

Australian Ship Suppliers & Services Association (July 2020)

Standard Terms & Conditions

1. These Terms and Conditions apply to the supply of all Goods and Services by [Member] as well as their subsidiaries, trading partners, authorised distributors, agents and subcontractors, or any person or body acting on their behalf ("**the Supplier**").
2. The placing of an Order with the Supplier or the receipt or acceptance of Goods or Services provided by the Supplier shall constitute a warranty of acceptance of these Terms and conditions.
3. If an Order is placed by a Purchaser as agent for a principal whether the same is disclosed or undisclosed the Purchaser shall be jointly and severally liable with the principal for all obligations in respect of payment or otherwise arising out of this Agreement, and guarantees payment of the Goods and Services to the Supplier.
4. Further, the Purchaser acknowledges and confirms (including on behalf of its principal) that Goods and Services are supplied to a Vessel for use by the Vessel and the Vessel, its Master and its Owners/Managers shall be jointly and severally liable with the Purchaser for all obligations in respect of payment or otherwise arising out of this Agreement.
5. Any variation, cancellation or waiver of these Terms and Conditions in part or in full must be made in writing signed by a Director of [Member]. No other person has or will be given any authority whatsoever to agree any variation, cancellation or waiver of these Terms and Conditions.
6. The Supplier reserves the right to revise these Terms and Conditions from time to time. All revisions shall be effective from the date of posting on the Website. The Purchaser agrees to and accepts any revisions and shall be responsible for informing itself of any such revisions by referring to the Website.

Definitions and Interpretation

7. The following definitions shall apply to these Terms and Conditions and the Agreement made between the Parties.

Agreement	Means these Terms and Conditions and the Order Confirmation
Confidential Information	The terms of this Agreement and any technical, scientific, commercial, business, sensitive, financial, proprietary or other information or intellectual property.
Goods	Means any food and/or drinks and/or equipment and/or, goods of any description to be supplied by the Supplier.
Order	Means the purchase order placed by the Purchaser in respect of the Goods and/or Services.
Party	Means each of the Purchaser and the Supplier and includes their successors in title, permitted assignees and permitted transferees.
PPS Act	Means the <i>Personal Property Securities Act 2009</i> (Cth) and where the context permits, includes the PPS Regulations.
PPS Register	Means the electronic register established under Part 5 of the PPS Act

PPS Regulations	Means the <i>Personal Property Securities Regulations 2012</i> (Cth).
PPS Security Interest	Means a Security Interest over personal property granted under the PPS Act.
Purchaser	Means the person placing the Order on its own behalf and as agent for its principal, the Vessel, its Master and its Owners/Managers.
Secured Money	Means all money (and any part of that money) which directly, indirectly, contingently or otherwise at any time is or becomes due and payable by the Purchaser (whether alone or not) to the Supplier for any reason whether due by the Purchaser in its own right or in any other capacity.
Secured Obligations	Means the obligations of the Purchaser under the Order Confirmation.
Secured Property	Mean the Goods supplied to the Vessel.
Security	Means the Security Interest granted by the Purchaser to the Supplier under the Agreement.
Security Interest	Means: <ul style="list-style-type: none"> (a) a PPS Security Interest (b) any priority or preferential interest or arrangement giving a person a priority or preference over claims of other persons in relation to property or assets; (c) any third party right or interest that arises as a consequence of an enforcement; (d) any charge or similar interest imposed by law or other arrangement of any nature having similar economic effect to a Security Interest or charge; or (e) any present or future right or interest in personal property that is a Security Interest for the purposes of the PPS Act not included in paragraphs (a) to (e) of this definition.
Services	Means services of any description provided by the Supplier.
[Member]	Means [Member] Pty Ltd, a company registered in Australia with ABN [TBA].
Supplier	Means [Member], as well as their subsidiaries, trading partners, authorised distributors, agents and subcontractors or any person or body acting on their behalf.
Vessel	Means the vessel to which the Goods and/or Services are supplied.
Website	Means the website of [Member] [TBA]

