

## GENERAL OBLIGATIONS OF THE PARTIES

In consideration of the Client paying MPC Kinetic the Fee, MPC Kinetic will use its reasonable endeavours to perform the Services for the Client at the Site from the Commencement Date and by the Delivery Date(s).

For clarity, it is not an essential term or condition of the Contract that the Services be completed before the Delivery Date(s). If MPC Kinetic is delayed in the performance of the Services by a cause outside its reasonable control, the Client will compensate MPC Kinetic for the actual reasonable, mitigated costs of that delay as a variation to the Fee.

1.1 Unless otherwise specified in the Quotation:

- (a) MPC Kinetic is only responsible for the performance of the Services expressly included in that Quotation;
- (b) to the extent that the Services involve the supply of a Lease Liner, MPC Kinetic is only responsible for performing the Services specified in the document entitled "Lease Liner Responsibilities Matrix" published on MPK's website;
- (c) any services, works, provision of labour, plant, materials or other items or activities ancillary to the provision of the Services will be the responsibility of the Client; and
- (d) if the Services include loading, transporting, unloading, storage or other handling of FIM or other Goods, the Client is responsible for those Goods and the handling or non-handling of them.

1.2 The Client must and must ensure that its Personnel comply with all laws and hold all consents, permits, licences and similar necessary to enable MPC Kinetic to provide the Services and, if those laws, consents, permits, licences or similar contain requirements which affect the performance of the Services, the Client must notify MPC Kinetic in writing of those requirements.

1.3 MPC Kinetic acknowledges that it will not be granted access to the Site by the Client until it has complied with any preconditions to Site access notified by the Client in writing to MPC Kinetic before the Commencement Date.

1.4 MPC Kinetic must comply with all reasonable directions of the Client whilst on Site.

## 2 GOODS

2.1 To the extent that the performance of the Services includes the supply of Ordered Goods (excluding FIM):

- (a) MPC Kinetic takes the risk in damage to, and loss of, those Ordered Goods until they are physically delivered to the Client or the Site;

- (b) the Client will take the risk in damage to, or loss of, those Ordered Goods for any period that they are in the possession or under the control of the Client; and

- (c) Title to the Ordered Goods will not pass to the Client until all amounts owing to MPC Kinetic in relation to the Contract have been paid.

2.2 Where there is FIM:

- (a) each party will be responsible for damage to, or loss of, the FIM whilst the FIM is in their possession or under their control; and
- (b) the Client will be and remain responsible for any defects and non-conformances in the FIM at all times and will indemnify MPC Kinetic in this regard.

## 3 DATA INTERPRETATION & OTHER PROFESSIONAL SERVICES

3.1 Subject to clauses 3.2 and 3.3, the Services do not include any data interpretation, other than by conventional measurement and calculation techniques.

3.2 Where the Services expressly include data interpretation, the Client acknowledges and agrees that:

- (a) MPC Kinetic is providing the Client with its best judgement as to the interpretation of the data;
- (b) the interpretation is based on interferences from electrical or other logs and records, and other empirical factors which are not necessarily infallible, and interpretations may vary between individuals undertaking the interpretation, and as a result, MPC Kinetic does not warrant the accuracy or correctness of any interpretation;
- (c) any data interpretation by MPC Kinetic is not intended to form a recommendation to the Client or to any person about a particular course of action; and
- (d) MPC Kinetic will not be liable to the Client or any Third Party in relation to the interpretation of survey data, and the Client will indemnify and hold harmless MPC Kinetic from such Claims.

3.3 Where the Services include professional services, the Client acknowledges and agrees that the deliverables of the Services are subject to the scope of Services undertaken by MPC Kinetic, any clarifications, exclusions and assumptions noted by MPC Kinetic and the limitations which would be placed on a competent professional service provider, acting reasonably in the context of providing similar services.

