

OSBORNE PROPELLERS LTD. STANDARD TERMS AND CONDITIONS

PART A: AGREEMENT

1. **Agreement.** These Standard Terms and Conditions (the “**Terms**”) form part of the agreement (the “**Agreement**”) pursuant to which Osborne Propellers Ltd. (“**Osborne**”) agrees to provide and perform certain marine propeller design, repair, fabrication, supply and/or consulting services (the “**Services**”) for the organization and/or individual identified as the customer or client (the “**Customer**”) as named pursuant to a proposal, quote or form of agreement to which these Terms were attached (the “**Proposal**”) for the works, service and/or supply as indicated therein (the “**Project**”).
2. **Supply and Services.** The Customer hereby engages Osborne to perform, provide or arrange (i) the Services described in the Proposal, subject to such exceptions, changes, additions or deletions expressly set out in these Terms, and (ii) such other or additional Services that the Customer requests and Osborne agrees to perform in the course of the Agreement, all subject to these Terms.
3. **Standard of Care.** Osborne shall perform the Services substantially in accordance with the skill, care and diligence of a prudent marine propeller supplier, repairer and consultant (as applicable, consistent with the scope of Services) performing services at the same time and of substantially similar scope, scale and complexity in British Columbia.
4. **Assistance.** The Customer shall at all times provide such reasonable assistance as requested by Osborne to facilitate the timely and efficient completion of the Services, including but not limited to access to and use of the Customer’s equipment, facilities, vessels, personnel, and information.
5. **Customer Instructions and Data.** Osborne shall be entitled to act upon instructions of any apparently authorized employees, agents and/or representatives of the Customer and to rely on information provided to Osborne by such employees, agents and/or representatives. Osborne shall not be responsible for its failure to advise or comment upon any matter which falls outside of the scope of its Services or of the Agreement. The Customer further represents and warrants the correctness of all data and information that is provided to Osborne for use in any Services performed by Osborne, and the Customer shall take all necessary steps to ensure the accuracy and correctness of any and all information provided to Osborne.
6. **Application.** These Terms shall automatically apply to and form part of any Agreement, Proposal and/or Project as between Osborne and the Customer.

PART B: PRICE AND COMMERCIAL TERMS

7. **Quotes.** Subject to any proposal validity period set out in the Proposal, quotes and proposals shall remain open for acceptance by the Customer for a period of 30 days from the date noted on the Proposal unless withdrawn by Osborne or otherwise stated or agreed upon in writing by Osborne in its sole discretion.
8. **Deposit.** A deposit of 50% of the price stipulated on the Proposal shall be payable by the Customer within seven (7) calendar days of acceptance of the Proposal unless the Proposal expressly states otherwise, with the balance of payment being due and owing upon completion of the Project, prior to shipping. Any deposit made shall be non-refundable once a project is started.
9. **Fees and Disbursements.** In the Agreement:
 - a. The Customer shall pay for the Services in accordance with the price, payment terms, and conditions set out in the Proposal. Notwithstanding the foregoing, if the Proposal or variation form is silent on any aspect of fees, travel, or disbursements, the Customer shall pay the following:
 - i. **Services:** For Services at Osborne’s standard personnel charge-out hourly rates applicable for the individuals performing the Services at the time the Services are performed (“**Labour**”) on a time-and-materials basis, which rates are subject to change from time to time without notice.
 - ii. **Disbursements:** For any disbursements, third party services, and other expenditures or costs incurred by or on behalf of Osborne in the course of providing the Services (“**Disbursements**”), including but not limited to, travel and subsistence costs, reproduction of drawings, photography, courier charges, Transport Canada or Classification Society charges and equipment rental, at Osborne’s actual costs plus its standard mark-up for such Disbursements.
 - b. If the Proposal or Osborne provides an estimated maximum fee, Osborne shall make commercially reasonable efforts to perform the Services within that maximum fee. If at any time the Services are projected to exceed the maximum fee, Osborne shall provide the Customer with (a) recommendations to reduce the Services’ components and expenditures going forward, and/or (b) a proposed revised maximum amount, and the Customer shall review same and agree to the revised maximum fee and/or reduced Services.
10. **Invoices:** Payment of all invoices shall be due within thirty (30) days of the invoice date, subject to any express terms to the contrary in the Proposal. If any part of an invoice is in dispute, the Customer shall pay the undisputed part thereof and immediately notify Osborne as to any part of the invoice which is in dispute and give full reasons for the dispute. The parties shall endeavor to resolve the disputed portion without delay.
11. **Late Payments and Interest:** Late payment of invoices shall be subject to interest charged on a daily basis at a rate of Twelve percent (**12%**) per annum on the outstanding balance of the invoice, calculated and compounded monthly, until paid in full. Osborne reserves the right to stop Services or withhold deliverables if an invoice (including a disputed invoice) is overdue.
12. **Taxes and Duties.** All Services and Disbursements are exclusive of and subject to applicable GST, PST, HST and other sales and other taxes, as well as applicable import, export and/or other duties (together, the “**Taxes**”) unless otherwise stated or agreed upon in writing by Osborne in its sole discretion.

