Terms and Conditions
Supply of Services

1. DEFINITIONS AND INTERPRETATION

In these Terms, unless the context otherwise requires:

"**ACL**" means the Australian Consumer Law Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

"**Customer**" means any person who purchases Services from PMB Bundaberg and if more than one party, means those parties jointly and severally;

"**Cyber Security Incident**" means an unwanted or unexpected cyber security event or series of events (including a breach of cyber security or a failure of cyber security safeguards in place) that have a significant probability of compromising business operations;

"**Force Majeure Event**" means any cause whatsoever beyond a party's reasonable control including acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, epidemics, pandemics, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, labour disputes and other industrial disturbances, any border closure, road closure or congestion of roads, any quarantine or customs restriction, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, crane, machinery or equipment;

"**GST**" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated regulations as amended;

"**Insolvent**" means with respect to a party that:

(a) it is (or states that it is) insolvent (as defined in the *Corporations Act 2001* (Cth);

(b) it is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up or has had a receiver and manager appointed; or

(c) it is taken to have failed to comply with a statutory demand;

"**Intellectual Property**" means all intellectual property rights created by the PMB Bundaberg as part of the performance of the Services, including but not limited to:

(a) its website and content of its social media channels;

(b) patents, copyright, rights in circuit layouts, registered designs, trademarks and any rights to have confidential information kept confidential;

(c) any application or right to apply for registration of any rights referred to in clause (a) above; and

(d) sketches, plans, drawings, designs, calculations, estimates, reports, software and in all other documents and models prepared by PMB Bundaberg as part of the Services, created by PMB Bundaberg whether alone or with a third party in the course of or in connection with providing the Services;

"**Legislative Requirements"** means any acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and state or territory applicable performance of the Services, PMB Bundaberg's yard or any vessels, including any amendment or replacement;

"**PMB Bundaberg**" means Pacific Marine Base Bundaberg Pty Ltd ABN 20 617 298 085 or any of its subsidiaries or affiliate entities as noted in contracts or agreements, whether written or oral, from time to time;

"**Services**" means any mooring, vessel maintenance, cranage, equipment hire, blasting, painting, land hire, skilled labour, bunkering, marine logistics, towage, vessel movements, dredging support, waste delivery and removal or any other kind of work whatsoever, or any form of supply of material or equipment made by PMB Bundaberg to the Customer;

"**Site**" means the marine site located at 100-140 Wharf Drive, Burnett Heads, Queensland, 4670;

"**Terms**" means the terms and conditions of supply set out in this document and any special terms and conditions agreed in writing between the parties;

"**Vessel**" means the Customer's vessel.

2. GENERAL TERMS

2.1. These Terms shall apply to all contracts, agreements, or arrangements for the supply of the Services by PMB Bundaberg to the Customer, whether in writing or oral, and shall prevail over any other documentation or communication from the Customer.

2.2. In the event of any inconsistency between these Terms and any specific terms of a separate formal written contract, then the specific terms of the formal contract shall prevail.

2.3. PMB Bundaberg shall provide the Services to the Customer in accordance with these Terms.

3. PRICING AND PAYMENT

3.1. Unless otherwise agreed in writing:

(a) all pricing is quoted exclusive of GST;

(b) if PMB Bundaberg has requested a deposit from the Customer, no work shall commence until such deposit has been paid in full;

(c) all monies payable to PMB Bundaberg must be paid in full within 14 days of the date of an invoice to the Customer;

(d) the Customer must contact a known representative at PMB Bundaberg prior to making payment of any monies payable to verify that the bank details provided are correct and have not been altered or intercepted as a result of a Cyber Security Incident;

(e) the Customer's failure to contact a known representative at PMB Bundaberg to verify bank details in accordance with clause 3.1(d) means that payment is deemed to not have been made by the Customer;

(f) if the Customer's payment to PMB Bundaberg is intercepted as a result of a Cyber Security Incident, PMB Bundaberg may recover any amounts due and payable from the Customer as a debt in a court of competent jurisdiction;

(g) if any monies payable by a Customer to PMB Bundaberg are not paid in accordance with clause 3.1 of these Terms, PMB Bundaberg may charge the Customer interest on the full amount outstanding. Interest will be charged at the standard contract default rate as published by the

Queensland Law Society from time to time from the date that the payment was due and shall accrue daily until the date that the payment is received; and

(h) the Customer shall pay to PMB Bundaberg any and all expenses, including reasonable legal costs and debt recovery costs, incurred in relation to recovery of any amounts overdue under these Terms or any other agreement between the parties.

4. MUTUAL OBLIGATIONS

4.1. To enable the parties to perform their obligations, each party shall:

(a) co-operate with the other party;

(b) provide the other party with any information reasonably required;

(c) make every endeavour to enable the Services to be provided in a timely manner;

(d) keep the other party notified of their correct name, postal address and any phone, fax or e-mail information; and

(e) the parties agree to comply with such other requirements as agreed between the parties.

5. CUSTOMER OBLIGATIONS AND WARRANTIES

5.1. The Customer warrants to PMB Bundaberg that it is the owner or authorised agent of the owner of the Vessel, good or property subject to the Services to be performed by PMB Bundaberg.

5.2. The Customer shall make payment to PMB Bundaberg for the performance of the Services in accordance with clause 3 of these Terms.

5.3. The Customer and its personnel shall cooperate fully in any and all reviews, inspections, investigations or audits carried out or on behalf of by PMB Bundaberg, to the extent required by any applicable Legislative Requirements.

5.4. The Customer and its personnel shall not disrupt or hinder the existing operations of PMB Bundaberg or any other third parties at the Site.

5.5. The Customer and its personnel shall while on the Site comply with all PMB Bundaberg policies and procedures.

5.6. The Customer shall at all times be responsible for the supervision and security of the Vessel, while the Vessel is at the Site. PMB Bundaberg shall have no supervision or security obligations for the Vessel, while the Vessel is at the Site.

6. SUBCONTRACTING

The Customer acknowledges and agrees that PMB Bundaberg may in its absolute discretion subcontract all or any part of the Services to a third party.

7. WORK HEALTH AND SAFETY

7.1. The Customer shall ensure that any personnel of the Customer and/or any subcontractor that has access to the Site and that is engaged by the Customer complies with:

(a) all Legislative Requirements relating to work health and safety including but not limited to the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld);

(b) any PMB Bundaberg policies and procedures relating to work health and safety; and

(c) any reasonable directions issued by PMB Bundaberg in relation to work health and safety.

7.2. The Customer and its personal shall notify PMB Bundaberg of any and all incidents at the Site including but not limited to an injury, accident, risks of injury or accident, or any other incident affecting work health and safety.

8. ENVIRONMENT

8.1. The Customer shall comply with all Legislative Requirements relating to envrionmental protection and the prevention of pollution including but not limited to the *Environmental Protection Act 1994* (Qld) and associated regulations.

8.2. The Customer acknowledges and agrees that under the relevant Legislative Requirements if any pollution is discharged into waters including but not limited to harbour waters, stormwater drains, docks or the sewage system that the environmental regulator may impose fines on the Vessel's master and owner.

8.3. The Customer and its personal shall notify PMB Bundaberg of any and all incidents at the Site including but not limited to discharges, actual or risk of environmental harm, or any other incident affecting the environment.

8.4. The Customer shall be fully responsible for the payment of any fines issued by the relevant environmental regulator in accordance with clause 8.2.

8.5. If while the Services are being performed, sewage is required to be discharged from the Vessel, the Customer shall:

(a) notify PMB Bundaberg; and

(b) make arrangements for the discharge of sewage ashore in accordance with PMB Bundaberg's policies and procedures relating to the environment.

8.6. PMB Bundaberg may inspect the Vessel's tanks for any contaminants if it observes or suspects that a contamination has taken place while the Vessel is at the Site.

