

## **MCC Marine Pty Ltd – Terms and Conditions of Trade**

### **1. Definitions:**

“Surveyor” – is the Surveyor trading under these conditions.

“Client” – is the party at whose request or on whose behalf the Surveyor undertakes surveying services.

“Report” – means any report or statement supplied by the Surveyor in connection with instructions received from the Client.

“Disbursements” – means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees and all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary.

“Fees” – means the fees charged by the Surveyor to the Client and including any value added tax where applicable and any disbursements.

### **2. Scope:**

The Surveyor shall provide his services solely in accordance with these terms and conditions.

### **3. Payment Terms:**

The Client shall pay the Surveyor’s Fees punctually in accordance with these Conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties.

### **4. Obligations and Responsibilities:**

- a. Client: The Client undertakes to ensure that full instructions are given to the surveyor and are provided in sufficient time to enable the required services to be performed effectively and efficiently and to procure all necessary access for the Surveyor to goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions. The Surveyor shall not be liable for the consequence of late, incomplete, inadequate, inaccurate or ambiguous instructions.
- b. Surveyor: The Surveyor shall use reasonable care and skill in the performance of the services in accordance with sound marine surveying practice.
- c. Reporting: The Surveyor shall submit a final written Report to the Client following completion of the agreed services describing the Surveyor’s findings and the condition and/or quality of the object and/or purpose of the assignment, unless otherwise expressly instructed by the Client not to do so.
- d. Confidentiality: The Surveyor undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law.
- e. Property: The right of ownership in respect of all original work created by the Surveyor remains the property of the Surveyor.
- f. Conflict of Interest/Qualification: The Surveyor shall promptly notify the Client of any matter including conflict of Interest or lack of suitable qualifications and experience, which would render it undesirable for the Surveyor to continue his involvement with the appointment. The Client shall be responsible for payment of the Surveyor’s Fees up to date of notification.

### **5. Liability:**

- a. Without prejudice to Clause 7, the Surveyor shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or

indirect and howsoever arising UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Surveyor or any of its employees or agents or sub-contractors.

- b. In the event that the Client proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Surveyor aforesaid the, save where loss, damage, delay or expense has resulted from the Surveyor's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Surveyor's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of ten times the Surveyor's charges or AUD \$1,000,000.00 whichever is the greater. The Surveyor shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

## **6. Indemnity:**

Except to the extent and solely for the amount therein set out that the Surveyor would be liable under Clause 6, the Client hereby undertakes to keep the Surveyor and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever and howsoever arising which may be brought against them or incurred or suffered by them and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Surveyor may suffer or insure (either directly or indirectly) in the course of the services under these conditions.

## **7. Force Majeure:**

Neither the Surveyor nor the Client shall, except as otherwise provided in these Conditions, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

## **8. Insurance:**

The Surveyor shall effect and maintain, at no cost to the Client, Professional Liability insurance or such loss and damage for which the Surveyor may be held liable to the Client under these terms and conditions.

## **9. Surveyor's Right to Sub-Contract:**

The Surveyor shall have the right to sub-contract any of the services provided under the Conditions, subject to the Client's right to object on reasonable grounds. In the event of such a sub-contract the Surveyor shall remain fully liable for the due performance of its obligation under these Conditions.

## **10. Time Bar:**

Any claims against the Surveyor by the Client shall be deemed to be waived and absolutely time barred upon the expiry of **one year** from the submission date of the Report to the Client.

## **11. Jurisdiction and law:**

These conditions shall be governed by and construed in accordance with the laws of Australia and any dispute shall be subject to the exclusive jurisdiction of the Australian Courts.