

1. Definitions

- 1.1 **"Acknowledgment Document"** means the document signed by the Client in conjunction with these Terms and Conditions of Trade and applicable if GBL elects, whereby the Client acknowledges the extent and effect of the provision of security the Client provides to GBL in consideration of the provision of the Services.
- 1.2 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client (being the owner of the Vessel) requesting GBL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using GBL's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **"Docking Plan"** means markings for the placement of Vessel supports on the Hard Standing.
- 1.7 **"Facilities"** means and includes the jetties, moorings, boatlifting machines, land and Hardstanding owned or occupied by GBL or under GBL's use and control and situated at 195 Connell Road, West End, Geraldton WA 8530.
- 1.8 **"First Lift"** means lifting the Vessel out of the water.
- 1.9 **"GBL"** means Geraldton Boat Lifters Limited, its successors and assigns or any person acting on behalf of and with the authority of Geraldton Boat Lifters Limited.
- 1.10 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.11 **"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.
- 1.12 **"Incidental Items"** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by GBL in the course of it conducting, or supplying to the Client, any Services.
- 1.13 **"Master"** means any person (not being the Vessel owner) having management and control of the Vessel.
- 1.14 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between GBL and the Client in accordance with clause 7 below.
- 1.15 **"PPSA"** means the Personal Property Securities Act 2009 (Cth) and associated regulations, as amended from time to time.
- 1.16 **"PPSR"** means the Personal Property Securities Register established under the PPSA.
- 1.17 **"Return Lift"** means returning the Vessel to the water.
- 1.18 **"Services"** means all Services (inclusive of First and Return Lifts and/or storage (*where requested*)) supplied by GBL to the Client at the Client's request from time to time.
- 1.19 **"Slipping Plan"** means markings on the Vessel where lifter slings are to be placed prior to the First and Return Lifts.
- 1.20 **"Vessel"** shall mean the boat described on any accompanying documentation supplied by GBL to the Client.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
- (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
- (d) a reference to dollars (\$), is a reference to Australian currency; and
- (e) this Contract is not to be interpreted against GBL merely because they prepared this Contract; and
- (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
(i) Terms and Conditions of Trade; and
(ii) any schedules.
- (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. The Commonwealth Competition And Consumer Act 2010 (CCA) And Fair Trading Acts

- 3.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

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- 3.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 3.3 Liability of GBL arising out of any one incident in respect of any alleged breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by GBL:
- (a) rectifying the Services; or
 - (b) supplying the Services again; or
 - (c) paying for the Services to be supplied again.
- 3.4 If GBL is required to rectify, re-supply, or pay the cost of re-supplying the Services under clause 3.3 or the CCA, but is unable to do so, then GBL may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

4. Acceptance

- 4.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Services provided by GBL.
- 4.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 4.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 4.4 The Client acknowledges and agrees that:
- (a) the supply of Services on credit shall not take effect until the Client has completed a credit application with GBL and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, GBL reserves the right to refuse further Services;
 - (c) the Client shall upon request from GBL provide evidence that the Client is the lawful Owner of the Vessel for which the provision of the Services is to be supplied for;
 - (d) in the event that GBL reasonably forms the opinion that the Client's Vessel is not safe for the provision of the Services, then GBL shall be entitled to halt any Services and payment in full shall be required for any Services completed to the date of cancellation; and
 - (e) GBL reserves the right to retain the Vessel subject to clause 21, until the Client has met all their obligations under this Contract.
- 4.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

5. Errors and Omissions

- 5.1 The Client acknowledges and accepts that GBL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by GBL in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by GBL in respect of the Services.
- 5.2 In circumstances where the Client is required to place an order for the Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Services (whether they are made to order Incidental Items or not) ("**Client Error**"). The Client must pay for all Services it orders from GBL notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. GBL is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

6. Change in Control

- 6.1 The Client shall give GBL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by GBL as a result of the Client's failure to comply with this clause.

