



## Terms and Conditions:

### 1. Definitions

- 1.1. The JAAC Family Trust T/As BLACKPOND MARINE CONSULTANTS ABN 12 208 646 882 hereinafter referred to as "**BlackPond**".
- 1.2. The person, firm or company with whom BlackPond shall enter into a contract shall hereinafter be referred to as "**the Client**".
- 1.3. "**Offer**" shall mean the estimate, quotation or tender provided to the Client by BlackPond together with these terms and conditions of contract.
- 1.4. "**Price**" means the price to be paid by the Client for the Services.
- 1.5. "**Services**" means the services, goods and materials described and referred to in the Offer annexed to these terms and conditions, which have been provided by BlackPond to the Client.

### 2. General

- 2.1. If the Client shall verbally place an Order, a contract shall be deemed to have been made immediately upon acceptance by BlackPond and shall only be subject to alterations in strict accordance with the terms and conditions contained herein.
- 2.2. BlackPond may, in its sole discretion, choose to act on a verbal acceptance of the Offer by the Client.
- 2.3. These terms and conditions shall form part of and shall govern any contract entered into between BlackPond and the Client, unless they shall have been specifically modified or rescinded by BlackPond in writing prior to BlackPond's acceptance of the Order.
- 2.4. In the event that there is any conflict between these terms and conditions and the Offer, then these terms and conditions shall prevail to the extent of any inconsistency.
- 2.5. The Client may place an order ("**Order**") with BlackPond in accordance with the Offer. On acceptance of the Order by BlackPond, the parties shall be contractually bound and these terms and conditions shall be incorporated into, shall take precedence over any terms and conditions on which the purchaser may trade and will form part of the contract between the parties. If the Client decides not to proceed with the Offer at that stage, charges may still apply for the inspection and any associated third-party costs
- 2.6. Unless otherwise specified in writing, an Offer is to remain open for 30 days from the date of delivery.
- 2.7. Prior to receipt of an Order, BlackPond reserves the right to make any changes to the Offer as it considers necessary.

### 3. Exclusions

- 3.1. No dealing between BlackPond and the Client shall be or be deemed to be a sale by sample.
- 3.2. Subject to terms implied by law and not capable of exclusion, BlackPond does not warrant the fitness for the Client's purpose of any Services.
- 3.3. The Client will rely on its own knowledge and expertise in selecting any Services and as to the suitability and fitness for any required purpose of any Services.
- 3.4. The Client acknowledges that BlackPond has not made any warranty, guarantee or representation in relation to the Services on which the Client has relied (including as to the fitness of the Services or any part of the Services for a particular purpose), apart from those which it has expressly received in writing from BlackPond.
- 3.5. Unless otherwise required by law, any warranty provided by BlackPond will be for a period of 12 months in relation to any Services and both BlackPond and the Client agree that a period of 12 months from the date of supply is a

reasonable warranty period.

#### **4. Drawings**

- 4.1. The descriptions, illustrations and statements as to performance of the Services contained in catalogues, price lists and other advertising matter do not form part of the contract.
- 4.2. Any working drawings, specifications and samples which are produced by BlackPond are merely representative of the Services, forms dimensions and samples and descriptions of the Services. BlackPond shall be at liberty to make such variations to any working drawings, specifications or samples to complete the Services provided always that such variations shall not render the Services unfit for use.

#### **5. Placement of Orders**

- 5.1. If any dispute arises over an Order, BlackPond's records will be conclusive evidence of what was ordered.
- 5.2. On the placement of each Order, the Client represents to BlackPond that it is solvent and able to pay all of its debts as and when they fall due.
- 5.3. In addition to the Client's obligations on completion of any credit application which BlackPond may require, the Client shall inform BlackPond when an Order is placed, of any material facts that might reasonably affect any decision to accept the Order or grant credit.

