

Service Terms

Middle Harbour Marine

Parties

1. **R & D ENGINEERING HOLDINGS PTY LTD (ABN 98 604 925 653) T/A Middle Harbour Marine (MHM)**, 1 Dymrna Street, Cromer NSW, 2099. (MHM); and
2. **the entity to whom a Quote is addressed to or who accepts the Services (you).**

Operative Provisions

1. Agreement

- (a) These terms and conditions (the Terms) govern the provision of Pickup/Delivery, Workshop based antifouling, detailing, mechanical, electrical, shipwright or other boat-related services from Middle Harbour Marine to you, being the entity to whom the estimate or quotation of costs (the Quote) is addressed to or who accepts the Services (as defined in clause 2.1(b(i))).
- (b) You agree and acknowledge that by approving a Quote and/or accepting the Services, you warrant that you have read and understood these Terms and you agree to be bound by these Terms from the time when you first approve a Quote or receive any Services (whichever occurs first) until the time that these Terms are terminated in accordance with clause 9(b).

2. Quote

Issue

- (a) You may, from time to time, request that Middle Harbour Marine provide you with services relating to your boat, ship, barge, tender, Trailer or other marine vessel (the Vessel).
- (b) Upon your request, Middle Harbour Marine may send you a Quote, which will outline:
 - (i) the services that Middle Harbour Marine will provide (the Services);
 - (ii) any parts or other items that Middle Harbour Marine will supply, as part of the Services (the Goods); and
 - (iii) the fees that are payable for the Services and the Goods (the Fees).

Acceptance

- (c) You may accept a Quote by either confirming your acceptance (orally or in writing) or by accepting the Services or Goods described in the Quote, at which point you become bound by these Terms. If you do not agree to these Terms, you must not accept the Services or the Goods.
- (d) You acknowledge that a Quote is open for acceptance for a period of thirty (30) days after it is issued, after which point Middle Harbour Marine is entitled to issue a new Quote for the Services and Goods that you have requested.

Variation

You acknowledge that:

- (a) a Quote is an estimate only and the Fees, Services and/or Goods may vary, as determined by Middle Harbour Marine in its discretion;
- (b) Middle Harbour Marine may, but is not obliged to, advise you of any such variations prior to supplying the Services and/or Goods;
- (c) you will be liable to pay Middle Harbour Marine for any variations, as advised by Middle Harbour Marine from time to time; and
- (d) in the event that you wish to vary the Services or Goods in a Quote, Middle Harbour Marine has no obligation to carry out the variations unless it has agreed to do so in writing.

No Quote

In the event that Middle Harbour Marine provides the Services or Goods without a Quote, it may rely on any terms agreed verbally or otherwise, in order to receive the Fees.

3. Services

Generally

You agree and acknowledge that Middle Harbour Marine:

- (a) will provide the Services outlined in your accepted Quote, in consideration for receiving the Fees;
- (b) may perform the Services in any way it deems necessary or appropriate;
- (c) may access, use, modify or alter the Vessel in the course of supplying the Services and/or the Goods;
- (d) may undertake any incidental or related services that it deems necessary from time to time, in its discretion, in order to perform the Services;
- (e) may liaise with and/or engage any third parties as it deems necessary in order to perform the Services;
- (f) will be entitled to exclusive possession and use of the Vessel during any period when it is supplying the Services or the Goods;
- (g) will not be liable in relation to any delays in the supply of the Services or the Goods;
- (h) may, in the event that it discovers materials which it deems to be dangerous or hazardous on the Vessel, deal with such materials in any way it deems necessary and recover any associated costs from you;
- (i) may share or otherwise use images or content relating to the Vessel, the Services or the Goods on its website, marketing materials or otherwise, as determined by Middle Harbour Marine in its discretion; and/or
- (j) may cease or suspend the Services, in the event that:
 - (i) any Fees are not paid in accordance with clause 4; or
 - (ii) you fail to comply with these Terms.

