



Menno Marine Pty Ltd

ABN: 66 672 765 472

Marine Services – Terms and Conditions

1. DEFINITIONS

In these Terms the following words shall have the following meanings:

"ACL" means the Australian Consumer Law Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

"Customer" means any person or entity who purchases Services from Menno Marine;

"Cyber Security Incident" means an unwanted or unexpected cyber security event or series of events (including a breach of cyber security or a failure of cyber security safeguards in place) that have a significant probability of compromising business operations;

"Force Majeure" means any cause whatsoever beyond a party's reasonable control including acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, epidemics, pandemics, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, labour disputes and other industrial disturbances, any border closure, road closure or congestion of roads, any quarantine or customs restriction, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, crane, machinery or equipment;

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

"Insolvent" means with respect to a party that:

- (a) it is (or states that it is) insolvent (as defined in the *Corporations Act 2001* (Cth));
- (b) it is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up or has had a receiver and manager appointed; or
- (c) it is taken to have failed to comply with a statutory demand;

"Menno Marine" means Menno Marine Pty Ltd ACN 672 765 472 of 14 Popplewell Avenue, Colebee, NSW 2761;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

"Services" means any marine services provided by Menno Marine or its authorised agents or contractors, to any Customer, and without limiting the generality of the foregoing, includes:

- (a) inspecting, testing and certifying fixed fire suppression systems (Halon, CO2, FM200, Wet Chemical, Novec NAF SIII, Aerosol systems, water mist, Foam & Dry Chemical powder systems and others from time to time);
- (b) inspecting, testing and certifying fixed fire detection systems (conventional and addressed);
- (c) inspecting, servicing and certifying portable fire extinguishers;
- (d) visual inspection, recommendations and replacement of portable life saving equipment (smoke signals, life buoy, inflatable life jackets and life rafts certified by the OEM);



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- (e) visual inspection, recommendations and service or replacement of breathing air equipment (Emergency Escape Breathing Device, BA sets & cylinders, medical oxygen equipment & cylinders);
- (f) testing, verifying and certifying gauge and relief valve; and
- (g) any related or ancillary services rendered in relation to vessels such as superyachts, cruise ships, tugs, barges, work vessels, and Navy vessels.

"Terms" means the terms and conditions of supply set out in this document and any special terms and conditions agreed in writing between the parties.

2. GENERAL

- 2.1. These Terms shall apply to all contracts, agreements, or arrangements for the supply of the Services by Menno Marine to the Customer, whether in writing or oral, and shall prevail over any other documentation or communication from the Customer.
- 2.2. In the event of any inconsistency between these Terms and any specific terms of a separate formal written contract, then the specific terms of the formal contract will prevail.

3. PRICING AND PAYMENT

- 3.1. Unless otherwise agreed in writing:
 - (a) all pricing is quoted exclusive of GST;
 - (b) all monies payable to Menno Marine must be paid in full within 7 days of the date of an invoice;
 - (c) a 50% deposit is required prior to the commencement of Services quoted for \$50,000.00 or more and no work shall commence until such deposit has been paid to Menno Marine;
 - (d) in the event that any monies payable by a Customer to Menno Marine are not paid in accordance with clause 3 of these Terms, Menno Marine may charge the Customer interest on the full amount outstanding;
 - (e) interest will be charged at the standard contract default rate set by the Queensland Law Society from the date that the payment was due until the date that payment is received;
 - (f) the Customer shall be liable to pay to Menno Marine any and all expenses, including reasonable legal costs and debt recovery costs, incurred in relation to recovery of any amounts overdue under the respective contract, agreement or arrangement in place.



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3.2. It is agreed that:

- (a) prior to making payment to Menno Marine of any monies due and payable, the Customer must contact a known representative at Menno Marine to verify that the bank details provided are correct and have not been altered or intercepted as a result of a Cyber Security Incident;
- (b) the Customer's failure to contact a known representative at Menno Marine to verify bank details in accordance with clause 3.2(a) means that payment is deemed not to have been made by the Customer; and
- (c) if the Customer's payment is intercepted as a result of a Cyber Security Incident, Menno Marine may recover any amounts due and payable from the Customer as a debt in a court of competent jurisdiction.

