

# Holmes Marine: Marine Surveyors & Consultants

## Terms & Conditions

These Terms & Conditions ("Conditions") apply to all services provided by  
Holmes Marine Pty Ltd

These Conditions supersede and override all other warranties, representations and terms and conditions whether express or implied, oral or written, including the Client's standard terms

You should read these Conditions carefully

Nothing in these Conditions is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 and the Australian Consumer Law or comparable legislation in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

### 1. Definitions

- 1.1. "Company" means Holmes Marine Pty Ltd (ACN 157 726 568).
- 1.2. "Client" is the party at whose request or on whose behalf the Company undertakes to provide services.
- 1.3. "Report" means any report or statement supplied by the Company in connection with instructions received from the Client.
- 1.4. "Fees" means the fees charged by the Company to the Client and including any Goods and Services Tax where applicable and any expenses and disbursements.

### 2. Acceptance of these Conditions

Any instructions received by the Company from the Client for the supply of services shall constitute acknowledgement by the Client that it has received, understands and agrees to be bound by these Conditions.

### 3. Scope

The Company shall provide its services solely in accordance with instruction received from the Client and these Conditions.

### 4. Services

- 4.1. The Client will set out in writing the services which it requires the Company to provide. The Company will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions ("Services").
- 4.2. The Client undertakes to ensure that full instructions are given to the Company in writing and are provided in sufficient time to enable the required Services to be performed effectively and efficiently. The Company shall not be liable for any loss or damage, resulting from late, incomplete, inadequate, inaccurate or ambiguous instructions.
- 4.3. Once the Company and the Client have agreed what services are to be performed, any subsequent changes or additions must be agreed by both parties in writing. For the avoidance of doubt, if the instructions are not provided in writing but the Company nevertheless confirms its acceptance of these, the Services will be provided in accordance with these Conditions.

### 5. Fees, Expenses, Payment Terms

- 5.1. Unless otherwise agreed, the Company will perform the Services on an hourly or daily rate. The Company reserves the right to increase its hourly or daily rates at any time and shall give the Client reasonable notice of such increase. Where delays by the Client cause the Services to be extended beyond the time specified or the time originally anticipated, then the cost of the Services charged to the Client may be increased.
- 5.2. Unless otherwise agreed, the Company shall be entitled to charge for legitimate expenses and disbursements incurred in connection with the Services. These may include travel and subsistence costs, reproduction of drawings,

photography, courier charges and the hire of specialised equipment. Car mileage will be charged at AUD 1.00 per kilometer (or local currency equivalent).

- 5.3. The Client shall pay the Company's invoices punctually in accordance with these Conditions and the terms of the invoice issued and in any event not later than 14 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties.
- 5.4. If any part of an invoice is in dispute, the Client shall notify the Company immediately upon receipt of invoice as to any part of the invoice which is in dispute giving full reasons as to why a portion of the invoice is disputed and nevertheless pay the undisputed part within 14 days of the invoice date.

### 6. Obligations and Responsibilities

- 6.1. **Client:** The Client undertakes to i) ensure that full information and instructions are given to the Company and in sufficient time to enable the Services to be performed effectively and efficiently; ii) procure all necessary access for the Company's staff to goods, premises, vessels, installations and transport and iii) ensure that all appropriate safety measures are taken to provide safe and secure working conditions. If the Client becomes aware of any claim or circumstances which might involve litigation or arbitration concerning or connected with the subject matter of this Agreement, the Client shall inform the Company immediately.
- 6.2. **Company:** The Company shall procure that all persons carrying out the Services use reasonable care and skill in the performance of the Services in accordance with sound marine surveying/consulting practice.
- 6.3. **Reporting:** The Company shall submit interim reports (if agreed), site situation reports (if required) and a final written Report to the Client following completion of the Services describing the Company's findings and the condition and/or the quality of the object and/or purpose of the Services, unless otherwise expressly instructed by the Client not to do so.
- 6.4. **Confidentiality:** The Company 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. If information is provided by the Client in confidence the Client undertakes to make it clear in writing what information is provided in confidence.
- 6.5. **Intellectual Property:** Ownership rights to intellectual property resulting from the performance of the work created by the Company shall vest in and remain the property of the Company. The Client may disclose the report or document to a third party for whose benefit the instruction/contract was specifically commissioned.
- 6.6. **Conflict of Interest/Qualification:** The Company 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

Company to continue its involvement with the appointment. The Client shall be responsible for payment of the Company's Fees up to the date of notification.

### 7. Liability

- 7.1. Subject to the Competition and Consumer Act 2010 and the Australian Consumer Law, the Company shall be under no liability whatsoever to the Client for any loss or damage, or expense of whatsoever nature, whether direct or indirect and howsoever arising unless the loss, damage or expense is proved to have resulted solely from the negligence of the Company or any of its employees or agents or sub-contractors. Unless the Services are provided for personal, domestic or household use or consumption, the Company's liability for each incident or series of incidents giving rise to a claim or claims shall, at the option of the Company, be limited to
  - (a) the supplying of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.
- 7.3. In any event, in no circumstances shall the Company be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise, howsoever, and whatever the cause thereof
  - (a) for any delays,
  - (b) for any loss of profit, business, contracts, goodwill, revenues, or anticipated savings, or
  - (c) for any special indirect or consequential damage of any nature whatsoever.
- 7.4. The Company 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.
- 7.5. Any person, including but not limited to the Company's servants or agents, any independent contractor or his servants or agents, and all others by whom the whole or any part of the Services are performed, shall have the benefit of all provisions in these Conditions benefiting the Company as if such provisions were expressly for his or her benefit and, in agreeing to perform the Services, the Company does so not only on its own behalf but also as agent or trustee for such persons and such persons shall to this extent be deemed to be parties to these Conditions. The Client agrees that it will not bring an action directly against Company's servants or agents, any independent contractor or his or her servants or agents, or any other persons by whom the whole or any part of the Services are performed, in respect of their acts or omissions.

### 8. Indemnity

The Client hereby undertakes to keep the Company and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or 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 Company or its employees, agents and

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- sub-contractors may suffer or incur (either directly or indirectly) in the course of providing the Services under these Conditions.
9. **Force Majeure**
- 9.1. The Company shall not be responsible for any loss, damage, delay or failure in performance resulting from any of the circumstances defined in sub-clause 2 below.
- 9.2. The Company shall be excused from the performance of any of its obligations under the Services if and in so far as for so long as such performance is delayed or prevented by the Client's acts or omissions (including, but not limited to failing to provide timely information, supplying incomplete or defective information, delaying the Services' start date, or failing to provide material or facilities required by these Services), or by circumstances beyond its reasonable control including delays on the part of Classification Societies or other bodies in granting or giving approval to any documentation or inspection or survey which requires approval, strikes, lock-outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, adverse weather conditions or prolonged power failure.
- 9.3. In performing its Services, the Company will rely in good faith upon any information which is provided by any ship broker and /or any Classification Society or bona fide third party body and/or upon the instructions and information received from any apparently authorised employees or agents of the Client and the Company shall not be liable in respect of any act or omission or failure to advise or comment upon any matter which falls outside the scope of the Services or for any recommendation based upon the information or instructions which it has received from the persons or organisations referred to above.
10. **Termination and breach**
- 10.1. The Company or the Client may without prejudice to any other rights it may have hereunder terminate the Services (by giving notice in writing to the other party) for one or more of the following reasons:
- (a) If the other party commits any material breach of these Conditions.
- (b) If the other party calls a meeting of its creditors or to have a receiver appointed over all or any of its assets or enter into any liquidation.
- (c) If an individual, the Client dies or becomes bankrupt.
- 10.2. In the event of termination of the Services by either party, the Company shall be entitled to payment by the Client for all costs associated with the Services including:
- the full cost of employing and/or hiring any employees/contract staff specifically for the purposes of and for the period of the Services;
  - the costs of buying and/or hiring any materials, goods, plant, machinery or equipment specifically for the purposes of the Services;
- the costs irrevocably committed by subcontractors specifically for the purposes of the Services - even if this commitment extends beyond the expiry of the period of notice;
  - recovery of the costs of all Services completed and delivered to the Client;
  - recovery of the costs of Services completed but not yet delivered and work in progress;
  - recovery of any costs irrevocably committed by the Company even if this commitment extends beyond the expiry of the period of notice;
  - recovery of any monies due to the Company;
  - any removal costs or setting up costs.
11. **Insurance**
- The Company shall effect and maintain, at no cost to the Client, Professional Liability Insurance for such loss and damage for which the Company may be held liable to the Client under these Conditions.
12. **Company's right to sub-contract**
- The Company shall have the right to sub-contract any of the services provided under these conditions, subject to the Client's right to object on reasonable grounds. In the event of such a sub-contract the Company shall remain fully liable for the due performance of its obligations under these Conditions.
13. **Goods and Services Tax (GST)**
- 13.1. Words or expressions used in this clause that are defined in the GST Act have the same meaning given to them in the GST Act.
- 13.2. Unless otherwise stated, any amount specified in these Conditions as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- 13.3. If a party makes a taxable supply under these Conditions (GST Supplier), then the Recipient of the taxable supply (GST Recipient) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 13.4. Notwithstanding the foregoing, the GST Recipient is not obliged under these Conditions to pay the amount of any GST payable until the GST Supplier provides it with a valid tax invoice for the taxable supply.
- 13.5. If an adjustment event arises in relation to a taxable supply made by a GST Supplier under these Conditions, the amount paid or payable by the GST Recipient pursuant to sub-clause 3 will be amended to reflect this and a payment will be made by the GST Recipient to the GST Supplier or vice versa as the case may be.
- 13.6. If a third party makes a taxable supply and these Conditions requires a party to these Conditions (the payer) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
14. **Time Bar**
- The Company shall be discharged from all liability to the Client for all claims for loss, damage or expenses unless proceedings are issued and served on the Company within 6 (six) months after the date of the performance by the Company of the Services which gives rise to the claim or in the event of any alleged non-performance within 6 (six) months of the date when such Services should have been completed.
15. **Jurisdiction and Law**
- These conditions shall be governed by and construed in accordance with the laws of New South Wales and any dispute shall be subject to the exclusive jurisdiction of the Federal Court of Australia or the Federal Circuit Court of Australia.
- Holmes Marine Pty Ltd  
69/42-46 Wattle Road  
Brookvale NSW 2100