PART C; SCHEDULE, CHANGES AND INSURANCE

13. **Schedule Estimates.** Osborne may develop schedule estimates for the Services as set out in the Proposal, and shall use commercially reasonable efforts to meet such estimates. However, it is expressly understood and agreed that all such estimates are non-binding, for information purposes only, may be dependent upon by Osborne’s suppliers, propeller manufacturers and/or other third parties, and are subject to change. Accordingly, Osborne is not responsible for any variations or delays of any kind whatsoever and regardless of the cause or reason for variation to the schedule or delay, and the Customer shall have no right to terminate the Agreement, the Project, the Services and or/ the Proposal for Osborne’s failure to meet an estimated schedule.
14. **Commencement of Services.** The Customer shall be deemed to have accepted the Agreement if the Customer instructs Osborne to commence the Services. Notwithstanding the foregoing, Osborne may refrain from commencing the Services despite the Customer’s instructions until the following are complete:
 - a. the parties executing all documents as required under the Agreement, the Project and/or the Proposal; and
 - b. the Customer provides payment of a deposit as specified in these Terms or the Proposal, as applicable.

OSBORNE PROPELLERS LTD. STANDARD TERMS AND CONDITIONS

15. **Changes to Services, Specifications.** In the Agreement:

- a. *Changes to Services.* If either party proposes changes to the Services or specifications, including addition, substitution, deletion, or other variations (the "**Changes**"), such changes shall be specified in writing pursuant to a variation form agreed upon by the parties. Osborne shall not be obligated to perform such Changes, and shall be entitled to suspend any impacted Services, until the applicable variation form is signed by the Customer. Osborne shall be entitled to a reasonable extension of time and variation of its fees to reflect and accommodate any Changes, including relevant factors such as Osborne's standard rates for additional work, changes in prices and supplies, and work disruptions and delay in performing the Services, arising from each Change or the cumulative effects of the Changes.
- b. *Fundamental Changes.* In the event changes to the Services, Proposal and/or Agreement result in a fee increase of more than fifteen percent (15%), Osborne shall be entitled to renegotiate the terms of this Agreement. If a new agreement cannot be reached, Osborne shall be entitled to terminate this Agreement by notice to the Customer, and retain the deposit referenced in clause 8 for costs incurred to the date of termination.

16. **Intellectual Property.** In the Agreement:

- a. All intellectual property rights embedded in the Services or associated work product and deliverables shall be and remain the property of Osborne and / or its subcontractors or suppliers, as applicable. Intellectual property rights include but are not limited to industrial design, modelling, analysis, software applications, technical know-how, copyright, and patents owned, licensed, used or developed by Osborne or its subcontractors or suppliers in connection with the Agreement and the Services.
- b. The Customer shall not, without the prior express written consent of Osborne, alter, modify, vary or create derivative works from Osborne's Services or associated work created in connection with the Agreement, or permit any other person to do same, in any manner which in the reasonable opinion of Osborne is material.
- c. Nothing in these Terms shall affect the rights of Osborne in respect of any intellectual property rights held prior to the commencement of the Services under the Agreement.

17. **Insurance.** The Customer shall obtain and maintain, or cause to be obtained and maintained (i) hull and machinery insurance for the fair market value of any vessel and/or propeller; and (ii) protection and indemnity insurance for liabilities with respect to the vessel and/or propeller for, without limitation, claims arising from death or personal injury, or from loss of or damage to property, with a minimum limit of \$2,000,000 applicable to any one accident or occurrence. The Customer agrees that any failure by it to comply fully with the provisions of this clause will be grounds for Osborne to immediately suspend the provision of any Services, without any refund. The Customer shall, upon request of Osborne, provide certificates confirming insurance coverage for all policies required to be placed and maintained pursuant to the Agreement.

