

## **TOP OF THE SOUTH MARINE COATINGS LIMITED – TERMS AND CONDITIONS OF TRADE**

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 "Contract for Goods and Services" shall mean the agreement (whether written or verbal) between Top of the South Marine Coatings and the Customer for the supply of Goods and Services.
- 1.2 "Customer" shall mean any person or entity that Top of the South Marine Coatings provides Goods to and/or carries out Services for and if there is more than one Customer then each person or entity is jointly and severally the Customer.
- 1.3 "Customer's Property" shall mean any tangible asset owned by the Customer that may be the subject of the Contract for Goods and Services.
- 1.4 "Customer's Site" shall mean the site (or sites if applicable) owned, occupied and/or under the control of the Customer where the Customer's Property may be stored.
- 1.5 "Top of the South Marine Coating's Site" shall mean the site (or sites if applicable) owned, occupied and/or under the control of Top of the South Marine Coatings where the Contract for Goods and Services may be satisfied.
- 1.6 "Goods" shall mean the goods to be supplied by Top of the South Marine Coatings to the Customer in satisfying a Contract for Goods and Services includes, without limitation, boats, trailers, boat and trailer accessories, drawings, designs, materials, products, parts, and components.
- 1.7 "Person" includes a company, partnership, family trust, individual or any other entity.
- 1.8 "Services" shall mean the services to be supplied by Top of the South Marine Coatings to the Customer in satisfying the Contract for Goods and Services and may include, without limitation, the provision of Goods, engineering, paintwork, manufacturing, construction, renovations, repairs, refitting, maintenance, servicing and other marine related services.
- 1.9 "Top of the South Marine Coatings" shall mean Top of the South Marine Coatings Limited trading as Top of the South Marine Coatings (or such other name as it trades by), its successors and assigns or any person acting on behalf of and with the authority of Top of the South Marine Coatings Limited.
- 1.10 Unless the context requires otherwise:
- 1.10.1 References to any statute, regulations or other statutory instrument or by-law shall be deemed to be references to a statute, regulations, instrument or by-law of New Zealand as from time to time amended and includes substitute provisions (whether in an amendment of existing legislation or in new legislation) that substantially correspond to those referred to;
  - 1.10.2 Where the context requires or admits, words importing the singular shall import the plural and vice versa; and
  - 1.10.3 References to any party includes the successors and any permitted assigns of that party and party means them collectively.

### 2. ACCEPTANCE OF TERMS AND CONDITIONS OF TRADE

- 2.1 Any instructions received by Top of the South Marine Coatings from the Customer for Top of the South Marine Coatings Services shall constitute acceptance of these terms and conditions of trade and the terms and conditions of trade shall form part of a binding contract between Top of the South Marine Coatings and the Customer.
- 2.2 These terms and conditions of trade do not require the Customer's signature to be deemed to be binding.
- 2.3 The Customer warrants it has the power to enter into a Contract for Goods and Services with Top of the South Marine Coatings and has obtained all necessary authorisations to do so. The Customer further warrants it is not insolvent and accepts the Contract for Goods and Services creates binding and valid legal obligations on it.

### 3. PERSONAL GUARANTEE

- 3.1 Top of the South Marine Coatings may require one or more of the representatives of the Customer to jointly and severally personally guarantee the Customer's obligations under any Contract for Goods and Services with Top of the South Marine Coatings.

### 4. QUOTATIONS AND PRICING

- 4.1 Where a quotation is given by Top of the South Marine Coatings for its Services then:
- 4.1.1 Unless otherwise agreed the quotation shall be valid for 30 days from the date of issue;
  - 4.1.2 Unless expressed otherwise the quotation shall be exclusive of Goods and Services Tax ("GST");

4.1.3 Where the quotation is based on information specified by the Customer, Top of the South Marine Coatings reserves the right to alter the quotation if there is a variation to this information.