7. Credit Card Information

- 7.1 GBL will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by GBL;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Policy (clause 20) or where required by law.
- 7.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due and outstanding by the Client that GBL is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

8. Price and Payment

- 8.1 At GBL's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by GBL to the Client upon placement of an order for the Services; or
 - (b) GBL's estimated Price (subject to clause 9). The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to Client approval before proceeding with the Services; or

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- (c) GBL's quoted price (subject to clause 9) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2 At GBL's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for the Services, in accordance with any quotation provided by GBL or as notified to the Client prior to the placement of an order for the Services.
- 8.3 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by GBL, which may be:
- (a) on or before the provision of the Services;
 - (b) by way of instalments/progress payments in accordance with GBL's payment schedule;
 - (c) failing any notice to the contrary, the date is seven (7) days following the date of any invoice given to the Client by GBL.
- 8.4 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and GBL.
- 8.5 GBL may in its discretion allocate any payment received from the Client towards any invoice that GBL determines and may do so at the time of receipt or at any time afterwards. On any default by the Client GBL may re-allocate any payments previously received and allocated.
- 8.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by GBL nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify GBL in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as GBL investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in GBL placing the Client's account into default and subject to default interest in accordance with clause 16.1.
- 8.7 Receipt by GBL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then GBL's ownership or rights in respect of the Services, and this Contract, shall continue.
- 8.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to GBL an amount equal to any GST GBL must pay for any supply by GBL under this or any other agreement for providing GBL's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 9. Additional Charges**
- 9.1 GBL reserves the right to change the Price:
- (a) in the event that the Client requests a variation to GBL's quotation; or
 - (b) if a variation to the Services which is to be provided is requested; or
 - (c) if a variation to the Services originally scheduled (including any applicable plans and specifications) is requested; or
 - (d) as a result of increases to GBL's in the cost of labour or consumables.
- 9.2 Where the Services are commenced and then delayed as a result of unforeseen difficulties as per clause 9.1(d), then payment for the Services must be made in full if not already done so and GBL shall reserve the right to requote for the remainder of the Services outstanding, GBL shall not be held liable for any damages, losses or costs incurred by the Client due to any such delays.
- 9.3 Variations will be charged for on the basis of GBL's quotation, and will be detailed in writing, and shown as variations on GBL's invoice. The Client shall be required to respond to any variation submitted by GBL within ten (10) working days. Failure to do so will entitle GBL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 10. Provision of Services (Lifting and Hard Standing)**
- 10.1 The Client acknowledges and accepts that:
- (a) **The Client must provide to GBL, prior to the commencement of any Services:**
 - (i) Docking plan;
 - (ii) Slipping plan;
 - (iii) notify GBL of any explosive materials or cargo held on or in the Vessel; and
 - (iv) the Client must not permit:
 - (A) any expositive materials or cargo to be brought onto the Vessel while it is at the facilities without GBL's prior consent;
 - (B) without GBL's written consent the fumigation of the Vessel whilst it remains at the Facilities.
 - (b) **During the provision of the Services, the Client must:**
 - (i) 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;
 - (ii) provide such assistance as the Yard Manager's satisfaction (including, by providing securing lines); and
 - (iii) obey and comply with (and ensure the Client's employees, agents, subcontractors and invitees, who come on the Facilities, obey and comply with all directions given by the Yard Manager.
 - (c) **The Client is responsible for:**
 - (i) placement of all Vessel supports;
 - (ii) the Vessel, its accessories or contents while it is being stored or handled in connection with the Services authorised, unless caused by the negligence of GBL or GBL's employees;
 - (iii) removal of waste (including but not limited to, keeping 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; and
 - (iv) shall indemnify, hold harmless and keep indemnified, GBL from and against any injury, loss or damage, breach of clause 10.1(a)(iii) and 10.1(a)(iv) caused by such placement.
- 10.2 If GBL consider weather conditions unfavourable for berthing, un-berthing, slipping or the provision of any of the Services generally, GBL may direct the Client not to berth, un-berth or slip the Vessel and may delay the provision of the Services, until a date to be determined by GBL.
- 10.3 Notwithstanding clause 10.2 any time specified by GBL for delivery of the Services is an estimate only and GBL will not be liable for any loss or damage incurred by the Client as a result of delivery of Services being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that GBL is unable

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to supply the Services as agreed solely due to any action or inaction of the Client then GBL shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

