

# LIFTING AND HARDSTAND AGREEMENT

## REFERENCE SCHEDULE

LIFT NUMBER:

LIFT DATE:  /  /2014

The Operator agrees to provide the services under this agreement and the Customer agrees to pay for the services provided under this agreement.

ITEM 1	OPERATOR DETAILS		
Name:	Mackay Marina Shipyard Pty Ltd	ABN / ACN: 28 104 047 609	
Address:	Lot 1 Mulherin Drive, Mackay Harbour Queensland 4740.		
Phone:	07 4955 6855	Fax: (07) 4955 6922	Email: shipyard@mackaymarina.com
ITEM 2	CUSTOMER DETAILS		
Name:			ABN / ACN:
Address:			
Phone:		Email:	
Mobile:		FAX:	
ITEM 3	GUARANTOR DETAILS		
Name:			ABN / ACN:
Address:			
Phone:		Email:	
Mobile:		FAX:	
ITEM 4	VESSEL DETAILS		
Name:		Reg. No.:	
Overall Length:		Mono/Multi:	
Hull Type:		Hull Material:	
Insurance Comp:		Policy No.:	Exp:
Underwater Obstructions	E.G: Sonar, Under water Stabilizer		
ITEM 5	Important Dates		
Expiry Date:		Commencement Date:	
ITEM 6	LIFTING SERVICES*		
Lift out & return	\$	\$	
High pressure water clean	\$		
Environmental levy	\$		
Hardstand rates (per day)	\$		
Load-unload transport lift	\$		
Survey / inspection lift	\$		

\*For further details please see Hardstand Price List

Payment may be made by VISA, MASTERCARD, EFTPOS or DIRECT DEBIT. No cheques unless prior arrangement.

<b>ITEM 7</b>	<b>MISCELLANEOUS</b>	
<b>Keys for Hardstand</b>		<b>Deposit:</b>
<b>ITEM 8</b>	<b>OUTSIDE CONTRACTOR DETAILS</b>	
<b>Name:</b>		
<b>ABN / ACN:</b>		
<b>Address:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>Insurance:</b>	Company:	Policy number:

**EXECUTION**

I / We:

- have been made aware of the Terms and Conditions attached to this document and have been given a **current shipyard price list**, showing all price variables and received a copy of same;
- acknowledge that this Lifting and Hardstand Agreement includes both the Terms and Conditions and the Reference Schedule; and
- record of completed work / Lifting Services and does not form part of the Lifting and Hardstand Agreement
- have read the this Lifting and Hardstand Agreement and accept the conditions in full.

**SIGNED** for and on behalf of the Operator:

Name: ..... Signature: ..... Date: \_\_\_\_/\_\_\_\_/2014

Witness: ..... Signature: ..... Date: \_\_\_\_/\_\_\_\_/2014

**SIGNED** by or on behalf of the Customer:

Name: ..... Signature: **X**..... Date: \_\_\_\_/\_\_\_\_/2014

Witness: ..... Signature: ..... Date: \_\_\_\_/\_\_\_\_/2014

**SIGNED** for and on behalf of the Guarantor:

Name: ..... Signature: ..... Date: \_\_\_\_/\_\_\_\_/2014

Witness: ..... Signature: **X** ..... Date: \_\_\_\_/\_\_\_\_/2014

**ANNEXURE**

DATE	WORK SUMMARY	QUOTE NO.	ESTIMATE	SIGNATURE
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# Terms and Conditions