4.1.4 Top of the South Marine Coatings reserves the right to alter the quotation if:

(a) The cost of supply of the Goods and/or Services increases beyond the control of Top of the South Marine Coatings between the date of the quotation and the completion of the Contract for Goods and Services; or

(b) The time estimated to satisfy the Contract for Services will be increased due to factors which were not reasonably foreseen by Top of the South Marine Coatings at the time of the quotation;

4.1.5 The Customer agrees to pay for the cost of any additional Goods and Services required over and above the Goods and Services included in the quotation.

4.2 Where a quotation is not provided by Top of the South Marine Coatings then:

4.2.1 The Goods and Services shall be deemed to be provided at the amount specified by Top of the South Marine Coatings and shall be exclusive of GST; and

4.2.2 Top of the South Marine Coating's pricing will be based on labour and materials.

4.3 Top of the South Marine Coatings may request the Customer to make payment up front, to pay a deposit and/or to pay the balance of its invoice prior to collection of the Goods and/or Customer's Property.

4.4 Top of the South Marine Coatings shall be permitted to charge the Customer any Public Holiday rates it incurs in completing a Contract for Goods and Services.

## 5. ACCURACY OF INFORMATION FROM CUSTOMER

5.1 Top of the South Marine Coatings shall be entitled to rely on any information provided by the Customer in relation to the provision of Goods and Services including, without limitation, timeframes, measurements, quantities, plans, specifications, and information regarding any previous work that has been carried out on the Customer's Property by any other Person.

5.2 Top of the South Marine Coatings shall not be liable for any loss, damages, costs and/or expenses incurred as a result of the Customer's failure to provide information or the provision of inaccurate information.

## 6. LICENSES AND PERMITS

6.1 If the performance of a Contract for Goods and Services requires a licence or other permit then the Customer is responsible for obtaining such a licence or permit at its cost before the Services commence.

## 7. PAYMENT

7.1 Unless otherwise specified, payment under a Contract for Goods and Services shall be due to Top of the South Marine Coatings five (5) working days following the date of the invoice.

7.2 Part payment of an account shall not amount to satisfaction of the whole account unless, prior to the act of making the part payment, Top of the South Marine Coatings agrees in writing that part payment will be accepted in full satisfaction of the account.

7.3 Any dispute of an invoice must be made in writing and received by Top of the South Marine Coatings within five (5) working days of the Customer's receipt of the invoice.

## 8. DEFAULT

8.1 Top of the South Marine Coatings may charge penalty interest at a rate of 15% per annum on any amount outstanding after the date payment was due under clause 7.1. Penalty interest is payable from the date payment was due until then date payment is received by Top of the South Marine Coatings. This clause is without prejudice to any other rights and/or remedies of Top of the South Marine Coatings in respect of the Customer's default.

8.2 In the event that a payment is not made by the due date Top of the South Marine Coatings may, in its sole discretion, suspend the completion of any Services for the Customer but failure to do so shall not negate any other rights and/or remedies of Top of the South Marine Coatings. Top of the South Marine Coatings will not be liable to the Customer for any loss or damage the Customer suffers if Top of the South Marine Coatings suspends its Services under this clause.

8.3 Should the Customer default in payment or be placed in receivership, liquidation, declared bankrupt, or otherwise become insolvent, then in addition to any other rights and/or remedies of Top of the South Marine Coatings, it may demand immediate payment of all amounts then unpaid and cancel the completion of any existing Contract for Goods and Services with the Customer.

8.4 Any costs and expenses incurred by Top of the South Marine Coatings in enforcing its rights under these terms and conditions of

trade, including debt collection agency fees and legal fees as between solicitor and client (being Top of the South Marine Coatings), shall be recoverable from the Customer.

8.5 The Customer indemnifies Top of the South Marine Coatings from and against all costs and disbursements incurred by Top of the South Marine Coatings in recovering any money owing to it.

#### 9. SET OFF

9.1 Top of the South Marine Coatings may, in its sole discretion, allocate any payment received from the Customer towards any invoice that Top of the South Marine Coatings determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated.

#### 10. RETENTION OF TITLE

10.1 Ownership and legal title in any of Top of the South Marine Coating's Goods shall remain the ownership of Top of the South Marine Coatings regardless of whether they are attached, fixed, inseparable or indistinguishable from the Customer's Property until full payment is made under the relevant Contract for Goods and Services.

10.2 If the Customer is in default under a Contract for Goods and Services, Top of the South Marine Coatings shall be entitled to remove, from the Customer's Site, any Goods it has supplied, and the Customer authorises Top of the South Marine Coatings to enter upon the Customer's Site at any time to recover the Goods pursuant to this clause.

#### 11. LIEN

11.1 Where the Customer has not paid Top of the South Marine Coatings under a Contract for Goods and Services, Top of the South Marine Coatings shall have the right to retain the Customer's Property until such time as all outstanding amounts have been paid.

#### 12. PERSONAL PROPERTY SECURITIES ACT 1999

12.1 In entering a Contract for Goods and Services with Top of the South Marine Coatings the Customer acknowledges and agrees that the Contract for Goods and Services creates a security agreement between Top of the South Marine Coatings and the Customer for the purposes of the Personal Property Securities Act.

12.2 The Customer acknowledges and agrees that Top of the South Marine Coatings has a security interest in any Goods it supplies to the Customer under a Contract for Goods and Services.

12.3 Top of the South Marine Coatings may protect its interests by registering and maintaining a financing statement(s) on the Personal Properties Securities Register. The Customer waives its right to receive a copy of any verification statement received by Top of the South Marine Coatings.

12.4 The Customer undertakes to sign any documents and/or provide further information, such information to be complete, accurate and up to date in all respects, which Top of the South Marine Coatings may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

#### 13. CANCELLATIONS

13.1 Where a Contract for Goods and Services is quoted below a value of \$20,000.00 the Customer shall be permitted to cancel the Contract for Goods and Services up until 14 days before Top of the South Marine Coatings is scheduled to commence its Services by giving written notice of the cancellation to Top of the South Marine Coatings.

13.2 Where a Contract for Goods and Services is quoted between the values of \$20,000.00 - \$75,000.00 the Customer shall be required to provide Top of the South Marine Coatings with a minimum of 45 days written notice of the cancellation prior to the date that Top of the South Marine Coatings is scheduled to commence its Services.

13.3 Where a Contract for Goods and Services is quoted above a value of \$75,000.00 the Customer may only cancel the Contract for Goods and Services with the express written consent of Top of the South Marine Coatings.

13.4 Top of the South Marine Coatings has the right to charge the Customer for any time and materials associated with the Contract for Goods and Services prior to its cancellation, charge a reasonable cancellation fee, and/or retain the Customer's deposit in consideration of it being required to reschedule its workload under any of the circumstances covered in clauses 13.1 to 13.3.

#### 14. WARRANTIES

14.1 Top of the South Marine Coatings warrants that its Goods and/or Services supplied to the Customer will be free of defects in materials and workmanship under the normal use for which those Goods are intended. Top of the South Marine Coating's liability under this warranty shall be limited to making good any defects in materials and/or workmanship in satisfying the Contract for Goods and Services, provided that the Goods and/or the Customer's Property (as applicable) shall be returned to Top of the South Marine Coating's site or such other location as agreed by Top of the South Marine Coatings with transportation prepaid, and upon examination of the Goods and/or Customer's Property Top of the South Marine Coatings is satisfied that the Customer's Property is defective as a result of Top of the South Marine Coating's

Services, provided that no such Goods and/or Customer's Top of the South Marine Coatings Property shall be returned to Top of the South Marine Coatings any later than 12 months after collection by or delivery to the Customer.

