

Dive Works General Terms and Conditions

The following are Dive Works' general terms and conditions (**Terms and Conditions**) applying to the provision of ROV Services and other services by Dive Works (and defined as "Work" below) which, together with the Dive Works Special Terms and Conditions for offshore ROV Work available at <http://diveworks.com.au/terms-and-conditions/> (**Special Terms and Conditions**), shall be deemed to constitute the contract or agreement for the Work and shall be binding on Dive Works and the Client in the absence of a written contract or agreement. Where a written contract or agreement is entered into between Dive Works and a Client for the provision of Work, the terms of that contract or agreement will prevail to the extent of any inconsistency with these Terms and Conditions, however, the Special Terms and Conditions will prevail unless specifically excluded.

1. DEFINITIONS

- **Agreement** – the contract for the provision of Work by Dive Works which, in the absence of a written agreement, will include these Dive Works Terms and Conditions, the Dive Works Special Terms and Conditions and the terms and conditions set out in any Purchase Order issued by the Client. Where there is any conflict between these Terms and Conditions and the Purchase Order, the Purchase Order will prevail to the extent of any inconsistency.
- **Agreed Margin** – margin for Documents Costs as set out in the Rates and Prices or as otherwise agreed by the Parties.
- **Background Intellectual Property** – any pre-existing Intellectual Property owned or licensed by a Party that is in existence before the commencement of the Work and which a Party is free to disclose without being in breach of any obligations to a Third Party.
- **Client** – the principal and/or the ultimate principal, if applicable, to whom Dive Works is contracted to work.
- **Consequential Loss** - any indirect or consequential loss, damage, cost or liability of any kind (including liability for negligence) which arises from or in relation to the performance or non-performance of this Agreement, including economic loss, loss of revenue, profit or anticipated profit, loss of contract, loss of production, loss of product, loss of use of property or business interruption or special or indirect damages.
- **Defect** – means any failure, deficiency, error or omission in respect of the Work which causes the Work or Dive Works' performance of the Work not to comply with the Agreement.
- **Dive Works** – Ford Commercial Diving Services Pty Ltd as Trustee for the Ford Family Trust (Trading as Dive Works Subsea Solutions ABN 65 949 363 960) and/or its related body corporate identified as the party performing the Work in the Agreement.
- **Dive Works Special Terms and Conditions** – means the Dive Works special terms and conditions applicable to any offshore ROV Services comprising part of the Works available on Dive Works website at: <http://diveworks.com.au/terms-and-conditions/>.
- **Dispute** – any dispute, difference or claim between the Parties as to any matter arising out of, under or in connection with the Agreement or the Work, including Disputes arising out of or in connection with the performance of the Agreement or the enforceability, termination, existence or terms of the Agreement.
- **Dive Works' Equipment** – means any tools, instruments, machinery, plant, equipment, vessels, or other item that is provided by Dive Works or any Subcontractor for use in performance of the Work and any spare parts or consumable items used in connection with any such equipment.
- **Documented Costs** – means reimbursable costs and out of pocket expenses incurred in connection with performance of the Work and as evidenced to the Client by Third Party invoice or as agreed in the Rates and Prices.
- **GST** – has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- **Intellectual Property** – means any invention, patent, application for a patent, design, trademark, name or copyright, trade secret, know-how, proprietary information or other right in respect of any information, process, work, material or method, whether registered or unregistered.
- **Latent Conditions** - physical conditions on or relating to the Work Site or its surroundings, including artificial things but excluding weather conditions, which differ materially and substantially from those physical conditions which should reasonably have been anticipated by a skilled, experienced and competent contractor at the date of the Agreement.
- **Laws** - means all or any part of the common law or any decree, legislation, statute or Act of Parliament or government authority and any decree, legislation, regulation, ordinance, proclamation, order, by-laws made under such Act or by any government authority, and any amendments, re-enactments or modifications made to such laws from time to time.
- **Party** – each of Dive Works and Client.
- **Personnel** of a Party means that party and its subcontractors and their respective directors, officers, employees, agents, invitees, consultants and subcontractors.
- **Purchase Order** – any purchase or service order issued by Client to Dive Works in respect of the Work.
- **Rates and Prices** – the rates and prices for the Work as set out in a Purchase Order or if not set out in a Purchase Order, as provided by Dive Works in its quotation or fee proposal for the Work.
- **Related body corporate** – is as defined in the *Australian Corporations Act 2001 (Cth)*.

