



Introducing the 2016 Standard Conditions to clients

For all **new/future** projects, RINA Members should give their clients a copy of the 2016 Standard Conditions when confirming an order for Design Work, and obtain written acceptance of the Standard Conditions before any Design Work is undertaken. This can be achieved by:

- (i) Arranging for clients to sign and return an estimate/proposal for the Design Work to be provided, which includes a sentence adopting the Standard Conditions (e.g. *“By accepting this proposal [or Statement of Work etc.], the Client acknowledges and agrees that the Standard Conditions and Recognised Customs of the Marine Design Profession in New Zealand (July 2016) apply to the work contemplated within this proposal”*); or
- (ii) The RINA Members sending their estimate/proposal (incorporating the sentence above) to clients by email, with a copy of the 2016 RINA Standard Conditions, and asking the client to confirm acceptance by reply email.

We recommend that RINA Members obtain acceptance of the Standard Conditions in writing (email correspondence is ok). If this is not possible, we recommend that the Members write back to their client immediately to record any verbal instructions to proceed (although written confirmation from the client is preferable).

For existing clients, if RINA members wish to adopt the 2016 Standard Conditions for existing projects/ engagements, the RINA NZ Member can send a copy of the 2016 Standard Conditions in PDF format to their client, with a brief covering email as follows:

Hi [insert client name]

We have recently updated our supply terms. I attach a copy of the Royal Institution of Naval Architects (NZ) Standard Conditions and Recognised Customs of the Marine Design Profession in New Zealand (July 2016). All future work will be supplied on these Standard Conditions.

If you have any queries, please let me know.

Regards

[insert RINA Member's name and details]

If RINA Members distribute the Standard Conditions in this manner, it is essential that they **keep copies of all emails** sent to clients/ business partners attaching the 2016 Standard Conditions, in case they need to refer to that email (to prove the Standard Conditions were sent) in the future. However, it would be better if clients provide written acceptance of the Standard Conditions, to avoid potential future dispute (e.g. if a client claims they did not receive the email, or otherwise disputes the imposition of the 2016 Standard Conditions on an existing project).

Email Footer

We have also prepared a general email footer which can be included under all of RINA Members' correspondence. This email footer refers to the RINA Standard Conditions and provides that the Standard Conditions will apply to all Design Work completed by the Marine Designer:

“All services/design works are provided on the terms contained in the Royal Institution of Naval Architects (NZ) Standard Conditions and Recognised Customs of the Marine Design Profession in New Zealand (July 2016) [insert RINA url link]. Your issue or continuation of instructions to [insert Marine Designer's name/business], or acceptance of any estimate/proposal, is confirmation of your acceptance of these Standard Conditions.”

**1 MARINE DESIGNER SERVICES**

The Client engages the Marine Designer to provide the Design Work, and the Marine Designer accepts that engagement, on the following terms and conditions.

2 ACCEPTANCE OF INSTRUCTIONS

- 2.1 An agreement shall not come into existence between the Client and the Marine Designer until the Marine Designer's acceptance of an order for Design Work.
- 2.2 All orders for Design Work must be in writing.
- 2.3 The Client agrees to provide the Marine Designer with a full brief of requirements and objectives, together with full information about the purpose, implementation and any other information regarding the Design Work reasonably requested by the Marine Designer to enable the Marine Designer to comply with the Marine Designer's obligations under these Standard Conditions.

3 DESIGN FEE

- 3.1 Unless otherwise agreed, the Client shall pay the Marine Designer for all fees, costs and disbursements (plus GST) incurred by the Marine Designer in providing the Design Work.
- 3.2 Where a fee estimate is given for the Design Work, the Marine Designer shall not be bound by that estimate. The Marine Designer is not obliged to bring any changes to fee estimates to the attention of the Client.
- 3.3 The fee is subject to reasonable upward adjustment in the event that:
 - (a) Through no fault of the Marine Designer, the Design Work will require more effort and labour to complete than reasonably contemplated;
 - (b) The cost of providing the Design Work unexpectedly increases due to circumstances beyond the control of the Marine Designer between the date the Marine Designer accepts an order for Design Work and the date the Design Work is completed;
 - (c) After an order for Design Work is accepted, the Client varies the scope of the Design Work required; and/or
 - (d) After completion and approval of any Design Work or part of any Design Work, the Client instructs the Marine Designer to alter the Design Work supplied.
- 3.4 The Marine Designer may add a service charge of ten (10) per cent of invoiced costs where payment to third parties has been made by the Marine Designer on behalf of the Client.
- 3.5 If the Marine Designer orders third party products or services charged to the Marine Designer's account, or paid for by the Marine Designer to be on-charged to the Client, the Client is on notice that, unless otherwise agreed in writing, the Marine Designer may receive a commission from the original supplier. The Marine Designer shall not be required to account to the Client for any commissions received and the commissions shall be the Marine Designer's property.

