



TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement the following words have the following meanings:

Acceptance Period means:

- (a) the period stated in the Quotation; or
- (b) if no period of acceptance is stated, the period commencing on the date of the Quotation and ending on the date that is seven (7) days after the date of the Quotation.

Agreement means the Quotation and these terms and conditions.

Approached Customer means a Customer that has entered into this Agreement after being approached to do so by email, telemarketing or similar means.

Approvals means any development, environmental, planning or other approval, notice, consent or licence from any Government Authority or under any Law in respect of the Works.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Completion means the date that Superior Jetties notifies the Customer that the Works are complete.

Covid-19 Pandemic means the Covid-19 coronavirus pandemic as established by the World Health Organisation, and includes all regulations, sanctions, travel restrictions, forced closures, lockdowns, self-isolation, quarantine or other pandemic protocols, directions or unforeseen circumstances imposed by any government authority in respect of or in connection to the Covid-19 coronavirus pandemic.

Claim means any claim, cause of action, Liability, demand, action, remedy, suit, injury, indemnity, damage, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise whether present, unascertained, immediate, future or contingent.

Consequential Loss means without limitation one or more of loss of bargain, loss of revenue, loss of reputation, indirect loss, loss of profits, consequential loss, loss of actual or anticipated savings, lost opportunities, including opportunities to enter into arrangements with third parties and loss or damage in connection with claims against the Customer by third parties.

Customer means the customer identified in the Quotation.

Customer Works means works and other matters to be completed by the Customer or its contractors (other

than Superior Jetties) (at the Customer's cost) prior to the Commencement Date, as identified in the Quotation or anywhere else in this Agreement or as notified to the Customer by Superior Jetties.

Deposit means the amount described as such in the Quotation.

Event of Default means:

- (a) if the Customer fails to pay the Price in accordance with this Agreement or fails to pay any other money payable under this Agreement as and when due;
- (b) the Customer breaches a term of this Agreement and fails to remedy that breach within seven (7) days after receiving a written notice from Superior Jetties to do so;
- (c) if the Customer has provided misleading, false or inaccurate statements to Superior Jetties which, in Superior Jetties' opinion, has caused a material effect on its ability to undertake the Works or the Customer's ability to pay the Price; or
- (d) the Customer suffers an Insolvency Event.

Exclusions means the Customer Works and any other works not specifically included within the Works described in the Quotation.

Force Majeure Event means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement (other than a payment obligation), and includes without limitation an act of God or a disaster (whether natural or man-made) including fire, flood, lightning or earthquake; riot, civil commotion, act of public enemies, national emergency (whether in fact or in Law) or government declaration or direction; epidemic, pandemic (including the Covid-19 Pandemic) or quarantine restriction; supply shortage or strike, lock out, stoppage, labour dispute or shortage including industrial disputes involving Superior Jetties' suppliers.

Goods means the goods to be supplied and installed by Superior Jetties to the Customer in connection with the Works as described on the Quotation.

Government Authority includes a government or government department or other body (including the local council), judicial person or a person who is charged with the administration of a Law.

GST Act means *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

Guarantee means the deed of guarantee and indemnity set out in Annexure A.

Guarantor means the party identified in the Quotation.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, layouts, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Inspection means a visual inspection of the Site which may be carried out by Superior Jetties (at Superior Jetties' discretion) prior to the commencement of the Works but excludes:

- (a) geotechnical investigations, inspections or testing; and
- (b) visual or physical inspection of underwater or obstructed areas of the Site (including but not limited to engaging divers).

Insolvency Event means the occurrence of any one or more of the following events in relation to any party:

- (a) if the party is an individual, the party is a bankrupt, or has signed an authority under section 188 of the Bankruptcy Act 1966 (Cth);
- (b) an application (other than one that is dismissed within ten (10) business days) is made to a court for an order appointing a liquidator, provisional liquidator, receiver or other administrator in respect of the party or one of them is appointed whether or not under an order or to wind up the company;
- (c) the party resolves to appoint an administrator to itself, wind itself up, or otherwise dissolve itself, or gives Notice of an intention to do so, or is otherwise wound up or dissolved;
- (d) the party is or states that it is, unable to pay its debts as and when they fall due, resolves to appoint a liquidator or resolves to wind up the company.

Latent Conditions means any physical condition of, underlying to or adjacent to the Site that could not reasonably be identified during the Inspection or from information provided by the Customer to Superior Jetties prior to the Quotation being prepared and may include (but is not limited to);

- (a) unanticipated shore or ground conditions (including but not limited to bank erosion, siltation and sand build up or soil instability) or environmental or contamination issues that may impact the provision of the Works or the ability of the Superior Jetties to procure the Approvals;
- (b) the existence of substantial rocks or rock formations that may impact piling and require divers to investigate;
- (c) the existence of submerged hazards;
- (d) any obstruction, condition or other matter that prevents, hinders or delays access to the Site or the commencement of the Works (including but

not limited to any obstruction (for example, a vessel) which will require removal to enable the Works to be carried out.