4. MENNO MARINE'S OBLIGATIONS

4.1. Menno Marine warrants that:

- (a) any Services supplied will be done so with reasonable skill and care, and to a reasonable standard in accordance with recognised standards and codes of practice; and
- (b) any time specified by Menno Marine for provision of the Services is an estimate only and Menno Marine will not be liable for any loss or damage incurred by the Customer as a result of any delay from any cause. However, both parties agree that they shall make every endeavour to enable the Services to be provided in a timely manner.

5. CUSTOMER'S OBLIGATIONS

- 5.1. The Customer warrants to Menno Marine that the Customer is the owner, or authorised agent of the owner, of any vessel, goods, or property the subject of any works or agreement with Menno Marine.
- 5.2. The Customer shall keep Menno Marine notified of;
 - (a) its correct name; postal address, telephone numbers, fax, or email information; and
 - (b) any and all information reasonably required to undertake the Services engaged.
- 5.3. The Customer shall ensure that Menno Marine has clear and free access to the Customer's vessel or other location to enable the Services to be carried out.



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- 5.4. The Customer shall effect and maintain, at no cost to Menno Marine, the following insurances and shall make such insurances available for viewing by Menno Marine, at the request of Menno Marine.
- (a) protection and indemnity insurance for a Vessel (if relevant);
 - (b) public liability insurance for an amount of not less than AUD\$20,000,000;
 - (c) Hull and Machinery Insurance, incorporating ports risks cover to the value of the Vessel (if relevant);
 - (d) workers' compensation cover for all of the Customer's personnel; and
 - (e) insurance must be sufficient to provide full coverage for such loss and damage for which the Customer may be held liable to Menno Marine.
- 5.5. If required, the Customer shall provide a Vessel induction to Menno Marine's employees and any sub-contractors prior to commencement of the Services.
- 5.6. The Customer warrants that the Vessel is safe, seaworthy and in all respects in compliance with any relevant laws relating to the Vessel and marine safety.
- 5.7. The Customer shall cooperate fully in reviews, inspections, investigations, or audits, carried out by or on behalf of Menno Marine, to the extent required by any applicable legislative requirements.

6. HEALTH AND SAFETY

- 6.1. The Customer shall ensure that its personnel, and any sub-contractors comply with the relevant rules and regulations including those relating to:
- (a) Menno Marine's Health Safety and Environment (HSE) Policies and Procedures;
 - (b) any lawful directions issued by Menno Marine or a third party relating to health and safety; and
 - (c) any legislative requirements relating to health and safety.
- 6.2. For the avoidance of doubt, Menno Marine is not the Principal Contractor within the meaning of the legislative requirements for health and safety for the worksite or Vessel where the Services are being performed. The Customer retains its responsibilities to ensure health and safety accordingly.



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7. TERMINATION

- 7.1. Menno Marine may at its absolute discretion terminate the underlying agreement incorporating these Terms at any time and for any reason whatsoever in its absolute discretion.
- 7.2. The Customer agrees to pay an administrative fee to Menno Marine in the event the Customer cancels any agreed service in accordance with clause 7.3.
- 7.3. If the Customer wishes to cancel the agreed Services, the following fees shall be payable by Customer to Menno Marine:
- (a) no administration fee shall be payable if more than 21 days' notice of cancellation is provided;
 - (b) 10% of the administration fee shall be payable if 21 days' notice of cancellation is provided;
 - (c) 50% of the administration fee shall be payable if 14 days' notice of cancellation is provided;
 - (d) 75% of the administration fee shall be payable if 7 days' notice of cancellation is provided; and
 - (e) 100% of the administration fee shall be payable if less than 3 days' notice of cancellation is provided.
- 7.4. For the purpose of clause 7.2, the administrative fee will be calculated at 10% of the cost value of the Services as calculated by Menno Marine.

8. INSOLVENCY

If the Customer becomes Insolvent, Menno Marine may terminate these Terms and any agreements or contracts that incorporate these Terms.

