

Geelong Marine Services

Terms & Conditions for the Provision of Stevedoring Services

1. DEFINITIONS

In these terms the following words have the following meanings:

Geelong Marine Services will be abbreviated as GMS from now on.

Agreement means these terms for the supply of Services by GMS.

Ballasting Condition means the ratio of cargo to ballast, and the arrangement or placement of cargo and ballast onboard a ship, which are fundamental to a ship's safety and structural integrity.

Cargo includes the Goods.

Claim means any claim or cause of action including:

- in contract (including breach of warranty);
- in tort (including misrepresentation or negligence);
- in respect of the personal injury or death to a person; and
- under statute.

Client means the person(s), company, firm or organization with whom GMS contracts to supply the Services.

Client Equipment means any equipment or software supplied by or for the Client to GMS to enable GMS to supply the Services.

Commencement Date means the date on which GMS starts supplying the Services.

Completion Date means the date on which GMS finishes supplying the Services.

Confidential Information of a party means the following information in any form:

- all confidential information (including without limitation, trade secrets and confidential know-how) relating to that party or a corporation related (as that term is used in the Corporations Act 2001) to that party from time to time;
- of which the other party becomes aware at any time.

Dangerous Goods means dangerous goods as defined in the Australian Dangerous Goods Code and any Goods that may injure people or damage property or the environment, including without limitation, Goods that are or may become dangerous, poisonous, corrosive, volatile, explosive, flammable or radioactive.

Delay means the additional time required for GMS's personnel to complete the Services where such personnel cannot be reasonably redeployed on other work during that time.

Dispute means a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.

Fee means the amount quoted by GMS for the Services, set out in the Quotation.

Force Majeure Event affecting a party means anything outside the party's reasonable control, including without limitation, fire, flood, drought, storm, lightning, act of God, peril of the sea or air, explosion, sabotage, accident, embargo, labour dispute or shortage, riot, civil commotion, act of war and war.

Goods means:

- the goods in relation to which GMS agrees to supply the Services; and
- any packaging, pallets or containers for those goods supplied by or for the Client or its suppliers.

GST:

- has the same meaning as in the GST Law;
- includes any other goods and services tax or any Tax applying to this Agreement in a similar way; and
- includes any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999.

Load Plan means a document prepared by the vessel, to show all details of cargo loaded, e.g. weight (individual and total), measurement, markings, shippers, consignees, the origin & destination of goods, and location of cargo within a defined hold.

Load Sequence means the sequence of which cargo will be loaded on the Vessel.

Non-excludable Condition means an implied condition or warranty the exclusion of which from a contract (including without limitation a contract with a consumer as defined in the Competition and Consumer Act 2010) would contravene any statute or cause part or all of a clause of this Agreement to be void.

GMS means GMS Pty Limited ABN: 32 137 422 329.

Parties means GMS and the Customer.

Premises means the premises at which GMS supplies the Services in accordance with this Agreement.

Quotation means the quotation provided by GMS to the Customer and accepted by the Customer prior to the Commencement Date.

Services means the stevedoring services supplied by GMS under this Agreement and as described in the Quotation and any Specification. Unless otherwise agreed in writing, the stevedoring services include the receipt, handling, storage and delivery of the Goods in accordance with the Client's instructions.

Specification means a document agreed to by the Parties which describes Services.

Subcontractor means any person who agrees to perform or performs part or all of the Services for GMS (including without limitation any related company of GMS).

Third Party Claim means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the Goods, the Client Equipment, the Services, any delay or failure in supplying the Services, or this Agreement.

Vessel means the vessel the Client uses to transport the Goods:

- which is owned, chartered, operated or leased by the Client and notified in writing by the Client to GMS, whether prior to the commencement of this Agreement or from time to time during the term of this Agreement;
- which complies with all relevant Australian and International standards with respect to safety, stability and fitness for purpose; and
- once notified to GMS under paragraph (a), shall automatically be deemed to have been warranted by the Client to GMS as being safe, stable and fit for purpose.

