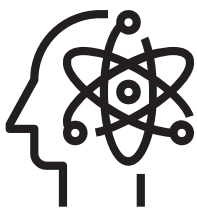


Standard Terms of Engagement Agreement

Recreational & Non Survey Vessels



Talent



Integrity



Excellence

Preamble

A terms of engagement document for services between a marine surveyor and a client/customer is a critical piece of documentation that seeks to assist all parties to ensure they understand the services you're engaged to perform and how much and on what terms you'll be paid.

It forms a legal contract to fall back on if either party does not hold up their end of the deal. The terms of engagement have been set up to fairly balance risks for all parties.

As marine survey services are so diverse and can cover many different aspects and criteria it is critical to make sure that the documented agreement protects both parties' interests and fairly allocates risk.

This document can be used in the case of a defined survey request or a quote for services.

The Australasian Institute of Marine Surveyors does not accept any legal responsibility for errors, omissions or consequences of any action taken by members in relation to this pro-forma Terms of Engagement Agreement.

Standard Terms of Engagement Agreement

THIS AGREEMENT is made on the day of, 20.....

BETWEEN The Contractor (ABN.....)

of

and the Client (ABN.....)

of

WHEREAS:

- A. The Contractor is engaged in the business of providing specialist expertise and services in the marine survey fields or categories <insert categories of survey or general description of the Contractor's expertise>
- B. The Client is seeking such services [or whatever general description of the Contractor's expertise applies].
- C. The Contractor is able to provide the specialist skills and experience that the Client wishes to engage as per the terms of this specific engagement

IT IS HEREBY AGREED AS FOLLOWS:

1. Performance of services

- (a) The Contractor hereby agrees to undertake supply of the following services [details of services to be specified, hours, type of service, location, etc.] and undertakes to comply with any reasonable requirements relating to the performance of these services which shall be communicated in writing to the Contractor by the Client.
- (b) The price for the services will be \$..... per hour plus travel expenses and
- OR
- The price for the services will be \$ per metre plus travel expenses and
- (c) The price charged by the Contractor is specific to this Agreement only.
- (d) The Contractor will supply all equipment, software and other expertise necessary for the provision of the services with the exception of certain services which are listed at Annex 1.
- (e) The Client will provide for the vessel to be appropriately berthed and ready for survey as outlined in Annex 1.
- (f) The Contractor will provide the Client with an invoice <state your invoicing terms > for the services showing the date of each day allocated to the provision of the services and detailing the time spent in performing the services.
- (g) The Client will pay the Contractor the amount quoted and agreed upon prior to receiving the final marine survey <or your terms for payment>.

- (h) The Client agrees and understands that the condition/state of items reported reflects the condition/state found commencing on the date of the survey and ending with the final report and takes into consideration the specific details of the inspection as per Annex 1 and the vessel's age and the items reported upon.
- (i) The Contractor and Client agree that defects and or faults which are outside of the terms agreed in Annex 1 that may be identified after the services have been delivered and are not the responsibility of the Contractor and liability lies with the Client.
- (j) The Contractor agrees that the survey report will be a factual report on the inspection carried out, and the opinions expressed are given in good faith as to the condition of the vessel as seen at the time of the survey.
- (k) The Contractor will indemnify the Client for claims or loss arising from a breach of professional duty in the provision of professional services however the liability of the Contractor is reduced to the extent that the Client or other person(s) caused or contributed to the loss or occurrence of subsequent defects, or defects not discovered at the time of the survey in metal strakes or areas of the vessel which are covered, unexposed, or not accessible to the surveyor internally due to the installation of non-removable linings, panels and internal structures, etc, or agreement and permission and instructions not being given to the surveyor to gain access to closed off areas.
- (l) This Agreement remains in effect from the date of execution until the completion of services agreed in Annex 1.