9. LIMITATION OF LIABILITY

- 9.1. The liability of Menno Marine shall be limited in accordance with these Terms in respect of the Services provided to the Customer.
- 9.2. Notwithstanding anything else contained in these Terms, Menno Marine shall not be responsible for any loss of or damage arising, including to the vessel, or for the personal injury or death of any person arising out of or in any way connected with the performance or non-performance of the Services set out in these Terms whatsoever and in any circumstances, even if such loss, damage or personal injury or death is caused wholly or partially by the act, neglect, breach of duty (whether statutory or otherwise) or default of Menno Marine;



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the Customer shall indemnify and hold harmless Menno Marine from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such loss, damage, personal injury or death.

- 9.3. Nothing in these Terms excludes, restricts or modifies, or has the effect of excluding, restricting or modifying, any non-excludable warranty, condition or guarantee conferred on the Customer by the Australian Consumer Law in Schedule 2 of the ACL or any other applicable law that cannot be excluded, restricted or modified by agreement.
- 9.4. To the fullest extent permitted by law, the liability of Menno Marine for a breach of a non-excludable warranty, condition or guarantee referred to in clause 9.4 is limited, at Menno Marine's absolute discretion to:
- (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
- 9.5. Unless otherwise agreed in writing, Menno Marine shall not have any supervisory or security obligations toward the Customer's vessel, property or goods while it is undergoing the Services.

10. DISPUTE RESOLUTION

- 10.1. If any dispute arises out of or in connection with these Terms, the responsible representatives of the parties shall attempt, in fair dealing and in good faith, to settle such dispute. A party can request from the other party that a senior representative becomes involved in the negotiations.
- 10.2. If the parties are not able to reach an amicable settlement pursuant to clause 10.1, any dispute between the parties arising out of or connected with this agreement shall be referred to arbitration in Sydney, New South Wales in accordance with the Australian Maritime and Transport Arbitration Commission ("AMTAC") Rules.
- 10.3. If any dispute is referred to arbitration in accordance with clause 10.2, the cost of arbitration shall be shared equally between the parties.
- 10.4. For the avoidance of doubt, the parties acknowledge and agree that the agreement to refer any disputes arising to arbitration in accordance with this clause 10 specifically prevents the enforcement of any claim in Admiralty and that any such proceedings brought shall be stayed in accordance with section 29 *Admiralty Act 1988* (Cth), save for the commencement of *in rem* proceedings for the provision of security for the arbitration.



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11. FORCE MAJEURE

- 11.1. Menno Marine shall not be liable for any failure or delay in performance of the Services if such failure or delay is due, in whole or in part, to any cause whatsoever beyond its control including due to Force Majeure event.
- 11.2. If a Force Majeure event occurs, the affected party must immediately give the other party a written notice containing the:
 - (a) full particulars of the Force Majeure event including its nature and likely duration;
 - (b) obligations of the party the performance of which are prevented or delayed; and
 - (c) nature and extent of the effects of the Force Majeure event on those obligations.
- 11.3. The obligations of the party affected by the Force Majeure event are suspended to the extent that they are affected by the Force Majeure event, from the date the affected party gives written notice until cessation of the Force Majeure event.
- 11.4. If a Force Majeure event continues for longer than 30 calendar days, the parties may by notice in writing terminate these Terms.
- 11.5. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

12. MENNO MARINE'S PROPERTY

- 12.1. Menno Marine's Intellectual Property (including website and social media channels, including but not limited to Facebook, LinkedIn, Instagram, TikTok and YouTube) may not be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means without the prior express written permission of Menno Marine.
- 12.2. Menno Marine warrants that in providing the Services that it owns or has a licence to use the intellectual property in the provision of the Services.



