

ASP SHIP MANAGEMENT'S TERMS & CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES BY CONTRACTORS IN SUPPORT OF HMAS SIRIUS:

In this agreement:

"ASP" means ASP Ship Management Pty Ltd (A.C.N. 080 401 949). All references to ASP in this agreement include a reference to its servants and agents.

"Contractor" means the person or company which enters an agreement for the supply of goods and/or services with ASP.

"Contract Completion Date" means the day by which Work is to be completed in accordance with this agreement.

"Contract Price" means the sum payable to the Contractor for Work pursuant to this agreement.

"GFM" means data, information or equipment of the Owner.

"OQE" has the meaning in clause 4.3

"Owner" in relation to HMAS SIRIUS, means the Commonwealth of Australia represented by the Department of Defence and/or the Royal Australian Navy.

"Person" includes a natural or corporate person or a partnership.

"this agreement" means these terms and conditions, and any document or information of or provided by ASP to the Contractor including without limitation any repair order, service order, purchase order, specification in connection with such provision of goods and/or services.

"Supplies Acceptance Certificate" means a certificate signed by or on behalf of the Owner acknowledging the Owner's acceptance of relevant goods and/or services supplied.

"Technical Requirements Specification" has the meaning given in clause 23.

"Work" includes goods and/or services provided, performed, necessary, required or intended pursuant to this agreement.

HMAS SIRIUS GENERAL SHIP PARTICULARS

The vessel is an Auxiliary Oiler Large Tanker single screw, flush deck without forecastle, machinery and accommodation aft, owned by the Royal Australian Navy.

<u>LENGTH OVERALL:</u>	175.96m
<u>LENGTH B.P.:</u>	168.00m
<u>BREADTH MOULDED:</u>	31.00m
<u>DEPTH MOULDED:</u>	17.00m
<u>DEADWEIGHT TONNAGE:</u>	37,432 tonnes
<u>GROSS TONNAGE:</u>	25,382
<u>NETT TONNAGE:</u>	
<u>CLASSIFICATION:</u>	LLOYDS REG No; 9283772
<u>DATE OF BUILD:</u>	July 2004
<u>BUILT BY:</u>	Hyundai Mipo 0228
<u>MAIN ENGINES:</u>	Hyundai B&W 6S50MC AA1776
<u>AUXILIARIES:</u>	Hyundai B&W 6L23/30(x2) and 8L23/30(x1)
<u>ELECTRICAL SUPPLY:</u>	440V - 3 PHASE - 60 HZ

1. GENERAL

- 1.1 In entering into this agreement, ASP is acting as prime contractor to the Owner under the terms of ASP's commercial contract with the Owner.
- 1.2 Throughout these conditions, "Contractor" includes the Contractor's employees, servants, agents, permitted sub-contractors, permitted assigns, successors and administrators.
- 1.3 This agreement applies to Work and to every supply of goods and/or services by and/or on behalf of the Contractor to or in connection with HMAS Sirius and/or the Owner, whether or not the goods and/or services are described in a work order, specification, repair order, service order,

purchase order or other document. In entering into this agreement the Contractor agrees to be bound by this agreement, enters this agreement for itself and as the agent of any permitted sub-contractors and agents and accepts the terms of this agreement on its own and their behalf.

- 1.4 This agreement can only be waived or altered by ASP expressly and in writing. Any such waiver or alteration of these conditions only affects the specific provision which has been waived or altered.
 - 1.5 With the prior express written consent of ASP the Contractor may subcontract or otherwise arrange for Work to be provided or performed by another Person. The Contractor remains responsible for the due performance of this agreement and must also procure that such Person complies in full with each obligation of the Contractor under this agreement. The Contractor enters this agreement as the agent of such Person. Such Person's own conditions of contract, if any, have no force or effect whatsoever regarding ASP and the Contractor must so inform such Person.
 - 1.6 The Contractor is an independent contractor. The Contractor is liable to ASP, the Owner and to the owner and/or charterer of any vessel or property damaged for any injury, loss or damage of any kind whatever caused by the negligent acts of its employees.
 - 1.7 The Contractor must indemnify ASP and the Owner against all claims and expenses arising out of any breach of this agreement by the Contractor.
 - 1.8 The Contractor enters ASP's premises or on board HMAS SIRIUS at its own risk and must indemnify ASP and the Owner against any injury, loss, damage, claim or liability of any kind whatever arising directly or indirectly out of the performance of the Work or presence on or in the vicinity of ASP's premises or HMAS SIRIUS, including claims against ASP whether alleging negligence on the part of ASP or otherwise.
 - 1.9 This agreement represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, statements and understandings whether oral or in writing.
 - 1.10 Information delivered by the Contractor as part of or in connection with Work must be in English.
 - 1.11 Measurements must be in Australian legal units as prescribed under the National Measurement Act 1960 unless otherwise agreed.
 - 1.12 The Contractor represents and warrants to ASP that it has the skill, expertise, financial stability, knowledge, authorisations, licences, permissions and consents to perform the obligations of the Contractor as set out in this agreement.
 - 1.13 In this agreement unless the context otherwise requires the singular includes the plural and vice versa; and any provision which binds more than one Person binds all of those Persons jointly and each of them individually.
 - 1.14 To avoid doubt, if there is more than one agreement between the Contractor and any ASP entity, this agreement prevails in connection with Work and each supply of goods and/or services by and/or on behalf of the Contractor to or in connection with HMAS Sirius and/or the Owner.
- 2. SUPPLY OF GOODS AND SERVICES**
- 2.1 Any purchase order, repair order, service order or tender agreement issued by ASP to the Contractor may only be amended in writing by ASP or with ASP's written consent.
 - 2.2 By supplying the goods referred to in any such order or tender, the Contractor accepts and agrees to be bound by this agreement.
 - 2.3 If excess goods are delivered to ASP under any such order or tender the excess goods may be returned by ASP to the Contractor at the Contractor's expense.