4. Fees

Payment

- (a) You agree to pay Middle Harbour Marine the Fees, without set-off, delay or deduction, in consideration for the Services and/or the Goods.
- (b) You must pay Middle Harbour Marine the Fees:
 - (i) upon receipt of a tax invoice from Middle Harbour Marine and on the date of the invoice, unless otherwise stated; and
 - (ii) in accordance with Middle Harbour Marine' instructions, which may include requiring an upfront deposit (*Deposit*) and/or progress payments.

Deposit

In the event that Middle Harbour Marine requires you to pay a Deposit:

- (a) you must pay the Deposit upon demand by Middle Harbour Marine;
- (b) Middle Harbour Marine has no obligation to supply the Services or Goods until it receives the Deposit; and
- (c) once Middle Harbour Marine commences supplying the Services or orders any Goods, the Deposit is non-refundable.

GST

- (d) Unless otherwise expressly stated, all amounts payable under Terms are stated exclusive of GST (as defined in *A New Tax Policies (Goods and Services Tax) Act 1999* (Cth) (the *GST Act*)).
- (e) In the event that GST is imposed or levied on any supply by a Party under these Terms, then the Party making the supply:
 - (i) may recover the GST amount from the Party receiving the supply; and
 - (ii) shall supply the Party receiving the supply with such invoices as required under the *GST Act*.

Other

- (f) In the event that you are late in paying the Fees, Middle Harbour Marine reserves the right to charge default interest, at a rate of ten percent (10%) per annum, calculated daily and charged weekly, on the total of all amounts which you owe to Middle Harbour Marine until such amounts are received by Middle Harbour Marine in cleared funds.
- (g) Middle Harbour Marine is entitled to apply, deduct from or set-off any monies it receives from you towards any invoices which remain unpaid, or any other amounts owed by you to it under these Terms, as it deems fit.
- (h) In the event that you pay the Fees by credit or debit card, you agree that you will be liable to pay an additional surcharge, as charged by Middle Harbour Marine, depending on which card you use.

5. Your Obligations and Warranties

Obligations

In relation to the Services, you must, at your own cost:

- (a) provide Middle Harbour Marine with keys for the Vessel and login credentials for any systems or other technology that Middle Harbour Marine requires to carry out the Services, as notified by Middle Harbour Marine from time to time;
- (b) ensure that:
 - (i) all inlets, outlets and/or openings either above or below the waterline on the Vessel 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;
 - (ii) all refrigeration equipment has been emptied and switched off at the time the Vessel is delivered to Middle Harbour Marine; and
 - (iii) the Vessel does not have any dangerous items on it, as determined by Middle Harbour Marine,
- (c) promptly reply to any enquiries, and comply with any requests, from Middle Harbour Marine;
- (d) continue to pay all costs, taxes, fines and other expenses relation to the Vessel;
- (e) provide Middle Harbour Marine with accurate, complete and up-to-date information at all times;
- (f) not interfere with Middle Harbour Marine' supply of the Services or the Goods;
- (g) pay Middle Harbour Marine the Fees, in accordance with clause 4; and
- (h) in the event that Middle Harbour Marine has consented to you engaging contractors to perform separate services to the Vessel, ensure that such contractors have adequate insurances in place and indemnify Middle Harbour Marine for any liabilities or claims that may arise in relation to such contractors.

Warranties

At all times, you warrant that:

- (i) you own the Vessel or are otherwise authorised by the owner of the Vessel to appoint Middle Harbour Marine to supply the Services and the Goods and to grant the rights contained in these Terms;
- (ii) the Vessel is adequately insured (including coverage for the indemnities in clause 13);
- (iii) the Vessel complies with all laws, regulations and legal requirements and is not the subject of any defect notice, registration cancellation or other order or notice, nor is it illegally obtained or held;
- (iv) the Vessel has not had any alterations to its serial number, other identification numbers or plates; and
- (v) you are not insolvent, bankrupt or otherwise unable to comply with your obligations.

