

TERMS AND CONDITIONS

1. GENERAL

- 1.1. These terms and conditions ("Terms") apply to all services supplied (including any surveying, certification or consultancy) ("Services"); by Marine Design & Survey Services Ltd ("MDSS, we, us, our") to the Client ("Client, you, your").
- 1.2. By your written or verbal request to us to provide any Services and / or Goods you agree to be bound by these Terms.
- 1.3. These Terms supersede and prevail over any representations made by any of our agents or representatives.
- 1.4. In the event of conflict between these Terms and any other terms and conditions (of the Client or otherwise), these Terms shall prevail unless expressly agreed by us in writing.

2. FEES, PRICES AND PAYMENT

- 2.1. Payment in full is required prior to all certification, reporting and survey work being carried out, along with acceptance of our terms of trade. A re-inspection fee applies on failed inspections.
- 2.2. We (as accurately as possible) estimate the time and resources required to deliver Services to you. Notwithstanding any estimate given, unless we have agreed in writing to be bound by a set price for the Services, you shall pay to us our actual cost of completing the Services which will be calculated by totalling the following:
 - a) the number of hours of worked multiplied by the hourly rates for the MDSS personnel involved on the date(s) which the Services are undertaken;
 - b) the number of hours travelled multiplied by the hourly travel rates for the MDSS personnel involved on the date(s) which the Services are undertaken;
 - c) Milage travelled multiplied by the milage rates for the MDSS personnel involved on the date(s) which the Services are undertaken;
 - d) any additional costs and expenses incurred by us on your behalf ("Actual Cost").
- 2.3. All fees and prices are stated exclusive of Goods and Services Tax and any other taxes and duties which are payable by you (if applicable).
- 2.4. Unless otherwise expressly stipulated by us, payment for all Services must be made by you to our nominated Bank Account by the 20th of the month after the date of our invoice. We may, at our option, issue a monthly interim invoice where the delivery of Services is over a period exceeding one month.
- 2.5. Payment of all money due shall be without any set-off or deduction of any kind.
- 2.6. We may in our discretion require you to pay a deposit, being an advanced payment for the Services, or to pay for the Services in full, before we commence the Services.
- 2.7. If you fail to make payment in full by the due date you are in default and must pay default interest on any outstanding amount, calculated at 5% above the Official Cash Rate of the Reserve Bank of New Zealand against the total balance outstanding.
- 2.8. Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in these Terms will be paid by you, including any reasonable solicitor's fees or debt collection agency fees.
- 2.9. We will apportion payments to outstanding accounts in our absolute discretion.

3. PERFORMANCE OF SERVICES

- 3.1. We will:
 - a) perform the Services with reasonable skill, care and diligence, in a professional manner;
 - b) endeavour to ensure that the Services are performed in accordance with any time frames agreed in writing with you; and
 - c) liaise with you during the course of performing the Services in accordance with your reasonable requirements.
- 3.2. If we have given you a time frame for completion of the Services, unless agreed in writing to the contrary, such time frame is approximate only and is not deemed to be of the essence of the contract.
- 3.3. You will give the necessary assistance to enable us to perform the Services by:
 - a) giving clear instructions;
 - b) promptly providing any information or content required from you for us to complete the Services; and

- c) procuring all necessary access for our personnel to goods, premises, vessels, installations; transport or other accesses.

3.4. You shall ensure, so far as is reasonably practicable and applicable:

- a) the provision and maintenance of a work environment that is without risks to health and safety;
- b) the provision and maintenance of safe plant and structures;
- c) the provision and maintenance of safe systems of work;
- d) the safe use, handling, and storage of plant, substances, and structures;
- e) the provision of adequate facilities for the welfare at work of MDSS personnel (whether employees, sub-contractors or agents) in carrying out the Services, including ensuring access to those facilities;
- f) the provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the Services;
- g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of workers; and
- h) that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person.

3.5. If required to do so by us, you will:

- a) provide us with details of any health and safety procedures used by you in connection with the Services; and
- b) promptly comply with all our reasonable health and safety requirements and any safety-related instruction given by us to you in connection with the Services.

3.6. If you wish to make any variations to the Services you must notify us in writing of your request as soon as possible. We shall endeavour to make any requested changes and any additional costs incurred by us as a consequence shall be paid by you.

3.7. If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the Services we shall notify you as soon as practicable. We shall endeavour to keep such changes to a minimum and shall seek to offer you the arrangements as close to the original as is reasonably possible in the circumstances.