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- 2.4 Engineering or other data in connection with Work must be supplied as required by ASP.
- 2.5 If ASP requires goods or services in addition to any already described in a work order, specification, repair order, service order, purchase order or other document, ASP may issue an additional work order, specification, repair order, service order, purchase order or other document as the case may be and each such will form part of this agreement.
- 2.6 All prices quoted for goods are firm. Prices for services are based on a schedule of rates agreed between ASP and the Contractor unless the subject of a fixed price quotation.
- 2.7 Any costs incurred by the Contractor as a result of deviating from the packing, marking and transport requirements specified by ASP shall be borne by the Contractor.

3. TITLE AND LIENS

- 3.1 Where goods are supplied by the Contractor:
- (a) The Contractor warrants that it has property and title to the goods which it can pass to ASP or its principals free of any kind of claim, stop notice, attachment, encumbrance, lien or defect in title;
- (b) ASP may withhold payment from the Contractor and/or set off against any amount due to the Contractor until such are removed;
- (c) Risk in the goods passes on delivery to ASP or its principal(s). Property in the goods passes upon payment by ASP and/or its principal(s).
- 3.2 Where part payment has been made for goods, property in the partly completed or completed goods and any materials on hand which are to be used in their manufacture, passes to ASP upon part payment. All such goods must be identified at all times as belonging to ASP.

4. QUALITY OF GOODS

- 4.1 The Contractor must have AS/NZS ISO 9000:2000 certification and must apply the certified quality system to the production of the Supplies.
- 4.2 The Contractor must calibrate its inspection, measuring and testing equipment and must maintain associated documentation in accordance with AS 3912.1:1993, "Meteorological Confirmation System for Measuring Equipment", or other international standard agreed by ASP in writing from time to time.
- 4.3 In supplying goods the Contractor warrants and must provide Objective Quality Evidence (OQE) that confirms that the goods:
- 4.3.1 Conform to specification and/or any sample.
- 4.3.2 Conform to their description.
- 4.3.3 Are of merchantable quality.
- 4.3.4 Are fit for the purpose for which they were sold.
- OQE may take the form of, but is not limited to: Calibration Certificates, Material Certification, Pressure Test Certificates etc.**
- 4.4 If ASP considers that the goods do not comply with 4.3 above and the Contractor disputes the same, ASP may appoint a mutually agreed independent expert, or in default of such agreement an expert chosen by ASP, and if in the opinion of such expert the goods do not comply with 4.3 above, ASP may reject the goods. If ASP or the Owner suffers any loss, damage or expense because of a breach of 4.3 above, the Contractor must indemnify and hold harmless ASP and/or the Owner as the case may be for all such loss, damage and/or expense.
- 4.5 The Contractor must at all times record and keep recorded by appropriate documentation and/or data and must make available to ASP and/or the Owner in relation to goods sold and/or supplied pursuant to this agreement including any

part of such goods) all information necessary to enable ASP or the Owner to identify:

- (a) the place and date of origin or manufacture of such thing or part of a thing; and
- (b) all information relevant to the warranties in 4.3 or OQE referred to in 4.3,

5. LABOUR PROVISIONS

- 5.1 The Contractor must comply strictly with the wages and working conditions prescribed in relevant statutes, awards, rules, regulations and agreements.
- 5.2 The Contractor must appoint a competent supervisor who must have charge on behalf of the Contractor of its operations and of the supervision of employees. The Contractor must give written notice to ASP of the name, address and telephone number (day and night) of such supervisor.
- 5.3 ASP may require the Contractor to remove any person employed by the Contractor from ASP premises, or HMAS SIRIUS, at the request of the Owner or if ASP determines in its sole discretion that the presence of such person is detrimental to the performance of Work or to ASP's other operations, or if in ASP's sole opinion the employee is not qualified to perform the work assigned to him or is guilty of improper conduct.
- 5.4 A list of the Contractor's employees deployed on the task must be supplied to ASP's Project Manager before work commences.
- 5.5 The Contractor must perform all Work only by suitably qualified and/or expert personnel with the appropriate skills and experience.
- 5.6 On a daily basis where labour is supplied on a schedule of rates the Contractor must submit timesheets for approval by ASP. These timesheets must provide full details of:
- (a) names of staff employed;
- (b) hours worked by each person; and
- (c) all material used.
- 5.7 Each timesheet must be verified and signed daily by an ASP representative. A copy of each timesheet must be retained by the Contractor for submitting with its invoice to ASP.