8.7. The Customer shall comply with all Legislative Requirements governing the change over ballast procedures for the Vessel and its operators and the requirements to discharge any ballast water that has been sourced from an unacceptance external source.

9. CANCELLATIONS

9.1. The Customer agrees to pay an administrative fee to PMB Bundaberg in the event the Customer cancels any agreed service without reasonable notice.

9.2. For the purpose of clause 9.1, reasonable notice will be determined PMB Bundaberg with regard to the nature and scope of the Services and the level of preparation required to allocate resources to perform the Services.

9.3. For the purpose of clause 9.1, the administrative fee will be calculated at 10% of the cost value of the Services as reasonably calculated PMB Bundaberg.

10. LIMITATION OF LIABILITY

10.1. The liability of PMB Bundaberg shall be limited in accordance with these Terms in respect of the Services provided to the Customer.

10.2. Notwithstanding anything hereinbefore contained, PMB Bundaberg shall under no circumstances whatsoever be responsible for or be liable for any loss or damage caused by or contributed to or arising out of any delay or detention of the Customer's vessel or of the cargo or passengers on board or being loaded on board or intended to be loaded on board the Customer's vessel or of any other object or property or of any person, or any consequence thereof, whether or not the same shall be caused or arise whilst the Services are being performed or whilst at the request, either express or implied, of the Customer rendering any service of whatsoever nature at any other time whether before during or after the making of these Terms.

10.3. Nothing in these Terms excludes, restricts or modifies, or has the effect of excluding, restricting or modifying, any non-excludable warranty, condition or guarantee conferred on the Customer by the Australian Consumer Law in Schedule 2 of the ACL or any other applicable law that cannot be excluded, restricted or modified by agreement.

10.4. To the fullest extent permitted by law, the liability of PMB Bundaberg for a breach of a non-excludable warranty, condition or guarantee referred to in clause 10.3 is limited, at PMB Bundaberg's absolute discretion to:

(a) the supplying of the Services again; or

(b) the payment of the cost of having the Services supplied again.

10.5. PMB Bundaberg shall not be liable under any circumstances to the Customer or any third party for any indirect or consequential loss of profit or other economic loss suffered, howsoever caused.

11. INSURANCE

11.1. The Customer shall at its sole expense effect and maintain the following insurance policies:

(a) protection and indemnity insurance;

(b) public liability insurance;

(c) hull and machinery insurance, including port risks cover to the value of the vessel; and

(d) workers' compensation insurance for the Customer's personnel who access the Site.

11.2. The Customer shall effect and maintain insurance in accordance with clause 11.1 that is sufficient cover any and all loss and damage for which the Customer may be held liable to PMB Bundaberg.

11.3. The Customer shall make all insurance policies effected and maintained available for viewing by PMB Bundaberg, at PMB Bundaberg's request.

12. FORCE MAJEURE

12.1. PMB Bundaberg shall not be liable for any failure or delay in performance of the Services if such failure or delay is due, in whole or in part, to any cause whatsoever beyond its control including due to Force Majeure Event.

12.2. If a Force Majeure Event occurs, the affected party must immediately give the other party a written notice containing the:

(a) full particulars of the Force Majeure Event including its nature and likely duration;

(b) obligations of the party the performance of which are prevented or delayed; and

(c) nature and extent of the effects of the Force Majeure Event on those obligations.

12.3. The obligations of the party affected by the Force Majeure Event are suspended to the extent that they are affected by the Force Majeure Event, from the date the affected party gives written notice until cessation of the Force Majeure Event.

12.4. If a Force Majeure Event continues for longer than 30 calendar days, the parties may by notice in writing terminate these Terms.

12.5. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from a Force Majeure Event and the party shall be entitled to a reasonable extension of its obligations.

13. PMB BUNDABERG'S PROPERTY

13.1. PMB Bundaberg's Intellectual Property (including the contents of its website and social media channels), may not be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means without the prior express written permission of PMB Bundaberg.

