



# NAUTILUS MARINE SERVICES

G43 GOLD COAST CITY MARINA WATERWAY DRIVE, COOMERA PO Box 484, HELENSVALE QLD 4212

ABN: 41 957 020 809 T: 0417 220 720 F: 07 5556 0132

E: JOHN@NAUTILUSMARINE.COM.AU WWW.NAUTILUSMARINE.COM.AU

## TERMS OF TRADE/CREDIT AGREEMENT

To take effect immediately;

### BETWEEN

Nautilus Marine Services Pty Ltd (ACN 107 129 493) as trustee for the Nautilus Marine Services Trust (ABN 41 957 020 809) trading as Nautilus Marine Services (“**Nautilus Marine**”)

AND

The Client

### 1. Recitals

- 1.1 In consideration of Nautilus Marine anticipating, providing or continuing to provide to the Client credit in respect to marine vessel management, crew placement, voyage planning, marine brokerage services, marine vessel re-fitting and the procurement of equipment (“total vessel management operations”) the Client
- 1.1 must inform Nautilus Marine in writing within seven (7) days of any change to its business or corporate structure;
- 1.2 and its guarantor/s declare all information supplied on this agreement is true and correct in every particular and that the Client is aware that credit is given to the Client on reliance upon the information supplied and the representations made by the Client to granting this credit facility;
- 1.3 will pay all future fees incurred by Nautilus Marine to the Client and will be made on the terms of this agreement. If credit is refused or withdrawn then payment shall be made in accordance with Nautilus Marine’s standard requirements for payment set out in its invoices.

## 2. Scope and Guarantee of Works

- 2.1 Nautilus Marine guarantees the workmanship of all of its workmanship for one (1) year from the date of the provision of the invoice in respect to the services provided. Nautilus Marine does not warrant in any way detailing of Client's marine vessels. In the event that Nautilus Marine install manufactured components and/or parts ("parts"), Nautilus Marine only guarantees such parts as warranted by the manufacturer of the same.

## 3. Information and Confidentiality ("Privacy Act")

- 3.1 The Client acknowledges the information provided to Nautilus Marine in this agreement has been given to Nautilus Marine for the purposes of it assessing the financial standing and credit worthiness of the Client and its guarantor/s and the Client and its guarantor/s hereby:-
- 3.1.1. authorise Nautilus Marine to make enquiries and obtain any information from bankers and business referees mentioned in this agreement or from anybody else Nautilus Marine may reasonably consider necessary;
  - 3.1.2. acknowledge that Nautilus Marine has informed the Client and its guarantors that in accordance with section 18E (8)(c) of the *Privacy Act (1988) Cth* that certain items of personal information about the guarantor/s contained in this agreement are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies;
  - 3.1.3 that in accordance with sections 18H and/or 18K and/or 18L(4) of the *Privacy Act (1988) Cth* the Client and the guarantor/s agree to reports given by Nautilus Marine for the purpose of the assessment of this agreement and to establish the credit worthiness of the Client and/or guarantor/s;
  - 3.1.4. authorises Nautilus Marine to exercise the Client's/guarantor/s rights of access to credit information of the Client and the guarantor/s.
- 3.2 The Client agrees that Nautilus Marine may give to and seek from any credit providers whether or not named in this agreement any reports or information that have any bearing on the Client/guarantor/s credit worthiness, credit standing, or credit capacity or any:
- 3.2.1. assessment of any credit application made by the Client;
  - 3.2.2. default made by the client or guarantor/s in this agreement;
  - 3.2.3. exchange of information between credit providers as to the status of its account with Nautilus Marine when the Client is in default of this agreement with Nautilus Marine;
  - 3.2.4 assess the Client's credit worthiness at any time; and

- 3.2.5 assessment of the Client's director/s personal credit history containing personal information in respect to confirming this agreement.

#### **4. Payment of Nautilus Marine's Account**

- 4.1 Unless otherwise agreed in writing, payment for all invoiced fees and costs in respect to the provision of vessel management operations is to be paid by the Client on provision of the invoice form Nautilus Marine.
- 4.2 In the event that payment is not received within the terms at clause 4.1 and that Nautilus Marine has to re-issue invoices to the Client then Nautilus Marine reserves its right to impose a 2.5% administration fee on overdue accounts on the amount owed by the Client and/or per re-issue of additional invoices to the Client.
- 4.3 If labour has been expended or materials purchased, where the order of the Client has not been completed, Nautilus Marine reserves the right to issue an invoices as progress payment for all purchases and labour costs that will be incurred in respect to the Client's order.
- 4.4 All GST, financial institutions duty, stamp duty and other government charges in particular those relating to the establishment and operation of the Client's account will be automatically debited to the account.
- 4.5 If an account is issued then the Client is responsible for payment supplied against any use of that notwithstanding that such use was unauthorised.