Law includes any law, whether statute or common law (including the laws of negligence and nuisance and principles of equity), ordinance, regulation, by-law, order or other determination of any government authority or statutory authority and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.

Liability means any liability, loss, damage, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Material Affect means a change in circumstances which in the professional judgment of Superior Jetties requires an increase in the Price over and above the Price.

Payment Terms means the amounts and timing of payment of the Price as set out in the Quotation

Personnel means the Supplier's employees, agents, consultants, subcontractors, invitees and their respective employees, agents, consultants, contractors and invitees.

PMSI means a purchase money security interest as defined under the PPSA.

PPSA means the *Personal Property and Securities Act 2019* (Cth).

Price means the amount stipulated in the Quotation.

Progress Instalment means each payment instalment of the Price as required pursuant to the Payment Terms.

Services means the services supplied by Superior Jetties to the Customer as identified as 'Nature of the Works' in the Quotation.

Site means the address identified on the Quotation as the 'Site Address'.

Sunset Date means the date that is six (6) months after the Commencement Date.

Superior Jetties means Atlas Marine International Pty Ltd ACN 100 384 254 trading as Superior Jetties.

Tax Invoice has the meaning given to the term 'tax invoice' in the GST Act.

Term means the period from the Commencement Date until Completion.

Quotation means the quotation for the Works provided by Superior Jetties to the Customer and annexed to these terms and conditions.

Works means the nature of the works identified in the Quotation

2. AGREEMENT

2.1 This Agreement is between Superior Jetties and the Customer.

- 2.2 On acceptance of the Quotation pursuant to clause 3.3 below, the Customer agrees to be bound by the terms of this Agreement.

3. ORDERS AND ACCEPTANCE

- 3.1 Despite anything to the contrary in this Agreement, Superior Jetties may withdraw the Quotation at any time during the Acceptance Period.
- 3.2 Unless previously withdrawn by Superior Jetties in writing to the Customer, the Quotation remains open for acceptance by the Customer during the Acceptance Period.
- 3.3 To accept the Quotation, the Customer must sign this Agreement and return the signed Agreement to Superior Jetties.
- 3.4 If the Quotation is:
- (a) withdrawn by Superior Jetties during the Acceptance Period; or
 - (b) otherwise not accepted by the Customer prior to 5.00pm on the expiration of the Acceptance Period in accordance with clause 3.3 above,
- the Quotation will lapse and will no longer be binding on Superior Jetties.
- 3.5 Once the Customer has accepted the Quotation in accordance with clause 3.3 above, the Customer may not cancel or seek to vary the Works or other conditions contained in the Quotation or this Agreement:
- (a) other than in accordance with clause 16 of this Agreement; and
 - (b) without limiting clause 3.5(a) above, unless the Customer pays Superior Jetties' reasonable costs of and incidental to the cancellation or variation.

4. COOLING OFF PERIOD

If the Customer is an Approached Customer, the Customer may cancel the Agreement within ten (10) business days from and including the day after acceptance. If the Customer cancels the Agreement during the Cooling Off Period, Superior Jetties will refund in full all amounts paid by the Customer up to and including the date of cancellation.

5. CUSTOMER OBLIGATIONS

5.1 General obligations

The Customer must:

- (a) pay the Price in accordance with this Agreement;
- (b) undertake any Customer Works no later than five (5) business days prior to the Commencement Date;
- (c) provide Superior Jetties with:

- (i) free and unencumbered access to the Site (and land or other areas adjacent to the Site) sufficient (in the reasonable opinion of Superior Jetties) to enable Superior Jetties to carry out an Inspection and carry out the Works; and
- (ii) (at their cost) do all acts and provide all information reasonably necessary to enable the Supplier to undertake the Works in accordance with this Agreement.

5.2 Site access

If the Customer or its employees, agent or invitees (as applicable) do not comply with one or more of the conditions in clause 5.1 above then without limiting Superior Jetties' other rights under this Agreement or at Law:

- (a) Superior Jetties may suspend performance of the Works until the default is remedied; and
- (b) all additional expenses suffered or incurred by Superior Jetties are payable by the Customer on demand, in addition to the Price.