- **Subcontractors** – any person engaged by Dive Works for the performance of any part or aspect of the Work.
- **State** – means the State of Australia or the Country which has jurisdiction over the Work Site and/or where the Work is being performed.
- **Third Party** – any person other than Dive Works and Client and their respective related bodies corporate and Personnel.
- **Work** – the ROV and other services and associated work, including goods, services, surveys, operations, personnel and equipment, required to be provided or performed by Dive Works under the Agreement, and any other responsibilities and obligations imposed on Dive Works under the Agreement.
- **Work Site** – means the place or places at which the Work is to be performed.

In Interpretation of the Agreement:

- words in the singular include the plural and vice versa;
- other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning;
- a reference to a person includes any company, partnership, joint venture, unincorporated association, corporation, other body corporate or government authority;
- specifying anything in this document after the words “includes” or “for example” or similar expressions does not limit what else is included unless there is express wording to the contrary; and
- headings shall not be deemed to form part of the Agreement or be taken into consideration in the interpretation of construction thereof.

2. NOTICES

All notices relating to the Agreement must be in writing and either delivered in person, or by private prepaid courier, or sent by email.

Contact details for Client are as set out in any Purchase Order or other written advice from Client to Dive Works.

Contact details for Dive Works are:

Address: 5/30 Access Way, Carrum, Victoria 3201, Australia

Attention: Andrew Ford

Phone: +613 9708 2632

Mobile: +61 408 881 616

Email: info@diveworks.com.au

3. COMPENSATION, INVOICING AND PAYMENT

- a. Client shall pay Dive Works for performance of the Work in accordance with the Rates and Prices. The Works' performance will be invoiced by Dive Works on a progressive basis at the end of each month, unless otherwise agreed between the Parties.
- b. All Rates and Prices are quoted in Australian Dollars and are to be paid in the same currency.
- c. All Rates and Prices for Work undertaken in Australia are exclusive of GST and where applicable Dive Works will add GST to the invoiced amount for the Work under the Agreement in accordance with the Good and Services Tax Act 1999 (Cth) and Client will pay the amount of GST to Dive Works at the same time and in the same manner as the Rates and Prices invoiced.
- d. Client shall attend to payment of invoices within 30 days from the date of invoice without deduction, set off or other retention. Any payment overdue shall incur a late payment fee of 3% per month or part-thereof until payment is made.
- e. In the case of disputed item(s) the undisputed portion of the invoice shall be paid by Client with payment for the disputed portion deferred until the dispute is resolved in accordance with the Dispute procedure in clause 14. Notification of any disputed items must be given by Client within 7 days of receipt of invoice. There shall be no deduction or set-off outside of a dispute related to an invoiced amount.
- f. Rates and Prices are valid for 30 calendar days from the date provided to Client, unless otherwise agreed.
- g. Dive Works retains the right to submit documented costs variations to Client as and when unforeseen costs are encountered and additional personnel, equipment and capabilities are requested by Client.
- h. A Purchase Order for any Work will be required prior to mobilisation, unless agreed otherwise in writing.
- i. Dive Works' Rates and Prices for Work in country's other than Australia make no provision for any local corporate, withholding, purchase (i.e. GST, etc.) and personal taxes, duties (e.g. import, export and customs) and levies according to the Laws applicable to performance of the Work (including to the mobilisation and demobilisation of Dive Works' and Subcontractor's equipment and personnel). Should any of the aforementioned taxes, duties or levies be applicable to the Work then they shall either be added to Dive Works' Rates and Prices at the time of invoicing or invoiced separately and shall be reimbursed by Client. To the extent permitted by Law, Client shall not retain payment of any

portion of Dive Works' invoices for such taxes unless they are itemised as such on Dive Works' invoices. If the form or content of Dive Works' invoice would require the Client to withhold any tax, Client will notify Dive Works and give Dive Works the opportunity to rectify.

