DISCOVERY MARINE LIMITED
PO Box 4048, Mount Maunganui, 3149, Bay of Plenty, New Zealand
p. New Zealand 0800 365 787 **p.** Australia 1800-625-317
e. info@dmlsurveys.co.nz **w.** www.dmlsurveys.co.nz
ABN 68 914 988 491

Terms and Conditions of Trade

1. Definitions

"The Company" is DISCOVERY MARINE LIMITED trading under these conditions.

"The Client" is the party at whose request or on whose behalf the Company undertakes surveying and consultancy related services.

"The Services" means any time, effort, expertise, goods, reports and charts supplied by the Company to the Client in connection with instructions received from the Client.

"Report" means any report or statement supplied by the Company in connection with instructions received from the Client.

"Chart" means any chart, map or graphical representation of an area of land or sea supplied by the Company in connection with instructions received from the Client.

"Disbursements" means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary.

"Fees" means the fees charged by the Company to the Client including any Disbursements but exclusive of any taxes where applicable.

2. Scope

The Company shall provide its services solely in accordance with these terms and conditions.

3. Work

The Client will set out in writing the services which it requires the Company to provide. The Company will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions. Once the Company and the Client have agreed what services are to be performed any subsequent changes or additions must be agreed by both parties in writing.

4. Contract between the Company and the Client

4.1 These Terms will take precedence over any other written document or oral message from the Client and in the case of conflict or dispute between the parties these Terms will prevail. Any failure by the Company to enforce the Terms or to exercise its rights under this contract will not be a waiver of these rights by the Company.

4.2 Acceptance of any written services, including pricing, from the Company by the Client and/or the placing of any request for Services by the Client is deemed acceptance by the Client of these Terms, notwithstanding anything that may be stated to the contrary on the Client's order.

5. Price

5.1 Any written Services, including pricing, issued by the Company will be valid for 30 days. Pricing is exclusive of GST unless stated otherwise. The Client will confirm the price by providing a Purchase Order or request for services to the Company. The Company may cancel the order without liability if it considers the order uneconomic or impractical to fulfil.

5.2 Any disputes over price need to be raised within 7 days of receipt of invoice, otherwise the Client is deemed to have accepted the price.

5.3 The Client cannot cancel the request for services without the consent of the Company and in such cases the Client will be liable to pay all costs and expenses incurred by the Company in fulfilling the order or request for services to the date of cancellation; and if the request for services cannot be cancelled the Client will be held liable for the costs incurred by the Company in relation to the order or request for services.

6. Variations

Any variations to the services to be carried out by the Company or regarding the price must be supplied in writing and take precedence over the part of the order or request for services so affected.

7. Payment Terms

7.1 The Client shall pay the Company's Fees punctually in accordance with these Conditions or in such other manner as may have been agreed in writing between the parties.

7.2 The Company may require partial payment of an order or request for services of up to **30% of the value of the services or when the services are valued at greater than NZ$50,000**.

7.3 Payment of the balance of the purchase price is to be made on delivery of the services unless the Client has completed an Application for Credit on the form supplied by the Company and the Company has agreed to grant such credit, in which case final payment shall be made in full **on the 20th of the month** following the date of the invoice.

7.4 The Client agrees that the Company has sole discretion to apply payments from the Client to any transaction or Company invoice notwithstanding that the Client may have applied the payment to a particular transaction or invoice.

7.5 If payment is not made in full by the due date, the Company is entitled to charge the Client interest on the unpaid overdue balance at the rate of 2.5% per month or part thereof from the due date for payment down to the actual date of payment, and the Company may, at its option, suspend the sale regardless of the term of this contract until the overdue amounts are paid in full. In doing so, the Company does not agree to extend the due date for payment of monies due nor forbear to sue for or seek recovery of the overdue monies by other legal process.

7.6 The Client agrees to indemnify the Company and pay all costs and expenses which the Company may incur in recovering or enforcing payment of any overdue amount from the Client including the debt collection fees and all legal and collection costs not covered by the fee.

8. Obligations and Responsibilities

8.1 Client

The Client undertakes to ensure that full instructions are given to the Company and are provided in sufficient time to enable the required Services to be performed effectively and efficiently and to procure all necessary access for the Company to goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions, where appropriate.

The Company shall not be liable for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions.

8.2 Company

The Company shall use reasonable care and skill in the performance of the services in accordance with sound industry practice.

8.3 Reporting

The Company shall submit to the Client all deliverables as specified in the order or request for services following completion of the agreed Services, unless otherwise expressly instructed by the Client not to do so.

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8.4 Confidentiality
The Company undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law.

8.5 Use of Services, Company Ownership and Title
The Client agrees that the Company has legal and equitable title to the Services and that ownership shall only pass to the Client when the contract price is paid in full.