## **1. DEFINITIONS AND INTERPRETATION**

- 1.1** In this Agreement, unless the contrary intention appears:
- 1.1.1 "**Agreement**" means this document and the bargain which this document evidences.
- 1.1.2 "**Authority**" means any State, Federal or Local Government or other person or authority having jurisdiction over the Vessel or the Complex.
- 1.1.3 "**Claim**" includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action or claim for compensation, whether present or future, whatsoever and howsoever arising.
- 1.1.4 "**Commencement Date**" means the relevant date specified in Item 5.
- 1.1.5 "**Common Areas**" means all parts of the Complex intended by the Operator for common use of the Occupants.
- 1.1.6 "**Complex**" means the land and all improvements from time to time which comprise the MACKAY MARINA hardstand, vessel lifting and maintenance and repair facilities as determined by the Operator from time to time and includes the Vessel Hardstand Area.
- 1.1.7 "**Cost**" includes any cost, charge, expense, outgoing, payment or other expenditure, including all reasonable legal fees.
- 1.1.8 "**Customer**" means the party specified in Item 2.
- 1.1.9 "**Customer's Associates**" means each and every of the Customer's employees, agents, contractors, customers, clients, visitors (with or without invitation) who may at any time be on the Complex.
- 1.1.10 "**Default Rate**" means 10.0 % per annum.
- 1.1.11 "**Environmental Protection Law**" means any Law or requirement, directive, authority, permit or licence issued by an Authority relating to waste, pollution, use of land or the protection, preservation and enhancement of the environment.
- 1.1.12 "**Expiry Date**" means the relevant date specified in Item 5 or such other date upon which the Lifting Services and/or the Hardstand Services are completed.
- 1.1.13 "**Guarantor**" means the person or persons specified in Item 3.
- 1.1.14 "**Hardstand Fee**" means the amounts applicable from time to time charged by the Operator for the Hardstand Services. These amounts are subject to change without notice.
- 1.1.15 "**Hardstand Services**" means the storage of the Vessel on the Vessel Hardstand Area and the services provided by the Operator pursuant to this Agreement, including but not limited to:
- (a) the hire of any equipment/machinery (including but not limited to any trestles, planks, ladders and scaffolding);
  - (b) any services provided by the Operator;
  - (c) fork lift hire;
  - (d) crane hire; and
  - (e) mast storage.
- 1.1.16 "**Keys**" includes keys, encoded cards or other articles issued or used for the purpose of obtaining access to the Complex or any part of it.
- 1.1.17 "**Key Deposit**" means the amount specified in Item 7.
- 1.1.18 "**Law**" means any statute, rule, regulation, proclamation, ordinance or by-law, present or future, State, Federal or otherwise.
- 1.1.19 "**Lifting Fee**" means the amounts applicable from time to time charged by the Operator for the performance of the Lifting Services. These amounts are subject to change without notice.
- 1.1.20 "**Lifting Services**" means the lifting services specified in Item 6, provided by the Operator pursuant to this Agreement, including but not limited to:
- (a) the removal of the Vessel from the Small Craft Haven to the Vessel Hardstand Area;
  - (b) the removal of the Vessel from the Vessel Hardstand Area to the Small Craft Haven;
  - (c) the lifting of the Vessel from the water for the purposes of short duration survey and inspection lift and thereafter the return of the Vessel to the water;
  - (d) the movement of the Vessel within the Complex; and

