

TERMS AND CONDITIONS OF SALE (Standard) PRO-BOAT LIMITED ("the Company")

1. GENERAL

- 1.1 In these terms and conditions 'Goods' includes the supply of services in accordance with the provisions hereof and "Delivery" includes performance of services as the context may admit. 'Order' means an Order accepted by the Company and includes contracts to provide services and also authorised amendments to an Order.
- 1.2 These terms and conditions exclude any other terms and conditions inconsistent therewith which a buyer might seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms or conditions inconsistent with them or may be contained in any offer acceptance or counter offer made by the buyer. No forbearance or indulgence by the Company shown or granted to the buyer whether in respect of these conditions or otherwise shall in any way affect or prejudice the rights of the Company against the buyer or be regarded as a waiver of any of these conditions.

2. AMENDMENTS TO ORDER

Save as expressly agreed in writing signed by the Company's duly authorised representative or as provided by clause 4 hereof:

- 2.1 If any information supplied by or on behalf of the buyer is insufficient incorrect inaccurate or misleading or if the buyer notifies the Company of any change of requirements in relation to any Order after acceptance thereof by the Company the Company shall be entitled to amend the Price the terms of payment and the delivery date or delivery schedule as in the circumstances the Company shall consider fair and reasonable. The Company shall as soon as practicable notify the buyer in writing of such amendments.
- 2.2 Any variation or amendment requested by the buyer will only be valid and binding on the Company when subject to a change order relating to the Order duly placed upon and accepted by the Company in writing signed by a duly authorised representative and subject to appropriate adjustment in Price delivery dates and other matters.

3. DELIVERY

- 3.1 The Company will endeavour to make delivery at the time and in the manner specified in the Order but any delivery date given is an estimate only and in no circumstances shall time be or be capable of being made of the essence of the contract. Delivery may be made by instalments if the Company so requires and each instalment may be invoiced separately.
- 3.2 Unless otherwise stated in the Order delivery of Goods within the United Kingdom shall be at the Company's premises.
- 3.3 If for any reason the buyer is unable to accept delivery of the Goods when the Goods are due and ready for delivery the Company shall be entitled to invoice the buyer for the Goods and may arrange storage of the Goods and the buyer shall be liable to the Company for all reasonable costs (including insurance) incurred by the Company. This provision is without prejudice to any other right which the Company may have in respect of the buyer's failure to take delivery of the Goods or to pay for them in accordance with the contract.

4. PRICE

- 4.1 The Price delivery dates carriage and handling charges or other terms relating to any Goods are based upon the Company's assessment of materials labour and buy-in prices from manufacturers and are subject to revision in respect of any increased cost to the Company in respect thereof. The Company reserves the right to apply Prices prevailing at the date of despatch.
- 4.2 The Price includes packing and delivery ex-works. If the buyer requests the Company to deliver the Goods all costs incurred in delivering the Goods will be for the account of the buyer.
- 4.3 The Company uses all reasonable endeavours to ensure where necessary the suitability of packing but no claim will be accepted by the Company for damage in transit on the grounds of alleged unsuitability for packing.

