

## MARINELOGIX – TERMS AND CONDITIONS OF SUPPLY

### THESE TERMS AND CONDITIONS CONTAIN LIMITATIONS AND EXCLUSIONS OF LIABILITY.

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions:

- (a) "**Contractor**" means any third party supplier, agent, contractor or sub-contractor arranged or engaged by Marinelogix on behalf of Customer to supply Services;
- (b) "**Credit Account**" has the meaning given in condition 8.1;
- (c) "**Customer**" means any person who purchases Services from Marinelogix. If Customer is more than one person, these Terms will bind those persons jointly and severally;
- (d) "**Marinelogix**" means Marinelogix NZ Limited (company number 4910679);
- (e) "**Services**" means services provided by Marinelogix to Customer from time to time as set out in the Specification;
- (f) "**Specification**" means the description or specification of the Services agreed in writing between Marinelogix and Customer; and
- (g) "**Terms**" means these terms and conditions of supply, as may be amended from time to time.

##### 1.2 Interpretation: In these Terms, unless the context requires otherwise:

- (a) a **person** includes any company, body corporate or body of persons (incorporated or not);
- (b) any **headings** to the conditions shall be ignored in interpreting these Terms; and
- (c) the word **including** and other similar words do not imply any limitation.

#### 2. TERMS OF SUPPLY

- 2.1 Unless otherwise agreed in writing by the parties, these Terms shall apply to the supply of all Services by Marinelogix to Customer (together with any written terms of engagement of Marinelogix sent by Marinelogix to Customer) to the exclusion of all other terms and conditions. If there is any inconsistency or conflict between these Terms and the terms of engagement, these Terms shall prevail.

#### 3. PROPOSAL

- 3.1 Any proposal, including any quotation specified therein, provided by Marinelogix to Customer shall not constitute an offer but an invitation only for Customer to purchase Services based on that proposal. Any proposal is valid for thirty (30) days from its date of issue (unless otherwise stated in the proposal), after which period the proposal and any quotation therein shall expire. If Marinelogix provides a written proposal to Customer, the price and Specification of the Services shall be those stated in the proposal and the applicable terms of engagement shall include any other specific terms set out in that proposal, provided that:

- (a) Marinelogix accepts the engagement under condition 4.1; and

- (b) Customer executes or otherwise accepts the terms of engagement based on the proposal within the stated time period.

#### 4. ENGAGEMENT FOR SERVICES

- 4.1 **Engagement:** To make an offer to purchase Services based on the proposal provided by Marinelogix, Customer will complete and deliver to Marinelogix the service level agreement in the form specified by Marinelogix, unless otherwise agreed by the parties. Marinelogix reserves the right to reject any offer, and an engagement will become binding only when Marinelogix has accepted the offer in writing and Customer has delivered to Marinelogix the executed terms of engagement provided by Marinelogix.
- 4.2 **Customer's amendments:** Customer may at any time, with written agreement of Marinelogix, request amendments in the Specification or any specific terms of the engagement. Subject to condition 4.4, Marinelogix may (but shall not be obliged to) accept any such amendments requested by Customer, provided that Customer shall be responsible for costs already incurred and/or additional costs incurred by Marinelogix and/or any Contractors as a direct result of such amendments. If Customer requests for any Service to be supplied sooner than originally specified, Marinelogix shall not be obliged to meet such requests but shall use commercially reasonable efforts to do so, provided that Customer shall be responsible for any additional costs incurred by Marinelogix and/or any Contractors as a direct result of such amendments.
- 4.3 **Marinelogix's amendments:** Marinelogix reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of Services, and Marinelogix shall notify Customer in any such event.
- 4.4 **No cancellation:** Except with the express consent of Marinelogix, Customer may not cancel an engagement after it has been accepted by Marinelogix.