Visitor means any employee, agent or subcontractor of the Client or any other person having an interest in the Goods who enters the Premises.

2. SUPPLY OF SERVICES

2.1 GMS must supply the Services to the Client:

- in accordance with this Agreement; and
- in compliance with all applicable standards, awards, laws and regulations.

2.2 GMS:

- and any Subcontractor may subcontract on any terms the performance of part or all of the Services to any person; and
 - may suspend or stop forever supplying Services at any time.
- 2.3 GMS may, require that the Client or any Visitor seek its permission prior to entering the Premises.
- 2.4 The Parties agree that the Agreement shall comprise the following documents which shall be read in the following order of precedence (the first is the highest in precedence):
- these terms and conditions;
 - the Quotation; and
 - the Specification.

3. CLIENT OBLIGATIONS

3.1 The Client must:

- not less than 1 working day before the Commencement Date:
 - provide GMS with an accurate description of the Goods including their packaging, weight, content, measure, quality, condition, marks and numbers; and
 - notify GMS if:
 - any of the Goods are Dangerous Goods.
 - it intends to make available Client Equipment; and
- ensure that each Visitor to the Premises complies with all rules and regulations (including without limitation safety requirements) applicable to the Premises.

3.2 The Client warrants that:

- the description of Goods under clause 3.1(a) is accurate in all material respects;
 - all Goods are safely and securely packed and in a fit and proper condition for GMS to supply the Services;
 - all Client Equipment is:
 - fit for the purposes for which it is supplied;
 - free from defects in materials, design, workmanship and installation, including without limitation, free from all computer viruses including any self replicating program that infects and may damage another program; and
 - if it does not have full right, title and interest in the Goods, it is authorised to enter into this Agreement for every person who does have an interest in the Goods; and
 - it has complied with all applicable standards, laws and regulations in connection with the Goods (including the Dangerous Goods Code) to ensure they can be lawfully handled, transported and stored by GMS.
- 3.4 The Client warrants that the Vessel will be in possession of up to date stability calculations giving due consideration to the Load Plan, Load Sequence and Ballasting Condition at the time of and during any cargo operations. These calculations must be in line with sound maritime practices. Any delays attributed to any failure to provide proper stability calculations will be charged at the published hourly delay rates.

4. HANDLING OF GOODS

The Client acknowledges and agrees that:

- if GMS reasonably considers whether or not the Client has notified GMS under Clause 3.1(a)(ii):
 - any Goods are Dangerous Goods; or
 - the packing or presentation of any Goods does not comply with all applicable standards, laws and regulations, GMS may, at the Client's expense, do anything it considers necessary in order to be able properly to provided the Services. In the case of Goods that GMS considers Dangerous Goods, GMS may in its absolute discretion and without any cause of action arising against it as a result, dispose of or destroy the Goods.

5. VARIATION TO SERVICES

5.1 If the Client wants to vary the Services after the Commencement Date the Client must:

- notify GMS in writing of the proposed variation; and
- if GMS agrees with the variation, pay GMS the additional fee (if any) quoted by GMS for those varied services.

6. PAYMENT

6.1 Unless otherwise agreed in writing, the Client must pay GMS:

the entire balance within 30 days of invoice date. There is no right of set off and the full invoice balance must be paid in any event.

6.2 GMS may charge the Client for Delays at the delay rates set out in the Quotation or the published hourly delay rates, if not set out in the Quotation, for all time on a per Vessel basis including Delays arising out of or in connection with:

- weather delays; ;
 - Vessel defects;
 - where the Vessel requests hatch closure for whatever reason; and
- unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST which is to be added to such consideration.

6.3 To the extent that any supply made under or in connection with this Deed is a taxable supply, the Client must pay, in addition to the consideration provided under this Agreement for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The Client must pay the additional amount at the same time as the consideration to which it is referable.

