



**PORT** marlborough  
NEW ZEALAND LTD

**STANDARD CONDITIONS  
OF BUSINESS**

**FOR MARINE SERVICES:**

***Pilotage and Towage***

**INTRODUCTION**

1. These are the Standards Terms and Conditions (*Conditions*) which apply to the business we do.
2. These Conditions will apply to all of the business which we do unless some other terms and conditions are agreed in writing.
3. If there is any inconsistency between these Conditions and any other agreement in writing which we enter into then the other agreement shall prevail.
4. In addition to complying with these Conditions all Customers are to comply with all applicable laws whether Central Government laws, Local Government laws or otherwise. The Marlborough Sounds in which we undertake our business are part of the region for which the Marlborough District Council has responsibilities and we draw the attention of the Customer to the authority which Marlborough District Council has through its Harbourmaster, through its Bylaws and otherwise.
5. We may vary these Conditions from time to time and when we do we will give notice of variation on our website [www.pictonpilot.co.nz](http://www.pictonpilot.co.nz). The Conditions shown on our website are the operative Conditions at any time. In response to a particular situation we may introduce and promulgate special conditions applying to that situation.

**TO WHOM DO THESE CONDITIONS APPLY**

6. These Conditions apply to all Customers and others who are in and about that geographical area known as Marlborough Sounds. Unless otherwise agreed, any request received by us to provide services shall constitute acceptance of these Conditions. Where such a request is made by a port agent or shipping agent on behalf of a ship owner, such agent warrants that it has the irrevocable authority of the vessel's owner and /or operator to commit the owner and or operator to these Conditions.

**THE SERVICES WE PROVIDE**

7. We provide services in the following general areas:
  - Pilotage;
  - Towageand these Conditions apply only to such services.

**OVERALL CONTROL**

8. Subject to UKSC conditions, at all times we will retain control of the services we provide and we will retain control of all of our vessels and equipment involved in the provision of services. We retain the right through our own personnel or through others to whom we delegate our authority, to give directions and instructions. All such directions and any other procedures or requirements which are notified shall be complied with at all times.

**OUR PERSONNEL AND OUR FACILITIES**

9. We make all reasonable endeavours to have good resources of personnel, equipment and facilities. We make all reasonable endeavours to maintain our equipment and facilities in a condition which is appropriate for the tasks they were designed to perform. We make all reasonable endeavours to deliver our services safely and efficiently and to ensure that all of our personnel are fully and appropriately trained. We have a commitment at all levels of our operation to the establishment and maintenance of safe and convenient practices. We will

encourage safe working practices and conditions and we will disapprove any conditions or practices which may endanger people, property or shipping operations. We encourage anyone who is aware of any unsafe practices or conditions to bring these to our attention as quickly as possible. We are committed to taking all appropriate actions when we become aware of any conditions or practices which may be unsafe.

#### **AGREED SERVICES**

10. We will provide such services as shall have been requested from us and as we shall have agreed to provide. The services which we shall provide shall be those which have been specifically agreed. These are limited to pilotage and towage.
11. We will be ready, willing and able to provide particular services when they are within the range of services which we generally provide. We require requests for services to be made within a reasonable time before they are required to give us a fair opportunity to evaluate our capacity to provide such services and, wherever possible, reach agreement for the provision of such services. Ultimately, the services which we are required to provide are those which we have agreed in a particular instance to provide. If any special services are required beyond those which we offer or have the capacity to perform, we would expect to be able to assist in the making of arrangements for the provisions of those services.

#### **OUR CHARGES**

12. Charges for the services we provide shall be in terms of our *Schedule of Principal Tariffs* in force at the time of the actual provision of the service unless the User has negotiated a separate contract with us.
13. If a User has a separate contract with us and this expires, the rates applicable to any ongoing services provided to that User shall be in accordance with the *Schedule of Principal Tariffs*.

#### **PAYMENT FOR SERVICES**

14. Subject to any other operative agreement in writing between our Customer and ourselves, our Customer shall pay us all of our charges for services together with GST if any.
15. Unless otherwise agreed in writing prior to the provision of the services requested, the terms of payment for services will be in cash in full prior to the time of departure from the port of the vessel to which services have been provided or where services have not yet been provided in relation to a vessel, payment for services will be in cash in full within seven (7) days of the date of our invoice.
16. We reserve the right in any particular case to require the provision of a bond or security before any services are provided.
17. We strive to invoice for our services carefully and correctly. Our Customer shall pay the full amount shown on our invoice unless there is an identified error which we acknowledge and correct and in such case the corrected amount shall be paid. Our Customer may not in any circumstances reduce the amount due and payable by any set off, counter claim or otherwise.