5.3 Trade-in

- (a) The Customer consents to Superior Jetty trading in the existing pontoon at the Site ('**Trade-in Pontoon**').
- (b) The Customer represents, warrants and guarantees that:
 - (i) it is the absolute beneficial owner of Trade-in Pontoon;
 - (ii) the Trade-in Pontoon is not encumbered in any way, and there is no security interest registered against it, and there are no charges or liens whatsoever against the Trade-In Pontoon which may affect the ability to transfer good title in the Trade-In Pontoon to a third party,
- (c) The Customer indemnifies Superior Jetty for any Claim suffered or incurred by Superior Jetty as a result of or in connection with a breach of the warranty in clause 5.3(a) above.

6. CUSTOMER WORKS

- 6.1 The Customer must undertake the Customer Works (at their cost) in accordance with clause 5.1(b) of this Agreement.
- 6.2 The Customer is solely responsible for all risks and costs relating to, arising from or in connection with the Customer Works.
- 6.3 Superior Jetties makes no warranty in respect of the condition or suitability of the Customer Works and is not liable in respect of or in connection with the Customer Works.

- 6.4 The Customer indemnifies Superior Jetties from all Claims and Liability suffered or incurred arising from or in connection with the Customer Works (including but not limited to their suitability, condition, effectiveness and safety).

7. PRICE

7.1 Payment

- (a) The Customer must pay the Price to Superior Jetties, without setoff, in accordance with the Payment Terms, in exchange for a valid Tax Invoice(s) from Superior Jetties.
- (b) The Price may be increased to include additional amounts payable for variations agreed pursuant to clause 16 (if any).

7.2 Deposit

On acceptance in accordance with clause 3.3 above, the Customer must pay the Deposit to Superior Jetties in accordance with this Agreement.

7.3 Payment Method

- (a) Any payment referred to in this Agreement must be paid by EFT, cash or cheque. If paid by cheque, the payment shall only be deemed received when cleared funds are received by Superior Jetties.
- (b) An additional fee of:
 - (i) 1.15% will be applied to any amount where the Customer makes payment by visa card; or
 - (ii) 1.15% will be applied to any amount where the Customer makes payment via American Express (AMEX).

7.4 Overdue amounts

- (a) Without limiting any of Superior Jetties' other rights under this Agreement or at Law, if the Customer fails to pay Superior Jetties pursuant to the Payment Terms, Superior Jetties may charge interest on the overdue amounts at the Reserve Bank of Australia's bank bill rate plus 8% per month, calculated daily.
- (b) All interest on overdue amounts shall be calculated from the date the payment was due and owing until the date payment is received by Superior Jetties.

7.5 Deferral of performance

If the Customer does not pay a Progress Instalment as and when it is due in accordance with the Payment Terms, then without limiting any other remedies available to Superior Jetties, Superior Jetties may suspend performance of the Works until the outstanding Progress Instalment is paid.

8. WARRANTIES

8.1 Second Hand Goods

- (a) For Goods not manufactured by the Superior Jetties, any warranty provided shall be the current warranty provided by the manufacturer of the Goods. To the extent permitted by Law, Superior Jetties will not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods or as required by Law.
- (b) In the case of second hand Goods (including goods supplied by the Customer), the Customer acknowledges that it has had full opportunity to inspect the Goods and that they accept the Goods with all faults and that no warranty is given by Superior Jetties as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Superior Jetties will not be responsible for any loss to the Goods or Claim caused or arising in connection with the Goods.

8.2 Customer Warranties

The Customer warrants that:

- (a) All information and other material provided by, or on behalf of, the Customer to Superior Jetties is true, correct and accurate and is not misleading or deceptive in any way or likely to mislead or deceive (whether by omission or otherwise).
- (b) The Customer has not withheld from Superior Jetties any document, information or other fact which is or may impact Superior Jetties' ability to undertake the Works.
- (c) The use by Superior Jetties of the information and materials supplied by or on behalf of the Customer will not infringe any Intellectual Property Rights of any third party.
- (d) The Customer has not relied on any representation or inducement to enter into this Agreement.
- (e) The Customer is the registered owner of the Site and has full power and authority to commission the Works.

8.3 Acknowledgment

Superior Jetties is relying on the representations and warranties of the Customer under clause 8.2 in entering into this Agreement.