#### 5. SERVICES, RISK AND TITLE

- 5.1 **Services:** Marinelogix shall supply Services to Customer in accordance with the Specification in all material respects. Marinelogix will use reasonable commercial efforts to meet any supply dates specified in Customer's service level agreement or terms of engagement. Subject to conditions 6.3, 8.7 and 10.4, Marinelogix may arrange or engage Contractors to provide Services directly to Customer or provide labour, materials, goods and services of any nature as required in connection with the Services, provided that in all cases the contractual relationship exists between Customer and Contractors directly and Marinelogix will not be liable to Customer for any loss arising from any act or omission of the Contractor however arising.
- 5.2 **Risk:** Customer's vessel shall be at Customer's own risk at all times.
- 5.3 **Title:** Title to all incidental goods and supplies provided to Customer in connection with the Services will remain the property of either Marinelogix or the relevant Contractor providing the goods and supplies until payment in full of the applicable invoice in accordance with conditions 8.2 or 8.7, unless otherwise expressly agreed in writing. Marinelogix or any Contractors will be entitled

to reclaim possession of goods and supplies if Customer fails to make the applicable payment by the due date.

## 6. CUSTOMER OBLIGATIONS AND INDEMNITIES

### 6.1 **Customer's obligations:** Customer shall:

- (a) provide MarineLogix or any Contractors with such information and materials as may be reasonably required in order to supply the Services, and ensure that such information is complete and accurate;
- (b) co-operate with MarineLogix in all matters relating to Services;
- (c) provide MarineLogix or any Contractors (including their respective personnel) with access to its vessel as reasonably required by MarineLogix or the Contractors; and
- (d) unless otherwise agreed, obtain and maintain all necessary licences, permits or other governmental approvals that may be required for the Services (including the entry of Customer's vessel into port and onto a berth for the duration of its stay) before the date on which the Services are to start.

### 6.2 **Customer Default:** If MarineLogix's performance of any of its obligations under its contract with Customer is prevented or delayed by any act or omission or negligence of Customer, its personnel, contractors, agents, customers, visitors or breach or non-observance by Customer of any of the Terms ("**Customer Default**"):

- (a) without limiting or affecting any other right or remedy available to it, MarineLogix shall have the right to suspend performance of the Services until Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays MarineLogix's performance of any of its obligations;
- (b) MarineLogix shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from MarineLogix's failure or delay to perform any of its obligations as set out in this condition 6.2(a); and
- (c) Customer shall indemnify and keep indemnified and shall hold harmless MarineLogix from and against any direct or indirect loss, damage or liability incurred or sustained by MarineLogix and any proceedings, actions or claims against MarineLogix (including by any Contractor) which directly or indirectly arises out of or in consequence to the Customer Default, except to the extent that such loss, damage or liability arises from the act or omission or default of MarineLogix. Customer shall reimburse MarineLogix on written demand for such costs and losses.

### 6.3 **Indemnity:** Customer shall indemnify and keep indemnified MarineLogix for all costs sustained or incurred in connection with arranging any Contractor to provide the Services.

## 7. PRICING AND OTHER CHARGES

- 7.1 **Prices:** Subject to condition 3, prices of Services are as set out in the applicable proposal, terms of engagement or other ancillary document provided by Marinelogix. The parties will mutually review and determine any adjustments to the prices of Services prior to Customer's execution of the terms of engagement if any cost price determining factors have been subject to an adjustment. These factors include fees of Contractors, cost of third party supplies, and imposition of any government levy.
- 7.2 **Other charges:** Customer shall pay in full all additional charges in connection with and required for the performance of the Services (including travelling expenses, shipping or delivery costs, freight costs, any costs associated with drydocking for any vessel maintenance or repair works).
- 7.3 **Tax:** Unless agreed otherwise, prices are exclusive of the Goods and Services Tax (as defined in the Goods and Services Tax Act 1985) that may apply to any supply under these Terms and other taxes, duties, levies or charges in any jurisdiction levied on or in relation to the supply of Services to Customer ("**Taxes**"). The amount of any such Taxes will be for Customer's account and Customer shall pay or reimburse Marinelogix (including by way of deduction from Customer's Credit Account) for any costs incurred as a direct result of paying any such Taxes.

## 8. PAYMENT

- 8.1 **Invoice:** Marinelogix shall invoice Customer on completion of the Services or otherwise in accordance with the proposal. Unless otherwise agreed, Customer will open a credit account held with Marinelogix ("**Credit Account**"), from which Marinelogix will deduct its invoice.
- 8.2 **Payment:** Unless otherwise agreed or specified by Marinelogix that payment must occur at an earlier date (which may be earlier than delivery), each invoice issued by Marinelogix shall be paid within 14 days of the date of the invoice, in full, without deduction, set-off or counterclaim by Customer. Customer shall make all payments under these Terms by the due date in either: (i) cash delivered to the Marinelogix Head Office, or (ii) direct debit paid into Marinelogix's nominated bank account in cleared funds. The amount owing by Customer at any point in time must not exceed the credit limit granted by Marinelogix to Customer.
- 8.3 **Default:** Failure by Customer to satisfy its obligation under condition 8.2 may result in Marinelogix suspending Customer's credit facilities without notice, until payment is made. If Customer's non-compliance continues for more than sixty (60) days, then Marinelogix may close Customer's Credit Account and take any action that it is legally entitled to take to recover the outstanding debt.
- 8.4 **Amount owing to Marinelogix:** Any payment received from Customer may be applied by Marinelogix to all or part of any amount owing to Marinelogix as Marinelogix sees fit, irrespective of whether that payment is intended by Customer to be for a particular Service or in connection with a particular invoice.
- 8.5 **Dispute about invoice:** If there is any dispute about an invoice issued by Marinelogix, Customer shall pay the undisputed portion of that invoice by the due date, and work with Marinelogix in good faith to promptly resolve the dispute.

8.6 **Interest:** Where any amount payable to Marinelogix by Customer is not paid by thirty (30) days after the due date, Marinelogix may charge interest on the amount outstanding from the due date to the date of payment. The interest rate will be 15% per annum.

8.7 **Payment of Contractors:** Marinelogix may, at Customer's request, receive and hold Customer's funds in trust under these Terms in order to pay any Contractors directly on behalf of Customer and Marinelogix may be deemed to be acting as an agent of Customer for the sole purpose of effecting payment to Contractors under this condition 8.7. Customer agrees and acknowledges that Marinelogix may deduct its own fees/prices from Customer's funds (with prior notice to Customer).

## 9. TERMINATION OF CONTRACT

9.1 Marinelogix may terminate the contract, in whole or in part, at any time, upon written notice to Customer. Marinelogix shall not be liable to Customer for any losses, damages or expenses resulting from such termination. Upon termination by Marinelogix, all charges for Services performed and any ancillary charges owed to Marinelogix and/or any Contractors shall be immediately due and payable by Customer. This right of termination shall be additional to all rights that Marinelogix otherwise possesses.

## 10. LIMITATION OF LIABILITY

10.1 **Maximum liability:** Subject to condition 10.2, Marinelogix's maximum aggregate liability to Customer for any reason whatsoever is limited to, at Marinelogix's option, either:

- (a) performance of the defective Services again; or
- (b) issue of credit to Customer up to the aggregate value of the defective Services paid for by Customer.

10.2 **Limitation of liability:** Where any terms, conditions or warranties may not be excluded or modified in accordance with these Terms, no claim for direct loss or damage by Customer relating to the Services will be allowed unless:

- (a) the claim is notified to Marinelogix within thirty (30) days of providing the Service to Customer quoting invoice number;
- (b) Marinelogix is given a reasonable opportunity to investigate the claim.

In respect of goods or services used, supplied or performed by any Contractor in connection with the Services, which are of defective workmanship or do not otherwise comply with the Specification, Marinelogix shall in no event be liable to refund any fees/price or be liable for any loss arising from any act or omission of the Contractor however arising.

10.3 **Exclusion of liability:** Except as expressly set out in these Terms and subject to any terms, conditions or warranties that by law may not be excluded or modified, all terms, conditions and warranties relating to the supply of Services, whether expressed or implied, whether statutory or otherwise and whether oral or in writing, are expressly excluded but reasonable endeavours will be taken to ensure that Services will conform to the Specification on the date of supply (within the limits of reasonable commercial accuracy). Except as set out in condition 10.1, under no circumstances does Marinelogix accept any liability whatsoever to Customer for any direct, indirect, special or

consequential loss or damage (whether for loss of profit, loss of business or revenue, loss of contracts, depletion of goodwill, loss of anticipated or actual savings, loss of use, incurring of expense or otherwise), which may in any way arise for any reason, including out of Services supplied or not supplied, of or in connection with any act or omission of Marinelogix or any Contractors (or their respective personnel), or however arising, even if due to negligence of Marinelogix or any Contractors (or their respective personnel).

- 10.4 **Assignment of rights against Contractors:** Notwithstanding condition 5.1, if any court of law determines that a contractual relationship exists between Marinelogix and any Contractor by virtue of the fact that Marinelogix engaged the Contractor to supply Services to Customer, then Marinelogix will use its best endeavours to assign, transfer or otherwise make available to Customer the benefit of all unexpired and assignable guarantees and warranties given by the Contractor and the rights (then vested in Marinelogix) to claim against the Contractor in connection with the Services, provided that Marinelogix will not be liable to Customer for any loss arising from any act or omission of the Contractor however arising. Marinelogix shall be entitled to rely on any limitations and exclusions of liability provided for in the Contractors' terms and conditions as if they were incorporated in these Terms.
- 10.5 **Survival:** This condition 10 shall survive termination of the contract between Marinelogix and Customer.

## 11. FORCE MAJEURE

- 11.1 Marinelogix may suspend or reduce the provision of Services if Marinelogix is unable to perform or supply Services by reason of circumstances reasonably beyond its control, including strikes, lockouts, accidents, riots, war, epidemics, act of God, governmental action or order superimposed after the date of these Terms, failure of any Contractors and any other third party suppliers, agents, contractors or sub-contractors, fire, communication line failures, power failures, floods, storms, earthquakes, or natural disasters (in each case a "**force majeure event**").
- 11.2 If the effects of a force majeure event continue for a period longer than two (2) weeks, Marinelogix at its absolute discretion may terminate any engagement affected by the force majeure event. Customer will have no claim against Marinelogix, and neither party will be liable for any loss arising from any suspension, reduction, delay in performing or failure to perform its obligations under these Terms (other than a payment obligation) by reason of a force majeure event or any termination pursuant to this condition 11.2.

## 12. CONSUMER GUARANTEES ACT

- 12.1 Where Customer receives Services for business purposes, Customer acknowledges that the Consumer Guarantees Act 1993 does not apply to any transaction to which these Terms apply.

## 13. PRIVACY ACT

- 13.1 Customer authorises Marinelogix to collect, retain and use any information about Customer from any third party (including from any trade reference or credit reporting agency), for the purposes of:

- (a) assessing Customer's credit worthiness and determining whether or not to extend (or continue to extend) any credit to Customer;
- (b) responding to requests received by Marinelogix for information about Customer's credit worthiness; and
- (c) sending Customer marketing, promotional or other material relating to any Services or products that Marinelogix may provide from time to time.

## 14. GENERAL

- 14.1 **Dispute resolution:** If a dispute arises out of or in connection with these Terms, the parties shall work together in good faith to endeavour to promptly resolve such dispute.
- 14.2 **Assignment:** Customer will not, without the prior consent in writing of Marinelogix, directly or indirectly in any manner assign or transfer its rights and obligations under these Terms to any third party.
- 14.3 **Amendments:** Marinelogix reserves the right to amend these Terms from time to time and to notify Customer by publishing on its website ([www.marinelogix.co](http://www.marinelogix.co)) the then current version of the Terms. Any supply of Services by Marinelogix to Customer will be subject to the version of the Terms published on Marinelogix's website on the date Customer executes the terms of engagement for Services, and Customer shall be deemed to be aware of and bound by that version of the Terms.
- 14.4 **No agency:** Except where condition 8.7 applies, Marinelogix and Customer are independent contractors and nothing in these Terms will be deemed or construed to constitute either party a partner, agent or representative of the other party, or to create any trust or commercial partnership. Neither party has the authority to act for or to incur any obligation on behalf of the other party except as expressly provided in these Terms.
- 14.5 **Severance:** If at any time any of these Terms is or becomes unenforceable, illegal or invalid for any reason whatsoever, it is to be read down so as to be enforceable, valid and legal. If this is not possible, such provision will be deemed to be severed from these Terms without affecting the enforceability, legality, validity or application of any other provision of these Terms.
- 14.6 **Waiver:** Marinelogix's acceptance of payment, or delay or failure to act will not prejudice its rights or constitute a waiver. No waiver by Marinelogix of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.
- 14.7 **Governing law:** These Terms will be governed by, and construed in accordance with, New Zealand law and the parties submit to the exclusive jurisdiction of the courts of New Zealand.