18. **Impairment.** The Customer shall not permit any act or omission that causes the insurance to be suspended, impaired, voided or defeated and shall not permit the vessel and/or propeller that forms the basis of the Agreement to engage in any activity that is not permitted under the policy or policies of insurance in effect unless the Customer obtains express written permission to do so from the applicable insurance underwriters.

PART D: LIABILITY, REMEDIES AND CUSTOMER WARRANTIES

19. **Delays or Suspension of Work.** In the Agreement:

- a. Osborne shall not be liable in any way to the Customer for any non-performance of any of its obligations under the Agreement if and for so long as such performance is delayed, suspended, or prevented by:
 - i. the Customer's acts or omissions, or the acts or omissions of its employees, agents, representatives and/or subcontractors, including but not limited to failing to provide timely information, supplying incomplete or defective information, delaying the start of work on the Project and/or the Agreement, or failing to provide material or facilities required by the Agreement;
 - ii. circumstances beyond Osborne's reasonable control including but not limited to:
 1. delays on the part of Classification Societies, governmental institutions, regulatory authorities or other bona fide bodies having jurisdiction in granting or giving approval to Osborne's work product or other documentation which requires approval;
 2. strikes, lockouts or labour disruptions of any kind (whether relating to the employees of the Customer, Osborne, Osborne suppliers or otherwise), fire, flood, explosion, natural catastrophe, military operations, blockade, equipment failure, sabotage, revolution, riot, civil commotion, war or civil war, adverse weather conditions or prolonged power failure; or
 3. any acts, decrees or restraints of any Government institution or regulatory body having jurisdiction or for any changes in Classification Society class rules or regulations introduced subsequent to the signing of the Agreement;

provided however that in such circumstances, Osborne shall make commercially reasonable efforts to try to mitigate, overcome, and dispel the delay.

- b. *Extension of time.* Where delays are caused by any of the circumstances set out in clause 19(a) of the Terms, Osborne shall be entitled to a reasonable extension of time to reflect any direct and consequential delays. If necessary, Osborne shall be entitled at its discretion to re-schedule the Services to avoid conflict with other customers' schedules and deadlines.
- c. *Fees.* Where delays are caused by circumstances set out in clause 19(a) of the Terms, Osborne shall be entitled to an increase of its fees to reflect additional costs incurred by Osborne, including but not limited to:
 - i. mobilization and demobilization costs, if applicable;
 - ii. the full costs, including overhead, of hiring, employing, terminating or laying off any employees, staff, or consultants engaged for the purposes of the Agreement, the Services and/or the Project;
 - iii. the costs to cancel or suspend any contracts entered into by Osborne for the purposes of delivering the Services; and
 - iv. the increased costs of buying or renting any materials, goods, plant, machinery or equipment for the purposes of the Agreement, the Services and/or the Project.

20. **Breach of the Agreement.** If the Customer is in breach of any term of the Agreement, Osborne shall have the following options in its sole discretion:

- a. claim compensation from the Customer for any additional costs resulting from the breach and an extension of time to complete the Services as determined by Osborne in its sole discretion; or
- b. renegotiate the Agreement.

21. **Termination.** In the Agreement:

- a. Osborne may without prejudice to any other rights hereunder, terminate the Agreement forthwith by giving notice in writing to the Customer:

