

## **TERMS AND CONDITIONS FOR USE OF FACILITIES**

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1. In these conditions unless otherwise stated -  
  
    **"the Applicant"** means the applicant named in the application form annexed hereto being either the Owner or the Charterer of the Vessel;  
  
    **"the Application"** means the application form annexed hereto completed and signed by the applicant;  
  
    **"the Charterer"** means the person or company lawfully having possession and control of the Vessel pursuant to a valid and subsisting Charter Agreement made with the Owner;  
  
    **"the Company"** means HGHUVR%RDW/LIWHUV  
  
    **"the Dockmaster"** means the person employed from time to time by the Company to manage and control the Facilities;  
  
    **"the Facilities"** means and includes all the land, , boatlifting machines, jetties, and moorings within owned or occupied or under the control of the Company and situated at Lot 33 Clarence Beach Road, Henderson, Western Australia, Australia;  
  
    **"the Master"** means the person employed by the Applicant and having the management and command of the Vessel;  
  
    **"the Owner"** means the registered owner of the Vessel;  
  
    **"the Vessel"** means any type of water craft or otherwise agreed craft which is named in the Application;  
  
    **"the Works"** means and includes the whole of the work and services as set out in the Services Application & Agreement or otherwise agreed between the Company and the Applicant and to be carried out on the Vessel (whether by the Company or any sub-contractor) and "services" shall have a similar meaning;
2. The Master and the Applicant HEREBY AGREE at all times to obey and comply with the directions of the Dockmaster and any other authorised officer of the Company;
3. The Application shall be completed to the best of the Applicant's knowledge and ability. The Application shall be addressed to the Company and delivered, posted or faxed to the Company at it's address aforesaid;
4. Either the Dockmaster or the Company shall be at liberty to accept or refuse any Application for any reason whatsoever and in this respect a decision by either of them shall be final and binding on the Applicant;
5. (a) Upon being notified in writing by the Dockmaster of the Company's acceptance of the Application, the Applicant or the Master shall cause the Vessel to be presented at the Facilities on the date and at the time so notified by the Dockmaster to the Applicant or the Master in the notice of Acceptance of the Application;  
  
    (b) If the Applicant or the Master is unable to present the Vessel on the date and at the time specified by the Dockmaster either the Master or the Applicant shall notify the Dockmaster in writing not less than seventy two (72) hours prior to the appointed date and time;
6. If for any reason the Applicant or the Master fails to give the notice referred to in sub-clause 5.2 and the Master fails to present the Vessel on the date and at the time appointed by the Dockmaster then :  
  
    (a) The Applicant agrees to indemnify and keep indemnified the Company for any loss or damage suffered by the Company as a result of the Vessel not being presented at the appointed time in accordance with the Dockmaster's directions; and  
  
    (b) without prejudice to any of the Company's rights pursuant to Clause 6 (a) then the Company may in addition to any of the Company's powers and without further notice to the Applicant rescind the Agreement evidenced by the Company's acceptance of the Application or specify another date and time at which the Applicant is required to present the Vessel at the Facilities.
7. Prior to berthing or slipping the Vessel the Applicant and the Master shall advise the Dockmaster of any explosive material or cargo carried on or within the Vessel other than those materials used or employed in the day to day running of the Vessel. The Applicant and the Master shall not permit any explosive materials or cargo to be brought onto the Vessel while it is at the Facilities without the prior consent of the Dockmaster. In the event of any breach of this Clause 7 the Applicant will indemnify and keep indemnified the Company against all loss or damage resulting from fire explosion or damage caused thereby;
8. In the event that the Dockmaster considers weather conditions unfavourable for berthing, unberthing, slipping or lifting the Vessel at the Facilities he may direct the Master not to berth, unberth, slip or lift the Vessel at the Facilities and the Applicant HEREBY AGREES that the Company shall not be responsible for any loss or damage which the Applicant may suffer by reason of any such direction of the Dockmaster.
9. In the course of berthing, unberthing, slipping or lifting the Vessel the Master shall comply with the directions of the Dockmaster and provide such assistance as the Dockmaster may require to secure the Vessel in a manner satisfactory to the Dockmaster including any provision of lash-up lines.
10. The Applicant and the Master shall not permit the Vessel to be fumigated whilst berthed or at the Facilities without the prior written consent of the Dockmaster.
11. The Applicant HEREBY AGREES to pay all costs associated with removing all waste materials, chips, shavings, mud barnacles, sand and other rubbish resulting from work performed on or about the Vessel whilst it is berthed, slipped or stored at the Facilities. The Applicant and the Master FURTHER AGREE to keep the Facilities clean and tidy and in good working order during the period of which the Vessel is at the Facilities and immediately after the completion of any work carried out on or about the Vessel.
12. The Applicant HEREBY AGREES with the Company that :-  
  
    12. (a) the Company shall either itself or by it's servants agents and sub-contractors carry out all of the Works unless agreed or arranged otherwise;