## 4 VARIATIONS

4.1 The Client may direct MPC Kinetic in writing at any time to change the character of, increase or decrease the quantity or frequency of or supply

- additional Services and MPC Kinetic may (if reasonable) comply with the direction.
- 4.2 Within a reasonable time of MPC Kinetic receiving a direction from the Client under this clause, MPC Kinetic will provide the Client with the details of the effect of that direction on the Fee and Delivery Date.
- 4.3 If accepted in writing by the Client, the modified Fee and Delivery Date will apply to the Contract. If the Client does not agree with the modified Fee and/or Delivery Date, and the parties cannot otherwise agree on the modified Fee and Delivery Date, MPC Kinetic will advise the Client of a reasonable modification to the Fee and Delivery Date, which will apply to the Contract from that point forward.
- 5 INSURANCE**
- 5.1 Each of MPC Kinetic and the Client will effect and maintain until the Delivery Date:
- public liability insurance with a limit of not less than \$20,000,000.00 per occurrence for personal injury, death and property damage;
  - compulsory third party and comprehensive motor vehicle insurance;
  - workers' compensation insurance as required by law; and
  - any other insurance specified in the Quotation.
- 5.2 Within 24 hours of a request from the other party, MPC Kinetic or the Client must provide the other with evidence in the form of a certificate of currency that the insurance required by the Contract is in place.
- 6 DEFECTIVE OR NON-CONFORMING SERVICES**
- 6.1 Subject to clauses 6.2 and 6.3, if at any time prior to the Services being completed, the Client can prove that the Services have not been performed in accordance with the Contract or are otherwise defective, the Client's sole remedy is to request the re-performance of the Services by MPC Kinetic within a reasonable time.
- 6.2 Subject to clause 6.3, MPC Kinetic does not otherwise warrant the Services or any part of them unless the Services involve:
- the supply of chemical products by MPC Kinetic, in which case, MPC Kinetic will re-supply any chemical product which is defective or otherwise does not conform with the requirements of the Contract within the earlier of:
    - 6 months of the date of delivery of the chemical product; or
    - the expiry of the shelf-life of the chemical product,
 provided that the chemical product has been stored in accordance with the manufacturer's instructions; or
  - the supply of a Lease Liner, in which case, MPC Kinetic will re-supply or rectify (at MPC Kinetic's election) any Lease Liner which is defective or otherwise does not conform with the requirements of the Contract within 6 months from the date of installation of the Lease Liner at the Site, but only if the defect or non-conformance is as the sole, direct result of UV radiation.
- 6.3 Any Ordered Goods supplied by MPC Kinetic as part of the Services must only be used by the Client in a manner which is consistent with the instruction of, and technical specifications provided by, the manufacturer and MPC Kinetic. In the case of:
- a Lease Liner, the manufacturer's instructions and technical specifications are published on MPK's website; and
  - a Lease Liner or any other Ordered Goods, the manufacturer's instructions and technical specifications include any other written or verbal advice provided by MPC Kinetic to the Client (including in the case of chemical products where MPC Kinetic is the manufacturer);
- and the Client is responsible for obtaining and understanding all manufacturer's technical specifications and instructions. MPC Kinetic is not responsible for the use of any Ordered Goods inconsistently with this clause.
- 7 FEE**
- 7.1 The Fee is only firm if the Quotation signed or the Services are commenced within any stated validity period or, if no validity period is stated, within 30 days from the date of the Quotation. If the Client proceeds with the Services outside of the validity period for the Quotation referred to in this clause, this will be considered a variation directed by the Client to which clause 4 will apply.
- 7.2 Unless otherwise specified in the Quotation:
- any reimbursables such as meals and accommodation and other charges incurred by MPC Kinetic in relation to the performance of the Contract will be paid by the Client at actual cost to MPC Kinetic plus a mark-up of 25% for logging tools and 15% for all other charges; and
  - the rates included in the Quotation will only be valid for a maximum of:
    - where the Services are for the supply of production chemicals, 12 months from the date of the Quotation, except for any portion of the Fee which is subject to FX, in which case the relevant portion of the Fee will be adjusted to reflect the actual cost of FX movements incurred by MPC Kinetic; and

