

HAWKES BOATYARD PTY LTD

STANDARD TERMS AND CONDITIONS

1 Definitions

'Agreement' means this document

'Customer' means the owner or owners representative, the person, firm, body corporate, association or company who or on whose behalf requests the repairer to perform the works.

'PCBU' means Person Conducting a Business or Undertaking while working on the Customers Vessel.

'Repairer' means Hawkes Boatyard Pty Ltd

'Vessel' means the boat or watercraft described on any quotations, invoice, job sheet or other document issued by the Repairer to the Customer and it includes the hull, motors, controls, equipment, accessories, dinghies, tenders and their motors.

'Works' means all works carried out by the Repairer at the request of the Customer, its employees or agents including without limitation.

All repairs, maintenance, improvements or shipwright work.

The supply of all machinery, parts, materials, equipment, accessories, labour or specialised tools and/or the removal from the Vessel of any machinery, parts, materials, equipment or accessories.

Any operation, movement or storage of the vessel.

2 Scope of Works and Authorisation

The customer warrants that it is the owner of the Vessel or the Vessel owner's agent and that it has the authority to request that the Repairer perform the Works. The Customer authorises the Repairer to move and store the Vessel by whatever means and in whatever circumstances the Repairer considers necessary and appropriate for the performance of the Works. The Customer acknowledges that quotes for Works are valid for the period stated in the quote.

3 Payment

The Owner or owner's representative agrees that they will make payment in full for all services provided by Hawkes Boatyard Pty Ltd prior to the relaunching of their vessels. This includes all Insurance Work unless previously negotiated. The customer agrees that until full payment of the invoiced amount has been made the title of any machinery, parts, materials, equipment or accessories supplied by the repairer does not pass to the customer and the customer is not entitled to delivery of the vessel.

4 Lien

The repairer is entitled to a repairer's lien cover over the vessel and/or a general lien over any other property of the Customer that comes into the possession of the Repairer for any reason until all amounts owing by the Customer to the Repairer are paid in full.

5 Liability limitation and indemnity

To the extent the *Trade Practices Act 1974 (Cth)* (TPA) or any similar state law applies to this Agreement then certain conditions and warranties will be implied into this Agreement to the benefit

of the Customer and those conditions and warranties cannot be excluded, restricted or modified by any provision of this Agreement. If the repairer is liable for a breach of a condition or warranty implied by the TPA then to the extent permitted by section 68A of the TPA the Repairers liability to the Customer will be limited to at the discretion of the Repairer either to re-supply of the goods or services or the cost of having the goods or services re-supplied.

Except as provided for in this Agreement the Repairer will not in any circumstances be liable for any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of the Repairer, its employees, agents or sub-contractors.

The customer will indemnify the Repairer against all claims and demands, whatsoever by whomsoever made in respect of any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of the Repairer, its employees, agents or subcontractors.

6 Sub-contracting and indemnity

The Repairer is entitled to subcontract on any terms the whole or part of the Works.

7 Liability of employees, agents and sub-contractors

It is expressly agreed that every exemption from liability, defence, immunity and right under this Agreement will extend to and protect every employee, agent and subcontractor defined as the Repairer in this Agreement and in this regard the Repairer who is a party to this Agreement will be deemed to be acting as agent or trustee on behalf of all Repairers.

8 Force Majeure

If the Repairer by reason of any matter beyond its control including without limitation any act of God, strike, lock-out or labour disturbance, war or warlike condition, act of terrorism, civil riot, sabotage, explosion, lightning, fire, earthquake, landslide or tidal wave, storm, flood or other extraordinary weather conditions, quarantine, requirements of government authorities, unavailability or delay in supplies (including electricity, oil or gas), equipment or transport refusal of or delay in obtaining governmental or quasi-governmental approval, consents, permits, licences, or otherwise is unable to perform any part of its obligations under this Agreement, to the extent and for the period that it is not reasonably able to perform, the Repairer will not be liable to the Customer.

9 Time Bar

The repairer will not in any circumstances be liable for any claim for loss, damage or injury (including any economic or consequential loss) arising out of or in any way connected with the performance of the Works, whether involving negligence of the Repairer or otherwise, unless such claim is made in writing within sixty days of the works being completed.

