

TERMS AND CONDITIONS FOR LIFTING OF VESSEL

You hereby agree that the following terms and conditions shall apply to the provision of Lifting Services and Hard Standing by Us.

1. BINDING LEGAL AGREEMENT

You acknowledge and agree:

- (i) that this Agreement:
 - (A) is a binding legal agreement between You and Us;
 - (B) includes all matters and details appearing on the Application and on any invoice issued by Us;
 - (C) does not include any of Your terms and conditions; and
- (ii) that You have read and understood this Agreement and have had the opportunity to obtain independent legal advice about it.

2. APPLICATION

2.1 You:

- (i) accept full responsibility for the truth and accuracy of the information contained in the Application;
- (ii) warrant that all information contained in the Application or supplied in connection with this Agreement is true and accurate.

2.2 We may refuse Your Application for any reason whatsoever.

3. THE VESSEL

You warrant that You are the sole owner of the Vessel. We may require You to produce evidence of this prior to commencing provision of Lifting Services.

4. COMMENCEMENT OF SERVICES

4.1 We are under no obligation to commence provision of Lifting Services until You have:

- (i) provided the signed and completed Application to Us;
- (ii) proven to Our satisfaction that You are owner of the Vessel; and
- (iii) complied with Your obligations under cl 13.1.

4.2 Upon acceptance of Your Application You must present the Vessel at the Facilities on the Estimated Delivery Date (at such time as We may notify to you not less than 24 hours prior to the Estimated Delivery Date) for the First Lift or at such other time or date notified by Us.

5. LIFTING SERVICES AND HARD STANDING

5.1 Subject to cl 4.1 We will provide Lifting Services (on or about the Estimated Delivery Dates) and Hard Standing (between the First and Return Lifts) in accordance with this Agreement.

5.2 You must:

- (i) prior to commencement of Lifting Services provide a Docking Plan and Slipping Plan to Us;
- (ii) during provision of Lifting Services:
 - (A) attend (or ensure that the Master attends) in person at the Facilities to provide instructions as to support placement, including but not limited to slings, blocks and stands; and provide such assistance as the Yard Manager may require to secure the Vessel to the Yard Manager's satisfaction (including by providing securing lines).
 - (B) during provision of Lifting Services and Hard Standing obey and comply with (and ensure Your employees, agents, subcontractors and invitees who come on to the Facilities obey and comply with) all directions given by the Yard Manager.

5.3 You:

- (i) are responsible for placement of all vessel supports;
- (ii) indemnify, hold harmless and keep indemnified Us from and against any injury, loss or damage caused by such placement.

5.4 If We consider weather conditions unfavorable for berthing, unberthing, slipping or the provision of Lifting Services generally We may direct You not to berth, unberth or slip the Vessel and may delay the provision of Lifting Services until a date to be determined by Us.

5.5 We are not liable for any loss or damage You may suffer arising from any delay in providing Lifting Services whether in connection with the matters at cl 5.4 or otherwise.

6. EXPLOSIVE MATERIALS

6.1 Prior to berthing or slipping the Vessel You must advise Us of any explosive material or cargo on or in the Vessel.

6.2 You must not permit any explosive material or cargo to be brought onto the Vessel while it is at the Facilities without Our prior consent.

6.3 You indemnify, hold harmless and keep indemnified Us against all loss or damage We may suffer arising from a breach of this clause 5.

7. FUMIGATION

You must not without Our prior written consent fumigate or permit the fumigation of the Vessel whilst it remains at the Facilities.

8. REMOVAL OF WASTE

You must during provision of Lifting Services and Hard Standing keep the Facilities clean, tidy and in good working order and remove all waste materials, chips, shavings, mud barnacles, sand and other detritus resulting from works performed on or to the Vessel.

9. SUBCONTRACTORS

9.1 Subject to cl 9.2 We have the right to refuse entry onto the Facilities to any contractor or other person engaged by You to provide any services to the Vessel.

9.2 We will not refuse entry to any contractor or other person engaged by You provided such contractor or other person:

- (i) provides copies of current policy documents in respect of the insurances referred to in cl 13.3; and

- (ii) is solvent, responsible, respectable and of sound financial standing.