6. SAFETY EQUIPMENT - EMPLOYEES OF CONTRACTORS

- 6.1 ASP as the manager of a vessel aims to ensure the safety of all personnel working on board the vessel. The Contractor is however solely responsible for the health and safety performance of its employees, agents, subcontractors and visitors.
- 6.2 The Contractor must and must ensure that its employees, agents, subcontractors and visitors:-
- (a) are aware of all hazards and how to avoid them including without limitation by undertaking relevant safety induction prior to commencing Work;
- (b) comply with all relevant laws;
- (c) report all hazards without delay;
- (d) provide training in the use of equipment to be used for or in connection with Work;
- (e) observe every applicable safe work practice;
- (f) provide and ensure the wearing of safety and protective clothing;
- in accordance with, as a minimum: ASP's Technical Repair Specification; all applicable Australian legislation; and all relevant Australian Standards.
- 6.3 Without affecting 6.2 the Contractor must observe and obey every applicable safe work practice and regulation, and must conform to mandatory personal protective equipment (PPE) requirements including but not limited to the wearing of safety clothing, industrial foot wear, hardhat, goggles/glasses as will be outlined in the ASP safety induction.

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- 6.4 Without affecting 6.2 the Contractor must ensure that all persons working on deck wear:
- Safety footwear to comply with AS2210-1980.
 - Safety helmets.
 - Safety goggles, spectacles or face visor when tools and equipment are being used in such a way that the eyes and/or face could become injured.
- 6.5 Without affecting 6.2 the Contractor must ensure that all persons working in any engine room or machinery space wear:
- Safety footwear to comply with AS2210-1980 and ear muffs/plugs.
 - The Contractor must make readily available for all persons when working in areas other than the engine room or machinery spaces ear muffs/plugs to be worn as required.
 - The Contractor must procure that the vessel's **Fire & Smoke Doors are not held open** by lashings or any other methods for any purpose during any time that the vessel is in the Shipyard. If welding cables, water lines, hoses or any such equipment is required to enter rooms or compartments then specific and appropriate bulkhead penetrations must be used. These arrangements are to be approved by the Owner's Representative prior to any work commencing.
- 7. SHIP'S EQUIPMENT AND AMENITIES**
- 7.1 All ship's equipment and stores remain the property of the Owner. Any person removing any such item from the ship without permission shall be liable to prosecution.
- 7.2 The amenities on board the ship are provided for the ship's crew only. This includes the duty mess, the restaurant, smoke rooms, showers and toilets. Any facilities for use by the Contractor, its sub-contractors and employees must be provided by the Contractor.
- 7.3 The Contractor shall be liable to ASP and/or to the Owner for any damage to the vessel, its equipment or amenities caused by the Contractor during or in connection with the performance of this agreement.
- 8. SPECIFICATIONS**
- 8.1 All specifications prepared by ASP are prepared in good faith. The Contractor must make and rely on its own enquires to ensure that the specification is correct. Access to the vessel will be provided for appropriate inspections when in ASP's opinion access for such inspection is reasonably possible.
- 8.2 No size or measurement specified is guaranteed. The Contractor must make and rely on its own measurements. ASP will give all necessary and reasonable assistance in this regard.
- 8.3 The Contractor must examine and investigate the scope and location of Work and examine all conditions, information, data and/or equipment (including but not limited to GFM) which may affect the performance of Work. In entering into this agreement the Contractor affirms and acknowledges that it has made or will before commencing any part of relevant Work make such inspections and enquiries by or suitably qualified and/or expert personnel with the appropriate skills and experience as may be necessary.
- 8.4 The Contractor must obtain and pay for all necessary licences and permissions required to undertake Work and must pay every applicable bond or deposit. Any licence or permit which ASP is required to obtain by law will be obtained by ASP at its own expense.
- 9. INSTALLATION OR FITTING**
- If the Contractor installs or fits any item or where the specification or order requires the presence of the Contractor on ASP's premises or on board HMAS SIRIUS:
- 9.1 The Contractor, unless advised in writing from ASP to the contrary, must supply all labour, tools, equipment and materials to complete Work.
- 9.2 The Contractor must procure that all workmanship, quality and finish of materials and or services that it provides conform with and meet the requirements of this agreement.
- 9.3 The Contractor must use its best endeavours not to impede or interfere with other work in progress on ASP's premises or on board HMAS SIRIUS.
- 9.4 The Contractor must at its own expense obtain every license or permission and comply with every laws and regulation in connection with Work and/or goods and/or services supplied pursuant to this agreement.
- 10. TOOLS, EQUIPMENT, MATERIALS AND WORKMANSHIP**
- 10.1 The Contractor must supply and is solely responsible for the Work and for all related tools, equipment, materials, renewals, replacements, workmanship, goods and/or services, each of which must be of first class quality. Prior to undertaking any Work the Contractor must record the as found condition and status of any item to be the subject matter of Work and provide that record to ASP within 5 working days.
- 10.2 All Work of the nature of repair must without exception be carried out and completed using workmanship and materials of the best quality throughout and of at least the quality of those materials now in the vessel,
- 10.3 All Work must be executed to the satisfaction of ASP, the Owner, the Royal Australian Navy, and the vessel's classification society. Equipment which has been repaired, overhauled or installed by the Contractor must be tested to the satisfaction of ASP.
- 10.4 If the Contractor requires the removal of any part of the vessel or any of its fittings, installations, stores or equipment for the purpose of carrying out repairs then such removal shall be done by the Contractor always in compliance with this agreement. Every item so removed must be subsequently replaced by the Contractor and (without affecting this agreement) any damage that may result must be made good by the Contractor. Written approval must be obtained from ASP before any such removals are undertaken.
- 11. INSPECTION OF WORK IN PROGRESS**
- 11.1 Each of ASP, the Owner and any Person nominated by ASP or the Owner for the purposes of this clause (including without limitation Lloyd's Register) has the right to inspect and re-inspect as it or they may require all Work and such items of goods, plant, equipment, machinery, tools and facilities of or used by the Contractor in connection with this agreement or in connection with Work.
- 11.2 The Contractor must facilitate and provide all reasonable assistance in connection with such inspection(s).
- 11.3 If following such inspection any Work is, in the sole opinion of ASP, not of the specified standard, the Contractor must at ASP's request procure that each such item is brought to the specified standard forthwith and at no additional cost to ASP.
- 12. DELAY AND LIQUIDATED DAMAGES**
- 12.1 The Contractor must commence Work on the date in the relevant purchase order or as otherwise notified to the Contractor by ASP.
- 12.2 All Work must be completed by the Contract Completion Date in the relevant purchase order or as otherwise notified to the Contractor by ASP.
- 12.3 Work must be completed with all diligence and reasonable speed. ASP will monitor the progress of Work and may (acting reasonably) notify; the Contractor of a date to complete Work or any stage or part of Work and the Contractor must duly comply.
- 12.4 If Work (including without limitation any related plant, equipment, tools, goods or materials) is delayed by some reason beyond the reasonable control of the Contractor and without the Contractor's fault or neglect, the Contractor must give prompt notice of the delay, the reason for the