- (e) the high pressure water cleaning of the hull of the Vessel.
- 1.1.21 "**Manager**" means the General Manager of the Operator from time to time, or his nominee.
- 1.1.22 "**Occupants**" means tenants, licensees or other occupants of the Complex as the context permits.
- 1.1.23 "**Operator**" means the party specified in Item 1.
- 1.1.24 "**Operator's Employees**" means all of the employees of the Operator or persons authorised on its behalf by the Operator.
- 1.1.25 "**Rules and Regulations**" means the rules and regulations prescribed from time to time by the Operator relating to the use, enjoyment, management and care of the Complex.
- 1.1.26 "**Services**" includes the services provided:
- (a) to the Complex by authorities including water, electricity, waste outlets; and
  - (b) other additional operating costs of the Complex incurred by the Operator applicable to the use of the Complex by the Customer or the Customer's Associates.
- 1.1.27 "**Small Craft Haven**" means the area adjacent to the Complex in which the Mackay Marina and any other berths for the mooring of vessels are situated.
- 1.1.28 "**Term**" means the period of time from the Commencement Date to the Expiry Date.
- 1.1.29 "**Vessel**" means the Vessel being lifted, referred to in Item 4.
- 1.1.30 "**Vessel Hardstand Area**" means that area of the Complex as determined by the Operator from time to time for the hardstanding of Vessels.
- 1.2** In this Agreement unless contrary to or inconsistent with the context:
- 1.2.1 words importing:
- (a) the singular include the plural and vice versa; and
  - (b) any gender includes all genders;
- 1.2.2 a reference to a party or person includes a reference to that party or person and its successors, substitutes (including, but not limited to, any party or person taking by novation), executors, administrators and assigns;
- 1.2.3 the word "person" includes a corporation and vice versa;
- 1.2.4 a reference to any thing or any matter is a reference to the whole or any part of it;
- 1.2.5 a reference to a group of persons or parties is a reference to any two or more of them jointly and to each of them individually;
- 1.2.6 a covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- 1.2.7 a covenant, representation or warranty on the part of two or more persons binds them jointly and severally;
- 1.2.8 a reference to this Agreement or other document includes any variation, novation or replacement of or supplement to any of them from time to time;
- 1.2.9 a reference to a clause means a reference to a clause of this Agreement;
- 1.2.10 a reference (whether specific or general) to a statute or to any other legislation includes any code, ordinance or other law, and any regulation, rule or by-law or other instrument made under it, and all official directives (if any) and all amendments, consolidations, re-enactments or substitutions, of any of them from time to time;
- 1.2.11 a reference to a document includes, but is not limited to, any agreement in writing, certificate, notice or other instrument in writing of any kind;
- 1.2.12 "writing" and related expressions includes all means of reproducing words in a tangible and permanently visible form;
- 1.2.13 any agreement, undertaking, acknowledgment, condition or other term (including but not limited to any indemnity and/or release) that is made or given by the Customer and/or the Guarantors is deemed to be a covenant by the Customer and/or the Guarantors in favour of and for the benefit of the Operator and the owner from time to time of the Complex; and
- 1.2.14 headings are inserted for guidance only and do not affect the interpretation of this Agreement.

## **2. PROVISION OF SERVICES**

- 2.1 The Operator will provide the Lifting Services and/or Hardstand Services as reasonably required by the Customer at the request of the Customer and subject to the terms of this Agreement.
- 2.2 The Operator may change the manner in which the Lifting Services and/or Hardstand Services are provided from time to time in its absolute discretion.
- 2.3 The Operator may arrange for any of the Lifting Services and/or Hardstand Services or any part to be carried out by a sub-contractor.
- 3. FEES**
- 3.1 The Customer must pay the Lifting Fee, the Hardstand Fee and/or other associated fees to the Operator as arranged or required and in any event before the Vessel is returned to the water or leaves the Complex.
- 3.2 If the Operator provides any Services to the Customer, the Customer must pay the charge to the relevant Authority or to the Operator as the case may be, by the due date for payment. If the charge is not assessed directly against the Customer, the Customer must pay the charge to the Operator within 14 days of being billed for the charge by the Operator.
- 3.3 When access to a supply of electric current, whether single or three phase, is provided by the Operator, it will be used by the Customer at his own risk in all respects and at the request of the Operator, the Customer will, without limiting clause 3.1, make payment for the current reasonably estimated to have been used. The Customer will provide all necessary connecting leads and cables, which shall be of appropriate size and in good condition and also, all safety devices.
- 3.4 The Customer must:
- 3.4.1 upon demand by the Operator pay all stamp duties from time to time assessed on this Agreement;
- 3.4.2 make payments due to the Operator under this Agreement without set-off, counterclaim, withholding or deduction and by any method the Operator reasonably requires; and
- 3.4.3 pay to the Operator interest at the Default Rate on any moneys due by the Customer to the Operator but unpaid for 7 days, from the due date up until the money is received by the Operator.
- 3.5 Each party will bear their own costs of this Agreement.
- 3.6 Time is essential for all obligations of the Customer under this Agreement, to pay money and otherwise.
- 3.7 All amounts payable under this Agreement are exclusive of GST. If GST is imposed on any supply made under this Agreement, the recipient of the taxable supply must pay to the supplier (in addition to the consideration otherwise payable for that supply under this Agreement and at the same time as that consideration is payable) an amount equal to the GST payable on the taxable supply. For the purposes of this clause "GST", "taxable supply" and other words and phrases defined in the GST Act have the same meaning in this Agreement unless the context otherwise requires. "GST Act" means *A New Tax System (Goods and Services Tax) Act* and any other GST related legislation as modified, amended or replaced from time to time.
- 4. KEY DEPOSIT**
- 4.1 The Customer shall pay the Key Deposit to the Operator on or before the Commencement Date.
- 4.2 If the Customer fails to return to the Operator any Keys, then the Customer forfeits the Key Deposit to the Operator and the Customer shall pay to the Operator the cost of securing the Complex as a result of the loss of the Keys.
- 4.3 The Operator's rights contained in clause 4.2 are in addition to any other rights available to the Operator under this Agreement, at Law or in equity.
- 4.4 The Operator shall refund to the Customer the Key Deposit, not called upon by the Operator pursuant to this clause, at the expiration of this Agreement.
- 5. CUSTOMER'S WARRANTIES**
- 5.1 The Customer warrants:
- 5.1.1 all information provided by the Customer in this Agreement is true and correct and that it has full power and authority to enter into this Agreement including all authorities or consents needed by the Customer to enter

- into this Agreement from any co-Customer, financier and/or other entity in respect of the Vessel;
- 5.1.2 that it has given the Operator all information which may be relevant to the Operator in providing the Lifting Services and/or Hardstand Services or assessing the Customers needs for the Lifting Services and/or Hardstand Services including but not limited to the position in which to place the slings for the lift and/or the ability of the Vessel's coatings to withstand water blasting; and
- 5.1.3 that it has given the Operator all information which may be relevant to the use of any plant or equipment owned or provided by the Operator to perform any of the Lifting Services and/or Hardstand Services.
- 6. CUSTOMER'S OBLIGATIONS**
- 6.1 The Customer must:
- 6.1.1 not under any circumstances attempt to undertake any of the Lifting Services and/or Hardstand Services;
- 6.1.2 not without the express permission of the Operator, use any plant or equipment owned or provided by the Operator to perform any of the Lifting Services and/or Hardstand Services;
- 6.1.3 without limiting the Customer's obligations under this Agreement, do or provide anything reasonably requested by the Operator, necessary for the provision of the Lifting Services and/or Hardstand Services;
- 6.1.4 ensure that the Vessel is kept in a clean, sound, and, to the extent applicable, seaworthy and watertight condition;
- 6.1.5 not obstruct in any way the provision of the Lifting Services and/or Hardstand Services;
- 6.1.6 not bring any motor or other vehicle or conveyance into the Complex, without the express permission of the Manager. Any such permission will be granted only for the purpose of loading or unloading materials, parts and tools of trade. Motor or other vehicles or conveyances will be parked only in the areas and during the times so designated by the Manager. No work whatsoever may be done in the car park of the Complex;
- 6.1.7 not obstruct the pavements, pathways, roadways, entry and exit avenues and driveways in the Complex and any easement giving access to the Complex or any part of the Complex or use them for any purpose other than ingress and egress or allow any of the Customer's Associates to park or permit to be parked any vehicles so as to prevent the passage of other vehicles over the said pavements, pathways, roadways, entry and exit avenues, driveways and easements;
- 6.1.8 ensure that all appropriate gates, entrances and exits within the Complex are properly closed after each use;
- 6.1.9 only access the Complex during times approved by the Manager from time to time;
- 6.1.10 not waste water under any circumstances and all taps must be turned off when water is not being immediately used. Fire hoses must not be used for other than their specified purposes;
- 6.1.11 not carry out any repairs, sandblasting, painting, fitting out, maintenance, works or refitting of any kind within the Complex. Any such works must only be undertaken in such area designated by the Operator and if required by the Operator, the Customer shall enter into such licence or tenancy agreement as the Operator shall require for the use of such designated area;
- 6.1.12 not obstruct in any way the entry, exit, embarkation or disembarkation of any other persons to or from the Complex;
- 6.1.13 not fuel any vehicle or vessel from any place within the Complex, other than the marine fuelling facility designated by the Operator from time to time. Transferring of fuel via containers to the tanks of any vessel, vehicle or internal combustion engine is strictly forbidden, other than in any area designated for that purpose by the Operator, and in no event without the express permission of the Operator. This clause is an essential term of this Agreement;
- 6.1.14 promptly make good, at its cost and expense in all respects, any loss or damage to property which may be directly or indirectly attributable to the spillage, emission or discharge of any substances from or on to the Complex or adjacent water areas caused by the act or