- (B) for all other Services, 24 months from the date of the Quotation.
- 7.3 The Fee is quoted by MPC Kinetic, and will be paid by the Client, in the denomination specified in the Quotation. If no denomination is specified in the Quotation, the denomination will be as notified by MPC Kinetic.
- 7.4 The Fee excludes all applicable taxes (including GST), levies, duties, fees, bank charges or expenses assessed or levied in relation to the Client or the Services. The Client is responsible for the payment of all such taxes (including GST), levies, duties (including customs), fees, bank charges or expenses assessed or levied and, if levied on MPC Kinetic may be charged to the Client as if part of the Fee.
- 8 PAYMENT**
- 8.1 MPC Kinetic will provide a Tax Invoice for the relevant portion of the Fee to the Client upon completion the Services or any portion of the Services.
- 8.2 The Client will pay the amount of a Tax Invoice issued by MPC Kinetic under this clause within 30 days from the date of the Tax Invoice, except where the Client, by written notice to MPC Kinetic, disputes the Tax Invoice in which case:
- the Client will pay the undisputed part of the Tax Invoice (if any) within this timeframe; and
  - if the resolution of the dispute determines that the Client is to pay an amount to MPC Kinetic, the Client will pay that amount within 2 Business Days of resolution of that dispute.
- 8.3 Interest at a rate of 10% per annum will be payable by the Client in respect of any amount of a Tax Invoice which is due but unpaid.
- 9 LIABILITY**
- 9.1 The Client will indemnify and hold harmless MPC Kinetic Group against the amount of any Claims (including legal costs on a full indemnity basis) which MPC Kinetic Group suffers or incurs in relation to the performance or non-performance of the Contract, in respect of:
- loss of, or damage to, any Goods or other property of the Client (whether owned, hired, leased or otherwise provided by the Client, including but not limited to the well itself or any facilities associated with the well);
  - personal injury, disease or illness (including mental illness) to, or death of any Client Personnel;
  - personal injury, disease or illness (including mental illness) to, or death and loss of, or damage to the Goods or other property of any Third Party, but only to the extent caused by the Gross Negligence or Wilful Misconduct of the Client or its Personnel.
- For the purpose of this clause 9.1, any FIM is considered property of the Client.
- 9.2 Notwithstanding anything contained elsewhere in the Contract to the contrary, the Client will defend, indemnify and hold harmless MPC Kinetic Group from and against all Claims arising from or in relation to:
- loss of or damage to any well or hole including, without limitation, the cost of re-drill and any associated Goods or services;
  - blowout, fire, explosion, cratering or any uncontrolled well condition (including the cost to control a wild well and the removal of debris);
  - damage to any reservoir, geological formation or underground strata or the loss of oil or gas;
  - the use of radioactive tools in relation to the Services; and
  - any contamination (man-made or natural) coming from beneath the rotary table or well head (as appropriate) or emanating from the Client's property (including any Goods), including investigation, retrieval, containment, clean up and reporting.
- 9.3 The Client will indemnify and hold harmless MPC Kinetic Group for loss of, or damage to, Goods or other property of MPC Kinetic, which occurs whilst in-hole, subsurface or below the rotary table. If required by MPC Kinetic, the Client will fish in-hole for Goods or other property of MPC Kinetic and assume the entire responsibility for, and cost of, such fishing operations in the recovery or attempted recovery of any such lost or damaged Goods or other property of MPC Kinetic. If unable to be fished or fishing is not required by MPC Kinetic, the Client will reimburse MPC Kinetic all costs incurred by MPC Kinetic in relation to the full replacement or repair value of the Goods or other property of MPC Kinetic including any reasonable costs incurred by MPC Kinetic during the time the Goods or other property were unable to be used.
- 9.4 Notwithstanding anything expressed or implied in the Contract to the contrary, MPC Kinetic will not be liable to the Client for any Consequential Loss arising out of, or in relation to the Contract.
- 9.5 MPC Kinetic will not be liable for any Claim by the Client unless the Client provides MPC Kinetic with written notice of the details (including the legal basis, factual basis and quantum) of the Claim within five (5) days of the time when the Client should have first become aware of the facts or circumstances giving rise to the Claim.
- 10 TERMINATION**
- 10.1 Either party may terminate the Contract by written notice to other party ('defaulting party') if:

