

# Terms and Conditions for Installation, Repair, Maintenance and Other Services

DA.MET

## 1. General Provisions

1.1 In these Terms and Conditions the following words shall, unless the context otherwise requires, have the following meanings:

**“Contract”** means the agreement between DA.MET and the Customer, which Contract includes these Terms & Conditions and the Order;

**“Customer”** means the person, firm, body corporate, association or company who, or on whose behalf, requests DA.MET to perform the works or who is named in the Order to which these Terms and Conditions are annexed.

**“DA.MET”** means DA.MET AUTOMOTIVE & INDUSTRIAL PTY LTD ACN 154059024 or DA.MET AUSTRALIA PTY LTD ACN 169325339 or DA.MET Maritime Pty Ltd ACN 611057740 or VOLMARINE & INDUSTRIAL POWER PTY LTD ACN 139165361 or EPD PTY LTD ACN 109497467 and including but not limited to any of the employees, representatives, agents or subcontractors of the aforementioned.

**“Vessel”** means the boat or watercraft described in any quotation, invoice, job sheet or other document issued by DA.MET to the Customer and it includes the hull, motors, controls, equipment, accessories, dinghies, tenders and their motors in respect of which the Works are to be provided by DA.MET;

**“Force Majeure”** means any act, omission or circumstance over which DA.MET could not have reasonably exercised control including, without limitation, Act of God, strikes, lockout, war, government control and unforeseen delays and shortages of services, materials, labour or fuel;

**“Order”** means the order from the Customer for the supply of Works by DA.MET.

**“Works”** means all works carried out by DA.MET at the request of the Customer, its employees or agents, including without limitation:

- all repairs, maintenance, improvements or shipwright work;
- assembly, installation, repair, modification, overhaul, servicing and maintenance of ship equipment;
- the supply of all machinery, parts, materials, equipment, accessories, labour or specialised tools and/or the removal from the Vessel of any machinery, parts, materials, equipment or accessories; and
- any operation, movement or storage of the Vessel.

**“Site”** means the site at which the Works are to be carried out or provided;

1.2 The Customer shall bear the risk of faulty transmission of Orders or instructions given by post, facsimile, email or telephone.

1.3 All Works to be provided inside and outside the DA.MET factory shall be subject to these Terms and Conditions. The Terms and Conditions shall operate to the complete exclusion of any terms, conditions or other provisions submitted by the Customer at any time and shall supersede all previous negotiations, representations, warranties, offers and agreements, whether written or oral, between DA.MET and the Customer in connection with the Equipment and/or the Works, unless specifically agreed otherwise by DA.MET in writing.

## 2. Scope of Works and Authorisation

2.1 The Customer warrants that it is the owner of the Vessel or the Vessel owner's agent and that it has the authority to request that DA.MET perform the works.

2.2 The Customer authorises DA.MET to move and store the Vessel by whatever means and to do every act, matter and thing in whatever circumstances that DA.MET considers desirable, necessary or appropriate for DA.MET to provide the Customer with the Works in respect of its vessel, including:

(a) Entering the vessel; and

(b) Performing tests and trials on the Customer's vessel (including moving the vessel to another location outside of the premises).

## 3. Cost Estimate and Conclusion of Contract

3.1 The Contract shall be deemed to be formed by and upon confirmation of the Order by DA.MET (“the Confirmation”).

3.2 Any estimates and quotations by DA.MET in connection with the Works or the Equipment are indicative only and are only binding if given in writing and are expressly stated to be binding.

3.3 The Customer acknowledges that quotes for the Works are valid for the period stated in the Quote

3.3 If, for any reason, DA.MET inadvertently fails to issue the Confirmation, the Customer will be deemed to have agreed to these Terms and Conditions if it accepts Works from DA.MET or by third parties acting on DA.MET instructions.

3.4 The Customer shall not assign or purport to assign any of the Customer's rights and obligations under the Contract unless the Customer has previously obtained the written consent of DA.MET.

3.5 DA.MET is entitled to perform test and trial runs upon the Equipment.

3.6 At any time, DA.MET can require the Customer to pay an advance payment on account of reasonable costs that will be incurred in performing work for the Customer. DA.MET is not required to render a tax invoice for this payment but can request such payment verbally from the Customer. Until such time as the payment is made by the Customer, DA.MET is not required to perform any works on behalf of the Customer.

