

Boat Surveys & Consultants Trading Terms & Conditions

Unless otherwise specifically agreed in writing, Boat Surveys & Consultants undertakes its services in accordance with these terms and conditions.

Definitions:

"Us" or "We" or "Our"	Stephen Eiszele and Boat Surveys & Consultants ABN 18 187 849 981
"Client":	The party at whose request and/or on whose behalf we undertake the Survey.
"Scope of Work":	The nature of survey, as agreed between us and the Client, that will be conducted upon receipt of instructions given by, but not limited to, letter, fax, email, telephone.
"Survey" and "Survey Report":	The survey and the related survey report that form the subject matter of this agreement.
"Survey Fee":	The agreed amount, not including disbursements, which will be charged in addition in accordance with clause 3 of the terms below.

1. Surveys

1.1 The Client's instructions, howsoever received, and the scope of our services hereunder, are as defined in the Scope of Work. Any subsequent changes or additions to the Scope of Work must be agreed in writing by the Parties.

1.2 The Client undertakes to:

- 2.2.1 ensure that full instructions are given to us and are provided in sufficient time to enable the required services to be performed effectively and efficiently;
- 2.2.2 disclose to us all relevant information of which they have knowledge, or to which they have access, in relation to the vessel to be surveyed; and
- 2.2.3 procure all necessary access to premises and vessels (including lift-out, trials and facility for inspection ashore and afloat as appropriate) for no less than such a time as shall in each particular circumstance be reasonable, to enable all appropriate inspections and tests to be undertaken or performed, and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions.

1.3 To the extent that we are so instructed, we will inspect the vessel as thoroughly as is practicable. If agreed as part of the Scope of Work, we will survey and report on the integrity of the main structural or physical elements of the vessel so far as can reasonably be ascertained from a visual inspection of the vessel at its location at the time of Survey. The Client accepts that our Survey and Survey Report(s) cannot cover hidden, unexposed or inaccessible areas of the vessel; neither can we undertake to investigate areas that we believe to be inaccessible at the time of inspection. Where we are unable to gain access to areas commonly accessible, we will endeavour to identify these areas.

1.4 We recommend a full survey of a vessel be undertaken, including inspection of the vessel while lifted and while in the water. Where it is agreed as part of the Scope of Work to survey a vessel solely on the basis of an inspection of the vessel while lifted or located out of the water, we make no representation and give no warranty or guarantee as to its watertight integrity or seaworthiness.

1.5 Unless otherwise stated in writing, all our services are provided on the basis that no representation, warranty or guarantee is given regarding:

- 1.5.1 ownership or title or freedom from mortgages, charges, debts, liens or other encumbrances;
- 1.5.2 vessel seaworthiness, stability, performance or design;
- 1.5.2 latent defects or of suitability or fitness of the vessel or other item for any particular purpose or of compliance with any particular local, national or international requirement or code;

and 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.

1.5 We retain the intellectual property rights and copyright to the Survey Report. Any permission to use the Survey Report is withheld if payment is not received under the provision of 2.1 and the Client may not use, copy, disseminate or action the content of the report until payment has been made.

1.6 We will maintain professional indemnity insurance throughout the period of the performance of our services provided that such insurance shall remain available at reasonable market rates.

2. Payment terms

2.1 Unless otherwise agreed in writing, payment of the Survey Fee shall be made prior to commencement of the Survey or delivery of the Survey Report. Invoices will be submitted for the Survey Fees and Disbursements and payment of each invoice must be made within the time period stated on the invoice.

2.2 Disbursements: all reasonable costs incurred in the execution of Scope of Work including, but not restricted to, air fares, mileage, accommodation, meals and refreshments, photographic and reproduction of drawings etc. and electronic transmission fees where appropriate.

3. Default of party

3.1 Client default: we may terminate the appointment forthwith if the Client fails, for more than 14 days after a request to do so, to pay any sum due or to adequately respond to requests for information and/or instructions, without prejudice to our accrued rights.

3.2 Either party may terminate the appointment forthwith by notice in writing if the other party has a receiver or manager, administrator, liquidator or bankruptcy trustee appointed or a petition is presented for its winding up which is not discharged within 14 days of presentation or any other action is taken with a view to its winding up or the person becomes bankrupt or commits an act of bankruptcy or enters into a personal solvency agreement, or have anything analogous to any of the foregoing under the laws of any jurisdiction occur to it, or to cease or threaten to cease to carry on business, without prejudice to the accrued rights of the other party.

