

# **SAXTON MARINE SUPPLIES LIMITED**

## **TERMS AND CONDITIONS OF SALE**

### **1. Definitions:**

In these terms and conditions of sale the following expressions shall have the following meanings:-

'seller' means Saxton Marine Supplies Limited;

'buyer' means the person firm organisation or corporation with whom the seller contracts for the sale of the products;

'goods' means the goods and any instalment of goods or any part thereof to be supplied by the seller to the buyer in accordance with these terms and conditions;

'the contract' means the contract for the sale of the goods by the seller to the buyer incorporating these conditions arising from the seller's acceptance of the buyer's order;

'conditions' means these terms and conditions;

'contract' means the contract for the sale and purchase of the goods incorporating these terms and conditions arising from the seller's acceptance of the buyer's order;

'Incoterms 2000' means Incoterms 2000 published by the International Chamber of Commerce as revised from time to time;

'the services' means any service provided by the seller whether in relation to the supply of goods or otherwise and where the contract is for work and materials or work and includes the supply of labour'

'writing' includes facsimile transmission email and comparable means of communication.

Headings are for convenience only and shall be ignored in the interpretation and construction of these conditions.

### **2. General**

2.1 These conditions and Incoterms 2000 shall be deemed to be incorporated into any contract between the seller and the buyer and shall override any terms or conditions which are inconsistent with them. These conditions are the only conditions upon which the seller transacts business. Any reference in any document forming part of or evidencing the contract (including any order design drawing specification or other similar document ) to any terms or

conditions of purchase or business of the buyer shall not have the effect of incorporating any such terms or conditions in the contract.

2.2 All quotations and orders are accepted upon the terms and conditions of these conditions and any contract between the seller and the buyer shall be created subject to the conditions. The seller shall be entitled to refuse to accept any order. No quotation estimate or tender given or made by the seller shall form an offer capable of acceptance by the buyer. A contract for sale of the goods shall only be capable of being created upon acceptance in writing by the seller of the buyer's order.

Quotations are subject to withdrawal at any time before receipt of an unqualified order from the buyer and shall be deemed withdrawn unless so accepted within 30 days from their date.

2.3 Any error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the seller shall be subject to correction without any liability on the part of the seller.

2.4 Unless expressly agreed in writing, all illustrations and dimensions shown in any seller's catalogue or sales literature are approximate only and the seller gives no guarantee or representation that the goods will in all cases be identical with the illustrations and dimensions. No variation to these conditions shall be binding unless agreed in writing by the authorised representatives of the seller and the buyer.

2.5 The seller's employees or agents are not authorised to make any amendment or alterations to these conditions unless confirmed by the seller in writing. In entering into a contract the buyer acknowledges that it does not rely on and waives any claim for breach of any representations not so contained.

2.6 Any advice or recommendation given by the seller or its representative's agents or employees as to the storage application or use of the goods if acted upon is done so entirely at the buyer's own risk.

2.7 No modification of these conditions shall be effective unless made by an express written agreement between the parties. The signing by the seller of any of the buyer's documentation shall not imply any modification of these conditions.

### **3. Price Orders value added tax**

3.1 The price of the goods shall be the seller's quoted price or where no price has been quoted or a quoted price is no longer valid the price listed in the seller's published price list current at the date of the acceptance of the order.

3.2 All prices quoted are valid for 30 days only or until earlier acceptance by the buyer after which time the seller may alter them without giving notice to the buyer.

3.3 All prices are quoted exclusive of value added tax and include the cost of packaging. All prices are quoted ex works and where the seller has undertaken

to provide arrange carriage of the goods to the buyer, carriage shall be charged in addition to the price unless otherwise expressly agreed in writing by the seller.

Unless otherwise agreed in writing the price of the goods despatched to a destination in the United Kingdom and Eire includes carriage to that destination.

In certain circumstances goods may be zero rated. It is the responsibility of the buyer to determine whether zero rating applies and guidance is available from the local customs and excise office.

3.4 In the event of any alteration or amendment to an order requested by the buyer and agreed by the seller, the seller shall be entitled upon notifying the buyer to adjust the contract price to reflect such alteration or amendment.

