

Waratah Marine – Terms and Conditions of Hire

These Terms and Conditions of Hire ('Terms') govern the provision of marine services and the hire of vessels and equipment by Waratah Marine Pty Ltd ('Waratah Marine' or the 'Service Provider') to its clients ('Client'). They apply to all quotations, agreements, and work orders unless expressly overridden by written contract or law.

1. DEFINITIONS

- 1.1. 'Agreement' refers to any formal document executed between Waratah Marine and the Client, including these Terms.
- 1.2. 'Services' means any marine-related work or hire provided by Waratah Marine as outlined in Section 2.
- 1.3. 'Personnel' means employees, contractors, and representatives of Waratah Marine.
- 1.4. 'Site' refers to the location where the Services are delivered.
- 1.5. 'Force Majeure Event' means events outside a party's control that hinder obligations.
- 1.6. 'Variation' refers to written amendments to Services, timing, or pricing.
- 1.7. 'Standby Time' means periods when equipment or personnel cannot operate due to Client delays or site inaccessibility.
- 1.8. 'Equipment' means all vessels, machinery, tools, and materials provided by Waratah Marine for the Services.
- 1.9. 'Client Representative' means the individual authorised to make decisions on behalf of the Client on Site.
- 1.10. 'Dry Hire' refers to the hire of vessels or equipment without crew or operational support.

2. SCOPE OF SERVICES

Waratah Marine offers the following services:

- 2.1. Crane Hire – Marine crane operations for lifting cargo, construction, and salvage work.
- 2.2. Towing Services – Transport of vessels and equipment using tug and tow configurations. For towage services, Waratah Marine adopts the principles of the BIMCO Towcon Standard Agreement (International Ocean Towage Agreement). These principles govern allocation of risks, insurance requirements, and responsibilities of tug and tow, unless expressly varied in writing.
- 2.3. Delivery of Cargo/Materials – Maritime transport of construction materials and cargo.
- 2.4. Salvage Services – Recovery of stranded or sunken vessels.
- 2.5. Boat Hire – Crewed – Provision of manned vessels with crew, fuel, and safety gear.
- 2.6. Boat Hire – Non-Crewed – Bareboat charter services for qualified clients.
- 2.7. Mooring Services – Installation, maintenance, and certification of vessel moorings.
- 2.8. Additional Services – Any other marine-related services as agreed in writing between Waratah Marine and the Client.

3. TERM

- 3.1. These Terms apply upon the Client's acceptance of a quote or commencement of Services.
- 3.2. Services continue until completed or terminated under Section 15.
- 3.3. Recurring or framework Services may extend for up to 24 months.

4. FEES AND PAYMENT

- 4.1. Fees are outlined in Schedule B and confirmed via quotation.
- 4.2. Invoices are issued upon completion or at agreed milestones.
- 4.3. Payment is due 14 days from invoice date.
- 4.4. Late payments attract interest at 2% per month.
- 4.5. Disputes must be raised within 5 business days of invoice.
- 4.6. Services may be suspended for non-payment.
- 4.7. Standby and Delay Charges – If work is delayed due to Client or third-party causes, standby charges apply as per Schedule B. Charges commence from time of delay and continue until operations resume.
- 4.8. Waratah Marine reserves the right to require a deposit or pre-payment prior to mobilisation for new Clients or projects exceeding AUD 20,000.

5. INSURANCE AND LIABILITY

- 5.1. Waratah Marine holds:
 - Public Liability: AUD 20 million
 - Marine Hull & Machinery
 - Workers Compensation
- 5.2. Client must insure any cargo or equipment provided at their own cost.
- 5.3. Waratah Marine's liability is limited to re-performing defective Services, or issuing a partial or full refund, at its discretion.
- 5.4. No liability for indirect or consequential loss.
- 5.5. Each party is responsible for any personal injury, death, or property damage caused by its negligence or breach of contract.
- 5.6. The Client indemnifies Waratah Marine for any third-party claims arising from the Client's use or misuse of the hired Services or Equipment, except to the extent caused by Waratah Marine's negligence, gross misconduct, or breach of contract.
- 5.7. Waratah Marine is not responsible for delays or failures in performance due to circumstances beyond its control, including but not limited to weather, tide, or third-party actions.
- 5.8. In respect of towage operations, the BIMCO Towcon 'knock-for-knock' principle shall apply:
 - (a) Each party is responsible for loss of or damage to its own vessel, property, equipment, and personnel, regardless of fault.
 - (b) The Client remains responsible for the seaworthiness and fitness of the tow, including hull integrity, stability, and manning, unless otherwise agreed.

(c) Waratah Marine remains responsible for providing a seaworthy tug or barge and competent crew.

6. HEALTH, SAFETY & ENVIRONMENT

- 6.1. Compliance with relevant WHS, AMSA (Australian Maritime Safety Authority) regulations, and environmental standards. Waratah Marine maintains a Safety Management System (SMS) in accordance with AMSA requirements.
- 6.2. Client ensures Site access and safety.
- 6.3. Inductions and emergency protocols shared.
- 6.4. Waste and spill control plans established jointly.
- 6.5. Client must notify Waratah Marine of any known hazards.
- 6.6. Client must ensure cargo or liftable units are prepared in accordance with lifting and handling safety requirements.
- 6.7. If specific documentation such as Safe Work Method Statements (SWMS), engineering reports, or traffic management plans are required, Waratah Marine reserves the right to charge additional fees.
- 6.8. The Client agrees that any cargo presented for lifting must have clearly visible lifting points and certified lifting plans if required.

7. SITE CONDITIONS

- 7.1. Waratah will provide a loading wharf at Glebe Island. Access to this site is subject to the conditions of access on our website.
- 7.2. Delays due to late deliveries or unforeseen circumstances incur standby charges.
- 7.3. Unsafe loads, unacceptable behaviour, or unsuitable delivery sites may lead to suspension of services and additional costs.
- 7.4. For towage operations, the Client shall provide all necessary permits, regulatory consents, and approvals before commencement.

8. DRY HIRE OF VESSELS

- 8.1. The Client shall be fully responsible for the safe and competent operation of the vessel.
- 8.2. Only qualified personnel may operate the vessel.
- 8.3. The Client is responsible for maintenance, fuel, consumables, and damages incurred during hire.
- 8.4. Waratah Marine accepts no liability for damage to property or persons during dry hire.
- 8.5. Waratah Marine reserves the right to inspect and terminate hire if breached.
- 8.6. Dry hire Clients are responsible for returning vessels in clean and operable condition.
- 8.7. Waratah Marine reserves the right to request a security deposit for dry hire.

9. TOWAGE TERMS

- 9.1. Towage services are subject to the BIMCO Towcon framework, adapted to Australian law and conditions.
- 9.2. Waratah Marine will exercise due diligence to ensure tug(s) are seaworthy and crew competent.
- 9.3. The Client warrants that the tow is fit for towage and compliant with regulations.

9.4. Towage is undertaken at the Client's risk, subject to Clause 5.8.

9.5. Nothing in this Agreement limits liability for personal injury, death, or gross negligence.

10. DISPUTES

10.1. Parties will attempt to resolve disputes amicably.

10.2. If unresolved within 15 business days, disputes will be referred to mediation in Sydney, NSW.

10.3. If mediation fails, either party may commence proceedings in the courts of NSW.

10.4. Each party bears its own negotiation or mediation costs.

10.5. Urgent interlocutory relief may be sought.

11. CONFIDENTIALITY

11.1. Both parties shall keep business information confidential.

11.2. Disclosure only permitted by law or with consent.

11.3. Clause survives termination.

12. INTELLECTUAL PROPERTY

12.1. IP remains property of Waratah Marine unless otherwise agreed.

12.2. Client receives license to use IP for project-related use only.

13. GOVERNING LAW

13.1. These Terms are governed by the laws of New South Wales, Australia.

13.2. Parties submit to the jurisdiction of the courts of New South Wales, Australia.

13.3. To the extent Towcon provisions are adopted, they are incorporated subject to local jurisdiction.