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delay, an estimate of time of the delay and an estimate of time to recover from the delay, to ASP. Such notice does not affect any obligation of the Contractor in or in connection with this agreement.

12.5 ASP may in its sole discretion extend the Contract Completion Date and such extensions will not be unreasonably withheld.

12.6 If the delay is caused by a lack of materials and/or equipment and ASP is able to supply the necessary materials and equipment, no extension will be granted and the cost of materials and equipment supplied by ASP will be deducted from the Contract Price.

12.7 If Work is not completed on or before the Contract Completion Date the Contractor must pay to Owner for every whole day or part thereof the completion of work is delayed beyond the Contract Completion Date, as liquidated damages, as a reasonable pre-estimate of damages and not as a penalty, at the rate of 1% of the Contract Price up to a maximum of 10%.

12.8 In the event liquidated damages are due, such amounts shall at ASP's option, be deducted from, and thus reduce, the Contract Price

12.9 The words "whole day" in clause 12.7 mean a calendar day including Saturdays, Sundays and all holidays.

13. INSURANCE

13.1 At all times the Contractor must have in place and maintain in full effect the following insurance at its own expense:

- (a) Worker's compensation or such other insurance as is required by law or is usual in accordance with good business practice in respect of employees, (including without limitation Employer's Liability Insurance] to protect the Contractor and its sub-contractors against any claims and liability arising out of the common law or statute relating to employees for accident or injury to any person employed by Contractor or by any sub-contractor in connection with Work or this agreement.
- (b) Public liability insurance covering all of the Contractor's operations, including but not limited to the operations of sub-contractors, the operation of vehicles and equipment which are not registered for road use by it or sub-contractors, with a maximum sum insured of not less than \$5 million for injury to, or death of, any one or more persons and for property damage in any one accident.
- (c) Automobile bodily injury liability insurance and automobile property damage liability insurance in accordance with the laws of the State in which Work is being done or may be done on all vehicles which may at any time or from time to time be used for the purpose of or in connection with Work.

13.2 The Contractor must:

- (a) Comply with all applicable laws including without limitation occupational health and safety legislation and must (as may be the case) be registered under such Acts.
- (b) Fulfil every relevant duty of disclosure (whether statutory or otherwise) including without limitation by making any public liability insurer concerned aware that the Contractor carries out work on ships.
- (c) Establish by reasonable evidence at ASP's request at any time that insurance cover is in force in accordance with this agreement.

13.3 The Contractor must comply with the terms of each insurance in clause 13.1. The Contractor must do everything necessary to keep the insurance in force and effect. The Contractor must pay any applicable excess.

13.4 For each insurance in clause 13.1 the relevant policy must provide that each of the Contractor and the insurer are required separately to indemnify each of (1) ASP and (2) the Owner against any claim, loss, expense, damage of whatsoever nature arising out of or relating to the risks insured and for the avoidance of doubt this shall include (and not be limited to) an obligation upon the Contractor to so indemnify in circumstances where the insurer either fails to respond to such claim, loss, expense or damage or seeks to avoid that policy.

13.5 The Contractor must not amend, surrender or cancel any insurance in clause 13.1 unless the Contractor gives ASP thirty days' notice in writing and provides proof that replacement policies acceptable to ASP in its sole discretion are in place.