#### **5. Quoted Fees**

- 5.1 All quotations as to price given by Nautilus Marine are subject to withdrawal or variation by Nautilus Marine at any time prior to actual receipt by Nautilus Marine of the Client's written order and, unless otherwise specified in the quote, will be valid for thirty (30) days only.
- 5.2 Agreements for the supply of Nautilus Marine's vessel management services that are based upon a quotation will be subject to final written confirmation from Nautilus Marine to the Client after receipt by Nautilus Marine of the Client's order. Supply of the goods by Nautilus Marine will be deemed to be such written confirmation.
- 5.3 Due to the nature of some works, it may be impossible to provide a fixed quote. In such cases, NMS will provide either an indicative range of resultant costs to the client or in extreme cases, a situation of do and charge will prevail.

## 6. Price

- 6.1 Nautilus Marine and the Client agree that all internal costs associated with working on the Client's file and account are to be borne by Nautilus Marine and are inclusive with the quoted fee amount.
- 6.2 From time to time external costs may arise; Nautilus Marine will bring these to the Client's attention prior to making any commitment on the Client's behalf.

## 7. Delivery

- 7.1 Nautilus Marine will not be liable for any losses or damages to goods which occur in transit where the carrier is independent of Nautilus Marine.
- 7.2 Nautilus Marine will not be responsible for any losses or damages caused to the Client's property or the property of any third party as a result of the entry upon any property at the request of the Client by any of Nautilus Marine's employees, servants or agents. The Client will indemnify Nautilus Marine from any claim resulting from such loss or damage from a third party.
- 7.3 Nautilus Marine will use reasonable endeavours to supply the goods ordered within the time frame specified or within a reasonable period. However, Nautilus Marine will not be liable for any failure to deliver or for delay in delivery of products occasioned by any cause whatsoever whether or not beyond the control of Nautilus Marine.

## 8. Default

- 8.1 If there is a breach of any of the terms and conditions of this Agreement then:
  - 8.1.1 All monies payable by the Client to Nautilus Marine will at Nautilus Marine's election become immediately due and payable notwithstanding that the specified period for payment may not yet have expired;
  - 8.1.2 Any credit facilities may be withdrawn by Nautilus Marine;
  - 8.1.3 Nautilus Marine may withhold the delivery of goods or vessel management services already ordered;
  - 8.1.4. Nautilus Marine may charge interest on the overdue amount at a rates of 15% p.a, (calculated daily) fee rate calculated on the amount overdue until payment in full; and
  - 8.1.5. Nautilus Marine may charge to the Client all monies, costs, charges and expenses (including legal costs on an indemnity basis) of any attempt made by or on behalf of Nautilus Marine to recover payment of any monies owing by the Client to Nautilus Marine or to secure any indebtedness or liability by the Client to Nautilus Marine notwithstanding that no demand has been made by Nautilus Marine for payment by the Client.

## 9. Disclaimer

- 9.1 Except as provided in this Agreement:
- 9.1.1 All express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods or services for any purpose are hereby expressly excluded; and
  - 9.1.2 Nautilus Marine will not be liable for any loss, damage or injury of any kind to the Client or any other person or company arising from or in connection with the supply by Nautilus Marine of goods to the Client or the exercise of any of Nautilus Marine's powers in this Agreement, any guarantee or security or any credit agreement including, but without limiting the generality of the foregoing, direct, indirectly and consequential losses and losses arising from loss of production or profit and the Client agrees to indemnify the Client for any such loss to a third person.

