

1. Purpose

This document sets out the entire terms and conditions relating to the provision of Works by Austal Service for or on behalf of the Customer.

2. Interpretation

In these terms and conditions: "Customer" includes the person, firm, body corporate, association or unincorporated association (or any agent of any such entity) who requests the Prime Contractor to carry out Works for it or on its behalf "Prescribed Terms" means the terms, conditions and warranties implied by law into contracts for the supply of goods and services which cannot be excluded, restricted or modified by agreement. "Prime Contractor" means Austal Ships Pty Ltd. "Works" means all works carried out by the Prime Contractor pursuant to these terms and conditions for and on behalf of the Customer including, without limitation, all parts, units, components, ullage, attachments, accessories, movements of vessels, storage of vessels, shipwright work, repairs, maintenance, improvements, supply of labour and specialised tools.

3. Works Authorisation

3.1 By requesting the Prime Contractor to carry out the Works, the Customer authorises the Prime Contractor to do all acts and things that are in the opinion of the Prime Contractor necessary or desirable to carry out and complete the Works including, without limitation:

- (a) to operate the vessel or any machinery, part or device on or about the vessel; and
- (b) to remove from the vessel any machinery, part or device.

3.2 The Customer warrants to the Prime Contractor that it has the authority to request the Prime Contractor to carry out the Works.

3.3 Where the Customer is acting as an agent in requesting the Works, then the Customer agrees to be jointly and severally liable with its principal for all amounts payable to the Prime Contractor arising out of the works and payable pursuant to these terms and conditions.

3.4 Quotes for any Works by the Prime Contractor are valid for the period stated in that quote unless otherwise advised by the Prime Contractor in writing.

3.5 Prices or rates quoted are in Australian dollars (unless otherwise noted) and exclusive of all taxes, duties or charges imposed by any government, statutory authority or agency.

3.6 The Customer may suspend or cancel a request for the Works to be done or call for the Works to cease before completion by notice to the Prime Contractor in writing. Such suspension or cancellation shall entitle the Prime Contractor to immediate payment in full for all Works to date plus reasonable cancellation charges.

4. Dockyard Works

Unless the Prime Contractor otherwise agrees in writing, where Works are to be carried out to a vessel or any machinery, part or device on or about the vessel at a dockyard, slipway, wharf, jetty or any other place, the Customer authorises the Prime Contractor to move the vessel by whatever means and in whatever circumstances that the Prime Contractor considers appropriate.

5. Payment

5.1 The Customer agrees that the vessel or other goods upon which the Works have been carried out will be collected only after the full invoiced price, plus all other amounts payable to the Prime Contractor under these terms and conditions, relating to or arising out of the Works for the Customer, have been made.

5.2 Unless otherwise agreed in writing by the Prime Contractor, if the Customer fails to pay any amounts due to and invoiced by the Prime Contractor (including any interim or progress payments within the period stated on the Prime Contractor's invoice, the Customer shall be liable to pay interest on that amount at a rate equal to the benchmark rate quoted by National Australia Bank Limited from time to time plus 2% calculated on a daily basis from its due date for payment until the amount outstanding (plus interest) has been paid in full.

5.3 Before collecting the vessel or other goods upon which the Works have been carried out, the Customer must inspect the works and satisfy itself that the Works have been carried out in a proper and satisfactory manner. By collecting the vessel or other goods the Customer is taken to have accepted that the Works have been carried out in a proper and satisfactory manner.

5.4 The vessel or other goods upon which the Works have been carried out must be collected from the Prime Contractor's worksite within 7 days (or as otherwise agreed in writing) after notification by the Prime Contractor to the Customer.

5.5 If the vessel or goods are not collected in accordance with clause 5.4, then at the Prime Contractor's option the Prime Contractor may charge the Customer for appropriate storage, security and maintenance costs for the time that the vessel or goods remains uncollected after the deadline specified in clause 5.4.

6. Lien

In addition to any workman's or Prime Contractor's lien which the Prime Contractor may have over the vessel or other goods on which the Works have been carried out, the Prime Contractor shall have a maritime lien over the vessel and/or general lien over any other goods and all other property of the Customer that comes into the possession of the Prime Contractor for any reason until all amounts owing by the Customer or owner of those assets to the Prime Contractor on any account whatsoever have been paid to the Prime Contractor.

7. Risk

The vessel shall, during the performance of the works, be at the sole risk of the Customer.

8. Insurance

8.1 The Prime Contractor shall during the performance of the works, maintain at its sole cost and expense customary General Liability, Shiprepairers Liability and Workers Compensation insurances. Such insurances shall be for a sum of not less than AUD\$10,000,000.

8.2 The Customer shall during the performance of the works maintain customary Marine Hull and Protection and Indemnity (including wreck removal) insurances, with limits of not less than the value of the vessel (including to the extent appropriate the value of the works to be undertaken hereunder) for Marine Hull and for a sum not less than AUD\$10,000,000 for Protection and Indemnity.

9. Warranty

The Prime Contractor warrants to the Customer that the service to be performed and / or the equipment, material and components to be furnished will be free from defects in material or workmanship and will be of the kind and quality designated or specified in the contract.

This warranty shall apply only to defects appearing within 90 days (unless extended terms and conditions are offered by a component supplier) from the completion or installation of the work by the Prime Contractor.

If the defect is the result of faulty parts or material supplied to the Prime Contractor or the result of sub-contracted workmanship, any subsequent claims shall be paid when monies involved have been recovered by the Prime Contractor from the supplier or sub-contractor concerned.

The Prime Contractor's obligations under this clause shall be subject to the provisions of Clause 10 which shall be paramount and shall override anything inconsistent therewith.

10. Limitation of Liability

10.1 Where the Customer is a "consumer" as defined by any relevant law such as the Trade Practices Act 1974 (as amended) or similar State laws, then certain terms and rights (the Prescribed Terms) will be implied into these Terms and Conditions for the benefit of the consumer, which terms and rights and any liability of the Prime Contractor flowing from them cannot be excluded, rescinded or modified by any provision of these Terms and Conditions.

10.2 Except for the Prescribed Terms, any terms, conditions or warranties not expressly stated in the terms and conditions do not form part of any contract between the Prime Contractor and the Customer regarding the Works.

10.3 Subject to the Prescribed Terms, the liability of the Prime Contractor for any breach of any Prescribed Term shall be limited to, at the option of the Prime Contractor:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the cost of repairing the goods;
- (e) the supply of the services again; or
- (f) the payment of the cost of having the services supplied again.

10.4 Except as provided in these terms and conditions, the Prime Contractor shall not in any circumstances be liable in contract, tort, negligence or otherwise for any loss or damage (including consequential, indirect, special or economic loss or damage) which arises out of or in connection with the Works.

10.5 The Customer indemnifies the Prime Contractor for any liability in contract, tort, negligence or otherwise incurred by the Prime Contractor to any third person which arises out of or in connection with the Works including, without limitation, any negligent act or omission on the part of the Prime Contractor or any employee, agent or sub-contractor of the Prime Contractor.

11. Force Majeure

If the Prime Contractor by reason of any matter beyond its control including, without limitation, any act of God, strike, lock-out or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport, refusal of or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations is unable to perform in whole or in part any obligation under these terms and conditions, the Prime Contractor shall be relieved of that obligation under these terms and conditions to the extent and for the period that it is not reasonably able to perform and shall not in any way be liable to the Customer in respect of such inability.

12. Sub-contracting and Indemnity

12.1 The Prime Contractor shall be entitled to sub-contract any part of the Works that are in the opinion of the Prime Contractor necessary or desirable to carry out and complete the Works.

12.2 The Customer undertakes that no claim or allegation shall be made against any person whomsoever, who performs or undertakes the Works (including all sub-contractors of the Prime Contractor), other than the Prime Contractor, which imposes or attempts to impose upon any such person any liability whatsoever in connection with the Works, whether or not arising out of negligence on the part of such person and, if any such claim or allegation should nevertheless be made, to indemnify the Prime Contractor against all consequences thereof.

13. Liability of employees, agents and contractors

It is hereby expressly agreed that every exemption from liability and every right, defence and immunity of whatsoever nature applicable to the Prime Contractor or to which the Prime Contractor is entitled hereunder shall also be available and shall extend to protect every employee or agent of the Prime Contractor (including every independent contractor from time to time employed by the Prime Contractor) while acting in the course of or in connection with their employment or engagement, the Prime Contractor is or shall be deemed to be acting as an agent or trustee on behalf of and for the benefit of all persons who are or might be employees or agents from time to time (including any independent contractors or subcontractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract entered into by the Prime Contractor.

14. General

14.1 If a provision of these terms and conditions is void or unenforceable then that provision shall be severed and these terms and conditions shall be read as if that provision did not form part of it.

14.2 No variation of these terms and conditions (including, without limitation, any Customer purchase order) shall be effective unless the Prime Contractor accepts such a variation in writing.

14.3 A failure by the Prime Contractor to exercise any rights or remedies under these terms and conditions is not a waiver of those rights or remedies unless the Prime Contractor gives clear and express written notification of such waiver.

14.4 These terms and conditions are governed by and shall be construed in accordance with the law of Western Australia.