

## **POWERBOAT SALES LTD**

### **TERMS & CONDITIONS**

#### **1. Definitions**

- 1.1 "Buyer" Means the person firm or company who buys or who agrees to buy the goods from the Seller or to whom price lists, quotation and tenders shall be -submitted
- 1.2 "Conditions" Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller
- 1.3 "Delivery Date" Means the date specified by the Seller when the goods are to be delivered
- 1.4 "Goods" Means the articles which the Buyer agreed to buy from the Seller and/or which the Seller agrees to repair
- 1.5 "Price" Means the price for the Goods on the basis of labour and material costs prevailing at the date of submission (excluding carriage, packing insurance and VAT)
- 1.6 "Repair" Shall include adjustment and partial or combined repair and replacement
- 1.7 "Seller" Means Powerboat Sales Ltd a company incorporated in England whose registered office is at 14 Cottesbrooke Park, Heartlands, Daventry, NN11 8YL.

#### **2. Conditions Applicable**

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 These conditions shall apply to Goods left with the Seller for evaluation for quotation.
- 2.3 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions. Confirmation of order by the Seller shall be deemed to be acceptance by the Seller.
- 2.4 Acceptance of Delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions as will the Buyer's signature on any order form.
- 2.5 Any variation to these Conditions (including special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

#### **3. The Price and Payment**

- 3.1 The terms of Payment are 25% of the Price quoted with the order. 75% of the Price with proforma invoice when goods are completed and ready for collection at the Seller's premises or 7 days before delivery. Time for payment shall be of the essence.
- 3.2 The Price shall be the Seller's quoted price as per its standard price list which shall be binding on the Seller provided that the Buyer shall accept the Seller's quotation within 30 days. The Seller may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price to reflect any increase in the cost of the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including without limitation, foreign fluctuations, tax and duties and the cost of labour, materials and other manufacturing costs). Provided that the Buyer may cancel this contract with 7 days (the "Cancellation period") of any such notice from the Seller. THE Price is exclusive of VAT which shall be due at the rate prevailing on the date of the VAT invoice.
- 3.3 In the event of the Buyer ordering equipment with parts and components of his own specifications or ordering special works to be carried out then an alternative Price will be submitted by the Seller based upon materials and labour costs prevailing at the time of submission of such supplementary quotation.
- 3.4 In the event of cancellation by the Buyer after the Cancellation period the Buyer will bear the cost of any loss suffered by the Seller whether in respect of any special work carried out or whether in respect of the cost of non standard parts acquired by the Seller at the Buyer's request or any shortfall in the Price on the re-sale of the Goods.
- 3.5 Interest on overdue monies shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2.5% above National Westminster Bank PLC's base rate from time to time in force and shall accrue at such a rate before and after any judgement.

#### **4. The Goods**

- 4.1 The description of the Goods shall be set out in the Seller's standard equipment quotation and/or tender.

#### **5. Warranties and Liability**

- 5.1 The Seller warrants that:
- 5.1.1 the Goods at the time of delivery correspond to the description given by the Seller
- 5.1.2 the time quoted for completion of any order or contract shall become operative from the date of acceptance by the Seller or upon receipt by the Seller of all necessary information from the Buyer whichever is the later. The Seller will use its best endeavours to adhere to the Delivery Date.
- 5.1.3 No warranty is implied or given concerning the suitability of the product for the Seller's purpose or intended use of the product.
- 5.1.4 Subject as expressly provided for in these Conditions all warranties, Conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by the law.

#### **6. Delivery of Goods**

- 6.1 The goods shall be delivered to the Buyer at Seller's address.
- 6.1.1 If the Buyer request it the Seller shall arrange for the carriage of the Goods to the Buyer's address. The cost of the carriage and any insurance which the Buyer reasonably directs the Seller to place shall be reimbursed by the Buyer without any set off or other withholding whatever and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.

#### **7. Acceptance of the Goods**

- 7.1 The Buyer shall be deemed to have accepted Goods upon delivery to the buyers.
- 7.2 If the Buyer wishes to make a claim against the Seller in respect of the Goods then written notice of such claim must be given to the Seller within 3 days of the Delivery Date.

