

1. Definitions:

In this Agreement:

- a) "Agreement" means the terms and conditions contained herein.
- b) "Buyer" means Marine Atlantic Inc.
- c) "Claim" means any claim, suit or action by any Person.
- d) "Copyrights" means copyrights in all artwork, copy, labels and packaging for the Deliverables.
- e) "Deliverables" means the services described in Marine Atlantic's Purchase Order.
- f) "Facility" means the facilities/vessels located in North Sydney, Nova Scotia, or as may be changed by the Buyer from time to time.
- g) "Government Authority" means any governmental authority or court, tribunal, agency, department, regulatory agency, commission, arbitrator, board, bureau, or instrumentality in Canada or any other country or territory, or domestic or foreign state, prefecture, province, commonwealth, city, county, municipality, territory, protectorate or possession.
- h) "Indemnified Party" means all Persons, including any third parties, which the Indemnifying Party agrees to indemnify under this Agreement.
- i) "Indemnifying Party" means the Party assuming indemnification obligations under this Agreement.
- j) "Laws" means all laws, statutes, by-laws, ordinances, codes, standards, regulations and other pronouncements having the effect of law of any Government Authority.
- k) "Losses" means any damages awarded and fines assessed in any Claim by a court of competent jurisdiction or pursuant to an arbitration proceeding, any amounts due under Claim settlement, and any other costs, losses, damages, expenses, charges, fines, penalties and/or injuries of every kind and character (including without limiting the generality of the foregoing, legal and other professional fees).
- l) "Marks" means the names, trademarks, service marks, logos, trade dress and related designs or trade names of the Deliverables.
- m) "Parties" means each of the Buyer and the Seller, and "Party" means either one of them.
- n) "Person" includes an individual, firm, corporation, partnership, joint venture and every other legal or business entity whatsoever.
- o) "Proposal" means the proposal of the Seller issued in response to the RFP, or RFQ, as applicable.
- p) "Purchase Order" means a binding commitment in writing to purchase the Deliverables.
- q) "RFP" means the request for proposals for the Deliverables issued by the Buyer, as applicable.
- r) "RFQ" means the request for proposals for the Deliverables issued by the Buyer, as applicable.
- s) "Seller" means the Party named on the Buyer's Purchase Order who is selling the Deliverables.

2. General Description of the Deliverables (scope): The Deliverables supplied shall be that as described in the Buyer's RFP, RFQ, or Purchase Order and the Seller's Proposal as agreed and accepted by the Buyer.

3. Purchase Orders: Each Purchase Order will specify, i) the description of Deliverables ordered, and ii) the required delivery date.

4. Specifications: If the Purchase Order refers to plans or specifications, these shall be deemed to be incorporated in and be a part of this Agreement, and any plans, blueprints, patterns, etc., furnished by the Buyer to the Seller shall not be published or disclosed by the Seller to any other person or corporation, and shall be returned to the Buyer upon completion of the Purchase Order.

5. Fees: Except as expressly agreed between the Buyer and Seller, as confirmed in the Purchase Order, there are no additional fees, charges or expenses incurred. Prices are firm through delivery for the Deliverables specified or for the term of the Agreement, whichever is greater. The Buyer covenants with the Seller that the Seller having in all respects complied with the provisions of this Agreement, will be paid the rates and expenses in the currency indicated as set forth in the Buyer's Purchase Order (the "Fees"). Unless otherwise expressly stated, Fees are in Canadian dollars.

6. Invoices: The Buyer agrees to pay to the Seller all Fees properly owing under this Agreement within forty-five (45) days after the date of delivery and receipt of a complete invoice. A complete invoice is one that contains the invoice number, invoice date, description of the transaction, total invoice amount with miscellaneous charges listed separately and payment terms consistent with and not additional to any provisions under this Agreement.

7. Representations, Warranties and Standards:

- a) The Seller represents and warrants to the Buyer that the Deliverables (i) shall be performed in a competent and professional manner, in accordance with good and workmanlike practices for the type of work to be performed, and (ii) shall be performed in full compliance with applicable Laws, this Agreement, and the profession of the representatives of the Seller performing the Services.
- b) The Seller represents and warrants to the Buyer that all Deliverables provided or to be provided pursuant to the Agreement do not infringe any existing patent, trademark, trade secret or copyright or any other intellectual property right registered or recognized in Canada or elsewhere with respect to or in connection with the Deliverables or the intended use of the Deliverables by the Buyer.
- c) The Buyer shall, at its sole discretion, be entitled at any time to require the withdrawal of a person performing the Deliverables, and the Seller on receipt of such notice shall provide a replacement whose qualifications and experience shall be acceptable to the Buyer.