14.2 The warranty in clause 14.1 does not apply to:

14.2.1 Any repairs or alterations made by the Customer without Top of the South Marine Coating's written consent;

14.2.2 Damage caused by overloading, misuse, neglect or accident;

14.2.3 Work completed by Top of the South Marine Coatings to repair the work of a previous Person or contractor;

14.2.4 Damage and/or defects unrelated to any work performed by Top of the South Marine Coatings and/or works that Top of the South Marine Coatings have not been asked to repair under a Contract for Goods and Services.

14.3 Top of the South Marine Coatings shall not be bound by any term, condition, representation or warranty given by the manufacturer

of any Goods used by Top of the South Marine Coatings.

## 15. LIMITATION OF LIABILITY

15.1 Top of the South Marine Coatings shall not be liable for:

15.1.1 Any claim arising from the sale of Top of the South Marine Coating's Goods and/or Services and the Customer relies solely on its own judgment as to the suitability of Goods and/or Services prior to entering into a Contract for Goods and Services;

15.1.2 Any loss of profit or indirect and/or consequential loss (whether arising under statute, contract, negligence or otherwise) arising out of a Contract for Goods and Services.

15.2 In the event that Top of the South Marine Coatings is found liable for loss associated with Goods and/or Services provided under a Contract for Goods and Services then Top of the South Marine Coating's liability shall not exceed the price of the Goods and/or Services provided under the applicable Contract for Goods and Services.

## 16. PRIVACY ACT 1993

16.1 The Customer authorises Top of the South Marine Coatings to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under the Contract for Goods and Services and marketing.

16.2 The Customer authorises Top of the South Marine Coatings to disclose any information obtained to any person for the purposes set out in clause 16.1.

16.3 Where the Customer is a natural person the authorities under clauses 16.1 and 16.2 are authorities or consents for the purposes of the Privacy Act 1993.

16.4 The Customer shall have the right to request a copy of the information held by Top of the South Marine Coatings about the Customer and the right to request Top of the South Marine Coatings to correct any incorrect information about the Customer.

## 17. FORCE MAJEURE

17.1 Top of the South Marine Coatings shall not be liable for any delay, failure to perform its obligations or default under the Contract for Goods and Services due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond its reasonable control.

## 18. CONSUMERS GUARANTEES ACT 1993

19.1 The parties agree in the event the Goods and/or Services provided under a Contract for Goods and Services are provided in trade then they contract out of the provisions of the Consumer Guarantees Act 1993.

## 19. COMPLIANCE WITH LAWS

19.1 Top of the South Marine Coatings will comply with any laws, regulations, bylaws, rules and standards that are applicable to the Goods and/or Services it provides to the Customer including but not limited to the Health and Safety at Work Act 2015.

## 20. HEALTH AND SAFETY

20.1 The Customer warrants that, if requested, it will at all times comply with Top of the South Marine Coating's health and safety policies and will take all practicable steps to uphold these. The Customer indemnifies Top of the South Marine

Coatings from and against any fines or penalties Top of the South Marine Coatings incurs as a result of the Customer, or any Person the Customer employs or contracts with, failing to comply with Top of the South Marine Coating's health and safety policies.

20.2 The Customer is responsible for undertaking its own health and safety policies, procedures and program at the Customer's Site.

## 21. MISCELLANEOUS

21.1 No waiver by Top of the South Marine Coatings in respect of any breach of a Contract for Goods and Services shall operate as a waiver in respect of any subsequent breach.

21.2 If any clause(s) of these terms and conditions of trade shall be declared invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining clauses shall not be affected, prejudiced or impaired.

21.3 Top of the South Marine Coatings reserves the right to amend these terms and conditions of trade at any time. Any amendment will be incorporated into any existing Contract for Goods and Services and take effect from the date on which Top of the South Marine Coatings notifies the Customer of such change. The Customer will be deemed to have accepted such amendment if the Customer makes a further request to Top of the South Marine Coatings to provide Goods and/or Services.

21.4 These terms and conditions of trade are governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

21.5 Top of the South Marine Coatings may licence or sub-contract all or any part of its Services under the Contract for Goods and Services without requiring or seeking the Customer's consent