

Marine Plant Systems Pty Ltd

Sales Terms and Conditions

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Terms and Conditions

1. Definitions and Interpretations

In these terms and conditions the following words and phrases shall have the following meanings:

- 1.1. "Agreement" shall mean the agreement comprised in the Order and these terms and conditions.
- 1.2. "Contractor" means the party identified as the Contractor on the Order.
- 1.3. "Customer" means the party identified as the Customer on the Order.
- 1.4. "The Contract Items" shall mean any items provided by the Contractor to the Customer including the Contract Items described in the Order.
- 1.5. "Order" shall mean the Order for Contract Items and/or Services on the reverse hereof.
- 1.6. "Party" or "Parties" shall mean the parties to this Agreement and may be used inter-changeably.
- 1.7. "Services" shall mean all services provided by the Contractor to the Customer including the services described in the Order.
- 1.8. "Sub-Contractor" shall include any person who pursuant to a contract or arrangement with any other person (whether or not the Contractor) performs or agrees to perform the Services or any part thereof.
- 1.9. "Latent defect" shall mean a hidden flaw, weakness or imperfection in an article which a seller knows about, but the Customer cannot discover by reasonable inspection.
- 1.10. Words importing the singular include the plural and vice versa.
- 1.11. Words importing a gender include any gender.
- 1.12. An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental authority or agency.
- 1.13. A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued pursuant to that statute.
- 1.14. A reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns.

1.15. A covenant or agreement on the part of two or more persons binds them jointly and severally.

2. Terms of Supply

Unless provided otherwise within the Contractor's Quotation, the Contract Items and/or Services supplied by the Contractor are supplied exclusively on these terms and conditions. These terms and conditions apply only to the specific Contractor Quotation number noted herein and may not be transferred in whole or in part to any other Contractor Quotation for the same or similar projects or deliveries to the Customer or other parties.

3. Consideration

In consideration of the Contractor providing the Contract Items and/or Services the Customer shall pay to the Contractor the Consideration referred to or calculated as set out in the Order.

4. Contractor's Quotations

Unless previously withdrawn by the Contractor any quotation(s) provided by the Contractor shall remain valid for the period stated therein or, when no period is so stated for a period of sixty (60) days only after the date of the relevant quotation(s). Quotations shall only be valid if in writing identified by number and duly executed by a duly authorised officer of the Contractor.

5. Terms of Payment

Unless otherwise agreed to in writing, the following terms shall apply:

- 5.1. Subject to the Sub Clauses hereof payment in full for the Contract Items and/or Services shall be made without deduction or set off by the Customer within thirty (30) days from the date of invoice rendered by the Contractor to the Customer or delivery whichever is earlier.
- 5.2. Notwithstanding the provisions of Sub-Clauses hereof the Contractor shall be entitled to withhold delivery of the Contract Items unless payment in advance is made by the Customer.

6. Cessation of the Supply of Contract Items and the Suspension of Services and Interest

- 6.1. In the event that the Customer refuses and/or fails to pay to the Contractor any monies due to the Contractor then the Contractor may immediately cease supplying Contract Items and/or suspend any Services being provided by it to the Customer without prejudice to any other rights that it may have against the Customer.

- 6.2. Without in any way limiting the provisions of any Sub Clause hereof in the event that payment for any Contract Items and/or Services is delayed beyond the due date for payment the Customer shall pay to the Contractor interest on such delayed payment at the rate of one-half percent (0.5%) per annum from the due date for payment until payment is received by the Contractor.

7. Packing

The cost of any special packing and packing materials used in relation to the Contract Items (if any) shall be at the Customer's expense notwithstanding that such costs may not have been included in any quotation(s).

8. Shortage

The Customer waives any claim for short delivery of any Contract Items if a claim with respect thereto is not lodged by the Customer with the Contractor within seven (7) days from the date when the Contract Items should have been received by the Customer.

9. Accuracy of Specifications

The Customer warrants the accuracy of all specifications, drawings, particulars, weights and dimensions submitted by it or its servants or agents to the Contractor and shall indemnify, keep indemnified and hold harmless the Contractor and its servants, agents and sub contractors from and against all actions, suits, claims, demands, losses and damages whatsoever including consequential loss and damage and liabilities suffered or incurred by the Contractor arising out of any breach by the Customer of the warranty contained herein.

