

PACIFIC MARINE BASE Brisbane
General Terms and Conditions of Engagement

1. INTERPRETATION

In this document the following words shall have the following meanings:

- 1.1. "Customer" means any person who purchases Services from Pacific Marine Base;
- 1.2. "Cyber Security Incident" means an unwanted or unexpected cyber security event or series of events (including a breach of cyber security or a failure of cyber security safeguards in place) that have a significant probability of compromising business operations.
- 1.3. "Legislative Requirements" means acts, ordinances, regulations, by-laws, orders, awards, and proclamations of the Commonwealth and the state or territory applicable to the Work, the Yard, and the Vessel, including any amendment or replacement of the above.
- 1.4. "Pacific Marine Base" means Pacific Marine Base Brisbane Pty Ltd ABN 76 919 660 677, or any of its subsidiaries or affiliate entities as noted in contracts or agreements, whether written or oral, from time to time;
- 1.5. "Pacific Marine Base Rules and Regulations" means any rules and regulations applying to the Pacific Marine Base for the use, occupation, operation of the Pacific Marine Base as a ship yard.
- 1.6. "Services" encompasses;
 - 1.6.1. any towage, movement, transport, storage, repairs, labour, or work whatsoever,
 - 1.6.2. any supply of material or equipment,
 - 1.6.3. any provision of site for storage of berthing of a vessel, made by Pacific Marine Base to the Customer.
- 1.7. "Terms and Conditions" means the terms and conditions of supply set out in this document and any special terms and conditions agreed in writing by Pacific Marine Base.

2. GENERAL

- 2.1. These Terms and Conditions shall apply to all contracts, agreements, or arrangements for the supply of Services by Pacific Marine Base to the Customer, whether in writing or oral, and shall prevail over any other documentation or communication from the Customer.
- 2.2. Any variation to these Terms and Conditions shall be inapplicable unless agreed in writing by Pacific Marine Base.
- 2.3. In the event of any inconsistency between these Terms and Conditions and any specific terms of a separate written contract, then the specific terms of the contract will prevail.

3. PRICING AND PAYMENT

- 3.1. Unless agreed otherwise in writing:

- 3.1.1. all pricing is quoted exclusive of GST; and
- 3.1.2. all monies payable to Pacific Marine Base must be paid in full within 14 days of the date of an invoice; and
- 3.1.3. the Customer must contact a known representative at Pacific Marine Base prior to making payment of any monies payable to verify that the bank details provided are correct and have not been altered or intercepted as a result of a Cyber Security Incident; and
- 3.1.4. if Pacific Marine Base has requested a deposit, no work shall commence until such deposit has been paid.

4. OVERDUE PAYMENTS AND INTEREST

- 4.1. In the event that any monies payable by a Customer to Pacific Marine Base are not paid in accordance with clause 3.2 of these Terms and Conditions, Pacific Marine Base may charge the Customer interest on the full amount outstanding.
- 4.2. Interest will be charged from the date that the payment was due until the date that payment is received.
- 4.3. Interest will be charged daily at the current Queensland Law Society standard contract default rate.
- 4.4. The Customer will be liable to pay to Pacific Marine Base any and all expenses, including reasonable legal costs and debt recovery costs, incurred in relation to recovery of any amounts overdue under the respective contract, agreement or arrangement in place.

5. PACIFIC MARINE BASE'S RESPONSIBILITY

Pacific Marine Base warrants that:

- 5.1. Any Services supplied will be done so with reasonable skill and care, and to a reasonable standard in accordance with recognised standards and codes of practice.
- 5.2. Pacific Marine Base accepts responsibility for the condition of Pacific Tug vessels, tools and equipment used in their own performance of Services.
- 5.3. Any time specified by Pacific Marine Base for provision of the Services is an estimate only and Pacific Marine Base will not be liable for any loss or damage incurred by the Customer as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided in a timely manner.

6. CUSTOMER'S RESPONSIBILITY

- 6.1. The Customer warrants to Pacific Marine Base that the Customer is the owner, or authorised agent of the owner, of any vessel, goods, or property the subject of any works or agreement with Pacific Marine Base.
- 6.2. The Customer shall keep Pacific Marine Base notified of;
 - 6.2.1. Their correct name; and
 - 6.2.2. Postal address, telephone numbers, fax, or email information; and
 - 6.2.3. All information reasonably required to undertake the services engaged.

- 6.3. The Customer shall effect and maintain insurance sufficient to cover, at no cost to Pacific Marine Base the following insurance. And shall make such insurances available for viewing by Pacific Marine Base, at the request of Pacific Marine Base.
 - 6.3.1. Protection and Indemnity Insurance, including public liability insurance;
 - 6.3.2. Hull and Machinery Insurance, incorporating ports risks cover to the value of the Vessel; and
 - 6.3.3. Workers compensation cover for all of the Customer's personnel who access Pacific Marine Base;
 - 6.3.4. Insurance must be sufficient to provide full coverage for such loss and damage for which the Customer may be held liable to Pacific Marine Base.
- 6.4. The Customer shall cooperate fully in reviews, inspections, investigations, or audits, carried out by or on behalf of Pacific Marine Base, to the extent required by applicable Legislative Requirements.