6. Vessel

Collection and Delivery

- (a) Except when clause 6.1(b) applies, in order to receive the Services, you must deliver the Vessel to Middle Harbour Marine at 1 Dymrna Street, Cromer NSW 2099 (the Workshop):
 - (i) at a time and date nominated by Middle Harbour Marine; and
 - (ii) otherwise in accordance with Middle Harbour Marine' instructions.
- (b) Middle Harbour Marine may elect, upon your request and in its absolute discretion, to collect the Vessel, in which case you:
 - (i) must leave the Vessel and all access cards and keys at the place agreed with Middle Harbour Marine so that Middle Harbour Marine may collect the Vessel at the time it has nominated;
 - (ii) must provide Middle Harbour Marine the Vessel location, Vessel insurance details and any other requested information;
 - (iii) agree that you will be liable to pay an additional collection fee, as advised by Middle Harbour Marine;
 - (iv) release Middle Harbour Marine from all claims and liabilities that may arise in relation to such collection; and
 - (v) warrant that the Vessel is seaworthy and capable of safe navigation.
- (c) Middle Harbour Marine will notify you when the Services and/or Goods have been supplied and you may collect the Vessel. You agree that:
 - (i) you must collect the Vessel by close of business on the day notified by Middle Harbour Marine, failing which you will be liable to pay additional storage costs, as notified by Middle Harbour Marine; and

- (ii) Middle Harbour Marine may agree, upon your request and in its absolute discretion, to deliver the Vessel to a location nominated by you, in which case you:
- (A) will be deemed to have accepted delivery of the Vessel upon Middle Harbour Marine leaving the Vessel at such location, regardless of whether you, or anyone you have nominated, is in attendance when the Vessel is delivered;
 - (B) agree that you will be liable to pay an additional delivery fee, as advised by Middle Harbour Marine;
 - (C) release Middle Harbour Marine from all claims and liabilities that may arise in relation to such delivery; and
 - (D) warrant that the Vessel is seaworthy and capable of safe navigation.
- (d) You agree that by accepting delivery of the Vessel you are warranting that you have inspected the Vessel and are satisfied that the Services and the Goods have been supplied with due care and skill, in a proper and workmanlike manner and in satisfaction of your requirements and the Quote.

7. Lien

You agree and acknowledge that:

- (a) the Vessel, and all of your property contained therein, is subject to a repairer's lien in favour of Middle Harbour Marine;
- (b) Middle Harbour Marine is entitled to retain the Vessel and such other property until all Fees and other amounts (including storage fees) that you owe to Middle Harbour Marine are received in cleared funds (and may take whatever action it deems necessary to prevent the Vessel from being removed without its consent from the Workshop);
- (c) during any period where Middle Harbour Marine retains possession of the Vessel as a result of your failure to pay the Fees, you will also be liable for additional storage and/or berthing fees, as advised by Middle Harbour Marine;
- (d) in the event that you collect the Vessel prior to paying the Fees, then risk of the Vessel shall pass to you but the lien will remain with Middle Harbour Marine and it shall be entitled to enforce its rights under this clause 6.2, including by entering your premises and taking possession of the Vessel (and you release Middle Harbour Marine from any claims or objections relating to such actions); and
- (e) in the event that you fail to collect the Vessel within thirty (30) days of Middle Harbour Marine notifying you that it is ready for collection, then Middle Harbour Marine shall be entitled to sell the Vessel by auction or public treaty, in which event:
 - (i) Middle Harbour Marine may give you notice that it intends to exercise this right;
 - (ii) Middle Harbour Marine shall be entitled to apply the sale proceeds towards any amounts you owe to Middle Harbour Marine (including any costs associated with enforcing the lien) and:
 - {A} if there are amounts remaining from the sale proceeds, provide such amounts to you; and
 - {B} if there are amounts still owed by you after the application of the sale proceeds, recover such amounts from you as a liquidated debt.

8. Risk

You agree and acknowledge that:

- (a) Middle Harbour Marine does not accept any risk, and will not be liable, in relation to any items of your property (including the Vessel and any other property located therein) and is not required to arrange any insurance relating to such property;
- (b) you are required to adequately document all defects in, and damage to, the Vessel prior to, and after, Middle Harbour Marine taking possession (and you acknowledge that, if you fail to do so, all defects and damage will be deemed to have occurred prior to Middle Harbour Marine taking possession of the Vessel); and
- (c) Middle Harbour Marine shall not be responsible in tort, contract, or otherwise, and shall be released from any liability arising from any loss of, or damage to, or deterioration of, your property for any reason.

