

# Terms and Conditions

**THESE TERMS OF BUSINESS APPLY TO ALL WORK UNDERTAKEN AND FACILITIES AND GOODS SUPPLIED BY SUPERIOR MARINE SERVICES PTY LIMITED ABN 98 143 288 886 (“SMS”)**

## 1. LIABILITY

- a) SMS shall not be liable for any loss or damage caused by any events or circumstances beyond our reasonable control (such as extreme weather conditions, the actions of third parties not employed by us or latent defects); this includes loss or damage to vessels, gear or equipment left with us for repair or storage, and harm to persons entering the premises or area of work and/or using facilities or equipment; customers should ensure that their own personal and property insurance covers such risks
- b) Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels. Any vessel, gear or equipment is left with us at the owners own risk; the customer should maintain adequate insurance which should also cover third party liability for at least \$5,000,000.00 [five million dollars];
- c) In no event do we accept liability to a business customer for consequential damage beyond replacement of any faulty or unsuitable article supplied by us.

## 2. PRICES AND ESTIMATES

- a) In the absence of express agreement to the contrary our price for work shall be based on time and materials expended and services provided;
- b) When we give an estimate or indication of price - in writing or orally - we will exercise skill and judgment in doing so. Such estimates are subject always to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any additional repairs or work found necessary to the vessel and/or gear or equipment during the work nor the cost of any extensions to the work comprised in the estimate;
- c) The customer will incur marina fees for each day that the vessel or property is in our custody, possession and/or care and such marina fees will be charged at the minimum rate of \$2.45 per foot per day, where the term “foot” refers to each foot of measurement of the length of teh boat;
- d) We will inform the customer promptly of any proposed increase in estimated prices and the reasons therefore and will only proceed with the work with the approval of the customer. In those circumstances the customer’s liability for any work already completed or goods already supplied or to be supplied shall be unaffected.

## 3. DELAYS

The time for the completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delays in completion of the work or for the consequences of any such delay unless it arises from our wilful acts or omissions or from our negligence.

## 4. VESSEL MOVEMENTS

We reserve the right to move any vessel, gear, equipment or other goods at our discretion for reasons of safety or good management.

## **5. PAYMENT**

- a) Unless otherwise agreed in writing the price of all work, goods and services shall be due immediately on invoice date;
- b) Pending receipt of payments in full without set off or deduction we reserve the right to charge interest on any sums outstanding after 14 days at 12% per annum from the date of invoice until receipt of payment in full of the outstanding invoice;
- c) SMS will immediately commence recovery proceedings against the customer for any sums that remain outstanding after 14 days from the date of invoice and the customer agrees that it will be liable for all such recovery costs incurred by SMS including but not limited to all credit collection costs and all legal costs;
- d) By accepting payment of any sum after its due date we do not waive our right either to require payments as they fall due or to suspend or end our arrangements.

## **6. GENERAL LIEN**

- a) The Customer agrees that SMS may exercise a general lien against any Goods or property belonging to the Customer that is in the possession of SMS for all sums outstanding under this contract and any other contract to which the Customer and SMS are parties;
- b) If the lien is not satisfied within fourteen (14) days of the due date SMS may, having given notice of the lien at its option either:
  - i) Remove such Goods and/or property and store them in such a place and in such a manner as SMS shall think fit and proper and at the risk and expense of the Customer; or
  - ii) Sell such Goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.
- c) To protect our security interest in the goods until payment we may choose to register the agreement between us under the Personal Properties Securities Act 2009. You agree to do all things necessary to facilitate such registration.

## **7. QUALITY STANDARDS**

We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.

## **8. SUB-CONTRACTING**

We may sub-contract all or part of the work entrusted to us by the customer, on terms that any such sub-contractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, contained in these Terms of Business.

## **9. GUARANTOR**

- a) If you are a company we require a guarantor of your obligations;
- b) All guarantors shall be jointly and severally liable for performance of all of the terms, covenants, and conditions of our agreements including but not limited to these Terms and Conditions.

**10. ANCILLARY PROVISIONS**

If any provision of these Terms and Conditions is deemed for any reason to be invalid, void or deleted, the Terms and Conditions shall nonetheless remain in full force and effect as if such provision had not originally been included. In such circumstances, we and the customer shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the invalid, void or deleted provision.

**11. GOVERNING LAW**

These terms are subject to the law of New South Wales and any dispute arising under them shall be submitted to the jurisdiction of the Courts of New South Wales.