

Standard Terms and Conditions

Vessel Maintenance and Repair

This agreement is between:

1. **PASMA HOLDINGS PTY LTD trading as “PASMA ELECTRICAL” (“Pasma”) & “Corrosion & Water Control Australia”**
AND
2. the **“Customer”**, who may be an individual, a firm, company, body corporate, unincorporated association or partnership and any agent of any of the foregoing).

1. TERMS OF AGREEMENT

1.1. This agreement sets out all the terms and conditions relating to the provision of works and services by Pasma to the Customer.

1.2. In this agreement:

“Equipment” means any machinery, part, accessory, component or equipment of the Vessel.

“Prescribed Terms” means the terms implied into a consumer contract by the Trade Practices Act 1974 (as amended) or any similar State or Federal legislation (the **“Legislation”**) to the extent that the same cannot be excluded by contract.

“Works” means the electrical repair works and related services to be carried out by Pasma on the Customer’s vessel (the **“Vessel”**).

2. AUTHORITY

2.1. The Customer hereby requests and authorises Pasma to carry out the Works.

2.2. The Customer authorises Pasma to do all things that are in Pasma’s professional opinion necessary or desirable to carry out and complete the Works, including without limitation:

- (a) Operating any Equipment;
- (b) Removing any Equipment from the Vessel;
- (c) Replace or Upgrade any equipment;
- (d) Source alternatives;
- (e) Modify or repair to an acceptable marine standard
- (f) Engage specialist subcontractors.

2.3. The Customer authorises Pasma to order or purchase on its behalf any parts that may be necessary for the completion of the Works and undertakes to reimburse Pasma or, on Pasma’s request, to pay in advance for such parts.

2.4. The Customer warrants to Pasma that it has the authority to enter into this agreement and to perform its obligations under this agreement, and to request and authorise Pasma to carry out the Works.

2.5. The Customer will not withdraw a request for the Works to be carried out or call for the Works to cease before completion without Pasma’s prior written agreement.

3. PAYMENT

- 3.1. Any quotation given by Pasma is valid only for the period stated in the quotation unless otherwise stated by Pasma in writing.
- 3.2. Any estimate given by Pasma will be indicative of costs only.
- 3.3. Prices and rates quoted are in Australian dollars and exclude any taxes, duties or charges imposed by any government authority.
- 3.4. On completion of the Works, Pasma will render a tax invoice (an "**Invoice**") to the Customer. The Invoice will include Pasma's charges for the Works and all expenses incurred by Pasma on the Customer's behalf in the carrying out of the Works not previously invoiced to the Customer.
- 3.5. The Customer agrees that:
 - (a) Payment for the Works will be due and payable on notification by Pasma to the Customer that the Works are completed.
 - (b) Within three business days of receipt of such notification, the Customer will inspect the Works and, if they have been carried out in a proper and satisfactory manner, settle Pasma's invoice in full and remove the Vessel. Removal of the Vessel by the Customer will constitute confirmation of the Customer's satisfaction with the Works.
 - (c) If the Customer fails to pay any amounts due and payable to Pasma, Pasma may charge interest on all overdue amounts at the rate 2% per annum above the benchmark rate from time to time of the National Australia Bank, compounded on a daily basis.
 - (d) Pasma shall have both a workman's or repairer's lien over the Vessel and the Equipment and a general lien over the Vessel, the Equipment and any property of the Customer that comes into Pasma's possession until payment for the Works is made in full.
- 3.6. Where the Customer is acting as an agent in requesting the Works, the Customer agrees to be jointly and severally liable with its principal for all amounts payable to Pasma in connection with the Works or this agreement.
- 3.7. Any completion date for the Works quoted by Pasma is an estimate only, and Pasma shall not be liable for any failure to complete the Works by that date.

4. FORCE MAJEURE

Pasma shall be relieved of any obligation under this agreement to the extent it is prevented from performing such obligation due to any matter beyond its control, including without limitation any act of God, strike, lock-out, other interference with work, war (whether or not declared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport and refusal or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations.