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- 12.3. The Customer shall not download, copy or take from Menno Marine any of its intellectual property, without prior written approval. Upon termination or other ending of these Terms all intellectual property taken from or provided, the Customer shall, as soon as practicable after the end of the Term, return any such intellectual property to Menno Marine.
- 12.4. Any tool, equipment, component, material, vessel, or property in general of Menno Marine's used in connection with the Services remains the property of the Menno Marine unless such item is paid for and Menno Marine specifically consents to its sale and the passing of title in writing.
- 12.5. The Customer agrees to reimburse the Menno Marine for any reasonable costs incurred in recovering Menno Marine's property.
- 12.6. The obligations under this clause 12 survive termination or expiry of these Terms.

13. PERSONAL PROPERTY SECURITIES ACT

- 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 in writing, the Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and create a security interest in all Services that are the subject of the performance of the Services or will be the subject of the Services in the future.
- 13.3. The Customer 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 Menno Marine 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 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Menno Marine 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 goods charged thereby;



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- (c) not register a financing change statement in respect of a security interest without the prior written consent of Menno Marine.
- 13.4. Menno Marine and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 13.5. The Customer 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 Customer 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 Menno Marine, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8. The Customer must unconditionally ratify any actions taken by Menno Marine pursuant to this clause.
- 13.9. Subject to any express provisions to the contrary nothing in these Terms is intended to have the effect of contracting out of any of the provisions the PPSA.

14. SEVERANCE

- 14.1. If any term or provision of these Terms is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms had been agreed, with the invalid, illegal or unenforceable provision eliminated.

15. INFORMATION PRIVACY

- 15.1. For the purposes of this clause 15 “*Personal Information*” has the same meaning given in the *Privacy Act 1988* (Cth).
- 15.2. If Menno Marine collects or has access to Personal Information in order to provide the Services, it shall:
 - (a) comply with the *Privacy Act 1988* (Cth);
 - (b) comply with the terms of its Privacy Policy;
 - (c) not use the Personal Information other than for the provision of the Services, unless required or authorized to do so by law;



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- (d) not disclose any Personal Information without the written consent of the Customer unless required or authorized to do so by law;
- (e) not transfer Personal Information outside of Australia without the written consent of the Customer;
- (f) ensure that access to Personal Information is restricted to those of Menno Marine's personnel who require access in order to perform their duties;
- (g) ensure that Menno Marine's personnel do not access, use or disclose Personal Information other than in performance of their duties;
- (h) ensure that its sub-contractors who have access to the Personal Information comply with obligations the same as those imposed on Menno Marine under this clause 15.2; and
- (i) immediately notify the Customer on becoming aware of any breach of this clause 15.2.

16. CONFIDENTIALITY

Unless otherwise agreed between the parties, Menno Marine is not obliged to keep any information about the Services or these Terms confidential beyond complying with Menno Marine's Information Privacy obligations set out in clause 15.

17. NOTICE

A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the receiving party. Notices sent by pre-paid post are deemed to be received within 4 business days from the date of the notice. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

18. ASSIGNMENT

- 18.1. Menno Marine may licence, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing Menno Marine is fully discharged from its obligations to the Customer.
- 18.2. These Terms are personal to the Customer and the Customer may not assign its interest in or obligations under the Terms without Menno Marine's written consent which consent shall not be unreasonably withheld.



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19. WARRANTY

The Customer warrants that it has the power to enter into these Terms and has obtained all necessary authorisations to allow it to do so, it is not Insolvent and that these Terms create binding and valid legal obligations on it.

20. TIME SHALL BE OF THE ESSENCE

Time shall be of the essence and shall be an essential term in relation to the timing of the payments referred to in these Terms.

21. VARIATION

21.1. Menno Marine may vary or amend these Terms from time to time by providing 7 days written notice to the Customer at any time. Any variations or amendments will apply to any orders for Services placed after the notice date.

21.2. The varied or amended Terms will be deemed to form part of any underlying agreement to which these Terms are incorporated

22. ENTIRE AGREEMENT

22.1. These Terms contains the entire understanding between the parties and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

22.2. These Terms contain the entire agreement between the parties and shall in no circumstances be replaced by the Customer's terms and conditions.

23. GOVERNING LAW

These Terms are governed by and must be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland and all courts which have jurisdiction to hear appeals from those courts, and waives any right to object to proceedings being brought in those courts for any reason.