

TERMS OF BUSINESS

- 1 Parties**
1.1 The Parties to these terms are Noakes Group Pty Ltd as the Contractor and you the Customer.
- 2 LIABILITY**
2.1 We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as severe weather conditions, the actions of third parties not employed by us or any defect in a customer's or third party's property); this extends to loss or damage to vessels, gear, equipment or other property left with us for work or storage, and harm to persons entering our premises or using any of our facilities or equipment.
2.2 We shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of any defect in the vessel or property concerned unless we have been expressly engaged to do so by the customer on commercial terms. Similarly we shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of an accident which has not been caused by our negligence or some other breach of duty on our part. However we reserve the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where we do so we shall be entitled to charge the customer concerned on a normal commercial basis.
2.3 Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels and while their vessel or other property is on our premises or is being worked on by us they shall be obliged to maintain adequate insurance.
2.4 Nothing in these Terms of Business shall limit or exclude our liability for death or personal injury caused by our negligence or the negligence of our employees, agents or sub-contractors; for fraud or fraudulent misrepresentation; or otherwise to the extent that it would be unlawful for us to exclude or attempt to exclude liability.
- 3 PRICES AND ESTIMATES**
3.1 In the absence of express agreement to the contrary our price for work shall be based on the estimates provided to you and/or labour and materials expended and services provided.
3.2 We will exercise reasonable skill and judgment when we give an estimate or indication of price. However such estimates are always subject to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any emergent work which may be necessary to the vessel, gear or equipment nor the cost of any extensions to the work comprised in the estimate.
3.3 We will inform the customer promptly of any proposed increase in estimated prices and the reasons for it and will only proceed with the work or supply with the approval of the customer. The customer shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied which are not affected by the proposed increase in price.
- 4 DELAYS**
4.1 Any time given for completion of our work is given in good faith but is not guaranteed. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our wilful acts or omissions or from our negligence.
- 5 VESSEL MOVEMENTS**
5.1 We reserve the right to move any vessel, gear, equipment or other property at any time for reasons of safety, security or good management of our business and premises.
- 6 PAYMENT**
6.1 Unless otherwise agreed between us payment for all work, goods and services shall be due immediately on invoice date, which can occur on a weekly basis. Payment shall be deemed to have been made when we receive cash or cleared funds at our bank.
6.2 We have the right to charge interest on any sum outstanding for more than 30 days (except in the case of a reasonable and proportionate retention by the customer of any amount genuinely in dispute between us and the customer) on the outstanding balance at 3% above the Commonwealth Bank of Australia interest rate on overdrafts exceeding \$100,000.
6.3 We reserve a general right ("a general lien") to detain and hold onto a customer's vessel or other property pending payment by the customer of all sums due to us. We shall be entitled to charge the customer for storage and the provision of any ongoing services at our normal daily rates until payment (or provision of security) by the customer and removal of the vessel or property from our premises. The customer shall be entitled to remove the vessel or other property upon providing proper security, for example a letter of guarantee from a Bank reasonably acceptable to us or lodgement of a cash deposit with a professional third party agent reasonably acceptable to us, sufficient to cover the debt with interest.
- 7 RETENTION OF TITLE/RISK**
7.1 Title to all goods, equipment and materials supplied by us to a customer shall remain with us until full payment has been received by us.
7.2 Risk in all goods, equipment and materials supplied by us to a customer shall pass to the customer at the time of supply to the customer.
- 8 GUARANTEE**
8.1 In addition to existing Australian consumer law we guarantee our work for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials supplied by us. This guarantee applies only to the customer to whom the work or materials were supplied.
8.2 On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other contractors to do so. Any remedial work which is put in hand by the customer directly without first notifying us and allowing us a reasonable opportunity to inspect and agree such work and its cost will invalidate this guarantee in respect of those defects.
- 8.3 Where we supply goods or services to a partnership or company or to a customer who is acting in the course of a business or a commercial operation (a "Business Customer") then:
8.3.1 no article supplied by us to a Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply the Business Customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgement;
8.3.2 no proprietary article specified by name, size or type by a Business Customer shall carry any such express or implied term but we will assign to the Business Customer any rights we may have against the manufacturer or importer of that article; and we accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied by us.
- 9 QUALITY STANDARDS**
9.1 We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.
9.2 We will make every effort to colour match repairs to existing surfaces and finishes however we cannot guarantee an exact or lasting colour match.
- 10 ACCESS TO PREMISES/WORK ON THE VESSEL**
10.1 No work or services shall be carried out on a vessel, gear, equipment or other property on our premises without our prior written consent (which consent shall not be unreasonably withheld or delayed) except for minor running repairs or minor maintenance of a routine nature by the customer or his regular crew. It shall be an absolute condition that all work is carried out in full compliance with our health and safety, environmental and access policies and that it does not cause any nuisance or annoyance to us, any other customer or person residing in the vicinity, and does not interfere with our schedule of work or the good management of our business and our said consent to work or services being carried out may be revoked with immediate effect in the event of any breach of such conditions. We shall not be responsible to customers or third parties for the consequences of any person's failure to respect any part of this clause 9.1 but we shall be entitled to demand the immediate cessation of any work which in our view breaches the requirements of this clause 9.1.
10.2 Subject to compliance with our Health & Safety requirements we will agree reasonable access to the owner and regular crew when it is safe to do so and when it will not interrupt or interfere with our work schedule.
- 11 RIGHT OF SALE**
11.1 We accept vessels, gear, equipment and other property for repair, refit, maintenance or storage subject to the provisions of the Warehousemen's Liens Act 1935. This Act confers a Right of Sale on us in circumstances where the customer fails to collect or accept re-delivery of the goods (which includes a vessel and any other property). A sale will not take place until we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
11.1.1 goods for repair or other treatment are accepted by us on the basis that the customer is the owner of the goods or the owner's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
11.1.2 our obligation as custodian of goods accepted for storage ends when we give notice to the customer;
11.1.3 the place for delivery and collection of goods shall normally be at our premises.
- 12 SUBCONTRACTING**
12.1 We may subcontract all or part of the work entrusted to us by the customer, on terms that any such subcontractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, which exist for us under these Terms of Business. Where we exercise this right we shall remain responsible to the customer for the performance of our subcontractor.
- 13 NOTICES**
13.1 Notice to a customer shall be sufficiently served if personally given to him or if sent by pre-paid post to the customer's last known address or Email address. Notices to us should be sent by first class post to our principal trading address or registered office.
- 14 LAW AND JURISDICTION**
14.1 Any contract or series of contracts made subject to these terms and any non-contractual obligations arising out of, or in connection, therewith shall be governed by and construed in accordance with the law applicable in NSW.
14.2 Each of the parties irrevocably agrees that any and every dispute (and any non - contractual obligations as aforesaid) arising out of or in connection with a contract or series of contracts that are subject to these terms shall first be referred to negotiation between an appointed representative of the Contractor and the representative of the Customer which negotiation shall be had in a conference within 14 days of notification of a dispute.
- 15 DISPUTE RESOLUTION SCHEME**
15.1 Disputes arising out of or in connection with a contract or series of contracts that are subject to these terms, and cannot be resolved by negotiation shall be submitted with the written agreement of the parties, to mediation in accordance with the LEADR (Lawyers involved in alternate dispute resolution) within 28 days of a party notifying the other party that the dispute cannot be resolved by negotiation.