{00600323;1}

OSBORNE PROPELLERS LTD. STANDARD TERMS AND CONDITIONS

- i. if the Customer breaches any term of the Agreement or these Terms, including but not limited to non-payment of invoices, and fails to rectify such default within 5 days upon notice;
 - ii. if Osborne's performance of any of its obligations under the Agreement are delayed, suspended, or prevented for a period of more than thirty (30) days;
 - iii. in the event of war, hostilities, civil war, rebellion, revolution, insurrection or other disturbance occurring in the Customer's country where the Services are to be performed, or country from where the propeller is to be supplied;
 - iv. if the Customer becomes insolvent or bankrupt, or any proceeding in bankruptcy or receivership or liquidation is initiated against the Customer, or if the Customer makes an assignment for the benefit of its creditors or files a petition or other proceeding in bankruptcy or for protection from its creditor or if a receiver or trustee in bankruptcy is appointed over all or any of its assets or business; or
 - v. if being an individual, the Customer dies or becomes incapacitated.
 - b. In the event of termination of the Agreement for any reason whatsoever and without prejudice to any other rights, Osborne shall be entitled to payment by the Customer for all costs associated with the Services and the Agreement, including but not limited to:
 - i. all Services completed and delivered to the Customer;
 - ii. all Services in progress and Services completed but not yet delivered to the Customer;
 - iii. all Labour, travel costs, and Disbursements as of the date of termination;
 - iv. all mobilization and demobilization costs;
 - v. the full costs, including overhead, of hiring, employing, terminating or laying off any employees, staff, or consultants engaged for the purposes of the Agreement;
 - vi. the costs to cancel any supply orders or other contracts entered into by Osborne for the purposes of delivering the Services;
 - vii. the costs of buying or renting any materials, goods, plant, machinery or equipment for the purposes of the Agreement;
 - viii. loss of profits; and
 - ix. legal costs and expenses incurred for recovery of the above amounts on a full indemnity basis.
22. **Indemnity.** The Customer shall indemnify Osborne and the Osborne Parties and hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the Agreement (collectively, the "**Claims**"), including for greater certainty infringement of third party intellectual property rights, any personal or bodily injury (including death) suffered by any person or any damage to, or destruction of, any real or personal property, environmental damages and against and in respect of all costs, losses, damages and expenses (including legal costs and expenses on a full indemnity basis) which Osborne may suffer or incur (either directly or indirectly) under or in connection with the Agreement, including without limitation any failure by Customer to comply with its insurance obligations set out in these Terms. The provisions of this paragraph shall apply notwithstanding the negligence of Osborne or any Osborne Party. Notwithstanding anything else in this paragraph, the Customer's obligation to indemnify set out in this paragraph will not apply to the extent that (i) the Claims arise as a direct result of the gross negligence of Osborne or any Osborne Party, or (ii) the Claims are for injuries or damages which are within the scope of coverage of Worksafe BC or similar coverage for accidents and injuries sustained in the course of employment. In this paragraph, "**Osborne Parties**" means Osborne and its employees, officers, directors, shareholders, contractors, subcontractors and agents, and "**Osborne Party**" means any one of them.
23. **Lien.** Osborne shall have a lien on the Project and the Customer's vessel for any outstanding payments, or any other fees, charges or other amounts contemplated by or due and owing as a result of the Agreement, including interest and legal fees (on a solicitor and own client basis) and disbursements arising in relation to the enforcement and satisfaction of this lien and associated procedures and remedies. The Customer authorizes Osborne and its lawful agent to take possession of the Project and/or the Vessel as security to recover such amounts owed under the Agreement. Osborne shall have the right **but not the obligation** to take possession of the Project and/or the Vessel, and any other Customer's goods and effects at Osborne's facilities, and to dispose of same to enforce and satisfy any such lien in accordance with the provisions of the *Warehouse Lien Act*, R.S.B.C. 1996, Chapter 480 or any successor legislation, which shall apply *mutatis mutandis*, and provided further that the risk of loss of such Project or other goods and effects shall remain always with the Customer.
24. **Himalaya.** It is hereby expressly agreed that no employee or agent of Osborne (including every sub-contractor from time to time employed or engaged by Osborne) shall in any circumstances whatsoever be under any liability whatsoever to the Customer for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his or her employment and, without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense or immunity of whatsoever nature applicable to Osborne or to which Osborne is entitled hereunder shall also be available and shall extend to protect every such employee or agent of Osborne acting as aforesaid and for the purpose of all the foregoing provisions of this clause Osborne is or shall be deemed to be acting as agent or trustee on behalf of an for the benefit of all persons who are or might be their servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the Agreement.
25. **Limitation and Exclusion of Liability.** Osborne's maximum aggregate liability arising under or resulting from or in connection with the Agreement, whether such liability arises from one or more claims or actions for breach of contract, tort, warranty, indemnity, strict liability or otherwise, shall not exceed the total fees of the Agreement, unless required by any applicable statute or law of the relevant jurisdiction. If the foregoing is found by a court of competent jurisdiction to be unconscionable or unlawful, then Osborne's maximum liability shall be limited to the amount reimbursable under Osborne's relevant insurance policy. Notwithstanding anything to the contrary in these Terms, the Agreement and/or Proposal, Osborne shall not under any circumstance whatsoever be liable to the Customer for any special, indirect or consequential damages or losses of any nature, including without limitation extra expenses, loss of profit, loss of revenue, loss of use, business interruption, whether resulting from breach or default in performance or otherwise, and even if the possibility of such loss or damage was foreseeable. This clause 25 shall remain in force notwithstanding termination of the Agreement.
26. **Vessel Performance.** As the Customer's vessel's engine power and hull resistance (including the design, weight and trim) are not subject to the Project, Agreement and/or Proposal, the Customer acknowledges and agrees that Osborne is not able to guarantee the Customer's vessel performance. The Customer acknowledges and agrees that vessel configuration and performance characteristics may adversely affect the Project and/or propeller's cavitation profiles. The Customer further acknowledges and agrees that Osborne makes no representation and/or warranty with regard to propeller erosion, propeller singing, cavitation or overall vessel performance. The Customer further acknowledges and agrees that Osborne is not a naval architect or marine engineering firm and its Services must not be relied on as such, and it is the Customer's obligation to engage such professional services independent from and in addition to the Services and/or Agreement if and to the extent such professional services are required in relation to the Services and the interaction between the Customer's vessel and the Services or any propeller or other goods supplied by Osborne.