8.4 Defects

- (a) Where the Customer is a consumer within the meaning of the Australian Consumer Law, the Goods and Works come with guarantees that cannot be excluded under the Australian Consumer Law.
- (b) Under the Australian Consumer Law:
 - (i) For a major failure with the Goods or Works, the Customer may be entitled to a replacement or refund and for compensation for any other reasonably foreseeable Liability or damage.
 - (ii) For a failure with the Goods or Works that does not amount to a major failure, the Customer may be entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality.
- (c) The Customer must inspect the Goods on delivery and must within five (5) business days of delivery (time being of the essence) notify Superior Jetties of any alleged defect, shortage in quantity, damage or failure to comply with the description or Quotation (**'Defect Notice'**). Superior Jetties may inspect the Goods within five (5) business days after Superior Jetties receives the Defect Notice and the Customer must provide Superior Jetties with access to the Site and the Works and Goods to enable Superior Jetties to do so.
- (d) To the extent permitted by Law, Superior Jetties is not liable for any Claim, damage or failure in respect of the Works and/or Goods to the extent such Claim, damage or failure is due to:
 - (i) fair wear and tear;
 - (ii) the reckless or negligent act or omission of the Customer;
 - (iii) improper or unauthorised installation, maintenance and service compliance, use, repairs or adjustments to the Site by any person other than Superior Jetties or the Personnel;
 - (iv) failure of the Customer to maintain regular service and maintenance of the Goods as specified in the maintenance schedule or (where service or maintenance requirements are not so specified) such servicing and maintenance as is reasonably required;
 - (v) as a result of a breach by the Customer of any of the warranties in clause 8.2.

9. APPROVALS

- 9.1 The obligation of Superior Jetties to manufacture and install the Goods and undertake the Works is subject to all necessary Approvals being granted.
- 9.2 Superior Jetties is under no obligation to commence the Works or install the Goods until the Approvals have been granted.
- 9.3 Without limiting clause 9.2 above, if:
 - (a) the Customer requests Superior Jetties to commence the Works or install the Goods before all necessary Approvals are granted; and
 - (b) Superior Jetties agrees (in its sole discretion) to that request,then the Customer:
 - (c) releases Superior Jetties from all Claims arising from or in connection with the Goods being installed and the Works being undertaken notwithstanding the Approvals have not been granted;
 - (d) releases Superior Jetties from all Liability suffered by the Customer or any third party as a result of, arising from or in connection with the lack of the Approvals); and
 - (e) indemnifies, and will keep indemnified, Superior Jetties from all Claims suffered or incurred by Superior Jetties as a result of, arising from or in connection with the Goods or the Works in the absence of the Approvals.
- 9.4 The costs associated with the Approvals (including but not limited to all costs to prepare the applications and supporting documents, plans and drawings, application, lodgement and approval fees and associated costs) are payable by the Customer in addition to the Price.
- 9.5 Subject to clauses 9.9, 9.10 and 9.11 below, where Superior Jetties elects to do so (in its discretion) by notice to the Customer Superior Jetties will coordinate and manage the process for obtaining all necessary Approvals at the Customer's cost limited to:
 - (a) preparing the application(s) for the Approvals; and
 - (b) preparing drawings and plans;
 - (c) lodging the application(s) for the Approvals with the relevant Government Authorities; and
 - (d) reasonably pursue the applications with the Government Authorities.
- 9.6 If it becomes necessary during the course of undertaking the Works for Superior Jetties to make any application for any additional Approval in order to lawfully install the Goods and undertake the Works, the Customer authorises Superior Jetties to make such application at the

Customer's cost. All application fees and related costs incurred by Superior Jetties will be payable by the Customer in addition to the Price.

9.7 If the required Approvals are refused, or if in the reasonable opinion of Superior Jetties are unlikely to be approved within a reasonable time, Superior Jetties may terminate this Agreement by notice to the Customer, in which event:

- (a) Superior Jetties will refund to the Customer, the Deposit less:
 - (i) all application fees paid by Superior Jetties on the Customer's behalf; and
 - (ii) all professional and administrative costs reasonably incurred in connection with preparing and pursuing the applications (including but not limited to preparing plans and documentation to support applications and making submissions to Government Authorities.
- (b) If the amount of such application fees and associated costs incurred by Superior Jetties exceeds the amount of the Deposit, the Customer must pay any shortfall to Superior Jetties within five (5) business days of demand by Superior Jetties.

9.8 Despite clause 9.1 above:

- (a) whether an application for an Approval is or is not obtained from a Government Authority is ultimately at the risk of Customer; and
- (b) any refusal of an application for Approval by a Government Authority, or where the Approval is not on terms satisfactory to the Customer, is not a breach of Superior Jetties in the delivery of the Works.

9.9 If the Customer elects to procure the necessary Approvals themselves it must notify Superior Jetties of this election on or before the Commencement Date.

9.10 If:

- (a) Superior Jetties is unwilling or unable to coordinate and manage the process for obtaining the Approvals; or
- (b) the Customer elects to procure the Approvals themselves pursuant to clause 9.9 above,

the Customer must (at its cost) do all things necessary to promptly apply for, make, prosecute and procure the Approvals as soon as reasonably practicable after the Commencement Date.

9.11 Where clause 9.5 applies, the Customer must:

- (a) do all necessary acts and make and execute any necessary consents, documents, plans and paper writings to

enable Superior Jetties to make and prosecute all applications for the Approvals;

(b) conduct negotiations with the Government Authorities when requested by Superior Jetties; and

(c) permit the erection on the Site of any notice or sign required in connection with the application(s) for the Approvals.