#### **NON PAYMENT**

18. If any amount is not paid when due we reserve the right to charge interest on the overdue amount until it is paid in full. We may charge interest on a daily basis at the rate of 15% per annum.

**ENFORCEMENT COSTS**

19. If we incur costs with lawyers, debt collectors, the Courts or otherwise in recovering or endeavouring to recover payments not made by a Customer then our Customer shall be liable for and pay to us the full amount of such costs and if payments are not made when demanded these amounts shall also bear interest at the rate specified above.

**SECURITY INTEREST / LIEN**

20. For purposes of securing our Customer's payment obligations, our Customer grants to PMNZ a security interest in all of our Customer's present and after acquired property. In addition, our Customer grants PMNZ a possessory lien so that, if PMNZ is custodian of any property of our Customer, PMNZ may retain possession of such property pending payment by our Customer of amounts owed to PMNZ. PMNZ may sell such property to recover any outstanding amounts due to it in terms of the Personal Property Securities Act 1999. PMNZ may register a financing statement on the Personal Property Securities Register and our Customer waives its right to receive a copy of the Verification Statement confirming registration of a financing statement or a financing charge statement.

**GENERAL OBLIGATIONS OF OUR CUSTOMER**

21. Our Customer will do everything that a reasonable customer in that Customer's relationship with a provider of pilotage or towage services would do and will not do anything which would be contrary to the behaviour and actions of such a reasonable customer. Without reducing the generality of this requirement:
- a. Our Customer will comply with all relevant laws, legal requirements, rules, regulations and codes promulgated thereunder whether the vessel is registered in New Zealand or elsewhere;
  - b. Our Customer will comply with all of our directions, instructions and notifications, or operational processes or policies which are enforced from time to time; and
  - c. Our Customer will ensure that all information and documentation is accurate, complete and not misleading.

**OUR OBLIGATIONS**

22. We will do everything that is reasonably required to provide the services which we have agreed to supply to our Customer. If, having acted reasonably, we are nevertheless unable to provide the services as soon as required or at all then we shall not be liable to our Customer.
23. We expect our Customer to use its best judgement as to what services are required and we do not accept responsibility to our Customer if a particular service requested by our Customer is not appropriate for its purpose or is not otherwise satisfactory.
24. We do not accept any responsibility or liability for the actions or inactions of any third party providing services to our Customer and invoicing our Customer independently for such services.

**PILOTAGE AND LIMIT OF LIABILITY**

25. Pilotage is compulsory within geographical area known as the *Marlborough Sounds*, for any vessel so directed by the Director of Maritime New Zealand and the Harbour Master of the Marlborough Sounds and including:
- vessels of 350 gross registered tonnage or greater in the Tory Channel pilotage district or a vessel engaged in towing where the combined tonnage of the tow and the towing vessel exceeds 350 gross registered tonnage; and
  - for vessels exceeding 500 gross registered tonnage, for all other pilotage districts
- except where a masters hold a current Pilot Exemption Certificate (PEC), issued pursuant to Maritime Rule Part 90.
26. For the purposes of this clause *pilotage services* shall include any service or advice provided by a pilot:
- while on board the vessel to be piloted; or
  - from on board the pilot launch; or
  - from on board any other vessel involved in the pilotage; or
  - from the shore.
27. A pilot may at his or her discretion decline to undertake any pilotage or terminate any pilotage once commenced and will not be liable for any complete or partial failure to perform services on the grounds of:
- adverse weather conditions;
  - mechanical defects;
  - unreasonable trim or insufficient stability;
  - non availability or incapacity of crew;
  - any other reason which in the opinion of the pilot compromises or may compromise the safety of the persons or vessels involved directly or indirectly in the pilotage.
28. In relation to pilotage, PMNZ shall not be liable for neglect or want of skill of the person who is the pilot and the Customer hereby indemnifies and holds harmless PMNZ and its related entities (if any) against any and all claims, suits, actions, loss and/or damage whatsoever (direct or consequential) and howsoever caused that may arise as the direct or indirect result of the provision of the pilot and/or pilotage services by PMNZ to the Customer.
29. These provisions are in addition to any relevant provisions contained in statute or otherwise.

**OUR LIABILITY FOR TOWAGE**

30. In relation to towage, where we provide towage within harbour limits, such towage is provided on the terms and conditions in the United Kingdom Standard Conditions for Towage and Other Services (as revised 1986 and amended 2008). The expression *whilst towing* as defined in the United Kingdom Standard Conditions shall also include any time where the tug is alongside the hirers vessel, whether or not the tug is in a position to receive orders direct from the hirers vessel to commence pushing, holding, moving, escorting or guiding the vessel or to pick up ropes or lines.