- (a) the other party commits a breach of the Contract and fails to remedy that breach within a reasonable time from receipt of a notice identifying the breach;
- (b) the other party or any of its Personnel commits fraud or other unlawful act or omission, Gross Negligence or Wilful Misconduct; or
- (c) the other party suffers an Insolvency Event.
- 10.2 If the Contract is terminated pursuant to clause 10.1:
- (a) irrespective of who the defaulting party is, the Client will pay MPC Kinetic the Fee for Services performed on or before the date of the termination; and
- (b) if the Client is the defaulting party, the Client will pay to MPC Kinetic all costs incurred by MPC Kinetic in relation to the termination including demobilisation and orders for Ordered Goods for which MPC Kinetic remains liable.
- 10.3 Notwithstanding clause 10.1, MPC Kinetic may terminate the Contract at any time by giving the Client 30 days' written notice, and upon termination, the Client will pay MPC Kinetic the Fee for the Services performed on or before the date of the termination.
- 11 INTELLECTUAL PROPERTY**
- 11.1 The right and title to all new Intellectual Property Rights created by MPC Kinetic under or in relation to the Contract will vest in MPC Kinetic upon creation.
- 11.2 MPC Kinetic provides a perpetual, worldwide, royalty-free, non-exclusive, transferable and sub-licensable licence to the Client (and any third parties to whom the Client needs to grant a sub-licence) to use and copy (but not modify, amend or enhance) the Intellectual Property Rights which were in existence at the Commencement Date and any new Intellectual Property Rights and which are incorporated into, are necessary for the use of, or otherwise form part of the Services.
- 12 GENERAL**
- (a) The Contract becomes binding once MPC Kinetic commences the performance of the Services or the Quotation is accepted by the Client, whichever is the earlier.
- (b) The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties in relation to the subject matter.
- (c) Under no circumstances will any purchase order, document, requirement or information provided or issued by the Client (whether or not signed or impliedly accepted by MPC Kinetic) will form part of the Contract, unless expressly stated in the Quotation.
- (d) The Contract may only be amended by written agreement between the parties.
- (e) A right under the Contract may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.
- (f) MPC Kinetic may sub-contract, assign or novate any of its rights or obligations under the Contract without the consent of the Client.
- (g) The law in effect at the Site will govern the Contract. Each party irrevocably submits to the exclusive jurisdiction of the courts of that law and courts competent to hear appeals from those courts.
- (h) The contents of the Contract and all communications, documentation and information provided by a party in relation to the Contract are considered confidential and must be kept confidential by the other party, except where disclosure is required by law or permitted by the other party.
- (i) Any dispute between the parties in relation to the Contract will be negotiated in good faith
- (j) MPC Kinetic holds the benefit of each covenant in the Contract in favour of MPC Kinetic Group for each person in MPC Kinetic Group.
- (k) A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.
- (l) Any notice, Tax Invoice or document given under the Contract shall be deemed to be sufficiently served, if delivered, posted (by prepaid post) or emailed to a party as per the details in the Contract or such other updated details provided by the party:
- (i) if it is posted, on the second Business Day following the date on which it was posted,
- (ii) in the case of electronic delivery, at the time shown in the delivery confirmation report generated by the sender's email system, or where a confirmation report is not generated, unless the sender receives a return notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent, but if such time is outside of normal business hours (being 8:00am-5:00pm on a Business Day), then at 8:00am on the next Business Day, and
- (iii) otherwise, any notice, Tax Invoice or document will be deemed to be received at the time of actual receipt.
- (m) Other than a Tax Invoice, all notices under the Contract must be given to, and by, the party's representative identified in the Contract. If no representative is identified in the Contract, all notices other than a Tax Invoice must be given to, and by the party's representative as notified

(whether implied or expressly) by each party in writing from time to time to the other.

- (n) In addition to this clause, clauses 5.2, 8, 9, 10.2, 10.3, 11, 12 and 13 will survive termination or expiry of the Contract.

### 13 DEFINITIONS & INTERPRETATION

#### 13.1 In the Contract:

**‘Business Day’** means a day that is not a Saturday or Sunday, a public holiday, nor 27, 28, 29, 30 or 31 December at the Site.

**‘Claim’** means any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit under, arising out of, or in any way in relation to the Contract.

**‘Client’** means the person receiving the Services, as identified in the Quotation or as otherwise advised by the Client (through the provision of a PO or otherwise).

**‘Commencement Date’** means the earlier of the date of the Contract or when MPC Kinetic commences performing the Services.

