



Sydney Harbour Marine
28 Abernethy ST
Seaforth 2092
ABN: 56 084 107 166
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Terms & Conditions

1. Definitions

"Act" means the Maritime Services Act 1935

"Authority" means anybody constituted for purposes of the management or regulation of enclosed waters and includes "Port Corporation" and "NSW Maritime" as defined under relevant NSW law including the Ports and Maritime Administration Act 1995, the Marine Safety Act 1998, the Maritime Services Act 1935, the Navigation Act 1901, the Marine Pilotage Licensing Act 1971 and the Commercial Vessels Act 1979.

"Mooring Apparatus" means a mooring, or a structure or an apparatus used to secure any floating object or apparatus in navigable waters whether or not that structure or apparatus is itself beyond the shores of the water, and whether or not that structure or apparatus is, or is proposed to be, used for any other purpose.

"Occupation license" means a license issued by the relevant Authority for the occupation of a specified locality in navigable waters by any floating object, apparatus or vessel of a specified class. "Owner" means the person or entity described in any Application attached hereto. "Secure" in relation to a vessel, floating object or apparatus means to retain in a location by an anchor, or by attachment to any object, structure or physical feature which is in, on the bed of, or in the vicinity of the shore of, any waters, and "secured" has a corresponding meaning. "the Company" means Glendaze Pty Ltd ACN 084 107 166 Trading as Sydney Harbour Marine ABN 40 021 926 909 of 28 Abernethy Street, Seaforth NSW 2092 "Vessel" shall mean a Yacht, Motor Boat, Cruiser, Tender or any other form of boat and includes "Floating object" as defined in the Management of Waters and Waterside Lands Regulations, NSW

2. Contract

The supply of all goods and services by the Company to the Owner shall be subject to these Terms and Conditions, which shall prevail over any other terms and conditions. The Company may vary these Terms and Conditions by notice in writing notified to the Owner in accordance with these Terms & Conditions and thereafter such varied Terms and Conditions shall apply.

3. Fees and Charges

The price of goods or services supplied by the Company shall be the price quoted verbally or notified in writing by the Company at the date of entry into any agreement with the Owner. Prices quoted are exclusive of GST and the Owner will pay Goods and Services Tax ("GST") on the goods and services and other supplies made under this Contract to the extent that they are taxable supplies within the meaning of the A New Tax System (Goods and Services Tax Act) 1999.

4. Lead Times

The Owner acknowledges that lead times may be affected by matters outside the control of the Company including but not limited to weather, sea conditions, delays by its suppliers and notices or orders issued by any competent Authority. Any lead times stated in relation to installation, inspection, servicing and maintenance are estimated dates only and the failure of the Company to install, inspect, service or maintain on that date shall not render the Company liable to the Owner, nor entitle the Owner to cancel any order or agreement unless agreed in writing by the Company.

5. Payment of Fees and Charges

Payment for goods and services supplied by the Company to the Owner shall be on a strictly C.O.D. basis or 7 days from date of invoice to approved customers only. Where payment is not made or made by the due date, the Company may charge interest from the due date on the overdue payment at 2% per annum above the rate paid or payable by the Company in respect of its overdraft.

6. General Lien

The Company has a right to exercise a general lien upon any Vessel and/or any other property of the Owner until such time as any money due to the Company in respect of the Vessel and/or any such other property, whether or not on account of installation, inspection, servicing, work done, goods supplied or otherwise shall be paid in full.

7. Title

Title to the Mooring Apparatus and any products supplied therewith or any products supplied to the Owner pursuant to any Maintenance or Service agreement with the Company shall not pass to the Owner until payment has been made in full to the Company in accordance with these Terms and Conditions.

8. Occupation License



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The installation of a Mooring Apparatus at the request of the Owner is subject to these Terms and Conditions and pursuant to the terms and conditions of a valid Occupation License issued by any relevant Authority and as directed by an Officer of any competent Authority as the case may be and in accordance with the Act.

It is the responsibility of the Owner to apply for an Occupation License and to act in accordance with the terms and conditions of such license and any applicable law.

9. Mooring Apparatus – Installation

A Mooring Apparatus installed by the Company at a site defined in the relevant Occupation License is suitable strictly for the mooring of one Vessel (as specified by the Owner) unless agreed in writing by the Company. The Owner hereby agrees that no other vessel shall be moored on the Mooring Apparatus except as declared in writing to the Company and subject to these terms & Conditions. It is the responsibility of the Owner to specify to the Company all relevant details of the Vessel to be moored at the Mooring Apparatus including but not limited to type of Vessel, registration number, length overall, beam, mast height, displacement, draft, age and any other details relevant to the mooring of the Vessel.

The Owner acknowledges that Mooring Apparatus design is specific to the Vessel specified to the Company by the Owner and the Company is not liable for the fitness for purpose of any Mooring Apparatus except in relation to the particular Vessel as disclosed.

10. Mooring Apparatus – Removal

The Owner is liable for the reasonable costs of the Company in the event that any competent Authority requires the removal or relocation of the installed Mooring Apparatus.

11. Change of Vessel at Mooring Apparatus

The Owner is responsible for notifying the Company and any competent Authority as the case may be in relation to any alternate Vessel which is proposed to be moored pursuant to the Occupation License on the Mooring Apparatus.

The Company reserves the right to make inspection of the Vessel and the Mooring Apparatus to determine the suitability of the Mooring Apparatus in relation to the alternate Vessel. If in the opinion of the Company or any relevant Authority the Mooring Apparatus or location is unsuitable for the mooring of the alternate Vessel the Company will notify the Owner and it is the responsibility of the Owner to make arrangements with the Company and the relevant Authority in relation to the relocation, modification to or replacement of the Mooring Apparatus.

12. Mooring Apparatus – Maintenance

The Company may subject to these terms and conditions agree to inspect, service and maintain a Mooring Apparatus. It is the responsibility of the Owner to maintain the Mooring Apparatus in good condition and repair and the Company recommends that any Mooring Apparatus be inspected and serviced not less than once per year. If the Company is engaged to inspect, service or maintain the Mooring Apparatus the Owner hereby authorises the Company to enter upon the Owner's Vessel and move the Vessel from the Mooring Apparatus for the purposes of inspection, servicing and maintenance of the Mooring Apparatus. The Company will use due care in relation to the moving of the Owners Vessel if required however the Company shall not be liable whether in contract, tort or otherwise for any loss, theft or any other damage of whatsoever nature caused to any Vessel or other property of the Owner or others claiming through the Owner except to the extent that such loss, theft or damage is caused by negligence or wilful act of the Company or its agents. At the completion of any service or maintenance requiring the moving of the Owners Vessel the Company will re-secure the Vessel to the Mooring Apparatus. It is the responsibility of the Owner to ensure that the Vessel has been re-secured in accordance with the Owner's requirements. The Company shall not be liable whether in contract, tort or otherwise for any loss, theft or any other damage of whatsoever nature caused to any Vessel or other property of the Owner or others claiming through the Owner caused as a result of the failure by the Owner to properly service or maintain the Mooring Apparatus except to the extent that such loss, theft or damage is caused by negligence or wilful act of the Company or its agents.

13. Mooring Apparatus – Limited Warranty

The Company warrants all parts and workmanship supplied in relation to any Mooring Apparatus for a period of three (3) months from the date of supply. Notwithstanding the above the Owner acknowledges that any installation under water may be subject to severe corrosion, erosion of the seabed, weathering, rusting, chafing and damage resulting from the effects of water, salt, oxidation, bottom conditions, tidal flow, other vessels and marine flora and fauna. It is the obligation of the Owner to maintain all ropes, chains, shackles and other fixing devices attached to the Mooring Apparatus in good



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and serviceable repair and the Company is not responsible in relation to any failure of the Mooring Apparatus or damage to the Vessel or consequential damage resulting from the fair wear and tear thereof.

The Company is not responsible at any time for the securing of the Vessel to the Mooring Apparatus. It is the responsibility of the Owner to ensure that the Vessel is properly and safely secured. The Owner acknowledges that it is responsible for the maintenance of the Vessel secured to the Mooring Apparatus in a safe and seaworthy condition. The Company is not responsible for any damage or consequential loss occurring as a result of the failure of any part of the Vessel while secured to the Mooring Apparatus.

The Company is not responsible at any time for the failure of the Mooring Apparatus or its component parts during weather conditions experienced on average less than once in every fifty (50) years including but not limited to tropical cyclones, tornadoes and other storms, tidal waves or surges or as a result of damage caused by other Vessels, their anchors and/or Mooring Apparatus or seabed works undertaken by any other party.

14. Interpretation

In the interpretation and application of these Terms and Conditions, unless inconsistent or repugnant to the context, the following shall apply;

- a) Words referring to persons shall include companies, corporations and bodies corporate and vice versa
- b) Words importing the singular shall include the plural and vice versa
- c) Words importing one gender shall mean and include other genders and vice versa
- d) Any reference to a covenant, obligations, promise, representations, warranty or liability of any nature whatsoever for more than one person shall be binding upon all such relevant persons on a joint and several basis
- e) in the event that any part of these Terms and Conditions shall be deemed void or illegal the offending part or parts shall be deemed deleted without affecting the continuing applicability of the remainder of these Terms and Conditions

15. Liability limitation and Indemnity

To the extent the Trade Practices Act 1974 (Cth) (TPA) or any similar state law applied to this Agreement, then certain conditions and warranties will be implied into this Agreement to the benefit of the Owner, and those conditions and warranties cannot be excluded, restricted or modified by any provision of this Agreement.

If the company is liable for a breach of a condition or warranty implied by the TPA, then to the extent permitted by section 68A or the TPA, the Companies liability to the Owner will be limited to, at the discretion of the Company either:

- . the re-supply of the goods or services; or
- . the cost of having the goods or services re-supplied. Except as provided for in this Agreement, the Company will not in any circumstances be liable for any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of the Repairer, its employees, agents or sub-contractors.

The Owner will indemnify the Company against all claims and demands whatsoever by whosoever made in respect of any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract breach of duty of bailment or wilful act of the Company, its employees, agents or subcontractors. Subcontracting and indemnity

The Company is entitled to subcontract on any terms the whole or part of the Works.

16. Governing Law

These Terms and Conditions shall be construed and interpreted in accordance with the laws of the State of New South Wales, Australia