

Sydney City Marine Trading Terms and Conditions

1. Definitions

- 1.1 "SCM" means Sydney City Marine Pty Ltd ACN 116 823 048, its employees, servants, agents, subsidiaries or associated entities;
- 1.2 "Contractor" means any person or entity engaged at all to carry out any of the Services;
- 1.3 "Customer" means the owner of the Property or other person or entity acting with the owner's authority requesting SCM to perform the Services;
- 1.4 "Estimate" means the Estimate Approval Form, Customer Work Request Form and their contents as supplied by SCM to the Customer ;
- 1.5 "Premises" means the land and buildings occupied by SCM and harbour waters adjacent thereto, berthing facilities and all means of access within SCM's operation or control;
- 1.6 "Property" means any yacht, boat, ship, barge or any other waterborne vessel and all or any of its component parts including its hull, motors and accessories or any other items of whatsoever nature delivered to SCM by the Customer for the purposes of the Services;
- 1.7 "Services" means all work carried out by SCM for the Customer as set out in the Estimate or agreed to be carried out by SCM with the Customer's authority or at the implied or express request of the Customer.

2. Entire Contract

- 2.1 The Services are at all times conducted subject to these Terms and Conditions which together with any signed Estimate constitutes the entire contract between SCM and the Customer and supersedes any prior arrangements or agreements between SCM and the Customer whether written or oral.
- 2.2 The Customer warrants that it has not relied upon or been induced by any representation, statement or conduct by or of SCM to enter into this contract with SCM.
- 2.3 In the event the Customer wishes to vary the scope of the Services, SCM shall be under no obligation to carry out the variations unless they have been agreed to in writing by SCM and the Customer. Where SCM exercises its election, the Customer will be deemed to have authorised SCM to carry out the services and acknowledges it will be liable in full for the payment of the Services.

3. Estimate

- 3.1 The Estimate is open for acceptance for a period of 30 days from the date thereof and is subject to withdrawal or revision at SCM's discretion within this period. SCM may in its discretion charge a fee for providing the Estimate. Such fees will be notified to the Customer prior to the Estimate being provided and the charge for the Estimate will be payable upon completion of same.
- 3.2 SCM can only estimate the time it will take to complete the Services and any estimated time for completion of the Services is not binding on SCM. Delays may be unexpected and unavoidable due to unforeseen circumstances such as the weather and especially where SCM is required to obtain parts or services from Contractors or third parties. SCM will not be liable for any loss, damage or consequential losses caused by reason of any delay or failure to complete the Services within the time estimate provided by SCM.
- 3.3 Where there is any variation to the estimated cost of the Services this will be based on actual work done for the Customer and/or materials supplied on behalf of SCM and the Customer is liable to pay to SCM the full invoiced amount including the costs for any variations to the Estimate.

4. Customer's Instructions and Authority

The Customer warrants that it is the owner of the Property or otherwise has the authority of the owner or person having an interest in the Property to request the Services and sign the Estimate or request any variations to the Estimate or the Services. By signing the Estimate the Customer is deemed to have authorised SCM to carry out the Services subject to these Terms and Conditions.

5. Price and Payment

- 5.1 SCM will issue an invoice to the Customer upon completion of the Services. SCM is not obliged to release the Customer's Property until the invoice has been paid in full. SCM is entitled to retain the Property and /or take whatever action is required to prevent the Property from being removed from the Premises until the invoiced amount has been paid in full. Such action may include but is not limited to securing the Property, removal of propellers or immobilisation of the engine.
- 5.2 In the event the costs of the Services differs from the amount contained in the Estimate, the Customer agrees by authorising SCM to continue with the Services either verbally or in writing or where the cost of the Services has increased due to increased costs levied by Contractors or third parties, to pay the actual cost of the Services. The Customer acknowledges that it is not entitled to possession of the Property until SCM's invoice has been paid in full.

6. Collection or Delivery of Property

- 6.1 Where the Customer delivers the Property to the Premises by whatsoever method, the Customer will be deemed to have familiarised itself and complied with SCM's procedures and policies as they apply from time to time to the method of delivery.
- 6.2 SCM will notify the Customer when the Services have been completed and the Property is available for collection. The Customer must collect the Property by close of business on the day of notification. Should the Customer fail to collect the Property within the required time, SCM is entitled to charge storage charges commencing on the first business day following notification that the Property is available for collection calculated on the basis of SCM's daily rates as they apply to the required manner of storage.
- 6.3 The Customer agrees that by accepting delivery of the Property that it has inspected the Property and is satisfied that the Services have been performed with due care and skill and in accordance with the Estimate and that the Customer has taken redelivery of all the Property.
- 6.4 In the event that the Customer requests SCM to deliver the Property to a location which is external to the Premises, the Customer will be deemed to have accepted delivery of the Property at the time it leaves the Premises.
- 6.5 The Customer warrants that any vessel which the Customer requires SCM to collect or deliver is seaworthy and capable of safe navigation by SCM.

7. Default in Payment

Interest will accrue on outstanding invoices or outstanding amounts. at the Corporate Overdraft interest rate as published by the Commonwealth Bank of Australia from time to time commencing 48 hours after SCM has notified the Customer that the Services have been completed and the Property is available for collection.

8. Lien

- 8.1 The Customer's Property is subject to a particular lien and a general lien in relation to any other property of the Customer that comes into SCM's possession until all sums owed to SCM by the Customer are paid in full.
- 8.2 In the event the Customer fails to collect Property within 30 days of SCM's notification to the Customer that the Property is available for collection, then SCM shall be at liberty to sell the Property by auction or private treaty without being liable to the Customer or any other person for any loss or damage thereby caused. SCM will give notice to the Customer that it intends to exercise its right of sale pursuant to this clause. SCM may apply the proceeds realised from the sale of the Property to satisfy any amounts owing to SCM and to recover any charges or expenses incurred in relation to the exercise of the lien. SCM shall remit any surplus proceeds from the sale to the Customer.
- 8.3 In the event any goods are provided to the Customer before full payment is made, risk shall pass to the Customer with the transfer of the goods, however, title to the goods shall remain with SCM.

9. Responsibility for the Customer's Property

- 9.1 The Customer warrants in signing the Estimate or otherwise authorising, requesting or permitting SCM to carry out Services that the Property is insured and therefore Property while at the Premises or while being delivered to a berth or mooring or other location if requested by the Customer, is at the risk of the Customer. Further, SCM shall not be liable for any loss or damage to the Property or any consequential loss while it is in SCM's possession and/or arising from the Services and the Customer indemnifies SCM against any claim, demand, suit or action arising therefrom.
- 9.2 Neither the Customer nor its employees, servants or agents shall be entitled to enter upon nor operate the Property while in SCM's possession without SCM's authority in which event the Customer will indemnify SCM for any liability whatsoever arising out of its activities or those of its employees, servants, agents and the Customer will reimburse SCM for the cost of any occupational health or safety induction that SCM requires the Customer, its employees, servants and agents to undergo.
- 9.3 It is the Customer's responsibility to ensure that all inlets, outlets and/or openings either above or below the waterline on the Property are set or closed as appropriate prior to the vessel being slipped or launched and that any underwater equipment or devices are removed or protected.
- 9.4 The Customer is not permitted to engage Contractors to work at the Premises unless expressly authorised by SCM in which event the Customer agrees to indemnify SCM for any liability whatsoever arising from the Customer's direct engagement of a Contractor and to ensure that the Contractor has taken out all necessary insurances.
- 9.5 It is the Customer's responsibility to ensure that all refrigeration equipment has been emptied and switched off at the time the Property is delivered to SCM. SCM will not be liable for spoilage of any refrigerated or frozen items which may occur as a result of the performance of the Services or any loss, damage, or consequential loss which may result from the non-operation of the Customer's refrigeration equipment during the course of the Services.
- 9.6 In the event the Property is connected to shore power for whatever reason, SCM shall not be liable to the Customer or any third parties for any loss, damage or consequential loss which may result from any failure of the shore power.

10. Personal Property Valuables and Dangerous Goods

- 10.1 SCM shall not be responsible for any personal items, including but not limited to navigational or audio equipment, articles of a personal nature or consumables left in SCM's possession or on the Property when it is delivered to SCM for the purpose of the Services. In the event that these items are delivered into the possession of SCM, SCM will not be liable for their loss or damage or any consequential loss howsoever caused and the Customer shall indemnify SCM for any claims, demands, damages, costs or expenses arising in connection with such items.
- 10.2 SCM will not accept Property if it contains or has on board any items which SCM in its absolute discretion considers dangerous. SCM may direct the Customer at its own expense to either remove the dangerous item from the Property prior to commencement of the Services or the Property from the Premises.

11. Warranties

- 11.1 Where goods or materials are supplied to the Customer by SCM in the course of the Services, then the Customer is entitled to the benefit of the manufacturer's warranty which is valid for a period of 6 months from the date of SCM's invoice and will claim any entitlement directly from the manufacturer. SCM will supply or install goods always subject to the manufacturer's terms and conditions. SCM accepts no responsibility to the Customer or any other person for damages of any kind or consequential loss arising from defects in the manufacturer's equipment, parts, goods or materials as a result of faulty workmanship or application or installation not in accordance with manufacturer's specifications. SCM is not responsible for rectification, repair or replacement of equipment, fittings or other materials supplied by SCM as part of the Services for which there exists a manufacturer's warranty or guarantee.
- 11.2 The Customer is entitled to 6 months warranty from the date of SCM's invoice for any labour component of the Services subject to the Customer providing written notice to SCM of any claim made in respect of labour within the warranty period and provided that the cost of the Services has been paid in full.
- 11.3 Should rectification work be required under either the manufacturer's warranty or SCM's labour warranty, the rectification work will only be conducted at SCM's premises and the Customer shall be liable for its own costs in delivering the Property to the Premises.
- 11.4 If the Customer requires SCM to carry out warranty rectification work at a location other than the Premises and SCM agrees to do so, the Customer will bear all SCM's costs incurred by SCM in attending at the Customer's designated location.