11. Insurance

- 11.1 The Client agrees that any work carried out on the Vessel and/or the storage of the Vessel at GBL's premises is done so at the Client's own risk and releases to the full extent permitted by law GBL, its employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage fire, theft and burglary or injury occurring to any person or property and all other usual risks arising out of the storage and/or repair of the Vessel.
- 11.2 Prior to the commencement of the Services the Client must:
- (a) insure the Vessel under an appropriate hull and machinery policy for its full insurable value;
 - (b) insure the Vessel under an appropriate protection and indemnity policy for an amount of not less than \$20million Australian dollars;
 - (c) keep effect the insurances referred to in clause 11.1(a) and 11.1(b) until completion of the Return Lift and the return of the Vessel to the Client; and
 - (d) provide copies of current policy documents in respect of the insurances referred to in clauses 11.1(a) and 11.1(b) to GBL.
- 11.3 The insurance referred to in clauses 11.2(a) and 11.2(b) must contain a non-cancellation clause requiring the insurer to give no less than one (1) month's written notice prior to cancellation.

12. Access

- 12.1 The Client shall ensure that GBL has clear and free access to the Vessel to enable them to undertake the Services. GBL shall not be liable for any loss or damage that may arise to the Vessel (including damage to any other secondary vessel, property, or marina that is necessary for GBL to use in gaining access the worksite) unless due to GBL's negligence.

13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Incidental Items previously supplied by GBL to the Client;
 - (b) all Incidental Items will be supplied in the future by GBL to the Client and the proceeds from such Incidental Items; and
 - (c) all the Client's present and after acquired property (including the Vessel) being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to GBL for Services – that have previously been provided and that will be provided in the future by GBL to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which GBL may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.2(a)(i) or 13.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, GBL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registrations charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of GBL;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Vessel in favour of a third party without the prior written consent of GBL.
- 13.4 GBL and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by GBL, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by GBL under clauses 13.2 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of GBL agreeing to provide its Services and as acknowledged by GBL in accordance with any Acknowledgment Document the Client grants GBL a security interest by way of a floating charge (registerable by GBL pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, including but not limited to those set out in any Acknowledgment Document, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Services under this Contract and/or permit GBL to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 14.2 The Client indemnifies GBL from and against all GBL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GBL's rights under this clause.
- 14.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 13.2 and 14.1 as applicable, is deemed insufficient by GBL to secure the repayment of monies owed by the Client to GBL, the Client hereby grants GBL a

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security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money), in accordance with the Acknowledgement Document.

15. Intellectual Property

- 15.1 Where GBL has designed, drawn or developed goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of GBL. Under no circumstances may such designs, drawings and documents be used without the express written approval of GBL.
- 15.2 The Client warrants that all designs, specifications or instructions given to GBL will not cause GBL to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify GBL against any action taken by a third party against GBL in respect of any such infringement.
- 15.3 The Client agrees that GBL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or digital images which GBL has created for the Client.

16. Default and Consequences of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at GBL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes GBL any money, the Client shall indemnify GBL from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising GBL's rights under these terms and conditions, internal administration fees, GBL's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 16.3 Further to any other rights or remedies GBL may have under this Contract, if a Client has made payment to GBL, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by GBL under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to any other remedies GBL may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GBL may suspend or terminate the supply of Services to the Client. GBL will not be liable to the Client for any loss or damage the Client suffers because GBL has exercised its rights under this clause.
- 16.5 Without prejudice to GBL's other remedies at law GBL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GBL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to GBL becomes overdue, or in GBL's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by GBL;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Limitation of Liability

- 17.1 The Client acknowledges and accepts that where services are undertaken by any third-party contractor employed by the Client to effect installation of any goods or services, while in GBL's Facilities, GBL shall accept no responsibility for such Services (including but not limited to, equipment failure). If the Client believes that they have any claim in relation to Services undertaken by that third-party, then said claim must be made against the third-party contractor in the first instance.