7. CONFIDENTIALITY

7.1 Each party:

- (a) may use Confidential Information of the other party solely for the purposes of this Agreement;
- (b) except as permitted under clause 7.1(c), must keep confidential all Confidential Information of the other party; and
- (c) may disclose Confidential Information of the other party only with the prior written approval of the other party (which approval must not be unreasonably withheld):
 - (i) to persons who:
 - (A) are aware and agree that the Confidential Information of the other party must be kept confidential; and
 - (B) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party; or
 - (ii) as required by law or stock exchange regulation.

7.2 Even though information is the Confidential Information of a party, the other party is not obliged to comply with clause 7.1 in relation to that Confidential Information if:

- (a) the Confidential Information becomes public knowledge during the term of this Agreement; or
- (b) the other party became aware of that Confidential Information from a third person, in circumstances where there was no breach of any obligation of confidence.

8. LIABILITY

8.1 Subject to clauses 8.2, 8.4, 8.5, 8.6 and 8.7, GMS's total liability to the Client:

- (a) in respect of any Claim arising out of or in connection with this Agreement howsoever arising is limited to, at GMS's option, the resupplying of the services in respect of which the Claim has arisen or at GMS's option the quoted cost of the supply of the Services;

8.2 GMS is not liable to the Client for a Claim arising out of or in connection with this Agreement which is less than \$5,000.

8.3 GMS does not exclude or limit the application of any provision of any statute (including the Competition and Consumer Act 2010) where to do so would contravene that statute or cause any part of this Agreement to be void.

8.4 GMS excludes:

- (a) from this Agreement all conditions, warranties and terms implied by statute, general law or custom, except any Non-excludable Condition;
- (b) all liability to the Client for consequential or indirect damages arising out of or in relation to any Claim arising out of or in connection with this Agreement including in relation to the Services, the Client Equipment, any delay or other failure in supplying the Services or the Client Equipment even if:
 - (i) GMS knew that such damages were possible; or
 - (ii) That such damages were otherwise foreseeable, including without limitation, lost profits and revenues and any damage suffered by a customer of the Client; and
- (c) all liability to the Client in bailment for acts or omissions of GMS, its employees, agents and subcontractors arising out of or in relation to the Services, the Client Equipment, any delay or other failure in supplying the Services or the Client Equipment, or this Agreement; and
- (d) all liability to the Client in negligence.

8.5 Notwithstanding the other provisions of this clause, GMS accepts no responsibility or liability for any loss or damage whatsoever or howsoever arising caused by grab equipment, front-end loaders or other mechanical equipment to any unprotected wing tank, deep or double bottom tank or to any other protrusion or obstruction that is insufficiently protected (whether because its scantlings are too light or insufficient to withstand fair wear and tear, or have no wood sheathing or other protection, or for any other reason) including but not limited to container shoes, container cleats and ladders, whether or not any such loss or damage arises from the negligence, breach of contract, or default of GMS or any other person whatsoever. others.

8.6 GMS shall be not liable for any loss or damage whatsoever or howsoever arising if such loss or damage arises by reason of GMS providing the Services in accordance with the documentation provided or such other information or instructions provided by or on behalf of the Client to GMS in respect of the handling of the Goods or any cargo.

8.7 No Claim may be pursued by the Client against GMS unless:

- (a) GMS has been advised in writing of the event or events giving rise to the Claim within seven (7) days of their occurrence; and
- (b) formal notification of such Claim, in the form of written demand or commencement of proceedings, setting out all relevant details of the Claim is received by GMS within one year of the occurrence of such event or events.

8.8 This clause 8 shall apply even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

9. INDEMNITY

9.1 The Client agrees to indemnify GMS, its employees, agents and subcontractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of this Agreement by the Client;
- (b) any negligence of an employee, agent or subcontractor of the Client, or any employee of any subcontractor of the Client, in relation to this Agreement; and
- (c) any Third Party Claim.