3.8. We may sub-contract the performance of the Services without your prior written consent. Where we sub-contract performance we shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of MDSS itself.

4. LIABILITY

4.1. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

4.2. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Services from us for the purposes of a business in terms of sections 2 and 43 of that Act.

4.3. Except to the extent that the law prevents us from excluding liability and as expressly provided for in these Terms, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from the Services provided or Goods supplied by us to you.

4.4. To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, our liability is limited to the amount of the Actual Cost.

4.5. In the event that the Services involve the survey or inspection of a vessel or any services to or containing a product or article which contain latent defects which were not apparent at the time of survey or inspection and could not reasonably have been expected to have been discovered by such survey or inspection (including but not limited to a lack of access to a vessel part, vessel spaces, or limited availability of time) then we shall have no liability for such defects.

- 4.6. You shall indemnify us against all damages, costs, claims and expenses suffered by us arising from the provision of the Services including (but not limited to) loss or damage to any equipment (including that of third parties) caused by you, your employees, sub-contractors or agents.
- 4.7. We respect having access to your vessel and take care while on board, however it is the owner's responsibility to ensure they are happy with the vessel condition and equipment settings on the completion of an inspection.
- 4.8. MDSS does not remove panels or dismantle any parts of the vessel to access physically inaccessible sections of a vessel. The report supplied to you does not include, or have any liability for issues or potential problems that have or could occur in inaccessible areas.
- 4.9. MDSS provides a report based on our qualifications and experience taking into account the information provided by the client on the vessel in question. Therefore, no liability will be accepted by MDSS for any relative information withheld, areas on the vessel concealed or limitations encountered to our inspection.
- 4.10. Inspections carried out by MDSS comprise of visual inspections and testing to the requirements of the applicable standards and guidelines at the time of inspection. MDSS has no liability for items altered or tampered with after inspection and certification.

5. CANCELLATION / TERMINATION

- 5.1. You may not cancel a request for Services without first obtaining our written consent. Such notice of cancellation must be in writing.
- 5.2. We may immediately terminate the provision of our Services to you and / or the security interests created by these Terms become enforceable in the event that:
 - a) you fail to pay any money owing when due;
 - b) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent; or
 - c) you are otherwise in breach of your obligations under these Terms
- 5.3. Termination may also be effected in accordance with clause 10 below.
- 5.4. Notice of termination by us shall be given in writing to you and shall have immediate effect.
- 5.5. In the event of termination of the provision of Services by us, in addition to any remedies we may have at law, we may charge default interest on outstanding amounts in accordance with these Terms (refer clause 2);

6. FORCE MAJEURE

- 6.1. Should we be delayed in providing Services or supplying Goods due to any event whatsoever that is not reasonably within our control, we may either:
 - a) terminate your request for Services; or
 - b) suspend our obligations to you under these Terms during the period when such event is causing delay, in either case without incurring liability to you for any loss or damage whatsoever suffered by you or any other person.

7. PRIVACY

- 7.1. By making a request for Services to us, you authorise us to collect, retain and use information about you for the following purposes:
 - a) to manage your account with us, including sending you statements and invoices, organising payment, assessing your credit worthiness, supplying Services and Goods to you; and
 - b) to provide you with information about our services and any special offers we believe may be of interest to you.
- 7.2. Under the Privacy Act 1993 you have the right to access and correct any personal information we hold about you. Please direct any such request to info@mdss.co.nz

8. OTHER

- 8.1. You may not assign or transfer all or any of your rights or obligations under these Terms without our prior written consent.
- 8.2. We are not bound by any error or omission in any invoice, order, form or other document.

- 8.3. You must keep all information you have provided to us up-to-date, including advising us in writing of any change of name, address or other details that would be relevant to your account with us.
- 8.4. If any provision of these Terms is or becomes invalid or unenforceable, that provision will be deemed deleted from these terms to the extent of such invalidity or unenforceability and such invalidity or unenforceability will not affect the other provisions of these Terms, all of which will remain in full force and effect.
- 8.5. We shall be entitled at any time by notice in writing to you to vary these Terms and you shall be bound by such variation.
- 8.6. Any notice may be given to you, in person, posted, or sent by fax or email to you or your last known postal or email address (or where you are a company, to any of your directors). Notices to us must be sent by email to info@mdss.co.nz
- 8.7. These Terms are governed by and construed in accordance with the current laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms.