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SPECIALISTS IN RIGGING  
& YACHT MANAGEMENT

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mobile 0412 783 533  
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www.elityachtingservices.com.au

## **Elite Yachting Services Terms and Conditions**

### **1 Definitions**

**'Agreement'** means this document.

**'Customer'** means the person, firm, body corporate, association or company who, or on whose behalf, requests the Repairer to perform the Works.

**'Repairer'** means Elite Yachting Services and any of its employees, agents or subcontractors.

**'Vessel'** means the boat or watercraft described on any quotation, invoice, job sheet or other document issued by the Repairer to the Customer and it includes the hull, motors, controls, equipment, accessories, dinghies, tenders and their motors.

**'Works'** means all works carried out by the Repairer at the request of the Customer, its employees or agents, including without limitation:

- all repairs, maintenance, improvements or shipwright work;
- the supply of all machinery, parts, materials, equipment, accessories, labour or specialised tools and/or the removal from the Vessel of any machinery, parts, materials, equipment or accessories;
- any operation, movement or storage of the Vessel.

### **2 Scope of Works and Authorisation**

The customer warrants that it is the owner of the Vessel or the Vessel owner's agent and that it has the authority to request that Elite Yachting Services perform the Works. The Customer authorises Elite Yachting Services to move and store the Vessel by whatever means and in whatever circumstances Elite Yachting Services considers necessary and appropriate for the performance of the Works. The Customer acknowledges that quotes for Works are valid for the period stated in the quote.



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### **3 Payment**

The Customer agrees to pay Elite Yachting Services within 14 days of an invoice being issued. If the Customer owes any amount on any invoice after the expiration of 14 days from the date of invoice, Elite Yachting Services will be entitled to claim interest at the weighted average interest rate on credit outstanding as published by the Reserve Bank of Australia from time to time.

The Customer agrees that until all outstanding invoices together with any interest, charges or other costs payable have been paid in full, the title of any machinery, parts, materials, equipment or accessories supplied by Elite Yachting Services remains the property of Elite Yachting Services and the Customer is not entitled to delivery of the Vessel.

The Customer must accept delivery of the Vessel within 2 days of Elite Yachting Services providing notification to the Customer that the Vessel is ready for delivery and if the Vessel is not accepted within such time, Elite Yachting Services will be entitled to claim storage costs at a rate of 2% of the invoiced price of the Works for each day that the Vessel remains in the custody of Elite Yachting Services. The Customer agrees that by accepting delivery of the Vessel it has inspected the Works and satisfied itself that all Works have been performed and completed with due care and skill and to a proper and satisfactory standard.

### **Lien**

Elite Yachting Services is entitled to a repairer's lien over the Vessel and/or a general lien over any other property of the Customer that comes into the possession of Elite Yachting Services for any reason until all amounts owing by the Customer to Elite Yachting Services are paid in full.

### **5 Liability limitation and indemnity**

To the extent the *Trade Practices Act 1974 (Cth)* (**TPA**) or any similar state law applies to this agreement, then certain conditions and warranties will be implied into this Agreement to the benefit of the Customer, and those conditions cannot be excluded, restricted or modified by any provision of this Agreement.

If Elite Yachting Services is liable for a breach of a condition or warranty implied by the TPA, then to the extent permitted by section 68A of the TPA, Elite Yachting Services' liability to the Customer will be limited to, at the discretion of the Repairer either;



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- the re-supply of the goods or services; or
- the cost of having the goods or services re-supplied

Except as provided for in this Agreement, Elite Yachting Services will not in any circumstances be liable for any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of Elite Yachting Services, its employees, agents or sub-contractors.

The Customer will indemnify Elite Yachting Services against all claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of Elite Yachting Services, its employees, agents or sub-contractors.

## **6 Sub-contracting and indemnity**

Elite Yachting Services is entitled to subcontract on any terms the whole or part of the Works.

## **7 Liability of employees, agents and subcontractors**

It is expressly agreed that every exemption from liability, defence, immunity and right under this Agreement will extend to and protect every employee, agent and subcontractor defined as Elite Yachting Services in this Agreement and in this regard Elite Yachting Services who is a party to this Agreement will be deemed to be acting as agent or trustee on behalf of all Repairers.

## **8 Force Majeure**

If Elite Yachting Services by reason of any matter beyond its control, including without limitation; any act of God; strike, lock-out or labour disturbance; war or warlike condition; act of terrorism; civil riot; sabotage; explosion; lighting; fire; earthquake, landslide or tidal wave; storm, flood, or other extraordinary weather conditions; quarantine; requirements of government authorities; unavailability or delay in supplies (including electricity, oil or gas), equipment or transport refusal of or delay in obtaining government or quasi-governmental approvals, consents, permits, licenses; or otherwise is unable to perform any part of its obligations under this Agreement, to the extent and for the period that it is not reasonably able to perform, Elite Yachting Services will not be liable to the Customer.



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### **Time bar**

Elite Yachting Services will not in any circumstances be liable for any claim for loss, damage or injury (including any economic or consequential loss) arising out of or in any way connected with the performance of the Works, whether involving negligence of Elite Yachting Services or otherwise, unless such a claim is made in writing within six (6) months of the earliest of the following occurring:

- the Works being completed; or
- the Vessel leaving the care, custody or control of Elite Yachting Services.