#### **6. Instructions & specifications**

- 6.1. The Client undertakes to ensure that full instructions are given to BlackPond and are provided in sufficient time to enable the required services to be performed effectively and efficiently and to procure all necessary access for BlackPond to goods, premises, vessels, installations, and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions. BlackPond shall not be liable for the consequences of late, incomplete, inadequate, inaccurate, or ambiguous instructions.
- 6.2. Accordingly, the Client shall, as soon as an Order has been placed, forthwith provide BlackPond with sufficient details and instructions to enable BlackPond to commence work. Any additional costs or expenses incurred by BlackPond as a result of the Client's delay in this regard may be added to the Price by BlackPond. This Offer is based on the information provided and is subject to potential changes following a thorough inspection of the vessel and the compilation of a comprehensive list of necessary tasks.
- 6.3. Where specifications, drawings or other particulars are supplied by the Client, BlackPond's offer is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Client on which BlackPond has based an Offer, then BlackPond is entitled to revise the Price in accordance with the additional work required to complete the Services
- 6.4. All Services to be supplied by BlackPond to the Client are as described in the Offer and the description in such Offer prevails over all other descriptions including any specification or enquiry of the Client. BlackPond shall use reasonable care and skill in the performance of the Services in accordance with sound industry practice.
- 6.5. BlackPond shall, on request by the Client, submit a final written Report to the Client following completion of the agreed services describing BlackPond's findings and the condition and/or quality of the object and/or purpose of the assignment.
- 6.6. BlackPond undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by operation of law or an order of a competent court of law.
- 6.7. The right of ownership in respect of all original work created by BlackPond remains the property of BlackPond.
- 6.8. BlackPond shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for BlackPond to continue its involvement with the appointment. The Client shall be responsible for payment of BlackPond's fees up to the date of notification.
- 6.9. The Client warrants that all information it gives to BlackPond is complete and correct.

#### **7. Intellectual Property**

- 7.1. The Client acknowledges and agrees that BlackPond is the absolute legal and beneficial owner of all works and materials including the copyright and goodwill attached thereto which have been or will be developed by the Parties as a result of the performance of the obligations set out in this Agreement.
- 7.2. The Client agrees that it will not at any time during the time thereafter do any act, matter or thing calculated to or

which might otherwise have the effect of interfering with, restricting, limiting, or challenging the proprietary rights of BlackPond in and to the intellectual property and BlackPond's property.

7.3. At the expiration of this agreement or upon earlier termination pursuant to the termination clause, the Client shall deliver all IPR in its possession to BlackPond.

## **8. Confidentiality**

8.1. The Client shall ensure that it and its representatives keep confidential and not disclose to any person any confidential information except to the extent that the confidential information has become publicly available or generally known to the public at the time of such disclosure otherwise than as a result of a breach of this agreement, or if such disclosure is expressly permitted by some other provision of this agreement or if the other party has given prior written approval to this disclosure.

## **9. Services Performed**

9.1. All Services to be supplied by BlackPond to the Client are as described in the Offer and the description in such Offer prevails over all other descriptions including any specification or enquiry of the Client.

## **10. Continuity**

10.1. This contract contemplates that the whole of the work required to complete the Services, or each major section thereof, shall be capable of being completed and delivered by BlackPond in one continuous operation. Any additional expense incurred by BlackPond as a result of BlackPond being unable to complete or deliver the whole of the Services or each major section of the Services in one part or delivery may be added to the Price by BlackPond.

## **11. Part Acceptance**

11.1. The Offer is intended for acceptance in its entirety only, notwithstanding that certain parts thereof may have been individually itemised. Should a portion only of the Offer be accepted, that portion may be subject to a revision in Price at the election of BlackPond.

## **12. Payment Terms**

- 12.1. A deposit of 50% shall be paid with your Order, unless otherwise agreed to in writing by BlackPond.
- 12.2. Clients who are charged an hourly agreed rate, will pay the Price in full within seven (7) days of written notification.
- 12.3. Any part of the Price which is not paid by the Client on the due date shall bear interest at the rate of 8% per annum (which may be waived by BlackPond in its discretion).
- 12.4. The balance of the Price will be invoiced upon job completion, with full payment required prior to submission of design plans, reports, AMSA documentation, and/or collection/delivery of manufactured goods.

## **13. Part Invoice**

- 13.1. Where required by BlackPond and identified in the Offer, part invoices (or invoices for any portion of the work or for part only of the Price) may be delivered by BlackPond and payments are then required to be made by the Client within 7 Days of the part invoice being delivered in writing by BlackPond.
- 13.2. Any failure by the Client to comply with the terms of any part invoice shall be construed as a breach of contract on the part of the Client and shall entitle BlackPond to cease all works forthwith until the payment shall have been made.
- 13.3. BlackPond shall not have any liability to the Client whatsoever arising from the cessation of work for failure to pay any part invoice.

## **14. Shortage**

14.1. The Client waives any claim for shortage of any Services delivered, if a claim in respect of short delivery has not been lodged with the Seller within seven (7) days from the date of receipt of the Services by the Client.

## **15. Prices**

- 15.1. Unless otherwise stated the Price stated by BlackPond in the Offer is exclusive of Goods and Services Tax (GST).
- 15.2. Where any Price stated by BlackPond in the Offer includes any external costs (such as freight and insurance), those are provided by BlackPond on the date the Offer is made.
- 15.3. In the event that there is a significant variation in the cost of materials, labour, external costs or other matters, then BlackPond may vary the Price set out in the Offer and the Client shall pay the revised Price.
- 15.4. The Price may be revised by BlackPond at any time prior to performance, supply or despatch of the Services.

