

TERMS & CONDITIONS

Propel Marine Pty Ltd

PROPEL MARINE PTY LTD

ACN 627 314 756

BIBRA LAKE | A 25 Wellard Street, Bibra Lake WA 6163 | P (08) 9494 1198 | F (08) 9316 1414 |

1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 These Terms and Conditions apply to all Services undertaken and provided by the Company, whether gratuitously or not and the Company accepts instructions to provide Services only in accordance with these Terms and Conditions.
- 1.2 By entering into an Agreement with the Company and by accepting Services from the Company, the Client hereby agrees to be bound by these Terms and Conditions to the exclusion of all other representations, statements, conditions, terms, warranties, whether express, implied, statutory or otherwise except any implied by law or statute which cannot by law be excluded.
- 1.3 These Terms and Conditions may include provisions which change, reduce or exclude entirely rights which the Client might otherwise have at law.
- 1.4 The Company may, by giving written notice to the Client, modify, alter or vary these Terms and Conditions from time to time.
- 1.5 These Terms and Conditions, together with any other written terms of the Agreement, comprise the entire Agreement between the Company and the Client with respect to the Services. In the event of a conflict or inconsistency, the following descending order of precedence shall apply:
 - (a) any specific terms of the Agreement between the Company and the Client set out in writing in any Scope of Work or other document; and then
 - (b) these Terms and Conditions.
- 1.6 While the Company and the Client agree and acknowledge that they reasonably believe (in all the circumstances known to them at the date of entering the Agreement) that these Terms and Conditions are reasonable, as to all of their terms, if a Court shall otherwise determine that any one or more of the terms is unreasonable or unenforceable for any reason, such terms shall be deemed to be severed from the body of these Terms and Conditions such that the remaining terms shall stand and be enforceable between the Company and the Client.
- 1.7 All representatives of the Company shall have the benefit of any and all limitations, indemnities, exceptions and conditions in these Terms and Conditions benefiting the Company as if such provision was made expressly for such representatives.
- 1.8 Nothing in these Terms and Conditions shall exclude or limit any liability or any right which either Party may

have in respect of fraud or in respect of pre-contractual statements given fraudulently or dishonestly or in circumstances where there has been willful concealment of any relevant fact, matter, circumstance or thing.

2. DEFINITIONS

- 2.1 **Agreement** means any agreement or arrangement between the Company and the Client in respect of the provision of any Service by the Company, including the Terms and Conditions set out herein and any specific terms or conditions contained in any Scope of Work or otherwise agreed in writing.
- 2.2 **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as amended from time to time.
- 2.3 **Business Day** means any day other than a Saturday, Sunday or a public holiday in Western Australia.
- 2.4 **Client** means the person by or on behalf of whom the Company is engaged to render any Service pursuant to the Agreement.
- 2.5 **Client Information** means all documents, instructions, specifications, codes, requirements, samples, measurements and other information and materials provided by or on behalf of the Client to the Company in relation to the performance of the Services.
- 2.6 **Company** means Propel Marine Pty Ltd ACN 627 314 756 of 25 Wellard Street, Bibra Lake in the State of Western Australia.
- 2.7 **Confidential Information** has the meaning given in clause 11.1 hereof.
- 2.8 **Corporations Law** means the Corporations Act 2001 (Cth) as amended from time to time.
- 2.9 **Disclosing Party** has the meaning given in clause 11.1 hereof.
- 2.10 **Disbursements** means all reasonable fees incurred in respect of the performance of the Services including without limitation in all photography, copying, electronic transmission costs and all reasonable travel, accommodation and subsistence charges where an overnight stay is necessary.
- 2.11 **Fees** means the Company's fee and any and all other charges and expenses (including any commissions and Disbursements if applicable) payable for the Services as set out in the Scope of Work or otherwise in any Agreement between the Company and the Client or which may be payable by custom of the trade or by reference to a course of dealings between the Company

and the Client or otherwise by reference to the Company's standard hourly rates set from time to time.

- 2.12 **Force Majeure Event** means any occurrence or non-occurrence as a direct or indirect result of which a Party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under the Agreement and that is beyond the reasonable control of that Party, including without limitation Government Authority restrictions, port authority and security restrictions in ports, strikes, boycotts, lock-outs or industrial disputes of any kind (whether relating to its own employees or others), acts of God (including but not limited to earthquake, fire, flood, tsunami, volcano, hurricane, tropical storm, cyclone, blizzard, adverse weather conditions or other similar event) acts of war, terrorist attack, military operations, blockade, sabotage, revolution, riot, civil commotion, insurrection, arrest or restraint of sovereigns, heads of state or rulers, explosion, nuclear contamination, interruption to supply chain, or prolonged power failure.
- 2.13 **Goods** means any goods, including the packages containing those goods and shipping or other transport containers, which are the subject of the Services provided by the Company to the Client.
- 2.14 **Government Authorities** means, without limitation, all domestic and foreign governments, government departments, statutory corporations or authorities, governmental agencies, semi-governmental persons, judicial persons, or persons (whether autonomous or not) who are charged with the administration of law in any place.
- 2.15 **GST** has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law.
- 2.16 **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.
- 2.17 **Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Law) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Law to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing his or her own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Law), entering into a compromise or arrangement with, or assignment for the benefit of, any

of its members or creditors, or any analogous event under the laws of any applicable jurisdiction.

