

Terms and conditions

1 Definitions and interpretations

Definitions

1.1 In this document:

'Agreement' means the agreement between Oceanic Design & Survey and the Client for the supply of Services which, unless Oceanic Design & Survey expressly agrees in writing otherwise, comprises only these Terms and Conditions.

'Business Day' means a day other than a Saturday, Sunday or official public holiday.

'Client' means the person or entity identified as such in the Schedule.

'Conditions of Survey' means any conditions identified as such in these Terms and Conditions and Survey Report.

'Consequential loss' means any financial, economic or consequential loss (whether direct or indirect) including, but not limited to:

- (a) loss of actual or anticipated profits or revenue;
- (b) loss by reason of shutdown or non-operation
- (c) loss of opportunity;
- (d) increased capital or financing;
- (e) increased operational costs;
- (f) increased costs of borrowing; or
- (g) exemplary or punitive damage;

whether caused by or in relation to breach of contract (including any indemnity), warranty, tort, product liability or strict liability.

'Intellectual Property' in relation to Oceanic Design & Survey, includes but is not limited to, all present and future copyright, registered and unregistered trademarks, patent, design or rights and any other intellectual or industrial property rights, discovery, invention, trade secret, secret process, concept, data or improvement in procedure of any kind whether arising from statute, under common law or in equity.

'Invoice' means the Invoice issued by Oceanic Design & Survey for the supply of the Services.

'Nominated Vessel' means the vessel(s) identified as such in the Schedule.

Oceanic Design & Survey means Oceanic Design & Survey Pty Ltd.

'Price' means the price for the Services as set out in the Invoice.

'Schedule' means document that outlines client, nominated vessel(s) and scope of Services details.

'Services' means the services identified in the Schedule.

'Survey Report' means the report referred to in Clause 2.2 of this Agreement.

'Terms and Conditions' means this Agreement.

Interpretations

1.2 In this Agreement:

- (a) a singular word includes the plural and vice versa;
- (b) a reference to a party to this Agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (d) a reference to a document or an agreement (including a reference to this Agreement) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this Agreement is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (i) a reference to the Client includes a corporation, joint venture, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity engaging the Services of Oceanic Design & Survey; and
- (j) this document is not to be interpreted against the interests of Oceanic Design & Survey merely because it proposed this document or some provision in it or because it relies on a provision of this document to protect itself.

2 Supply of Services

2.1 In exchange for payment by the Client of the Price, Oceanic Design & Survey agrees to supply the Services of (where applicable):

2.2 For Surveying Services:

2.2.1 A qualified marine surveyor to inspect the Nominated Vessel for the purpose of providing a Survey Report.

2.2.2 Subject to any Conditions of Survey, the Survey Report will be a report on the vessel's condition, and, if requested, market value. If the Client requires any other matters be addressed in the Survey report they must be agreed to in writing by Oceanic Design & Survey.

2.3 For Design Services:

2.3.1 A qualified naval architect or experienced marine draftsman for the purpose of supplying the Services specified in the Schedule.

3 Valuations

3.1 Any valuation provided is based on opinion only and is not a representation of fact, and does not carry with it any guarantee of the particulars or information on which that opinion is based.

3.2 Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation or such other date as is expressly referred to.

4 Timing

4.1 All times quoted to the Client for the supply of the Services are estimates only and under no circumstance is Oceanic Design & Survey liable for any Consequential Loss arising from any late performance of the Services. For the avoidance of doubt, time is not of the essence of this Agreement.

5 Price

5.1 The Client must pay Oceanic Design & Survey the Price and any other amounts payable to Oceanic Design & Survey for the supply of Services in accordance with these Terms and Conditions.

- 5.2 Unless Oceanic Design & Survey specifies otherwise in writing to the Client, the Price and all prices quoted by Oceanic Design & Survey are exclusive of all taxes, levies, duties and tariffs (whether direct or indirect).

6 Invoicing and Payment

- 6.1 Unless otherwise stipulated the Client will pay Oceanic Design & Survey the amount specified in the Invoice within 14 days of issue of the Invoice.

7 Confidentiality and Intellectual Property

- 7.1 Subject to clause 7.2, all information supplied by Oceanic Design & Survey is to remain private and confidential, and must not be disclosed to other parties without prior written authority.
- 7.2 The Client may provide a copy of the Survey Report to the Client's insurer or financier for the purpose of providing a valuation of the Vessel. However, Oceanic Design & Survey owes no duty of care to those parties.
- 7.3 Any information, know-how, data, results, reports, plans and inventions, and any associated intellectual property, that is made, discovered, created, invented or generated by Oceanic Design & Survey in any activities or work under this Agreement shall be owned by Oceanic Design & Survey.

8 Warranties and conditions of survey

- 8.1 Oceanic Design & Survey warrants the Services will be performed by a suitably qualified and experienced professional exercising due skill, care and diligence. Subject to clause 9.2, this is the only warranty provided by Oceanic Design & Survey in respect of the Services.
- 8.2 In relation to supplied Surveying Services, Clause 8.1 is subject to the following Conditions of Survey:
- (a) no representation, guarantee or warranty is given in respect to design (faulty or otherwise), latent defects or of suitability of the vessel or other item for any particular purpose or of compliance with any particular local, national or international requirement or code;
 - (b) the Survey Report will be based on a visual inspection of the vessel at its location at the time of survey and will not consider hidden, unexposed or inaccessible areas of the Nominated Vessel;
 - (c) opinions are given without the benefit of running of machinery or opening up or other dismantling whether of interior linings, machinery or other items or systems;
 - (d) Oceanic Design & Survey will inspect the rigging of the Nominated Vessel from deck level to a height of two metres only;
 - (e) Oceanic Design & Survey does not undertake to inspect the rig or sails aloft unless requested to do so in writing by the Client;
 - (f) Oceanic Design & Survey will not undertake any electrical inspection unless requested to do so in writing by the Client and Oceanic Design & Survey will not be liable for any electrical faults; and
 - (g) no representation, guarantee or warranty is given as to the watertight integrity of the Nominated Vessel unless requested to do so in writing by the Client.
- 8.3 To the extent there is any inconsistency between the Conditions of Survey in these Terms and Conditions and those in the Survey Report, the Conditions of Survey in these Terms and Conditions prevail. Otherwise, any conditions in the Survey Report are additional.

9 Liability

- 9.1 The Client indemnifies Oceanic Design & Survey from and against any and all claims, demands, suits, liabilities, causes of action, losses, expenses, damages or penalties, for personal injuries or property damage, to the extent caused or contributed to by the negligence or wilful misconduct of the Client.

- 9.2 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to the Services supplied by Oceanic Design & Survey, and Oceanic Design & Survey's liability for failing to comply with that guarantee cannot be excluded but may be limited, Oceanic Design & Survey's liability for such failure is limited (at Oceanic Design & Survey's election) to Oceanic Design & Survey supplying the Services again or paying the cost of having the Services supplied again.

- 9.3 Oceanic Design & Survey will not be liable to the Client for any Consequential Loss.

10 Amendment

- 10.1 This Agreement may only be amended, altered, supplemented or cancelled with the prior written consent of Oceanic Design & Survey.

11 Termination and Cancellation

- 11.1 Oceanic Design & Survey may terminate this Agreement:
- (a) immediately on written notice to the Client if the Client breaches any term of this Agreement; or
 - (b) for any reason in its absolute discretion on giving 14 days' written notice to the Client.
- 11.2 If Oceanic Design & Survey terminates this Agreement in accordance with the previous paragraph, the Client will have no claim against Oceanic Design & Survey.
- 11.3 The Client may only terminate this Agreement with the written consent of Oceanic Design & Survey. If the Agreement is terminated before commencement of the supply of Services, the Client must pay to Oceanic Design & Survey an amount equal to 10% of the Price. If this Agreement is terminated after commencement of the supply of Services, the Client must pay to Oceanic Design & Survey the Price of the Services unless otherwise agreed by Oceanic Design & Survey in writing.

12 Dispute Resolution

- 12.1 If a party considers that a dispute has arisen in connection with this Agreement that party must give the other party written notice detailing the nature of the dispute. Within ten Business Days after a receipt of a notice of dispute, the parties must attempt to resolve the dispute or, failing resolution, agree on an alternative method or resolving the dispute.
- 12.2 If the parties cannot agree on an alternative method of resolving the dispute within 15 Business Days of receipt of the notice of dispute, then either party may commence mediation by giving notice to the other party and referring the matter to an approved mediator.
- 12.3 The rules nominated by the approved mediator apply to any mediation under this Agreement and the parties must comply with those rules.
- 12.4 If 25 Business Days after the notice of the dispute has been served (or such other period as the parties may agree), the parties have not resolved the dispute or agreed on an alternative means of resolving the dispute, either party may initiate proceedings in a court. Until such time neither party may initiate court proceedings except for urgent injunctive or declaratory relief in relation to any matter arising under this Agreement.

13 Governing law and jurisdiction

- 13.1 Queensland law applies to this Agreement. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.