12. Customer's Indemnity

The Customer shall indemnify SCM and its employees, agents and Contractors against all actions, suits, claims, injury, loss, damage, fines and payments howsoever caused whether arising directly or indirectly from the Services performed by SCM or whether arising by way of negligence, breach of contract, breach of duty of bailment or otherwise.

13. Subcontracting

The Customer acknowledges and agrees that SCM is entitled in its absolute discretion to subcontract out the performance of any or all of the Services. Any Contractors shall be independent contractors and the Customer is not entitled to give directions to any Contractor. Any amounts charged by Contractors for the performance of the Services will be included in the total invoice issued by SCM to the Customer.

14. Liability of Contractors, Agents and Employees

Every exclusion from liability, defence and indemnity under these Terms and Conditions extends for the benefit of SCM and its associated entities and their employees, directors, agents and Contractors.

15. Exclusions and Limitation of Liability

- 15.1 Subject to these terms and conditions, SCM shall not be liable for any loss or damage whatsoever including any direct or indirect loss, loss of enjoyment, economic loss, loss of profit, loss of contracts or consequential loss suffered by the Customer arising from or in any way connected with the performance of the Services whether suffered by the Customer or any other person, howsoever caused or arising or in connection with the performance of the Services and whether caused by the breach of contract or negligence of SCM's servants, agents, employees, sub contractors or otherwise;
- 15.2 In all cases where liability cannot be excluded, restricted, modified or limited by these Terms and Conditions by reason of the conditions and warranties implied by the Trade Practices Act 1974 (Cth) or equivalent state legislation, then SCM's liability for the breach of the implied conditions or warranties will be limited at its discretion to either:
- (i) in the case of services:
 - the supply of the services again; or
 - the payment of the cost of having the services supplied again;
 - (ii) in the case of goods as defined by the Trade Practices Act 1974 (Cth) and not as defined by these Terms and Conditions:
 - either the repair of the goods,
 - the payment of the costs of having the goods repaired;

- the replacement of the goods or supply of equivalent goods;
- the payment of the cost of replacing the goods or acquiring equivalent goods.

16. Intellectual Property

- 16.1 Where the Customer supplies SCM with specifications or designs in which a third party has intellectual property of whatsoever nature, the Customer warrants that the use of the specifications or designs shall not infringe the rights of any third party and agrees to indemnify SCM against any action, suit, claim or demand for infringement or alleged infringement of such intellectual property rights. SCM shall not be liable to defend any action, claim or demand or contest any costs or expenses covered by this indemnity.
- 16.2 The Customer agrees that SCM is entitled to record images of the Property while it is at the Premises and for SCM to display such images for promotional purposes, however SCM acknowledges that the Customer may upon request to SCM, refuse its consent. SCM shall own all right, title and interest in any intellectual property so created.

17. Returns

Products supplied to the Customer in their original packaging may be returned to SCM within 7 days of them being supplied and the Customer shall be entitled to receive a refund for the products if they are returned in their original, unopened and unmarked packaging.

18. Termination

- 18.1 Either party may terminate this agreement immediately without giving reasons by giving notice in writing to the other party. SCM may give the Customer notice at the address notified in the Estimate.
- 18.2 The Customer remains liable to SCM for the cost of the Services and any goods supplied or ordered on behalf of the Customer prior to termination. SCM will not be liable for any loss or damage whatsoever, including consequential loss arising from such termination.
- 18.3 SCM shall be entitled to terminate this contract in the event of an order being made or resolution being passed for the winding up, dissolution, liquidation or bankruptcy of the Customer.
- 18.4 Neither party is released from any obligation arising under these Terms and Conditions that existed prior to termination.

19. Force Majeure

SCM will not be liable to the Customer in the event it is unable to perform or complete the Services for reasons beyond its control including but not limited to weather conditions, quarantine, requirements of government authorities or delays in obtaining permits or licences which SCM may require in order to perform the Services.

20. Severability and Waiver

It is hereby agreed that if any provision or term of these Terms and Conditions is held to be unenforceable then such unenforceability shall not affect any other provision or term contained herein. Further, should SCM elect not to exercise or enforce any of its rights under these terms & conditions, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

21. Applicable Law

Any dispute arising under this contract shall be governed by the laws of New South Wales whose courts will have exclusive jurisdiction in relation to any dispute arising out of this contract, the Estimate or any variation thereof or these Terms and Conditions.

September 2009