

MARITEK

TERMS AND CONDITIONS

1. The meaning of some words Used in these terms and conditions

1.1. Definitions

- (a) **Consumer Guarantee** means a guarantee applicable to the supply of goods and services incorporated into this agreement under division 1 part 3-2 of the Australian Consumer Law.
- (b) **Deposit** means the amount stated as the deposit in the Quote.
- (c) **Intellectual Property Rights** means intellectual property rights protected by statute or common law including copyright, trademarks, patents and registered designs.
- (d) **Materials** means any materials, goods, parts or items We need to buy necessarily to perform the Services.
- (e) **Parties** is a reference to both Us and You.
- (f) **Quote** means a written description of the Materials and Services to be provided, an estimate of Our charges for the performance of the required work and an estimate of the time frame for the performance of the work.
- (g) **Services** means the services to be provided to You under a Quote and these terms and conditions.
- (h) **Site** means the place where We will provide the Services.
- (i) **We, Us or Our** is a reference to Maritek Pty Ltd (ACN 649 125 922).
- (j) **You or Your** is a reference to the person to whom We are providing Our Services and who must pay for the Services We provide as described on the Quote.

1.2. In these terms and conditions, unless the context otherwise requires:

- (a) a reference writing includes email and other communication, including texting and communication established through Our Website;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms and conditions;
- (d) a reference to a Party includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms and conditions.

2. Entering into a legally binding contract

2.1. A contract between You and Us will come into being in one of two ways:

- (a) when You accept the Quote online We and You will enter into a legally binding contract on the date you accept the Quote; or
- (b) if You pay the Deposit before accepting the Quote, We and You will enter a legally binding contract on the day We receive the Deposit into Our bank account.

2.2. The contract between You and Us will comprise:

- (a) the Quote;
- (b) these terms and conditions;
- (c) any variations

- 2.3. We suggest before You accept the Quote or pay the Deposit you read through these terms and conditions. If You have questions about them please ask Us.
- 2.4. Keep a copy of these terms and conditions for Your records.
- 2.5. These terms and conditions may be amended only with Our consent in writing and shall prevail to the extent of any inconsistency with any other document.

3. Quote

- 3.1. We may provide You with a Quote. Quotes are valid for thirty (30) days from issue.
- 3.2. Our quote is based on:
 - (a) the cost to supply the Materials;
 - (b) the time required to provide the Services on an hourly basis. Our rates, excluding GST are set out in the Quote.
- 3.3. The quote is an estimate only. We may need to charge You a higher amount than stated in the Quote. This can occur for several reasons, for example:
 - (a) what You require Us to do changes, or Services You require Us to provide increases or is different to what We and You agreed before We start the Services; or
 - (b) when We start the Services, it becomes apparent the work involved is different to what We agreed, and We could not reasonably foresee this before We started the Services.
- 3.4. We do not have to commence work until the Quote has been accepted by You.
- 3.5. We may amend the Quote before the Services are performed if there is any change in the cost of Materials. We will notify you of any change as soon as possible.
- 3.6. An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. We will endeavour to complete the Services at a time or times required by you but failure to do so shall not confer any right of cancellation, termination, or refusal of delivery, or render Us liable for any loss or damages directly or indirectly.

4. Materials

- 4.1. When We perform the Services, We may not have all the Materials We need. This may be for several reasons such as:
 - (a) it may not have been reasonably possible to establish the need for Materials when We provided the Quote (the need for the Materials may only be revealed when We perform the Services); or
 - (b) the condition of an item or an area which is the subject of the Services may only become apparent when We perform the Services, and it was not reasonably possible to establish it until that pointin such cases We may need to purchase materials.
- 4.2. If the Materials are available from a local supplier, then We may travel to the supplier and purchase the Materials and return to continue performing the Services. If the Materials are not available from a local supplier, We may order the Materials and return on another occasion to perform the Services.

5. Price and Payment

- 5.1. At Our sole discretion the price shall be:
 - (a) as indicated on any invoice provided by Us to you; or
 - (b) Our quoted price (subject to clause 3.3).
- 5.2. Our minimum fee is two (2) hours.
- 5.3. You will have to pay the Deposit on acceptance of the Quote. We will not commence performance of the Services until the Deposit is paid.
- 5.4. We may invoice you for the balance of the Services in the following ways:
 - (a) before commencing the provision of the Services, for an amount equal to the Quote where We have not carried out work for you or where We choose to do so;
 - (b) at the end of each Week before the work is completed, We may issue one or more invoices for the work done to that point, and request a further proportion of the Quote be paid before any further Services being provided; or
 - (c) upon completion of the Services or any time after such completion.
- 5.5. You must pay an invoice issued by Us within seven (7) days from the invoice. Time is of the essence for payment of the invoice.

- 5.6. If any invoice is due but unpaid, We may withhold the provision of any further Services until overdue amounts are paid in full.
- 5.7. You may not set off against or deduct from the invoice sum any sums owed or claimed to be owed to you by Us nor to withhold payment of any invoice or part thereof, because the invoice or any part of it is in dispute.
- 5.8. You are to pay interest at 10% per annum, calculated daily on all overdue amounts owed by you to Us.
- 5.9. All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses, are to be paid by you as a debt due under these terms and conditions.
- 5.10. You agree to comply with your obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

6. Your Obligations

- 6.1. It is your sole responsibility to check and confirm the Services with Us before accepting the Quote.
- 6.2. It is your responsibility to ensure the Services can be completed without interruption, in a continuous work flow on the mutually agreed date. We reserve the right to charge any extra costs incurred by Us by interruption including but not limited to additional return to Site charges and travel costs.
- 6.3. You shall ensure We have clear and free access to the Site to enable Us to carry out the work. We shall not be liable for any loss or damage to the Site unless due to Our negligence.

7. Title and Risk

- 7.1. Risk in Materials passes to you immediately upon delivery at the Site.
- 7.2. Property and title in Materials supplied to you do not pass to you until all money (including money owing regarding other transactions between Us and you) due to Us by you has been paid.
- 7.3. Where Materials are supplied by Us without payment in full, you:
 - (a) are a bailee of the Materials until property in them passes to you;
 - (b) agree that We may repossess the Materials if payment is not made within seven (7) days (or such longer time as We may, in Our complete discretion, approve in writing) of the supply of the Materials ;
 - (c) you grant Us or Our agent an irrevocable licence to enter your premises to recover possession of the Materials. You indemnify Us for any damage to property or personal injury which occurs because of the Us entering the Site; and
 - (d) agree We may commence proceedings to recover the price of the Materials sold notwithstanding that ownership of the Materials has not passed to you.
- 7.4. Where Materials are supplied by Us without payment in full of all moneys payable regarding the Materials and any Services provided by Us regarding those Materials, you acknowledge We may register and perfect a personal property security interest.
- 7.5. Where you have supplied materials for Us to complete the Services you acknowledge you accept responsibility for purpose, quality, and any fault inherent in the materials. We shall not be responsible for any defects in the Services or any loss or damage to the materials arising for materials supplied by You.

8. Personal Property Securities Act 2009 ("PPSA")

- 8.1. In this clause financing statement, financing change statement, security agreement and security interest have the meaning given to it by the PPSA.
- 8.2. These terms and conditions constitute a security agreement for the PPSA and create a security interest in all Materials supplied and all that will be supplied by Us to you.
- 8.3. You undertake to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date) which We may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse Us for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged;

- (c) not register a financing change statement regarding a security interest without Our prior written consent;
- (d) not register or permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of a third party without Our prior written consent;
- 8.4. You agree sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5. You waive your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA
- 8.6. You waive your rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA
- 8.7. Unless otherwise agreed in writing by Use, you waive your right to receive a verification statement under section 157 of the PPSA.
- 8.8. You unconditionally ratify any actions take by Us under clauses 7.3 to 7.5.
- 8.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to contract out of the PPSA.

9. Intellectual Property Rights

- 9.1. Unless specifically agreed in writing between the parties, all Intellectual Properties Rights in any works created by Us on behalf of you vests and remains Our property.
- 9.2. Subject to the payment of all invoices due regarding the Materials and Services, We grant to you a perpetual, non-exclusive licence to Use the works created or produced by Us in connection with the Materials and Services under these terms and conditions.

10. Exclusion and Limitation of Liability

- 10.1. Subject to clause 10.2 and to the extent permitted by the Australian Consumer Law (**ACL**) and relevant state legislation, Our obligation under this agreement is to Use Our best endeavours to provide the Services, or to repair (at Our discretion) any part of the Services found to be defective during the six (6) months after the Services are performed. We will not be liable for any other claims or damages including but not limited to, claims for faulty design, negligent and misleading advice, damages arising from loss or Use of the Materials or Services, and any indirect, special, or consequential damages or injury to any person, corporation or other entity.
- 10.2. If the Services performed under this agreement are provided to You as a “consumer” of goods within the meaning of that term in ACL (as amended) or relevant state legislation, the consumer will have the benefit of certain non-excludable rights and remedies regarding the goods or services. Nothing in these terms and conditions excludes or restricts or modifies any ordinarily condition, warranty, right or remedy which under the ACL or similar legislation is so conferred. If the Services are not ordinarily acquired for personal, domestic or household Use or consumption, under section 64A of the ACL and similar provisions of relevant state legislation, We limit Our liability to:
 - (a) In the case of Materials supplied to You, the replacement, or the supply of equivalent Materials (or the payment of the cost to You for the replacement or supply), or the Materials of the goods (or the payment of the cost to You for the repair); and
 - (b) In the case of Services supplied to You, the supply of the Services again or the payment of the cost to You for having the services supplied again.
- 10.3. Subject to clause 10.2, We are not liable for default or failure in performance of Our obligations under this contract resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war accidents, fire explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond Our reasonable control.

11. Termination

- 11.1. If where you terminate the contract, then You will be responsible for the cost of:
 - (a) any of Our time in performing the Services up to the date We stop providing the Services; and
 - (b) any Materials We committed to buying up to termination (whether We need to pay for them before or after the date the contract between Us and You is terminated). Any Materials We have purchased (but not Used in performing the Services) will be delivered to You.

- 11.2. In the circumstances stated in paragraph 12.1(b) We will first deduct the amounts for which You are responsible from any Deposit You have paid. Any remaining Deposit will be returned to You. If the amount owing is greater than the Deposit, We will Invoice You for the amount over the Deposit.
- 11.3. You must give notice to Us as early as possible of the termination of contract in writing.
- 11.4. If We fail to complete the work in a reasonable time for an unacceptable reason or fail to remedy any defective work, you may issue a notice to Us to respond in ten (10) days.
- 11.5. We may terminate the contract if you have not complied with these Terms and Conditions, including the Payment Terms or if you have not acted fairly and reasonably.

12. Dispute Resolution

- 12.1. Where a dispute has arisen in relation to the contract, both parties agree to negotiate in good faith to resolve the issue before any complaints are made to the Department of Fair Trading or any legal action is taken.

13. Law and Jurisdiction

- 13.1. This agreement takes effect, is governed by, and is construed under the laws from time to time in force in New South Wales.
- 13.2. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

14. Entire Agreement

- 14.1. The Contract is the entire agreement between the parties and supersedes all and any communications, negotiations, arrangements, and agreements, whether oral or written, between the parties regarding all matters are the subject of the contract.

15. Survival

- 15.1. Clauses 7 (Title and Risk), 8 (Personal Property Securities Act 2009 ("PPSA")), 9 (Intellectual Property Rights) and 10 (Exclusion and Limitation of Liability) survive the expiry or termination of this Contract.

16. Severance

17. If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision must, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and must not in any way affect other circumstances of or the validity or enforcement of the Contract.