2. Relationship between the parties

- (a) This Agreement does not constitute any company, partnership or joint venture between the parties for any purpose. Neither party to this Agreement shall have any right to incur any liabilities or obligations on behalf of or binding upon the other party except as provided for in that Agreement.
- (b) Nothing in this Agreement constitutes a relationship of employer and employee. The Contractor must not act in any way other than as an independent contractor of the Client.
- (c) The Client will not be responsible for any payments in respect of:
 - (i) the remuneration of the Contractor's personnel including salary and wages, annual leave, sick leave, long service leave or superannuation;
 - (ii) workers' compensation, accident, sickness and life insurance for the Contractor's personnel; and
 - (iii) all taxes including but not limited to corporate tax, payroll tax, PAYG tax, training guarantee levy, FBT, excise duty, GST, personal income taxes, company income taxes, Contractor's payroll taxes, superannuation guarantee levy, health insurance levy and any other additional taxes or levies imposed by government.
- (d) Where agreed, the work carried out to achieve the results set out in this Agreement can be undertaken by another person provided by the Contractor. This arrangement will be subject to the substitute Contractor having the appropriate qualifications and relevant experience, and to the Client's approval. The Client maintains the right to veto the choice of substitute.
- (e) The Contractor acknowledges and hereby agrees that in relation to the supply of the services under this Agreement it is responsible for compliance with all statutory requirements in relation to trading, including but not limited to the payment of all or any taxes, superannuation, workers' compensation or other charge, levy or obligation imposed by law as a result of this Agreement.
- (f) The ownership of any intellectual property, unless in the public domain, generated by or introduced into the services by the Contractor remains at all times with the Contractor unless otherwise specifically agreed in writing. All written data to be exchanged by the parties to this Agreement shall be regarded as confidential and shall remain the property of the discloser. All such written data shall be immediately returned to the discloser upon written request or at the expiry of this Agreement.

- (g) These terms (2(a), (b), (c), (d), (e), (f) and (g)) shall have effect from the date of execution and shall survive the Agreement.

3. Confidentiality

- (a) The parties agree that confidential information disclosed to the other party remains at all times confidential and each party indemnifies the other in respect to all loss, damage, claim, liability, cost or expense suffered by the discloser arising from any breach of this Agreement.
- (b) The Contractor shall not disclose and shall use its best endeavours to prohibit and prevent the unintentional disclosure of the final marine survey report.
- (c) The Client acknowledge that the methodology, materials and survey report of the Contractor, unless in the public domain, are to remain confidential to the Contractor unless otherwise specifically agreed in writing.

4. Disputes

If any dispute arises involving the performance of this contract or the interpretation of its terms, before resort to legal action is had by either party, it is agreed that if negotiations fail, the parties shall utilise mediation by each party bearing their own costs.

5. Governing law

This Agreement shall be governed by and construed in accordance with Australian Law and the parties to this Agreement agree to submit, subject to clause (6), to the jurisdiction of its Courts.

6. Notices

Unless otherwise specified in the Agreement or documents collateral to this Agreement, all notices or communications of a contractual nature given in relation to this Agreement by either party to the other party shall be in writing and delivered or mailed by registered mail as follows:

- (a) The Contractor to: (address)
- (b) The Client to: (address)

IN WITNESS OF THIS AGREEMENT the parties have executed this Agreement in duplicate on the date set out at the head of the Agreement.

.....
Contractor

.....
Witness

.....
Client

.....
Witness

Annex 1

This Schedule sets out the scope of services to be delivered.

1. The Client agrees that the scope of services to be delivered are:

General Survey Requirements	Please tick all applicable items
In water pre purchase survey and valuation appraisal	
In water – pre purchase no valuation appraisal	
Out of water pre-purchase survey and valuation appraisal	
Out of water – pre purchase no valuation appraisal	
Vessel insurance survey using insurer checklist only	
Vessel insurance survey using Contractor checklist	
Sea trial required	
AMSA renewal survey (using standard AMSA checklist and documentation) in accordance with the National Law	
Lifesaving, fire and safety management audit and inspection	
Operational systems test and inspection	
Hull and superstructure visual non-invasive inspection Check visual condition only of: Keel, Strakes and Chines Rest of Bottom Area Welds Transom Bow and Topside Deck/Cabin Windscreen Canopy/Storm Cover Bilge Pump operational Are all Deck fittings secure Navigational lights operational	
Is Hull fitted with: Yes/No Operative Engine Blower Gas Detector fitted Battery Isolation Switch	
Hull inspection – all aspects – invasive – client to ensure suitable access (Note – See clause 2 client is responsible for removal of equipment or fittings and reinstatement unless otherwise agreed)	
Check compliance and safety aspects of any modifications or additions	
Navigational equipment – test and inspect	

2. Additions to scope of survey

Please detail client requirements in regard to vessel access, sea trials, additional survey requirements etc.

Additional Scope Detail any additional scope or requirements and indicate who is responsible for the arrangement of access, expenses for sea trials or other survey aspects	Client responsible for costs	Included in Marine Surveyor costs



The largest industry body in the Australasian region for professional marine surveyors.

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