- 7.3 Goods delivered to the Buyer which are in accordance with the Contract will not be accepted for return without the prior written approval of the Seller and on terms to be determined at the absolute discretion of the Seller.
- 7.3.1 If the Seller agrees to accept any Goods for return the Buyer shall be liable to pay handling charge of (10%) of the invoice Price. The Goods must be returned by the Buyer carriage paid to the Seller in their original packing.
- 7.3.2 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.
- 7.4 All Goods must be examined before acceptance by the Buyer. If Goods are delivered by carriers and they are subsequently found to be damaged upon delivery a claim in respect thereof must be made to the Buyer to the carrier immediately.

## **8. Title and Risk**

- 8.1 Where the Seller agrees to dispatch the Goods the method of packing and dispatch of the Goods shall be at the Seller's discretion.
- 8.2 Where the Seller agrees to dispatch them the Goods shall be dispatched at the Buyer's risk and except where the Goods are repaired or replaced under any guarantee or warranty at the Buyer's expense.
- 8.3 Where the Buyer's engines and equipment are handled and/or operated by the Seller's employees or where the installation of the Buyer's engines and equipment is included in the work carried out by the Seller then the Seller does not accept responsibility for any loss or damage to such engines or equipment nor for any consequential damage arising there from unless such loss or damage is caused by the Seller's negligence or the negligence for those for whom it is responsible.
- 8.4 The Goods shall be at the Buyer's risk as from delivery.
- 8.5 Title in the Goods shall pass from the Seller to the Buyer upon payment of Price in full or on Delivery whichever occurs last. In the event that delivery takes place before the Buyer has paid the Price and all other sums due to the Seller then the provisions of Clause 8.6 shall apply.
- 8.6 Until title in the Goods passes to the Buyer in accordance to clause 8.5 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 8.7. Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as a principal when making such sales or dealings. Until title in the Goods passes from the Seller the entire proceeds of the sale or otherwise of the Goods shall be held in a separate account and to the order of the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 8.8 Until such time as title in the Goods passes from the Seller the Buyer shall upon demand deliver up the Goods in the Buyer's possession or control to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods.
- 8.9 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer breaches this obligation all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.10 The Buyer shall insure and keep insured the goods to the full price against "all risks" to the reasonable satisfaction of the Seller until the date that title in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the buyer to the Seller shall forthwith become due and payable.

## **9. Remedies**

- 9.1 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of breach by the Seller of this Contract.
- 9.2. Subject to Clause 10 of this Contract in the event of any breach of this Contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price.
- 9.3. If the Buyer fails to pay the price, in accordance with this Contract or commits any other breach of this Contract all sums outstanding in respect of the Goods shall become payable immediately and the Seller may forthwith sell the Goods at such a price as in its discretion it thinks fit and it may retain from the proceeds of sale an amount sufficient to defray the costs of supply repair and/or replacement and storage expenses incurred in attempting to trace the Buyer and in arranging the sale of the Goods. Any deficiency shall forthwith be made up by the Buyer and in arranging the sale of the Goods. Any deficiency shall forthwith be made up by the Buyer.
- 9.4 The Buyer may not withhold payment of any invoice or any other amount due to the Seller by reason of any set-off or counterclaim which the Buyer may have or alleges he has or for any reason whatever.
- 9.5 The Seller shall be entitled to a general lien on all Goods of the Buyer in the Seller's possession (including Goods of the Buyer which have been paid for) for the unpaid price of all Goods sold to the Buyer by the Seller under which this or any other contract.

## **10. Guarantee**

- 10.1 The Seller shall for a period of twelve calendar months from the date of delivery make good by replacement or repair any defect in or failure of Goods supplied or in material or workmanship or arising from faulty design provided the Goods are returned to the Seller's premises free of cost to the Seller and collected from the Seller's premises free of cost once the guarantee work has been completed.
- 10.2. At the termination of that twelve month period all liability of the Seller shall cease.
- 10.3 This guarantee shall not apply:-
- 10.3.1 Where damage to the Goods is occasioned by accident mishandling or non observance of operating instructions or unauthorised modification or repair by the Buyer his servants or agents; or
- 10.3.2 Where the Goods have been overloaded or an engine which is too powerful for the Goods have been fitted to the Goods by the Buyer, his servants or agents; or
- 10.3.3 Where any equipment (including engines) not supplied by the Seller has been fitted to the Goods or they have been in any way altered without the express agreement of the Seller; or
- 10.3.4 Where the Goods have been used for racing unless it is a specially built hull type which has been previously agreed in writing with the Seller that it may be used for racing; or
- 10.3.5 Where the buyer uses the Goods for a purpose other than the purpose for which the Goods are designed in accordance with the Seller's description; or
- 10.3.6 Where cosmetic gel crazing or damage may occur.