7. HEALTH AND SAFETY

The Customer must ensure that personnel of the Customer, and any sub-contractor engaged by the Customer:

- 7.1. Comply with the Pacific Marine Base Rules and Regulations including those relating to;
 - 7.1.1. the Pacific Marine Base Health Safety and Environment (HSE) Policies and Procedures;
 - 7.1.2. any safe work method statements prepared by Pacific Marine Base in consultation with the Customer;
 - 7.1.3. any lawful directions issued by Pacific Marine Base relating to health and safety;
 - 7.1.4. the Legislative Requirements.
- 7.2. Do not disrupt or hinder the operation of existing operations at Pacific Marine Base.

8. ENVIRONMENTAL PROTECTION

The Customer acknowledges and agrees that:

- 8.1. The Customer will abide by all legislative requirements relating to environmental protection and prevention of pollution.
- 8.2. The Legislative Requirements impose significant fines on Vessel Masters and owners for pollution of any kind entering the harbour waters, stormwater drains, docks or sewage system.
- 8.3. Any discharge of sewage ashore to be undertaken after Delivery must be organized and undertaken in accordance with the Pacific Marine Base environmental policies and procedures.
- 8.4. Pacific Marine Base reserves the right to inspect Vessel tanks for contaminants where it is observed or suspected that contamination has taken place in the storm water drains, the harbour in the vicinity of the Vessel, or the Facility.

8.5. The Customer will abide by all Legislative Requirements governing quarantine change over ballast procedures for vessels and operators, and the requirements to discharge any ballast water that has been taken from an unacceptable external source before entering harbour.

9. SUB-CONTRACTING

9.1. The Customer authorises Pacific Marine Base to sub-contract all or any part of its rights and/or obligations, including using the services of others.

10. LIMITATION OF LIABILITY

10.1. In no circumstances shall Pacific Marine Base's liability to a Customer include any sum in respect of loss of hire, profit, use of business, or any similar direct, indirect or consequential loss, damage or expense, or any claim in bailment.

10.2. To the maximum extent permitted by law, Pacific Marine Base is not liable for any Consequential Loss arising out of or in any way in connection with services provided.

10.3. Pacific Marine Base shall only be liable to a Customer for proven direct loss or damage caused by the gross negligence or wilful default of Pacific Marine Base employees.

10.4. Unless otherwise agreed in writing, Pacific Marine Base shall not have any supervisory or security obligations toward Vessel stored at Pacific Marine Base.

10.5. Except as might otherwise be required by statute, any damages payable by Pacific Marine Base in relation to the Services shall not exceed the value of the Services as quoted.

11. CANCELLATIONS

11.1. The Customer agrees to pay a cancellation fee to Pacific Marine Base in the event the Customer cancels any agreed service without reasonable notice.

11.2. For the purpose of clause 10.1, reasonable notice will be determined by Pacific Marine Base with regard to the nature and scope of the Services and the level of preparation required to allocate resources to perform the Services.

11.3. For the purpose of clause 10.1, the cancellation fee will be calculated at 10% of the cost value of the Services as reasonably calculated by Pacific Marine Base.

11.4. If at any time the Customer is in breach of any obligation, Pacific Marine Base may suspend or terminate the provision of Services to the Customer and any of its other obligations under the terms and conditions. Pacific Marine Base will not be liable to the Customer for any loss or damage the Customer suffers because Pacific Marine Base exercised its rights under this clause.

12. FORCE MAJEURE

12.1. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control.

- 12.2. For the purposes of clause 10.1 such events or circumstances include but are not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply.
- 12.3. Either party impacted by the event or circumstance shall be entitled to a reasonable extension of its obligations.
- 12.4. Where the event or circumstance frustrates the provision of Services, Pacific Marine Base are entitled to terminate the contract by written notice to the Customer.

13. PACIFIC MARINE BASE'S PROPERTY

- 13.1. The contents of Pacific Marine Base's website may not be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means without the prior express written permission of Pacific Marine Base.
- 13.2. Any tool, equipment, component, material, vessel, or property in general of Pacific Marine Base used in connection with the Services remains the property of Pacific Marine Base unless such item is paid for and Pacific Marine Base specifically consents to its sale and the passing of title in writing.
- 13.3. The Customer agrees to reimburse Pacific Marine Base for any reasonable costs incurred in recovering Pacific Marine Base's property.

14. SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed, with the invalid, illegal or unenforceable provision eliminated.

15. DISPUTE RESOLUTION AND GOVERNING LAW

- 15.1. These Terms and Conditions shall be governed by and construed in accordance with the law of Queensland and the parties hereby submit to the exclusive jurisdiction of the Queensland courts.
- 15.2. *Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the AMTAC Arbitration Rules. The seat of the arbitration shall be Brisbane, Australia. The language of the arbitration shall be English.*
- 15.3. Notwithstanding 13.2 parties may agree at any time to refer to mediation any dispute arising out of or in connection with this Contract.