- omission or negligence of the Customer and/or the Customer's Associates;
- 6.1.15 at its cost observe, perform and fulfil all requirements of any:
- (a) Law;
  - (b) any Environmental Protection Law; and
  - (c) any management and operational plans adopted by the Operator from time to time;
- 6.1.16 not do anything on the Complex which is immoral, unlawful, noxious, offensive, hazardous, or likely to cause nuisance, damage or injury to the Operator, any Occupant or to any other person;
- 6.1.17 not conduct any auction, fire, bankruptcy or liquidation sale on the Complex;
- 6.1.18 make prompt payment of the accounts and invoices of any other Occupants;
- 6.1.19 not bring onto the Complex any animals, pets, pests, insects and vermin and must keep the Vessel free of people, animals, pets, insects, infectious diseases and vermin while the Lifting Service and/or Hardstand Services is being performed;
- 6.1.20 at all times act in a safe, competent and responsible manner;
- 6.1.21 keep the Complex clean and tidy at all times and dispose of rubbish only as directed by and in any containers provided by the Operator. The Customer will pay the cost of disposing of any large or heavy items and any costs incurred by the Operator in disposing of large volumes of rubbish;
- 6.1.22 maintain, and must ensure that the Customer's Associates maintain, at all times, all licences, permits, consents and registrations required to be held by the Customer and/or the Customer's Associates for the carrying out of the Lifting Services and/or Hardstand Services and shall not by act or omission cause such licences etc to lapse or be revoked; and
- 6.1.23 follow the directions of the Manager and ensure that the Customer's Associates do the same.
- 6.2** The Customer acknowledges that:
- 6.2.1 no promise, representation or warranty is given by the Operator:
- (a) as to the suitability or adequacy of the Lifting Services and/or Hardstand Services; or
  - (b) regarding the sufficiency or efficiency of the Lifting Services and/or Hardstand Services;
- 6.2.2 the Lifting Services and/or Hardstand Services do not include inspecting, assessing or assuming responsibility for the condition of the Vessel for any purpose whatsoever; and
- 6.2.3 the Operator's obligations under this Agreement are limited to providing the Lifting Services and/or Hardstand Services at the request of the Customer and subject always to the provisions of this Agreement.
- 6.3** Subject to this Agreement, the Customer may use the Common Areas for the purposes for which they are intended, but must not obstruct the Common Areas in any way.
- 6.4** In consideration of the Operator entering into this Agreement at the request of the Guarantor, the Customer and each Guarantor, by executing this Agreement, charges all of their right, title, estate and interest which they have or may acquire in any freehold or leasehold property with the payment of all moneys due and payable under this Agreement. The Customer and each Guarantor shall, immediately upon demand, at the cost and expense of the Customer and/or Guarantor (as applicable) in all respects, deliver to the Operator a mortgage or consent caveat in registrable form in order to better secure the charge hereby granted.
- 7. REPAIR OF DAMAGE**
- 7.1.1 The Customer must:
- (a) give immediate notice to the Operator of any damage, accident to or defects in the Complex or the Vessel; and
  - (b) repair damage to the Services or the Complex caused by the wilful or negligent act of the Customer or the Customer's Associates, or on demand by the Operator, pay to the Operator the cost of such repairs.

**8. RESERVATIONS**

- 8.1** The Operator reserves the exclusive right to :
- 8.1.1 move the Vessel and/or require the Customer, at its cost and expense, to move the Vessel to another position in the Complex as reasonably required, in its absolute discretion;
  - 8.1.2 control the Common Areas in its absolute discretion;
  - 8.1.3 use any part of the Complex for any purpose; and
  - 8.1.4 construct or permit the construction of any building, marina or other works on any part of the Complex, and the Customer will not make any objection or Claims with respect to any of these matters.
- 8.2** The Operator is not liable to the Customer:
- 8.2.1 for any damage which the Customer may suffer because of any interruption to any of the Lifting Services and/or Hardstand Services and/or any Services; and/or
  - 8.2.2 for any loss suffered by the Customer in connection with this Agreement and, in particular but without limitation, as a result of the Vessel being lifted or water blasted.

