



## 1. MARINE DESIGNER SERVICES

If the MARINE DESIGNER provides any design services to any person (referred to as "**the Client**"), then unless those services, together with other incidental services as the MARINE DESIGNER may consider necessary for the proper performance of such services (together called "**the Services**"), are documented as being "no-fee preliminary services", such **Services** and the designs produced by the MARINE DESIGNER from those **Services** ("the **Works**") shall be chargeable to the **Client** at the rate(s) agreed between the parties.

Acceptance by the MARINE DESIGNER of any "no-fee preliminary service", identified as such by the MARINE DESIGNER to the **Client**, shall be in consideration for the **Client**'s agreement to the following terms and conditions:

- (a) On request by the MARINE DESIGNER at any time after agreement by the MARINE DESIGNER to provide "no-fee preliminary service", the **Client** shall advise the MARINE DESIGNER of the number of other marine designers requested to supply such **Services**. The MARINE DESIGNER may, if the **Client** fails to answer the MARINE DESIGNER's request, or has engaged more than 2 marine designers including the MARINE DESIGNER, at its discretion, elect to terminate the agreement and to provide any "no-fee preliminary service" and such termination shall not give rise to any claims by the **Client** for any no-fee services performed or yet to be performed;
- (b) No copyright material will in any way be disclosed to any competing marine designer; and
- (c) The trade secrets of the MARINE DESIGNER shall be preserved by the **Client**.

## 2. SUPPLY FOR BUSINESS PURPOSES

The **Client** acknowledges that where **Services** and/or **Works** are purchased for business purposes, the Consumer Guarantees Act 1993 shall not apply.

## 3. PERFORMANCE STANDARDS

The MARINE DESIGNER shall perform his or her **Services** in accordance with the reasonable standard of skill, care and diligence generally exercised by the marine design profession in New Zealand subject to any financial, physical, time or other restraints imposed by the **Client** or necessarily resulting from the nature of the engagement.

## 4. JOB-RELATED COSTS

The **Client** shall pay the MARINE DESIGNER for all job-related costs, including disbursements and telecommunication, reproduction, illustration, model building, testing and travelling expenses. The MARINE DESIGNER may add a service charge of ten per cent of invoiced costs where payment to others has been made on behalf of the **Client**.

The term "job related costs" does not include the supply of product or the services of others unrelated to a process of design or supplied as part of creating a derivative work, such costs being "job costs". If the MARINE DESIGNER orders products or services charged to the MARINE DESIGNER's account, or paid for by the MARINE DESIGNER to be on charged to the **Client**, the **Client** is on notice that, unless otherwise agreed in writing, the MARINE DESIGNER may be acting, in supplying such products and services, as a commission agent of the original supplier. The MARINE DESIGNER shall not be required to account to the **Client** for any commissions received when so acting as a commission agent and the property in such commissions shall be the MARINE DESIGNER's.

## 5. CLIENT TO INDEMNIFY MARINE DESIGNER

The **Client** shall be responsible for payment of all fees and job costs and undertakes to indemnify the MARINE DESIGNER for any unpaid fees or job costs of persons other than the MARINE DESIGNER, whether or not the **Client** is to be reimbursed for such fees by the principal.

## 6. PAYMENT OF FEES AND COSTS

6.1 The MARINE DESIGNER shall be entitled to progress payments of fees and other job related costs in the following manner:

- (a) payment of invoices for job costs (as against fees or job related costs) on presentation, without deduction or set-off;
- (b) payment of invoices rendered on completion of stages for fees and job related costs, but only as defined in writing, within 5 working days of delivery of invoice unless other terms are agreed;
- (c) all other invoices or other accounts shall be due on the 20th of the month following presentation;
- (d) where payment is made on or before the due date (excluding invoices for job costs), the **Client** shall be entitled to a discount of 5% on the invoice value exclusive of GST and job related costs;
- (e) for any invoice not due, if the **Client** is issued with proceedings for any recovery of any debt owed by the **Client**, immediately on demand by the MARINE DESIGNER.