12. (b) the Applicant will pay the Company the fee stipulated in the Application for that part of the Works which are carried out by the Company through its employee's and will pay in addition such amount for any additional works and services (including equipment hire) which are not stipulated in the Application but which the Applicant requests the Company to perform which additional amount shall be calculated by reference to the rates payable for "Additional Services and Equipment Hire" which are annexed to the Application;
12. (c) in addition to the fee payable under clause 12(b) where in any case the Company engages a sub-contractor to perform any part of the Works the Applicant will pay the Company a fee equal to ten per centum (10%) of the total amount charged by any such sub-contractor engaged by the Company;
12. (d) the Works to be performed by the Company will be carried out during the Company's normal operating hours unless otherwise agreed by the Company in which case the Applicant will pay to the Company an additional fee equal to any additional or overtime payments the Company is required to pay its servants, employee's, agent's, or sub-contractors for performing the Works other than during the Company's normal operating hours.
- 13.1 Without prejudice to any other rights and remedies contained in this Agreement or which the Company may otherwise possess if the Applicant -
- (a) shall have any execution levied against it or have a winding up order made or (except for the purposes of a reconstruction) pass or attempt to pass a resolution for winding up or be party to the appointment of or have an official manager appointed or have a receiver of the whole or any part of its property or undertaking appointed or be a party to or attempt to enter into any composition or scheme of arrangement with its creditors;
- (b) refuses or neglects to comply with any lawful direction by the Dockmaster or any authorised officer of the Company; or
- (c) is otherwise guilty of a breach of the provisions of this Agreement
- THEN in any such case the Company may give the Applicant or the Master a written notice stating the intention of the Company to determine this Agreement and such notice shall specify and detail the default relied on PROVIDED THAT such notice shall not be given unreasonably or vexatiously.
- 13.2 If the Applicant or the Master fails to remedy in terms consistent with this Agreement a default of which it has been given notice under Clause 13.1 within seven (7) days of receipt of such notice then the Company without prejudice to any other of its rights or remedies may within a period of seven (7) days thereafter by written notice to the Applicant determine this Agreement and render an account for the works performed and costs incurred by the Company to the date of determination of the Agreement.
14. All charges and payments due from the Applicant to the Company shall be paid on the date on which any such account is rendered by the Company to the Applicant (terms for approved clients only). Interest at the rate of the Company's bank's overdraft rate calculated on a daily basis shall accrue on all accounts not paid by the due date. Until such time as the Applicant pays all outstanding accounts in full the Company may in its absolute discretion require the Vessel to remain berthed or slipped at the Facilities. In the event of any Vessel remaining so berthed or slipped the Applicant agrees to pay an additional charge calculated on a daily basis for each day or part thereof that the Vessel remains berthed or slipped at the Facilities.
15. The Applicant shall be responsible for the cost of all water and electricity used by or in connection with the Vessel whilst it is berthed or slipped at the Facilities.
16. Any notice necessary or required to be given in accordance with this Agreement shall be deemed to be sufficiently given if delivered by hand, facsimile transmission or alternatively if sent by pre-paid post in which case the receipt of such notice shall be deemed to have occurred two (2) days after the date of posting.
17. The Applicant shall not be entitled to assign its rights or obligations under this Agreement without the prior written consent of the Company.
- 18.1 Notwithstanding anything contained in these conditions the Company shall not be liable for any delay, loss or damage suffered or sustained by the Applicant which is caused by or arises from any strikes or labour disputes affecting workmen employed in any trade or in any way relating to the Works being performed in on or about the Vessel or the Facilities whatsoever nor shall the Company be liable for any loss or damage suffered or sustained by the Applicant in connection with the Vessel or any cargo, machinery or equipment being placed in, on or about the Vessel or being removed for any purpose from the Facilities whether by theft or otherwise or for any happening incidental to the use of the Facilities on for injuries to any servant, agent or contractor engaged by the Applicant whether such delay, loss, damage or injury results from or is attributable to the negligent act or omission of the Company or its servants agents or contractors.
- 18.2 The Applicant hereby indemnifies and shall keep indemnified the Company from any loss or damage which the Company may at any time sustain by reason of the failure of the Applicant or its servants, agents or contractors to observe these terms and terms and conditions.
19. The Applicant (not being the Owner of the Vessel) HEREBY WARRANTS AND REPRESENTS to the Company that the Applicant is in lawful possession and control of the Vessel pursuant to a charter agreement made with the Owner of the Vessel which agreement is valid and subsisting and which the Applicant agrees to present to the Company on demand.
20. Any discount for goods and services will be forfeited if payment is not received as per payment terms in invoice. i.e. if payment terms are 7 days and payment is not received within the terms, any discounts will be reversed.
21. Payments made by credit card on transactions greater than \$2000.00 will incur a 1% credit card charge, which will then be applied on the invoice.