4. Limitations of liability

4.1 All services and reports are provided for the named Client's use only. No liability of whatever nature is assumed towards any other party and nothing in these terms, or the relationship between us and the Client, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms.

4.2 Notwithstanding any other provision of these terms or any other agreement reached between the parties, we shall not be liable for any loss or damage caused in circumstances:

- 4.2.1 resulting from or relating to particulars, data and other information given to us by others or obtained from outside sources, publications and the like reasonably relied upon by us, including but not restricted to, registration details or manufacturer specifications and other such information and no assurances can be given regarding the accuracy of the same;
- 4.2.2 resulting from late, incomplete, inadequate, inaccurate or ambiguous instructions or the non-disclosure by the Client or its agents of relevant information;
- 4.2.3 resulting from any breach by the Client of any of its obligations or these terms.

4.3 The Client acknowledges and agrees that, for reasons of commercial practicality, it is necessary for us to limit any liability in respect of loss or damage suffered by the Client as a result of any breach by us of any of our obligations, whether in contract or tort and howsoever caused (including our negligence). As such, the Client acknowledges and agrees that, to the extent permitted by law, we:

- 4.3.1 exclude all warranties, conditions, guarantees or terms in relation to the supply of our services;
- 4.3.2 exclude all liability, loss and damage howsoever arising or caused (including by our negligence).

Nothing in this clause however has the effect of excluding, restricting or modifying any non-excludable statutory condition, warranty, guarantee, right or remedy provided for by the Australian Consumer Law should it apply to our services.

4.4 Where the Australian Consumer Law applies, or we are otherwise not entitled to exclude a warranty, condition, guarantee or term, and to the extent permitted by law, our liability is limited to the lesser of the cost of supplying the services again or to the payment of the cost of having the services supplied again or to the cost of having our services repaired or replaced.

4.5 Notwithstanding anything in these terms, we will not be liable for any indirect or consequential losses, including loss of profits, loss of income or revenue, loss of production or any other economic loss however caused or arising.

4.7 Every officer, employee, agent or subcontractor of us shall have the benefit of these terms and conditions including the limitation of liability.

4.8 Any claim by the Client in respect of any breach by us must be notified to us as soon as is reasonably practicable after the Client becomes aware of the breach but no later than 6 months from submission of the Survey Report. Where any breach might be capable of remedy, we must be afforded a reasonable opportunity to respond to the alleged breach before any remedy or rectification is undertaken.

4.9 Where the Client is acting in the course of a business or commercial operation, any liability we may have shall expire 12 months after the date of the Survey Report and we shall thereafter have no further liability whether in contract, tort or otherwise.

5. Client responsibility & indemnity

The Client shall be responsible for, and indemnify us against, all claims, liabilities, losses, expenses or other costs reasonably incurred by us (including legal costs on an indemnity basis) that are caused by or result from any acts, omissions or negligence of the Client (or its employees, agents or subcontractors) or any default or breach by the Client of its obligations or these terms.

6. Miscellaneous

6.1 Each party undertakes to maintain the confidentiality of all information supplied by the other and not to divulge such information to third parties without the prior written authority of the other.

6.2 Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.

6.3 If any provision of these terms is held to be void or unenforceable, all other provisions continue to be valid and enforceable.

6.4 No variation, modification or waiver of any provision of these terms will be of any effect unless it is confirmed in writing by us.

6.5 References to "we", "us" and "our" include our officers, employees, agents and subcontractors appointed or engaged by us for carrying out any work or services.

6.6 Any communication required to be given under these terms by either party shall be in writing and shall be sufficiently given either by letter, fax or electronic mail (provided the same is capable of being recorded by the recipient in durable form) sent to the other at the contact details previously notified and any such notice shall be deemed to have been given at the time at which it would in the ordinary course of transmission have been received.

7. Law & disputes

These terms shall be governed by and construed in accordance with Queensland law and any dispute or difference arising, or claim made, between or by the parties out of or in relation to or in connection with the provision of services to which these terms relate and which cannot be resolved by the parties shall be submitted to the exclusive jurisdiction of the Courts of Queensland.