Order Process

8. The Order constitutes an offer by the Purchaser to purchase Goods or Services from the Supplier.
9. The Order is accepted by the Supplier only when the Supplier has sent a written confirmation to the Purchaser confirming its agreement to fulfil the Order in whole or in part ("**Order Confirmation**").
10. The Supplier is not obliged to accept any Order or part Order.
11. The Supplier's Order Confirmation shall constitute a binding contract between the Parties subject to these Terms and Conditions only. Any Terms and Conditions proffered by the Purchaser will be inapplicable.
12. If a Purchaser does not, within 24 hours of receipt of the Order Confirmation, notify the Supplier in writing of any inaccuracies, the Order Confirmation is deemed to be expressly agreed between the Parties.
13. The Purchaser agrees to promptly provide all necessary information, documentation and approvals to the Supplier to facilitate the delivery of the Goods and Services within the time provided by the Order Confirmation. If information, documentation and approvals are not provided promptly by the Purchaser the Supplier may, at its absolute discretion, refuse to supply the Goods and Services.
14. The Supplier shall not be responsible for any failure or restriction in the service provided on its Website and does not guarantee the service will be fault free. Access to the Website may be occasionally restricted to allow for repairs, maintenance or the introduction of new facilities or services.

Terms of Payment

15. Unless otherwise agreed in writing all payment for Goods and/or Services shall be made by the Purchaser in advance of delivery. The Supplier reserves the right not to supply the Goods and/or Services until payment is received in full by the Supplier.
16. The Purchaser shall pay the purchase price, the deposit and any other amount due in full, free of bank charges, and within the time specified in the invoice/statement. The Supplier shall be entitled to claim interest of 2% per month (before as well as after any award) on any overdue payment from the due date until payment in full is received by the Supplier.
17. If payment is overdue, the Supplier is entitled to claim and recover full compensation for collection costs and expenses in and out of court and all legal costs and expenses on a full indemnity basis.
18. GST - Where the Agreement requires either Party to pay for, reimburse or contribute to any expense, loss or outgoing ("**reimbursable expense**") suffered or incurred by the other Party, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of:
 - (a) The amount of the reimbursable expense net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense ("net amount"); and
 - (b) If the other Party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.
19. The Purchaser shall be liable to pay any tax, duty, levy or charge of any kind imposed by any state or state authority or other authority by reason of the supply of the Goods and/or Services. Where

the Supplier incurs expenses or liabilities or is subject to claims in respect of such payments the Purchaser shall indemnify the Supplier fully and hold it harmless in respect of all penalties, claims, damages, losses, cost and expense whatsoever arising incurred in connection with such taxes, duties, levies, charges or similar items of expenditure.

Delivery of Goods and Services

20. The Supplier will endeavour to deliver the Goods to the place stipulated in the Order Confirmation and/or Vessel or so close thereto as reasonably practical (**Point of Delivery**). The Supplier reserves the right not to deliver to all locations and to deliver the Goods in instalments.
21. Evidence that Goods have been left at the Point of Delivery shall be final and binding proof of delivery.
22. The Purchaser is responsible for making suitable arrangements to receive the Goods and Services at the Point of Delivery and providing all necessary information and instructions.
23. The Supplier has no liability for any damage or loss (including theft) of the Goods during or following delivery.
24. The Purchaser or its representatives shall confirm safe receipt in writing immediately on delivery and must inspect the Goods and Services on delivery and notify the Supplier of any defects not apparent at the time of delivery within 24 hours after delivery.