Without limiting the generality of section 7a), the Seller warrants that the Seller shall provide a quality of service at least equal to that generally accepted in the industry for similar work and that the Deliverables have been performed in strict compliance with all applicable Laws

d) Insurance: The Seller represents and warrants to the Buyer that it has Commercial General Liability Insurance with a combined limit of not less than five million dollars (\$5,000,000); and if an automobile is required to enter Marine Atlantic's premises, automobile liability insurance (including owned, non-owned and hired vehicles) with a limit not less than two million dollars (\$2,000,000) per occurrence, personal injury and property damage combined.

e) Workers Compensation ("WC"): The Seller represents and warrants that it is a member of a government workers' compensation program. The Seller shall provide current proof of a WC coverage certificate certifying that the Seller is in good standing with all premiums paid to date. Renewals of such certificates shall be provided immediately upon expiry during the period that the Deliverables are being performed by faxing such to: WC Renewal Notice c/o Marine Atlantic fax no. 709-772-8956.

f) Good Standing: The Seller represents and warrants that it is in good standing with the corporate registry under which it is licensed to carry on business.

8. Limitation of Liability & Indemnification:

The Seller shall unequivocally and unconditionally indemnify and save harmless the Buyer, and at the Buyer's request, defend the Buyer, its directors, officers, members, employees, and agents from and against any Losses arising from or as a result of any Claim by the Seller, or a third party, including as applicable their representatives, officers, directors, agents and servants including any and all liability, loss expense, damage, claim, licence, and encumbrance, legal expenses or other expenses of any kind or nature whatsoever, imposed on or assumed by, or incurred by or asserted against the Buyer, its directors, officers, agents and servants in any way relating to, or arising out of the supply contemplated in this Agreement except for losses, or portions thereof, arising as a result of the proven negligence or proven contributory negligence of the Buyer.

Indemnification Procedures: i) **Notice:** The Indemnified Party must give the Indemnifying Party prompt written notice of a Claim, provided, however, that failure of an Indemnified Party to give prompt written notice does not relieve the Indemnifying Party from its indemnification obligations under this Agreement except to the extent the defence is materially prejudiced by the failure. When the Indemnifying Party receives notice of a Claim from an Indemnified Party, the Indemnifying Party agrees, at its sole cost and expense, to assume the defence of the Claim by representatives chosen by the Indemnifying Party. The Indemnified Party may participate in the defence of the Claim and employ counsel at its own expense to assist in the defence of the Claim, subject to the Indemnifying Party retaining final authority and control over the conduct of the defence. ii) **Conduct of Defence:** The Indemnifying Party's defence lawyers must be reasonably experienced and qualified in the areas of litigation applicable to the defence. The Indemnifying Party has the right to assert any defences, causes of action or counterclaims available given the subject of the Claim and also has the right to settle the Claim, subject always to the Indemnified Party's prior written consent. The Indemnified Party agrees to provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, as may be reasonably requested by the Indemnifying Party in connection with any defence, including, without limitation, providing the Indemnifying Party with information, documents, records and reasonable access to the Indemnified Party as the Indemnifying Party reasonably deems necessary.

9. Termination:

a) Termination for Insolvency: If either Party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against a Party and the petition is not discharged within sixty (60) days after filing, or upon any assignment for the benefit of a Party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a Party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "Event of Bankruptcy"), then the Party affected by any Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to the other Party, and the other Party may terminate this Agreement by notice to the affected Party.

b) Termination for Breach: If either Party breaches any material provision contained in this Agreement and the breach is not cured within thirty (30) days after the breaching Party receives notice in writing of the breach (together with reasonable details of such breach) from the non-breaching Party, the non-breaching Party may then deliver a second notice to the breaching Party immediately terminating this Agreement.

c) Termination for Convenience: The Buyer may also terminate the Agreement for any reason on providing the Seller with ten (10) days prior written notice and any Fees properly owing shall be prorated to the date of termination.

10. Force Majeure:

Any failure or delay by a Party in the performance of its obligations under this Agreement is not a default or breach of the Agreement or a ground for termination under this Agreement to the extent the failure or delay is due to elements of nature or acts of God, acts of war, terrorism, riots, revolutions, or strikes or other factors beyond the reasonable control and without the fault or negligence of the Party claiming the force majeure, and which, despite all reasonable efforts, timely taken by the Party claiming the force majeure to prevent its occurrence or mitigate its effects, causes failure or delay (each, a "Force Majeure Event"). The Party failing or delaying due to a Force Majeure Event agrees to give notice to the other Party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Agreement, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should three (3) Force Majeure Events apply to the performance of a Party during any calendar year, the Party not subject to the Force Majeure Event may terminate this Agreement by notice to the Party subject to the Force Majeure Event. Lack of financial resources shall not be considered Force Majeure.

