

Transport & Marine Ltd

TERMS AND CONDITIONS OF HIRE

- a) **Charter Purpose and Duties:** The Charter may use the vessel for anything reasonable and safe within the normal operational capability of the vessel; at all times ensuring it does nothing that damages or causes additional maintenance requirements for the vessel.
- b) **Owners Performance:** In performing this Agreement, the Owner shall act diligently, carefully and in a proper manner in accordance with any applicable laws and regulations and within normal recognised industry standards and practices.
- c) **Specific Vessel:** This Agreement is specific to the listed vessel. In the event the Owner is unable to provide or continue to provide the vessel for any reason, including total or constructive loss or extended breakdown, the Owner shall not be obliged to provide an alternative vessel. After payment of hire charges, due up to the time of such non-provision, this Agreement shall terminate.
- d) **Port Charges:** The Charterer shall provide, and pay for, all port charges - pilotages (whether compulsory or not), light dues, tug assistance, berthage (except at the vessels home port), and any other dues and charges.
- e) **Structural Alterations & Charterer's Equipment:** The Charterer may, at its own expense and subject to the Owners' reasonable exercised written approval, make structural alterations to the vessel or install additional equipment and shall be responsible for repair and maintenance of such alterations and equipment. The vessel shall, at the Charterers' expense, be reinstated to its original condition before redelivery to the Owner and shall remain on hire during any period of alterations or reinstatement.
- f) **Invoicing and Payment:** The Owner may invoice the Charterer for all payments due under this Agreement monthly and at the conclusion of hire. The Charterer shall pay all invoices by the 20th of the month following, unless otherwise stated in the contract. All rates and prices contained within this charter Agreement are exclusive of Goods and Service Tax (GST), which shall be levied in addition at the current prevailing rate(s) and paid by the Charterer as applicable.
- g) **Day:** Unless otherwise agreed in writing a "day" means "any part of any calendar day" between times agreed with the Charterer, inclusive of weekends and public holidays.
- h) **Maintenance Allowance:** From the commencement of the charter period the Owner shall be entitled to a maximum of 24 hours per month of maintenance and repairs for the vessel. The maintenance allowance shall be cumulative over the charter period and shall be applied pro-rata for a part-month. Hire shall be suspended during any time taken in maintenance repairs in excess of the accumulated maintenance allowances.
- i) **Suspension for Default:** Either party may suspend performance of its obligation under the Agreement at any time if the other party remains in default of the performance of its obligation under the Agreement after 3 calendar day's written notice.
- j) **Loss of Vessel:** Should the vessel be lost or missing, hire for the vessel shall cease from the date when it was lost. In the event of a breakdown of machinery, damage to the hull or other accident not caused by the Charterer, either hindering or preventing the performance of the vessel, under this Agreement and continuing for more than 3 consecutive days in any calendar month, no hire shall be payable by the Charterer for the vessel for that period.
- k) **Insurances:** Each party shall be responsible for and insure its own vessel(s), equipment and/or personnel as the case may be, and shall as applicable provide its own Hull & Machinery, Protection & Indemnity, General Liability, Motor Vehicle, Asset & Equipment and Employers Statutory Liability insurances. Each party shall provide the other party with insurance certificates from reputable insurers upon request. The Owner warrants that it has appropriate and adequate insurances for the vessel, including Hull & Machinery, General Liability and Protection & Indemnity insurances (including for collision and pollution cover).
- l) **Third Party Liability Arising From Vessel Operation:** The Charterer shall not, in connection with the operation of the vessel under this Agreement, be liable to any third parties in respect of any damages or losses caused to or suffered by any third party, unless such damages or losses are caused by an act or omission of fault or negligence by the Charterer or any of its sub-contractors, employees or agents. The Owner hereby indemnifies and holds harmless the Charterer in respect of any losses, costs, claims or damages caused to or suffered by any such third parties, except those which are caused by an act, omission, fault or negligence of the Charterer, its servants or agents.
- m) **Knock for Knock:** For the purpose of this Clause:
- "Owners Groups" shall mean the Owner, its contractors, sub-contractors and employees of any of the foregoing.
 - "Charterers Group" shall mean the Charterer, its contractors, sub-contractors and co-ventures and customers (having a contractual relationship with the Charterer, always with respect to the job or project on which the vessel is employed) and employees of any of the foregoing.
- i. **Owners:** Notwithstanding anything else contained in the Agreement, the Charterer shall not be responsible for loss of or damage to the property of any member of the Owner's group, including the vessel, or for personal injury or death of any member of the Owner group arising out of or in any way connected with the performance of this Agreement, even if such loss, damage, injury or death is caused wholly or partially by unseaworthiness of any vessel. The Owner shall indemnify, protect, defend and hold harmless the Charterer from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such loss, damage, personal injury or death.
- ii. **Charterers:** Notwithstanding anything else contained in this charter party, the Owners shall not be responsible for loss or damage to, or any liability arising out of anything towed by the vessel, any cargo laden upon or carried by the vessel or her tow, the property of any member of the Charterers group or of anyone on board anything being towed by the vessel, arising out of or in any way connected with the performance of this Agreement, even if such loss, damage, liability, injury or death is caused wholly or partially by the unseaworthiness of any vessel. The Charterer shall indemnify, protect, defend and hold harmless the Owner from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such loss, damage, liability, personal injury or death.

