

## **STANDARD TERMS OF TRADE - RUDOLPHS LIMITED**

Where the goods and/or services are supplied by Rudolphins Limited for the purpose of a business then the provisions of the Consumer Guarantees Act 1993 shall not apply (Section 43.2)

### **1. DEFINITIONS**

In these Terms unless the context otherwise requires or it is specifically otherwise stated:

- (a) "Client" means the party named in the application for credit, written estimate/quote or other statement of work contracting with Rudolphins for the provision of credit, goods and/or services;
- (b) "Rudolphins" means the entity Rudolphins Limited;
- (c) "works" means the provision of goods and services which Rudolphins has been contracted to provide to the Client and as described in the written estimate, quote and/or other statement of work provided by Rudolphins to the Client;
- (d) "goods" means all goods supplied by Rudolphins to the Client;
- (e) "services" means all services supplied by Rudolphins to the Client;
- (f) "subject of the works" means such vessel or other property owned by the Client in respect of which goods and services are being provided by Rudolphins to the Client.

### **2. ACCEPTANCE OF TERMS**

The following terms and conditions together with any other terms agreed upon in writing between Rudolphins and the Client (hereinafter referred to as "Terms") shall apply to all dealings between Rudolphins and the Client including an application for credit or the supply of goods and/or services. Rudolphins reserves the right to change these Terms from time to time and such changes shall be deemed to be accepted by the Client when Rudolphins notifies the Client in writing of the changes.

### **3. QUOTES AND ESTIMATES**

3.1 A Client's acceptance of a quote constitutes an agreement to purchase goods or services on these Terms.

3.2 In relation to a quotation the Client shall be solely responsible for the accuracy of any information upon which the quotation is based. Any changes to the quantities, measurements, specifications or nature of the goods or services required subsequent to the quotation or any inaccuracies or misstatements in the information provided to Rudolphins shall constitute variations and shall be paid for at the charge up rate as applies from time to time irrespective of the terms of the quotation.

3.3 A quote may be withdrawn or varied by Rudolphins before it has been accepted in writing by the Client.

3.4 All quotes are based on rates and charges in effect at the date of the relevant quote. Any increase in rates or charges (including without limitation sub-contracted labour, materials and fuel) shall result in an equivalent increase in the quoted price.

3.5 In relation to an estimate, the Client shall be solely responsible for the accuracy of any information upon which an estimate is based. Rudolphins shall not be bound to supply the goods and/or services at the estimated price and the Client shall be liable for the price of any goods and/or services purchased as invoiced by Rudolphins.

3.6 Rudolphins may choose to modify or substitute items specified in the description of the works to the overall benefit of the Contract and shall notify the Client who will not unreasonably deny such modifications or substitutions.

### **4. AUTHORISATIONS**

The Client shall provide written advice to Rudolphins of the names of personnel authorised to contract on the Client's behalf and must advise in writing if any such authority is later withdrawn. Any contracts entered into by an authorised person prior to the receipt by Rudolphins of written notice withdrawing authority, shall be honoured by the Client.

### **5. PAYMENT TERMS**

5.1 Where Rudolphins has agreed to extend credit to the Client, the client shall be invoiced monthly for work that has been carried out and payment shall be due within seven days of an invoice being issued to the Client unless varied in writing by Rudolphins.

5.2 Any deposit required by Rudolphins will be paid immediately on the acceptance of an estimate, quotation or statement of work and is non-refundable.

5.3 All accounts are to be paid in full prior to the earlier of such time as when the subject of the works either leaves the Rudolphins premises or re-enters the water.

5.4 Payment of any monies owing to Rudolphins shall be made free of any counterclaim, set-off, deduction or other claim whatsoever.

5.5 Payment by cheque or by any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into Rudolphins bank account.

5.6 Rudolphins may allocate any payment made by or on behalf of the Client to the account and/or payment of any goods as it sees fit and the Client waives any right to receive notification of that allocation.

5.7 Unless otherwise stated prices do not include GST and the Client shall pay, in addition to the prices quoted or estimated, GST together with any government duties, levies and taxes which may apply from time to time in respect of the goods and services provided.

### **6. FAILURE TO COMPLY**

6.1 If payment in full of any amount payable by the Client to Rudolphins is not made when due, or the Client breaches any of its other obligations to Rudolphins, or the Client commits an act of bankruptcy, or the Client enters into any arrangement with its creditors, or the Client is a Company and any grounds for winding up shall exist or a receiver shall be appointed, then Rudolphins may without prejudice to and in addition to any other rights or remedies exercise all or any of the following rights:

- (a) delay supply of any goods or services until the matter is resolved to Rudolphins' satisfaction;
- (b) suspend or cancel (in whole or in part) any contract between the parties by written notice to the Client;
- (c) recover from the Client, or deduct from or set-off against any amount Rudolphins may owe the Client, all amounts for any damage, losses, costs or expenses (including actual legal costs and expenses) arising from the default or non-performance by the Client including such costs incurred by Rudolphins in recovering any moneys owed by the Client;
- (d) charge, and the Client must pay, default interest calculated on a daily balance basis on the unpaid overdue balance at the rate of 2% per month from due date;
- (e) by notice to the Client, require that any moneys owing to Rudolphins, whether or not due, are paid immediately and such amounts will then become immediately due and payable.