Lack of conformity – Purchaser

25. In the event of a lack of conformity of the supplied goods with the Order Confirmation at the time of delivery, which is notified to the Supplier within 24 hours and is proved to be the responsibility of the Supplier, the Supplier shall at its sole discretion rectify the lack of conformity, and/or deliver substitute Goods. No further remedy shall be available to the Purchaser.
26. The Purchaser loses any claim based on lack of conformity where such lack of conformity would have been discovered on reasonable inspection at the time of delivery but was not notified to the Supplier in accordance with Clause 24. Except as provided by Clause 24, the Purchaser shall have no further rights or claims in respect of lack of conformity on the part of the Supplier.
27. Should the Supplier deliver goods in excess of that stated in the Order Confirmation the Purchaser shall immediately inform the Supplier at the time of delivery and immediately return the excess. Any and all costs arising from the Purchaser's failure to immediately notify the Supplier of any excess shall be for the Purchaser's account. If the Purchaser fails to return the excess prior to departure of the Vessel the Purchaser is deemed to have accepted the excess and agrees to pay for the same.

Limit of liability and Force Majeure

28. Except where otherwise expressly provided for in these Terms and Conditions the Supplier shall not be liable in tort, (including but not limited to negligence) contract, statutory duty, misrepresentation or otherwise for any loss, damage or delay whatsoever and howsoever arising from:
 - (a) The act or omission of the Purchaser or any of its servants, agents or employees;
 - (b) Compliance with the instructions given by the Purchaser or any of its servants, agents or employees;
 - (c) Handling, loading, stowage or unloading of the Goods;

- (d) Inherent vice of the Goods;
 - (e) Riots, civil commotions, acts of God, epidemic, pandemic, terrorism, sanctions, piracy, war, strikes, labour shortage, labour or industrial disputes, restraint of labour, embargo, lockouts, stoppage, government regulation or order;
 - (f) Adverse weather conditions, flood, storm, strike action, vehicle breakdown, traffic congestion or problems, port or ship security arrangements accident, disruption to energy supplies, power or fuel, equipment or supplier failure, fire, explosion or theft;
 - (g) Any other cause beyond the reasonable control of the Supplier.
29. The Supplier shall not be liable in tort (including but not limited to negligence) contract, statutory duty, misrepresentation or otherwise for loss or damage howsoever caused (whether or not indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss, loss of profit, business, contracts, anticipated savings, goodwill, revenue, wasted expenditure, loss of market, consequential loss, indirect loss, delay or deviation howsoever arising.
30. The Supplier will not be liable to the Purchaser by way of representation (unless fraudulent), common law duty, or under any express or implied term of the contract for any losses which are not foreseeable by the Purchaser and the Supplier when the Agreement is formed and losses which are not caused by any breach of the Supplier and business or trade losses including, without limitation, loss of profits, loss of goodwill, loss of reputation and loss of business.
31. Without prejudice to the limitations of liability set out above the Supplier's liability howsoever arising out of tort (including but not limited to negligence), contract, statutory duty, misrepresentation or otherwise shall not exceed the total value of the Goods and/or Services as set out in the Order Confirmation, or the sum of Thirty-Thousand Australian Dollars, whichever is lower.
32. Nothing in this Agreement excludes or limits the Supplier's liability for death or personal injury caused by the Suppliers' negligence, or for any matter which it would be illegal for the Supplier to exclude or attempt to exclude, or for fraud or fraudulent misrepresentation.

Claims presentation and time bar

33. Without prejudice to limitations contained herein the Supplier shall not be liable for any claim in respect of any matter arising out of this Agreement, unless the claim, with full particulars and all supporting documents, is lodged in writing with the Supplier within 21 days of the date of delivery of the Goods and/or Services or the date on which the Goods and/or Services should have been delivered
34. Further, if proceedings are not commenced within three months of the date of delivery of the Goods and/or Services or the date on which the Goods and/or Services should have been delivered then the claim shall be deemed to be waived and absolutely time barred.

Handling of Third Party Goods

35. The Supplier may agree to handle the Purchaser's own goods (which shall include goods procured from a third party at the request of the Purchaser) (**Purchaser's Goods**), including arranging customs clearance, inland or international carriage, storage and delivery to a nominated vessel. In the absence of any contrary terms agreed between the Vendor and Purchaser in relation to such activity Clauses 35-46 set out the terms upon which such Services are provided.