PART E; TITLE, RISK and WARRANTY

OSBORNE PROPELLERS LTD. STANDARD TERMS AND CONDITIONS

27. **Title.** Title to the Project shall vest in the Customer after both (a) completion of the Services, and (b) the CLIENT has paid in full all amounts as stipulated in the Proposal or as amended pursuant to clause 14.
28. **Risk and Responsibility – Project.** The risk of loss of or damage to the parts shall be with OSBORNE until the earlier of (i) the Project being completed and shipped to the Customer upon payment, or (ii) the Customer taking possession of the Project.
29. **Limited Warranty.** The Customer acknowledges that there are no warranties in the Agreement, express or implied, except as follows:
- OSBORNE warrants that its Services in relation to the Project shall be performed in a prudent, orderly and good workmanlike manner, in accordance with the Standard of Care, for a period of one (1) year from the date the Services were performed. Ordinary wear and tear shall not be considered a defect.
 - OSBORNE shall use commercially reasonable efforts to assign and transfer to and for the benefit of the Customer any manufacturer's warranties for parts, materials and labour provided in connection with the performance of the Services, the Proposal and/or the Agreement, including without limitation any propeller sourced from a third-party supplier.
 - OSBORNE hereby expressly disclaims any warranty of fitness for a particular purpose and any other warranties, express or implied, other than the ones expressly set out in this Section 29, whether for the Project provided in connection with the performance of the Services, or otherwise. The Customer hereby expressly acknowledges and accepts the express disclaimer in the preceding sentence.

PART F: GENERAL

30. **General.**

- Confidentiality.** The Parties shall hold in strict confidence all dealings as between each other (including the Agreement, Proposal and/or Project) and not disclose or permit to be disclosed any such information to any third party without the prior written consent of the other party, except as required by law or court order.
- Publicity.** Osborne shall be entitled to make, or arrange to be made, a photographic record of any product created in connection with the Services or the Project under the Agreement and to promote and publish such photographic record or any portion of its work under the Agreement, the Proposal and/or the Services with the written permission of the Customer, not to be unreasonably withheld. The Customer shall not publish or issue Osborne's work without Osborne's prior written consent, provided that this restriction shall not apply to copies of same made and distributed to the Customer's decision-makers and stakeholders in the Project. Notwithstanding the foregoing, the Customer shall ensure any publication of any product created in connection with Osborne's work under the Agreement identifies Osborne as the designer if Osborne informs the Customer that such credit is necessary.
- Conflict between Terms and Proposal.** In the event of any inconsistency or conflict between the Terms, the Proposal and/or the Agreement, these Terms shall prevail.
- Law and Forum.** These Terms shall be construed in accordance with the laws of British Columbia and of Canada applicable therein (without application of any principle of conflict of laws that would result in the application of the laws of any other jurisdiction). The Parties irrevocably submit to attorn to the jurisdiction of the British Columbia and Canadian Federal Courts, sitting at Vancouver, British Columbia.
- Severability.** In the event that any of the provisions of these Terms are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed for the remainder of these Terms.
- Entire Agreement.** These Terms and the Agreement constitute the entire agreement among the Parties, and it supersedes any prior agreement or understanding among them, oral or written, all of which are hereby cancelled.
- Waiver.** The failure by either Party to enforce at any time any provision of these Terms and/or the Agreement shall not be construed to be a waiver of such provision or the right of such Party thereafter to enforce that or any other provision of these Terms.
- Amendments.** Except as otherwise provided herein, the provisions hereof may be amended, supplemented, waived or changed, only by a writing that makes specific reference to these Terms and the Agreement and is signed by the Party as to whom enforcement of any amendment, supplement, waiver or modification agreement is sought.

[End of Osborne Propellers Ltd. Standard Terms and Conditions.]