5. LIMITATION ON LIABILITY

- 5.1. If the Customer is a “consumer” as defined in the Legislation, the Prescribed Terms shall apply and shall prevail over any contradictory terms herein.
- 5.2. Other than the Prescribed Terms (if relevant), this agreement constitutes the entire agreement between the Customer and Pasma in relation to the Works.
- 5.3. Subject to clause 5.1, where the Vessel or any Equipment is damaged due to Pasma’s negligence or breach (“**damaged goods**”), Pasma’s liability hereunder shall be limited to Pasma’s choice of:
 - (a) Replacement of the damaged goods;
 - (b) Supply of equivalent goods;
 - (c) Repair of the damaged goods;
 - (d) Payment of the cost of replacing the damaged goods or acquiring equivalent goods;
 - (e) Payment of the cost of repairing the damaged goods;
 - (f) Supply of the Works or part thereof again at no further cost to the Customer; or
 - (g) Payment of the cost of the supply of the Works or part thereof.
- 5.4. Save as set out in clause 5.3, Pasma shall not in any circumstances be liable in contract, tort, negligence or otherwise for any loss or damage (including consequential, indirect, special and economic loss or damage) that arises out of or in connection with the Works, including without limitation any negligent act or omission by Pasma or any employee, agent or sub-contractor of Pasma.
- 5.5. The Customer indemnifies Pasma against any liability in contract, tort, negligence or otherwise incurred by Pasma or any third party that arises out of or in connection with the Works, including without limitation any negligent act or omission by Pasma or any employee, agent or sub-contractor of Pasma.
- 5.6. The SAFETY and SECURITY of the vessel and all of it’s equipment will remain the owners responsibility at all times and as such shall supervise, or put in place measures, to ensure such Safety and Security. This may entail supervision of the works where necessary by the owner or owner’s representative to ensure that safety and security measures are not compromised.
- 5.7. The operation of any instrumentation, plant & equipment will be supervised by the customer or it’s representative to ensure correct operation of such. Manuals or correct operating procedures may need to be provided or sourced to ensure correct operating procedures are followed such as provided by the manufacturer or supplier.
- 5.8. Pasma is an independent contractor and not an employee or agent.
- 5.9. Pasma may be asked for advice to, design, recommend, recommend alternatives, upgrade etc. by the owner and when given, it is the owners responsibility to ensure the accuracy of the advice, design, suitability or recommendation. Where alternative parts, design or recommendations are given this is given in good faith with the information supplied or known.

6. SUBCONTRACTING AND INDEMNITY

- 6.1. Pasma may subcontract on any terms the whole or any part of the Works.
- 6.2. The Customer undertakes not to make against any person other than Pasma who performs or undertakes any part of the Works any claim or allegation that imposes or attempts to impose on such person any liability in connection with the Works, howsoever arising; should any such claim or allegation be made by any person, the Customer indemnifies Pasma against all consequences thereof.

7. LIABILITY OF EMPLOYEES, AGENTS AND CONTRACTORS

- 7.1. The Customer expressly agrees that the indemnities contained in clauses 5.5 and 6.2, and every exemption from liability, right, defence and immunity available to Pasma, shall extend to protect every employee, agent and independent contractor or subcontractor of Pasma while such person is acting in the course of his employment, appointment or engagement by Pasma.

8. GENERAL PROVISIONS

- 8.1. Any provision of this agreement that is void or unenforceable shall be severed, and this agreement shall be read as if such provision formed no part of it.
- 8.2. Any amendment to this agreement must be in writing signed by both Pasma and the Customer; No employee, agent or subcontractor of Pasma other than Henk Pasma has any authority to vary the terms of this agreement.
- 8.3. This agreement is governed by and to be construed in accordance with the laws of Queensland, to the non-exclusive jurisdiction of whose courts each party unconditionally and irrevocably submits. The Customer waives any right to object to the courts of Queensland on the grounds that such courts (a) are an inconvenient forum or (b) do not have jurisdiction to hear any dispute relating to this agreement.
- 8.4. It is up to both parties to maintain dialogue and communications on any disputes, claims, counterclaims or inconsistencies and to ensure there is no breakdown in communications
- 8.5. The customer will provide/ensure reasonable access ie. Wharf Jetty Dockyard, Slipway, Ferry, or other means or place to allow Pasma to perform any works or provide any services.
- 8.6. This agreement will be deemed accepted on receipt of customers purchase order/advice!