10. PRICES AND PAYMENTS

10.1 Rates, Charges And Payment Terms

- (i) You agree to pay:
 - (A) the rates specified in the Application;
 - (B) the cost of any consumables supplied by Us;
 - (C) all other rates, fees, levies and costs referred to in this Agreement or Our invoices, including any applicable GST, duties, penalties or other relevant charges; and
 - (D) all additional costs due to any factor beyond Our control (including any increased costs due to any change in the Estimated Delivery Dates as requested by You or inaccuracies in the Vessel specifications as provided by You).
- (ii) Invoices in respect of the items mentioned in para 10.1(i) will be issued monthly and must be fully paid within 14 days of the invoice date.
- (iii) You acknowledge and agree that the Actual Cost may differ from the Estimated Total Cost and agree to pay the Actual Cost in accordance with the payments terms set out in para 10.1(ii).

10.2 Payment method and interest

- (i) All payments to Us must be made by cash, immediate funds transfer or banker's cheque. We do not accept personal or business cheques.
- (ii) We are entitled to charge interest on overdue payments at a rate equal to the business overdraft rate of BankWest.

11. GST

- 11.1 GST will apply to the Lifting Services and Hard Standing.
- 11.2 Unless otherwise stated all amounts referred to are exclusive of GST.

12. AUSTRALIAN CONSUMER LAW, LIABILITY AND INDEMNITY

12.1 Nothing in this Agreement may be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any services pursuant to this Agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal law. The Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* provides consumer rights and remedies that may not be contracted out of, in part or wholly. Where those consumer rights and remedies apply to the supply of the services by Us to You and cannot be contracted out of, they apply and override any inconsistent provisions in this Agreement but only to the extent of the inconsistency.

12.2 Subject to Your rights at law, in relation to the supply of services, Our liability is limited (as elected by Us) to supplying the service again or providing for the cost of having the services supplied again

12.3 You agree that, without limiting clause 12.1, the maximum aggregate liability of Us for all Claims under or relating to this Agreement or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity or on any other basis, is limited to the Actual Cost paid by You under this Agreement.

12.4 To the maximum extent permitted by law, We are not liable to You or any third party in respect of any consequential losses (including loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right) or any other indirect loss.

12.5 You indemnify Us against any claims, demands, suits, actions, proceedings, costs, expenses, loss or damages suffered or incurred by Us arising from or in any way connected with a breach of this Agreement by You or any negligent or willful or reckless act or omission of You or anyone You are responsible for. Your liability under this indemnity reduces proportionately to the extent the claim, demand, suit, action, proceeding, cost, expense, loss or damage was contributed to by a breach of this Agreement by Us or any negligent or willful or reckless act or omission by Us or anyone We are responsible for. This indemnity survives termination of this Agreement.

13. INSURANCE

13.1 Prior to commencement of Lifting Services You must:

- (i) insure the Vessel under an appropriate hull and machinery policy for its full insurable value;
- (ii) insure the Vessel under an appropriate protection and indemnity policy for an amount of not less than \$20,000,000.00;
- (iii) keep effective the insurances referred to in paras 13.1(i) and (ii) until completion of the Return Lift and the return of the Vessel to You; and
- (iv) provide copies of current policy documents in respect of the insurances referred to in paras 13.1(i) and (ii) to Us.

13.2 The insurances referred to in paras 13.1(i) and (ii) must contain a non-cancellation clause requiring the insurer to give no less than 1 month's written notice prior to cancellation.

13.3 If You engage any contractor or other person to provide any services with respect to the Vessel whilst the Vessel is at the Facilities then You shall be solely responsible for ensuring such contractors and/or other persons have the following insurance policies:

- (i) employees indemnity insurance (workers compensation and common law liability to workers);
- (ii) ship repairers liability; (where applicable);
- (iii) public and product liability insurances for an amount of not less than \$20,000,000.00;
- (iv) motor vehicle third party liability for property damage insurance; and
- (v) any other policies of insurance We may reasonably require.