3.4 No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in writing by the seller.

3.5 The buyer shall be responsible for ensuring the accuracy of the terms of any order including any applicable specifications submitted by the buyer. The seller reserves the right to make any changes to the specifications of the goods which are required to conform to any applicable safety or statutory regulations.

3.6 No order which has been accepted by the seller may be cancelled by the buyer except with the express consent in writing of the seller and on terms that the buyer shall indemnify the seller against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing.

3.7 It is the absolute obligation of the buyer to ensure that the goods are suitable and fit for the purpose for which they are being purchased.

#### **4. Conditions and warranties**

4.1 Subject to the conditions the seller warrants that the goods will correspond with the specifications and will be free from defects in material and / workmanship.

4.2 All descriptions and illustrations of the goods whether in catalogues brochures or price lists provided by the seller are intended only for general guidance and do not form part of any contract for the sale of the goods. No responsibility is accepted for any errors or omissions therein or for any loss or damage resulting from reliance on such descriptions or illustrations.

4.3 All conditions warranties terms and obligations whether expressed or implied by statute common law custom or otherwise including without prejudice to the generality of the foregoing any warranty or condition as to the satisfactory quality or fitness for any particular purpose of the goods are excluded to the fullest effect permitted by law.

4.4 The seller shall be under no liability to the buyer resulting directly or indirectly from any drawing design or specification supplied by the buyer.

4.5 If the buyer claims or detects any defect in the goods the buyer shall as soon as any such defect becomes known to the buyer, given written notice of the defect to the seller and either return the goods affected to the seller at its own cost or if the goods are retained indemnify the seller against all liability and claims which may arise out of or incidental to the defect.

In the event of any defect becoming apparent in the goods within 1 year of the delivery date, the seller shall repair or replace the goods free of charge. Any part so repaired or replaced during the warranty period is warranted for the remainder of the period. Parts replaced after the original warranty period are warranted for 3 months only.

4.4 Items of a consumable nature are not covered by the warranty period unless items have suffered undue wear as a direct result of a manufacturing defect.

4.5 The warranty shall not apply where any defect or malfunction has in the seller's opinion arisen as a result of any modification adjustment or repair to the goods made by a third party or the goods have been subjected to unusual physical or electrical stress, neglect, misuse or accidental damage, or any error or omission relating to the operation of the goods or fair wear and tear.

4.6 The buyer confirms that it will only use the goods in accordance with specific instructions included with the packaging of the goods and that the seller will not be liable in any way for any fault or defect or harm caused as a result of the buyer or its agents or servants not following the specific instructions.

4.7 Where the goods are sold under a consumer transaction the statutory rights of the buyer are not affected by these terms.

4.8 Where the seller is not the manufacturer of the goods, the seller will endeavour to transfer to the buyer the benefit of any warranty or guarantee given to the seller and the only warranty or guarantee given to the buyer by the seller is the benefit of the warranty or guarantee given by the manufacturer to the seller.

## 5. Delivery

5.1 All delivery dates are approximate and the seller shall not be liable for any delay in the delivery of the goods however caused. Time for delivery is an estimate and shall not be of the essence.

The seller reserves the right to deliver goods by instalments and in such event each instalment shall be treated as a separate contract save that the further delivery of further instalments may be withheld until goods contained in earlier instalments have been paid for in full.

If the contract provides for testing or inspection of the goods by or on behalf of the buyer prior to delivery whether at the seller's premises or elsewhere then upon the seller giving notice of availability of the goods testing and or

inspection the buyer shall inspect and or test the goods within 24 hours days of such notice.

If the buyer fails to do so or within 24 hours of the buyer having done so the buyer does not notify the seller that the goods are not in accordance with the contract specifying the matters complained of then the buyer shall be conclusively deemed to have accepted that the goods are in accordance with the contract and shall not be entitled to reject the goods or claim damages or compensation from the seller upon any basis.

5.2 The buyer's signature on the delivery note shall constitute acceptance of the goods within the meaning of section 35 Sale and Supply of Goods Act 1994.

5.3 If delivery is delayed at the request of or due to the default of the buyer, the seller shall be entitled to recover the cost of storing the goods and such cost shall be added to the invoice value of the goods and payable at the same time as the price.

5.4 Unless otherwise stated, goods stated to be ex stock or equivalent terms are subject to availability. If having used its reasonable endeavours to comply with any date or dates specified in the contract for the despatch or delivery of goods to the buyer the seller is unable to do so such failure shall not constitute a breach of contract by the seller entitling the buyer to terminate the contract and or claim damages whatsoever against the seller. The seller shall be entitled to a reasonable extension of time in which to effect despatch or delivery.

## **6. Risk and Title**

6.1 Risk of damage to or loss of the goods shall pass to the buyer at the time of delivery or if the buyer wrongfully fails to take delivery of the goods the time when the seller has tendered delivery of the goods. Delivery shall mean the arrival of the goods at the place of delivery of the buyer where delivery is by the buyer, or the safe loading of the goods into the buyer's vehicle at the seller's premises where delivery is through collection at the seller's premises.

6.2 Until such time as property in the goods passes to the buyer the buyer shall hold the goods as the seller's fiduciary agent and bailee and shall keep the goods properly stored protected and insured against all risks. Until that time the buyer shall be entitled to resell or use the goods in the ordinary course of its business but shall account to the seller for the proceeds of sale or otherwise of the goods whether tangible or intangible.

6.3 Until such time as property passes to the buyer in the goods the seller shall be entitled at any time to require the buyer to deliver up the goods to the seller and if the buyer fails to do so forthwith, to enter upon any premises or place or location of the buyer or any third party where the goods are stored or being used in order to repossess the products.

6.4 The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the seller until payment is made in full. If the buyer does so, all monies owing

by the buyer to the seller shall without prejudice to any other right or remedy of the seller forthwith become due and payable.

#### **7. Property and seller's lien**

7.1 Notwithstanding delivery and passing of risk in the goods to the buyer, or any other provision of these conditions, the property in the goods shall not pass to the buyer until the buyer has received payment in full for the goods and all other sums due which are or become due to the buyer and for which payment is then due.

7.2 In addition to any right of lien to which it may be by law entitled the seller shall be entitled to a general lien on all goods of the buyer in the seller's possession (although such goods or some of them may have been paid for) for all sums, whether liquidated or quantified or not, due from the buyer to the seller. The seller shall not be liable for loss of or damage to the buyer's property in the seller's possession either as a result of the exercise by the seller of its lien or otherwise.

7.3 The buyer shall indemnify the seller in respect of all damage injury or loss occurring to any person or property and against all actions suits claims demands charges or expenses in connection therewith arising from the condition or use of the goods in the event and to the extent that the damage injury or loss shall have been occasioned partly or wholly by the carelessness of the buyer or his servants or agents or by any breach by the buyer of its obligations to the seller hereunder.

#### **8. Damage loss or short delivery**

8.1 Upon delivery, the buyer shall examine the goods for completeness or damage or defects. No claim for damage in transit, for shortage in delivery or for loss of goods will be considered by the seller unless notice of the same is given to the carriers or the seller within 48 hours of the delivery of the products. The buyer shall within 10 days of the delivery submit a claim in writing giving full details of the claim. Where any loss or damage is covered by insurance then the buyer shall only be entitled to recover under any such insurance.

8.2 The seller shall not be liable under any circumstances, whether in contract or tort, for any indirect or consequential loss or damage including without limitation loss of profits or damage to property, or for any claim against the buyer by any third party.

8.3 The seller's liability for non-delivery or damage of goods duly notified in accordance with these conditions shall be limited to the repair or replacement of the products within a reasonable time.

#### **9. Returns**

9.1 Unless goods are defective the seller will not accept goods returned unless previously agreed in writing and the provision of a valid return authorisation number. The seller reserves the right to make a handling charge of 20% of the value of the goods returned by the buyer if they are no longer required or were

incorrectly ordered. Carriage for returned items are at the buyer's expense except for warranty claims.

9.2 Valid orders may only be cancelled in whole or in part with the prior written agreement of the seller and upon terms acceptable to the seller.

9.3 All deposits are deemed non refundable.

## **10. Credit accounts**

The seller will only open credit accounts in its discretion following receipt of trade and bank references acceptable to it. The seller reserves the right to withdraw credit accounts without notice and without giving any reason.

## **11. Terms of payment**

12.1 If the buyer has credit facilities with the seller the price for goods and or services shall be paid by the buyer within 30 days of the date of the relevant invoice. If no credit facilities have been agreed then the price of goods shall be paid by the buyer on a pro forma basis with funds being cleared prior to the despatch of an order.