8.6 Conflict of Interest/Qualification
The Company shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for the Company to continue its involvement with the appointment. The Client shall be responsible for payment of the Company's Fees up to the date of notification.

9. Liability

9.1 Without prejudice to Clause 10, the Company shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Company or any of its employees or agents or sub-contractors.

9.2 In the event that the Client proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Company, then, save where loss, damage, delay or expense has resulted from the Company's act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Company's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of 5 times the Company's fee for Services.

9.3 The Company shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

10. Indemnity
Except to the extent and solely for the amount therein set out that the Company would be liable under Clause 9, the Client hereby undertakes to keep the Company and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Company may suffer or incur (either directly or indirectly) in the course of the services under these Conditions.

11. Force Majeure
Neither the Company nor the Client shall, except as otherwise provided in these Conditions, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

12. Insurance
The Company effects and maintains Professional Indemnity Insurance (NZ$5,000,000) and Public Liability Insurance (NZ$5,000,000) for such loss and damage for which the Company may be held liable to the Client under these terms and conditions. Any additional cover required by the Client over and above those listed above may incur a cost and will be subject to negotiation.

13. Time Bar
Any claims against the Company by the Client shall be deemed to be waived and absolutely time barred upon the expiry of one year from the submission date of the Report or Chart to the Client.

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14. The Company's Right to Sub-contract

The Company shall have the right to sub-contract any of the services provided under the Conditions, subject to the Client's right to object on reasonable grounds. In the event of such a sub-contract the Company shall remain fully liable for the due performance of its obligations under these Conditions.

15. Insolvency and Default

If a Client:

a) Makes a default in any payment due under this contract.
b) Commits any act or bankruptcy or enters into any composition or arrangement with creditors.
c) Where the Client is a company, does any act which would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the winding up or liquidation of the Client or if a Receiver is appointed in respect of all or any assets of the Client.
d) No longer carries on business or threatens to cease carrying on business then, and in such event, the Company may at its option do any of the following:
    i. demand payment in full of all or any sums due to the Company.
    ii. require security for such obligations to its full satisfaction before any further services are made to the Client.
    iii. withhold any Services.
    iv. cancel the contract by notice in writing without the prejudice to its rights hereunder and seek damages accordingly.

16. No release from obligations

Cancellation of this contract shall not relieve the Client of its obligations to pay all money owed by it to the Company, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived.

17. Immediate steps upon cancellation

Upon cancellation of this agreement for any reason, all remaining rights of the Client granted by this agreement shall terminate.

18. Guarantor

18.1 Where the Client is a company, in consideration of the Company supplying the services to the Client and providing trade credit to the Client from time to time at the request of the person(s) referred to in this contract as Guarantor(s), the Guarantor(s) jointly and severally personally guarantee the obligations of the Client under this contract and in particular accept liability for credit extended by the Company to the Client and undertake to pay the Company for all services supplied by the Company to the Client if the Client fails to meet its obligations under this contract.

18.2 If the Client defaults in the payment of any monies due or the performance of any obligations under this contract the Guarantor(s) will pay such monies to the Company or The Client agrees that the Company has legal and equitable title to the Services and that ownership shall only pass to the Client when the contract price is paid in full. On the Company demanding the Guarantor(s) to do so, even if the Company has not taken steps against the Client to enforce the payment or the performance of the obligations.

19. Privacy Act and Credit Reporting Privacy Code

19.1 Under the terms of the Privacy Act 1993 and the Credit Reporting Privacy Code 2004 the Client authorises any person or company to provide the Company with such information as it may require in response to its credit enquiries for the purpose of making a credit decision in relation to the Client or for debt collection purposes. The Client further authorises the Company to furnish to any third-party details of any dealings that it has with the Client. The Company agrees that it will only use information gathered about the Client for purposes directly related to granting credit to or collecting debt from the Client and that it will maintain policies, procedures and controls to safeguard such information from improper use or access.

19.2 Without limiting the application of clause 16, the Client acknowledges that details of the Client's account with the Company may be given to any debt collection agent engaged by the Company in the event that the Client defaults in making any payment and that this may affect the Client's ability to obtain credit in the future.

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20. Severability

If any of the provisions of these Terms is held invalid, unenforceable, or illegal for any reason but is capable of being interpreted in such a manner as to render it binding and enforceable, it shall be interpreted in such a manner. If it is not capable of being so interpreted then such word or words or, if required, the whole provision shall thereupon be severed, and the remainder of these terms shall otherwise remain in full force and effect.

21. Jurisdiction and Law

These Conditions shall be governed by and construed in accordance with the laws of New Zealand and any dispute shall be subject to the exclusive jurisdiction of the New Zealand Courts.