

## TERMS AND CONDITIONS

### 1. GENERAL

- 1.1. These terms and conditions ("Terms") apply to all:
  - (a) services supplied (including any surveying, certification, consultancy, repair and / or servicing of goods) ("Services"); and
  - (b) goods supplied pursuant to the Services ("Goods"), by Beacon Marine Limited ("Beacon Marine, 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. 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 Beacon Marine personnel involved on the date(s) which the Services are undertaken;
  - b) any additional costs and expenses incurred by us on your behalf; and
  - c) the price of any Goods supplied by us as part of the Services or otherwise supplied at your request, ("Actual Cost").
- 2.2. 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).
- 2.3. To the extent possible, prices for Goods will be as quoted in writing by us to you.
- 2.4. All freight, courier, travel, and any other costs or expenses in relation to the supply of Services or Goods are in addition to the estimated fees or quoted price and will be payable by you.
- 2.5. Unless otherwise expressly stipulated by us, payment for all Services and Goods must be made by you to our nominated Bank Account as per the terms stated on our invoice. We may, at our option, issue a monthly interim invoice where the delivery of Services is over a period exceeding one month.
- 2.6. Payment of all money due shall be without any set-off or deduction of any kind.
- 2.7. If payment is made by credit card, a surcharge of 2.5% will be added to the price.
- 2.8. 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. This will be required before we commence the Services as per the payment terms stated on our estimate and /or invoice.

- 2.9. 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.
- 2.10. 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.
- 2.11. 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.

1.2. 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.

1.3. 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.

1.4. 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 safe use, handling, and storage of plant, substances, and structures;
- c) in carrying out the Services, including ensuring access to those facilities;
- d) 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;
- e) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of workers; and
- f) 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.

1.5. 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.
- 1.6. 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.
- 1.7. 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.
- 1.8. 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 Beacon Marine itself.

## **2. DELIVERY, RISK AND TITLE**

2.1. Goods supplied to you by us are deemed to have been delivered when, as relevant:

- a) you collect them from us; or
- b) we install them in your vessel, premises, installation or transport (as applicable).

2.2. Risk in Goods passes to you on delivery as above.

2.3. Title in Goods does not pass to you until payment for the Goods is made to us in full.

## **3. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

3.1. All terms in this clause 5 have the meaning given in the PPSA and section references shall be to sections of the PPSA.

3.2. Clause 4.3 creates a security interest in Goods we supply to you.

3.3. You shall not grant any other security interest or any lien over Goods that we have a security interest in.

3.4. At our request you shall promptly sign any documents and do anything else required by us to ensure that our security interest constitutes a first ranking perfected security interest in the Goods.

3.5. We may at any time enter any vessel, premises, installation, or transport (as applicable) to uplift Goods that we have a security interest in.

3.6. If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the Goods or in the whole.

3.7. You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.

- 3.8. You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 3.9. You will give us prior written notice of a proposed change of your name or address.

#### **4. RESPONSIBILITY FOR MAINTENANCE & PERFORMANCE**

- 4.1. Goods purchased by you may be accompanied by the manufacturer's user manual and / or installation manual. For the avoidance of any doubt, it is your responsibility to read these manuals carefully and to strictly adhere to the maintenance and inspection schedules and instructions detailed in them.
- 4.2. We take no responsibility and accept no liability for any failure or malfunction of Goods resulting from your failure to strictly adhere to the schedules and instructions detailed in these manuals or otherwise (see also clause 8.3).

#### **5. LIABILITY**

- 5.1. 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.
- 5.2. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Services and/or Goods from us for the purposes of a business in terms of sections 2 and 43 of that Act.
- 5.3. 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.
- 5.4. 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.
- 5.5. In the event that the Services involve the survey or inspection of a vessel or any work or 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.
- 5.6. 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.

- 5.7. We respect having access to your vessel and take care while on board, however it is the owners responsibility to ensure they are happy with the vessel condition and equipment settings on the completion of a Job.
- 5.8. Beacon Marine provides services 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 Beacon Marine for any relative information withheld, areas on the vessel concealed or limitations encountered to our servicing.
- 5.9. Beacon Marine has no liability for items altered or tampered with by any third party outside of Beacon Marine during and after completion of work.