36. When the Supplier procures goods at the request of the Purchaser and/or instructs any third party in connection with the clearance, handling or movement of Purchaser's Goods it does so strictly as agent for the Purchaser and the Purchaser authorises the Supplier to act as its agent and to contract on the usual terms of those third parties.
37. The Purchaser is responsible for fully and accurately declaring, describing and documenting the contents of any package or packages to the Supplier for handling, such declaration, description and documentation being appropriate for the place at which the Supplier is required to handle the Purchaser's goods.
38. All Purchaser's Goods shall be properly and adequately packaged for the period of transit and storage envisaged. The Supplier shall not be responsible for inspecting said packaging, or taking any remedial steps in relation the deficiencies, or for compliance with the terms of any warranty that may apply to the Purchaser's Goods. The Supplier shall not be responsible for inspecting the condition of the contents of any packages for loss or damage. The Purchaser shall remain at all times responsible for compliance with the ISPS Code as concerns the acceptance of goods on board vessels.
39. Where the Purchaser's Goods require particular handling or care the Supplier shall only be required to provide such handling and care if it has agreed in writing to do so, in advance of the Goods being consigned to them.
40. It is envisaged that the Supplier's charges shall be agreed in advance of goods being procured and/or consigned to them. Where no such agreement is in place the Supplier shall be entitled to charge a reasonable sum, consistent with similar work for similar clients.
41. The Purchaser shall insure the Purchaser's Goods for all carriage and storage risks during the period that they are under the custody, care or control of the Supplier on terms that the insurer waives any rights of subrogation or recourse against the Supplier. The Supplier has no obligation or requirement to insure the Purchaser's Goods.
42. The Supplier provides no warranty in respect of the Purchaser's Goods and shall not be liable for loss or damage to Purchaser's Goods otherwise than by its own negligence or default. Any claims in respect of Purchaser's Goods lost or damaged whilst in the custody of third parties instructed on behalf of the Purchaser by the Supplier shall be made directly to the relevant third party, whose details the Supplier shall provide.
43. Where the Supplier is liable in respect of Goods lost or damaged then its liability shall be strictly limited to 2 SDRs per kilo of the weight of the Purchaser's Goods lost or damaged, and such limits shall apply in all cases including loss or damage caused by the Supplier's breach of contract or negligence. The Supplier shall not be liable for any other losses, claims or damages and for the avoidance of doubt shall not be liable for losses arising from a failure to deliver or a delay in delivery of the Purchaser's goods, including losses arising from delay to the vessel, including detention, demurrage or periods off-hire.
44. The Supplier shall have a right of general lien over Purchaser's goods and any documents related thereto in respect of any sums due from the Purchaser, whether related to the Purchaser's Goods under lien or any other Contract.
45. Where the Purchaser's Goods are (i) held under lien; or (ii) held for a period of more than 60 days without instructions for their delivery or forwarding the Supplier shall be entitled to sell or dispose of them, upon 5 days' notice to the Purchaser of an intention to do so, and may apply the proceeds to any sums due from the Purchaser.

46. The Purchaser shall immediately upon written demand from the Supplier fully indemnify the Supplier for all costs, expenses, penalties, fines, taxes, duties or other dues arising from the handling and delivery of Purchaser's Goods including those arising from the Purchaser's incorrect or false declaration of the content of any package.