## 4. Prices and Terms of Payment

4.1 Tax invoices will be rendered on the basis of the ascertained costs of the Works (and replacement parts if relevant) at the prices valid at the time of delivery or performance. Payment shall be made by the Customer forthwith and in any event not more than fourteen (14) days after the date of the tax invoice is rendered by DA.MET to the Customer without discount, retention or any other deduction.

4.2 All costs of packing, insurance, freight, and customs duty shall be borne by the Customer.

4.3 Debts shall only be liquidated if payment is made to DA.MET or to persons having written authorisation from DA.MET for collection. Banker's charges and expenses for letters of credit shall be borne by the Customer. Payment by way of bill of exchange will be accepted only subject to the prior approval of DA.MET and cheques and bills of exchange will be accepted only subject to clearance.

4.4 Tax invoices rendered by DA.MET shall bear interest on daily rests at the rate of **fifteen** per cent per annum (15%) from due

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date until payment is received. No interest shall be payable upon a tax invoice if full payment of such tax invoice is received by DA.MET within 14 days after the date of the tax invoice. DA.MET may waive this interest provision in its discretion after submissions from the Customer.

4.5 Tax invoices will be regarded as accepted unless they are disputed by the customer in writing within seven (7) days of the tax invoice.

4.6 The Customer agrees that until all outstanding invoices together with any interest, charges or other costs payable have been paid in full, the title of any machinery, parts, materials, equipment or accessories supplied by DA/MET does not pass to the Customer and the Customer is not entitled to delivery of a Vessel

## 5. Customer's Assistance

5.1 The Customer shall provide to DA.MET at its own risk and expense such assistance (including, without limitation, the provision of personnel, fuel, equipment, building materials, preparation of the Site, and provision of storage and accommodation facilities) as DA.MET considers necessary to ensure satisfactory compliance with its obligations pursuant to the Order. The Works to be provided outside the DA.MET factory will only begin when all such assistance on the Customer's part has been completed.

5.2 If the Customer cannot provide the necessary tools, implements and assistance either itself or through third parties, DA.MET may at its absolute discretion, provide such tools, implements or assistance for a fee as reasonably determined by DA.MET. Delivery, use and return thereof shall be made at the Customer's risk and expense.

5.3 The Customer shall take all measures necessary (including, if appropriate, medical services) for the protection of persons and objects on the Site and for the prevention of accidents and shall inform DA.MET in advance of any safety regulations in force and to be observed on the Site.

5.4 The Customer shall at its own expense dispose of fluids and lubricants such as coolant, engine oil and similar materials.

## 6. Work Stoppage

6.1 DA.MET shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure.

6.2 DA.MET shall notify the Customer as soon as practicable of any anticipated delay due to Force Majeure, and the performance of DA.MET's obligations shall be suspended during the period of the delay due to such Force Majeure.

## 7. Working Conditions

7.1 The Works shall not be carried out on ground which is unhealthy or dangerous or under conditions which are, in the opinion of DA.MET, inadequate. The Customer shall call DA.MET's attention to special dangers that could arise during provision of the Works.

## 8. Performance

8.1 The contract shall be deemed completed upon the performance of the Worksop that part of the Services considered necessary in the opinion of DA.MET.

8.2 DA.MET will use all reasonable endeavours to comply with time limitations and schedules agreed between the Customer and DA.MET. However, DA.MET shall not be liable for any loss or damage resulting from any delay in performing the Services or Services being only part performed by stipulated dates including (without limitation) any indirect, consequential, special or economic loss or damage, or loss of profits.

8.3 Where the Services are to be supplied at the DA.MET factory, the Vessel shall be forwarded by the Customer at its risk and expense in accordance with schedules agreed to between the Customer and DA.MET prior to sending.

8.4 Vessel replaced during the Services or (if the Services are not carried out, or are discontinued) the dismantled Vessel, will be returned to the Customer at its expense if so requested by the Customer in writing, after payment to DA.MET of its account for the Services provided.

8.5 If the Services cannot commence within three (3) months from the arrival of the Vessel at DA.MET for any reason originating with the Customer, DA.MET may consider the Order as cancelled and may charge the Customer for expenses already incurred.

## 9. Permits

The Customer shall obtain all statutory or other permits, consents or approvals (if any) as are required by law for, or in connection with, the Works and shall pay all fees therefor and shall indemnify DA.MET against

- any breach of the requirements of any regulatory authority having jurisdiction over the Site or the Vessel, and
- any infringement of the legitimate interests of third parties having any interest in the Site or the Vessel.