9. Cancellation

- (a) Either party may cancel a Quote after it has been approved by providing the other Party with written notice, in which case the Quote will be cancelled but these Terms shall continue to operate between the Parties for any other Quotes or Services.
- (b) Either Party may terminate these Terms, for any reason, by providing the other Party written notice.
- (c) Upon the cancellation of a Quote or the termination of these Terms:
 - (i) Middle Harbour Marine will immediately cease supplying the Services and the Goods; and
 - (ii) you will be liable to pay Middle Harbour Marine the following amounts, which will immediately become due and payable:
 - (iii) all Fees for Services supplied and Goods ordered up to and including the date of termination.

10. Intellectual Property

- (a) For the avoidance of doubt, the Parties agree and acknowledge that Middle Harbour Marine exclusively owns all intellectual property rights in its trade marks, copyright, designs, systems, documents and other forms of intellectual property.
- (b) In the event that you supply Middle Harbour Marine with specifications or designs, you warrant that the use of such specifications or designs shall not infringe the rights of any third party.

11. Public Statements

You must not mislead or deceive, or make disparaging remarks to, the public or any other entity in relation to Middle Harbour Marine, its business or its Related Entities or Associates (each as defined in the *Corporations Act 2001* (Cth)).

12. Liability

- (a) In the event that you believe that there is a defect in any Goods that we supply, you agree and acknowledge that:
 - (i) the third party manufacturer of the Goods may offer a warranty, which you may be able to claim under; and
 - (ii) Middle Harbour Marine makes no warranties regarding the Goods or whether you will be entitled to claim under the warranty contemplated in clause 10(a)(i).
- (b) Middle Harbour Marine makes no guarantees that the Services or the Goods are free from defects or errors. In the event that you believe such defects or errors exist, please discuss this with Middle Harbour Marine.
- (c) To the fullest extent permitted by law, Middle Harbour Marine excludes all warranties, guarantees or conditions, whether statutory, express, implied, collateral or otherwise, relating to the Services and the Goods.
- (d) In no circumstances shall Middle Harbour Marine or its Related Entities or Associates be liable to you, or anyone claiming under or through you, for consequential or punitive losses or damages, howsoever caused, arising in relation to these Terms, the Services or the Goods.

13. Indemnity

You hereby release and indemnify Middle Harbour Marine (and its Related Entities and Associates), and keep Middle Harbour Marine released and indemnified, from and against all claims, demands, losses, damages, proceedings, compensation, costs, charges, expenses and liabilities:

- (a) relating to any breach of these Terms, or the warranties in these Terms, by you or your directors, employees, agents or contractors;
- (b) relating to your failure to comply with any legislation or laws;
- (c) relating to loss of, or damage to, the Vessel (except to the extent that it is caused by Middle Harbour Marine);
- (d) arising in relation to any act or omission (whether unlawful, negligent or otherwise) or willful misconduct by you or any of your directors, employees, contractors or agents; and
- (e) which may arise in respect of any accident, loss or damage to property or death of or injury to any person of whatever nature or kind during the currency of these Terms.

14. Waiver

Any failure, delay or partial exercise of Middle Harbour Marine' rights under these Terms does not constitute a waiver of that right, unless the waiver is expressly waived in writing and signed by Middle Harbour Marine.

15. Variation

An amendment or variation to these Terms must be agreed in writing by the Parties.

16. Construction

In the event that the Parties disagree as to the interpretation or application of a provision of these Terms, you hereby agree and acknowledge that Middle Harbour Marine' interpretation shall apply.

17. Notices

- (a) Any notice to be given to any of Party will be served by post, hand or email (to the email address usually used by each Party in the course of communicating with the other party).
- (b) Unless otherwise specified in the Agreement, all notices, requests, demands, and other communications (other than routine operational or billing communications) required or permitted hereunder shall be in writing and shall be deemed to have been received by a Party:
 - (i) when actually received in the case of hand delivery against a signed receipt;
 - (ii) two (2) business days after being given to a reputable overnight courier with a reliable system for tracking delivery;
 - (iii) upon receipt, when mailed by Australia Post, registered or certified mail, return receipt requested, postage prepaid; or
 - (iv) one (1) business day after transmission by electronic mail.