9.12 The Customer releases and indemnifies Superior Jetties against all Claims which may be taken or made against Superior Jetties in the course of or arising out of the performance or exercise of the powers and authorities of Superior Jetties pursuant to this clause 9.

10. COMPLETION

10.1 Estimated Completion Date

- (a) Where Superior Jetties provide the Customer with an estimated date of completion for the Works ('**Estimated Completion Date**'), that Estimated Completion Date is given as an approximate indication only.
- (b) Superior Jetties is not liable to the Customer for any Claim arising either directly or indirectly from any delay or failure to complete the Works by the Estimated Completion Date.

10.2 Consequences of delays

- (a) Without limiting clause 19.1 of this Agreement, Superior Jetties will not be liable if provision of the Works is prevented or delayed due to any act, omission or default of the Customer or any party under or through the Customer (including but not limited to a failure to provide access to the Site or to pay the Price pursuant to the terms of this Agreement).
- (b) The Customer is responsible for and must pay on demand all expenses, costs, charges and other money incurred by Superior Jetties associated with any delay in provision of the Works due to one or more of the matters described in clause 10.2(a) above.

11. INSURANCE

During the Term, the Customer must keep and maintain adequate insurance to cover any loss or damage to the Site from any cause.

12. TITLE AND RISK

12.1 The Site and any property on or in the Site (including the Goods) remain entirely at the Customer's risk.

12.2 The Goods remain the property of Superior Jetties, and ownership in the Goods only passes to the Customer once the Price is paid in full.

12.3 Until ownership of the Goods passes to the Customer in accordance with clause 12.2 above, the Customer must:

- (a) keep and maintain the Goods in the Customer's possession and in good working condition;
- (b) not assign, sell, transfer, change, pledge, encumber or deal with the Goods;

12.4 Without limiting any other right Superior Jetties may have, if the Customer does not pay the Price in accordance with this Agreement, Superior Jetties or any agent of Superior Jetties may (as the Customer's invitee) enter onto the Site (or any land or premises where the Goods are situated) and retake possession of the Goods (at the Customer's cost).

12.5 The Customer releases and indemnifies Superior Jetties in relation to all Claims or Liability suffered or incurred arising from or in connection with Superior Jetties exercising its rights under this clause 12.

13. LIMITATION OF LIABILITY

13.1 Exclusions

- (a) The Customer acknowledges and accepts that the Exclusions do not form part of the Works or this Agreement.
- (b) Superior Jetties is not liable to the Customer for the Exclusions.
- (c) The Customer indemnifies, and will keep indemnified, Superior Jetties from any Claims suffered or incurred arising from or in connection with the Exclusions.

13.2 Liability limited to Price or re-performance

- (a) To the extent permitted by Law, any Liability of Superior Jetties for any Claim however caused (including but not limited to by the negligent or reckless act or omission of Superior Jetties, the Personnel), suffered by the Customer in connection with this Agreement or the Works is limited to (at Superior Jetties' discretion):
 - (i) re-performance or correction of the Works; or
 - (ii) that part of the Price already paid by the Customer to Superior Jetties.
- (b) The limitations set out in the above clause 13.2(a) is an aggregate limit for all Claims, whenever made.

13.3 Consequential loss

To the extent permitted by Law, Superior Jetties is not liable for any Consequential Loss however caused (including by the reckless or negligent act or omission of Superior Jetties, the Personnel), suffered or incurred by the Customer in connection with this Agreement.

13.4 Seriousness or nature

For clarity, and without limiting clauses 13.2 or 13.3 above, the parties agree that clauses 13.2 or 13.3 apply in connection with a breach of this Agreement, anticipated breach of this Agreement and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

13.5 Application to indemnities

The limitations and exclusions of liability in this clause 13 apply to any Liability of Superior Jetties under any indemnity given by Superior Jetties pursuant to this Agreement.

14. SECURITY

14.1 Definitions

Words and phrases used in this clause that have defined meanings in the PPSA have the corresponding meaning given to them in the PPSA.

14.2 Security for performance

- (a) The Customer charges all of their property (including your real property) with their obligations, and all warranties and indemnities given by the Customer, under this Agreement.
- (b) The Customer consents to Superior Jetties registering:
 - (i) a PMSI over the Goods;
 - (ii) a Security Interest over all of the Customer's present and after acquired property; and/or
- (c) a caveat over any of the Customer's real property,

to secure the performance of the Customer's obligations (including payment of the Price and compliance with the warranties and indemnities given by the Customer) under this Agreement.