4 PAYMENT OF DESIGN FEE

- 4.1 In some circumstances, the total fee payable for the Design Work will not be fixed, specified or known at the time of the Marine Designer's acceptance of an order for Design Work. The Marine Designer is not obliged to provide an estimate for the fee and the fee may be calculated by reference to the actual costs incurred by the Marine Designer whilst carrying out the Design Work or upon completion of the Design Work.
- 4.2 To allow for the circumstances set out in clause 4.1, the Marine Designer may, in its absolute discretion, invoice the Client for the fee:
 - (a) Upon completion of the Design Work;
 - (b) Monthly; or
 - (c) At appropriate milestones as the Marine Designer progressively completes the Design Work.
- 4.3 Unless otherwise agreed in writing between the parties, the Client shall pay each invoice described in clause 4.2 on or before the 7th day following the date on the invoice.
- 4.4 The Client may not deduct, withhold or offset any sum from the amounts owed to the Marine Designer under these Standard Conditions.
- 4.5 Any monies paid may be allocated by the Marine Designer towards any amount owed by the Client.
- 4.6 The Client may not reduce or withhold payment to the Marine Designer because a third party has not carried out their obligations to the Client.

5 PAYMENT DEFAULT

- 5.1 Any monies not paid in full in accordance with clause 4 may be charged with interest at a rate of 2% per month or part month overdue, and the Marine Designer is, in addition, entitled to recover all debt collection costs and related legal expenses (on a solicitor-client basis).
- 5.2 In the event that any monies due are not paid in full, the Marine Designer reserves the right to immediately suspend further Design Work for the Client. If further Design Work is suspended, the Marine Designer shall not be obliged to resume the Design Work until the full amount owing and any costs incurred in relation to the suspension are paid in full and the Marine Designer has adequate security for future payments. The Marine Designer shall not be liable to the Client or any person for losses arising from suspension of the Design Work. Noting in this clause prejudices or otherwise affects the Marine Designer's rights under clause 17.

6 INTELLECTUAL PROPERTY

As part of providing the Design Work, the Marine Designer may utilise existing Intellectual Property, including or incorporating (as the case may be) Intellectual Property owned by the Marine Designer or Intellectual Property which the Marine Designer is licensed or otherwise permitted to supply to the Client. The following Intellectual Property ownership and use rights shall therefore apply unless otherwise agreed in writing between the parties:

- 6.1 The Client grants the Marine Designer the right, authority and licence to use the Client IP for the sole and exclusive purpose of supplying the Design Work, on the terms and conditions set out in these Standard Conditions.
- 6.2 The Client IP remains the property of the Client. This licence does not convey title or grant any rights of ownership in Client IP to the Marine Designer.
- 6.3 The Marine Designer grants the Client the right, authority and licence to use the Marine Designer IP on the terms and conditions set out in these Standard Conditions.
- 6.4 The Marine Designer IP remains the property of the Marine Designer. This licence does not convey title or grant any rights of ownership in the Marine Designer IP to the Client.
- 6.5 The Marine Designer may suspend or revoke the licence granted in clause 6.3 if the Client fails to make any payment owed to the Marine Designer on time.
- 6.6 Any Intellectual Property which has been disclosed between the parties shall for all purposes be deemed to have been disclosed under and be subject to all the terms, limitations and conditions of these Standard Conditions.
- 6.7 The Client shall not sell, assign, sublicense or otherwise transfer or deal with the Marine Designer IP, except for the Client's personal use of the Design Work in accordance with these Standard Conditions.
- 6.8 The Client shall supervise and control the use of the Design Work in accordance with the terms of these Standard Conditions.
- 6.9 The Marine Designer asserts all of the Marine Designer's moral rights in respect of the Design Work and any reference to the Design Work shall be accompanied by full attribution to the Marine Designer in a form to be approved by the Marine Designer.
- 6.10 Unless the right to reproduce or create derivative Design Work is otherwise agreed in writing between the parties, the Client shall be entitled to use the Design Work to create one (1) derivative work only and to make such copies of the Marine Designer IP as are necessary solely for completion of that derivative work and any statutory compliance associated with it.
- 6.11 Where property and materials are left with the Marine Designer without specific instructions, the Marine Designer may dispose of them at the end of six (6) months from the date of receiving them and retain the proceeds.

7 ROYALTIES AND RECORD KEEPING

- If the parties agree that the Client is entitled to use the Design Work to create more than one (1) derivative work, then this clause shall apply unless the parties agree otherwise in writing:
- 7.1 Within five (5) days of the Client entering into an agreement to sell a vessel constructed using or incorporating any of the Design Work (a "Marine Designer Vessel"), the Client shall provide written confirmation to the Marine Designer:
 - (a) Notifying that the Client has entered into an agreement to sell a Marine Designer Vessel; and
 - (b) Providing details of the number of Marine Designer Vessels, specifications, and sale price for each Marine Designer Vessel.
 - 7.2 The Client shall pay the Marine Designer a royalty fee equal to 1.5% of the total sale price for each Marine Designer Vessel sold by the Client. This royalty fee shall be payable in one (1) instalment once construction of the hull of the Marine Designer Vessel is completed.
 - 7.3 The royalty fee stated in clause 7.2 is payable regardless of whether the Client has received any payment from the sale of the Marine Designer Vessel.
 - 7.4 Interest on overdue royalty fees may be charged in accordance with clause 5.1.
 - 7.5 The Client shall keep and maintain full and accurate records from which the accuracy of the royalty fee payments can be verified and shall permit the Marine Designer (by its authorized agent or officer) upon reasonable notice to inspect and take copies of all such records in the Client's possession or control as may be necessary to verify the accuracy of the royalty fee payments.
 - 7.6 The Client warrants that no monies (or other benefit) other than the notified sale price of each Marine Designer Vessel shall be received by the Client from the purchaser or any third party.

8 RETAINER FEE

- 8.1 Any retainer fee for the Design Work agreed between the parties shall be paid by the Client prior to commencement of the Design Work.
- 8.2 The retainer fee in clause 8.1 shall be:
 - (a) Credited towards the Marine Designer's invoices to the Client; and
 - (b) Non-refundable unless the Marine Designer terminates the Design Work in accordance with clause 17.1(b).

9 PERFORMANCE AND DELIVERY

- 9.1 Any periods of time estimated for completion of the Design Work are indicative estimates only. The Marine Designer shall use reasonable commercial endeavours to meet deadlines; however, any delay shall not entitle the Client to terminate an order for Design Work or claim remedies.

10 CONFIDENTIALITY

- 10.1 If the Client does not agree to progress the Design Work beyond a concept design stage onto a detailed design stage, then:
 - (a) The Client must not disclose the Design Work to any third party;
 - (b) The Client must recover all copies of the Design Work from any third party to which it has supplied a copy; and
 - (c) The Client must not use the Design Work or any part of the Design Work, except with express written permission of the Marine Designer.
- 10.2 The parties shall, at all times during and after completion of the Design Work, keep the following information ("Confidential Information") in whatever form (including electronic) confidential (whether disclosed before or after commencement of the Design Work):
 - (a) All designs, drawings, diagrams, records, documents and reports (including drafts) in relation to other party's Intellectual Property; and
 - (b) All other information relating to the other party's business.



10.3 Confidential Information must be returned or destroyed upon termination of the Design Work or otherwise upon request of the party that supplied the information.

10.4 The obligations in clauses 10.1 to 10.3 shall apply except:

- (a) As authorised in writing by the party that supplied the information;
- (b) As reasonably required on a “need to know” basis to officers, employees, and professional advisers of the party, provided such persons have agreed to keep the Confidential Information confidential;
- (c) As required by law; or
- (d) To the extent that any Confidential Information is already or becomes public knowledge, other than as a result of a breach by that party.

11 PRIVACY

11.1 The Marine Designer shall abide by the Privacy Act 1993 and shall take all practical steps to achieve privacy protection.

11.2 The parties will take all reasonable steps to keep secure and private each other’s data.

11.3 The Marine Designer shall keep as confidential the Client’s details and/or the details of the Design Work where instructed to do so by the Client, except where it is reasonably necessary to enable the Marine Designer to provide the Design Work.

12 TITLE AND SECURITIES

12.1 Until the Client has paid for the Design Work in full together with all sums due to the Marine Designer, the Client acknowledges and agrees as follows:

- (a) The title and ownership of the Design Work and any derivative work, whether 2-dimensional or 3-dimensional including moulds, hulls and vessels, (together, “the Assets”), shall become and remain the sole property of the Marine Designer;
- (b) The Client shall keep the Assets apart from the Client’s own goods, hold the Assets as agent for the Marine Designer, and not part with possession of the Assets or, if possession has been parted with, recover possession of the Assets.
- (c) The Client shall make the Assets available at a reasonable time and place designated by the Marine Designer;
- (d) The Client irrevocably authorises the Marine Designer, its agent and contractors to enter on and into any site or premises occupied by the Client to search for and remove any of the Assets in which the Marine Designer has ownership without in any way being liable to the Client or any person or company claiming through the Client. If the Design Work or any part of the Design Work is wholly or partially attached to other goods the Marine Designer may, where practical, disconnect or sever in any way whatsoever as may be necessary to remove the Assets;
- (e) The Marine Designer may sell or otherwise dispose of the Assets;
- (f) The Marine Designer may terminate its agreement with the Client for the Design Work;
- (g) The Client grants to the Marine Designer a security interest in the Assets and its proceeds to secure payment of all fees and other amounts due from the Client to the Marine Designer from time to time; and
- (h) Nothing in sections 114(1) (a), 133 and 134 of the Personal Property Securities Act 1999 shall apply to these Standard Conditions. The Client waives its rights pursuant to sections 121, 125, 129, 131 and 132 of that Act and its rights to receive any verification statement relating to the security interests in the Assets (section 148).

13 WARRANTIES

13.1 The Marine Designer warrants that the Design Work will:

- (a) Conform to the requirements expressly agreed in writing between the parties; and
- (b) Be free from significant errors and defects, for a period of twelve (12) months from the date the Design Work is completed (“the Warranty Period”), subject to any financial, physical, time or other constraints imposed by the Client or reasonably resulting from the nature of the Design Work. The Marine Designer agrees to replace or repair any defective Design Work at its cost (excluding travelling costs and expenses) during the Warranty Period. This warranty will be effective only where the Client has complied with its payment obligations. To the fullest extent permitted by law, this warranty shall be the Client’s sole remedy against the Marine Designer.

13.2 Notwithstanding clause 13.1:

- (a) The Marine Designer shall not be responsible for any defects in the Design Work caused by fair wear and tear, incorrect or unintended use, non-compliance with operating instructions or operator error, misuse, neglect or accident.
- (b) Any third-party components or designs supplied as part of the Design Work are subject only to the warranty given by the suppliers of the components or designs.
- (c) No warranty support will be provided where the Design Work has been modified, repaired or tampered with by a person other than the Marine Designer.

13.3 Any requests for out-of-warranty support and maintenance of the Design Work shall (if accepted by the Marine Designer) be provided at the Marine Designer’s prevailing charge rates.

13.4 Except as expressly provided in these Standard Conditions, to the maximum extent permitted by law, the Marine Designer disclaims all warranties (statutory, express or implied) including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose, standards compliance, or non-infringement of title, with regard to the Design Work.

13.5 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 or equivalent legislation may apply to the Design Work provided by the Marine Designer if the Client acquires the Design Work for personal, domestic or household use or consumption. If those Acts apply, nothing in these Standard Conditions will limit or exclude the Client’s rights under those Acts. If the Client is acquiring the Design Work for business purposes, then the Client’s rights are subject to these Standard

Conditions only and all guarantees, warranties, rights or remedies implied by the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or any similar statutes are expressly excluded to the maximum extent permitted by law.

14 INDEMNITY

14.1 The Client undertakes to indemnify the Marine Designer at all times against any liabilities, costs, losses, claims, or damages (including legal fees and disbursements on a solicitor-client basis) arising or in incurred in any way from or in connection with:

- (a) The Client’s breach of these Standard Conditions;
 - (b) The Client’s use of the Design Work, except as permitted by these Standard Conditions;
 - (c) Non-payment of any monies when they become due or any action taken by the Marine Designer as a result;
 - (d) Any unpaid fees and job-related costs of persons other than the Marine Designer, whether or not the Client is to be reimbursed for such monies;
 - (e) Any claim by a third party against the Marine Designer alleging that the Client IP and/or the Design Works (excluding Marine Designer IP) infringes any third-party Intellectual Property; and/or
 - (f) Any claim by a third party against the Marine Designer as a result of or in connection with any breach of the Client’s obligations to the Marine Designer, or arising in relation to any contracts or supply arrangements (in which the Client supplies, uses, incorporates or relies upon the Design Work) between the Client and a third party,
- and such liability, cost, loss and damage shall be moneys due under these Standard Conditions.

15 LIMITATION OF LIABILITY

The Marine Designer’s maximum aggregate liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or relating to any Design Work supplied by the Marine Designer, or arising from or relating to these Standard Conditions, shall not exceed the amount paid by the Client for the Design Work.

16 EXCLUSION OF LIABILITY

16.1 Except as provided in clause 13 and to the fullest extent permitted by law, the Marine Designer shall in no circumstance be liable (whether at common law (including negligence), equity, statute or otherwise) for any damage, costs, expenses, claims, liability, loss or injury caused by any defect or non-compliance of the Design Work supplied, or from a consequence of any act, default or negligence on the part of the Marine Designer, its employees, agents to contractors.

16.2 Without limiting clause 16.1, the Marine Designer shall in no circumstance be liable for:

- (a) Any loss or damage arising by reason of any delay in the completion of the Design Work;
- (b) Any loss or damage arising by reason of the Marine Designer’s termination of the Design Work in accordance with clause 17;
- (c) Any loss or profits or loss of revenues resulting from the commercial performance of the Design Work;
- (d) Any indirect or consequential loss of whatever nature; or
- (e) Any loss resulting from any errors or omissions arising from incorrect information provided by the Client, or failure by the Client to provide information, or an oversight or a misinterpretation of a Client’s verbal instructions.

16.3 Unless specifically agreed in writing between the parties, the Designer accepts no responsibility and will not be liable under any circumstances for archiving, storage or backups of the Design Work or constituent/preliminary materials.

16.4 The Marine Designer accepts no liability for any claim relating to or arising from any representations, warranties or conditions made or conveyed by any agent or representative of the Marine Designer, which is not expressly confirmed by the Marine Designer in writing.

16.5 Unless specifically agreed in writing between the parties, the Marine Designer shall not be responsible for any aspect of project management relating to the Design Work.

17 TERMINATION

17.1 TERMINATION ON NOTICE: Any agreement between the Marine Designer and the Client for Design Work pursuant to these Standard Conditions may, unless otherwise agreed between the parties in writing, be terminated by:

- (a) The Client giving four (4) weeks’ written notice to the Marine Designer and paying the Marine Designer for the Design Work undertaken to date. Upon receipt of such notice from the Client, the Marine Designer shall take all reasonable steps to bring the Design Work to a close and to reduce expenditure to a minimum;
- (b) The Marine Designer giving four (4) weeks’ written notice to the Client and refunding any fees paid by the Client for any Design Work not performed.

17.2 TERMINATION FOR CAUSE: Without prejudice to any other right or remedy it may have, whether under these Standard Conditions, under statute or otherwise, either party may terminate any agreement for Design Work by written notice to the other party if:

- (a) The other party is in breach of any term of these Standard Conditions and such breach is not remedied within ten (10) days of notifying the other party;
- (b) The other party commits an act of bankruptcy or makes any assignment or composition with its creditors;
- (c) Liquidation or bankruptcy proceedings are commenced for the other party; or
- (d) The other party has a receiver or manager or statutory manager appointed.

17.3 SUSPENSION: Where the Design Work is suspended on the Client’s instructions for 30 days or more then the Client must, at the time of suspension, pay the Marine Designer for all the Design Work completed to date.

**17.4 CONSEQUENCES OF TERMINATION**

- (a) Upon suspension or termination of the Design Work, the Marine Designer shall be entitled to payment for all Design Work undertaken up to the effective date of postponement or termination (including fees, disbursements and costs incidental to the orderly wind-down of the Design Work).
- (b) If the Client terminates an agreement for Design Work other than through breach of these Standard Conditions by the Marine Designer, the Client shall indemnify the Marine Designer against any loss, costs (including costs on a solicitor-client basis), expenses, demands, or liability, suffered or incurred in relation to the Design Work.
- (c) Early termination of the Design Work will not prejudice or affect the accrued rights or liabilities of each party to the other.

18 DISPUTE RESOLUTION

- 18.1 Either party may raise a dispute by notice in writing to the other party. The parties agree to use their best efforts to resolve any dispute which may arise under these Standard Conditions through good faith without-prejudice negotiations.
- 18.2 If the parties' nominated contact persons are unable to resolve the dispute within seven (7) days following delivery of the notice referred to in clause 18.1, the dispute shall be escalated to the Chief Executive Officer (or equivalent) or each party who shall conduct information, off-the-record and without-prejudice discussions in good faith seeking to resolve the dispute.
- 18.3 If, after a further discussion period of five (5) days, the parties remain unable to reach an agreed outcome, either party may take such further steps as they elect. The parties agree not to commence litigation or any formal claim/dispute resolution processes in respect of the design services unless the preceding provisions of this clause have been complied with, provided that nothing shall prevent any party from taking immediate steps to seek urgent equitable relief in any Court.

19 ACCESS TO FINISHED DESIGN WORK

- 19.1 The Client will on the reasonable request of the Marine Designer for a period of twelve (12) months following completion of the Design Work, permit the Marine Designer to come onto the Client's premises or derivative work of the Design Work (as the case may be) for the following purposes:
 - (a) Photographing or filming the derivative work for the purpose of publicising the Design Work of the Marine Designer; and
 - (b) Inspection of the derivative work for the purpose of any professional award or requirement to submit work for review on application to the Royal Institution of Naval Architects for any category of membership.
- 19.2 The Marine Designer shall:
 - (a) Prior to exercising such right in clause 19.1, first obtain the Client's consent to such a visit (which shall not be unreasonably withheld); and
 - (b) Observe and obey any reasonable terms and conditions the Client may set for such a visit, including any limit on the number of persons that may come onto the Client's premises or derivative work.
- 19.3 The Marine Designer retains the right to use the Design Work for the purposes of the Marine Designer's portfolio and in other media, websites, exhibitions, and competitions for recognition of creative/ naval architecture excellence.

20 HEALTH AND SAFETY

When the Marine Designer is present on the Client's or other third party's premises for the purpose of the Design Work:

- 20.1 The Client shall promptly notify the Marine Designer of any health and safety policies in place on those premises; and
- 20.2 The Marine Designer shall at all times comply with all reasonable health and safety requirements and safety-related instructions provided by the Client.

21 CONTRACTORS, EMPLOYEES AND THIRD PARTY PROVIDERS

- 21.1 The Marine Designer may engage contractors, employees and/or third party suppliers in order to complete the Design Work.
- 21.2 Where the Marine Designer engages contractors at the Client's request, the Marine Designer shall not be liable for the performance or remuneration of those contractors. The Client indemnifies the Marine Designer against all costs, disbursements and other obligations arising from the contractor engagement(s).

22 NON-SOLICITATION

During the period in which the Marine Designer undertakes the Design Work, and for one (1) year following the completion of the Design Work, the Client will not solicit or engage any contractors or employees of the Marine Designer.

23 RELATIONSHIP BETWEEN THE PARTIES

- 23.1 Nothing expressed or implied in these Standard Conditions shall constitute either party as the partner, agent, fiduciary, employee or officer of, or as a joint venture with, the other party and neither party shall make any contrary representation to any person.
- 23.2 Unless specifically agreed in writing or these Standard Conditions, no provision of these Standard Conditions shall empower a party to act on behalf of the other party in any way, or to incur any liability on behalf of the other.

24 ASSIGNMENT

- 24.1 The Client may not assign any rights, duties or obligations under these Standard Conditions (including any licence granted) without the prior written consent of the Marine Designer, which shall be granted at the Marine Designer's sole discretion.
- 24.2 Any licence granted by the Marine Designer under these Standard Conditions will terminate automatically if that licence is assigned to a third party.

- 24.3 The Marine Designer may assign or novate its rights, duties and obligations under these Standard Conditions by written notice to the Client.

25 VARIATION OR WAIVER

- 25.1 The provisions of these Standard Conditions shall not be varied except by agreement between the parties in writing.
- 25.2 No right, duty or obligation in these Standard Conditions shall be deemed to be waived except by agreement between the parties in writing.

26 FORCE MAJEURE

The Marine Designer shall not be liable in any way whatsoever for any delay or breach of these Standard Conditions caused directly or indirectly by war, acts of God, strikes, lockouts, labour disputes, riots, government action or interference, fire, earthquake, material shortage, late or non-delivery by a supplier, interruption to transportation or telecommunications, or any other cause beyond the Marine Designer's reasonable control.

27 SURVIVAL OF STANDARD CONDITIONS

The covenants, conditions and provisions of these Standard Conditions capable of having effect after the completion or termination of the Design Work shall remain in full force and effect following completion or termination of the Design Work.

28 SEVERABILITY

If any provision or part of any provision of these Standard Conditions is for any reason declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable it shall not affect the legality, validity or enforceability of the other provisions of these Standard Conditions and shall be severed from these Standard Conditions so that the remaining provisions of the Standard Conditions remain in full force and effect.

29 GOOD FAITH

The parties agree to act in good faith towards one another and use their best endeavours to comply with the spirit and intention of these Standard Conditions.

30 GOVERNING LAW

These Standard Conditions shall be construed in accordance with and governed by the laws of New Zealand and the Client submits to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Design Work and these Standard Conditions.

31 DEFINITIONS

In these Standard Conditions:

- (a) Client means the client engaging the Marine Designer to provide the Design Work, and may include any person(s) acting as an agent and/or behalf or a company and/or trust and/or partnership;
- (b) Design Work means the supply of any goods and/or services by the Marine Designer to the Client, as agreed between the parties;
- (c) Marine Designer means the marine designer providing the Design Work, and may include any person(s) acting as an agent and/or behalf or a company and/or trust and/or partnership;
- (d) Standard Conditions means these Standard Conditions and Recognised Customs of the Marine Design Profession in New Zealand (July 2016);
- (e) Marine Designer IP means all Intellectual Property forming part of, or arising from or in relation to, the Design Work, excluding Client IP;
- (f) Client IP means all pre-existing Intellectual Property of the Client, and all other proprietary Intellectual Property owned or supplied by the Client, including Intellectual Property supplied by the Client for use by the Marine Designer when providing the Design Work; and
- (g) Intellectual Property includes copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks (including names, labels, get-up, logos, patterns or other identifying marks), registered and unregistered designs, methods, techniques, graphics, compilations, templates, moulds, models, drawings and CAD files, proprietary and other software, trade secrets and know-how, and all other rights resulting from intellectual activity in any field, together with all right, interest, or licence in or to any of the foregoing.

32 GENERAL RULES OF INTERPRETATION

- (a) Singular words include the plural and vice versa, and where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (b) References to any party shall mean and include a reference to that party, its successor, executors or personal representatives (as the case may be), and transferees.
- (c) Where more parties than one are covenanting parties, the covenants expressed or implied in these Standard Conditions bind the covenanting parties jointly and each of them severally.
- (d) Any reference to legislation, statute, regulation, ruling, code, rules or ordinance includes reference to any modification, substitute for, consolidation or re-enactment of it and any regulation, order in council or other instrument from time to time made or issued under such legislation, statute, regulation, ruling, code, rules or ordinance.
- (e) Headings are for convenience only and do not affect the interpretation of these Standard Conditions except for use as cross-references.
- (f) Any covenant not to do anything shall also constitute an obligation not to suffer, permit, cause or assist any other person to do that thing.