6.2 Rudolphins shall not be liable for any loss or damage arising from the exercise of its rights and remedies under clause 6.1 above.

### **7. LIMITATION OF LIABILITY AND WARRANTIES**

7.1 The Client warrants that it will disclose any defects or possible latent defects of any nature in respect of a vessel to Rudolphins prior to signing a contract with Rudolphins.

7.2 The Client shall be solely liable for any defects, loss or damaged caused by or resulting from work undertaken or materials supplied by the Client or Client's representatives, contractors or agents and will fully indemnify Rudolphins against any claim or proceedings against Rudolphins to the extent caused or contributed to by any act, error or omission of the Client or the servants, agents, employees or invitees of the Client.

7.3 The Client's vessel is removed from the water, transported and stored entirely at the risk of the Client, and shall remain at all times at the risk of the Client. Rudolphins and/or its sub-contractors shall not be liable for any loss or damage to the vessel's gear, tackle, rig, machinery or other property from any cause whatsoever.

7.4 The Client warrants that the vessel is and will remain comprehensively insured throughout the period that the works are to be completed and that such insurance policy shall provide comprehensive cover including but not limited to fire, storm, acts of God and perils of the sea.

7.5 The liability of Rudolphins in respect of all claims for loss, damage or injury arising from breach of any of Rudolphins' obligations under this agreement or from any act or omission of Rudolphins is limited, in each case, to the lesser cost to Rudolphins of:

- (i) replacement or re-supply of the goods and services; or
- (ii) the price of the goods or services supplied.

7.6 Rudolphins shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of goods or services by Rudolphins, except as set out in clause 7.5 above.

7.7 No action arising out of the supply of goods or services by Rudolphins, regardless of form, may be brought more than six months after the Client becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.

### **8. ENTIRE AGREEMENT**

The Client acknowledges and agrees that it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding of any person, whether party to this agreement or not, other than as expressly set out in these Terms. Other than the warranties expressly contained in these Terms the parties expressly agree that all warranties and other terms expressed or implied by statute, law or otherwise that would but for this clause apply to these Terms are hereby expressly excluded to the maximum extent permitted by law.

### **9. INTELLECTUAL PROPERTY**

All intellectual property rights in the goods or arising out of the performance of the services are and shall remain the property of Rudolphins.

### **10. PRIVACY ACT**

The Client hereby accepts and agrees that the Rudolphins may and is hereby authorised to seek and obtain information on its Clients from its credit and other agencies and in the case of debtors to provide details of such to Rudolphins' Credit and Debt Collection Agencies.

### **11. FORCE MAJEURE**

No claim or liability will arise against Rudolphins if and to the extent that Rudolphins failure or omission to carry out or observe any provisions of these Terms arises by reason of any event outside the reasonable control of Rudolphins and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply or materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation or requirement of any governmental agency.

### **12. PROPER LAW AND JURISDICTION**

All contracts made between Rudolphins and the Client shall be governed by and construed in accordance with the laws of New Zealand. The Client agrees to submit exclusively to the jurisdiction of courts based in Whangarei, New Zealand for all purposes of or in connection with such contracts.

### **13. ARBITRATION**

If any dispute or difference of any kind whatsoever shall arise between the parties in connection with or arising out of agreement of the carrying out of the works (whether during the progress of the works or after completion; and whether before or after the termination, abandonment or breach of any contract between the parties), it shall be referred for final settlement to a single arbitrator if the parties can agree upon one; and if not, two arbitrators (of whom one shall be appointed by each party) who shall before proceeding in the arbitration appoint an umpire and the decision of the arbitrator or umpire shall be final and binding on the parties. Such arbitrators and umpires shall be appointed and the arbitration conducted in New Zealand in all aspects of the manner provided by the Arbitration Act 1996 or any amendment thereto or re-enactment thereof for the time being in force and this clause shall be deemed to be a submission for the purposes of that Act. Rudolphins shall not be obliged to continue performance of the works during arbitration. No payments due or payable to Rudolphins shall be withheld by the Client on account of any dispute unless otherwise directed by the arbitrators.

### **14. MISCELLANEOUS**

14.1 Rudolphins failure or delay to exercise or enforce any right under these Terms shall not operate as a waiver of Rudolphins right to exercise or enforce such right or any other right in the future.

14.2 Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from and shall not affect the remaining provisions of these Terms.

14.3 The headings of these Terms are provided for convenience only and shall have no effect on the interpretation thereof.

14.4 If the Client comprises more than one person, each of those person's liability herein is joint and several.

14.5 The Client warrants that the information provided in support of any application for a credit account is reliable and accurate. The person completing the application on behalf of the Client also provides this warranty.

14.6 References to a party or a person includes any form of entity and their respective successors, assigns and representatives.