) if the Customer does not accept delivery within such time, Coastline Marine will be entitled to claim storage costs at a rate of \$10 per square metre of floor space the Project occupies for each day the Project is not accepted.
- (c) the Customer agrees to notify Coastline Marine of any matters concerning the quality or content of the Services provided within seven days of accepting delivery, then the Customer will be deemed to have approved the performance of the Services; and
- (d) where Coastline Marine has completed the Project, the Customer will be deemed to have accepted or approved them within seven days of Coastline Marine:

- (i) notifying the Customer that the Project has been completed; or
- (ii) sending an invoice to the Customer.

## **4 Location**

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Coastline Marine will provide the Services in places and locations as Coastline Marine considers appropriate to the type and nature of the requirements of the Customer's Project.

## **5 Lien**

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To the extent the *Warehousemen's Liens Act 1958 (Vic)* or any similar state law applies, Coastline Marine is entitled to a lien over the Project and/or a general lien over any other property of the Customer that comes into the possession of Coastline Marine for any reason, until all amounts owing by the Customer to Coastline Marine are paid in full.

## **6 Fees**

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### **6.1 Payment of Fees**

- (a) In consideration of the Services provided by Coastline Marine the Customer agrees to pay Coastline Marine the Fees stipulated in the Project quote.
- (b) Coastline Marine will provide the Customer with a tax invoice in accordance with the GST Law in relation to remuneration payable under this clause (“invoice”).
- (c) The Customer agrees that the Fee is due and payable upon the terms stipulated on the invoice at the completion of the Project.
- (d) The Fees are exclusive of any GST that may be charged by Coastline Marine to the Customer, and therefore, Coastline Marine will be entitled to add on GST.
- (e) If the Customer does not make a payment by the date stated in an invoice or as otherwise provided for in the Agreement, Coastline Marine is entitled:
  - (i) to charge Default Interest on the outstanding amount, accruing daily;
  - (ii) to require the Customer to pay, in advance, for any Services

which have not yet been performed; and

- (iii) not to perform any further Services (or any part of the Services).
- (f) When making a payment the Customer must quote relevant reference numbers and/or the invoice number.
- (g) If the Customer disputes the whole or any portion of the amount claimed in an invoice, the Customer must:
  - (i) pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in this Agreement; and
  - (ii) notify Coastline Marine in writing within five days of receipt of the invoice of the reasons for disputing the remainder of the invoice.

## **6.2 Funds in advance**

- (a) Coastline Marine requires the Customer to pay 50% of the quoted Fee prior to the Services commencing should the Services quoted exceed \$10,000AUD.

## **7 Customer's obligations**

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- (a) During the performance of the Services the Customer will:
  - (i) cooperate with Coastline Marine as Coastline Marine reasonably requires;
  - (ii) provide any information and documentation that Coastline Marine reasonably requires to complete the Project.

## **8 Media**

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Unless otherwise stated by the Customer in writing, the Customer consents to Coastline Marine to use any media, inclusive but not limited to images, video, audio and documentation related to any Services conducted by Coastline Marine.

## **9 Use of subcontractors**

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- (a) Coastline Marine is permitted to use other persons to provide some or all of the Services.
- (b) Coastline Marine is responsible for the work of any of Coastline Marine's subcontractors.
- (c) Any work undertaken by any of Coastline Marine's subcontractors is to be undertaken to the same standard Coastline Marine
- (d) To the extent that the terms of any subcontract stipulate a higher standard for any of the Services than the standards set out in this Agreement (including as to timing or quality), any Services provided by the relevant subcontractor will be governed by the terms and conditions of the subcontract.
- (e) The Customer may, at any time, if it has reasonable grounds which have been disclosed and discussed with Coastline Marine, by notice in writing to Coastline Marine, require Coastline Marine to cease to permit a particular person or persons employed by Coastline Marine or acting as agents of Coastline Marine to carry out the Services.
- (f) If the Customer makes the requirement referred to in clause 9(e), Coastline Marine must, as soon as it is practicable, cease to provide the service of the particular person or persons in respect of the Customer's business and provide the services of an alternative person or persons as may be reasonably acceptable to the Customer.