10. Standard Specifications

Unless otherwise agreed in writing where Contract Items supplied by the Contractor are manufactured to particular standards and tolerances and the Contractor has advised the Customer of those standards and tolerances the Customer shall accept all Contract Items supplied to it by the Contractor provided that those Contract Items meet such standards and tolerances.

11. Performance

- 11.1. Any information or data with respect to the performance capacity or suitability of Contract Items or Services provided by the Contractor are estimates of performance, capacity or suitability only and the Contractor shall not be under any liability to the Customer or any third party with respect to any failure of the Contract Items or Services to achieve such performance or capacity or with

respect to the Contract Items or Services being unsuitable unless specifically guaranteed in writing by the Contractor.

- 11.2. Any descriptions, illustrations or details of performance or capacity contained in catalogues, price lists or any advertising material shall not form part of this Agreement and shall not be taken as representations by the Contractor and shall not be binding upon it.
- 11.3. The Customer acknowledges that in placing the Order for the Contract Items and/or Services it has not relied upon any conduct, warranty or representations whatsoever and whether written or oral made by or obtained by any other source than the Contractor or its employees.

12. Delivery

Any details of date(s) for delivery of the Contract Items or supply of the Services which are provided by the Contractor to the Customer shall be deemed to be estimates only.

13. Loss or Damage in Transit

Unless otherwise agreed in writing, the risk in the Goods and all insurance responsibility for theft, damage or otherwise passes to Customer immediately upon FOB delivery being effected. Customer accepts all risk of loss or damage thereto, upon delivery of Contract Items to a carrier, shipper, forwarding agent, transporter, or Government mail box or post office, whether selected by Customer or Contractor. In no event shall Contractor be responsible for any goods after delivery to such shipping means.

14. Warranty

- 14.1. The guarantee or warranty (if any) given by the manufacturer of any Contract Items supplied by the Contractor shall be accepted by the Customer to the exclusion of any warranty by the Contractor and shall be the only guarantee or warranty given to the Customer in respect of the Contract Items.
- 14.1. The guarantee or warranty period of any Contract Items will only be valid when the Customer provides the required warranty registration information:
 - 14.1.1. New building number of the ship
 - 14.1.2. Name of ship related to the new building number
 - 14.1.3. Commissioning date of the Contract Items
 - 14.1.4. Delivery date of the ship to the owner

- 14.1.5. Name and address of the owner
- 14.2. The Contractor does not give any guaranties or warranties with respect to the Services.
- 14.3. At the request of the Contractor, the delivered item(s) associated with a complaint must be returned, carriage paid by the Customer, to the Contractor.
- 14.4. All costs of shipping, insurance, and risk of loss arising in connection with performance of this warranty shall be borne by Customer.
- 14.5. In the case of material defects in the delivered items, the Contractor is obligated and entitled, as it so chooses within a reasonable time, to first repair or replace the item. In the case of failure, i.e. if it is impossible or not feasible to repair or replace the item or if there is a refusal or unreasonable delay in repairing or replacing it, the Customer may rescind the contract or reduce the purchase price appropriately.
- 14.6. The warranty shall lapse if the Customer, without the written consent of the Contractor, changes or has third parties change the delivered item(s) and as a result it becomes impossible or unreasonably difficult to remedy the defect. In all cases, the Customer must bear the additional costs of remedying the defect arising as a result of the change.
- 14.7. Used items may be delivered as agreed in the individual case with the Customer to the exclusion of any warranty of any kind for material defects.
- 14.8. Where remedy under the terms of warranty requires the attendance of the Contractor's technician, agent or Sub-Contractor to effect or supervise the necessary repairs at a site nominated by the Customer, travel and expenses required to achieve the attendance shall be for the account of the Customer. Labour provided by the attending technician shall be for the account of the Contractor.

15. Insurance Not Effected by the Contractor

Unless otherwise agreed to in writing, the following terms shall apply:

The Contract Items shall be at the sole risk of the Customer and no insurance will be effected by the Contractor for the benefit of the Customer and the Customer shall make all necessary arrangements for insurance of the Contract Items.