Security Interest and charge

47. To secure its obligation to pay the Secured Money and to perform the Secured Obligations the Purchaser (as Grantor) grants to the Supplier (as Secured Party) a fixed charge over all the Secured Property.
48. The charge created under the Agreement constitutes a PPS Security Interest which attaches to the Secured Property at the time prescribed by the PPS Act.
49. If the charge created under this agreement is not legally and fully effective as a fixed charge then it is a floating charge until it becomes a fixed charge.
50. The Purchaser:
- (a) acknowledges, agrees and consents to the Supplier registering this Security on the PPS Register; and
 - (b) irrevocably authorises the Supplier and its agents, solicitors, officers, employees and service providers to:
 - (i) apply for any registration or give any notification, in connection with this Security; and
 - (ii) complete any blanks in any other document associated with the Agreement, including a financing statement, financing change statement, amendment demands and transfers for the Secured Property.
51. Unless expressly provided otherwise in the Agreement, or otherwise agreed in writing by the Secured Party, this Security is a first ranking security and ranks in priority ahead of all other Security Interests in the Secured Property except Prior Security Interests.
52. Continuing security and obligations
- (a) This Security is a continuing security, and the Purchaser's obligations under the Agreement continue until the Supplier releases the Secured Property from this Security, despite any intermediate payment, discharge, settlement, release, the existence of any funds standing to the credit of the Supplier or any other matter.
 - (b) Despite clause 52(a), any full or partial release of the Secured Property will not release the Purchaser from liability under the Agreement until all Secured Money has been Finally Paid and all Secured Obligations have been fully and finally performed and complied with.
- 53. Release of Secured Property**
- (a) If the Purchaser considers that the Secured Money has been Finally Paid and all Secured Obligations have been fully and finally performed and complied with, it may request the Supplier to release the Secured Property from the Security.
 - (b) If it is satisfied that the Secured Money has been Finally Paid and all Secured Obligations have been fully and finally performed and complied with, the Supplier must, as soon as practicable after a request made under clause 53(a), release the Secured Property from this Security.

54. The Purchaser must pay interest on the Secured Money owing by the Purchaser to the Supplier in accordance with the terms of the Agreement.

Indemnification

55. The Purchaser acknowledges that the Goods sold and supplied under this Agreement are, or may be hazardous to human health, and the Purchaser assumes all risk and liability for the use of the Goods. The Purchaser shall familiarise itself and keep itself informed with respect to possible hazards to persons or property involved in the handling and use of the goods. The Purchaser shall advise its employees, independent contractors and others who handle the Goods, and shall take such action as is reasonably necessary to advise others, who are foreseeably users of the Goods, of the suspected or proven hazards of the Goods and the proper handling of the Goods.
56. The Purchaser shall use, deal with, store and handle the Goods always in accordance with the manufacturers and industry guidelines and the Purchaser assumes all risk and liability for the proper use and handling of the Goods after delivery and shall indemnify the Supplier and hold the Supplier harmless from all consequences including, but not limited to, all liability, costs and expenses whatsoever arising from improper use or improper handling, including but not limited to claims by third parties.
57. The Purchaser shall defend, indemnify and hold harmless the Supplier against all penalties, claims, damages, costs, liabilities, loss, and expenses whatsoever arising in connection of supply and subsequent use of the Goods and/or Services.

Cancellation, confidentiality, representations

58. The Supplier may suspend or cancel any Order at its discretion or if the Purchaser breaches any of its obligations under the Agreement.
59. The Parties must keep all Confidential Information private and confidential and must not use or disclose that Confidential Information except as necessary for the performance of this Agreement.
60. The Parties must store all Confidential Information in a way that minimises the risk of unauthorised access.
61. The Parties agree that when entering into this Agreement they have not relied upon oral or written statements, representations, warranties, assurances, undertakings made by either Party other than those set out expressly in the Agreement and the Parties waive all rights in relation to the same.

Severability, assignment

62. If any provision of this Agreement is or subsequently becomes void, unenforceable or illegal, this shall not affect the validity, enforceability or legality of the other provisions of this Agreement.
63. None of the rights and obligations of the Purchaser under this Agreement may be assigned or transferred in whole or in part without the prior written consent of the Supplier.

Applicable Law and Arbitration

64. This Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia. Any dispute, controversy or claim arising out of, relating to or in any way connected with any contract incorporating these terms and conditions, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the AMTAC Arbitration Rules. The seat of the arbitration shall be Sydney, Australia. The language of the arbitration shall be English.