## **16. Payment in Full Required**

16.1. The Price and all amounts payable to BlackPond shall be paid in full and without deduction on the part of the Client by way of set-off or counter-claim without the written authority of BlackPond.

## **17. Overdue Accounts**

17.1. The Client agrees to pay all legal costs, stamp duty (where applicable) and other expenses incurred by BlackPond in connection with the recovery of any amounts which are more than 7 days overdue by the Client.

## **18. Working Hours**

18.1. This Offer is made in contemplation that BlackPond shall execute its work during normal working hours from 8am to 4pm in a five (5) day week. BlackPond may, at its sole discretion, elect to accept or decline any Offer which may (as a result of the Offer or BlackPond's other commitments) require it to work outside of normal working hours. Any additional costs resulting from the Client's direction to work extraneous hours in lieu of the normal working hours in order to supply the Services may be added to the Price by BlackPond.

## **19. Sub-Contracting**

19.1. BlackPond shall be at liberty to sub-contract to third parties such parts of the work required to complete the Services as it may, in its absolute discretion think fit, without reference to the Client.

## **20. Release & Indemnity**

20.1. Save as provided in these terms and conditions, the Client hereby releases BlackPond from all liability and indemnifies BlackPond in respect of any claim, action or suit for loss or damage (including consequential loss or damage) by reason of delay, faulty or defective materials or workmanship or any act of negligence or omission by BlackPond its servants or agents.

## **21. Limitation of Liability**

21.1. BlackPond's liability for a breach of this contract, including for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the Australian Consumer Law, is limited to:

21.1.1. In the case of Goods, any one or more of the following:

- 21.1.1.1. the replacement of the Goods or the supply of equivalent Goods;
- 21.1.1.2. the repair of the Goods;
- 21.1.1.3. the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- 21.1.1.4. the payment of the cost of having the Goods repaired; or

21.1.2. In the case of Services:

- 21.1.2.1. the supplying of the Services again; or
- 21.1.2.2. the payment of the cost of having the Services supplied again at BlackPond's sole discretion.

21.2. BlackPond's liability under section 274 of the Australian Consumer Law is expressly limited to a liability to pay to the Client an amount equal to:

- 21.2.1. the cost of replacing the Goods or Services;
- 21.2.2. the cost of obtaining equivalent Goods or Services; or
- 21.2.3. the cost of supplying the Goods or Services again, whichever is the lesser amount.

## **22. General Exclusion of Liability**

22.1. BlackPond is not liable for any prospective profits, or special indirect or consequential damages, or any general loss or damage, or for any expense resulting from use by the Client or others of the property the subject of the Services or defective Goods.

22.2. BlackPond's liability is limited to the amount identified in the preceding paragraph plus replacement delivery charges.

## **23. Warranties**

23.1. These Terms outline how BlackPond warrants our Services and any goods purchased.

23.2. Australian Consumer Law (ACL) protects consumers by giving them certain rights relating to the purchase of goods and services.

23.3. If you are a 'consumer' as the term is defined in the ACL:

- 23.3.1. Our Services and Goods come within guarantees that cannot be excluded under the ACL;
- 23.3.2. You are entitled to a replacement or refund for major failure and for compensation for other reasonably foreseeable

loss or damage arising from the Services performed;

23.3.3. You are entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

## **24. Delivery**

- 24.1. Any delivery times provided by BlackPond to the Client are estimates only and are not of the essence.
- 24.2. BlackPond is not liable for any loss to the Client (or other parties) resulting from late delivery or non-delivery.
- 24.3. BlackPond may at its option deliver the Services to the Client in any number of instalments unless otherwise agreed in writing with the Client.
- 24.4. If BlackPond delivers any of the Services by instalments, and any one of those instalments is defective for any reason:
  - 24.4.1. it is not a repudiation of the contract;
  - 24.4.2. the defective instalment is a severable breach that gives rise only to a claim for compensation.

## **25. Loss or Damage in Transit**

- 25.1. BlackPond is not responsible to the Client or any person claiming through it for any loss or damage to the goods or property the subject of the Services in transit caused by any event, regardless of how caused (whether or not BlackPond is legally responsible for the person who caused or contributed to that loss or damage).
- 25.2. BlackPond will provide the Client with such assistance as may be necessary to make claims on carriers so long as the Client:
  - 25.2.1. has notified BlackPond and the carrier in writing immediately after loss or damage is discovered on receipt of the goods or property the subject of the Services; and
  - 25.2.2. lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the goods or property the subject of the Services.