4. PERFORMANCE OF WORK

- a. Dive Works will perform the Work at the Work Site with diligence and in accordance with the Agreement.
- b. Dive Works will comply with the directions, policies and requirements of Client as notified to Dive Works in writing, provided they are within Dive Works' capabilities and are in accordance with the Law of the State.
- c. The Work shall commence and will be completed on the dates set out in the Purchase Order for the Work or as otherwise agreed between the Parties in writing.
- d. Dive Works will ensure that its personnel engaged in performance of the Work are suitably qualified and trained in relation to the tasks they will be performing.
- e. Dive Works Equipment used in performance of the Work will be of merchantable quality, fit for its purpose or intended purpose.
- f. Client will provide Dive Works with all information and assistance as is reasonably required by Dive Works to assist it in compliance with the policies and Laws referred to in clause 4(b). Client releases Dive Works from compliance with any requirement or obligation in a policy of Client which is dependent on Client's provision of information and/or assistance where such information and or assistance has not been provided by Client, or with which the Client waives compliance in writing.
- g. The relationship between Dive Works and Client is a relationship of principal and independent contractor and Dive Works must exercise independent control, management and supervision in the performance of the Work. Nothing in the Agreement will be construed so as to create a relationship of employment, agency or partnership between the Parties.

5. QUALITY AND SAFETY REQUIREMENTS

- a. The Parties shall comply with the Laws relating to workplace health and safety applicable in the State in which the Works are performed and shall ensure that their respective personnel abide by, and that all equipment conforms to, all necessary workplace health and safety Laws.
- b. Dive Works supervisor at the Work Site shall be responsible for the safety of Dive Works' personnel and the operation of all Dive Works' Equipment. That supervisor shall be the sole judge of whether it is prudent to conduct operations, having regard to sea conditions and surrounding circumstances. The supervisor may refuse any instruction that, in his opinion, may endanger any personnel or equipment in his charge.
- c. Dive Works shall maintain a quality assurance program that is in accordance with ISO9001 2008.

6. DEFECTS

- a. Client shall notify Dive Works in writing ("Notice of Defect") of any Defect during Dive Works' performance of the Work.
- b. A Notice of Defect shall include sufficient details to enable Dive Works' to identify and rectify the Defect.
- c. Upon receipt of a Notice of Defect, Dive Works will promptly confirm with the Client whether it agrees that it is a Defect and where agreed, shall rectify the Defect within 7 days.
- d. If Dive Works does not agree with the Client that a Defect exists, then the Parties will follow the Dispute procedure in clause 14.
- e. Dive Works shall not be liable for any Defect resulting from:
 - i. the reasonable actions of Dive Works exercising diligence in relying on any information provided by the Client; and
 - ii. defects in materials or equipment provided by the Client and used in connection with the Work, provided that Dive Works was unaware of the defect at the time that the item was incorporated into the Work and the defects could not reasonably have been discovered by Dive Works exercising diligence.

7. SUSPENSION

- a. Dive Works shall suspend performance of the whole or any portion of the Work on receipt of notice to do so from Client. Dive Works shall do all things possible to reduce any cost or expense consequent on the suspension. The suspension shall not vitiate the Agreement.
- b. Following a notice from Client under clause 7(a), Client shall continue to pay Dive Works in accordance with the applicable Rates and Prices for the duration of the suspension of the Work, except to the extent that the suspension is due directly to fault on the part of Dive Works.
- c. Client shall, when the reason for the suspension no longer exists, direct Dive Works to recommence the Work or the relevant part of the Work and Dive Works shall comply with the direction promptly.

