



**BIG SEA MARINE  
CONSULTANTS**

www.bigsea.com.au

## Standard Terms of Engagement Agreement

### Pre-purchase Condition Survey Inspection

**THIS AGREEMENT** is made on the ..... day of ....., 20..... BETWEEN Big Sea Marine Surveyors ..... (ABN.....) of ..... and the Client ..... (ABN.....) of .....

#### **WHEREAS:**

- A.** Big Sea Marine Surveyors is engaged in the business of providing specialist expertise and services in the marine survey fields or categories.
- B.** The Client is seeking such services *[or whatever general description of Big Sea Marine Surveyors' expertise]*
- C.** Big Sea Marine Surveyors is able to provide the specialist skills and experience that the Client wishes to engage as per the terms of this specific engagement.

#### **IT IS HEREBY AGREED AS FOLLOWS:**

##### **1. Performance of services**

- (a) Big Sea Marine Surveyors hereby agrees to undertake supply of the following services [details of services to be specified, hours, type of service, location, etc.] and undertakes to comply with any reasonable requirements relating to the performance of these services which shall be communicated in writing to Big Sea Marine Surveyors by the Client.
- (b) The price for the services will be \$...... per hour plus travel expenses and .....or  
The price for the services will be \$ .....per metre plus travel expenses and .....
- (c) The price charged by Big Sea Marine Surveyors is specific to this agreement only.
- (d) Big Sea Marine Surveyors will supply all equipment, software, and other expertise necessary for the provision of the services with the exception of certain services which are listed at Annex 1.

- (e) The Client will ensure that the vessel is appropriately berthed and ready for survey as outlined in Annex 1.
- (f) Big Sea Marine Surveyors will provide the Client with an invoice for the services showing the date of each day allocated to the provision of the services and detailing the time spent performing the services.
- (g) The Client will pay Big Sea Marine Surveyors the amount quoted prior to receiving the final survey report.
- (h) The Client agrees and understands that the condition/state of items reported reflects the condition/ state found commencing on the date of the survey and ending with the final report and takes into consideration the specific details of the inspection as per Annex 1 and the vessel's age and the items reported upon.
- (i) Big Sea Marine Surveyors and Client agree that defects and or faults which are outside of the terms agreed in Annex 1 that may be identified after the services have been delivered and are not the responsibility of Big Sea Marine Surveyors and liability lies with the Client.
- (j) Big Sea Marine Surveyors agrees that the survey report will be a factual report on the inspection carried out, and the opinions expressed are given in good faith as to the condition of the vessel as seen at the time of the survey.
- (k) Big Sea Marine Surveyors will indemnify the Client for claims or loss arising from a breach of professional duty in the provision of professional services however the liability of Big Sea Marine Surveyors is reduced to the extent that the Client or other person(s) caused or contributed to the loss or occurrence of subsequent defects, or defects not discovered at the time of the survey in metal strakes or areas of the vessel which are covered, unexposed, or not accessible to the surveyor internally due to the installation of non-removable linings, panels and internal structures, etc, or agreement and permission and instructions not being given to the surveyor to gain access to closed off areas.
- (l) This Agreement remains in effect from the date of execution until the completion of services agreed in Annex 1.

## **2. Relationship between the parties**

- (a) This Agreement does not constitute any company, partnership, or joint venture between the parties for any purpose. Neither party to this Agreement shall have any right to incur any liabilities or obligations on behalf of or binding upon the other party except as provided for in that Agreement.
- (b) Nothing in this Agreement constitutes a relationship of employer and employee. Big Sea Marine Surveyors must not act in any way other than as an independent contractor of the Client.
- (c) The Client will not be responsible for any payments in respect of:
  - (i) The remuneration of Big Sea Marine surveyor's personnel including salary and wages, annual leave, sick leave, long service leave or superannuation;
  - (ii) Workers' compensation, accident, sickness, and life insurance for Big Sea Marine surveyor's personnel; and

- (iii) All taxes including but not limited to corporate tax, payroll tax, PAYG tax, training guarantee levy, FBT, excise duty, GST, personal income taxes, company income taxes, Contractor's payroll taxes, superannuation guarantee levy, health insurance levy and any other additional taxes or levies imposed by government.
- (d) Where agreed, the work carried out to achieve the results set out in this Agreement can be undertaken by another person provided by Big Sea Marine Surveyors. This arrangement will be subject to the substitute Contractor having the appropriate qualifications and relevant experience, and to the Client's approval. The Client maintains the right to veto the choice of substitute.
- (e) Big Sea Marine Surveyors acknowledges and hereby agrees that in relation to the supply of the services under this Agreement it is responsible for compliance with all statutory requirements in relation to trading, including but not limited to the payment of all or any taxes, superannuation, workers' compensation or other charge, levy or obligation imposed by law as a result of this Agreement.
- (f) The ownership of any intellectual property, unless in the public domain, generated by or introduced into the services by Big Sea Marine Surveyors remains at all times with Big Sea Marine Surveyors unless otherwise specifically agreed in writing. All written data to be exchanged by the parties to this Agreement shall be regarded as confidential and shall remain the property of the discloser. All such written data shall be immediately returned to the discloser upon written request or at the expiry of this Agreement.
- (g) These terms (2(a), (b), (c), (d), (e), (f) and (g)) shall have effect from the date of execution and shall survive the Agreement.

### **3. Confidentiality**

- (a) The parties agree that confidential information disclosed to the other party remains at all times confidential and each party indemnifies the other in respect to all loss, damage, claim, liability, cost, or expense suffered by the discloser arising from any breach of this Agreement.
- (b) Big Sea Marine Surveyors shall not disclose and shall use its best endeavors to prohibit and prevent the unintentional disclosure of the final marine survey report.
- (c) The Client acknowledge that the methodology, materials, and survey report of Big Sea Marine Surveyors, unless in the public domain, are to remain confidential to Big Sea Marine Surveyors unless otherwise specifically agreed in writing.

### **4. Disputes**

If any dispute arises involving the performance of this contract or the interpretation of its terms, before resort to legal action is had by either party, it is agreed that if negotiations fail, the parties shall utilize mediation by each party bearing their own costs.

## 5. Governing law

This Agreement shall be governed by and construed in accordance with Australian Law and the parties to this Agreement agree to submit, subject to clause (6), to the jurisdiction of its Courts.

## 6. Notices

Unless otherwise specified in the Agreement or documents collateral to this Agreement, all notices or communications of a contractual nature given in relation to this Agreement by either party to the other party shall be in writing and delivered or mailed by registered mail as follows:

(a) Big Sea Marine Surveyors to: (address) .....

(b) The Client to: (address) .....

**IN WITNESS OF THIS AGREEMENT** the parties have executed this Agreement in duplicate on the date set out at the head of the Agreement.

Signed:.....

**Guy Howard.**

Big Sea Marine Consultants and Surveyors.

Signed Witness:.....

**Witness Name:**.....

Signed:.....

**Client Name:**.....

Signed Witness:.....

**Witness Name:**.....

## Annex 1

**This Schedule sets out the scope of services to be delivered.**

**1. The Client agrees that the scope of services to be delivered are:**

General Survey Requirements	Please tick all applicable items
In water pre purchase survey and valuation appraisal	
In water – pre purchase no valuation appraisal	
Out of water pre-purchase survey and valuation appraisal	
Out of water – pre purchase no valuation appraisal	
Vessel insurance survey using insurer checklist only	
Vessel insurance survey using Contractor checklist	
Sea trial required	
AMSA renewal survey (using standard AMSA checklist and documentation) in accordance with the National Law	
Lifesaving, fire and safety management audit and inspection	
Operational systems test and inspection	
Hull and superstructure visual non-invasive inspection Check visual condition only of: Keel, Strakes and Chines Rest of Bottom Area Welds Transom Bow and Topside Deck/Cabin Windscreen Canopy/Storm Cover Bilge Pump operational Are all Deck fittings secure Navigational lights operational	
Is Hull fitted with: Yes/No Operative Engine Blower Gas Detector fitted Battery Isolation Switch	
Hull inspection – all aspects – invasive – client to ensure suitable access (Note – See clause 2 client is responsible for removal of equipment or fittings and reinstatement unless otherwise agreed)	
Check compliance and safety aspects of any modifications or additions	
Navigational equipment – test and inspect	

**2. Additions to scope of survey:**

\*Please detail client requirements in regard to vessel access, sea trials, additional survey requirements etc.

<b>Additional Scope:</b> Detail any additional scope or requirements and indicate who is responsible for the arrangement of access, expenses for sea trials or other survey aspects.	<b>Client responsible for costs</b>	<b>Included in survey costs</b>

*Notes:* \_\_\_\_\_  
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