



Port Operation Management Services P/L

Standard Trading Terms and Conditions

for the provision of Professional Services
to.....

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1. Definitions

“**POMS**” is Port Operation Management Services P/L trading under these conditions.

“**Customer**” is the party at whose request or on whose behalf POMS undertake surveying/consulting services.

“**Report**” means any report or statement supplied by POMS in connection with instructions received from the customer.

“**Fees**” means the fees charged by POMS P/L to the Customer and including goods and services tax where applicable and any Disbursements.

“**Disbursements**” means the cost of all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary.

2. General Description of Services

Port Operation Management Services P/L (POMS) shall provide its services solely in accordance with these Terms and Conditions.

The Customer will set out in writing the services it requires POMS to provide. POMS will confirm in writing that it accepts those instructions and what services it will perform in connection with the Customer's instructions. Once POMS and the Customer have agreed what services are to be performed any subsequent changes or additions must be agreed by both parties in writing. For the avoidance of doubt, if the instructions are not provided in writing but POMS confirms their acceptance of these, the services will be provided in accordance with these conditions.

3. Obligations and Responsibilities

POMS P/L warrants and agrees to:

- a) Use all reasonable care and skill in the performance of the services provided.
- b) Not to disclose any information provided in confidence by the Customer to any third party and will not permit access to such information by any third party unless the Customer expressly grants permission save where required to do so by an order of a competent court of law.
- c) Notify the Customer of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for POMS employees, agents or sub-contractor to continue their involvement with the appointment.
- d) Not assigning, transfer or otherwise cause the work to be done by any other party without prior and written agreement of the customer.
- e) Invoice the Customer in accordance with the rate agreed as detailed in POMS written confirmation of services to be performed.
- f) Provide documental evidence of all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary.
- g) Maintain Professional Indemnity and Public Liability Insurance providing full coverage for such loss and damage for which the POMS may be held liable to the Customer under these Term & Conditions.

The Customer warrants and agrees to:

- a) Ensuring full written instructions are given to POMS and are provided in sufficient time to enable the required services to be performed effectively and efficiently.
- b) Procuring all necessary access for the POMS representative to access premises, vessels, installations and transport.
- c) Ensuring that all appropriate safety measures are taken to provide safe and secure working conditions.
- d) Pay POMS invoices within 7 days from the date of receipt or, in such other manner as may have been agreed in writing between the parties.

4. Liability & Indemnity

- a) Without prejudice to Clause 4(f), POMS shall be under no liability whatsoever to the Customer for any loss, damage, delay or expense of whatsoever nature, indirect or consequential loss, non-performance of any obligation, misdirection, costs, expense, death or injury of whatsoever nature and howsoever arising unless same is proved to have resulted solely from the negligence, gross negligence or willful default of POMS employees, agents or sub-contractor.
- b) Where the Australian Consumer Law consumer guarantees do not apply and In the event that the Customer proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or willful default of POMS employees, or sub-contractor then, save where loss, damage, delay or expense has resulted from the POMS employees' personal 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, POMS 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 ten times POMS fees or A\$100,000, whichever is the lesser, per event or events arising from any one cause or occurrence.
- c) Notwithstanding anything set out in these conditions, they are subject to the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* if and to the extent consumer guarantees apply to this Contract and prevent the exclusion, restriction or modification of any such consumer guarantee. The liability of POMS, if any, for the breach of any consumer guarantee that applies, (other than where the services are of a kind ordinarily acquired for personal, domestic or household consumption), shall be limited to the option of POMS to the supply of the Services again or, the payment of having the Services supplied again.
- d) POMS shall not be liable for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions.
- e) POMS shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Customer however such loss or damage occurs.
- f) Except to the extent and solely for the amount therein set out that POMS would be liable under Clauses 4 (a & b), the Customer hereby undertakes to keep POMS and its employees 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 POMS may suffer or incur (either directly or indirectly) in the course of the services under these Terms & Conditions.

5. Force Majeure

Neither POMS nor the Customer shall, except as otherwise provided in these Terms & 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 people.

6. Payment Terms

The Customer shall pay POMS invoices within 7 days from the date of receipt or, in such other manner as may have been agreed in writing between the parties.

In circumstances where it is agreed that it would be undesirable for POMS to continue its involvement with the appointment, the Customer shall be responsible for payment of POMS fees up to the date of notification.

7. Property

The right of ownership in respect of all original work created by the POMS remains the property of the POMS.

8. Time Limit

POMS shall be discharged of all liability in respect of any claim for loss, damage, delay or expense suffered by the Customer unless, within 12 months of the submission date of the final report to the Customer, (or, if no report is issued, the date on which the report would have been issued), suit is brought against POMS in the proper forum and written notice thereof is received by POMS .

9. Jurisdiction and Law

These conditions and any claim or dispute arising out of or in connection with the services of POMS shall be subject to the law of the State of Victoria and the exclusive jurisdiction of the courts of that State.

POMS P/L reserves all rights, including copyright, trademarks and other intellectual property rights, in these Standard Trading Terms & Conditions and no part thereof can be redistributed, republished or stored in any format without the express permission of POMS P/L.