8. TERMINATION

- a. **Termination due to suspension:** If a suspension by Client under clause 7 continues for a period in excess of fourteen (14) days, either Party may terminate the Agreement by written notice to the other Party.
- b. **Termination due to Force Majeure:** If by reason of Force Majeure Dive Works is prevented from performing the Work for a continuous period of fourteen (14) days, either Party may terminate the Agreement by written notice to the other Party.
- c. **Termination due to default:** Either Party reserves the right to terminate the Agreement, with immediate effect, by written notice to the other Party, if in the reasonable opinion of the terminating party:
 - i. The other party commits a serious or persistent breach of any of the terms of the Agreement;
 - ii. The other party defaults in performance of a fundamental obligation under the Agreement; or
 - iii. The other party and/or its personnel otherwise commit or engage in any serious misconduct or gross negligence in connection with performance of the Work.
- d. **Effect of termination on price:** Termination of the Agreement pursuant to the provisions of this clause 8 will be without penalty to the Party exercising the right to terminate, provided that on termination, Client will pay Dive Works all amounts due and payable for:
 - i. the Work actually performed up to the date of termination;
 - ii. reasonable and documented reimbursable expenses incurred up to the date of termination; and
 - iii. Dive Works' demobilization costs.

Neither Party will be relieved of its respective obligations and liabilities accruing or arising from the Work provided pursuant to the Agreement prior to the effective date of termination.
- e. **Rights and obligations on termination:**
 - i. Upon early termination of the Agreement, Dive Works will vacate the site and remove any equipment, materials or other property within twenty-eight (28) days.
 - ii. On termination, all Dive Works' Equipment is to be returned to Dive Works.

9. LATENT CONDITIONS

If during the course of providing the Work, Dive Works becomes aware of a Latent Condition, which in Dive Works' reasonable opinion is likely to cause Dive Works to carry out additional work or incur additional cost, Dive Works must immediately give written notice to the Client seeking a variation to the Work or associated costs of the Work, specifying:

- a. the Latent Condition encountered and in what respects it differs from that anticipated by the Dive Works;
- b. the additional work, resources and time which Dive Works estimates is required to deal with the Latent Condition; and
- c. the associated costs of the measures necessary to deal with the Latent Condition, and within 7 days from receipt of such notice the Client shall accept or reject such notice. An accepted notice shall constitute an amendment or variation to the Agreement in accordance with the Variations Clause in the Agreement. If such a notice is rejected either Party may refer it for resolution pursuant to clause 14.

10. FORCE MAJEURE

- a. In this Agreement, a "Force Majeure Event" means an exceptional event or circumstance that:
 - i. is beyond the reasonable control of the affected Party and is not directly caused by the fault or negligence of that Party;
 - ii. causes or results in prevention of the performance by the affected Party of its obligations under the Agreement; and
 - iii. could not have been prevented, overcome or remedied by the exercise by the affected Party of a standard of care and diligence consistent with good industry practice, including, (subject to satisfaction of paragraphs i, ii and iii above), the following:
 - iv. riot, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), epidemics, piracy, civil disturbance, rebellion, revolution, insurrection of military or usurped power, terrorism;
 - v. changes to any Law or any new Law by any government or duly constituted regulatory authority having or asserting jurisdiction in the State;
 - vi. earthquakes, flood, cyclone, fire, explosion, and/or any natural physical disaster; and
 - vii. industrial action by persons other than the personnel of Dive Works or its Subcontractors which affects a substantial portion of the Work.
- b. Neither Party will be responsible to the other for any loss, damages or delay or failure to comply with its obligations under the Agreement (excluding the obligation to pay money) as a result of a Force Majeure Event. If Dive Works is prevented from performing the Work by reason of a Force Majeure Event, the Work will be suspended for the duration of the Force Majeure Event.