- 2.18 **Intellectual Property Rights** means all present and future rights conferred by law in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information and trade secrets and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable including all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.
- 2.19 **Occupational Health and Safety Law** means any occupational health and safety law applicable to workplaces in any applicable jurisdiction in which the Services are to be performed from time to time.
- 2.20 **Party** means a party to the Agreement and Parties has a corresponding meaning.
- 2.21 **Privacy Law** means the Privacy Act 1988 (Cth) as amended from time to time including the Australian Privacy Principles.
- 2.22 **Receiving Party** has the meaning given in clause 11.1 hereof.
- 2.23 **Related Body Corporate** has the meaning given to that phrase in the Corporations Law.
- 2.24 **Report** has the meaning given in clause 9.1 hereof.
- 2.25 **Scope of Work** has the meaning given in clause 4.4 hereof.
- 2.26 **Services** means the services to be performed by the Company under the Agreement as more particularly described in the Scope of Work relevant to those services or as otherwise agreed by the Parties in writing.
- 2.27 **Supply** has the same meaning as in the GST Law.
- 2.28 **Taxable Supply** means any Supply under the Agreement in respect of which the Company is or may become liable to pay GST.

3. INTERPRETATION

- 3.1 In the interpretation of these Terms and Conditions:
- (a) the singular includes the plural and vice versa;
 - (b) words importing one gender mean and include each other gender;
 - (c) words importing corporation mean and include natural persons and words importing person mean and include corporations;

- (d) references to a representative of any Party is to an employee, officer, agent, contractor or sub-contractor of that Party;
- (e) references to any statute includes reference to that statute as amended from time to time;
- (f) references to clauses are references to clauses in these Terms and Conditions; and
- (g) headings have no effect on the interpretation of these Terms and Conditions.

4. SCOPE OF WORK

- 4.1 The Client must instruct the Company in writing of the Services requested by the Client and provide such Client Information as is reasonably requested by the Company in relation to the instruction within a reasonable time.
- 4.2 Unless written notification to the contrary is given by the Client to the Company at or prior to entering into these Terms and Conditions the Client expressly warrants and represents that all or any Services requested by the Client and acquired by the Client pursuant to the Agreement are so requested, supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by or on behalf of the Client.
- 4.3 The Company will promptly notify the Client of any matter which would render the Company unable or unwilling to provide the Services requested by the Client, including without limitation any conflict of interest or lack of suitable qualifications or experience.
- 4.4 If the Company is willing and able to provide Services to the Client, the Company will prepare and provide to the Client a written scope of work setting out:
 - (a) the Services to be provided on the basis of the Client's instruction;
 - (b) a quote for the Fees payable by the Client in respect of those Services;
 - (c) the email address or addresses of each Party designated for the exchange of correspondence and the provision of written notices in respect of those Services and as required under the Agreement; and
 - (d) any other information, applicable specifications and standards and any specific terms and conditions relevant to the provision of those Services,
(Scope of Work).
- 4.5 If the Client accepts the Scope of Work in writing or by its conduct in continuing to instruct the Company or allowing the performance of all or any part of the

Services set out in the Scope of Work, the Client is taken to have accepted these Terms and Conditions and to have made an offer to purchase the Services as set out in the Scope of Work. The Client's offer is taken to be accepted by the Company if the Company acknowledges, whether orally or in writing, that it accepts the Client's offer or commences performance of all or any part of the Services.

- 4.6 Any variation or addition to the Scope of Work proposed or requested by the Client must be agreed by the Parties in writing.
- 4.7 The Company must not accept any instructions in relation to the Services other than from the Client or its authorised representative, or as otherwise notified by the Client to the Company in writing.
- 4.8 The Client will at all times ensure that it gives full instructions and Client Information to the Company promptly to enable the Company to perform the Services effectively and efficiently.
- 4.9 Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. If the Company adopts the Client's standing or general instructions, or instructions given late, for the provision of Services on any occasion, that does not in any way bind the Company to provide Services on another occasion. No attempt by the Company to adopt the Client's late instructions will constitute acceptance of those instructions by the Company unless the Company prepares a Scope of Work and the Client offers to purchase the Services set out in the Scope of Work as set out in clause 4.5 hereof.
- 4.10 The Company is not liable for any delay, loss, damage or other prejudice that may arise from, out of or in connection with the Client providing incomplete, inaccurate, inadequate or ambiguous instructions.
- 4.11 The Client acknowledges and agrees that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any vessel, product, material, services, Goods, systems or processes tested, inspected or certified and the Scope of Work does not necessarily reflect all specifications and standards which may apply to the same.
- 4.12 The Company hereby reserves the right to and the Client agrees the Company may deviate, without notice, from any specific instructions given by the Client to the Company or from any stated means by which it will provide the Services as set out in the Scope of Work if any event or situation arises rendering the provision of the Services in that manner not commercially viable, despite the reasonable endeavours of the Company to the contrary. In such an event the additional Fees

associated with such alternate means of providing the Services shall be payable by the Client in accordance with these Terms and Conditions provided that such events were, to the reasonable knowledge of the Company, not foreseeable, predictable or anticipated as at the date of the Agreement.

4.13 In the absence of any specific instructions from the Client or stated means by which it will provide the Services as set out in the Scope of Work, the Company may perform the Services in accordance with any relevant trade custom, usage or practice as the Company sees fit and use such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.

5. THE COMPANY'S RIGHTS AND OBLIGATIONS

5.1 The Company must provide the Services set out in the Scope of Work for or on behalf of the Client in accordance with the Agreement and in consideration for the Fees.

5.2 The Company will use all reasonable endeavours to minimise any interference with the Client's business and operations when performing the Services. Unless otherwise agreed in writing, the Company's representatives are not required to be in permanent attendance at any premises, site, vessel, installation, transport or Goods in respect of which or whereupon the Services are to be performed and the Client acknowledges and agrees that their attendances may be intermittent or unannounced.

5.3 The Company must:

- (a) undertake the Services with all reasonable care, diligence, skill and judgement consistent with the level of care, diligence, skill and judgement ordinarily exercised by other companies providing like services under similar circumstances;
- (b) provide the Services in compliance with any applicable:
 - (i) laws, rules and regulations including without limitation Occupational Health and Safety Laws;
 - (ii) specifications and professional or industry standards specified in the Scope of Work;
 - (iii) quality system specified in the Scope of Work;
 - (iv) conditions, restrictions, limitations or terms of any authorisation, permit or licence held by the Company; and

- (v) the Client's reasonable and lawful instructions and security requirements, if any, accepted by the Company in writing from time to time in accordance with these Terms and Conditions.

5.4 Subject to and in accordance with these Terms and Conditions, the Company is entitled to sub-contract with any third party agent or contractor for the performance of all or any part of the Services without notice to the Client.

5.5 The Client authorises the Company to disclose the Scope of Work and such of the Client Information to the Company's agent or sub-contractor as is necessary for the performance of the Services.

5.6 In the event the Company sub-contracts with any third party for the performance of all or any part of the Services, the Company must take all reasonable steps to ensure that any work undertaken by an agent or sub-contractor of the Company meets the requirements of the Agreement and the Scope of Work and the Company remains liable to the Client for the acts and omissions of the Company's agent or sub-contractor.

6. LIMITATION OF THE COMPANY'S LIABILITY

6.1 Without prejudice to the Company's right of indemnity under clause 6.4 hereof:

- (a) the Company is not liable to the Client for any loss, damage, delay, cost or expense of any nature, whether direct or indirect or actual or contingent arising in any manner from the performance of the Services save for any loss, damage, delay, cost or expense caused solely by the Company's negligence, gross negligence or wilful default;
- (b) the Company is not liable to the Client for any loss, damage, delay, cost or expense of any nature, whether direct or indirect or actual or contingent arising in any manner from or in connection with the claim of any third party against the Client save for any loss, damage, delay, cost or expense caused solely by the Company's negligence, gross negligence or wilful default;
- (c) the Company is not liable for any loss or damage caused to any Goods, property, vehicle, machine, vessel or equipment placed at its disposal by or on behalf of the Client in the course of the Company's performance of the Services however such loss or damage occurs and is not liable for any loss or damage arising out of any inherent liability of Goods to wastage, or the faulty design, latent or inherent defect or vice or natural

- deterioration of any Goods or property of the Client;
- (d) the Company is not liable to the Client for any special, indirect or consequential loss (including but not limited to loss of profits), loss of market, business, contracts, anticipated savings, goodwill revenue or wasted expenditure or any loss or damage arising out of any error, act, omission, misstatement or misrepresentation by the Client or its representatives;
- (e) the Company is not liable for any delayed, partial or total non-performance of the Services caused directly or indirectly by any event outside the Company's control including without limitation any failure by the Client to comply with its obligations under the Agreement or any Force Majeure Event;
- (f) in the event the Scope of Work requires the Company to witness any third party intervention, the Company's sole responsibility is to be present at the time of the third party's intervention and to forward the results, or confirm the occurrence of, the intervention for the benefit of the Client and the Company is not liable for the condition or calibration of apparatus, instruments and measuring devices used in the intervention, the analysis methods applied or the qualifications, acts or omissions of the third party or its representatives; and
- (g) in the event the Client proves on the balance of probabilities that any loss, damage, delay, cost or expense arising in any manner from the performance of the Services was caused by the negligence, gross negligence or wilful default of the Company (save for any personal act or omission committed by the Company with the intent of causing the same or recklessly and with knowledge that the same would probably result), the Company's liability for each act or omission, or series of acts or omissions, giving rise to the Client's claim for loss, damage, delay, cost or expense will be limited:
- (i) where any consumer guarantee provided under the Australian Consumer Law does not apply, to no more than a multiple of 10 times the Fees payable by the Client in respect of the Scope of Work or \$100,000, whichever is the lesser; or
- (ii) where any consumer guarantee provided under the Australian Consumer Law does apply, to, at the Client's election, either the Company's provision of those Services again or the amount reasonably incurred by the Client in having those Services performed by a third party.
- 6.2 Any claim by the Client against the Company in respect of the performance, purported performance or non-performance of the Services (subject to clause 6.1 hereof) must be made within twelve (12) months from the date any Report in respect of those Services is submitted to the Client or the date for performance of the Services falls due, whichever is the earlier. The Client's failure to make any claim within twelve (12) months from the applicable date shall constitute a bar or irrevocable waiver to any claim, either directly or indirectly, the Client may make in contract, tort or otherwise in connection with the Agreement.
- 6.3 The Company must maintain, at its own cost, appropriate professional indemnity insurance for such loss and damage for which the Company may be held liable to the Client under the Agreement (subject to clause 6.1 hereof). The Company must give the Client a copy of the insurance policy or certificate of currency upon request.
- 6.4 Except to the extent the Company would be liable under clause 6.1 hereof, the Client hereby agrees to keep the Company and its representatives indemnified and hold them harmless against any actual or threatened claim, demand, action, proceeding or liability of any nature arising in any manner against the Company or any of its representatives or otherwise incurred or suffered by the Company or any of its representatives and in respect of all costs, loss, damage, expense (including, without limitation, legal costs and expenses on a full indemnity basis) which may be suffered by the Company or any of its representatives arising from or in connection with the performance, purported performance or non-performance of the Services. The Client's obligation set out in this clause 6.4 shall survive termination of the Agreement.
- 6.5 The Client agrees to pay any amounts claimed pursuant to the indemnity in clause 6.4 hereof within seven (7) days of written demand by the Company.
- 6.6 The Company and the Client hereby agree that the limits and exclusions of liability found in this clause are fair and reasonable having regard to the nature of the Services, the Fees in respect of the Services and all other circumstances known to the Client and the Company relating to the Services at the time of the making of the Agreement.

7. THE CLIENT'S RIGHTS AND OBLIGATIONS

- 7.1 The Client warrants to the Company that:
- (a) the Client has the power and authority to enter into the Agreement and procure the provision of the Services from the Company;
 - (b) unless specified in writing, the Client seeks the provision of the Services on its own account and not as an agent or broker of another person or entity or in any other representative capacity; and
 - (c) the Client has obtained and will maintain all necessary licenses, permits, authorisations and approvals including without limitation from any Government Authority in relation to the Services.
- 7.2 In addition to its obligation in clause 4.1 hereof, the Client must provide to the Company promptly upon request and at the Client's own expense all of the Client Information reasonably requested by the Company to enable the Company to provide the Services. The Client Information will remain the property of the Client.
- 7.3 The Client warrants to the Company that the Client Information:
- (a) is accurate, up to date, complete, relevant to the Services to be performed by the Company and is not misleading in any manner;
 - (b) complies with any applicable laws, rules, regulations, Australian or international standards, industry specifications and the requirements or policies of any relevant Government Authorities; and
 - (c) is retained by or on behalf of the Client in the manner required by any relevant Government Authorities.
- 7.4 The Company will not be liable for a delay or failure to perform the Services or any part thereof if there is a failure or delay by the Client or its representatives in providing the Company with any Client Information.
- 7.5 The Client must co-operate with the Company in all matters relating to the Services and comply with the Client's reasonable directions and requests from time to time to enable the Client to perform the Services.
- 7.6 The Client must supply, if reasonably requested by the Company, any special tools, equipment, materials and personnel necessary for the performance of the Services.
- 7.7 The Client must provide, procure and facilitate for the Company and its representatives unrestricted access to any premises, site, vessel, installation, transport and Goods in respect of which or whereupon the Services are to be performed and will take all necessary steps to

ensure that appropriate occupational health and safety measures are taken, to the Company's satisfaction, to provide safe and secure working conditions for the Company and its representatives including without limitation by complying with all applicable Occupational Health and Safety Laws and the requirements or policies of all Government Authorities.

- 7.8 The Client must give the Company prior written notice of any known or reasonably foreseeable barriers, issues, hazards or dangers, actual or potential, associated with access to any premises, site, vessel, installation, transport and Goods in respect of which or whereupon the Services are to be performed.
- 7.9 If access to any premises, site, vessel, installation, transport and Goods in respect of which or whereupon the Services are to be performed is unavailable for any reason (other than due to the fault of the Company) at a time when the Company's representatives are available and on standby to access the same to perform the Services, the Client is liable to pay the Company its usual hourly rates for those representatives for the standby time, unless otherwise agreed in writing by the Company.
- 7.10 The Client must maintain all applicable insurance policies with a reputable insurance company to cover the potential liabilities which the Client may owe to the Company or its representatives arising out of or in connection with the Agreement. The Client must give the Company a copy of the insurance policies or certificates of currency upon request.
- 7.11 In agreeing to provide the Services pursuant to the Agreement, the Company does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person or any duty or obligation of any person to the Client.

8. RELATIONSHIP BETWEEN COMPANY AND CLIENT

- 8.1 The relationship of the Company and the Client under the Agreement is that of principal and contractor. The Agreement and any conduct engaged in by the Parties under the Agreement does not constitute either Party a joint venturer, partner, associate, employee, or legal representative of the other. No act or omission of either Party is to bind the other Party except as expressly set out in the Agreement.
- 8.2 The Company expressly disclaims any liability to the Client as an insurer or guarantor.

9. REPORTING

- 9.1 In providing the Services, the Company in its capacity as an independent contractor will supply information collected by the Company and the Company's analysis of the information to the Client in writing in the form of any one or more of ascertainment, advice, assessment, calculation, certification, estimate, finding, inspection report, laboratory data, memoranda, notes, recommendation or test result as the Company considers appropriate having regard to applicable regulatory requirements, applicable industry standards and/or any other applicable form or standard that is mutually agreed by the Parties in the Scope of Work or otherwise in writing (Report).
- 9.2 Subject to clause 9.3 hereof, the Report is for the sole use of the Client and must not be reproduced or distributed by the Client or relied upon by any third party without the prior written consent of the Company.
- 9.3 If the Scope of Work expressly or impliedly provides that the Client or the Company is obliged in the performance of the Services to deliver any Report to a third party, the Client is taken to have expressly authorised the Company to deliver such a Report to the applicable third party and the Company is taken to have expressly authorised the Client to reproduce, distribute or rely upon the Report in connection with the delivery of the Report to the applicable third party.
- 9.4 The Company warrants that any Report produced in respect of the Services will not infringe the Intellectual Property Rights of any third party. This warranty does not apply where any infringement is directly or indirectly caused by the Company's reliance upon or adoption of any Client Information or other instruction given by the Client or any of its representatives.
- 9.5 The Client agrees and acknowledges that:
- (a) any Report is prepared by the Company in reliance upon and with reference to any instruction and Client Information provided by the Client or recorded by the Company at the time of the Company's performance of the Services only;
 - (b) the Company is under no obligation to refer to or advise upon in any Report any facts or circumstances which are outside the Scope of Work and the Client agrees the Company is not liable for the omission of any facts or circumstances which are outside the Scope of Work;
 - (c) conclusions contained in any Report must be read and interpreted by reference to the limits of any instruction and Client Information provided

by the Client or recorded by the Company at the time of the Company's performance of the Services; and

- (d) the Client (and not the Company or its representatives) is solely and exclusively responsible for any decision, act or omission undertaken by the Client or any third party on the basis of any Report provided by the Company.

- 9.6 If the Client anticipates the use of all or any part of a Report directly or indirectly in connection with any legal proceeding, arbitration, dispute resolution process or other proceeding, financing or fundraising activity, valuation exercise or otherwise in the communication or provision of information to a regulator or auditor, the Client must first notify the Company in writing prior to offering to purchase the Services from the Company, if practicable to do so, or prior to the performance of the Services or provision of a Report.
- 9.7 Unless required by law or agreed in writing between the Parties, the Company and its representatives have no obligation under the Agreement to provide an expert witness or witness of fact in any legal proceeding, arbitration, dispute resolution process or other proceeding in connection with the Company's performance of the Services or provision of a Report.

10. INTELLECTUAL PROPERTY

- 10.1 All Intellectual Property Rights belonging to any Party prior to entry into the Agreement shall remain vested in that Party. Nothing in this Agreement is intended to transfer those Intellectual Property Rights from either Party to the other.
- 10.2 All Intellectual Property Rights arising from, out of or in connection with the performance of the Services, including any Reports, will vest in the Company immediately upon their creation and will be owned by the Company. To the extent the Client may at any time create or acquire any Intellectual Property Rights arising from, out of or in connection with the performance of the Services, the Client hereby assigns those future Intellectual Property Rights to the Company immediately upon their creation.
- 10.3 In the event the Company provides certification Services, the Client agrees and acknowledges that the use of certification trade marks may be subject to national and international laws and regulations in force from time to time.
- 10.4 The Client agrees that it will not contest the validity or ownership of any Intellectual Property Rights that vest in the Company pursuant to clause 10.2 hereof or engage in any conduct that may impair the value of those Intellectual Property Rights.

10.5 Nothing in the Agreement gives the Client any interest in any Intellectual Property Rights of the Company, save that the Company grants to the Client a non-exclusive, royalty-free, perpetual, worldwide licence to make use of any Report for the purpose provided in the Scope of Work or otherwise as provided in the Agreement.

10.6 The Client grants to the Company and its representatives a non-exclusive, royalty-free, perpetual, transferrable and worldwide licence to make use of any Intellectual Property Rights owned by the Client for the sole purpose of performing the Company's obligations under the Agreement.

11. CONFIDENTIALITY

11.1 Where a Party or any of its representatives (the **Receiving Party**) receives or obtains any information regarding the other Party's business, including without limitation, information with respect to assets, affairs, operations, procedures, methods, accounting, technical data, existing or prospective clients, existing or prospective agents or sub-contractors, employees or prospective employees, or any other information which the other Party has designated as confidential (**Confidential Information**) from the other Party or any of its representatives (the **Disclosing Party**) in connection with or for the purpose of the Agreement, (whether before or after the date of the Agreement), the Receiving Party must, subject to clauses 11.2 and 11.3 hereof:

- (a) keep the Confidential Information confidential, by applying the standard of care that a reasonable person in the position of the Receiving Party would apply to protect the confidentiality of its own Confidential Information;
- (b) use the Confidential Information solely for the purpose of performing its obligations under the Agreement; and
- (c) not disclose the Confidential Information, directly or indirectly, to any other person without the prior written consent of the Disclosing Party.

11.2 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) if the disclosure is expressly or impliedly required by the Scope of Work, is otherwise necessary for the performance of the Services and of the Parties' obligations pursuant to the Agreement or is authorised by the Disclosing Party giving its prior written consent;
- (b) if the information was public knowledge at the date of the disclosure;

- (c) if the information was already in the lawful possession of any person to whom the disclosure is made other than by breach of clause 11.1 hereof;
- (d) if the information is independently disclosed by a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (e) if the disclosure is required pursuant to any law or regulation to which the Receiving Party is subject and the Receiving Party must give the Disclosing Party notice in writing of any requirement to disclose; or
- (f) is independently developed by the Receiving Party without access to the relevant Confidential Information.

11.3 The Receiving Party may disclose the Disclosing Party's Confidential Information to any of the Receiving Party's representatives and professional advisors as required and the Receiving Party must ensure that its representatives and professional advisors are aware of and comply with the Receiving Party's obligations in clause 11.1 hereof.

11.4 The Client hereby consents to the Company's disclosure of Client Information to an accreditation body for the purpose of assessing the Client's competence and compliance with the relevant accreditation criteria.

11.5 The obligations in this clause 11 survive termination of the Agreement.

12. PRIVACY AND DATA

12.1 The Company shall observe all applicable statutory provisions with regard to the privacy of personal information and data protection including but not limited to the Privacy Laws.

12.2 To the extent the Company possesses or has access to personal information and data of the Client, its representatives or any other person in connection with the provision of the Services or otherwise in connection with this Agreement, the Company must take all necessary technical and organisational measures to ensure the security of the personal information and data and to guard against any unauthorised or unlawful access to, processing of, accidental loss of, destruction of or damage to such personal information or data.

13. PAYMENT OF FEES

13.1 Unless otherwise agreed in writing, the Company may revise the Fees quoted in the Scope of Work upon giving written notice to the Client:

PROPEL MARINE PTY LTD

Terms and Conditions

- (a) if the Scope of Work is not accepted by the Client in accordance with clause 4.5 hereof within thirty (30) days from the date thereof;
 - (b) if the Services or any part thereof cannot be commenced by the Company (other than due to the fault of the Company) within thirty (30) days from the date of the Scope of Work;
 - (c) if the duration of the Services exceeds twelve (12) months from the date of the Scope of Work;
 - (d) if the Services or any part thereof are suspended by the Company in accordance with clause 13.6(b) hereof; or
 - (e) if the Company is notified of any change to the Client Information that affects the fees quoted in the Scope of Work, or the Parties agree to any variation of the Scope of Work, following the commencement of the Services or part thereof.
- 13.2 All Fees and other charges will be invoiced by the Company to the Client on a monthly basis or upon completion of the Services unless otherwise specified in the Scope of Work.
- 13.3 Unless otherwise agreed in writing between the Parties, the Client is liable to pay all of the Company's Fees within thirty (30) days from the date of any invoice issued by the Company in respect of the Services or part thereof.
- 13.4 The Client must reimburse all reasonable Disbursements and other expenses incurred by the Company in providing the Services, whether or not quoted in the Scope of Work, provided that any Disbursement or expense in excess of \$1,000 or such greater amount as may be specified in the Scope of Work is approved in writing by the Client before it is incurred by the Company.
- 13.5 If the Company is unable to perform all or part of the Services for any cause whatsoever outside the Company's control (due to no fault of the Company) including without limitation any failure by the Client to comply with its obligations under the Agreement, the Company is entitled to payment of such Fees that consist of:
- (a) the amount of all non-refundable Disbursements or other expenses incurred by the Company; and
 - (b) a proportion of the Fees quoted in the Scope of Work equal to the proportion of the Services actually performed by the Company.
- 13.6 Without prejudice to any other right or remedy that the Company may have, if the Client fails to pay any invoice issued by the Company by the due date, the Company may:
- (a) charge interest on any Fees or part thereof due and payable from the due date at a monthly rate calculated at 8% above the Reserve Bank of Australia Cash Rate prevailing at the due date, accruing daily and being compounded monthly until payment is made in full; and
 - (b) immediately upon giving written notice to the Client suspend all or part of the Services until the Fees or part thereof due and payable and any interest accrued thereon is paid by the Client in full. Notwithstanding any suspension of the Services, the Client is liable to pay the Company for the Fees in respect of all Services performed or part performed up to the date of suspension plus all interest accrued thereon and the suspension costs and expenses incurred by the Company.
- 13.7 The Client is not entitled to retain or defer payment of the Fees or any part thereof due and payable to the Company on account of any dispute, counterclaim or set off which the Client may allege against the Company.
- 13.8 In any dispute under the Agreement involving any Fees or part thereof owed to the Company, the Client is liable to pay the Company's costs of collection and enforcement, including all legal costs and expenses.
- 13.9 The Company reserves the right to offset any amounts receivable from the Client against any amounts payable by the Client or any entity affiliated with the Client or any Related Body Corporate of the Client. This right exists irrespective of the date the relevant liabilities have been created or debts incurred with the Company.
- 14. GST**
- 14.1 The amount of any Fees quoted in the Scope of Work or any variation thereof or otherwise referred to in the Agreement is exclusive of GST and any other tax unless expressly provided.
- 14.2 If the Company is or may become liable to pay GST in relation to any Supply (or deemed Supply) provided under or in connection with the Agreement, the Fees payable in relation to that Supply (or deemed Supply) are increased by an amount equal to the amount of the applicable Fees multiplied by the rate at which GST is relevantly imposed.
- 14.3 The Company must provide to the Client a GST tax invoice as required by the GST Law.

14.4 The Client is liable to pay all taxes or duties arising from or in connection with the Agreement.

15. DELIVERY OF GOODS

15.1 Where the Client may from time to time direct certain Goods to be delivered to the Company at 25 Wellard Street, Bibra Lake in the State of Western Australia in respect of the Services:

- (a) the Company may accept delivery of the Goods in its absolute discretion;
- (b) upon receipt of the Goods if accepted pursuant to clause (a) above the Company shall notify the Client that the Goods have been received by the Company;
- (c) the Company is not liable for any delay howsoever caused in relation to rejection, receipt or delivery or non-receipt or non-delivery of the Goods;
- (d) the Client shall at all times be solely responsible for the Goods and for collection of the Goods from the Company within fourteen (14) days from the date on which the Company notifies the Client in writing that the Goods are available for collection;
- (e) the Company shall be entitled to store the Goods or any part thereof in the Company's absolute discretion and at the sole risk, cost and liability of the Client;
- (f) the Company shall be entitled to dispose of the Goods or any part thereof, by sale or in any manner as the Company deems reasonable in the circumstances, which have been stored by the Company for more than fourteen (14) days after the Company has notified the Client that the Goods are available for collection and reserves the right to accept any offer which may or may not amount to the market value of the Goods if the Client fails or refuses to collect the goods within fourteen (14) days of receiving the Company's notification.