18. Terms

- (a) The essential terms of these Terms are contained in clauses 4, 5 and 6.
- (b) The expiration or termination of these Terms does not operate to terminate or extinguish any of the continuing obligations under these Terms, including under clauses 4.3, 4.4, 7, 9(c), 10, 11, 12, 13, 14, 16, and 19 and those obligations remain in full force and effect and are binding upon the Parties.

19. Authority

In the event that a Quote and/or these Terms are agreed to by an individual other than you, on your behalf, then that individual hereby:

- (a) warrants that they have full authority to enter into these Terms on your behalf;
- (b) warrants that you have the ability to perform all your obligations in these Terms;
- (c) unconditionally and irrevocably guarantees to Middle Harbour Marine the prompt performance of all of your obligations in these Terms; and
- (d) indemnifies Middle Harbour Marine in respect all costs, losses and other liabilities which arise as a result of a breach of the warranties in this clause 19.

20. General Provisions

- (a) These Terms represents the entire agreement between the Parties and supersede all other agreements, arrangements and representations made between the Parties relating to the same subject matter.
- (b) These Terms shall prevail in the event of, and to the extent of, any inconsistency between them and a Quote, unless otherwise expressly stated in the Quote.
- (c) These Terms are governed by the law in force in New South Wales. Each Party submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (d) Middle Harbour Marine shall not be in default of these Terms due to any failure or delay in the performance of any obligations if that failure or delay is due to any cause which is beyond its reasonable control and furthermore is not due to that its fault or negligence, which causes shall include, without limitation: storms, floods, other acts of nature, fires, explosions, epidemics, pandemics, riots, war or civil disturbance, strikes or other labour unrests, embargoes and other governmental actions or regulations that would prohibit Middle Harbour Marine from performing any aspects of the obligations set out in these Terms.
- (e) Time is of the essence in these Terms unless it is agreed to otherwise by the Parties.
- (f) The rights, powers, authorities, discretions and remedies under these Terms are cumulative and do not exclude any other right, power, authority, discretion or remedy.
- (g) If any part of these Terms is invalid, illegal, unlawful or otherwise incapable of enforcement then that part will be deemed severed from these Terms and all remaining parts of these Terms will remain in full force.

21. Interpretation

In these Terms, unless otherwise specified:

- (a) the recitals, the Details and any annexures are incorporated in, and form part of, these Terms;
- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to a given gender includes all other genders;
- (d) a reference to a person includes a natural person, a company or other entities recognised by law;
- (e) a reference to dollars is to Australian dollars;
- (f) a reference to any of the Parties by their defined terms includes that Party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (g) a reference to an item is a reference to an item in the Details;
- (h) a reference to the Schedule is a reference to the correspondence schedule to these Terms;
- (i) a reference to any legislation, statute, ordinance, code or other law includes regulations and other instructions under it and consolidations, modifications, amendments, re-enactments or replacements of it;
- (j) a reference to any governmental or other body includes any statutory body which replaces, succeeds to the relevant power and functions of, or which serves substantially the same purposes or objects as such body;
- (k) a reference to a time is to that time in Sydney, Australia;
- (l) a reference to writing includes electronic communication;
- (m) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- (n) an obligation, representation or warranty in favour of two or more persons is to be construed for the benefit of them jointly and severally;
- (o) use of the word '*including*' or any similar expressions are not words of limitation;
- (p) any reference to you in these Terms includes your directors, employees and contractors, where the context permits (as determined by Middle Harbour Marine);
- (q) any reference to Middle Harbour Marine's consent, satisfaction or discretion may be withheld or exercised in its absolute discretion;
- (r) if the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and that day does not exist, the time is instead the next day; and
- (s) if the time for something to be done or to happen is a day that is not a business day, the time is extended to the next business day.