



**MARINE SURVEYORS, CONSULTANTS
& CONTAINER INSPECTORS**

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CONDITIONS OF CONTRACT

1. In these conditions of Contract:
"Client" means the party with whom the Surveyor contracts to provide the Services.

"Services" means and includes the whole of the services provided by the surveyor including but not limited to conducting surveys of container, general, break-bulk, bulk and liquid cargoes and of vessels' hulls, machinery and draughts.
"Subcontractor" includes any other person who pursuant to a contract or arrangement with any other person (whether or not the Surveyor) provides or agrees to provide the Services or any part of the Services.
2. All Services are provided by the Surveyor subject only to these Conditions of Contract and any terms, conditions or warranties not expressly stated in these Conditions of Contract do not form part of the Contract between the Surveyor and the Client.
3.
 - (1) The client expressly warrants that it has the authority to request the Surveyor to provide the Services.
 - (2) Where the Client is acting as an agent in requesting the provision of the Services, the client agrees to be liable jointly and severally with its principal for all amounts payable to the Surveyor pursuant to this Contract.
 - (3) The Client authorises the Surveyor to take all steps that in the opinion of the Surveyor are necessary in order to provide the Services.
 - (4) The Client agrees that it cannot withdraw its request for the provision of the Services or call for the Services to be terminated before their completion unless the Surveyor otherwise agrees in writing.
4.
 - (1) The Client agrees to pay all amounts which are invoiced to it by the Surveyor in respect of the Services provided within the period stated on the Surveyor's invoice, failing which the client agrees to pay interest on the amount outstanding at a rate equal to the benchmark rate quoted by the Commonwealth Bank of Australia from time to time plus 2% calculated on a daily basis from the due date for payment until those amounts outstanding (plus interest) have been paid in full.
 - (2) If the Client disputes the whole or any part of the amounts invoiced to it by the Surveyor, the Client agrees to pay that part which is not in dispute and to notify the Surveyor in writing of any reasons for disputing the unpaid part at the time of the payment. If the parties are unable to reach agreement within seven (7) days of the notification by the Client then the dispute shall be determined in accordance with this Contract. If it is determined that some or all of the part in dispute ought to have been paid at the time when it was invoiced, then the Client shall pay that part together with interest on that part calculated in accordance with Clause 4 (1).
 - (3) If the engagement of the Surveyor is terminated for any reason other than a breach of the Contract by the Surveyor, the Surveyor shall be entitled to a pro rata payment for the Services carried out and consequential costs and expenses incurred as a result of the termination for the period up to and including the date of that termination.
 - (4) The parties agree that where the Surveyor is required to provide the Services in circumstances other than those which normally occur in the provision of the Services or where there is a variation in the Services which have been requested to be provided, the Surveyor shall be entitled to the payment of additional amounts which are to be agreed between the parties immediately those circumstances or changes in the Services become known to the Surveyor.

5. (1) The Surveyor does not warrant the accuracy of any information or advice which is supplied during the provision of the Services.
- (2) Except as otherwise set out in this contract the Surveyor shall not be liable in contract, tort or otherwise for any loss or damage (including but not limited to consequential, indirect, special or economic loss or damage) of whatsoever nature, whether direct or indirect and howsoever arising UNLESS the same is proved to have resulted solely from the negligence of the surveyor.
- (3) Where the Australian Consumer Law consumer guarantees do not apply and in the event that the Client proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Surveyor / Consultant aforesaid then, save for where loss, damage, delay or expense has resulted from the Surveyor's / Consultant's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Surveyor's / Consultant's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed the sum calculated on the basis of ten times the Surveyor's / Consultant's charges or Australian \$10,000, whichever is the lesser.
- (4) Notwithstanding anything set out in this Contract these Conditions of Contract are subject to the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010, if and to the extent consumer guarantees apply to this Contract and prevent the exclusion, restriction or modification of any such consumer guarantee. Our liability, if any, for breach of any consumer guarantee which applies shall be limited at our option to the supply of the services again or the cost of having the services supplied again.
6. The Surveyor and any Subcontractor shall be entitled to subcontract on any terms the whole or any part of the Services.
7. Every exemption, limitation, condition, and liberty contained in this Contract and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Surveyor or to which the Surveyor is entitled in this Contract shall also be available and shall extend to protect all Subcontractors, every servant or agent of the Surveyor or of a Subcontractor, every other person (other than the Surveyor) by whom the Services or any part of the Services are provided and all persons who are or may be vicariously liable for the acts or omissions of any of the before-mentioned persons and for the purpose of this Clause the Surveyor is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract.
8. The Client undertakes that no claim or allegation shall be made whether by the Client or by any other person against any person (other than by the Client against the Surveyor) by whom (whether it is a Subcontractor, principal, employer, servant, agent or otherwise) the Services or any part thereof are provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Surveyor or others) in connection with the provision of the Services and if any such claim or allegation should nevertheless be made to indemnify the Surveyor and the person against whom such claim or allegation is made against the consequence thereof. Without prejudice to the foregoing and for the purpose of this Clause the Surveyor is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall be the extent be or be deemed to be parties to this Contract.
9. The Surveyor shall not be bound by any agreement purporting to waive or vary these Conditions of Contract unless such agreement to so waive or vary shall be in writing and signed by an executive officer of the Surveyor.
10. All the rights, immunities and limitations of liability in these Conditions of Contract shall continue at their full force and effect in all circumstances and notwithstanding any breach of any of these Conditions of Contract by the Surveyor or any other person entitled to the benefit of such provisions.
11. The parties agree that if any provision or any part of any provision of these Conditions of Contract is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.
12. In any event the Surveyor shall be discharged from all liability whatsoever in respect of the Services provided unless arbitration proceedings are commenced within twelve (12) months from the completion of their provision.
13. The parties agree that all disputes arising out of this Contract shall be referred initially to mediation for resolution and that such disputes which cannot be so resolved shall be referred to arbitration which shall be conducted in accordance with the laws of the State or Territory in which this Contract is entered relating to the conduct of commercial arbitration.
14. These Conditions of Contract shall governed by and construed in accordance with the laws of the State or Territory in which this Contract is entered and to the jurisdiction of whose Courts the parties submit.