**9. RULES**

- 9.1** The Customer must at all times comply and must ensure that the Customer's Associates at all times comply with the Rules and Regulations and in accordance with the rules and regulations applicable to the Small Craft Haven from time to time.

**10. INSURANCES AND INDEMNITIES**

- 10.1** During the Term, the Customer must take out and maintain while the Vessel is within the Complex and/or the Small Craft Haven:
- 10.1.1 public risk insurance for at least \$10,000,000.00 in respect of any single accident;
  - 10.1.2 comprehensive insurance on the Vessel for its market value, from time to time; and
  - 10.1.3 any other insurance reasonably required by the Operator.
- 10.2** The Customer must give the Operator evidence that it has taken out adequate insurance and give the Operator immediate notice if any insurance policy is cancelled.
- 10.3** The Customer must not:
- 10.3.1 do anything which may affect rights under any insurance policy taken out by the Operator or other persons; and
  - 10.3.2 store noxious, chemicals, flammable, volatile or explosive liquids or substances in any vehicle, vessel or conveyance or on any part of the Complex (without the consent of the Operator and provided that they are reasonably necessary, in such quantities as are reasonably required and are in the appropriate approved safety containers).
- 10.4** The Customer is liable for and indemnifies the Operator against any liability for any Claim arising from, connected with or in any way related to:
- 10.4.1 the use by the Customer or the Customer's Associates of the Complex, the Common Areas, the Services or the Vessel;
  - 10.4.2 any damage, loss or injury to person or property or death caused or contributed to by any act, omission, negligence or default of the Customer or the Customer's Associates; and
  - 10.4.3 the Customer's and/or the Customer's Associates failure to comply with its obligations under this Agreement.
- 10.5** The Operator may enforce an indemnity before incurring an expense.
- 10.6** The Customer releases the Operator from, and agrees that the Operator is not liable for any Claim arising from:
- 10.6.1 damage, loss or injury to person or property or death of the Customer or the Customer's Associates unless it is caused by the act, negligence or default of the Operator;
  - 10.6.2 anything the Customer is permitted to do under this Agreement;
  - 10.6.3 any defect in or faulty operation of the Lifting Services, the Hardstand Services and/or any Services; or
  - 10.6.4 the Common Areas not being clean.
- 10.7** The Customer acknowledges that any vehicle, vessel or conveyance and all property of whatever kind which may be on them or brought into the Complex is at the sole risk of the Customer. All vehicles, vessels, conveyances and all such other property must be kept safe and secure while in the Complex and the Operator accepts no liability or any responsibility whatsoever while they are in

or about the Complex. Security is the responsibility of the Customer.

**10.8** The Customer acknowledges that the Vessel and all property which may be on the Vessel is at the sole risk of the Customer at all times during the Term, including but not limited to, during the performance of the Lifting Services and/or Hardstand Services.

**11. DEFAULT OF CUSTOMER**

**11.1** The Customer will be in default if:

**11.1.1** the Lifting Fee and/or Hardstand Fee or any part of it or any other moneys payable by the Customer to the Operator are in arrears and remain unpaid for seven (7) days after any of the due dates for payment (whether demanded or not);

**11.1.2** the Customer or the Customer's Associates fail to comply with any of the provisions of this Agreement which ought to be performed or observed by the Customer or the Customer's Associates or fails or refuses to comply the Rules and Regulations, the rules and regulations of the Small Craft Haven or the directions of the Manager; and/or

**11.1.3** the Customer enters into any form of liquidation or insolvency or is wound up or dissolved, enters into a scheme or arrangement for creditors, is placed under administration or a receiver or receiver and manager is appointed.