5. LIABILITIES AND INDEMNITIES

- 5.1.1 All Goods will be carefully inspected before delivery to ensure freedom from defects and general compliance with the Order. The Company shall only be obliged to carry out tests which are specified in the contract and reasonable excesses and deficiencies thereof shall be accepted by the buyer who shall not be entitled to reject any Goods on the ground that they are not to precisely as specified Tests and inspections shall take place under the Company's standing testing arrangements. Any additional testing which the Company expressly agrees to carry out for the buyer shall be charged extra to the buyer and shall be undertaken subject to these conditions. Where the buyer requires to be present at any tests or inspections the Company shall give the buyer as much notice as is reasonably possible of the date and time such tests and inspections shall take place and if the buyer or any third party fails to attend such tests and inspections the Company shall be permitted to undertake such tests and inspections without liability to the buyer and shall notify the results thereof to the buyer who shall not be entitled to request further tests and inspections.
- 5.2 The Company shall have the right whether before or after the date of the Order to alter the specification of the Goods or any part thereof without notice to the buyer provided that such alteration shall not adversely affect the performance of the Goods and for the avoidance of doubt it is agreed that the sale and purchase shall not be a sale and purchase by sample.
- 5.3 The buyer must examine the Goods immediately upon delivery and within 7 days thereafter notify the Company in writing of any defects and return any allegedly defective part or parts of the Goods to the Company or as the Company shall direct at the buyers expense within 18 days of delivery and pay to the Company the costs of any tests carried out to such part or parts (such cost to be certified by the Company) together with costs of return thereof to the buyer in the event that no liability attaches to the Company in respect of defects in default the buyer will be deemed to have examined and accepted the Goods.
- 5.4 In relation to components bought in from outside manufacturers the Company will use all reasonable endeavours to allow the buyer the benefit of such rights against the manufacturers as the Company may have.
- 5.5 The Company shall not be liable for any loss or damage caused by or resulting from any variation (for whatever reason) in the specifications or technical data of any such outside manufacturer or for any loss or damage arising out of curtailment or cessation of supply following such variation.
- 5.6 Save as set out in the Order in the absence of specific written agreement signed by the Company's duly authorised representative.
- 5.6.1 The buyer accepts that he is not relying upon the Company's judgement as to the fitness of the Goods for any specific purpose of the buyer.
- 5.6.2 The buyer accepts that he is not placing an Order in reliance upon any promise representation or inducement on the part of the Company.
- 5.6.3 The Company shall not be liable for any consequential loss or loss of profit howsoever arising (including by negligence) to the buyer the buyer's staff or any third party.
- 5.6.4 The Company shall not be liable for any loss expense or damage howsoever arising (including by negligence) to any property of or furnished by the buyer and the buyer must insure it as hereunder provided.
- 5.6.5 The Company shall not be liable and the buyer shall indemnify and hold the Company harmless against any claim by or any loss or damage to any person or property occasioned directly or indirectly by or arising from the use or operation (otherwise than by the Company) or possession of any part of the Goods and from negligence (including the use of any part of the Goods otherwise than in accordance with the Company's operating instructions and manuals) or default (including any non-compliance with any obligation imposed by these terms and conditions or any delay wrong information or lack of required information) or misuse by or on the part of the buyer or any person or persons other than the Company

and this indemnity shall extend to any costs and expenses incurred by the Company and shall continue in force notwithstanding the termination of any agreement between the buyer and the Company.

- 5.6.6 Until the expiry of any warranty period granted by the Company or until the payment in full by the buyer of all monies whichever shall be later the Company's representative shall have a full and free right of access to the Goods.
- 5.7 The buyer shall conform with all instructions and labelling prescribed by the Company in relation to the Goods. Where the Company incurs any liability whether by court proceedings or by a bone fide out-of-court settlement as a result of a claim against the Company in respect of an alleged defect in the Goods then the buyer shall indemnify the Company against all liability and all related works and expenses (except to the extent the Company would be liable to indemnify the buyer in respect thereof under these terms and conditions).
- 5.8 The total liability of the Company in respect of any claim arising from a contract governed by these terms and conditions of sale shall under no circumstances exceed the Price for the Goods, which have proved to be defective.
- 5.9 Each exclusion or limitation of liability in this condition 5 or any sub-clause or paragraph thereof:
- 5.9.1 Shall be construed as separate distinct and severable.
- 5.9.2 Shall not apply to direct claims for death or personal injury arising from the Company's negligence as defined in the Unfair Contract Terms Act 1977 but the buyer shall have no claims to indemnity in respect of and shall fully indemnify the Company its employees agents and representatives against any claims by third parties (and all related costs and expenses) in respect of death or personal injury (save that the Company otherwise accepts liability therefor).

- 5.10 The Company warrants that it will (at the Company's choice) either repair or replace or refund the full purchase price of any Goods which are accepted by the Company as being defective or not in accordance with the contract or any express description or representation given or made on behalf of the Company in respect of the Goods within a period of 6 months from despatch of such Goods from the Company's works ('Ins Warranty Period'). The buyer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation thereto (whether or not involving negligence on the part of the Company) shall in all cases be limited to repair or replacement of the Goods or a refund of the purchase price of the Goods as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the Warranty Period and the Company shall not in any circumstances be liable for any damages compensation costs expenses losses or other liabilities whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or order or in respect of any delivery or instalment of an order or any part thereof shall not entitle the buyer to cancel or refuse delivery of or payment for any other order delivery or instalment or any part of the earns order delivery or instalment. The Company will require a reasonable period of time to carry out any repairs or replacements.