13.2. PMB Bundaberg warrants that in providing the Services that it owns or has a licence to use its Intellectual Property in the provision of the Services.

13.3. The Customer shall not download, copy or take from PMB Bundaberg any of its Intellectual Property, without prior written approval. Upon termination or other ending of these Terms all Intellectual Property taken from or provided, the Customer shall, as soon as practicable at the end of the Term, return to PMB Bundaberg.

13.4. Any tool, equipment, component, material, vessel, or property in general of PMB Bundaberg used in connection with the Services remains the property of PMB Bundaberg unless such item is paid for and PMB Bundaberg specifically consents to its sale and the passing of title in writing.

13.5. The Customer agrees to reimburse PMB Bundaberg for any reasonable costs incurred in recovering PMB Bundaberg's property.

13.6. The obligations under this clause 13 survive termination or expiry of these Terms.

14. DISPUTE RESOLUTION

14.1. If any dispute arises in connection with these Terms, the responsible representatives of the parties shall attempt, in fair dealing and in good faith, to settle such dispute. A party can request from the other party that a senior representative becomes involved in the negotiations.

14.2. If the parties are not able to reach an amicable settlement pursuant to clause 14.1, the dispute between the parties shall be referred to arbitration in Brisbane, Queensland in accordance with the Australian Maritime and Transport Arbitration Commission ("AMTAC") Rules.

15. INSOLVENCY

If the Customer becomes Insolvent, PMB Bundaberg may terminate these Terms and any agreements or contracts that incorporate these Terms.

16. INFORMATION PRIVACY

16.1. For the purposes of this clause "Personal Information" has the same meaning given in the *Privacy Act 1988* (Cth).

16.2. If PMB Bundaberg collects or has access to Personal Information in order to provide the Services, it shall:

(a) comply with the *Privacy Act 1988* (Cth);

(b) comply with the terms of its Privacy Policy;

(c) not use the Personal Information other than for the provision of the Services, unless required or authorized to do so by law;

(d) not disclose any Personal Information without the written consent of the Customer unless required or authorized to do so by law;

(e) not transfer Personal Information outside of Australia without the written consent of the Customer;

(f) ensure that access to Personal Information is restricted to those of PMB Bundaberg's personnel who require access in order to perform their duties;

(g) ensure that PMB Bundaberg's personnel do not access, use or disclose Personal Information other than in performance of their duties;

(h) ensure that its sub-contractors who have access to the Personal Information comply with obligations the same as those imposed on PMB Bundaberg under this clause 16; and

(i) immediately notify the Customer on becoming aware of any breach of this clause 16.

17. NOTICE

A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the receiving party. Notices sent by pre-paid post are deemed to be received within 4 days from the date of the notice. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

18. ASSIGNMENT

18.1. PMB Bundaberg may licence, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing PMB Bundaberg is fully discharged from its obligations to the Customer.

18.2. These Terms are personal to the Customer and the Customer may not assign its interest in or obligations under the Terms without PMB Bundaberg's written consent which consent shall not be unreasonably withheld.

19. WARRANTY

The Customer warrants that it has the power to enter into these Terms and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these Terms create binding and valid legal obligations on it.

20. TIME SHALL BE OF THE ESSENCE

Time shall be of the essence and shall be an essential term in relation to the timing of the payments referred to in these Terms.

21. SEVERANCE

If any term or provision of these Terms is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms had been agreed, with the invalid, illegal or unenforceable provision eliminated.

22. VARIATION

PMB Bundaberg may vary or amend these Terms by 7 days written notice to the Customer at any time. Any variations or amendments will apply to any orders for Services placed after the notice date.

23. ENTIRE AGREEMENT

23.1. These Terms contains the entire understanding between the parties and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

23.2. These Terms shall in no circumstances be replaced by the Customer's terms and conditions.

24. GOVERNING LAW

These Terms are governed by and must be construed in accordance with the laws of Queensland. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland and all courts which have jurisdiction to hear appeals from those courts and waives any right to object to proceedings being brought in those courts for any reason.