**11.2** Without prejudice to the Operator's rights at law or in equity, if the Customer is in default under this Agreement, the Operator:

**11.2.1** may immediately terminate this Agreement without notice to the Customer;

**11.2.2** may suspend all or part of any Lifting Services and/or Hardstand Services;

**11.2.3** may remove the Vessel to another area within the Complex; and

**11.2.4** shall have a lien over the Vessel until the default is remedied or all outstanding moneys are paid and shall be entitled to take such action as may be necessary to prevent the removal of the Vessel from the Complex.

**11.3** The Operator may terminate this Agreement at any time upon two days written notice to the Customer, without any reason required to be given.

**11.4** Termination of this Agreement by the Operator does not affect any prior Claim that the Operator may have against the Customer.

**11.5** The Operator's acceptance of any Lifting Fee, Hardstand Fee or other money under this Agreement (before or after termination) is not a waiver of a breach or an acceptance of the repudiation of this Agreement by the Customer.

**11.6** No waiver by the Operator or variation of this Agreement will be effective unless it is in writing.

**12. DETERMINATION OF TERM**

**12.1** On the Expiry Date or earlier termination of this Agreement the Customer must:

**12.1.1** deliver all sets of Keys to the Operator;

**12.1.2** immediately pay all fees and other amounts payable under this Agreement;

**12.1.3** vacate the Complex and leave it in a clean state; and

**12.1.4** remove the Customer's property, materials, tools and equipment, vehicles, vessels or conveyances from the Complex.

**12.2** The Customer must not cause any damage to the Complex in the removal of anything. If any damage is caused the Customer must promptly repair that damage to the satisfaction of the Operator, at the Customer's cost and expense in all respects.

**13. DIRECTIONS BY THE OPERATOR'S EMPLOYEES**

**13.1** The Customer will promptly observe any directions from any the Operator's Employees in relation to the operation

of the Complex, the lifting, storage or hardstanding of the Vessel.

**13.2** Where the context so permits the reference to the Operator shall also mean a reference to the Operator's Employees.

**14. WATER CLEANING**

**14.1** The Operator and the Operator's Employees do not warrant or represent in any way the quality or standard of the high pressure water cleaning services.

**14.2** Without in any way limiting the provisions of clause 5.1, the Operator has relied upon information provided by the Customer concerning the ability of the Vessel's coating to withstand water blasting.

**15. GENERAL PROVISIONS**

**15.1** Notices from one party to the other must be in writing and either delivered personally, by facsimile transmission or in any other way permitted by law to the address specified in this Agreement. Each party must notify the other of any change in address or facsimile number.

**15.2** If anything in the Agreement requires the consent or approval of the Operator, the Operator may withhold that consent or approval in its absolute discretion or grant its consent subject to conditions.

**15.3** This Agreement constitutes the entire agreement and understanding between the parties about its subject matter.

**15.4** This Agreement is governed by the law in force in Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

**15.5** Any covenants implied by Law or otherwise are not excluded but will be taken to have been modified (where permitted) to the extent of any inconsistency with this Agreement.

**15.6** If there is more than one Customer or Guarantor under this Agreement, their liability is joint and several.

**15.7** If the whole or any part of a provision of this Agreement is void, illegal or unenforceable in a jurisdiction, it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause will not operate if the severance alters the basic nature of this Agreement or is contrary to public policy.

**16. GUARANTEE AND INDEMNITY**

**16.1** The Guarantors give this guarantee and indemnity in consideration of the Operator agreeing to enter into this Agreement.

**16.2** The Guarantors unconditionally and irrevocably guarantee to the Operator the payment by the Customer of any moneys which the Customer has agreed to pay under this Agreement and the prompt performance and due observance by the Customer of the Customer's obligations under this Agreement.

**16.3** As a separate undertaking, the Guarantors unconditionally and irrevocably indemnify the Operator against any Claim arising from a breach of this Agreement by the Customer. It is not necessary for the Operator to incur expense or make payment before enforcing that right of indemnity.

**16.4** The Guarantors waive any right they have of first requiring the Operator to commence proceedings or enforce any other right against the Customer or any other person before claiming under this guarantee and indemnity.

**16.5** This guarantee and indemnity is a continuing security and is not discharged by any one payment.

**16.6** The liability of the Guarantors and the rights of the Operator are not affected by anything which might otherwise affect them at law or in equity.