14.3 Discharge

- (a) Superior Jetties agrees to discharge and release any caveat, Security Interest and/or PMSI and cause for it to be removed from the PPSR or title to the land (as the case may be) upon the Customer discharging all of the Customer's obligations under this Agreement.
- (b) The Customer agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Superior Jetties asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;

- (ii) enabling Superior Jetties to apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest; and
- (iii) enabling Superior Jetties to exercise rights in connection with the Security Interest.

14.4 Statements under the PPSA

Superior Jetties is not required to give any notice, and the Customer waives their right to receive any notice, under the PPSA (including notice of a verification statement or financing change statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

15. FORCE MAJEURE

15.1 Neither party will be in breach of this Agreement or liable for any failure or delay in the performance of its obligations under this Agreement (other than a payment obligation) to the extent that the failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the other party.

15.2 If this Agreement is no longer capable of being performed within a reasonable time after the Commencement Date due to a Force Majeure event or otherwise:

- (a) Superior Jetties may terminate this Agreement by written notice to the Customer and this Agreement will be at an end;
- (b) the Customer must immediately discharge all of their financial obligations under this Agreement up to the date of termination;
- (c) Superior Jetties is entitled to remove all its property from the Site; and
- (d) subject to clause 15.2(b) above neither party will have any further Claim against the other except in relation to prior breaches of this Agreement.

16. VARIATIONS AND ADDITIONAL COSTS

16.1 No obligation to vary

In no circumstances is Superior Jetties obliged to depart from the Works except as provided for under the terms of this Agreement.

16.2 Variation procedure

- (a) Without limiting clause 3.5 of this Agreement, if the Customer requests and Superior Jetties agrees (or Superior Jetties requires and the Customer agrees) to facilitate a departure from the Work the following procedure will apply:
 - (i) Superior Jetties will price the cost of the variation ('**Variation Price**'); and

- (ii) Superior Jetties will provide the Variation Price to the Customer for the Customer's consideration prior to commencing any work with respect to the variation requested;

- (iii) the Customer must, within two (2) business days of receipt of the Variation Price notify Superior Jetties in writing as to whether the Customer will proceed with the variation; and

- (iv) If the Customer does not accept Variation Price as required by the above clause 16.2(a)(iii), Superior Jetties is under no obligation to undertake the variation and the Customer releases Superior Jetties from all Claims or Liability in this regard.

16.3 Fee adjustments for variations

If the Customer notifies Superior Jetties of its Acceptance of the Variation Price, the scope and specification of Works will be varied accordingly and the Price will be adjusted as follows:

- (a) an increase to the Price as a result of an Acceptance of Variation Price where the work has commenced and for which payment has not previously been made; and
- (b) a decrease in the relevant progress payment in respect of a variation which reduces the Price.

16.4 Latent Conditions treated as variations

- (a) If Superior Jetties encounter unforeseen events or Latent Conditions during the course of undertaking the Works which may have a Material Affect on the work required, Superior Jetties will provide the Customer:

- (i) with full particulars of the unforeseen event and/or Latent Conditions along with details of the additional work required ('**Additional Works**'); and
- (ii) written details of the additional costs and expenses associated with the Additional Works ('**Deemed Price Variation**'); and

- (b) The Customer must, within two (2) business days of receipt of the notices contemplated in clause 16.4(a) above notify Superior Jetties in writing as to whether the Customer will proceed with the Additional Works and pay the Deemed Price Variation.

- (c) If the Customer agrees to proceed with the Additional Works and pay the Deemed Price Variation or does not give notice to

Superior Jetties within the time stipulated by clause 16.4(b) above:

- (i) the Works are deemed to be varied in accordance with the Additional Works notice and the Price varied pursuant to the Deemed Price Variation;
- (ii) the Customer must pay the Deemed Price Variation to Superior Jetties in addition to the Price, on demand or otherwise in accordance with this Agreement.

16.5 Changes to the cost of materials

If the cost of the raw materials ('Materials') required to complete the Works increase as a direct consequence of changes in economic or market conditions outside the control of Superior Jetties, Superior Jetties may pass that additional cost on to the Customer (in addition to the Purchase Price) and the Customer must pay those additional costs, provided Superior Jetties first provides the Customer with:

- (a) an itemised list of the additional costs;
- (b) reasonable evidence that Superior Jetties has necessarily and unavoidably suffered increased costs of the Materials greater than that which it allowed for in the Purchase Price.

16.6 Additional costs borne by the Customer

The Customer must pay (without limitation) to Superior Jetties in addition to the Price, on demand or otherwise in accordance with this Agreement:

- (a) the amount of any GST payable by the Customer in exchange for a valid Tax Invoice;
- (b) taxes (other than income tax and GST), stamp duty or other statutory charges or levies whether State or Federal payable in relation to the supply of the Works;
- (c) legal cost and disbursements on an indemnity basis incurred by Superior Jetties in relation to a breach of this Agreement by the Customer;
- (d) all costs, charges, expenses or any other outgoings incurred by Superior Jetties with respect to any variation by the Customer or the Additional Works;
- (e) any other costs, fees, charges or expenses described as being payable by the Customer in certain circumstances.