## 10. Inspection by the Customer or his Representative

10.1 The Customer shall have the right to inspect the condition of the Vessel at DA.MET's factory by appointment at any time.

## 11. Dispatch

11.1 The Customer must accept delivery of the Vessel within 2 days of DA.MET providing notification to the Customer that the Vessel is ready for delivery and if the Vessel is not accepted within such time, DA.MET will be entitled to claim storage costs at a rate of 2% of the invoiced price of Works for each day that the Vessel remains in the custody of DA.MET.

11.2 All risk including that of deterioration and loss shall pass to the Customer forthwith upon receipt of notification of readiness for dispatch of the Vessel from DA.MET.

11.3 The Customer agrees that by accepting delivery of the Vessel is has inspected the Works and satisfied itself that all Works have been performed and completed with due care and skill and to a proper and satisfactory standard.

11.4 Prior to dispatch, DA.MET shall notify the Customer of the mode of preservation, packing and delivery of the Vessel. Preservation, packing, handling, freight and insurance charges are for Customer's account.

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## 12. Warranties

- 12.1 DA.MET warrants to the Customer that the Works will be carried out in a competent and workmanlike manner, and that any replacement parts supplied by DA.MET for the Vessel will be free from defects in accordance with manufacturer's warranty standards.
- 12.2 This warranty shall not apply:
- (a) If alterations of the Vessel have been made by third parties or result from the installation or the addition of new parts not made by DA.MET, subject to the Customer proving that the defects were not caused by any such alteration.
  - (b) If any deficiency or damage has the following cause: natural wear and tear, improper handling, storage or erection, insufficient corrosion protection, use of force, improper installation, chemical or other harmful substances.
  - (c) If the customer does not comply with DA.MET's instructions for operation, maintenance and service of the Vessel.
  - (d) If the Vessel has been used for purposes other than those agreed between DA.MET and the Customer.
  - (e) If overhauling and repair have been carried out by a workshop other than that of DA.MET. In case testing at the DA.MET test bench facilities is required, the DA.MET warranty is limited to the professional performance of the test program only. The Customer shall ensure that the entire item of Vessel to be tested confirms in capacity and technical standard with the requirement of the test program and indemnifies DA.MET from all possible liabilities arising from the malfunction, faults and inability to achieve the testing values as well as any consequences with regard to duration, interruption, cancellation of the test program or any other conditions related to the contract of the Customer with a third party. The customer will arrange all necessary or essential insurances to protect himself against damages and shall produce evidence of such insurance upon request
  - (f) If the Vessel has been operated under unusual or exceptional conditions not disclosed to DA.MET in writing when the Order was placed.
- 12.3 If DA.MET acknowledges that a defect in an item of the Vessel originally provided by DA.MET is covered by warranty, any defective part(s) which, though properly handled, has/have been damaged as a result of such defect, will at the option of DA.MET, be repaired or replaced at the expense of DA.MET, either in an DA.MET factory or in a workshop nominated by DA.MET or at site. DA.MET may at its option provide a new or reconditioned part to replace such defective part. DA.MET shall not under any circumstances bear the cost of removal and installation of the equipment to allow warranty works to be carried out. Such costs if required shall be borne by the customer. Parts replaced will become the property of DA.MET. DA.MET may at its option carry out such repair or replacement, or employ such third party or sub-contractor to carry out such repair or replacement, or in certain circumstances as hereinafter defined permit the customer to carry out such repair or replacement. In such circumstances DA.MET shall be responsible for the cost of labour provided to effect such repair or replacement. In case of emergency when the operation and safety of equipment is jeopardised the customer may, provided it advises DA.MET as soon as reasonably possible and obtains written authority from DA.MET,

repair the defect or have it repaired by a third party in a proper manner. Thereupon, DA.MET shall reimburse to the customer the cost of such repairs, to the extent that such cost would have been incurred if the repair had been carried out by DA.MET.