## **10 Warranties, Liability, and Indemnities**

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- (a) Coastline Marine warrants that it will use reasonable care and skill in performing the Services to the standard generally accepted within the industry, sector or profession in which Coastline Marine operates for the type of Services provided by Coastline Marine.
- (b) The Customer must indemnify and hold harmless Coastline Marine from and against all Claims and Losses arising from loss, damage, liability, injury to Coastline Marine, its employees and third parties,

infringement of third party intellectual property, or third party losses by reason of or arising out of any Information supplied to the Customer by Coastline Marine, its employees or Coastline Marine s, or supplied to Coastline Marine by the Customer within or without the scope of this Agreement.

- (c) Each of the Parties acknowledge that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

Coastline Marine 's liability for failure to comply with a Consumer Guarantee is limited to the Services supplied to the Customer, the supply of the whole or any relevant part of the Services again or the payment of the cost to the Customer of having the Services supplied again.

## **11 Termination**

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- (a) Despite anything in this Agreement to the contrary, either Party may terminate this Agreement by notice in writing to the other if the Party notified fails to observe any term of this Agreement and fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of seven days' notice of the breach being given in writing by the notifying Party to the other Party.
- (b) Despite anything in this Agreement to the contrary the Customer may terminate this Agreement at any time by notice in writing to Coastline Marine, if Coastline Marine is guilty of any dishonesty, serious misconduct, or serious neglect of duty, in or in connection with the provision of the Services.
- (c) Despite anything in this Agreement to the contrary, either Party may terminate this Agreement upon the happening of any of the following events:
- (i) the giving of a thirty day's written notice by one Party to the other Party of the intention to terminate this Agreement;

(ii) if Coastline Marine would be presumed to be insolvent by a Court in any of the circumstances referred to in the Corporations Act; or

(iii) the death of the Customer.

- (d) On termination of this Agreement, the Customer must pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by Coastline Marine for the performance of the Services prior to the date of termination.

## **12 General**

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### **12.1 Force Majeure**

- (a) Neither Party has any liability under or is deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from a Force Majeure Event.
- (b) The Party affected by such circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than six months, either Party may terminate this Agreement by written notice to the other Party.

### **12.2 Amendments**

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

### **12.3 Assignment**

- (a) Subject to clause 12.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written Agreement of the other Party.
- (b) A Party may assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the

obligations of the assignor under this Agreement.

expressly provided for in this Agreement.

#### **12.4 Entire Agreement**

- (a) This Agreement contains the whole Agreement between the Parties in respect of the subject matter of Agreement and supersedes and replaces any prior written or oral Agreements, representations, or understandings between them relating to such subject matter.
- (b) The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

- (b) Neither Party may, nor represent that it has, any authority to make any commitments on the other Party's behalf.

#### **12.8 Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void, or unenforceable, the provision shall, to the extent required, be severed from this Agreement, and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement. It will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

#### **12.5 Waiver**

- (a) No failure or delay by Coastline Marine in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power, or privilege.
- (b) The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

#### **12.9 Announcements**

- (a) Subject to clause 12.9(b), no Party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms.
- (b) No Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law.

#### **12.6 Third Parties**

- (a) The Customer acknowledges that Coastline Marine provides no warranty with respect to any third party service provider that is introduced by Coastline Marine to the Customer.
- (b) The Customer agrees that it is required to enter into its own contractual relationship with the third party service provider and that the Customer is liable to the third party service provider with respect to any fees, costs and charges levied by that third party service provider.

#### **12.10 Notices**

- (a) A notice or other communication connected with this Agreement has no legal effect unless it is in writing.
- (b) In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this Agreement or sent by email to the email address of the addressee.

#### **12.7 No Partnership**

- (a) This Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship, or other relationship between the Parties other than the contractual relationship

#### **12.11 Law and jurisdiction**

This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in the State of Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria.