



Terms of Business

1. INTERPRETATION
 - 1.1 The following words shall have the following meanings:

“Conditions” means these terms and conditions.

“Purchaser” means the person(s), firm or company whose details are provided to the Seller as the purchaser of the Goods.

“Purchase Price” means the purchase price of the Goods as notified by the Seller to the Purchaser.

“Seller” means Superyacht Tenders and Toys Limited.

“Total Price” includes the Purchase Price of the Goods, plus any applicable value added tax, sales or import taxes or levies of a similar nature and/or packaging and/or transport costs and any other additional costs of any nature whatsoever as notified to the Purchaser by the Seller.

“Goods” means the goods to be purchased by the Purchaser from the Seller and any components, products or other items or services that the Seller is to supply.
 - 1.2 The terms “Seller” and “Purchaser” include their respective successors in title and the masculine shall include the feminine and vice versa.
 - 1.3 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as or as may have been amended, re-enacted or extended at the relevant time.
2. SALE AND PURCHASE
 - 2.1 The Seller agrees to sell and the Purchaser agrees to purchase the Goods free of all debts, liens, claims, and/or other charges in accordance with these Conditions in consideration for the Total Price.
 - 2.2 This Agreement will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification, or other document). For the avoidance of doubt, no terms or conditions endorsed upon, delivered with, or contained in, the Purchaser’s purchase order, confirmation of order, specification, or other document will form part of this Agreement simply as a result of such document being referred to in this Agreement or at all.
 - 2.5 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. By agreeing to purchase the Goods, the Purchaser acknowledges that he does not rely on any representations that are not so confirmed.
 - 2.6 The quantity, quality and description of, and any specifications of, the Goods shall be those notified by the Seller to the Purchaser and the Purchaser acknowledges that all other drawings, descriptions, specifications and advertising issued by the Seller and any drawings, descriptions, or illustrations contained in the Seller’s catalogues and brochures (if any) are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and so do not form part of these Conditions.
 - 2.8 No part of these Conditions may be cancelled or varied by the Purchaser except in accordance with Condition 13 and on the terms that the Purchaser will indemnify the Seller in full against all losses (including loss of profits), costs, damages, charges and expenses (including legal fees) incurred by the Seller as a result of such cancellation or variation.
3. PRICE AND PAYMENT
 - 3.1 The Seller hereby reserves the right to increase the Total Price of the Goods, by giving written notice to the Purchaser, to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller’s control, (including without limitation, any foreign exchange rate fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture); any change in the delivery date or specifications of the Goods which are requested by the Purchaser; or any delay caused by any instructions of the Purchaser or failure of the Purchaser to provide adequate information and/or instructions to enable the Seller to perform its obligations under these Conditions.
 - 3.3 The Seller shall be under no obligation to commence carriage of the Goods to the delivery address unless and until the Seller has received in cleared funds in full the Total Price, or proportion thereof due under these Conditions on or before Delivery.
 - 3.4 The Purchase Price is exclusive of any applicable value added tax, sale or import taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods. The Purchaser is responsible for all and any such charges and the Seller shall notify the Purchaser of such charges as soon as reasonably practicable after becoming aware of the same. The Purchaser shall pay such charges to the Seller, or payee as the Seller may direct, on demand by the Seller. Such charges shall form part of the Total Price payable under these Conditions.
 - 3.5 Failure by the Purchaser to pay on time and in full the Total Price or any instalment thereof in accordance with these Conditions shall entitle the Seller, without prejudice to any other right or remedy available to the Seller at its sole discretion, to:
 - (a) suspend any outstanding work or deliveries or cancel the contract relating to the Goods;
 - (b) appropriate any payment made by the Purchaser to such of the Goods as the Seller may think fit, notwithstanding any purported appropriation by the Purchaser.
 - (c) charge interest on any amounts outstanding (both before and after judgement) at 4% above the Bank of England base rate.
 - 3.6 All bank charges regarding payment are to be for the account of the Purchaser.
 - 3.7 All payments payable to the Seller under these Conditions shall be due immediately on its termination despite any other provision.
 - 3.8 The Purchaser shall make all payments due under these Conditions in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
 - 3.9 The Seller may apply any payments received from the Purchaser under these Conditions to settlement of the Total Price or to such other outstanding invoices that may exist from time to time between the Purchaser and the Seller.
4. DELIVERY AND HANDOVER
 - 4.1 The Seller shall deliver the Goods to the Purchaser at the location agreed in writing between the Seller and the Purchaser (“Delivery”).
 - 4.4 The delivery date of the Goods is approximate only and failure to comply with such dates shall not constitute a breach of these Conditions and the Seller will not be liable for any delay in Delivery of the Goods, howsoever caused. Time for Delivery shall not be of the essence in relation to these Conditions unless previously agreed by the Seller in writing. The Goods may, at the Seller’s option, be delivered by the Seller and paid for by the Purchaser in advance of the quoted delivery date by the giving of reasonable notice to the Purchaser.
 - 4.5 Where the Purchaser fails to accept Delivery of the goods on the delivery date then, without prejudice to any other right or remedy available to the Seller, the Seller may at its option:
 - (a) store the Goods until actual Delivery and charge the Purchaser for the costs (including insurance) of storage; or
 - (b) if the Purchaser has not taken Delivery of the Goods within 14 days of the advised delivery date, sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) account to the Purchaser for the excess over the Total Price under these Conditions or charge the Purchaser for any shortfall below the Total Price under these Conditions.
5. RISK AND THE PASSING OF TITLE
 - 5.1 The risk in the Goods shall pass to the Purchaser on Delivery of the Goods and the Purchaser shall properly insure the Goods in his name from the date of Delivery. Subject to Condition 5.2, title to the Goods shall also pass to the Purchaser on Delivery of the Goods.
 - 5.2 Notwithstanding Delivery and the passing of the risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Purchaser until the Seller has received all sums which are due, or which become due to the Seller from the Purchaser on or before Delivery, in full in cash or cleared funds.
 - 5.3 For the purposes of establishing the passing of title in the Goods, the submission of bankers’ drafts or other papers creating obligations to pay shall not be regarded as payment until all sums due to the Seller from the Purchaser on or before Delivery have been received by the Seller in full and in cleared funds.
 - 5.7 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from the Seller.
 - 5.8 The provisions of this Condition 5 shall survive termination of these Conditions.
6. SPECIFICATIONS
 - 6.1 All specifications are approximate only and are subject to normal margins of tolerance for the materials and construction in question. Whilst the Seller shall endeavour to supply the Goods in accordance with the specifications prevailing at the time of these Conditions it reserves the right notwithstanding the above to vary the specifications without notice in the light of changes in technical knowledge, production techniques, Government or other regulations, consideration for safety or other reasonable cause. The Delivery of the Goods conforming to the Seller’s prevailing design and specifications at the time of delivery shall be good and sufficient performance of these Conditions by the Seller.

6.2 Any alterations or additions to the specification of the Goods which may be required by the Purchaser and which are agreed by the Seller in writing shall be charged for in addition to the Total Price.

7. WARRANTY

7.1 The Seller shall use its best endeavours to assign any warranty/guarantee provided by the manufacturer/supplier of the Goods to the Purchaser, or where possible such warranty/guarantee shall be issued in the name of the Purchaser.

7.2 No warranty is provided by the Seller in respect of the Goods, and the Seller will not be liable for damage to the Goods howsoever arising, including but not limited to damage arising from fair wear and tear, wilful damage, failure to follow the Seller's and/or manufacturer's instructions (either oral or in writing), accident, acts of third parties, misuse or alteration or repair of the Goods, environmental conditions or other causes beyond its control.

7.3 Except as expressly stated in these Conditions, all warranties whether express or implied by statute, common law, or otherwise (including but not limited to fitness for purpose) are hereby excluded to the fullest extent permitted by law.

8. LIMITATION OF LIABILITY

8.1 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Purchaser by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of these Conditions, for any loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with these Conditions or at all) or their use or resale by the Purchaser and the entire liability of the Seller under or in connection with this Agreement shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.2 Nothing in these Conditions attempts to exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation.

9. INFORMATION

9.1 Any technical or other information contained in the Seller's advertising, sales and technical literature is provided for general guidance only and forms no part of these Conditions unless expressly agreed in writing.

10. FORCE MAJEURE

10.1 The Seller shall be under no liability for any delay or failure to perform in the event that the manufacture, supply or Delivery of the Goods is prevented or delayed by any act or circumstances beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;

- a) Act of God, explosion, flood, tempest, fire, accident, drought;
- b) Legislation, restrictions, regulations, bylaws, prohibitions or measures of any kind on any part of any government, parliament or local authority;
- c) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- d) Failure of power supply or breakdown in machinery;
- e) Lock-out strike or other action taken by either employees or the Seller or a third party in contemplation of furtherance of a trade dispute; and
- f) Difficulties and/or any inability to procure materials/labour, parts or machinery required for the performance of this Agreement.

11. WAIVER AND SEVERANCE

11.1 Any indulgence granted by the Seller to the Purchaser and any failure by the Seller to insist upon strict performance of these terms shall not be deemed a waiver of any of the Seller's rights or remedies nor be deemed a waiver of any subsequent default by the Purchaser.

11.2 The invalidity in whole or in part of any Condition in these Conditions shall not affect the validity of the remainder of such Condition or these Conditions.

12. ASSIGNMENT

12.1 These Conditions are between the Seller and the Purchaser as principals and is not assignable by the Purchaser. The Seller may without consent assign or sub-contract all or any of its rights and obligations hereunder.

13. TERMINATION

13.1 If either party becomes insolvent or goes into bankruptcy, receivership, administration or liquidation, the other party may forthwith on written notice terminate the sale and purchase contract relating to the Goods without incurring liability to that party and without prejudice to its rights which may have accrued up to the date of termination.

13.2 Either party shall be entitled to terminate the contract relating to the Goods by written notice to the other party, without incurring any liability to the other party and without prejudice to its rights which may have accrued up to the date of termination, if the other party has committed a breach of these Conditions and has been given written notice to remedy such breach but has failed to do so within 14 days of that written notice and has not referred the matter to dispute resolution pursuant to Condition 19.

13.3 If the Purchaser seeks to terminate the contract relating to the Goods other than in accordance with Condition 13.1 or 13.2 then the Purchaser hereby agrees to indemnify the Seller in full against all losses (including loss of profit), costs (including costs of all labour and materials used and/or procured in connection with the Goods), damages, charges and expenses (including legal fees) incurred by the Seller as a result of such termination.

13.4 In the event that the contract relating to the Goods is terminated by either party, the Purchaser agrees to indemnify the Seller in full in respect of all costs and expenses incurred by the Seller up to the date of termination. Further, in the event that the Seller terminates the contract relating to the Goods pursuant to clause 13.2, the Purchaser further agrees to pay to the Seller an amount equal to the Seller's loss of anticipated profit, as notified by the Seller to the Purchaser.

13.5 Subject as herein provided and to any rights and obligations accrued prior to termination neither party shall have any further obligations to the other under these Conditions, save that notwithstanding termination, no party shall be relieved of such termination be relieved from any of its obligations which is expressly, or by implication, intended to come into force on or after termination.

14. INTELLECTUAL PROPERTY

14.1 Any copyright and other intellectual property rights in all drawings, reports, documents and computer-generated data prepared by the Seller shall remain the property of the Seller.

14.2 Photographs reproduced on the Seller's website and promotional material are re-produced with the owner and/or manufacturer's permission and any intellectual property in the same remains with the manufacturer and/or owner as applicable.

15. PURCHASER WARRANTIES

15.1 The Purchaser hereby warrants that:
a) It is legally capable of entering into the contract relating to the Goods; and
b) any information provided to the Seller, in connection with these Conditions, and whether provided before or after the date of the contract relating to the Goods is accurate and complete.

16. THIRD PARTIES

16.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, these Conditions and/or the contract relating to the Goods do not and are not intended to give rights to enforce any of its provisions to any person who is not a party to it.

17. NOTICES

17.1 Any notice served under these Conditions shall be in writing and shall be sufficiently served if delivered personally or posted to the last known address or sent by email or facsimile. Any notice shall be deemed received within 48 hours after the time of posting and any notice given by facsimile or email shall be deemed to have been received within 48 hours after dispatch to the correct email address of the addressee.

18. ARBITRATION AND GOVERNING LAW

18.1 These Conditions shall be governed by and construed in accordance with English law and both parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

18.2 In the event that a dispute between the parties arising out of or in connection with these Conditions cannot be resolved between the parties, the parties shall first consider, as an alternative to court proceedings resolving the matter by arbitration in accordance with the provisions of the Arbitration Act 1996.