6.2 It is an implied term of any invoice of the MARINE DESIGNER that ownership of any product, goods, **Works** or derivative **Works** (together called "**the Assets**") shall remain with the MARINE DESIGNER until payment in full has been received by the MARINE DESIGNER. The **Client** shall, until payment is made in full for the **Assets**, keep the **Assets** apart, hold the **Assets** as agent for the MARINE DESIGNER, not part with possession of the **Assets** and, if requested, if payment is overdue, deliver the **Assets** up to the MARINE DESIGNER or the MARINE DESIGNER's nominee for sale or, if possession has been parted with, recover possession of the **Assets**. The MARINE DESIGNER may enter on to the **Client**'s premises to recover or take possession (to the exclusion of the **Client**) of the **Assets**.

6.3 The **Client** shall not be entitled by virtue of the provisions of this clause to return the **Assets** and where the **Assets** are recovered, or the MARINE DESIGNER takes possession of the **Assets**, the **Client** remains responsible for the cost of storage or the cost of the premises in which the **Assets** are situated. The risk in any **Asset** passes to the **Client** on delivery by the MARINE DESIGNER. Delivery shall be deemed to have occurred when the MARINE DESIGNER makes any **Asset** available to the **Client** or any agent of the **Client** or any carrier of the **Client**, at the MARINE DESIGNER's premises or another delivery point agreed to by the MARINE DESIGNER. The **Client** will be fully responsible for any loss or damage to the **Asset** following delivery.

## 7. CHANGES TO ESTIMATES (IF ANY)

If any estimates of fees and job-related costs are given, they are not firm quotations and are liable to alteration. The MARINE DESIGNER must bring any change to the estimate to the attention of the **Client**. Any change to the **Services** made by the **Client** may change the estimate of the fees and job related costs.

## 8. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights, including the copyright in all documents, the **Works**, and in any **Works** executed from the **Works** remains the absolute property of the MARINE DESIGNER. The MARINE DESIGNER does not accept commissions to create copyright **Works**.

## 9. INDEMNITY FOR BREACHES OF INTELLECTUAL PROPERTY

The **Client** shall fully indemnify the MARINE DESIGNER in respect of any claims, cost, or expenses (including legal expenses on a solicitor/client basis) arising out of any illegal or defamatory **Works** produced for the **Client** or any infringement of an intellectual property right of any person. Where property and materials are left with the MARINE DESIGNER without specific instructions, the MARINE DESIGNER may dispose of them at the end of six months from the date of receiving them and retain the proceeds.

## 10. LICENCE TO THE CLIENT

10.1 The **Client** shall be licensed to use the **Works** for the specific purpose for which they were prepared, but for no other purpose. Unless the right to reproduce or to create derivative or neighbouring **Works** is otherwise set out in writing, the **Client** shall only be entitled to use the licensed **Works** to create 1 derivative work only and to make such copies of the copyright material as are necessary for completion of that derivative work and any statutory compliance associated with it.

10.2 The licence to use the **Works** comes into effect on the first payment by the **Client** to the MARINE DESIGNER and remains in force so long as all payments required of the **Client** are made on time. The MARINE DESIGNER may suspend or revoke the licence if the **Client** fails to make any payment. Such suspension or revocation shall cause the suspension of the derivative **Works** if uncompleted.

10.3 The MARINE DESIGNER asserts all of his or her moral rights in respect of the **Works** and any reference to the **Works** shall be accompanied by full attribution to the MARINE DESIGNER in a form to be approved by the MARINE DESIGNER.

## 11. MARINE DESIGNER NOT LIABLE FOR LOSSES

Except as otherwise provided for by the Consumer Guarantees Act 1993 for any work for a consumer as defined in that Act, the MARINE DESIGNER shall not be liable for:

- (a) the commercial performance of the **Works**;
- (b) any loss or damage arising by reason of any delay in the completion of the **Works**;
- (c) any loss of profits;
- (d) any indirect or consequential loss of whatever nature; or
- (e) any loss resulting from any errors or omissions arising from an oversight, a misinterpretation of a **Client**'s verbal instructions arising directly or indirectly from any breach by the MARINE DESIGNER of any of its obligations under this agreement or from cancellation of this agreement



or from any negligence on the part of the MARINE DESIGNER or its employees.