13.4 You must ensure that We are named as an insured party under all policies of insurance referred to in this cl 13 for Our respective rights and interests and

- that all such policies contain a waiver of subrogation in Our favour.
- 13.5 You must upon demand produce or cause relevant contractors or other persons to produce certificates of currency acceptable to Us in respect of the insurances referred to in this cl 13.
- 14. FORCE MAJEURE**
If We are restricted or prevented from performing Our obligations by act of God, industrial action, embargo, boycott, delay by freight company, flood, fire, war, civil unrest, adverse weather, decrees or orders or other Government intervention, change of Government policy or any other cause whatsoever outside Our reasonable control, We may give written notice of any such cause to You and the time for performance of Our obligations shall be extended by the period the cause continues.
- 15. TERMINATION BY YOU**
- 15.1 By You**
You may terminate this Agreement by notice in writing to Us:
(i) at any time after provision of the signed, completed application to Us but before commencement of the Lifting Services; or
(ii) if We have not commenced to provide the Lifting Services within 90 days after the Estimated Delivery Date.
- 15.2 By Us**
We may terminate this Agreement by notice in writing to You if:
(i) You breach this Agreement, and if such breach is capable of remedy, fail to remedy it within 7 days of receipt of notice from Us requiring You to do so;
(ii) We believe that it will not be safe or that the Facilities are unsuitable to provide the Lifting Services or Hard Standing having regard to the nature, condition or specifications of the Vessel;
(iii) We have attended the Facilities at the time fixed for the provision of Lifting Services twice and You and/or the Vessel are not there on either occasion;
(iv) You become bankrupt, insolvent, make any composition, scheme or arrangement with Your creditors generally or have a receiver, administrator, liquidator, trustee or similar official appointed; or
(v) You materially breach this Agreement.
- 16. LIEN AND SALE**
- 16.1 We shall have a lien on the Vessel for any monies unpaid but due by You to Us, including any costs incurred by Us in recovering such monies and may enforce such lien as We may in Our absolute discretion think fit.
- 16.2 Without in any way limiting Our rights under cl 16.1, We may sell the Vessel to cover the amount of any claims We may have against You. The proceeds of such sale Will be used first to satisfy the costs of such sale, second to satisfy Our claim against You (including interest and costs) and the balance if any shall be paid to You.
- 16.3 If the *Warehousemen's Liens Act* applies then by provision of these terms and conditions We give notice and You acknowledge and agree that You have received notice that We have a lien over the Vessel under the *Warehousemen's Liens Act*.
- 17. SECURITY**
- 17.1 You hereby charge in favour of Us Your legal and equitable interest (present and future) of whatsoever nature in any and all real property and present and after acquired personal property (including the Vessel) with payment of all monies owed by You to Us and with performance of all obligations set out in this Agreement by You.
- 17.2 You agree to execute any documents and do all things necessary as required by Us to register the security granted in this cl 16 and appoint each director of Us Your attorney to execute and register such documents and instruments.
- 18. PERSONAL PROPERTY SECURITIES ACT 2009**
- 18.1 You acknowledge and agree:
(i) (without limiting anything in this cl 18) that We may record in the PPSR a security interest against You in relation to Your legal and equitable interest (present and future) of whatsoever nature in any and all real property and present and after acquired personal property (including the Vessel);
(ii) that this Agreement constitutes a security agreement for the purposes of the PPSA to secure performance by You of Your obligations including (without limitation) the obligation to pay all amounts owing by You to Us under or in connection with this Agreement now or in the future;
(iii) that this security will continue despite any settlement of account or other matter or thing until a final discharge is given to You.
- 18.2 For the purposes of s275(6) or any other provision of the PPSA You agree that no information may be disclosed in accordance with s275(1) of the PPSA.
- 18.3 Unless otherwise agreed in writing by Us, You:
(i) waive any right to receive a verification statement in accordance with s157 of the PPSA; and
(ii) waive and agree to contract out of any provision referred to in s115 of the PPSA (including but not limited to any right to receive any notice and any provision which would otherwise prohibit or limit the exercise by Us of any right in relation to the Lifting Services and Hard Standing).