16. Right to Subcontract

- 16.1. The Contractor shall be entitled to Sub-Contract on any terms the whole or any part of the Services.
- 16.2. The Customer undertakes that no claim or allegation shall be made, whether by the Customer or any other person whomsoever against any person (other than the Contractor) by whom (whether as sub-contractor, principal, employer, servant, agent or otherwise) the Services or any part thereof are performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever whether or not arising out of negligence on the part of such person, and if such claim or allegation should nevertheless be made, then to indemnify, keep indemnified and hold harmless the Contractor and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purposes of this Clause the Contractor is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Agreement.

17. Extensions of Exemptions to Sub-Contractors

Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Contractor or to which the Contractor is entitled hereunder shall also be available and shall extend to protect:

- 17.1. all Sub-Contractors;
- 17.2. every servant or agent of the Contractor or of a Sub-Contractor;
- 17.3. every other person (other than the Contractor) by whom the Services or any part thereof are performed or undertaken;
- 17.4. all persons who are or might be vicariously liable for the acts or omissions of any person falling within any Sub-Clauses hereof and for the purposes of this Clause the Contractor is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Agreement.

18. Liability of Contractor

The supply of the Contract Items and provision of the Services shall in all respects be at the risk of the Customer and not the Contractor and the Contractor and its servants and agents shall not be liable in tort or

contract or bailment or otherwise howsoever for any loss or damage of any nature or kind whatsoever including consequential or economic loss and including loss of or damage to any property whatsoever including the Contract Items and including personal injury to or the death of any person whomsoever including the Customer its servants, agents or contractors caused by contributed to or arising out or in the course of the supply or use of the Contract Items or provision of the Services and whether or not such loss, damage, injury or death is due to the negligence or breach of contract or breach of duty as bailee on the part of the Contractor or its servants, agents or Sub-Contractors and this Clause shall apply to all such loss or damage or injury or death whether or not the same occurs in the course of performance by or on behalf of the Contractor of the Agreement or in events which are in the contemplation of the Contractor and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a breach of this Agreement or a breach of a fundamental term thereof.

19. Handling of Contract Items

If the Customer expressly or impliedly instructs the Contractor to use or it is expressly agreed that the Contractor will use a particular method of handling the Contract Items the Contractor will give priority to that method but if it cannot conveniently be adopted by the Contractor the Customer hereby authorises the Contractor to handle store or carry the Contract Items by such other methods or method as the Contractor may determine.

20. Title

- 20.1. Until the Contract Items are paid for by the Customer in full, ownership shall remain with the Contractor, but the risk shall pass to the Customer.
- 20.2. Until the Contract Items are paid for in full, the relationship between the parties shall be fiduciary, and the Customer shall hold the Contract Items as bailee for the Contractor. The Customer shall store the Contract Items separately from its own.
- 20.3. The Customer is not permitted to dispose of the Contract Items until they are paid for without the specific consent in writing of the Contractor.
- 20.4. In the event that the Contractor consents to the disposal of the Contract Items, the monies resulting from the sale are to be specifically earmarked and placed into a separate account until payment for the Contract Items in full is made to the Contractor.
- 20.5. Until the Contract Items are paid for by the Customer in full, the Contractor authorises the Customer to sell the Contract Items on but as agent for the Contractor. The Customer shall

however not represent to any third party that it is in any way acting for the Contractor and the Contractor will not be bound by any contracts with third parties to which the Customer is a party.

20.6. Records shall be kept by the Purchaser of any Contract Items owned by the Contractor.

20.7. Until the Contractor has been paid in full the proceeds of any sale shall be paid into a separate account and the Customer shall account to the Contractor for the full price of the Contract Items.

21. Customer's Property

Any property of the Customer in the custody or under the control of the Contractor shall be entirely at the risk of the Customer and the Contractor shall not be responsible for any loss or damage whatsoever caused to such property whether due to breach of contract or negligence or breach of duty as bailee on the part of the Contractor or its servants, agents or sub-contractors or otherwise howsoever.

22. Storage

In the event that the Customer fails to take delivery of the Contract Items the Customer shall upon demand being made by the Contractor pay to the Contractor all storage and other costs incurred by it as a result of such failure by the Customer and the Contractor shall have a lien on the Contract Items for all such costs.

23. Contract Items not to be Returned

Unless otherwise agreed to in writing, the Customer shall not be entitled to return the Contract Items or any of them to the Contractor.

24. Description

The Contract Items and/or the Services to be supplied by the Contractor shall be as described on the Order and any such description shall prevail over any descriptions previously provided by the Customer.

25. Cancellation

No order for the Contract Items or the Services may be cancelled by the Customer except with the prior express written consent of the Contractor and then only upon terms to be agreed by the Contractor which will fully indemnify the Contractor from and against all losses, costs, damages and expenses of whatsoever nature including consequential losses which may be suffered by the Contractor.

26. Indemnity

The Customer shall indemnify, keep indemnified and hold harmless the Contractor in respect of any actions, suits, claims, demands, damages, losses, costs, expenses and liabilities brought or made by any person whomsoever in respect of any personal injury to or the death of any person whomsoever or loss of and/or damage to any property whatsoever (including the Contract Items) arising out of or as a consequence of any accident or circumstance involving the Services and/or the Contract Items and whether or not such loss or damage or injury or death arises out of breach of contract or negligence on the part of the Contractor or its servants, agents or Sub-Contractors.

27. Conditions to have in force in all Circumstances

All the rights, immunities and limitations of liability in these terms and conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of this Agreement or any of the conditions thereof by the Contractor or any other person entitled to the benefit of such provisions.

28. Validity of Terms and Severe-ability

In the event that any of the terms, conditions or provisions contained in this Agreement shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

29. Trade Practices and the Fair Trading Act

29.1. Notwithstanding anything herein contained the Contractor shall continue to be subject to any implied conditions and warranties provided by the Commonwealth Trade Practices Act, 1974 ("the TPA") and the Western Australian Fair Trading Act, 1987 ("the FTA") if and to the extent that those Acts or either of them is or are applicable to this Agreement and prevents the exclusion, restriction or modification of any such condition or warranty.

29.1. Save for other conditions and warranties (if any) set out in these terms and conditions the only conditions and warranties which are binding on the Contractor in relation to its supply of the Services are those required by the TPA (if applicable) and the FTA (if applicable) and in the event that the Contractor is liable for breach of a condition or warranty implied by the TPA or the FTA the liability of the Contractor for a breach of such condition or warranty shall be limited to:

29.1.1. in the case of Contract Items:

29.1.2. the replacement of the Contract Items or the supply of equivalent Contract Items;

- 29.1.3. the repair of the Contract Items; or
- 29.1.4. the payment of the cost of replacing the Contract Items or of acquiring equivalent Contract Items or of having the Contract Items repaired.
- 29.1.5. in the case of Services:
- 29.1.6. the supplying of the Services again; or
- 29.1.7. the payment of the cost of having the Services supplied again,
- 29.1.8. and otherwise all conditions and warranties whether express or implied by law and all representations, statements and obligations which would otherwise be binding upon the Company are hereby expressly excluded and negated.

30. Vienna Convention

The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Contract Items adopted at Vienna, Austria on 10th April, 1980, shall not apply to the sale of any Contract Items pursuant to this Agreement.

31. Notices

If either Party shall desire to give to or serve on the other Party any notice, claim or demand hereunder or in connection herewith then such notice, claim or demand shall be sufficiently given if forwarded by registered post, telex or facsimile transmission to such Party at his address stated herein or last known to the Party desiring to give such notice or in the case of any Party being a company to its registered office. Every notice shall be deemed to have been received and given at the time when in the ordinary course of post or transmission it should have been delivered or received at the address to which it was sent PROVIDED THAT if the day on which such notice or other communication as aforesaid is by this Clause deemed to have been received falls on a Saturday, Sunday or day which is a public holiday in the intended place of service or receipt, then the notice or other communication aforesaid shall be deemed to have been received on the day next following which is not a Saturday, Sunday or public holiday as aforesaid irrespective of whether or not such notice of other communication has been accepted by the addressee thereof.

32. Waiver

No waiver of any provision of this Agreement nor consent to any departure therefrom by any of the Parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the

Parties in exercising any rights powers or privileges hereunder shall operate as a waiver thereof or of any other right hereunder; nor shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege.

33. Contract Items and Service Tax

If Contract Items and services tax under the A New Tax System (Contract Items and Services Tax) Act, 1999 (Cth) applies to the supply of any Contract Items and/or Services made to the Customer by the Contractor pursuant to the Order then the Customer shall pay to the Contractor an amount equal to such Contract Items and services tax imposed upon the Contractor in relation thereto.

34. Variations

No modification variation or amendment of this Agreement shall be of any force or effect unless it is in writing and signed by all Parties hereto.