12.2 In the event of non-payment the seller without notice reserves the right to charge interest on any outstanding balance owed by the buyer at the rate of 6% per annum above the base rate of National Westminster Bank plc from the time when payment became due. The seller shall in addition be entitled to recover from the buyer all its reasonable costs and expenses incurred on an indemnity basis in seeking recovery of all payments due.

12.3 A 3% handling charge is levied on all card transactions to offset/cover merchant account fees. All invoices payable by credit card show items, delivery charges, VAT (where applicable) and +3% card handling fee. This handling fee also applies to the PayPal payment option.

12.4 Any credit card handling charge applied to the original reservation will not be refunded in the event of cancellation. A handling charge may also apply in the event of monies being returned to the customer's credit card.

## **13. Liability and Exclusions**

13.1 The seller shall not be liable for any consequential loss of profits or special loss arising out of any breach of its obligations to the buyer and the seller's liability for any such breach in respect of the goods shall be limited to the net invoice value of the goods or at its discretion the replacement of the goods.

13.2 The seller accepts no liability in respect of any representation made by the seller or its agents or employees to the buyer or the buyer's agents before the order was accepted.

13.3 All implied terms or conditions and warranties whether statutory or otherwise as to the correspondence of the goods to any description or satisfactory quality of the products or the fitness of the goods for any purpose whatsoever whether made known to the seller or not are hereby excluded from the order.

13.4 The seller does not seek to exclude liability for death or personal injury caused by the seller's negligence nor where the buyer deals as a consumer within the meaning of section 12 Unfair Contract Terms Act 1977 to exclude liability for breach of the obligations arising from sections 2-5 and 13-15 of the Supply of Goods and Services Act 1982.

#### **14. Force majeure**

14.1 The seller shall not be liable to the buyer or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the goods if the delay or failure was due to any cause beyond the seller's reasonable control.

14.2 Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond its control: act of god, explosion, flood, tempest, fire or accident, war, threat of war, sabotage, insurrection, civil disturbance, acts of governments, import or export restrictions or regulations, strikes, lockouts, or other industrial actions or disputes whether involving employees of the seller or third parties, difficulties in obtaining raw materials and supplies, power and machinery failures, theft.

#### **15. Applicable Law**

These conditions shall be governed and construed in accordance with English law and the seller and the buyer agree to submit to the exclusive jurisdiction of the English courts.

#### **16. Designs drawings specifications and other data**

16.1 The buyer shall be solely responsible for the accuracy of its designs drawings specifications and other data supplied to the seller by the buyer its employees or agents and in conformity with which the seller is to procure the supply of goods notwithstanding that the seller may have examined inspected studied or commented to the buyer upon any such designs drawings specifications or other data.

16.2 Where the goods are to be maintained in accordance with designs drawings specifications and other data supplied by the buyer then provided that the goods are so manufactured the seller shall not be liable to the buyer in contract or tort including negligence or breach of statutory duty for any loss or damage which the buyer may suffer because the goods subsequently prove to be unsuitable for the purpose or purposes for which the buyer required them or prove not to be satisfactory quality within the Sale of Goods Act 1979 or any other loss or damage which the buyer may suffer whether in contract or tort including negligence and breach of statutory duty or otherwise whatsoever.

#### **17. Health and Safety**

The seller shall not be liable to the buyer in any civil proceedings brought by the buyer against the seller in respect of breach of or under any health and safety regulations orders or directions made pursuant to the Health and Safety at Work Act or under any other directive regulation order or other instrument relating to health and safety where such exclusion of liability is permitted by

law.

**18. Assignment**

The buyer shall not assign any benefit under the contract without the consent in writing of the seller which may if given be on such terms as to guarantee or indemnity or otherwise as the seller thinks fit.

**20. Repairs**

Any goods returned for repair under warranty must be clearly labelled detailing the fault. Whilst every care is taken of products sent for repair, the seller does not accept any liability for damage to goods whilst in transit and they should be covered by appropriate insurance.

**19. Notices**

Any notice given under or pursuant to the contract may be sent by hand or by post or by registered post or express airmail or by email to the address of the party shown on the order and shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.