15.2 Any and all costs incurred by the Company in relation to the receipt, storage, collection and disposal of the Goods are payable to the Company by the Client upon written demand.

16. NOTICES

16.1 Any written notice required under or in connection with the Agreement may be served on a Party:

- (a) by email to the Party's designated email address or addresses specified in the Scope of Work;

- (b) personally on an officer of the Party;
- (c) by registered post to the address of the registered office of the Party, such other address as is notified by the Party in writing or the Party's last known address; or
- (d) by facsimile to the Party's last known facsimile number.

16.2 A notice served in accordance with clause 16.1 above is deemed to be received by the Company if:

- (a) personally, on the day the notice was handed to the relevant officer of the Party;
- (b) by post, on the second business day after posting; or
- (c) by email or by facsimile, if transmitted during normal business hours on a Business Day on the same date it was transmitted or otherwise on the next Business Day after transmission.

17. TERM AND TERMINATION

17.1 The Agreement shall commence on the date the Company accepts the Client's offer in accordance with clause 4.5 hereof and shall continue, unless terminated in accordance with clause 17.2 or 17.3 hereof, until the Services have been performed in full.

17.2 Without prejudice to any other rights or remedies that may be available to the Company, the Company may terminate the Agreement with immediate effect and without liability by giving written notice to the Client if the Client:

- (a) fails to pay any Fees due and payable under the Agreement on the due date for payment and remains in default for not less than seven (7) days after being notified in writing to make such payment;
- (b) commits any material breach of any term of the Agreement (or in case of a breach capable of being remedied if the Client fails, within fourteen (14) days of the receipt of a request in writing from the Company to do so, to remedy the breach);
- (c) repeatedly breaches any term of the Agreement in such a manner as to reasonably justify the Company's opinion that the Client's conduct is inconsistent with the Client having the intention or ability to be bound by and give effect to the terms of the Agreement;
- (d) suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business;

- (e) gives notice that it is affected, or is likely to be affected, by a Force Majeure Event in accordance with clause 18.2 hereof; or
 - (f) is affected by an Insolvency Event.
- 17.3 Without prejudice to any other rights or remedies that may be available to the Client, the Client may terminate the Agreement with immediate effect and without liability by giving written notice to the Company if the Company:
- (a) commits any material breach of any term of the Agreement (or in case of a breach capable of being remedied if the Company fails, within fourteen (14) days of the receipt of a request in writing from the Client to do so, to remedy the breach);
 - (b) repeatedly breaches any term of the Agreement in such a manner as to reasonably justify the Client's opinion that the Company's conduct is inconsistent with the Company having the intention or ability to be bound by and give effect to the terms of the Agreement;
 - (c) suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business;
 - (d) gives notice that it is affected, or is likely to be affected, by a Force Majeure Event in accordance with clause 18.2 hereof; or
 - (e) is affected by an Insolvency Event.
- 17.4 Upon termination of the Agreement:
- (a) the Client must immediately pay to the Company all of the Company's outstanding unpaid Fees incurred in the provision of Services or part thereof performed by the Company up to the date of termination and any interest accrued thereon and, in respect of Services performed but for which no invoice has been issued, the Company may issue an invoice which will be payable by the Client immediately on receipt;
 - (b) if the Agreement is terminated pursuant to clause 17.2 hereof, the Client is liable to immediately pay to the Company the amount of any loss or damage suffered by the Company as a result of the termination;
 - (c) the Client must return all of the Company's materials, equipment, tools and information and if it fails to do so, then the Company may enter the Client's vessel or premises and take possession of the materials, equipment, tools and information;
- (d) the Company must return all of the Client Information to the Client;
 - (e) the obligations in clause (a), (b), (c) and (d) herein shall survive termination of the Agreement; and
 - (f) termination of the Agreement does not affect the accrued rights and obligations of the Parties under the Agreement and nor does it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination.
- 18. FORCE MAJEURE**
- 18.1 Neither Party, except as otherwise provided in the Agreement, shall be responsible or liable to the other Party for any loss, damage, delay or failure in the performance of the Party's obligations under the Agreement if and in so far as and for so long as such performance is delayed or prevented by the other Party's acts or omissions, or by any Force Majeure Event providing that the Party complies with clauses 18.2 and 18.3 hereof.
- 18.2 If a Party is affected, or is likely to be affected, by a Force Majeure Event:
- (a) that Party must immediately give the other Party prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify or mitigate it; and
 - (b) the obligations under the Agreement of the Party giving the notice are suspended to the extent to which they are affected by the Force Majeure Event for as long as the Force Majeure Event continues.
- 18.3 A Party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a Party to settle any industrial dispute in any way that it considers inappropriate.
- 18.4 If the Company is prevented for any reason beyond its control, including a Force Majeure Event, from performing the Services or part thereof, the Client agrees:

- (a) to reimburse the Company for any Disbursements and expenses reasonably incurred by the Company to the date thereof; and
- (b) to pay the proportion of Fees in respect of the Services or part thereof performed by the Company to the date thereof and to release the Company from all responsibility for, or to complete, partial or total non-performance of the Services if so requested by the Company in writing.

19. ASSIGNMENT

- 19.1 The Client may not assign or transfer any or all of its rights under the Agreement without the prior express written consent of the Company.
- 19.2 The Company may assign or transfer its rights or obligations under the Agreement in its sole discretion without the consent of the Client but must notify the Client of any such assignment or transfer in writing. The Client hereby consents to the Company's disclosure of any of the Client's Confidential Information to an actual or prospective assignee or transferee.

20. ALTERATIONS OR VARIATIONS

- 20.1 The Company may, by giving written notice to the Client, modify, alter or vary these Terms and Conditions from time to time.
- 20.2 No representative of the Company has the authority to modify or vary these Terms and Conditions unless a Director of the Company approves such modification or variation in writing.

21. WAIVER

- 21.1 A right or remedy may only be waived in writing, if expressly stated to be a waiver and signed by the Party giving the waiver.
- 21.2 Subject to clauses 6.2 and 21.1 hereof, the conduct of any Party (including a failure to exercise or delay in exercising any right of that Party) shall not operate as a waiver of that right, shall not cause a diminution of the obligations established by the Agreement and does not otherwise prevent the exercise of that right.
- 21.3 No representative of the Company has the authority to waive any right of the Company under these Terms and Conditions unless a director of the Company (within the meaning of that term in the Corporations Law) approves such waiver in writing.
- 21.4 A waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again.

22. LAW AND JURISDICTION

- 22.1 The Agreement made between the Company and the Client shall be governed by and construed according to the laws of Western Australia.
- 22.2 The Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and of any court that may hear appeals from any of those courts, for any proceedings in connection with the Agreement.

23. DISPUTE RESOLUTION

- 23.1 If any dispute arises under or in connection with the Agreement, including without limitation any question regarding its existence, validity or termination, (**Dispute**), a Party may not commence any court proceedings in relation to the Dispute unless it has first complied with this clause 23, unless:
 - (a) the other Party fails or refuses to participate in the dispute resolution processes or any of them required by this clause 23;
 - (b) a Party seeks urgent equitable relief; or
 - (c) a statutory limitation period in relation to any cause of action arising from the Dispute would expire if a court proceeding is not commenced prior to the completion of the dispute resolution processes within the timeframes set out in this clause 23.
- 23.2 A Party claiming that a Dispute has arisen under or in connection with the Agreement must give written notice to the other Party setting out the nature of the Dispute (**Dispute Notice**).
- 23.3 Notwithstanding any Dispute, the issue of any Dispute Notice or the conduct of the dispute resolution processes required by this clause 23, the Parties must continue to perform their respective obligations under the Agreement unless their performance or purported performance is materially affected by the submission of the matter in Dispute to mediation or arbitration.
- 23.4 **Negotiation**

Within ten (10) Business Days from the date of the Dispute Notice, the representative of each Party with the highest level of authority (such as its chief executive officer or managing director) must meet in person or discuss by telephone to seek in good faith to resolve the Dispute. Any resolution agreed between the Parties' appropriate representatives is binding on the Parties. All aspects of the meeting or telephone discussion, except the fact of its occurrence, must be kept confidential and all communications between the Parties' representatives are made on a without prejudice basis.

23.5 Mediation

If the Dispute is not resolved in accordance with clause 23.4 hereof within fifteen (15) Business Days from the date of the Dispute Notice, the Party who issued the Dispute Notice must request that the Dispute be referred to mediation as follows:

- (a) Unless otherwise agreed by the Parties in writing, the mediation will be conducted in Perth in the State of Western Australia within thirty (30) Business Days from the date of the Dispute Notice and is to be attended by the representative of each Party with the highest level of authority (such as its chief executive officer or managing director).
- (b) The mediator will be appointed by agreement between the Parties and if the Parties fail to agree within three (3) Business Days, the mediator will be appointed by the President of the Institute of Arbitrators & Mediators Australia, at the request of the Party who issued the Dispute Notice.
- (c) The mediator's fees and charges will be borne by the Party who issued the Dispute Notice unless otherwise agreed between the Parties.
- (d) The Parties will seek in good faith to resolve the Dispute at mediation.
- (e) Any resolution agreed between the Parties at mediation is binding on the Parties. All aspects of the mediation, except the fact of its occurrence, must be kept confidential and all communications between the Parties' representatives and the mediator, including in the course of the mediation itself, are made on a without prejudice basis.

23.6 Arbitration

If the Dispute is not resolved in accordance with clause 23.5 hereof within thirty (30) Business Days from the date of the Dispute Notice, the Dispute shall be finally settled by arbitration as follows:

- (a) Unless otherwise agreed by the Parties in writing, the seat of the arbitration will be Perth in the State of Western Australia and the language of the arbitration will be English.
- (b) The arbitration must be conducted in accordance with the Arbitration Rules 2016 published by the Australian Centre for International Commercial Arbitration (**Arbitration Rules**).
- (c) A single arbitrator will be appointed by agreement between the Parties and if the Parties fail to agree within fifteen (15) Business Days, the

single arbitrator will be appointed by the President of the Institute of Arbitrators & Mediators Australia, at the request of the Party who issued the Dispute Notice.

- (d) All aspects of the arbitration, except the fact of its occurrence, must be kept confidential. All communications between the Parties' representatives and the arbitrator and any arbitral award are made or received on a confidential basis.
- (e) The arbitrator must state in any arbitral award the reasons upon which the award is made.
- (f) Any arbitral award is final and binding on the Parties and may be enforced by the courts of any relevant jurisdiction. The Parties must carry out any arbitral award without delay.
- (g) The costs of and incidental to the arbitration must, in principle, be borne by the unsuccessful Party, but the arbitrator may apportion costs between the Parties in accordance with the Arbitration Rules.