- 18.4 You agree to do such things, as We may require from time to time to protect Our position as a secured party.
- 18.5 Words defined in the PPSA have the same meaning where used in this Agreement unless the context requires otherwise.
- 19. LAW OF AGREEMENT**
This Agreement is governed by the law in force in Western Australia and You submit to Courts of that jurisdiction.
- 20. PERSONAL INFORMATION**
- 20.1 You must provide Us with all information reasonably requested from You in order to supply the Lifting Services and Hard Standing. We may use and disclose the information You provide:
(i) to supply services to You under this Agreement;
(ii) to fulfil Our obligations under this Agreement; and
(iii) to provide You with information about Our business and services.
- 20.2 We may disclose the information You provide:
(i) to Our related bodies corporate, agents and contractors;
(ii) to debt collection agencies and credit reporting agencies;
(iii) to relevant Government agencies; and
(iv) as authorised by law.
- 20.3 To access the personal information that We hold about You write to Us at Our address as noted on the Application Form.
- 21. Notice**
A notice under this Agreement is deemed duly served if it is in writing and is sent to the address in the Application for each party by certified mail, personal delivery or email (provided there is proof of delivery of the email).
- 22. INTERPRETATION**
- 22.1 Definitions**
(i) **Actual Cost** means the final sum payable for the Lifting Services and Hard Standing provided in accordance with this Agreement (which sum may differ from the Estimated Total Cost and which may include additional costs under paras 10.1(i)(B) to (D)).
(ii) **Agreement** means these terms and conditions and the Application.
(iii) **Application** means the application form attached to this Agreement.
(iv) **Claim** means any loss, damage, claim, liability, expense or demand of any kind or character, whether in contract, at common law, in equity or pursuant to any statute or law, including for consequential loss, loss of profit, loss of opportunity or losses due to business interruption.
(v) **Docking Plan** means markings for the placement of vessel supports on the Hard Standing.
(vi) **Estimated Delivery Dates** means the estimated dates for the provision of Lifting Services as set out in the Application.
(vii) **Estimated Total Cost** means the estimated total cost set out in the Application.
(viii) **Facilities** means and includes the jetties, moorings, boatlifting machines, land and Hardstanding owned or occupied by Us or under Our use and control and situated at 195 Connell Road, West End, Geraldton WA 6530.
(ix) **First Lift** means lifting the Vessel out of the Water.
(x) **Hard Standing** means hard standing and associated facilities (including trestles and props) on which to place the Vessel in between provision of the First and Return Lifts.
(xi) **Lifting Services** means the First and Return Lifts.
(xii) **Master** means any person (not being the Vessel owner) having management and control of the Vessel.
(xiii) **PPSA** means the Personal Property Securities Act 2009 (Cth).
(xiv) **PPSR** means the Personal Property Securities Register maintained in accordance with the PPSA.
(xv) **Return Lift** means returning the Vessel to the Water.
(xvi) **Slipping Plan** means markings on the Vessel where lifter slings are to be placed prior to the First and Return Lifts.
(xvii) **Vessel** means the vessel named in the Application.
(xviii) **We, Our and Us** means **GERALTON BOAT LIFTERS LIMITED** (ABN 83 114 584 342).
(xix) **Yard Manager** means the person We employ to manage the Facilities.
(xx) **You and Your** means the Vessel owner named in the Application.
- 22.2 Interpretation**
(i) Headings are for convenience only and do not affect interpretation.
(ii) Reference to the singular includes the plural and reference to a party includes its successors, administrators, personal representatives and assigns.
(iii) You may not assign any obligation under this Agreement without Our consent. We can assign or novate this Agreement to any person We believe has reasonable commercial and technical capability to perform Our obligations without notice to You.
(iv) If any term is invalid or unenforceable it can be severed from the Agreement without affecting the enforceability of the other terms.
(v) The terms of this Agreement may only be waived or varied in writing signed by both parties.
(vi) Any omission by Us to enforce a provision of this Agreement shall not operate as a waiver by Us and will not prejudice Our rights to enforce any provisions of this Agreement.
(vii) All rights and remedies expressly reserved to Us herein are without prejudice to any other right or remedy available to Us.