

T&CS

Oceaneer Marine Services T&CS

(Version: Dec 18)

1. Purpose This document sets out the entire terms and conditions relating to the provision of Works by the Oceaneer Marine Services (the "Repairer") for or on behalf of the Customer.

2. Interpretation In these terms and conditions: "Customer" includes the person, firm, body corporate, association or unincorporated association (or any agent or principal of any such entity) who enters into the contract with the Repairer to carry out Works. "Prescribed Terms" means the mandatory terms, conditions and warranties implied by law into contracts for the supply of goods and services which cannot be excluded, restricted or modified by agreement. "Repairer" means OCEANEER MARINE SERVICES (ABN: 17 400 509 795). "Vessel" means any object used, or meant to be used on water, whether complete, under modification, or under construction (and includes any part thereof of such object) upon which the Repairer has agreed to undertake Works. "Works" means all services performed by, and all works carried out by the Repairer, for and on behalf of the Customer including without limitation, all parts, units, components, attachments, accessories, movements of vessels, storage of vessels, shipwright work, repairs, maintenance, improvements, supply of labour and specialised tools.

3. Works Authorisation 3.1 The Customer warrants that it has lawful and legal authority, or is authorised by the Vessel's owner, to request the Works, instruct the Repairer and to enter in to these terms and conditions (including binding any principal or third party which owns the Vessel). 3.2 A Customer requesting the Repairer to perform any Work is conduct indicating that the Customer consents to, and agrees to be bound by, these terms and conditions. 3.3 By requesting the Repairer to carry out Works, the Customer authorises the Repairer to do all acts and things that are in the opinion of the Repairer necessary or desirable to carry out and complete the Works including, without limitation: a) to operate the Vessel or any machinery, part or device on or about the Vessel; b) to remove from the Vessel and/or replace any machinery, part or device. 3.4 Where the Customer is acting as an agent in requesting the Works, the Customer is jointly and severally liable with its principal for all amounts payable to the Repairer arising out of the Works. 3.5 The Customer acknowledges and consents to a security interest in the Vessel being granted to the Repairer for each and all invoiced amounts presented by the by the Repairer for Works performed. The security interest shall be available to the Repairer to register on the Personal Property Securities Register against the Vessel , without any further notice to the Customer and may be registered at the sole discretion of the Repairer after any invoice has not been paid by its due date.

4. Quotes 4.1 Quotes for Works by the Repairer are valid for the period stated in that quote unless otherwise advised by the Repairer in writing. 4.2 Any Works completion date or quoted amounts by the Repairer is an estimate only. 4.3 Unless expressly stated otherwise, all Prices or rates quoted are in Australian dollars and exclusive of all taxes, duties or charges and GST imposed by any government, statutory authority or agency.

5. Dockyard Works 5.1 Unless the Repairer otherwise agrees in writing, where Works are to be carried out to a Vessel or any machinery, part or device on or about the Vessel at a dockyard, slipway, wharf, jetty or any other place, the Customer authorises the Repairer to move (at Customer's expense) the Vessel and any machinery, part or device on or about the Vessel by whatever means and in whatever circumstances that the Repairer considers appropriate. 5.2 The Customer indemnifies and holds harmless the Repairer for any damage or loss whatsoever, to any third party property damaged during any move of the Customer's Vessel, machinery, part or device when moved pursuant to clause 5.1.

6. Payment 6.1 The Customer consents and authorises the Repairer to issue the Customer tax invoices by electronic means, including by email. 6.2 The Vessel or other goods upon which the Works have been carried out will be retained by the Repairer until the Repairer's tax invoice for the Works, plus all other amounts payable by the Customer to the Repairer, have been paid. 6.3 Total amount must be paid in full before the vessel is returned to the water or allowed to depart from any worksite, or leased area or marine facility of the Repairer. 6.4 Unless otherwise agreed in writing by the Repairer, if the Customer fails to pay any amounts due to and invoiced by the Repairer (including any interim or progress payments within the period stated on the Repairer's invoice, the Customer shall be liable to pay interest on that amount at a rate equal to the Cash Rate quoted by the Reserve Bank of Australia (on the next day after the invoice is due) plus 2%, calculated on a daily basis from its due date for payment until the amount outstanding (plus interest) has been paid in full. 6.5 Before collecting the Vessel or other goods upon which the Works have been carried out, the Customer must inspect the Works and satisfy itself that the Works have been carried out in a proper and satisfactory manner. By collecting the Vessel or other goods, the Customer acknowledges and agrees that the Works have been carried out in a proper and satisfactory manner. 6.6 The Vessel or other goods upon which the Works have been carried out must be collected from the Repairer's worksite within 7 days after notification by the Repairer to the Customer. 6.7 If any Vessel or goods are not collected within 7 days after notification by the Repairer to the Customer, the Repairer may exercise its rights without notice to the Customer (including the right to sell any Vessel or good) pursuant to the Repairer's rights in the Disposal of Uncollected Goods Act 1967 (Qld), and may at the Repairer's discretion place the vessel or goods in storage with all storage charges payable by the Customer with the stored Vessel or Goods also being subject to the Storage Liens Act 1973 (Qld).

7. Lien 7.1 In addition to any workman's or repairer's lien which the Repairer may have over the Vessel or other goods on which the Works have been carried out, the Repairer shall have a general lien over that Vessel or other goods and all other property of the Customer that comes into the possession of the Repairer for any reason until all amounts owing by the Customer have been paid to the Repairer. 7.2 The exercise of a possessory lien by the Repairer does not waive or exclude the Repairer from exercising any other lien established by statute or custom or waive the Repairer's rights to commence a proceeding against the Vessel or other property of the Customer under the Admiralty Act 1998 (Cth).