- c. A Party affected by a Force Majeure Event will:
 - i. immediately notify the other Party in writing setting out the details of the Force Majeure Event, the time of its commencement and expected duration;
 - ii. use reasonable endeavours to minimise any delay in the performance of the Agreement and any associated costs incurred as a result of a Force Majeure Event; and
 - iii. resume performance as soon as possible.
- d. For the avoidance of doubt, financial hardship does not constitute a Force Majeure Event.

11. VARIATIONS

- a. The Work to be performed under this Agreement shall not be varied except as agreed in writing by the Parties.
- b. Client may before completion of the Work, direct Dive Works to vary the Work or to perform additional Work provided that:
 - i. the Work is of a character and extent contemplated by, and capable of being performed under, the provisions of this Agreement, and
 - ii. the Rates and Prices payable for any such variation are agreed by the Parties.
- c. Except in an emergency situation, Dive Works shall not proceed with any variation to the Work unless such variation has been authorized in writing by Client.

12. INDEMNITIES

- a. **Dive Works Property and Personnel:** Dive Works shall be responsible for and shall save, indemnify, defend and hold harmless Client from and against all claims, demands, proceedings, damages, costs (including legal costs) losses, liabilities and expenses in connection with any:
 - i. liability for injury to, or death of Dive Works personnel;
 - ii. loss of, or damage to Dive Works' Equipment or other property of Dive Works;
 - iii. pollution (including clean-up costs) emanating from Dive Works' Equipment whether owned, leased or hired;
 arising out of or in connection with the performance of the Work irrespective of the negligence or breach of duty (whether statutory or otherwise) of Client.
- b. **Client Property and Personnel:** Client shall be responsible for and shall save, indemnify, defend and hold harmless Dive Works from and against all claims, demands, proceedings, damages, costs (including legal costs) losses, liabilities and expenses in connection with any:
 - i. liability for injury to, or death of Client personnel;
 - ii. loss of, or damage to Client's equipment or property;
 - iii. pollution (including clean-up costs) emanating from Client's property and equipment whether owned, leased or hired;
 arising out of or in connection with the performance of the Agreement irrespective of the negligence or breach of duty (whether statutory or otherwise) of Dive Works.
- c. **Third Party liability:** Each Party shall assume its own legal liability towards Third Parties and indemnify the other Party accordingly.
- d. **Consequential Loss:** Neither Party is liable to the other Party under the Agreement, or any Laws including the law of tort, including negligence, statute, in equity or otherwise, for Consequential Loss, irrespective of cause including default, negligence or breach of duty (statutory or otherwise).

13. INSURANCE

- a. Dive Works agrees to carry and maintain the insurances set out in this clause and shall provide evidence of such coverage to Client upon request:
 - i. Commercial Motor Vehicle Insurance in relation to motor vehicles used in performance of the Work;
 - ii. Public and Products Liability Insurance with a limit of \$20,000,000 for any one accident or occurrence;
 - iii. Subsea and Offshore Specialist Equipment Insurance in respect of ROV and Diving equipment used in performance of the Work;
 - iv. Professional Indemnity Insurance for an amount of \$5,000,000 for any one claim and in the aggregate per annum; and
 - v. Workers Compensation insurance for its personnel as required by Law.
- b. Dive Works will ensure that each of its Subcontractors obtain and maintain insurance coverage as appropriate for that element of the Work to be performed or provided by the Subcontractor. The

coverage of such insurance will be equivalent to that required to be maintained by Dive Works under the Agreement.

14. DISPUTE RESOLUTION

- a. Governing Law.** This Agreement and the rights and obligations of the Parties shall be construed in accordance with and governed by the laws in force in Victoria and each party submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from those courts.
- b. Notice of Dispute**
If a Dispute arises between the Parties, then either Party may provide a written notice of the Dispute to the other Party ("Notified Party"), identifying and providing details of the Dispute as soon as practicable after the event giving rise to the Dispute. That notice must ("Dispute Notice"):
- i. set out the facts on which the claim is based;
 - ii. annex copies of correspondence and any relevant background material; and
 - iii. contain detailed particulars of the quantification of the claim.
- c. Dispute Resolution Process**
- i. Upon receipt of a Dispute Notice by a Notified Party, the representatives of Client and Dive Works for the purposes of this Agreement will attempt to resolve the matter.
 - ii. In the event that the Dispute is not resolved by the Party's Representatives within fourteen (14) days of the date the Dispute Notice is received by the Notified Party, it will be referred to the chief executive officers or other similar senior officers of each Party ("Senior Officers") for determination.
 - iii. The Senior Officers will meet to seek to resolve the matter in good faith, within thirty (30) days of the date of the Dispute Notice is received by the Notified Party.
 - iv. If a Dispute is not resolved in writing by the Senior Officers within the 30 days period, either Party may commence legal proceedings to have the Dispute determined.
 - v. Good faith means that the Parties will act in good faith towards each other and in a spirit of mutual trust and cooperation in the performance of their contractual obligations.
- d. Condition Precedent to Litigation.**
Service of a Dispute Notice under and compliance with the process outlined in clause 14(c) are conditions precedent to the commencement of any litigation in respect of a Dispute except where the only relief sought is urgent injunctive or declaratory relief.
- e. Dispute not to delay Performance of Work**
Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under the Agreement. The existence of a Dispute will not prejudice either Party's right to terminate this Agreement for any reason.
- f. Survive Termination**
This clause 14 will survive termination of this Agreement.

15. ASSIGNMENT AND SUBCONTRACTING

- a. A Party must not assign or novate its rights or obligations under the Agreement without the prior written consent of the other Party, provided that, a Party may assign this Agreement to a related body corporate where such related body corporate enters into a written agreement on terms reasonably acceptable to the other Party agreeing to be bound by the terms and conditions of the Agreement in all respects as if such related body corporate had been a Party to the Agreement from the beginning.
- b. All applicable terms and conditions of the Agreement shall be imposed in all subcontracts entered into by Dive Works in relation to performance of the Work.

16. LIMITATION OF LIABILITY

- a. Dive Works' maximum aggregate liability to Client in connection with the Agreement will be limited to fifteen percent (15%) of the total price of the all the Work. However this limit shall not apply to:
 - i. an event that is covered by insurances;
 - ii. Dive Works' obligations to pay taxes; and
 - iii. indemnities provided under Clause 12.

17. INTELLECTUAL PROPERTY

- a. All rights, interest in and title to Background Intellectual Property (and any improvements to the Background Intellectual Property arising or developed during performance of the Work) vest in the owner of the Background Intellectual Property.
- b. To the extent that it is possible and where required for the performance of the Work, Client and Dive Works grant a royalty-free, non-exclusive, non-transferable right to use Background Intellectual Property for the purpose of performance of the Work.
- c. Dive Works shall hold the Background intellectual Property, techniques and all other information relating to Client's business, and Client shall hold the Background Intellectual Property, techniques and all the information relating to Dive Works' business confidential, with the exception of that information which falls into the public domain or as directed by a Court of Law. Such techniques and information shall remain confidential and the absolute exclusive property of the respective Party both during and after completion of the Work.
- d. Intellectual Property in any report, photo, video or other deliverables to be provided by Dive Works to Client as part of the Work, will vest in Client upon payment of the applicable Rates and Prices for such Work.

18. MISCELLANEOUS

- a. **Entire Agreement:** The Agreement constitutes the entire Agreement between Client and Dive Works about its subject matter and supersedes all previous agreements, understandings, negotiations on that subject matter.
- b. **Amendment and Waiver:** No amendment of the Agreement is effective unless made in writing and signed by authorized representatives of each Party. A provision of or a right created under the Agreement may not be waived or varied except in writing and signed by the Party or Parties to be bound. No waiver or breach of any provision of the Agreement constitutes a waiver or breach of any other provision of the Agreement.
- c. **Severability:** If any provision in the Agreement is void, voidable or unenforceable, that provision will be severed and the rest of the Agreement will remain in full force and effect.
- d. **Survival of Indemnities:** Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives expiry or termination of the Agreement.