9.2 The Client:

- (a) must include in all its contracts of carriage for containers or Cargo, provisions whereby every sub-contractor of the Client (including GMS and each of GMS's agents and sub-contractors):
 - (i) shall have the benefit of any provision in such contract which limits the Client's liability relating to such carriage (including, without limitation, any liability caps or limitation periods), and GMS hereby appoints the Client as its agent only for the purpose of making this inclusion in its contracts; and
 - (ii) GMS shall not be liable to any party other than the Client in relation to such carriage or Cargo including the Goods and, without prejudice to the liability of GMS to the Client under this Agreement, the Client hereby indemnifies GMS and each of GMS's agents and sub-contractors and shall hold them harmless against any claim by a third party relating to such carriage or Cargo or the provision of the Services; and

(b) acknowledges that one of GMS's promises to its agents and sub-contractors is that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Client and accordingly agrees that:

- (i) the exclusions and limitations of GMS's liability in Clause 9 of this Agreement benefit GMS's sub-contractors, all employees and agents of GMS or of any sub-contractor and anyone else who is vicariously liable for acts or omissions of any such person; and
- (ii) for the purposes of this sub-clause (b) only, GMS enters into this Agreement as agent for all such persons who shall be treated as if they were parties to this Agreement.

10. SECURITY AT BERTH

10.1 The Customer undertakes to comply with the GMS's security requirements with regard to the Premises.

10.2 GMS shall not be responsible for the security or safety of any Vessel whilst at the Premises,

10.3 GMS undertakes to provide Premises which comply with the safe working requirements defined by relevant Commonwealth and State legislation.

10.4 The Client undertakes to provide Vessels which comply with the safe working requirements defined by relevant Commonwealth and State legislation.

10.5 Subject to this clause, GMS shall not be liable for any loss or damage suffered or incurred by the Client (including, without limitation, the payment of expenses by the Client on account of care, lodging, medical attention, security and repatriation) and arising from the presence on board Vessels of stowaways, or other unauthorised personnel.

11. ENVIRONMENTAL PROTECTION

11.1 The Client will advise GMS of full details of any hazardous, toxic or other environmentally unfriendly substance or commodity carried or intended to be carried on any Vessels.

11.2 The Client will be liable for any fines, claims or clean up costs incurred where due to the negligent act or omission of the Client, the Vessel or any of its employees resulting in damage or spillage which is occasioned to such environmentally threatening Goods.

11.3 GMS will be liable for any fines, claims or clean up costs incurred where due to the negligent act or omission of GMS or any of its employees resulting in damage or spillage which is occasioned to such environmentally threatening Goods

12. WHO THIS AGREEMENT BENEFITS

The Client acknowledges and agrees that:

- (a) GMS's employees, agents and subcontractors and their respective employees, agents and subcontractors have the benefit of this Agreement; and
- (b) GMS holds that benefit on trust for them and may, if requested by them, enforce it on their behalf.

13. FORCE MAJEURE EVENT

13.1 If a party is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event affecting that party, then that party's obligations to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.

13.2 As soon as possible after a Force Majeure Event arises, the party affected by it must notify the other party of the Force Majeure Event and the extent to which the notifying party is unable to perform its obligations under this Agreement by reason of the Force Majeure Event.

13.3 If a Force Majeure Event lasts longer than 10 days:

- (a) either party may terminate this Agreement by giving written notice to the other party; and
- (b) if a party terminates this Agreement in accordance with clause 13.3(a), the Client must pay GMS that part of the Fee that GMS reasonably considers compensates it for the services supplied up to the date of termination.

14. DISPUTE RESOLUTION

14.1 Neither party may start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute, unless it has first complied with this clause.

14.2 A party claiming that a Dispute has arisen must notify the other party.

14.3 Within 7 days after a notice is given under clause 14.2 each party must nominate in writing to the other party an employee authorised to settle the Dispute on its behalf.

14.4 During the 20 day period after a notice is given under clause 14.2 (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the Dispute.

