

Moorings Northland (2011) Limited

Important Information – Terms and Conditions of Service:

All goods and services are supplied by Moorings Northland (2011) Limited (MN) on the following terms and conditions:

1. MN and the customer agree that where all or any of MN's goods or services are acquired in trade for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 ("CGA") and sections 9, 12A, 13, or 14(1) of the Fair Trading Act ("FTA") are excluded in relation to the supply of those goods or services. However, nothing in these terms shall restrict, negate, modify or limit any of the customer's rights under the CGA and FTA where MN is providing goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption and the goods or services are not being acquired in trade for the purpose of a business.
2. A customer's authorisation for MN to carry out work and/or provide services (including an authorisation received by email or phone) will remain binding unless cancelled in writing. Unless expressly agreed to the contrary, MN is authorised to carry out all works necessary to maintain the mooring to the necessary standard to enable a Certificate of Inspection to be issued, and the customer agrees to meet MN's costs of all such work. For the avoidance of doubt, if the customer sells the mooring to a third party without cancelling any existing work or service authorisation, then the customer remains liable for all costs for work carried out on the mooring pursuant to that authorisation.
3. Fees:
 - a. MN charges a standard fee for lifting the mooring. Non-standard moorings with multiple, or irregular blocks and remote moorings may incur additional charges. All other work is charged on a barge and labour time and materials basis.
 - b. Additional charges apply for certification/reporting and consumables.
 - c. MN will provide a fee estimate on request by the customer. The fee estimate may be stated as a range. MN will use reasonable skill and care in providing an estimate, and if appropriate, will state any significant assumptions on which the estimate is based and identify any areas of particular uncertainty.
 - d. Any estimate provided is a guide only and MN reserves the right to charge a total amount which exceeds the estimate provided.
 - e. MN reserves the right to periodically review prices without notification, and subject to market forces.
 - f. If while on site MN discovers that its estimate is likely to be exceeded by more than 20% MN will endeavour to contact the customer to discuss this before proceeding with the work. However, making contact may not be possible for various reasons including workplace conditions, poor reception and the customer being unavailable at the time of the call. If MN is unable to make contact with the customer, the authorisation referred to in clause 2 will still apply and MN will proceed with the work on that basis.
4. Payment:
 - a. Payment terms are 14 days from invoice date unless otherwise arranged. Should you have difficulty in meeting any of our accounts, please contact us without delay so that we may discuss whether a payment arrangement is appropriate.
 - b. If the period of MN's work is spread over more than one month, MN may issue monthly interim invoices for work completed up to that point.
 - c. MN may ask the customer to pay funds in advance to be held in trust and applied by us in payment of MN's fees and expenses. MN is authorised to use any funds held in trust for the customer towards payment of any invoice issued by it in accordance with these terms.
 - d. A Certificate of Inspection will only be issued upon full payment of MN's invoice for an inspection and service.
 - e. The customer is liable to pay all expenses (including but not limited to legal costs on a solicitor-client basis) incurred by MN in the recovery of overdue amounts payable by the customer.
5. A Romalpa clause applies; all goods supplied will remain the property of MN until full payment of invoice and MN may remove its goods without installing replacement mooring components. This clause constitutes a security interest within the meaning of the Personal Properties Securities Act 1999 ("PPSA"), and MN may, in its absolute discretion, register this security interest under the PPSA or do any act or thing required to perfect its security interest. The customer will provide all information and do all things required by the seller for the purposes of the PPSA, including (but not limited to) full identification details. The customer waives any rights to receive a copy of a verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this contract. The customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this contract, or the security under this contract, and waives its rights under sections 121, 125, 129, 131 and 132 of the PPSA.
6. If MN replaces any existing component of a mooring, the customer authorises it to remove and immediately dispose of the old component unless agreed to the contrary in writing prior to the work being done.
7. In providing its services, MN agrees to use the degree of skill, care and diligence reasonably expected of a competent mooring service provider. All measurements taken and the repositioning of the mooring block following servicing will be performed with reasonable care but are approximations only and some deviation should be expected. Any location analysis or mooring mapping services, including depth readings, are provided via a range of online third-party sources and is intended to be used only as an aid to navigation. MN's mapping services should facilitate use of official government charts, not replace them. Only Official Government Charts and Notices to Mariners contain all the current information needed for safe navigation. MN's information cannot be relied on as complete or accurate and may vary depending on location. It is the captain's responsibility to use official government charts, notices to mariners, caution, sound judgment and proper navigational skills when operating their boat using MN's information.
8. If MN is engaged to inspect and service an existing mooring then, unless there has been a material change in the use of the mooring or relevant Council bylaws/requirements since the mooring was last certified, MN may, in its absolute discretion, elect to service and maintain the mooring on a like-for-like basis. It is not within the scope of MN's services to consider whether the configuration of the mooring was non-compliant at the time that it was last certified. MN is entitled to proceed on the basis that acceptance of a previous Certificate of Inspection by the Council/Harbour Master means that the configuration of the mooring recorded in that certificate was accepted and / or compliant at that time. Unless informed to the contrary in writing by the customer, MN is entitled to proceed on the basis that the vessel using the mooring has not changed since the previous inspection and service.
9. If it is impracticable for the configuration of the mooring to comply with relevant Council guidelines due to particular requirements of the location/conditions of the mooring, or the specifications of the vessel using the mooring, then subject to clause 8 above MN may refer to such non-compliance in the Certificate of Inspection or Client Report issued in respect of the mooring. Approval of any deviation from the relevant Council Guidelines is in the absolute discretion of the Council/Harbour Master, and MN is not liable for any refusal to grant such approval.
10. Checking that there is sufficient swing room for the vessel using the mooring is not within the scope of MN's engagement.
11. If the customer requests that MN carry out specific work on the mooring between designated inspection and service dates, then unless expressly instructed in writing to the contrary MN will not undertake a full inspection and service of the mooring when carrying out that specific work. The mooring will remain due for a full service and inspection in accordance with the service cycle advised after the date of the previous full service and inspection.
12. The customer accepts that MN's operating schedule can be impacted by numerous factors including, but not limited to, availability of labour, adverse weather, maintenance programmes and work schedule, which individually and collectively may mean that work or services are carried out either substantially before or after the expiry date for the certification of the mooring. While estimated timing of the work may be provided, MN is not obliged to carry out the work on any given date and will not be liable for any loss or damage arising from any delays in carrying out the work.
13. The customer accepts full responsibility for the accuracy of all information it provides to MN, including but not limited to information about the vessel which is to use the mooring. MN will be entitled to rely on all such information (or any omission to provide material information) without auditing or making any independent enquiry as to its accuracy. If no vessel information is supplied, MN will service the mooring on a like-for-like basis in accordance with clause 8 above.
14. Unless expressly agreed in writing to the contrary, MN's engagement by the customer will come to an end upon the completion of the physical servicing of the mooring and the issue of a Certificate of Inspection (where applicable). MN is not engaged on an ongoing or perpetual basis to manage the mooring. Nor will any delay between the completion of physical servicing of the mooring and the issue of a Certificate of Inspection be interpreted to mean that MN is engaged to manage the mooring during that period of delay.
15. To the maximum extent permitted by law, MN's legal liability to the customer (whether in contract, tort including negligence, or any other legal basis whatsoever) in relation to its goods and services is limited as follows:
 - a. MN shall have no liability for loss or damage caused directly or indirectly by any of the following: (i) storm, other significant weather event, perils of the sea, navigation of any vessel or any other cause (ii) the customer's failure to adhere to relevant legislation, bylaws and guidelines and/or good boating practice (iii) the customer's failure to regularly monitor the condition of the mooring and attend to any urgent maintenance requirements (iv) incorrect usage of the mooring v) interference with the mooring rode above the waterline by the vessel using the mooring (vi) the use of the mooring by a vessel other than the one which MN understood would be using the mooring at the time of inspection and service (see clauses 8 and 13 above) (vii) the act of any person in causing damage to a mooring and any part of it, where the damage is caused by any vessel moored to such mooring and (viii) any breaking away or defect of a mooring or any part of it.
 - b. MN is not liable for any indirect or consequential losses, including loss of profits.
 - c. MN's maximum liability to the customer for any claim will not exceed the sum of five times the fee invoiced for the goods and/or services at issue in the claim or \$100,000, whichever is the lesser.
 - d. After a mooring inspection and service or any other work provided, MN is unable to control the mooring use or environmental conditions and therefore no liability will be accepted for any mooring failure and consequential losses.

For the avoidance of doubt, nothing in this clause is intended to derogate from the customer's rights under the CGA or the FTA where the application of those Acts is not excluded pursuant to clause 1 above.