**‘Consequential Loss’** means any indirect, special or consequential losses including but not limited to business interruptions of any nature, such as:

- loss of production;
- loss of product;
- loss of use;
- loss of opportunity;
- loss of revenue or anticipated revenue;
- loss of reputation;
- loss of profit or anticipated profit or savings;
- wasted overheads; and
- special, exemplary or punitive damages.

**‘Contract’** means:

- (a) these “O&G Australia & New Zealand – Services Terms and Conditions”; and
- (b) the Quotation provided to the Client; and
- (c) any documents or other information referenced in the Quotation,

and in the event of an inconsistency, the order of precedence above will apply.

**‘data interpretation’** includes the interpretation of data including survey results and logs, provided to or by MPC Kinetic.

**‘Delivery Date’** means the date specified in the Quotation and, if no date is specified in the Quotation, the date notified by MPC Kinetic.

**‘Fee’** means the remuneration specified in the Quotation, as varied under clause 4.

**‘FIM’** means any Goods supplied by the Client to MPC Kinetic in relation to the performance of the Services.

**‘FX’** means foreign currency exchange.

**‘Goods’** means any goods and materials, including any plant, equipment, tools or other items.

**‘Gross Negligence’** means any act or omission done or omitted to be done by a person who knew or ought reasonably to have known would involve negligence or a breach of duty and was done or omitted to be done with deliberate or reckless disregard of its foreseeable, harmful and avoidable consequences, which is not an act or omission done or omitted to be done in good faith.

**‘GST’** has the same meaning as in the GST Act.

**‘GST Act’** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or *Goods and Services Tax Act 1985* (NZ), as applicable.

**‘Insolvency Event’** means any of the following events:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)) or other equivalent legislation, trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
- (b) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or equivalent legislation or a debt agreement under part IX *Bankruptcy Act 1966* (Cth);
- (c) the party is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth) or equivalent legislation, or is presumed to be insolvent under the *Corporations Act 2001* (Cth) or equivalent legislation;
- (d) the party ceases to carry on business; or
- (e) an application or order is made for the liquidation of the party or a resolution is passed, or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction.

**‘Intellectual Property Rights’** means any invention, patent, trade mark, copyright, industrial design or process of manufacture or similar.

**‘Lease Liner’** means any “New Pig” product described in the “New Pig Data Sheet” published on MPK’s website.

**‘MPC Kinetic’** means the entity identified as such in the Quotation.

**‘MPC Kinetic Group’** means each of MPC Kinetic, its Related Bodies Corporate and its Personnel.

**‘MPK’s website’** means the website maintained by MPC Kinetic on which these Terms and Conditions are published.

**‘Ordered Goods’** means those Goods to be supplied by MPC Kinetic as part of the Services where

ownership is to be transferred to the Client under the Contract.

**'Personnel'** means any employee, director, officer, agent or contractor of a party or a Related Body Corporate or of a contractor to the party or a Related Body Corporate.

**'PO'** means a 'Purchase Order' or other similar document issued by the Client to MPC Kinetic.

**'Quotation'** means the 'Quotation' or other document providing the details of the Fee and/or scope of Services and other related terms and conditions issued by MPC Kinetic to the Client.

**'Related Body Corporate'** in relation to a person has the same meaning as in the *Corporations Act 2001* (Cth).

**'Site'** means the place where the Services are to be performed. If there are multiple places where Services are to be performed, the nearest capital city to the majority of the places.

**'Services'** means the services specified in the Quotation or otherwise required by the Client and agreed to by MPC Kinetic, including the supply of Ordered Goods.

**'Tax Invoice'** has the same meaning as in the GST Act.

**'Third Party'** means any person who is not a party to the Contract, excluding Personnel of a party.

**'Wilful Misconduct'** means any deliberate act or omission by a person who knew or ought reasonably to have known would be wrongful, or any deliberate act or failure to act in relation to which the person shows a reckless disregard, or is wantonly indifferent, as to whether it is wrongful or what its harmful consequences might be.

13.2 In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) 'includes' in any form is not a word of limitation;
- (c) a reference to a party to the Contract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns; and
- (d) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation or if that legislation does not apply in the jurisdiction, the corresponding law of that jurisdiction which deals with the relevant subject matter of that legislation, in each case, as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.