14.5 If a Dispute is not resolved within that time, the Dispute must be referred:

- (a) for mediation, in accordance with the Australian Commercial Disputes Centre (ACDC) Commercial Mediation Guidelines; and
- (b) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current chief executive officer of ACDC, or if that person is not available or unwilling to nominate a mediator, by the then President of the Law Society of Victoria).

15. ARBITRATION

15.1 Each Party agrees that any Dispute not resolved under clause 14 must be resolved by binding arbitration under arbitration rules agreed in writing by the Parties, or, if the Parties do not agree on rules within a reasonable time, under the ICC Rules (Rules).

15.2 Unless the Rules require otherwise:

- (a) the appointing and administering body will be the Australian Centre for International Commercial Arbitration;
- (b) the arbitration will be:
 - (i) by one arbitrator appointed in accordance with the Rules; and
 - (ii) in Melbourne, Victoria; and
- (c) under substantive Victorian law.

16. TERMINATION

16.1 This Agreement terminates on the earlier of:

- (a) the date either party terminates this Agreement in accordance with clause 13.3; or
- (b) the Completion Date.

16.2 On termination,

- (a) GMS is released and discharged from any further obligations under this Agreement; and
- (b) each party ('first party') must return to the other party all Confidential Information of that other party in material form (including without limitation, those parts of all notes and other records of the first party containing Confidential Information of the other party) in the first party's possession or control.

16.3 Within 7 days after termination, the Client must pay GMS any part of the Fee that remains outstanding.

16.4 Except where GMS exercises its rights under clause 7, GMS must return to the Client, at the Client's expense, any Goods in GMS's possession or control promptly after payment by the Client of the Fee in accordance with clause 16.3.

- 16.5 At any time after termination of this Agreement a party must not:
- (a) use or disclose to any person any Confidential Information of the other party;
 - (b) record any Confidential Information of the other party into any form (including without limitation, machine readable form); or
 - (c) sell or otherwise transfer any Confidential Information of the other party.
- 16.6 Clauses 8, 9, 10, 15, 16, 17, 19 AND 20 continue to bind the parties after the termination of this Agreement.

17. ENTIRE AGREEMENT

This Agreement excludes all conditions, warranties and terms implied by custom, general law or statute (except ones that by law may not be excluded). Therefore, what is expressed in this Agreement:

- (a) is the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties, including without limitation any letter of intent or proposal or both.

18. NOTICE

18.1 A party notifying or giving notice under this Agreement must notify:

- (a) in writing;
- (b) addressed to the recipient's or its agent's registered office in Australia (as varied by notice given in accordance with this clause); and
- (c) left at or sent by post or facsimile to that address.

18.2 A notice given in accordance with clause 18.1 will be taken to have been received:

- (a) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
- (b) if sent by post, 3 working days after the posting; and
- (c) if sent by facsimile on a working day at the recipient's, on the date of transmission, or if sent on a non-working day at the recipient's, on the next working day (in both cases as long as the sender's facsimile machine records a successful transmission).

19. RELATIONSHIP

Except as provided under Clause 10.12, nothing in this Agreement creates a relationship of employer and employee, principal and agent, or partnership between any of the parties.

20. ASSIGNMENT

A party must not assign this Agreement or any right under this Agreement to any person without the written consent of the other party.

21. SEVERANCE

Part or all of any clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

22. WAIVER

A party's failure to insist another party perform any obligation under this Agreement is not a waiver of that party's right:

- (a) to insist the other party perform, or to claim damages for breach of, that obligation; or
- (b) to insist the other party perform any other obligation, unless the waiving party makes or confirms the waiver in writing.

23. VARIATIONS TO THIS AGREEMENT

If the parties want to vary Agreement, they must do so by a document executed by both of them.

24. GOVERNING LAW

This Agreement is governed by Victorian law, and each party agrees to submit to the jurisdiction of the courts in that State.

GMS Pty Limited
A.B.N. 27 163 453 469
June 2013