10 Lifting Vessels

The owner or owner's representative confirms that the vessel they have requested to be lifted is delivered to Hawkes Boatyard Pty

Ltd with zero list and is in a structurally sound condition that will prevent damage being caused to the vessel by Hawkes Boatyard Pty Ltd lifting equipment.

It is the owners or owners' representatives' responsibility to instruct the Travelift driver where to position the straps to prevent damage to the vessels hulls, running gear or underwater appendages.

The owner or owner's representative agrees to indemnify and hold harmless Hawkes Boatyard Pty Ltd and its employees for any damage caused to the vessel while it is being lifted.

11 Workplace Health and Safety and Environmental Protection

Hawkes Boatyard as a total complex is a 'Workplace' and the customers designated area is their "Workplace" as defined by the Workplace Health and Safety Act 2011

The owner or owner's representative the Customer is the 'Person Conducting a Business or Undertaking (PCBU)' for any work carried out on the vessel by persons other than Hawkes Boatyard Pty Ltd workers. Any person including a volunteer working on the vessel is a 'worker'. All directions by Hawkes Boatyard management and staff must be complied with.

As a PCBU you have obligations to ensure all work is carried out in accordance with the Workplace Health and Safety Act 2011 and related Compliance and Advisory standards. You also have obligations under the Environmental Protection Act 1994 and all other relevant Acts applicable to your activities. A copy of the Standard Boatyard Terms and Conditions, Safety management policy, Fire and Emergency plans are available at the office.

The PCBU is responsible for any air or water borne pollutants and grinding dust that they or their workers cause which damages any other vessel, vehicle, building or equipment.

Waterblasting of your vessels underwater surfaces will be carried out only by Hawkes Boatyard Pty Ltd staff.

Airless spraying of antifoul paint systems will be carried out only by Hawkes Boatyard Pty Ltd staff.

Spray painting of topsides will be only carried out by Hawkes Boatyard Pty Ltd accredited contractors using full screening.

The PCBU are responsible to make good any damage caused by their workers to other people's property.

Grinding of ferrous metals will only be permitted after prior consultation with and approved by Management of Hawkes Boatyard Pty Ltd

Soda or grit blasting will only be carried out by Hawkes Boatyard accredited contractors.

Hawkes Boatyard Pty Ltd reserves the right to suspend all work where management is not satisfied that all reasonable steps are being taken to ensure the health and safety of themselves and others and the environmental protection of the facility and surrounding areas.

The PCBU agrees that they or their workers will not remove or adjust any cradle, props or stands which have been installed by Hawkes Boatyard Pty Ltd to support a vessel. Any adjustments to this equipment if considered safe will be made by Hawkes Boatyard Pty Ltd staff at your request.

12 Abandoned vessels or equipment

The Customer agrees that if they abandon a vessel or equipment on Hawkes Boatyard Pty Ltd property the vessel may be sold to recover outstanding debts owed by the Customer for services provided to them by Hawkes Boatyard Pty Ltd. A vessel is considered abandoned on Hawkes Boatyard if work has ceased on the vessel with no instructions in place with Hawkes Boatyard Pty Ltd for ongoing work and payment in full of all monies owing not been received by Hawkes Boatyard Pty Ltd. Hawkes Boatyard Pty Ltd will endeavour to advise the owners or owners representatives prior to the sale of any abandoned vessel by mail delivery to the address supplied on the booking sheet.

13 Housekeeping

Hardstand occupants, PCBU, are required to keep their designated area, the Workplace, clean and tidy. A clean-up fee of \$150.00 minimum will be levied if Hawkes Boatyard staff are required to clean up after you.

The PCBU will be responsible for any loss or damage to vessels or their contents in case of theft or any causes beyond our control.

Vehicles are not permitted on the hardstand area unless by special arrangement with the Management of Hawkes Boatyard Pty Ltd. Damage caused to boats on the hardstand must be paid for by the PCBU

The Customer agrees that they will not make any claim for consequential damages against Hawkes Boatyard Pty Ltd, its employees or its insurers for any loss or damage to their vessel, equipment, property or business no matter how that loss or damage has been caused.

Prices, terms and conditions are subject to change without prior notice.

I/We accept these standard terms and conditions

Signed: _____

Print Name: _____