



**Vessel Management Services Ltd**  
157 Westhaven Drive Westhaven

PO Box 147-112, Ponsonby, Auckland, New Zealand

Phone: 09 360 9867 Fax: 09 360 9868

Email: info@vms.co.nz Website: www.vms.co.nz

## VESSEL MANAGEMENT SERVICES LIMITED TERMS OF TRADE FOR GOODS AND SERVICES

Goods and Labour Services ("Goods and Services") supplied by VESSEL MANAGEMENT SERVICES LIMITED ("the Company") are supplied to ("the Purchaser") for sale on the following terms and conditions:

### 1. Terms of Contract between Company and Purchaser

1.1 These Terms of Contract between the Company and Purchaser shall apply to all orders accepted by the Company or quotations approved by the Purchaser and that these Terms and Conditions shall prevail and take precedence over any written document or oral message from the Purchaser and in the case of conflict or dispute between the parties these Terms and Conditions shall prevail. Where the Company fails to enforce any of the Terms and Conditions of this contract or fails in any way to exercise its rights under this contract the Company will not be deemed to have waived these rights with respect to any Term or Condition or right.

### 1.2 Definition of Goods and Services:

**Goods:** Goods shall mean any materials or parts or machinery including intellectual property associated with prototypes, samples and sample manufacture supplied by the Company for sale to the Purchaser.

**Services:** Services shall mean labour service for workmanship to manufacture, repair or service equipment owned by the Purchaser or other contracting such as installation and commissioning supplied at an hourly rate or at a quoted fixed cost.

1.3 The description given of any Goods to be made for order to the Purchaser relating to drawings, metallurgical standards, mechanical or other properties and any other descriptive matter has been given by way of identification only and the use of such description shall be the responsibility of the Purchaser as to fitness for purpose and does not constitute this contract as a sale by description and binding upon the Company until the Quotation describes the terms as being a sale by description.

1.4 The Purchaser shall agree that any commissioning or testing or acceptance procedure agreed in the Quotation that has been successfully completed by the Company, the Purchaser shall not make any claim against the Company that supply of the order does not meet the Purchaser's requirements for the completion of the order.

### 2. Quotations and Price and Works Authorisation

2.1 By requesting the Company to carry out the Works, the Purchaser authorises the Company to do all acts and things that are in the opinion of the Company 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.

2.2 The Purchaser warrants to the Company that it has the authority to request the Company to carry out the Works.

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

2.4 The Company shall quote a cost for Goods and Services in its Quotation following instructions from the Purchaser and the Purchaser shall confirm the cost by signing an order to the Company or signing the Company's Quotation. Quotations shall be valid for up to (30) thirty days but the Company may withdraw any Quotation before Purchaser signed acceptance.

2.5 No order arising out of the acceptance by the Company of an order shall be cancelled without the consent of the Company, and in such cases the Purchaser will be liable to pay the Company all costs and expenses incurred by the Company in fulfilling the order to the date of cancellation.

2.6 The Quotation price shall be net of GST and may be increased if the Company suffers any cost increases which are beyond its control in the supply, production and delivery of Goods and Services (including increases in materials costs and currency changes) between the date of contract (or, where the contract arises from a Quotation the date of the Quotation) and the date of delivery, where the Company can supply written evidence of such cost increases or if the Purchaser varies or alters its requirements for the Goods and Services. Variations and alterations may result from changes to instructions from the Purchaser requiring a changed basis for the Cost of Goods and Services OR additional drawings, samples, materials or tooling changes.

2.7 Where the Purchaser provided instructions, specifications, tools or dies for use in manufacture the Company warrants that it will supply the Goods according to instructions, specifications, tools or dies supplied by the Purchaser and that liability for Goods supplied under these circumstances shall remain with the Purchaser and the Purchaser will not hold the Company responsible for any economic or consequential loss that may be suffered by the Purchaser as a result of incorrect or mistaken instructions, specifications or tools or dies provided by the Purchaser or worn tools or dies owned by the Purchaser.

### 3. Delivery of Goods and Services

3.1 Delivery of the Goods to the care and control of the Purchaser shall constitute delivery including any delivery agent of the Purchaser and in the absence of providing a delivery agent the Purchaser shall accept that the delivery method of the Company. Delivery of Services shall be completion of labour services required by the order. The Company will make every effort to ensure that Goods and Services are supplied on time, but will not be responsible for any loss or damage to the Customer's property arising in any way from delays in delivery.

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- 3.2 Delivery of plus or minus ten per cent (10%±) of the quantity of the Goods ordered by the Purchaser constitutes delivery and the Purchaser shall accept a pro-rata cost for the quantity supplied.
- 3.3 Where the Company has performed part or all of the supply of Goods or Services at a time agreed by the Purchaser but where delivery is delayed because of any act, omission or delay by the Purchaser or where Service delivery is delayed by reasons caused by the Purchaser including the Purchaser not rendering its site safe under any Health and Safety Regulations, the Company will require the Purchaser to pay that portion of the contract price which represents the costs incurred by the Company in carrying out supply and the Company may also charge stand by costs while the Purchaser renders the site ready.
4. **Payment Terms**
- 4.1 Payment to be made by the means declared by the Company which will be seven days from date of invoice deposit declared in the Quotation Schedule before work will begin or upon delivery of the Goods and Services except where the Company has agreed to provide credit to the Purchaser in which case payment shall be the twentieth of the following month following the date of invoice and final payment is to be made in full without deduction or setoff according to the terms set out in the Quotation Schedule.
- 4.2 If payment is not made in full by the due date, the Company is entitled to charge the Purchaser interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by the Company's bank calculated from the due date of payment down to the actual date of payment, and the Company may at its option suspend the sale and secure the Goods in its possession regardless of the term of this contract until the overdue amounts are paid in full.
- 4.3 If at any time the Company reasonably deems the credit of the Purchaser to be unsatisfactory, it may require the Purchaser to provide at the Purchasers cost, security for payment and/or the Company may suspend performance of any of its obligations under this Contract until security is provided to the Company's satisfaction and the Company may require the Purchaser to pay all costs incurred as a result of suspension and re-commencement of supply including legal and debt collection costs.
5. **Risk and Ownership of Title**
- 5.1 Risk in the Goods shall pass to the Purchaser upon delivery but that ownership and title in the Goods shall remain with the Company until payment in full. The Purchaser agrees to insure the Goods upon delivery and will not hold the Company liable for any loss damage that may occur while under the risk of the Purchaser. If any or part of the Goods suffer loss damage while under the risk of the Purchaser, the Purchaser shall remit the proceeds of insurance claims to the Company. If the Purchaser defaults on its promise to properly insure the Goods, the Purchaser agrees to pay the Company for the cost of Goods suffering loss damage.
- 5.2 Regardless of either party supplying specifications or designs for making the Goods, the Purchaser shall agree that it can only use the Goods or resell the Goods as fiduciary agent and bailee of the Company and the Purchaser shall deal with and retain the proceeds from sale under trust to the Company and in a separate bank account that is not mixed with other funds of the Purchaser until the Purchaser pays the Company in full.
- 5.3 If the Goods including the value of Services the subject of this contract, have become the constituent of mixed with or attached to any other goods, meaning Goods that are sold by the Company and those goods are sold by the Purchaser prior to the Company receiving payment, then a portion of the proceeds of that sale, attributable to the Company's Goods, shall be the property of the Company, and the Purchaser shall ensure that such proceeds are at all times held in a separate fund in trust for the Company.
- 5.4 This reservation of title and ownership is effective whether or not the Goods have been altered from that supplied or mixed with other materials or fixed to property owned by the Purchaser. Where such Goods are mixed and are severable but not identifiable or where it is impractical to remove the Goods without incurring loss to an innocent third party, the Company is co-owner of the property in proportion to the contribution made by the Goods to the value of the Purchaser's or property.
- 5.5 The Purchaser shall inform its creditors of the terms upon which it buys Goods from the Company including that the Company may create and register a Purchase Money Security Interest over the Goods under the Personal Property Securities Act and that the Purchaser waives the right to receive a verification statement for purposes of s.148 of the Act and shall also inform any Trustee in Bankruptcy or Liquidator of the Purchaser or any Receiver of the Purchaser's business or assets of the rights of the Company and title to the proceeds of sale.
- 5.6 In any event where Goods remain unpaid by the Purchaser, the Company has unreserved right to enter the property of the Purchaser or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the Credit (repossession) Act and the Purchaser will not hold the Company responsible for any economic or consequential loss that the Purchaser may suffer as a result, whether the Goods are attached to other goods or property owned by the Purchaser, or not.
6. **Use of Intellectual Property and Indemnity**
- 6.1 The Purchaser agrees that the use of intellectual property in which the Company is proprietor in the form of published material, patents, trademarks, copyrights, manuals, drawings and other technical information, shall be for the sole purposes of the Purchaser in using the Goods and may not be copied, altered, adapted or given to any third party without the written permission of the Company. The Purchaser further agrees not to give or make any undertaking, assertion or representation in relation to the Goods to any other person or Company without the prior approval in writing of the Company, and the Purchaser shall indemnify the Company against liability or cost incurred by the Company as a result of any breach by the Purchaser of this provision.

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6.2 Where the Company has followed plans, drawings, designs, specifications and instructions being oral or written provided by the Purchaser, the Purchaser shall indemnify the Company against damages, costs and expenses in respect of which the Company may become liable by following such plans, drawings, designs, specifications and instructions and including those arising from the infringement of patents, copyrights or trademarks by the Purchaser.

**7. Warranty and Guarantees**

7.1 The Company shall warrant Goods for a period of twelve (12) months and Services for a period of three (3) months according to the product properties and general specifications defined in the Warranty and Quotation but that it will not be held responsible for the fitness of the Goods intended for the purposes of the Purchaser or the use of any technical information not contained in the Quotation except that it will repair, or at its option replace Goods supplied under this contract that are defective according to product properties and general specifications, provided the Purchaser notifies the Company of any defect within thirty (30) days of the defect occurring and subject to the conditions for damaged or defective Goods or Services.

7.2 The Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Purchaser or any other person arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the contract including delays in the delivery of Goods or Services or from the use of damaged or defective Goods or from any cancellation of the contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors.

7.3 The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or reasons beyond the Company's reasonable control. The occurrence of such an event shall not give the Purchaser a right of cancellation of any contract.

7.4 Notwithstanding anything herein before contained in this section 9 or contained elsewhere in the contract the liability of the Company whether in contract or pursuant to any cancellation of the contract or in act or otherwise however, in respect of all claims for loss, damage or injury arising from breach of any of the Company's obligations arising under or in connection with the contract, from any cancellation of this contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors shall be linked at the Company's option, to the repair of the Goods, or replacement of the Goods or Services or the price of the Goods or Services.

**8. Claims for Damaged or Defective Goods.**

8.1 The Company will not accept any claim by the Purchaser and this guarantee will not apply, and claims will not be considered, where:

- (a) the defect or failure is due to or resulting from damage or misuse, negligent maintenance or care while in the possession of the Purchaser or failure to follow care instructions or the Goods have not been used for the purpose for which they were designed or the Goods used by persons not technically competent with the design of the Goods or where the Goods have not been installed or maintained by a Registered Electrician or Registered Engineer where this is required.
- (b) the defect, or failure is due to defective drawings or instructions supplied by the Purchaser.
- (c) the defect or failure is due to acts, defaults or omissions outside the control of the Company
- (d) or where the Purchaser infers a right or license to use of exploit any intellectual property in which the Company is proprietor or where the Purchaser alters the Goods in any way from the condition in which they were supplied by the Company or attaches the Goods to other goods that cause a defect in the Goods supplied.
- (e) where the Purchaser or its agent elects to remedy faults or defects and causes damage.

8.2 If the Purchaser does not comply with the above requirements, the Purchaser will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

8.3 Where the Company accepts liability for damage or defect covered by its guarantee and elects to repair or replace materials or parts or machinery, it may repair or replace by other articles of similar description and value (but can be of a standard type) as soon as reasonably practicable and such substituted articles shall become subject to the provisions of this Agreement, in that the Company will conduct the repair or replacement at no charge to the Purchaser for parts or materials or machinery Services involved.

**9. Grounds for Termination by the Company**

9.1 This Agreement may be terminated by the Company immediately on written notice to the Purchaser, if an Event of Default of payments due to the Company by the Purchaser occurs, and the Company may enter the premises of the Purchaser where the Goods are stored and remove them.

9.2 Default will also mean, if the Purchaser:

- (a) Fails to commence operations of the contract meaning orders given to the Company on or before commencement date.
- (b) Fails to comply with any quality or standards for the care of the Goods issued by the Company.
- (c) Shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors.
- (d) Where the Purchaser is a Company do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Company or if a Receiver is appointed in respect of all or any assets of the Company.

**No release from obligations.** Terminations of this agreement shall not relieve the Purchaser of its obligations to pay all money owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement shall not relieve the Purchaser from liability arising from any antecedent breach of the terms of this agreement.

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**Immediate Steps Upon Termination.** Upon the termination of this agreement for any reason, all rights of the Purchaser granted by this agreement shall terminate and the Purchaser will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this agreement.

**10. Applicable Law for Dispute and Arbitration**

In the execution and interpretation of this contract the laws of New Zealand shall apply and in the case of dispute between the Company and the Purchaser arising out of this Agreement, such dispute shall be heard in New Zealand and be referred to a Mediator and if the parties do not agree to the outcomes from mediation the dispute shall be referred to an Arbitrator under the laws of New Zealand to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

**11. New Zealand Consumer Guarantees Act 1993**

The parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by the Act where the Purchaser acquires the Goods or Services for the business purposes of a business and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.

**12. Guarantor**

Where the Purchaser is a company, the person(s) referred to as guarantor(s) in this Agreement shall personally guarantee the obligations of the Purchaser.

**FOR COMPANY:  
VESSEL MANAGEMENT SERVICES LIMITED**

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**FOR PURCHASER:**

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**AS GUARANTOR FOR PURCHASER:**

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**DATE:**