## 12. LIABILITY OF MARINE DESIGNER LIMITED

Except as provided for by the Consumer Guarantees Act 1993 for any work for a consumer as defined in that Act, if the MARINE DESIGNER or any sub-consultant shall be found liable to the **Client** (whether under the express or implied terms of this license, in negligence, or otherwise at common law) for any costs, loss or damage suffered by the **Client**, however caused and of whatever nature, arising out of or connected with the performance or failure of performance of **Services** by the MARINE DESIGNER or any sub-consultant, then the maximum amount of that liability for all such claims against the MARINE DESIGNER and any sub-consultant shall not exceed the full value of the payment(s) made by the **Client** under the agreement between the parties.

## 13. "MARINE DESIGNER" AND "SUB-CONSULTANT" INCLUDES THEIR EMPLOYEES

For the purposes of Clauses 11 and 12 of these terms and conditions-

- (a) the expression "MARINE DESIGNER" shall include all employees of the MARINE DESIGNER; and
- (b) the expression "sub-consultant" shall include every party engaged by the MARINE DESIGNER or by any other sub-consultant to perform any part of the **Services** and all employees of any sub-consultant.

The terms of Clauses 11 and 12 shall be construed as conferring a benefit on, and being enforceable at the suit of, every person referred to in this clause.

## 14. POSTPONEMENT / TERMINATION

### 14.1 Reasonable Notice in Writing

Any agreement between the MARINE DESIGNER and the **Client** for **Services** pursuant to these terms and conditions, unless otherwise set out in writing, may be postponed or terminated by either party, on the expiration of reasonable notice given in writing.

### 14.2 Action On Receipt of Notice

Upon receipt of such notice from the **Client**, the MARINE DESIGNER shall take immediate steps to bring the **Services** to a close and to reduce expenditure to a minimum.

## 15. ENTITLEMENT TO PAYMENT

Upon postponement or termination of the **Services**, the MARINE DESIGNER shall be entitled to payment of fees and other job costs up to the effective date of postponement or termination and further fees and costs incidental to the orderly termination of the **Services**.

## 16. CLIENT CONFIDENTIALITY

The **Client** must advise the MARINE DESIGNER as to whether any material or information communicated to him/her is of a confidential nature. The MARINE DESIGNER will keep confidential material or information communicated to him/her in confidence, except where it is reasonably necessary to enable the MARINE DESIGNER to provide the **Services**.

## 17. ARBITRATION

### 17.1 Reference of disputes to Arbitration

If the **Client** has entered into this agreement in trade, or has signed the acknowledgment set out in Schedule 1 then any dispute arising under this Agreement which cannot be resolved by good faith discussion shall be referred to arbitration in accordance with the Arbitration Act 1996.

### 17.2 Commencement of Arbitration

The arbitration shall be commenced by either party giving to the other notice in writing stating the details of the dispute or difference and that party's desire to have the matter referred to arbitration.

### 17.3 Agreement on Arbitrator

The arbitration shall be by one arbitrator to be agreed upon by the parties and, failing agreement within one month of the notice given pursuant to Clause 17.2, to be nominated by the President for the time being of the New Zealand Division of the Royal Institution of Naval Architects.

## 18. ACCESS TO FINISHED PRODUCTS

The **Client** will on the reasonable request of the MARINE DESIGNER for a period of 6 months following completion, permit the MARINE DESIGNER to come onto the **Client**'s premises or derivative work itself as the case may be for the following purposes:

- (a) photographing or filming the derivative **Works** for the purpose of publicising the **Services** of the MARINE DESIGNER; and
- (b) inspection of the derivative **Works** for the purpose of any professional award or requirement to submit work for review on application to the Royal Institution of Naval Architects for any category of membership.

The MARINE DESIGNER shall:

- (i) prior to exercising such right, first obtain the agreement of the **Client** to such visit which shall not be unreasonably withheld; and
- (ii) observe and obey any reasonable terms and conditions the **Client** may set for such a visit, including any limit on the number of persons that may come onto the premises or derivative work.

## 19. GOVERNING LAW

The agreement between the parties shall be deemed to be a contract made in New Zealand and its construction, validity and performance shall be governed by New Zealand law (but expressly excluding the United Nations Convention on Contracts for the International Sales of Goods - Vienna, 1980).

## 20. JURISDICTION

The parties irrevocably agree that, subject to Clause 17, the Courts of New Zealand will have non-exclusive jurisdiction to hear and determine all claims under or in connection with this contract.