18. Compliance with Laws

- 18.1 The Client and GBL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 18.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 18.3 The Client acknowledges that health and safety is a priority of GBL and in:
- (a) acknowledging GBL's health and safety priority, the Client will:
 - (i) ensure, as far as reasonably practicable the health and safety of its workers and any other person influenced or directed by the Client;
 - (ii) have in place a health and safety plan that is consistent with the Occupational Health and Safety ("OHS") Laws and GBL's health and safety plan, and must provide a copy of that plan to GBL;
 - (iii) comply with all directions and instructions from GBL's regarding health and safety, and ensure that all staff, subcontractors and agents of the Client comply all directions and instructions from GBL regarding health and safety, so far as is reasonably practicable;
 - (iv) consults, co-operate with and co-ordinate with all other users of the Facilities or common purposes of ensuring the safety of all users of and visitors to the Facilities;
 - (v) immediately notify GBL of any hazards or risks to any person in relation to any work relating the Client's activities, or any other activity arising from or affected by the Client's activities;
 - (vi) will ensure its staff and contractors exercise all care when traversing the Facilities;
 - (vii) as far as reasonably practicable, consult, co-operate with and co-ordinate activities with GBL in relation to health and safety matters;
 - (viii) shall, as soon as possible after becoming aware that a notifiable event (as defined in the Occupational Health and Safety ("OHS") Laws) has occurred relating to the Facilities, notify OHS and GBL of the event; and

(ix) the parties agree that it is imperative that any breach of this clause 18 must be immediately remediated.

19. Cancellation

- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions (“**the Breaching Party**”) the other party may suspend or terminate the supply of Services to the other party, with immediate effect, by providing the Breaching Party with thirty (30) days’ written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 19.2 If GBL, due to reasons beyond GBL’s reasonable control, is unable to deliver any Services to the Client, GBL may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice GBL shall repay to the Client any money paid by the Client for the Services. GBL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Client may cancel delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 19.3, the Client will not be liable for the payment of any costs of GBL, except where a deposit is payable in accordance with clause 8.2. Failure by the Client to otherwise accept delivery of the Services shall place the Client in breach of this Contract.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by GBL is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. GBL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (“the Act”) including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). GBL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by GBL that may result in serious harm to the Client, GBL will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to GBL in respect of Cookies where the Client utilises GBL’s website to make enquiries. GBL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to GBL when GBL sends an email to the Client, so GBL may collect and review that information (“collectively Personal Information”)
- If the Client consents to GBL’s use of Cookies on GBL’s website and later wishes to withdraw that consent, the Client may manage and control GBL’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client agrees that GBL may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 20.4 The Client consents to GBL being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 20.5 The Client agrees that personal credit information provided may be used and retained by GBL for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 20.6 GBL may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.7 The information given to the CRB may include:
- (a) personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that GBL is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided GBL is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and GBL has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of GBL, the Client has committed a serious credit infringement;

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- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.8 The Client shall have the right to request (by e-mail) from GBL:
- (a) a copy of the Personal Information about the Client retained by GBL and the right to request that GBL correct any incorrect Personal Information; and
 - (b) that GBL does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.9 GBL will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.10 The Client can make a privacy complaint by contacting GBL via e-mail. GBL will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at www.oaic.gov.au.

21. Lien and Sale

- 21.1 GBL reserves the right to exercise a lien on the Vessel for any monies unpaid but due by the Client, including any costs incurred by GBL (as per clause 16) in recovering such monies and may enforce such lien as GBL may in GBL's absolute discretion think fit.
- 21.2 Without in any way limiting GBL's rights under clause 21.1, GBL may sell the Vessel to cover the amount of any claims, GBL have against the Client. The proceeds of such sale will be used:
- (a) firstly, to satisfy the costs of such sale; and
 - (b) secondly, to satisfy GBL's claim against the Client (including interest and costs); and
 - (c) the balance if any shall be paid to the Client.
- 21.3 If the Warehousemen's Lien Act 1952 applies, then by the provision of these terms and conditions, GBL shall serve notice on the Client to which the Client is required to acknowledge that such notice has been received and the Client accepts that GBL has duly exercised their right of a lien over the Vessel subject to the Warehousemen's Lien Act.

22. Confidentiality

- 22.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form) without the other party's written consent.
- 22.2 The quotation and the information contained in the quotation provided by GBL to the Client is done so on a "commercial in confidence" basis thereby, the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of GBL.

23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not GBL may have notice of the Trust, the Client covenants with GBL as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of GBL (GBL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which GBL has its principal place of business and are subject to the jurisdiction of the Perth Courts in Western Australia.
- 25.3 GBL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 25.4 The Client cannot licence or assign without the written approval of GBL.

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- 25.5 GBL may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of GBL's sub-contractors without the authority of GBL.
- 25.6 The Client agrees that GBL may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for GBL to provide Services to the Client.
- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to GBL, once the parties agree that the Force Majeure event has ceased.
- 25.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 25.9 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 25.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.