11. General:

a) Entire Agreement and Amendments: This Agreement is the entire agreement between the Parties and supersedes all earlier and simultaneous agreements regarding the subject matter, including, without limitation, any invoices, business forms, proposals or quotations. This Agreement may be amended only in a written document, signed by both Parties. **IT IS EXPRESSLY AGREED BY THE SELLER THAT ONLY THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL PREVAIL AND THAT ANY TERMS AND CONDITIONS SUBMITTED BY THE SELLER, INCLUDING ANY TERMS AND CONDITIONS ATTEMPTING OR PURPORTING TO LIMIT, NEGATE, AMEND, REPLACE OR SUPERCEDE THIS AGREEMENT, WHETHER FORMING PART OF THE SELLER'S QUOTATION, PROPOSAL OR OTHERWISE SUBMITTED OR REFERENCED IN ANY WAY OR FORM, SHALL NOT APPLY.**

b) Policies of Marine Atlantic: The Seller will comply with all of the policies of the Buyer or otherwise disclosed to the Seller in writing from time to time, or which are posted on the Buyer's website, and such policies are incorporated by reference into the Agreement and form part hereof.

c) Independent Contractor Status: The Seller shall provide the Deliverables as an independent Contractor, and nothing in this Agreement shall be construed to create a relationship of employee and employer. i) The Buyer shall not be required to deduct or remit to any Governmental Authority in respect of the Seller any amounts, including those relating to state and federal income taxes, employment insurance, and other similar levies in respect of the Agreement. The Seller shall be solely responsible to satisfy all such government obligations. ii) The Seller shall have no authority to act, or to hold the Seller as agent of the Buyer. The Seller shall not, without the prior written consent of the Buyer, enter into any contract or commitment in or on behalf of the Buyer or bind the Buyer in any respect whatsoever.

d) No Delegation of Services: The Deliverables to be provided hereunder to the Buyer by the Seller shall be provided exclusively by the Seller. The Seller covenants and agrees with the Buyer that it shall not delegate performance of the Deliverables to anyone without prior written consent of the Buyer.

e) Governing Law and Forum: All claims must be arbitrated or litigated, as the case may be, in St. John's, Newfoundland and Labrador, Canada, regardless of the inconvenience of the forum, or at the Buyer's option, the Federal Court of Canada, located in the Province of Newfoundland and Labrador.

f) Assignment: The Seller shall not assign all or any of its rights or obligations under this Agreement without the prior written consent of the Buyer.

g) Enurement: This Agreement binds and enures to the benefit of the Parties' successors and permitted assigns.

h) No Waivers, Cumulative Remedies: Party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Except if expressly stated otherwise, all remedies under this Agreement, at law or in equity, are cumulative and nonexclusive.

i) Severability: If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the Parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions.

j) Captions and Plural Terms: All captions are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.

k) Notice: All notices, including notices of address changes, under this Agreement must be sent by registered or certified mail or by overnight commercial delivery to the Buyer at address below.

Contact information:

Marine Atlantic Inc.
10 Fort William Place, Suite 302
Baine Johnston Centre, St. John's, NL A1C 1K4 Canada
Attention: Corporate Counsel
Phone: 709-772-0335 Fax: 709-772-8956
Email: contracts@marine-atlantic.ca

l) Survival: The following captioned sections survive any termination, expiration or non-renewal of this Agreement: "Limitation of Liability & Indemnification", "Representations and Warranties", "Survival" and "General", as well as any other provisions expressly stating that they are perpetual or survive this Agreement.

m) Interpretation: Unless the context otherwise requires, words importing the singular include the plural and vice-versa. Headings are for convenience of reference only and shall not affect interpretation. In the case of inconsistency between the RFP/ RFQ, the Proposal, a Purchase Order and this Agreement (or either one of them), the following priority shall apply: i) Agreement ii) Purchase Order iii) the RFP/RFQ, and iv) the Proposal.

n) Confidentiality: Each of the Buyer and the Seller agrees that it will not, either during the term of this Agreement or any time thereafter (except in accordance with its duties under this Agreement or as required by Laws or the other Party) disclose to any Person any confidential information of or relating to the other Party of which it has become possessed of as a result of this Agreement (including the terms of this Agreement). Nothing in this Agreement prohibits disclosure of information which i) is in the public domain ii) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party iii) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party, or iv) is required to be disclosed by Laws or by any Government Authority having jurisdiction over a Party.