13.6 Nothing in this clause releases the Contractor from any obligation or liability of any kind to any Person in contract, tort or otherwise or limits such obligation or liability.

14. INDEMNITY

14.1 The Contractor indemnifies and must keep indemnified ASP, the Owner, and the Commonwealth of Australia, against all losses, costs, liabilities, claims and expenses (including without limitation legal costs on a full solicitor/client basis) resulting from or arising out of any act or omission by the Contractor whether or howsoever arising and whether or not that act or omission amounted to a breach of this agreement by the Contractor or its sub-contractors. This indemnity covers all claims against ASP and the Owner, including claims arising out of the negligence or wilful default of the Contractor or its sub-contractors. ASP may withhold payment from the Contractor and/or set off sums payable under this clause against any amount due to the Contractor

14.2 This clause 14 survives termination of this agreement.

15. GUARANTEE

15.1 The Contractor warrants that all Work and each part thereof complies with this agreement and warrants that all workmanship by the Contractor shall be first class and the quality of all materials supplied shall be of the highest quality in every respect and suitable for the purpose for which they are to be used.

15.2 Every guarantee and/or warranty (and the benefit of any such) that may be obtainable from manufacturers and/or vendors of materials, goods, equipment, machinery or any item used in and about the performance of this agreement must be made available to or conferred on ASP to the full extent possible and the Contractor must hold each such guarantee and/or warranty on trust for and to the order or direction of ASP.

15.3 The Contractor must procure that for each such guarantee or warranty the relevant period of guarantee or warranty commences no earlier than date of the relevant Supplies Acceptance Certificate.

15.4 This clause 15 survives termination of this agreement.

16. PAYMENT

16.1 Every invoice provided to ASP:

- (a) must state the ASP purchase order number to which it relates and may be raised once all OQE and other information and/or reports and/or documentary requirements have been provided and fulfilled.
- (b) must be for 100% of Work, **except where the payment of progress claims has been agreed by ASP, which shall be at its sole discretion. The payment of progress claims will be considered on a case by case basis, with the timing and quantum of all progress claims being at the sole discretion of ASP.**
- (c) must be submitted with a copy of the signed delivery docket and must attach any sales tax, duty or charge certificates applicable to the goods.
- (d) must specify each item charged. The amount of GST payable must be shown as a separate item on the invoice, together with the method of calculation.

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- (e) which relates to labour charges that were contracted for at agreed rates must be supported by signed timesheets approved by ASP.
- (f) is for payment according to the terms of this agreement. In the absence of special terms, payment will be made by ASP within 30 days of receipt of an invoice that complies with this clause, subject to this agreement.
- 16.2 Failure by the Contractor properly to prepare and document claims for payment in accordance with this agreement or promptly to provide its invoice in accordance with this clause may cause delay in payment and no such delay will be a breach of this agreement.
- 16.2 At ASP's sole discretion and only when confirmed in writing by ASP the following early payment arrangements are available:
- (a) Where payment is made early pursuant to this clause, interest shall be payable to ASP in accordance with the formula at clause 16.2.3.
- (b) Where payment is made late pursuant to this clause, interest shall be payable by ASP in accordance with the formula at clause 16.2.3. Any payment made late pursuant to this clause must not be made more than 60 days after the relevant due date.
- (c) Interest payment = $\frac{\% \times p \times n}{365}$
- where:
- "I%" means the National Australia Bank 90 day bank bill rate plus 1% current at the date of payment for early payments and current at the due date for payment for late payments as a percentage;
- "p" means the amount of the early or late payment, and
- "n" means the number of days before or after the due date that the payment is made.
- 17. NOTICES**
- 17.1 Any notice, tender, quotation or other communication to be served under this agreement must be served on the other party by delivering it by hand, or by prepaid post, or by sending by facsimile transmission or by email (aspfamp@aspships.com) to the registered office of the other party. A party may substitute another address on notifying the other party in writing.
- 18. INSPECTION OF RECORDS**
- 18.1 ASP or the Owner may at any time require inspection of any books of account, records, documents or stored information in any format of the Contractor which relate to work carried out for ASP. Such inspection will be carried out at the expense of ASP or of the Owner.
- 18.2 The Contractor must keep each such book of account, record, document and information accessible and available for inspection for not less than seven years after the date of the Owner's relevant Supplies Acceptance Certificate
- 19. SUSPENSION**
- 19.1 ASP may suspend part or all of any Work at any time by giving notice in writing to the Contractor stating the date of the suspension.
- 19.2 During the period of suspension the Contractor must protect and care for all Work in progress, materials and equipment.
- 19.3 All outstanding agreements for equipment, materials or services must be referred to ASP for direction.
- 19.4 The Contract Price may in ASP's sole discretion (acting reasonably) be adjusted by savings or extra expense occasioned by the suspension.
- 20. TERMINATION**
- 20.1 ASP may terminate part or all of any Work or cancel the supply of any unsupplied (including without limitation undelivered) goods at any time by giving notice in writing to the Contractor stating the date of the termination (such date to be determined by ASP in its sole discretion).
- 20.2 On the date of the termination all Work in progress and all manufacturing must cease and all further orders and sub-contractors be terminated. Property in any Work, supplies, equipment or materials in use shall pass to ASP. The Contractor must follow each direction given by ASP.
- 20.3 If when a notice is given under clause 20.1 the Contractor is not in default of this agreement:
- (a) ASP will pay the Contractor such part of the Contract Price as properly represents Work completed as at the date of the termination, together with a premium of 5 per cent of such amount in lieu of profit.
- (b) In no circumstances will the total of the amounts referred to in 20.3 (a) exceed the Contract Price.
- (c) ASP will in its sole discretion determine whether and to the extent that ASP will pay any other or further costs occasioned to the Contractor by the termination
- 20.4 If when a notice is given under clause 20.1 the Contractor is in default of this agreement:
- (a) Termination of the agreement by ASP will not affect any obligation or liability of the Contractor pursuant to this agreement; and
- (b) without affecting anything in this agreement the Contractor is liable for all costs incurred by ASP as a result of the default and termination of the agreement.
- 21. INSOLVENCY OF CONTRACTOR**
- If the Contractor or any sub-contractor becomes insolvent or bankrupt; has a receiver or manager appointed; has a mortgagee or other creditor take possession or control of the Contractor's business; is subject to involuntary winding up proceedings; or if its creditors convene a meeting to consider placing its business and assets under external control, ASP may at its sole option either:
- (a) terminate the agreement immediately by the giving of notice to the Contractor or any third party in apparent control of the Contractor, as though the Contractor was in default; or
- (b) offer the option of continuing the agreement to such third party until completion of the Work described, including the provision of goods and materials, provided always that ASP may require such guarantees and undertakings from such third party as ASP may in its absolute discretion require.
- 22. LAW**
- 22.1 This agreement is governed by the law of Western Australia.
- 22.2 The Contractor must, in the performance of and in connection with this agreement comply with the laws from time to time in force in any State, Territory, or jurisdiction wheresoever, to the extent such may apply to or in connection with this agreement.
- 23. PRECEDENCE OF DOCUMENTS**
- If there is any inconsistency between provisions of this agreement a descending order of precedence shall be accorded to
- (a) These terms and conditions and any Statement of Work attached hereto.
- (b) The Technical Requirements Specification or Technical Repair Specification.
- (c) Any other document incorporated into this agreement by express reference.