## **26. Property and Risk**

- 26.1. Property in the Services shall not pass until payment in full of the Price (and all monies owed on any basis) is made by the Client.
- 26.2. Risk in the Services shall pass to the Client on delivery or despatch to the Client, whichever is the first to occur.
- 26.3. All of the Client's property in BlackPond's custody or control will be entirely at the Client's risk as regards to loss or damage thereto from any cause whatsoever.
- 26.4. All property of BlackPond (including in the Services if property has not passed) situated on the Client's premises will be the responsibility of the Client as to loss or damage caused by the Client.

## **27. Title to Goods**

- 27.1. BlackPond reserves the following rights in relation to the Services until the Price is paid in full:
  - 27.1.1. Ownership of the Services;
  - 27.1.2. To, with the full authority of the Client, which is hereby irrevocably given, enter the Client's premises (or the premises of any associated company or agent where the Services, goods or property the subject of the Services are located) if necessary with the assistance of a security agent who is similarly authorised by the Client to enter the Client's premises (including, where necessary, by picking or breaking the Client's locks) without liability for trespass or any resulting damage and retake possession of the Services; and
  - 27.1.3. To keep or resell any Services repossessed pursuant to 23(a)(ii) above.
- 27.2. If the Services are used to make new goods or property, then the new goods will be held in trust for BlackPond until paid for in full by the Client.
- 27.3. If the Services, goods or property the subject of the Services are resold, or further Services and materials performed using the Services and are sold by the Client, the Client shall hold such part of the proceeds of any sale as represents the Price of the Services and materials sold or used in the manufacture of the further Services and materials sold in a separate identifiable account as the beneficial property of BlackPond and shall pay such amount to BlackPond upon request. Notwithstanding any provision above, BlackPond shall be entitled to maintain an action against the Client for the Price.
- 27.4. Notwithstanding any provision above, BlackPond shall be entitled to maintain an action against the Client for payment of the Price.

## **Personal Property Securities**

- 27.5. The parties agree that for the purposes of Personal Properties Securities Act 2009 (PPSA), any agreement for the

supply of Services shall constitute a security agreement to secure payment of the purchase price and all of the Client's outstanding debts and obligations to BlackPond from time to time and this Security Interest shall continue until all your debts and obligations under this agreement are discharged.

- 27.6. BlackPond will have a Purchase Money Security Interest (PMSI) in all Services supplied in accordance with these terms and conditions and BlackPond's Security Interest shall extend to the Proceeds (including any Accounts) and Accessions.
- 27.7. The Client agrees to do all things necessary, including providing all relevant information necessary to register a Financing Statement or a Financing Changes Statement as a Security Interest in the Client's personal property, (and, if applicable, a Purchase Money Security Interest) on the Personal Property Securities Register (PPSR).
- 27.8. The Client will take all steps necessary to better secure any Collateral which secures or is intended to secure the supply of Services pursuant to those terms and conditions immediately and at the Client's own cost.
- 27.9. The Client must pay BlackPond's costs of any discharge or amendment of any Financing Statement or Financing Change Statement.
- 27.10. The Client agrees that BlackPond may take whatever action is appropriate to ensure that BlackPond has first ranking priority in the Collateral and will indemnify BlackPond for any costs.
- 27.11. The Client agrees that where BlackPond has any rights in addition to those conferred by Ch 4 of the PPSA 2009, those rights continue to apply.
- 27.12. Within two (2) business days of BlackPond's written request the Client will provide to BlackPond copies of all documents granting Security Interests registered over its personal property and any Security Interests perfected by Possession or Control within the meaning of PPSA 2009.
- 27.13. The Client authorises BlackPond (as your agent) to request any information under s275 of PPSA 2009 from any Secured Party relating to any Security Interest.
- 27.14. The Client will give BlackPond not less than seven (7) days prior written notice of any proposed change in your name, address, email address, facsimile number, ACN or ABN, company registration or any other details required for requisition on the PPSR.
- 27.15. If the Client commingles the Services and materials with other property BlackPond will have a Security Interest in any Processed and Commingled goods.
- 27.16. The Client acknowledges that the Services are not intended, and shall not be used, for personal, household or domestic use.
- 27.17. The Client agrees that, to the maximum extent permitted by law, sections 130, 142 and 143 of PPSA 2009 will not apply to any Security Interest.
- 27.18. The Client agrees, to the maximum extent permitted by law, to waive the right to do any of the following and to contract out of those sections of the PPSA 2009:
  - 27.18.1. Request a statement of account under s132(4) if there is no disposal of the Services and materials;
  - 27.18.2. Give notice objecting to BlackPond's proposal to retain or dispose of any of the Services and materials under s137;
  - 27.18.3. Receive notice of removal of an Accession or such damages relating to the removal of an Accession;
  - 27.18.4. Receive a verification statement or notice in relation to any Financing Statement or Financing Change Statement in respect to the Security Interest created pursuant to these terms and conditions;
  - 27.18.5. Receive a notice from BlackPond under s118, 121, 129 or 130;
  - 27.18.6. Receive a notice from BlackPond of seizure of Goods under s123 (vi) Receive a statement of account showing the amounts paid to the other secured parties after disposal of the Services and materials under s132;
  - 27.18.7. Receive a notice of retention of the Services and materials under ss134 and s135.

## **28. Client's Insolvency**

- 28.1. If the Client commits (or if BlackPond considers, on reasonable grounds, that the Client is at risk of committing) an act of bankruptcy, enters into a scheme of arrangement or composition with creditors, suffers a sequestration order or, being a company, takes or has taken against it any action or proceedings which may result in the winding up of the company or is placed under official management or receivership, then BlackPond may:
  - 28.1.1. terminate the contract on the giving of 24 hours notice to the Client in accordance with clause 34;
  - 28.1.2. exercise its rights pursuant to clause 25.

## **29. Force Majeure**

- 29.1. If for any reason beyond BlackPond's control, BlackPond's performance is delayed or impeded, BlackPond may cease

or suspend work on the Services (at its absolute discretion) provided always that the Client shall pay any part invoice and shall pay all charges and expenses incurred and moneys paid by BlackPond in respect thereof.

### **30. Finance**

30.1. The Client is entitled to obtain finance in order to purchase the Services and materials provided that the finance company contact details are given to BlackPond for approval prior to placement of any Order.

### **31. Client Restructure**

31.1. The Client will notify BlackPond in writing within seven (7) days of any change in its structure or management including any change in director, shareholder or change in partnership or trusteeship and/or of the sale of any part of its business. If the Client fails to do so, or if the change is not acceptable to BlackPond, it may terminate the contract immediately and the provisions of clause 34 of this contract shall then apply.

31.2. Both the person or entity shown in BlackPond's records as the Client and the person or entity operating the new business structure shall be liable to BlackPond prior to notification in accordance with clause 32.1.

31.3. Without any derogation to any of BlackPond's rights as set out in this clause 32, if the Client fails to comply with its obligations under this clause 32, then the new person or entity shall be deemed to have accepted the Terms and Conditions of this agreement in full and will be regarded as standing in the place or stead of the Client.

### **32. Credit Limit**

32.1. If BlackPond grants any credit facility or nominates any credit limit, that is an indication only of its intention at the time. BlackPond can vary or withdraw any credit facility at its unfettered discretion, without liability to the Client or any other party.

### **33. Returned Goods**

33.1. BlackPond is not under any duty to accept Services or Goods returned by the Client and will do so only on terms to be agreed in writing in each individual case.

33.2. BlackPond agrees to accept returned Services or Goods from the Client under this clause, the Client must return the Services or Goods to BlackPond at its place of business referred to in these terms and conditions and the Client shall bear the cost of transit (if any) for the return of the Services and materials to BlackPond

### **Cancellation**

33.3. No Order may be cancelled except with consent in writing and on terms, which will indemnify BlackPond against all losses resulting from such cancellation. If you wish to discontinue work on an Order, you will provide us with written notice of the same in which case you will immediately pay for all work performed for which we will issue you a revised invoice. No warranty or representations as to fitness for purpose will be given for work that is discontinued.

### **34. Termination**

34.1. If the Client shall default in any of its obligations under this contract, BlackPond shall have the right to terminate this contract immediately upon the provision of written notice to the Client.

34.2. To the extent permitted by law, upon termination of the contract prior to payment of the Price in full:

34.2.1. all amounts due under the contract become payable forthwith;

34.2.2. BlackPond shall be at liberty to retake possession of the Services in respect of which property has not passed and, if necessary, to enter onto the property of the Client in order to execute that right, in accordance with clause 27.

### **35. No Waiver**

35.1. No relaxation by BlackPond of the Client's obligations under this contract shall be regarded as a waiver of BlackPond's right to enforce those obligations on a subsequent occasion.

### **36. Applicable Law**

36.1. This contract shall be construed according to the laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.

### **37. SEVERABILITY**

37.1. To the extent possible, any part of these terms and conditions may be severed without affecting any other part.