8. Limitation of Liability 8.1 The Repairer shall not be liable for any failure to complete the Works by any date, whether stated in any Repairer's quote or otherwise. 8.2 Where the Customer is a "consumer" as defined by the Competition and Consumer Act 2010 (Cth) or any equivalent applying State or Territory law, then the Prescribed Terms will be implied into these terms and conditions for the benefit of the consumer. 8.3 Except for the Prescribed Terms, any terms, conditions or warranties not expressly stated in these terms and conditions do not form part of any contract between the Repairer and the Customer. 8.4 Subject to the Prescribed Terms, it is expressly agreed between the Customer and the Repairer that the liability of the Repairer for any breach of any Prescribed Term shall be, at the option of the Repairer: (a) the replacement of the goods or the supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; (d) the payment of the cost of having the goods repaired; (e) the supply of the services again; or (f) the payment of the cost of having the services supplied again.

8.5 Except as provided in these terms and conditions: a) The Repairer shall not be liable for loss of profits, loss of production, loss of business or other financial loss howsoever caused, whether directly or indirectly whatsoever; and b) the Repairer shall not in any circumstances be liable in tort or contract or bailment or statute or otherwise for any loss or damage whatsoever (including consequential, indirect, special or economic loss or damage) which arises out of or in connection with the Works whatsoever and howsoever caused including, without limitation, any negligent act or omission on the part of the Repairer or any employee, agent or subcontractor of the Repairer. 8.6 The Customer shall indemnify and hold harmless the Repairer in respect of any liability to any person for: a) any personal injury or death to employee's, agents, contractors or sub-contractors of the Customer and any third party entering a dock yard, facility or area (including any area owned or leased by the Repairer), where the Repairer is required to perform Works for the Customer; b) any damage whatsoever, including injury, delay or loss arising out of, or incidental to, the Works whether due to misconduct or negligence on the part of the Repairer (including any negligence of its servants, agents, contractors and subcontractors), or whether or not the cause of the damage is known or unknown to the Repairer; c) Any damage, cost or clean up expense whatsoever (including disposal of any contaminated material, clean up device, material or recovered pollutant) arising from an environmental pollutant escaping from the Vessel while Works by the Repairer are being performed. d) any other cause whatsoever arising out of, in relation to, incidental to, or caused by the Works;

9. Force Majeure 9.1 If the Repairer by reason of any matter beyond its control including, without limitation, any act of God, strike, lock-out or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasigovernmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport, refusal of or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations is unable to perform in whole or in part any obligation under these terms and conditions (the "Force Majeure Event"), the Repairer shall be relieved of that obligation under these terms and conditions from the commencement of the Force Majeure event. 9.2 The Repairer may elect to issue the Customer a written notice indicating the date upon which the Force Majeure Event commenced. 9.3 Upon the occurrence of a Force Majeure Event (whether the Customer is notified or not), the Repairer shall not in any way be liable to the Customer in respect of any inability to perform. 9.4 Should any subsequent change in circumstance resolve the Force Majeure Event and the Repairer resumes an affected obligation, the resumed obligation shall be construed as a new obligation starting upon its recommencement and shall not waive or diminish any prior liability of the Repairer that was excused by this clause.

10. Sub-contracting and Indemnity 10.1 The Repairer shall be entitled to sub-contract on any terms the whole or any part of the Works and any and all acts or things that are in the opinion of the Repairer necessary or desirable to carry out and complete the Works. 10.2 The Customer undertakes not to claim or seek recovery against any person whomsoever performs or undertakes the Works (including all servants, agents, contractors and sub-contractors of the Repairer) which imposes, or attempts to impose, upon any such person any liability whatsoever in connection with the Works. If any such claim or allegation should nevertheless be made, the Customer indemnifies and holds harmless the Repairer against all consequences thereof.

11. Liability of employees, agents and contractors 11.1 The Customer expressly agrees that no servant, agent, contractor or subcontractor of the Repairer shall be under any liability whatsoever to the Customer for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on their part while acting in the course of, or in connection with, their employment. 11.2 Without prejudice to the generality of the clause 11.1, every exemption, limitation, condition and liberty contained in these terms and conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Repairer (or to which the Repairer is entitled in these terms and conditions) shall also be available and shall extend to protect every such servant, agent, contractor or subcontractor of the Repairer. 11.3 For the Purpose of clause 11.1 and 11.2 the Repairer is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants, agents, contractor or subcontractors from time to time (including independent contractors) and all such persons shall to this extent be or be deemed to be parties to the contract

12. General 12.1 If a provision of these terms and conditions is void or unenforceable then that provision shall be severed, and these terms and conditions shall be read as if that provision did not form part of it. 12.2 No attempted or purported variation of these terms and conditions (including, without limitation, any Customer purchase order) shall be effective, even if the Repairer subsequently issues an invoice or carries out the Works, unless the Repairer accepts such a variation in writing which expressly refers to the variation or amendment 12.3 A failure by the Repairer to exercise any rights or remedies under these terms and conditions is not a waiver of those rights or remedies unless the Repairer gives clear and express written notification of such waiver. 12.4 No employee, agent or sub-contractor or other associated person of the Repairer has authority to vary these terms and conditions. 12.5 These terms and conditions are governed by and shall be construed in accordance with the law of the state of Queensland. 12.6 The Repairer and the Customer irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the state of Queensland and the courts of appeal from them for determining any dispute in relation to this contract.