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24. TAXES AND DUTIES

- 24.1 All taxes and duties and government charges imposed in Australia or overseas in connection with the Contract (including without limitation Customs duty) must be borne by the Contractor and with the exception of the Australian Goods and Services Tax (GST) shall be included in the Contract Price.
- 24.2 Subject to 24.3 if GST is imposed on any taxable supply made by the Contractor to ASP under the Contract, ASP agrees to pay the amount of GST imposed as an additional amount to each claim for payment for that taxable supply.
- 24.3 The Contractor must provide ASP with a valid tax invoice with each claim for payment submitted pursuant to clause 16.1 which will enable ASP to claim any input tax credit to which it may be entitled.

25. WARRANTY

- 25.1 The Contractor warrants that the Work is free from defects in materials and workmanship for **twelve** months starting not earlier than the date of the relevant Supplies Acceptance Certificate or Work Completion Certificate (for the purposes of this clause called the 'warranty period')
- 25.2 The Contractor, must remedy each defect in Work of which it shall be notified by ASP during the warranty period, by repair, replacement or modification and to avoid doubt this does not affect any right of ASP or the Owner..
- 25.3 Any items of Work remedied under warranty shall be further warranted until the expiration of the warranty period or a period of half the original warranty, whichever is the greater.
- 25.4 The Contractor warrants that it has complied with all requirements of any manufacturer's warranty and is not aware of any fact, act, matter, or circumstance whereby such warranty may be voided in whole or part.

26. NOTIFICATION OF DEFECTS

- 26.1 If at any time within one year plus one day after the date of a relevant Supplies Acceptance Certificate the Contractor becomes aware of any defect in the Work the subject matter of that Supplies Acceptance Certificate which adversely affects, or may adversely affect any aspect of the use or operation of the vessel, its equipment, fittings or supplies or the safety of any person, the Contractor must forthwith give notice of such defect to ASP.

27. LATENT DEFECTS

- 27.1 The Contractor must rectify any Latent Defect where such Latent Defect is discovered within the period of two years commencing on the later of:-
- (a) the date of the relevant Supplies Acceptance Certificate ; or
 - (b) the latest expiration of any applicable warranty period

but not where such Latent Defect is discovered in any item that has been modified by the Owner without the agreement of the Contractor.

28. GFM

- 28.1 The Contractor acknowledges that GFM may come into its custody and must indemnify the Owner and ASP in the event of loss of or damage to GFM or of any unauthorised disclosure of GFM. As soon as the Contractor becomes aware of any damage to or deficiency in GFM it must forthwith notify ASP of the same.
- 28.2 GFM may not be modified, moved or transferred by the Contractor nor used otherwise than for the purposes of Work the subject of this agreement nor used in any way contrary to the title and rights of the Commonwealth. GFM must be returned at the direction of the Owner.

29. Intellectual property

- 29.1 The Contractor must not infringe any intellectual property right of any Person, must comply with every condition of access to intellectual property of which it has been made aware or ought reasonably to be aware and must indemnify ASP and/or the Owner for any losses arising from a breach of this clause.

- 29.2 The Contractor must use all reasonable endeavours to arrange that the Owner and/or ASP and/or the Commonwealth acquire royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence(s) to use, modify adapt, integrate and dispose of any item of Work.

30. Cooperation with other contractors

The Contractor must cooperate with and provide reasonable assistance to other contractors engaged in connection with HMAS Sirius.

31. Confidentiality

- 31.1 ASP may notify the Contractor of any special security or access or confidentiality requirements that may arise from time to time and the Contractor must comply with and procure that Persons afforded access to relevant information or premises comply with, every such requirement. To avoid doubt, requirements under this clause may without limitation include the protection of public security, defence classification, commercial confidentiality and intellectual property.
- 31.2 The Contractor must diligently observe and protect the confidentiality (and confidentiality for this purpose includes without limitation the protection of public security, defence classification, commercial confidentiality and intellectual property) of information of which it becomes aware in connection with Work or this agreement and must if in doubt as the confidentiality of any information seek instructions thereon from ASP..

ASP SHIP MANAGEMENT'S TERMS & CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES BY CONTRACTORS IN SUPPORT OF HMAS SIRIUS:

SPECIAL TERMS AND CONDITIONS FOR WORK ALONGSIDE AT FLEET BASE WEST OR ANY WORK ON BOARD THE VESSEL

WORK, PRICE AND TIME

- S1. When submitting a quotation for this specification the Contractor shall include a complete price for each item and to give an overall time in terms of running days to complete all specified work. The Contractor is to state the amount of planned overtime in terms of days allowed for in the quotation and to advise ASPs Project Manager with regard to the general situation in respect of weekend working and/or holidays that may occur during the repair period.
- S2. The quotation shall include the cost of the following ancillary work:
- All transport and lifting equipment, but to exclude cranes if such is being provided by the Commonwealth, as is the case at Fleet Base West. Contractors shall submit a crane requirement plan with their quotations.
 - Opening of spaces for access and afterward closing including tank entry permits and gas free certification unless such certifications are being provided by ASP;
 - Removal and replacement of parts/pipes/equipment necessary to gain access to a repair item;
 - Removal and replacement of lagging and insulation;
 - Erecting and removal of staging;
 - Cleaning required to examine survey and repair all specified items;
 - Cleaning up of vessel after all work is completed
 - All bolts, nuts and fittings to be greased prior to re-assembly.
- S3. ASP may request quotes on an estimated price basis. The estimated price shall be shown within the quotation, however the amount payable on satisfactory completion of the order or, as applicable, that part to which the estimated price relates, shall be the Contract Price determined as follows:
- Direct Labour using the appropriate hourly rates specified in the Order multiplied by the number of hours of properly recorded time of employees directly engaged on the order
 - Direct Material Costs and subcontract expenses, shall be included at Allowable Costs plus the approved 'on cost' detailed in the Contract.
 - Direct Expenses (estimated on the order).
- S4. Any estimated price shown on an Order shall not be exceeded without an Order having been issued by ASP. In this regard the Contractor shall frequently review its estimates of costs so as to be able to inform promptly ASP of any significant variations.
- S5. The Contractor shall advise ASP's Project Manager should there be any specified items that may not be within the scope of repair facilities available. In such cases ASP shall be advised of alternatives available.
- S6. The Contractor shall adhere strictly to the written specification and carry out the repairs within the time and price of the accepted quotation. Cost variances resulting from changes in work content will only be considered in regard to written orders issued by ASP's Project Manager. ASP shall be notified immediately should the repairers require an extension of the original quoted time to complete any repairs additional to the specification.
- S7. The Contractor shall arrange the services of surveyors for Classification and statutory authorities at the time agreed by the Contractor and ASP Project Manager for all surveys listed in the relevant specification. All surveys must be attended by ASP Project Manager or an ASP representative appointed by him.
- S8. The Contractor shall remove and dispose of all dirt, debris, scrap and salvage which accumulates as a result of Work. Any damage or staining of paintwork, laminates or lightwork resulting from Work shall be made good to the satisfaction of ASP's Project Manager.
- S9. The Contractor shall receive and store all Owner/Manager supplied materials recording receipt against the Owner's/Manager's supply list. ASP's Project Manager

shall be advised of any items not received before Work commences.

- S10. Unless specified to the contrary by ASP, in writing, scrap and salvage materials recovered as a result of the contract shall remain the property of the Owner. If requested by ASP Project Manager this material shall be sold by the Contractor and the invoiced amount received in payment shall be subtracted from the final payment to the Contractor.
- S11. Plans or instructions required by the Contractor can be obtained on request to the ASP Project Manager. These will be supplied in good faith but it is the Contractor's responsibility to carry out direct measurement of all dimensions. (Refer to clause 8).
- S12. The Contractor shall provide detailed plans/bar charts/work programs, showing the planned commencement and completion schedules for the main systems and a detailed work plan for the major repair items. The preferred bar chart format is Microsoft Project (ASPSM's 'Supporting TRS' paragraph 3.) refers. These plans are to be forwarded to the ASP Project Manager's office and agreed with their representatives not less than FOURTEEN DAYS prior to commencement of repairs and ARE TO BE UPDATED WEEKLY DURING THE COURSE OF REPAIRS.
- S13. Before entering a confined space or performing any work in or adjacent to a confined space the Contractor must obtain written authority to do so from ASP/Ship's Staff. ASP/Ship's Staff will, following certification from a qualified chemist, issue written approval for this to proceed. The Contractor must comply with:
- the vessel's Confined Space and Hot Work procedures; and
 - Australian Standard AS 2865, Safe Working in a Confined Space.

THE CONTRACTOR MUST PROVIDE SUITABLY QUALIFIED CONFINED SPACE SENTRIES AT ALL TIMES FOR ANY WORK BEING CARRIED OUT IN A CONFINED SPACE.

- S14. The Owner the vessel and ASP have Health, Safety and Environment policies which extend to contractors. The Contractor must ensure that all possible means are provided for the prevention of unsafe acts and dangerous occurrences.
- S15. On a regular basis, determined by the Commonwealth, a co-ordinated fire and evacuation exercise will be conducted.
- The Contractor must ensure that all workers under their control working in the engine room, pump rooms, or any other working spaces, are adequately aware of the locations of the main and emergency exits. The Contractor may place additional safety signs that are more familiar, and readily understood by the Contractor's workers, on board the ship.
 - For reasons of safety, no oxy-acetylene, air hoses, or any other cables shall be permitted access to the engine room or pump rooms via the accommodation entrances. Where such hoses/cables are required to be led into these spaces, alternative access shall be discussed and agreed with the Chief Engineer and Owner's Representative.
 - No asbestos materials shall be used in any repair work. ASP's ASP Project Manager shall be consulted if asbestos products are thought to be in use within the Ship.
 - Safety performance will be an item of discussion at the daily management meeting between the ASP Project Manager, Yard Repair Manager and the Ship's senior officers.
- S16. All clearances, continuity checks, pressure and flow comparisons etc, taken prior to and following any repairs or adjustments detailed in specifications relevant to Work, and in any authorised additional work, shall be recorded and findings furnished to ASP as may be required by ASP.
- S17. No machinery or equipment shall be closed up after repairs prior to inspection by the Owner's Representative or

ASP SHIP MANAGEMENT'S TERMS & CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES BY CONTRACTORS IN SUPPORT OF HMAS SIRIUS:

authority specified in the related TRS and its associated Inspection and Test Plan.

- S18. ASP reserves the option to cancel in whole or in part any item or items of Work. The Contractor shall provide pro-rata credit for any items cancelled. Similarly, any additional Work shall be charged at the quoted rate without surcharge. In no event will ASP accept any charges higher than those provided in the Contractor's quotation.
- S19 The Contractor must observe the Commonwealth's OTHER POLICY REQUIREMENTS copies of which the Contractor acknowledges have been provided to it. Additional copies are available on request. These relate to:
- Affirmative actions
 - Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders
 - Hazardous Substances
 - Ozone Depleting Substances
 - Occupational Health and Safety
 - Workplace Equity and Diversity

ADDITIONAL TERMS AND CONDITIONS APPROPRIATE TO DRY DOCK WORK

- S20 The Contractor shall advise the ASP/ASP Project Manager of any bans or limitations and Public Holidays of labour that may occur during the period when Work will be carried out.
- S21 The vessel will be delivered to Contractor with cargo tanks gas free, for entry only. The ASP Project Managers do not undertake, and Contractor must not assume, that the vessel will be free from explosive or dangerous gases. Before performing any Work the Contractor must, at its own expense, have tests made by a qualified chemist who relevant certificates issued that will enable Work to proceed safely.
- S22 Docking shall be undertaken in accordance with the specific TRS for Docking and Undocking, noting the special requirements of the publication DEF(AUST) 5000, Vol 2, Part 20: Slipping and Docking.
- S23 The Owner reserves the right to remove the vessel to another shipyard, port or country, in the event of strikes or labour disputes which affect the progress of Work and which may delay completion of repairs beyond the quoted time.
- S24 Any and all expenses incurred in shifting the vessel during the course of repairs for the convenience of the Contractor shall be borne by the Contractor.
- S25 The Owner reserves the right to employ ship's staff, repair teams and technicians on routine work, maintenance and repairs provided such work does not unduly interfere with the Work.
- S26 Upon vessel's arrival in the shipyard, the Contractor shall inform the Master of all safety measures and security regulations which apply to the vessel whilst in the yard. The Master, ASP and duty watch keeper shall be provided with a list of emergency telephone numbers which allows rapid access to local emergency services on a 24 hour basis.

TERMS SPECIFIC TO COMPLETION OF WORKS ON BOARD HMAS SIRIUS

- S27 Ships belonging to the Royal Australian Navy undergo a formal certification programme for seaworthiness prior to completing any maintenance activity. This requires certification from certain Persons or organisations that certain work has been completed as specified. The Contractor must at ASP's request provide proof in the form of OQE, to substantiate that such work, and any supplies incorporated, meets the relevant specification. See paragraph 4.1 above. The Contractor must meet the individual Technical Repair Specification Closing Report requirements as specified within the appropriate TRS, Purchase order and '**Supporting TRS**'. Note that submission of OQE and closing report is a pre-requisite to invoicing action in paragraph 16.