17. DISPUTE RESOLUTION

17.1 Informal dispute resolution

- (a) If the parties to this Agreement are unable to agree on a matter of fundamental importance ('Dispute') the parties must

meet and use their reasonable endeavours to resolve the Dispute in good faith ten (10) business days of the Dispute initially arising.

- (b) If the Dispute is not resolved pursuant to clause 17.1(a) above, either party may give notice to the other of their intention to refer the Dispute to mediation.

17.2 Referring Dispute to mediation

- (a) Where a party gives notice of its intention to refer a Dispute to mediation, the other party must within ten (10) business days of the referral, prepare and provide to the other party a notice setting out its position in relation to the Dispute and its reasons for adopting such a position.
- (b) If the parties do not agree within five (5) business days of receipt of that notice as to:
 - (i) the dispute resolution technique and procedures to be adopted;
 - (ii) the timetable for all steps in those procedures; and
 - (iii) the selection and compensation of the independent person required for such technique,

then the parties must mediate the Dispute in accordance with the mediation rules of the Australian Commercial Disputes Centre in Sydney, with the mediator to be selected and the mediation organised by the Australian Commercial Disputes Centre or a similar organisation agreed to by all parties.

17.3 Costs

The parties must bear their own costs of dealing with any Dispute and the costs of any expert or mediator will be borne equally by the parties in Dispute.

18. GST

18.1 Interpretation

Any words capitalised in this clause 18 and not already defined in this Agreement have the meaning given to those words in the GST Act.

18.2 Taxable supply

- (a) If a Supply made under this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
 - (i) Superior Jetties may recover from the Customer an amount equal to the GST payable on the supply ('GST Amount'); and
 - (ii) the Customer must pay the GST Amount to Superior Jetties on the date the relevant portion of Fee is

due or in exchange for a valid Tax Invoice.

- (b) For clarity, the GST payable under clause is correspondingly increased or decreased by any subsequent adjustment to the amount of GST owed in respect of the Supply.

18.3 Progressive or Periodic Supply

Where a Supply made under or in connection with this Agreement is a Progressive or Periodic Supply, clause 18.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

19. TERMINATION

19.1 Superior Jetties termination

- (a) Upon the occurrence of an Event of Default, Superior Jetties' may give written notice to the Customer requesting that the relevant Event of Default be remedied by the Customer within seven (7) days after receipt of the notice.
- (b) Superior Jetties may:
 - (i) if the Event of Default has not been remedied within the timeframe stipulated in the notice contemplated by clause 19.1(a);
 - (ii) where the Event of Default is not capable of remedy; or
 - (iii) as otherwise provided for under this Agreement,terminate this Agreement by written notice to the Customer.
- (c) Should Superior Jetties terminate this Agreement, termination is taken to occur on the date specified in the written notice of termination or if no date is specified immediately on giving the notice to the Customer.

19.2 Customer termination

The Customer may terminate this Agreement by one months' written notice to Superior Jetties if Superior Jetties:

- (a) commits a material breach of a fundamental term of this Agreement that has a material and adverse affect on the Customer; and
- (b) fails to remedy that breach within thirty (30) days of receiving written notice from the Customer requiring Superior Jetties to do so,

in which case this Agreement terminates immediately on giving the notice of termination.

19.3 Termination if Approvals are not obtained

- (a) If the Approvals necessary to complete the Works are refused by the relevant Government Authority or not obtained by the Sunset Date either party may terminate this Agreement by written notice to the other.
- (b) Superior Jetties may terminate this Agreement by written notice at any time before the date that is six (6) weeks after the Commencement Date, if Superior Jetties reasonably believes that the Approvals necessary to complete the Works will not be obtained.

19.4 Payments upon termination

If this Agreement be terminated prior to Completion and without limiting Superior Jetties' other remedies at Law, the Customer agrees to pay Superior Jetties a pro rata amount of the Price reflective of the Work completed by Superior Jetties up to and including the time of termination.

19.5 Effect of termination

On termination of this Agreement accrued rights or remedies of a party are not affected.

19.6 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

20. PERSONAL GUARANTEE

- 20.1 Where the Customer is a corporation (other than a corporation listed on the Australian Stock Exchange), the Customer must cause all of its directors to sign the Guarantee at the same time the Customer signs this Agreement.
- 20.2 Superior Jetties may terminate this Agreement by giving written notice to the Customer if the Customer fails to comply with clause 20.1 above.

