

# General Terms and Conditions of Moorings Otago Limited

## 1. Definitions and interpretation

- 1.1. In this Agreement, unless the context otherwise requires:
  - (a) **Agreement** means this agreement for the supply of the Deliverables and Services and includes the Key Terms and these General Terms.
  - (b) **Deliverables** means any deliverable as specified in clause 4 of the Key Terms.
  - (c) **General Terms** means these general terms and conditions.
  - (d) **Key Terms** means the key terms which relate to the Deliverables and Services as set out in the Agreement.
  - (e) **IP** means intellectual property rights existing anywhere in the world under statute, common law or equity including but not limited to patents, designs, copyright, plant variety rights, trade marks and any rights of a similar nature whether registered or unregistered (and including applications, and the right to apply, for any of the foregoing), trade secrets and rights in confidential information.
  - (f) **Services** means the services supplied by MOL to the Customer under this Agreement as specified in clause 3 of the Key Terms.
- 1.2. In the event of conflict between the Key Terms and these General Terms, the Key Terms will prevail to the extent of any inconsistency.
- 1.3. Capitalised terms not otherwise defined in these General Terms have the meaning given in the Key Terms.

## 2. All Deliverables and Services acquired for business purposes

- 2.1. The Customer agrees that it is acquiring the Deliverables and Services for the purposes of a business, and that the Consumer Guarantees Act 1993 does not apply.

## 3. Goods and Services Tax

- 3.1. All prices and charges are in New Zealand dollars and are exclusive of GST and any other Government imposed levies, surcharges or taxes (unless otherwise stated).

## 4. Invoices and Notices

- 4.1. MOL will send invoices and other notices to the last address given by the Customer. Any invoice or notice is deemed to have been delivered:
  - (a) if delivered in person, on delivery;
  - (b) if sent by registered post, 5 business days after (but exclusive of) posting;
  - (c) if sent by email at the time the email is sent, unless MOL receives an automated message that the email has not been delivered.
- 4.2. The Customer will pay each invoice on the date specified on the relevant invoice, and where no date is specified, on the 20<sup>th</sup> of the month following MOL's invoice.
- 4.3. MOL may change the required frequency of payment, and may require payment to be made in advance or any other method, by giving 5 days' written notice to the Customer.

## 5. Charges and Interest

- 5.1. All charges are payable on receipt of an invoice from MOL. The Customer shall pay interest at the rate of 14% on any overdue amount from the due date until the date payment is received. This clause is without prejudice to MOL's other rights and remedies under this Agreement.

## 6. Intellectual Property

- 6.1. Any IP developed or discovered by either party, or both parties, in connection with this Agreement, shall be the absolute property of MOL.

## 7. Compliance with laws

- 7.1. The Customer shall hold all permits, licences, authorisations, certifications and consents required to perform its obligations under this Agreement. The Customer will at all times comply (and ensure that its employees, agents and contractors comply) with all applicable laws, permits, licences, authorisations, certifications and consents, and any reasonable directions of MOL.
- 7.2. It is the Customer's obligation to ensure that the Vessel and Mooring comply with all laws, permits, licences, authorisations, certifications and consents including, without limitation, all requirements under the Resource Management Act 1991 and the Navigation Safety Bylaws. MOL bears no responsibility for such compliance whatsoever.

## 8. No liability for events beyond reasonable control

- 8.1. MOL is not liable for any failure or delay in performing any obligation under this Agreement if the failure or delay arises due to an act of God, fire, explosion, industrial dispute, act of government such as a change in legislation, regulation or order made under legislative authority, or anything else beyond MOL's reasonable control.

## 9. Limitation of liability

- 9.1. MOL excludes all liability it may have to the Customer to the extent permitted by law. MOL is not liable to the Customer for anything caused by or resulting from anything it does or does not do, or delays in doing, whether or not it is contemplated by this Agreement. This exclusion applies whatever the Customer is claiming for and however MOL's liability arises whether it be under contract, tort (including negligence), equity, legislation or otherwise.
- 9.2. To the extent permitted by law, all express or implied warranties or representations of MOL (and its directors, officers or employees) in relation to the Deliverables and Services are excluded.
- 9.3. Where MOL provides Deliverables or Services which are defective, MOL may at its discretion provide the Deliverables or carry out those Services again for the Customer free of charge. However, MOL has no legal obligation to carry out such work.

## 10. Insurance

10.1. The Customer shall maintain, at its own cost, sufficient insurance cover with a reputable insurer in respect of its potential liability for loss or damage under this Agreement.

## 11. Credit checks

11.1. The Customer authorises MOL to obtain, and authorises third parties to provide, any information MOL reasonably requires to assess the Customer's creditworthiness. MOL may cancel this Agreement if it is not satisfied (in its sole discretion) as to the Customer's creditworthiness. If MOL cancels this Agreement, it will refund any advance payment the Customer has made. MOL may provide information to credit agencies about any overdue payment.

## 12. Deliverables

12.1. Ownership of the Deliverables shall pass to the Customer on the date the Customer has paid in full for those Deliverables.

12.2. Risk in the Deliverables passes to the Customer on the date they are delivered to the Customer.

## 13. Ending this Agreement

13.1. MOL may end this Agreement by written notice to the Customer if the Customer:

- (a) breaches any term of the Agreement and fails to remedy the breach within 7 days after receiving written notice from MOL requiring the breach to be remedied; or
- (b) commits an act of bankruptcy, is placed in liquidation, receivership, voluntary administration or statutory management, is insolvent or ceases to carry on a substantial part of its business or makes any composition or arrangement with its creditors or has execution levied upon all or any part of its assets.

13.2. MOL may also terminate this Agreement at any time by giving 30 days' notice in writing to the Customer.

13.3. The ending of this Agreement is without prejudice to:

- (a) any other rights and remedies of MOL, and any claim for money payable as at the date the Agreement comes to an end or in respect of work done or liabilities incurred before then;
- (b) any rights and responsibilities which are intended to continue or come into force after it ends.

## 14. Waiver

14.1. If either party delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy. A waiver will not be effective unless it is in writing and a waiver of any breach will not be a waiver of any other breach.

## 15. More than one customer

15.1. Every person named as a Customer is jointly and severally liable for meeting all the Customer's responsibilities under this Agreement.

## 16. No Assignment

16.1. The Customer may not assign its rights under this Agreement without MOL's prior written consent. A change in the Customer's effective ownership or control will be deemed to be an assignment for the purpose of this clause.

## 17. Each clause separately binding

17.1. Each clause of this Agreement is separately binding. If for any reason MOL cannot rely on any clause, all other clauses remain binding.

## 18. Choice of law and choice of forum

18.1. This Agreement is governed by New Zealand law and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute or proceeding arising out of this Agreement.

## 19. Entire Agreement

19.1. This Agreement constitutes the entire agreement between the parties, and the Customer agrees that its own terms of trade (if applicable) do not apply.

## 20. Relationship

20.1. Nothing in this Agreement creates any agency, partnership, joint venture, or employment relationship between the parties. Neither party has the right to bind the other in any way, unless expressly permitted to in this Agreement.

## 21. Amendment

21.1. These Standard Terms may be amended by MOL at any time without notice to the Customer. Any change applies from the date such updated terms are uploaded on to MOL's website ([www.mooringsotago.co.nz](http://www.mooringsotago.co.nz) as updated from time to time).

## 22. Further acts

22.1. The parties will take all actions and sign all documents reasonably required to give effect to the provisions of this Agreement.

## 23. Counterparts

23.1. This Agreement may be executed in counterparts (which may include electronic copies) all of which together will constitute one agreement.