## 10. Claims

- 10.1 The Client has fourteen (14) days from the date of delivery of the goods and/or the provision of vessel management services within which to provide to Nautilus Marine written notice of any alleged claim for failure to comply with the order, whether due to shortfall, defect, incorrect delivery or otherwise. Should the Client fail to provide such notice within the stipulated time period Nautilus Marine will be deemed to have complied with the Client's order in all respects of the order.
- 10.2 If a successful claim is brought against Nautilus Marine arising directly or indirectly in respect of goods, the liability of Nautilus Marine will be limited, except where any statute requires otherwise, to the replacement or repair of the goods during normal working hours and by its own employees or authorised representatives or the supply of equivalent goods and/or the payment of the costs of replacing the goods or of acquiring equivalent goods. Nautilus Marine will not be liable to pay for any services or repairs carried out by others.
- 10.3 The Client must not replace or indicate replacement of potential warranty claims until such claim has been approved by Nautilus Marine.
- 10.4 If the warranty claim is rejected by Nautilus Marine the goods will only be returned at the Client's request and the Client will be liable for any additional freight cost.
- 10.5 Any goods unclaimed for a period of six (6) months will be subject to disposal by Nautilus Marine at its discretion.

## 11. Entire Agreement

- 11.1 This agreement constitutes the entire agreement of the parties relating to this agreement and supersedes all prior undertakings, negotiations, agreement written or oral, express or implied in relation thereto.

## 12. Credit

- 12.1 Any credit limitation is solely for the benefit of Nautilus Marine and any obligation is not changed if the limit is exceeded.
- 12.2 Nautilus Marine may withdraw or refuse credit at any time without notice.

## 13. Security

- 13.1 In consideration of acceptance of this application by Nautilus Marine and as an essential condition of the terms of total, the Client charges all of its interest in any land (present or future and wherever situated) with the amount of its indebtedness of any account whatsoever to Nautilus Marine from time to time. The Client specifically authorises Nautilus Marine to lodge a caveat, bill of mortgage or other security as Nautilus Marine may require against such interest in any real property. The term "real property" includes all estates and interest including leasehold.
- 13.2 The Client hereby irrevocably appoints as its duly constituted and authorised attorney Nautilus Marine's Duly Authorised Officer to execute in the Client's name, as the Client's act and deed, any caveat, mortgage, encumbrance, charge or any other similar document that Nautilus Marine may in its absolute discretion choose to lodge against the Client's real property in the Titles Office in any State of Australia and to execute any consent to any such document and to do any other act so as to enable such document to be made fully effective and enable immediate registration. It will not be necessary for Nautilus Marine to inform the Client of Nautilus Marine's exercise of its powers under the Clause nor give the Client any notice of its intention to exercise those powers nor will Nautilus Marine be required to first make demand on the Client. Nautilus Marine will not be liable in any way for any loss or damage the Client or any third person which arises directly or indirectly from or in connection with Nautilus Marine's use or attempted use of its powers pursuant to the Agreement, any guarantee or other security in support hereof or any credit agreement. This clause will apply even though the use of the said powers may be unsuccessful or unjustified on any grounds whatsoever. Where the loss or damage occurs to some third party the Client indemnifies Nautilus Marine against all liability to the fullest extent permitted by law.

**14. Retention of Title of Goods**

Nautilus Marine retains title of all goods passed or supplied to the client until the client pays in full for such goods as itemised on Nautilus Marine's invoices. The client must prior to payment being received and funds clearing:

- 14.1 Store the goods separately.
- 14.2 Pay for the goods on receipt of Nautilus Marine's invoice.
- 14.3 If goods supplied by Nautilus Marine are used in the process of manufacturing or mixed with materials not owned by Nautilus Marine, Nautilus Marine reserves its right to value these materials at market value and invoice the client for the value of these goods to be paid immediately by the client to Nautilus Marine.
- 14.4 In the event the client does not pay on receipt of the invoice issued by Nautilus Marine on receipt of its invoice, the client irrevocably authorises Nautilus Marine to enter the client's premises or any premises under the client's control where the goods are stored and to take possession of the goods without any liability for the tort of trespass, negligence (public or otherwise) or payment of any compensation to the client or anyone claiming any right or cause of action through the client for entry or anything related to Nautilus Marine's entry (including its agents) in order to reclaim the goods provided by Nautilus Marine.

**15. Schedules**

- 15.1 Should the schedules 1 and 2 to this Application by the relevant and respective parties not be completed in its entirety, Nautilus Marine reserves it right to process this application.

**16. Laws to Govern**

Unless varied by notice by Nautilus Marine that this application and agreement and all matters arising from the relationship of Nautilus Marine and the Client will be interpreted and governed in accordance with the laws of the State of Queensland notwithstanding that total vessel management operations may be delivered outside the state of Queensland. The Client submits to the exclusive jurisdiction of the Courts of Central Business District of Brisbane or such other capital city in any other state that Nautilus Marine may from time to time notify the Client in writing of.