- n) **Consequential Losses:** Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any consequential costs, losses, liabilities or damages whatsoever (including, but not limited to, loss of opportunity, loss of use, loss of profits, loss of production and cost of insurance) arising out of or in connection with the performance or non-performance of this Agreement. Each party shall protect, defend, indemnify and hold harmless the other party from and against all such claims.
- o) **Force Majeure:** Force Majeure shall be an event or condition that is beyond the reasonable control and without the fault of negligence of either party, or which prevents or hinders the performance of this Agreement. Neither party shall be liable for and loss, damages, delay or failure in performance due to a Force Majeure event and/or condition to the extent the party invoking Force Majeure is prevented or hindered from performing any or all of its obligation under this Agreement, provided it has made all reasonable efforts to avoid, minimise or prevent the effect of such an event/condition. The party seeking to invoke Force Majeure shall notify the other party in writing within 2 working days of the occurrence of such event and/or condition. For clarity, adverse weather and/or sea state preventing vessel operations shall not be Force Majeure and the vessel shall remain on hire during such adverse conditions. If a Force Majeure event or condition prevents or hinders the performance of the charter Agreement for a period exceeding 7 consecutive days, either party may terminate this charter Agreement without penalty and the charterer shall pay the supplier all hire due up until the commencement of Force Majeure event plus hire to return to the port of redelivery including the sum due for demobilisation.
- p) **Confidentiality:** Confidential information means all confidential information which is not in the public domain or known to a third party outside this Agreement and which is reasonably regarded as confidential or commercially sensitive by a party to this Agreement. Each party will hold all such confidential information of the other party in confidence and shall not, without the written consent of that other party either directly or indirectly at any time during or after the term of this Agreement (for so long as the information continues to be confidential information) use, copy or disclose any confidential information to any person or party other than to the extent necessary to properly act under this Agreement or as required by law.
- q) **Notices:** Any notice given to a party under this Agreement may be served by personal service, e-mail, facsimile transmission or by telephone message confirmed by e-mail or facsimile.
- r) **Entire Agreement:** The Agreement represents the entire Agreement between the parties and supersedes all previous understandings. No modification of this Agreement shall be effective unless written and signed by authorised representatives of both parties.
- s) **Waiver and Severability:** No waiver by either party of any breach of this Agreement shall operate as a waiver of any subsequent breach. The invalidity of unenforceability of any provision of this Agreement shall not affect the validity of enforceability of any other provision of this Agreement.
- t) **Jurisdiction & Dispute:** The Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. Any dispute that cannot be resolved by amicable discussion or mediation shall be referred to arbitration under the Arbitrations Act 1996.

I HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS AND IN SIGNING BELOW I ACKNOWLEDGE THAT I WILL ABIDE BY THESE TERMS AND CONDITIONS.

Name:

Signed:

Date: