



END USER LICENSE AGREEMENT

1.0 GENERAL PROVISIONS

- (a) The information contained in **the design** and this **agreement** is subject to change at any time. Please read this **agreement** carefully. If you do not agree to the **agreement**, do not download **the design**.
- (b) This **agreement** shall be effective and bind you upon your downloading of **the design**.
- (c) Even though a royalty fee is not paid for the use of **the design**, there are conditions for using **the design**.
- (d) You are deemed to have read, understand, and have accepted this **agreement** upon executing a download of **the design**.
- (e) If you fail to abide to this **agreement**, your license to use **the design** shall be immediately and automatically revoked, without any notice or other action by **the designer**.

2.0 DEFINITIONS AND INTERPRETATIONS

- (a) In this **agreement**, unless the context otherwise requires, the following words and phrases have the following meanings:-

"Agreement" shall mean this *end user license agreement*.

"The builder" shall mean the **party** who downloads **the design**, builds a **vessel** to **the design** or has a **vessel** built to **the design**.

"The design" shall mean the downloadable documents "09006-100(GeneralArrangement)RevO.pdf" & "09006-200(Construction)RevO.pdf"

"The designer" shall mean McAlpine Marine Design Pty Ltd (ACN 003 056 399) T/A MMD Naval Architects

"Party" or **parties** shall mean the parties to this **agreement** and may be used interchangeably;

"The services" shall mean the services provided by **the designer** in producing **the design**;

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“**The vessel**” shall mean the vessel defined by **the design**;

- (b) A reference to a recital, part, clause, **party**, annexure, exhibit or schedule is a reference to a part or clause of and a **party**, annexure, exhibit and schedule to this **agreement** and a reference to this **agreement** includes any annexure, exhibit and schedule.
- (c) An expression importing natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental authority or agency
- (d) A reference to a **party** to a document includes that **party**'s executors, administrators, substitutes, successors and permitted assigns;
- (e) A covenant of **agreement** on the part of two or more persons binds them jointly and severally.

3.0 USE OF DESIGN (Royalties)

- (a) You are granted a non-exclusive license to use **the design** for the construction of a **vessel** for personal use and no royalty or licensing fees shall be payable. A royalty shall be payable for use of **the design** for any other purpose.
- (b) **Vessels** may only be built to **the design** and sold commercially with the approval of **the designer** and provided that **the builder** enters into an agreement with **the designer** agreeing to pay a royalty for each **vessel**. The obligation of **the builder** to pay such royalty shall survive any termination of this **agreement**.
- (c) In the event that **the builder** sells his business, or any assets thereof or is placed into administration or liquidation **the builder** must notify **the designer** accordingly and must notify any such purchaser and/or administrator and/or liquidator of the ownership of all **designs** by **the designer** and the obligation to pay royalties in relation to their use.
- (d) You may not distribute, copy, publish, assign, sell, bargain, convey, transfer, pledge, lease or grant any further rights to use **the design**.
- (e) You will not modify, enhance, reverse engineer or otherwise alter **the design** from its current state.

4.0 OWNERSHIP OF DESIGN

- (a) **The design** is the property of **the designer** whether the work for which it is produced is executed or not;
- (b) **The builder** is licensed to use **the design** to construct one **vessel** for personal use but it shall not be used for any other works whatsoever except with the prior express written consent of **the designer** which consent may be withheld by **the designer** in its absolute discretion;
- (c) **The builder** acknowledges that all intellectual property rights in **the design** shall be and remain the property of **the designer** and that **the builder** acquires no interest in or legal or equitable right in **the design** save as specifically set out in this **agreement** and will not at any time or in any way dispute the exclusive rights of **the designer** thereto;
- (d) **The designer** may terminate the license at any time if **the builder** breaches any of its obligations to **the designer** under this **agreement**;
- (e) Copyright in all drawings, specifications and other documents and in the work executed from them shall remain the sole property of **the designer**.

5.0 INJUNCTIVE RELIEF

- (a) **The builder** acknowledges that **the designer** may obtain injunctive relief against it for any breach or threatened breach of this **agreement**.

6.0 EXTENT OF WARRANTY

- (a) You accept **the design** on an “AS IS” and “WITH ALL FAULTS” basis. No representations and warranties are made to you regarding any aspect of **the design**.
- (b) **The designer** hereby disclaims any and all warranties, express or implied, relative to **the design**, including but not limited to any warranty of fitness for a particular purpose or merchantability. **The designer** shall not be liable or responsible for any damages, injuries or liabilities caused directly or indirectly from the use of **the design**, including but not limited to incidental, consequential or special damages.

- (c) **The designer** does not give any warranty nor accept any liability in relation to the performance or non-performance of **the services** except to the extent, if any, required by law or specifically provided for in this **agreement**;
- (d) If, apart from this clause, any warranty would be implied, whether by law, custom or otherwise, that warranty is, to the fullest extent permitted by law, hereby excluded.

7.0 **INDEMNITY**

- (a) **The builder** indemnifies **the designer** against all or any losses, damages, costs, expense, claims or actions inclusive of all legal fees and disbursements incurred by **the designer** as a consequence of **the builder's** use of **the design**.
- (b) **The builder** indemnifies **the designer** against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against **the builder**) which **the designer** may sustain or incur as a result, whether directly or indirectly, as a consequence of:
 - i. Any breach of this **agreement** or the warranties contained herein by **the builder** including, but not limited to, a breach in respect of which **the designer** exercises an express right to terminate this **agreement** ; and
 - ii. Any claim by any person arising out of **the builder's** use of **the design**.

8.0 **DESIGNERS, EMPLOYEES AND CONSULTANTS**

- (a) All limitations of liability under this **agreement** shall apply for the benefit of the employees, agents and consultants of **the designer** to the same extent as they apply for the benefit of **the designer** against **the builder** or anyone claiming through or under **the builder** and, for the purposes of this clause, **the designer** is or shall be deemed to be acting as the agent or trustee of those employees, agents and consultants and with their authority.

9.0 **WAIVER**

- (a) No waiver of any provision of this **agreement** nor consent to any departure there from by any of the **parties** hereto shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or

delay on the part of any of the **parties** hereto in exercising any rights powers or privileges hereunder shall operate as a waiver thereof or any other right hereunder; nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

10.0 VARIATIONS

- (a) This **agreement** may be amended or varied only by agreement in writing executed by all the **parties** hereto.

11.0 VALIDITY OF TERMS AND SEVERABILITY

- (a) In the event that any of the terms, conditions or provisions contained in this **agreement** shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

12.0 JURISDICTION AND GOVERNING LAW

- (a) In case of a dispute in relation to this **agreement**, you agree to submit to the jurisdiction of the Courts of Western Australia and Australia.
- (b) This **agreement** is governed by the laws of Australia and the State of Western Australia.

13.0 TECHNICAL SUPPORT

- (a) **The designer** cannot provide free technical support for any aspect of **the design**.
- (b) Where technical support is required by **the builder**, **the designer** shall supply **the builder** with a written quotation for the works. Execution of the works shall be commenced after **the builder** supplies **the designer** with a written authority to produce the works.