31. The expression *Tugowner* shall include PMNZ and PMNZ will not be responsible for any liability, consequences, damage or loss arising out of the provision of towage services.

**CUSTOMER'S LIABILITY**

32. Our Customer will be liable for loss or damage caused to PMNZ where the UKSC so provide and/or where such loss or damage is caused by the fault or negligence of our Customer, its employees, agents or subcontractors.

**EXCLUSIONS OF LIABILITY**

33. Notwithstanding anything elsewhere contained in these Conditions, PMNZ, its directors, employees, agents or subcontractors will not be liable in any circumstances whatsoever:
- a. Where liability might otherwise be attributed to PMNZ but New Zealand law excludes PMNZ's liability, or imposes liability on another party or parties (e.g. including without limitation circumstances in which PMNZ may provide pilotage);
  - b. Where UKSC so provide;
  - c. Where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of our Customer to comply with any of these Conditions;
  - d. Where we are unable to provide, for any reason, a berth or berthage requested by the Customer;
  - e. Where we direct the Customer to remove or shift the vessel;
  - f. Where there is a lack of draught, adverse actual or forecast weather, adverse sea or tidal conditions, condition of berths and approaches to them, unavailability of pilot or tugs or the inadequacy of any mooring lines or bollards.

And, for the avoidance of doubt:

- g. For any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of PMNZ, its employees, agents or subcontractors;
- h. For indirect, special or consequential loss or damage howsoever caused including, without limitation, the negligence of PMNZ, its employees, agents or subcontractors;
- i. In addition to and without limiting the other limits and exclusions of liability under these Conditions, PMNZ and its employees, agents and subcontractors shall be entitled to rely on any limitation of liability available under New Zealand law and PMNZ, its employees, agents and subcontractors shall not be liable in any event in excess of those limits.

**NOTIFICATION OF CLAIMS**

- 34.
- a. For all loss, damage, expense, accident or injury PMNZ will be liable only if notice in writing is given to PMNZ by our Customer within thirty days after the date when the loss, damage, expense, accident or injury occurred.
  - b. If no such notice is given within this period, any claim will be deemed waived and absolutely barred.

**CUSTOMER RESPONSIBLE FOR SAFE MANAGEMENT AND OPERATION**

- 35.
- a. Nothing in these conditions contained or implied will affect our Customer's responsibility for the safe navigation and proper management of the vessel including, without prejudice to the generality of the foregoing, her stowage, trim and stability and the operations of berthing, mooring, unmooring and unberthing. Our Customer warrants that the vessel is and remains in all respects seaworthy.
  - b. Our Customer shall comply with all of its statutory, regulatory and other obligations as provided for under the law and thus our Customer has agreed to do in terms of these Conditions.
  - c. If at any time our Customer becomes aware that it is in breach, or is likely to be in breach of any duty or obligation, our Customer agrees to immediately notify PMNZ and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.
  - d. Our Customer will ensure that its agents, subcontractors and employees are aware of these conditions and will abide by them.
  - e. Our Customer will indemnify PMNZ in respect of any loss or damage suffered by us as a consequence of non-compliance with any of the Conditions.

**INSURANCE**

36. Our Customer will effect and maintain at all times during the term of these Conditions at its own cost, the following insurance policies:
- a. [Public Liability Insurance not less than NZ\$1 million or such higher amount as we may from time to time reasonably require.
  - b. [Other policies of insurance]
37. Our Customer will, will if so required by provide PMNZ with a copy of such policy and/or certificate of currency from such policies of insurance.

**DEFINITIONS**

38. In these Conditions the following expressions have the following meanings unless the context otherwise requires:

- **CUSTOMER** means all ship owners, operators, and the directors, employees, agents and representatives of ship owners and operators and includes any person or persons with whom we do business on a basis where PMNZ provides services, facilities or goods.
- **PERSON** includes a company or other corporate entity.
- **PILOT** means any person holding a licence to pilot in Queen Charlotte Sound and Tory Channel.
- **PILOTAGE DISTRICT** means the Queen Charlotte Sound and/or Tory Channel Pilotage District.
- **PROPERTY** means all land, buildings, Wharves and other structures, plant or equipment - either mobile or static, owned or administered by PMNZ.
- **SCHEDULE OF PRINCIPAL TARIFFS** means applicable fees and charges as posted on PMNZ's website.
- **UKSC** means UK standard conditions for towage and other services as shall be enforced from time to time.
- **WE** shall mean PMNZ.