6. PAYMENT

- 6.1 VAT and all indirect taxes duties and levies are unless otherwise shown payable in addition to the Price.
- 6.2 Any sums paid by deposit retainer or prepayment are not in any circumstance returnable.
- 6.3 Unless otherwise provided in the Order the Company will invoice at the date of despatch of the Goods. Payment in full shall be due to the Company 30 days after the date of the Company's invoice and is the essence of the contract. When deliveries (or the provision of services) are spread over a period each consignment will be invoiced as dispatched and each invoice will be treated as a separate account and be payable accordingly.
- 6.4 Failure to pay for any Goods or for any delivery or instalment shall entitle the Company to suspend further deliveries and work both on the same order and on any other order from the buyer without prejudice to any other right the Company may have.
- 6.5 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any Order.

7. ASSIGNMENT AND SUB-CONTRACTING

- 7.1 The Company may assign or sub-contract such part or parts of any Order as it sees fit.
- 7.2 None of the rights/obligations of the buyer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Company.

8. TITLE AND RISK IN GOODS

- 8.1 The title in Goods shall not pass from the Company to the buyer until the later of delivery and receipt by the Company of payment in full of all sums due or owing from the buyer to the Company on any account. Until title has passed the Goods shall be held in trust for the Company and shall be marked as the property of the Company stored separately not incorporated into any larger assembly or system or disposed of or used in any way by the buyer. If the buyer defaults in the punctual payment of any sum owing to the Company then the Company shall be entitled to the immediate return of all Goods sold by the Company to the buyer in which the title has not passed to the buyer and the buyer hereby irrevocably authorises the Company to recover the Goods and enter any premises of the buyer for that purpose.

- 8.2 Risk in the Goods shall pass to the buyer on delivery at the Company's works immediately prior to loading onto appropriate transport but if the buyer fails to accept delivery by loading onto such transport when required so to do by these terms and conditions the risk shall pass at the time the buyer was obliged to accept delivery by such loading. As soon as the risk passes to the buyer he shall keep the Goods and altered goods insured in the amount at which the Goods and other mixed or incorporated products were sold to the buyer against all insurable risks. Any sums paid by such insurance prior to the Goods being paid for in full and all other accounts being paid to the Company by the buyer shall be paid to the Company to the extent of the outstanding price.

9. MATTERS BEYOND COMPANY'S CONTROL

The Company shall not be liable for any loss damage or expense howsoever arising from any delay or failure of performance arising from circumstances beyond its control or of an unexpected or exceptional nature including but not limited to earthquake flood storm act of God or of public enemies national emergency invasion insurrection riots strikes picketing boycott interruption of services rendered by any public utility or interference from any government agency or official.

10. SPECIAL PROVISIONS FOR EXPORT ORDERS

The buyer shall at his own risk and expense obtain any export licence or import licence or permit as the case may be or exchange control permission or any other governmental authorisation necessary to either party for the export of the Goods and their payment therefor in pounds sterling to the Company. The buyer shall provide evidence of having obtained any such licences or authorisations to the Company before the Company despatches the Goods as the Company shall require.

11. TERMINATION

If the buyer enters into a deed of arrangement or commits an act of bankruptcy or becomes insolvent or compounds with his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the court shall make an order that the buyer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or an administration order shall be made in respect of it or a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the buyer or if circumstances shall arise which entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding up order or if the buyer takes or suffers any similar action in consequence of debt or if the financial responsibility of the buyer shall in the opinion of the Company become impaired or if the buyer shall commit any breach of any part of the contract the Company may without prejudice to its rights and remedies hereunder stop all Goods in transit and suspend further production and deliveries and by notice in writing to the buyer may forthwith determine the contract.

12. LAW

This agreement shall in all respects be governed by and construed in accordance with the laws of England. The buyer submits to the non-exclusive jurisdiction of the English courts.