## **6. WARRANTY**

- 6.1. Other than warranties imposed by law and that are not expressly excluded (refer clause 6), we warrant only that any Goods supplied by us will comply with the warranties offered, and for the period specified, by the manufacturer of the Goods. Any such warranties shall be claimed only against the manufacturer and we shall have no responsibility or liability whatsoever for such warranties.
- 6.2. Save to the extent set out in clause 8.1 we do not give any warranties for any Goods supplied and installed by us.
- 6.3. To the extent any warranties do apply, we will, at our sole discretion, either repair or replace defective Goods, or provide a refund. This is conditional upon:
  - a) the defect not being caused or partly caused by, or arising through failure on the part of you to properly maintain the Goods;
  - b) you following any user and / or installation manual, instructions or guidelines provided by us or the manufacturer;
  - c) use of the Goods immediately ceasing once any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
  - d) the defect not being as a result of fair wear and tear or any accident or act of God; and
  - e) the Goods not having been repaired, altered or overhauled in any way.
- 6.4. Where we undertake any Services pursuant to any warranty on behalf of a supplier or manufacturer of Goods you acknowledge and agree that our responsibility extends only to the repair or replacement of such Goods (as instructed) and we make no warranties in respect of repaired or replaced Goods. We shall always be entitled to payment of our Actual Costs in respect of such Services.
- 6.5. Save as agreed, in the event of a warranty claim you shall be responsible for arranging return of the Goods to us and all costs associated with the return of the Goods. If this is not possible you shall be invoiced the actual costs incurred by us in arranging the return of the Goods.
- 6.6. All Goods must be returned in the same new condition as supplied and where possible, in the original packaging. Items not returned in this condition or manner will not be accepted.

- 6.7. Other than warranties imposed by law and that are not expressly excluded (refer clause 6) and without prejudice to any other rights under these Terms, we warrant only that any Services shall be provided by us in accordance with clause 3.1. In the event of defective Services we will in our sole discretion undertake rectification Services at the port or place where the original Services were carried out, so long as: (i) notice of defective Services is given to us in writing within 12 calendar months of the completion of the original Services; and (ii) the vessel is returned to the port or place where the original Services were provided at the Client's cost.
- 6.8. In respect of all warranty claims we shall not be liable to compensate you for any delay in properly assessing any claim, undertaking rectification Services or repairing or replacing any Goods. During such time we are not required to provide you with Services or loan or replacement Goods.

## **7. CANCELLATION / TERMINATION**

- 7.1. If you need to cancel a request for Services, such notice of cancellation must be in writing.
- 7.2. In the case of cancellation where the services have already commenced, payment will be required for all services & materials received and requested. Any restocking or supplier fees for materials ordered but returned will also be at your cost.
- 7.3. 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
- 7.4. Termination may also be effected in accordance with clause 10 below.
- 7.5. Notice of termination by us shall be given in writing to you and shall have immediate effect.
- 7.6. In the event of termination of the provision of Services by us, in addition to any remedies we may have at law, we may do one or more of the following:
- a) charge default interest on outstanding amounts in accordance with these Terms (refer clause 2); and
  - b) enter on to your premises or vessel and repossess any Goods which have not been paid for in full.

## **8. FORCE MAJEURE**

- 8.1. 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 an 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.

## 9. PRIVACY

- 9.1. 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 products and services and any special offers we believe may be of interest to you.
- 9.2. 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@beaconmarine.co.nz](mailto:info@beaconmarine.co.nz)

## 10. OTHER

- 10.1. You may not assign or transfer all or any of your rights or obligations under these Terms without our prior written consent.
- 10.2. We are not bound by any error or omission in any invoice, order, form or other document.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. 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@beaconmarine.co.nz](mailto:info@beaconmarine.co.nz) or post to PO Box 90538, Victoria St West, Auckland, 1142.
- 10.7. 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.