21. GOVERNING LAW

This Agreement is governed by the laws of Queensland.

ANNEXURE A

DEED OF GUARANTEE AND INDEMNITY

1. DEFINITIONS

- 1.1 In this Deed, the following words have the following meanings:

Customer means [Insert].

Agreement means the works and services agreement dated on or about the date of this Deed between the Customer and the Supplier of which this Deed forms **Annexure A**.

Guarantor means the following individuals, jointly and severally:

- (a) Name [Director 1]:

Address:

- (b) Name [Director 2]:

Address:

- (c) Name [Director 3]:

Address:

- (d) Name [Director 4]:

Address:

Supplier means Atlas Marine International Pty Ltd ACN 100 384 254 trading as Superior Jetties.

- 1.2 Words and phrases defined in the Agreement have the same meaning when used in this Deed, unless the contrary intention appears.

2. CONSIDERATION

The Guarantor has requested the Customer enter into the Agreement with the Supplier and the Supplier does so in consideration of the Guarantor giving this guarantee and indemnity by signing this Deed.

3. GUARANTEE

The Guarantor guarantees to the Supplier the prompt performance of all of the obligations of the Customer contained or implied in the Agreement. If the obligation is to pay money, the Supplier may recover the money from the Guarantor as a liquidated debt.

4. INDEMNITY

In addition to the Guarantor's liability under clause 3 of this Deed, the Guarantor indemnifies the Supplier against all Claims or Liability suffered or incurred because the Customer is not bound by some or all of its obligations under the Agreement.

5. CONTINUING GUARANTEE

The Guarantee is a continuing guarantee and indemnity and is irrevocable and remains in full force and effect until the obligations of the Customer and/or

Guarantor under this Agreement have been fully satisfied.

6. NO WAIVER

The Guarantee will not be considered as wholly or partially discharged by:

- (a) the payment at any time of any money on account or by any time credit or any indulgence or concession extended by the Supplier to the Customer, the Guarantor or any other person;
- (b) by any compounding compromise, release, abandonment, waiver, variation, relinquishment, renewal of any rights by the Supplier against the Guarantor or any other person;
- (c) the neglect or omission of the Supplier to enforce its rights;
- (d) by any other dealing, matter or thing which but for this clause 6 could or might operate or abrogate prejudice or affect this Guarantee; or
- (e) by any alteration, modification, variation or addition to this Agreement.

7. NO PREJUDICE TO RIGHTS AND SECURITIES

- 7.1 This Guarantee is in addition to and not in substitution for any other rights which may exist under or by virtue of this Agreement and may be enforced against the Guarantor without first having recourse to any such rights and without taking any steps or proceedings against the Guarantor.

- 7.2 This Guarantee shall not prejudicially affect or be prejudicially affected by any security or Guarantee held at any time by the Supplier for any money for the time being owing pursuant to this Agreement, but such security shall be deemed to be collateral and the Guarantor shall not as against the Supplier in any way claim the benefit or seek the transfer of any security wholly or partially.

8. RIGHT OF SUBROGATION

The Supplier and the Guarantor acknowledge and agree that if the Guarantor rectifies any default or makes good any Liability suffered by the Supplier by reason of any breach of, or failure by the Customer to perform any covenant, term or condition of this Agreement, the Guarantor shall, if the Guarantor so desires and on written notice to the Supplier be subrogated to the rights of the Customer to the exclusion of the Customer.

9. JOINT AND SEVERAL LIABILITY

Where there is more than one Guarantor then the obligations of those so named are joint and several.

10. PAYMENT LATER AVOIDED

The Guarantor's liability is not discharged by a payment to the Supplier which is later avoided by

Law. If that happens, the Supplier, the Customer and the Guarantor will be restored to their respective rights and obligations as if the payment had not been made.

11. INDEMNITY ON DISCLAIMER

If a liquidator or trustee in bankruptcy disclaims the Agreement, the Guarantor indemnifies the Supplier against any resulting Liability.

12. SECURITY FOR PERFORMANCE

12.1 The Guarantor charges its interest in all of its property (including its real property) with the Guarantor's obligations and indemnities given by it, under this Deed.

12.2 For the purposes of the PPSA, this Deed constitutes a security agreement under which the Guarantor grants a Security Interest in all of the Guarantor's present and after-acquired property to the Supplier to secure the performance of the Guarantor's obligations under this Deed.

EXECUTED as a Deed

**SIGNED SEALED AND DELIVERED by [INSERT]
as Guarantor in the presence of:**

_____ (Signature)

_____ (Witness Signature)

_____ (Witness Name)

**SIGNED SEALED AND DELIVERED by [INSERT]
as Guarantor in the presence of:**

_____ (Signature)

_____ (Witness Signature)

_____ (Witness Name)