## 13. Liability

- 13.1 Where any Act of Parliament implies in the Contract any term, condition or warranty, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in the Contract. To the extent the *Trade Practices Act 1974 (Cth)* or any similar state law applies to this Contract, then certain conditions and warranties will be implied into this Contract to the benefit of the Customer, and those conditions and warranties cannot be excluded, restricted or modified by any provision of this Contract. However, the liability of DA.MET for any breach of such term, condition or warranty shall be limited, at the opinion of DA.MET, to any one or more of the following:
- (a) if the breach relates to Works:
    - (i) the supplying of the Works again; or
    - (ii) the payment of the cost of having the Works supplied again.
  - (b) if the breach relates to parts of the Vessel replaced under any clause of these Terms and Conditions:
    - (i) the replacement of that part or the supply of equivalent part;
    - (ii) the repair of that part;
    - (iii) payment of the cost of replacing that part or of acquiring equivalent parts; or
    - (iv) the payment of the cost of having that part repaired.
- 13.2 Except as provided to the contrary in the Contract, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, and whether collateral or antecedent hereto or otherwise, relating in any way to the Works are excluded. Without limiting the generality of the preceding sentence, DA.MET shall not be under any liability to the Customer in respect of any death, injury, loss or damage (including indirect, consequential, special, or economic loss or damage, or loss of profits, however caused), which may be suffered or incurred by the Customer or any third party or which may arise directly or indirectly in respect of the Works or the failure or omission on the part of DA.MET to comply with its obligations under the Contract or for any alleged breach of warranty or negligence or breach of contract or breach of duty of bailment or wilful act of DA.MET.
- 13.3 The Customer will indemnify DA.MET against all claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of DA.MET.
- 13.4 The Customer warrants that it has not relied on any representation made by DA.MET (including without limitation, representations or predictions as to future durability, economy, performance or quality) which has not been stated expressly in the Contract or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by DA.MET.

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## 14. Time Bar and Notice of Loss

- 14.1 DA.MET will not in any circumstances be liable for any claim for loss, damage or injury (including any economic or consequential loss) arising out of or in any way connected with the performance of the Works, whether involving negligence of the Repairer or otherwise, unless notification is received in writing to the DA.MET within three (3) months of the earliest of the following occurring;
- a) the Works being completed; or
  - b) the Vessel leaving the care, custody or control of DA.MET
- 14.2 Failing receipt of which notice DA.MET shall be forever discharged from any and all liability to any person (including the Customer) in respect of the goods and/or the Works to the Vessel.

## 15. Sub-contracting and Indemnity

- 15.1 DA.MET shall be entitled to sub-contract the whole or part of the Works undertaken by DA.MET on any terms whatsoever consistent with any applicable law.
- 15.2 It is expressly agreed that every exemption from liability, defence, immunity and right under this Contract will extend to and protect every employee, agent and subcontractor defined as DA.MET in this Contract and in this regard DA.MET who is a party to this Contract will be deemed to be acting as agent or trustee on behalf of any and all repairers authorised by DA.MET to carry out the Works.

## 16. Lien and Set-Off

- 16.1 DA.MET has a right of retention and a lien on any Vessel received in connection with an Order and the lien can also be asserted for debts resulting from previous Works or deliveries of Vessel and for other debts arising from or in connection with any ongoing business between the Customer and DA.MET.
- 16.2 DA.MET may, at its discretion, exercise the lien in respect of any due and unpaid amounts outstanding by the Customer and may retain the Vessel and/or any goods in the Vessel and serve notice on the Customer requiring immediate payment of the amounts outstanding by the Customer.
- 16.3 If the amounts outstanding by the Customer have not been paid within 90 days of DA.MET providing notice to the Customer after DA.MET makes reasonable attempts to contact the Customer, DA.MET may sell the Customer's Vessel and/or all goods in or attached to the Vessel and apply the proceeds in the first instance to the satisfaction of the amounts outstanding by the Customer and the costs of exercising the right of sale.
- 16.4 Any balance of the proceeds of the sale will be returned, where possible, to the customer.

## 17. Passing of Property and Title

- 17.1 Property and title in Goods shall not pass until full payment of all outstanding invoices together with any interest, charges or other costs payable have been paid in full by the Customer. If the Customer resells the Vessel prior to making full payment to

DA.MET, the Customer shall hold the proceeds of such sale on trust for the DA.MET.

- 17.2 Cheques tendered shall not constitute payment until cleared.

## 18. Place of Jurisdiction

- 18.1 These Terms and Conditions, the Contract (and all present and future claims arising under it) and the business relationship between the parties generally shall be governed by the Laws of the State of Queensland, Australia, and the parties hereby submit to the non-exclusive jurisdiction of the courts of that place.