- 10.4 The Seller accepts no responsibility and gives no warranty whatsoever (unless otherwise specifically agreed in writing) for proprietary goods and articles supplied by the Seller but not manufactured by the Seller. It is the Buyer's responsibility to inspect such Goods engines or trailers or other equipment and satisfy himself.
- 10.5 Other than the warranty conditions stated above the Seller accepts no responsibility consequent upon failure of or damage to the Goods engines or equipment or any part thereof supplied by the Seller or for any loss or damage consequent upon such failure including any loss of use, opportunity or any consequential losses whatsoever. However in the event of a sale to a person who buys other than in the course of business then nothing in these conditions shall affect the Customer's statutory rights which are implied by the Sale and Supply Act 1994 or the unfair Terms and Consumer Contract Regulations 1994.

**11. Termination**

In addition to any other provisions for termination herein contained and without prejudice to any other remedies the Seller may have hereunder, the Seller may at its option terminate this or any other agreement or order between the Seller and the Buyer and may cancel or suspend future deliveries (if any) under this or any other agreement forthwith if any of the following shall occur:-

- 11.1 If the Buyer is in breach of any part of these Conditions or another provision of this or any other agreement or order.
- 11.2 Incurred and all arrears of charges or other payments arising in respect of the Goods, under these Conditions or otherwise, in addition to any other rights and remedies the Seller may have against the Buyer.
- 11.3 If the Buyer, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up or convene a meeting to pass a resolution for voluntary winding up or shall enter into any liquidation whether compulsory or voluntary (other than for the purposes of voluntary reconstruction or amalgamation) or have a receiver or administrator of all or any of its undertakings or assets appointed or shall be deemed by virtue to Section 518 (I) of the Companies Act 1985 to be unable to pay its debts or shall cease to carry business.
- 11.4 If the Buyer being an individual shall die or being a firm/partnership shall be dissolved or in any case shall commit any act of bankruptcy or have a receiving order made against him/it or make or negotiate any compensation or arrangement with or assignment for the benefit of his/its creditors. On termination howsoever or whenever occurring the Buyer shall pay to the Seller all costs expenses, including legal and other fees.

**12. Force Majeure**

The Seller shall not be liable for any default due to any Act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or any other event beyond the reasonable control of the Seller.

**13. Severance**

Any provision of this Contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Contract.

**14. Sub-contracting**

The Seller may licence or sub-contract all or any part of its rights and obligations under this Contract without the Buyer's consent.

**15. Data Protection**

The Seller is notified with the Information Commission in accordance with the Data Protection Act 1998 ("the Act") and will only process personal data (as defined by that Act) in accordance with the Act.

- 15.1 The Seller carries out credit reference checks in relation to each of the Buyer's directors (or partners or individuals holding equivalent roles in the Buyer, as applicable) and the Company reserves the right to refuse any order for Goods on the basis of the result of each such credit search.
- 15.2 The Seller will, from time to time, issue promotional material to the Buyer and invite the Buyer to attend product launches which the Seller thinks will be of interest to the Buyer. The Seller will not issue such material or invitations if the Buyer so requests, by contacting the Publicity Manager on 0845 6128670

**16. Third Party Rights**

Nothing in this Contract shall create any rights for third parties under the Contracts (rights of Third Parties) Act 1999.

**17. Law and Jurisdiction**

This contract is subject to the law of England and Wales. Any dispute shall be referred to and subject to the jurisdiction of the High Court of England and Wales.

**18. Headings**

All headings are for ease of reference only and shall not affect the construction of this Contract. Words denoting one singular include the plurals and vice versa. Words denoting any one gender include all genders. Words denoting persons include corporations and vice versa.