

# TERMS AND CONDITIONS



## 1. INTERPRETATION

1.1 The following terms shall have the following meanings:  
"Conditions" means these terms and conditions.  
"Contract" means any purchase order, agreement for sale/purchase or other instrument for the sale and purchase of the Goods as between the Seller and the Purchaser.  
"Purchaser" means the person(s), firm or company whose details are provided to the Seller as the Purchaser of the Goods or as set out in the Invoice supplied by the Seller.  
"Seller" means Superyachts Tenders and Toys Limited.  
"Total Price" or "Total" 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 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 supplies.  
"Invoice" means the invoice for the supply of the Goods rendered by the Seller to the Purchaser.

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 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 consideration for the Total Price.

2.2 All sales/purchases of Goods shall be pursuant to 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) save if a particular Contract has its own terms and conditions annexed thereto. 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 be applicable 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. In entering into the agreement to purchase, the Purchaser acknowledges that it does not rely on any representations that are not so confirmed.

2.6 With respect to the sale of tenders (and the agreements for such used by the Seller), the Seller accepts no liability unless and until the Purchaser and an authorised representative or director of the Seller have both signed such agreement.

2.7 The quantity, quality and description of, and any specifications of, the Goods shall be 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 this Conditions may be cancelled or varied by the Purchaser except in accordance with Condition 17 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, only 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 fluctuations, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or 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.

3.2 If such is applicable, any change in the delivery date or specification of the Goods which are requested by the Purchaser must be notified to the Seller in writing. The Seller will advise the Purchaser of any consequential change to the Total Price in writing. In the event that the Purchaser does not accept the amended Total Price within 14 days of receipt of the notice from the Seller, the Seller shall continue with the provision of the Goods on the basis that the changes requested are not agreed by the Purchaser.

3.3 The Seller shall be under no obligation to commence carriage of the Goods to the delivery location unless and until the Seller has received in cleared funds in full the Total Price, or proportion thereof due under this Agreement 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 this Agreement.

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 this Agreement shall be due immediately on its termination despite any other provision.

3.8 The Purchaser shall make all payments due under this Agreement 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 this Agreement 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. SEA TRIALS (only applicable to the sale of tenders)

4.1 The Seller shall procure that the manufacturer of the Goods shall undertake sea trials of the Goods, where applicable, and if requested by the Purchaser in writing.

4.2 The sea trials shall be performed in the vicinity of the manufacturer's premises, or at such other location as agreed between the Seller and the Purchaser and the Seller shall provide the Purchaser with at least 14 days written notice of the commencement of sea trials.

4.3 The sea trials shall be carried out in such weather and sea conditions and in such a manner as shall be sufficient to enable all parties to verify the Goods' compliance with this Agreement.

4.4 The manufacturer and/or the Seller shall conduct the sea trials and shall be responsible for all costs in relation to the conduct of the trials, including the provision of suitably qualified crew. During the sea trials, all consumables such as fuel and oil shall be at the Seller's cost. The Purchaser and/or its nominated representatives will accompany the Goods during the sea trials.

4.5 Should the sea trials not be performed due to unsuitable sea and/or weather conditions, the Purchaser shall be entitled either to ask that the trials to be performed as soon as reasonably practicable, and the Delivery Date shall be amended accordingly, or to waive such trials.

4.6 Within 2 days of completion of the sea trials the Purchaser shall notify the Seller of any defects noted during such trials. Where such defects are accepted by the Seller, the Seller shall procure that the manufacturer shall rectify such defects as soon as possible prior to delivery, or by such other date as may be agreed between the Seller and the Purchaser. Any dispute between the parties regarding the defects notified by the Purchaser shall be resolved in accordance with Condition 21.

## 5. DELIVERY AND HANDOVER

5.1 The Seller shall deliver the Goods to the Purchaser at the location agreed as between the Seller and Purchaser ("Delivery").

5.2 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 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.

5.3 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 this Agreement or charge the Purchaser for any shortfall below the Total Price under these Conditions.

## 6. RISK AND THE PASSING OF TITLE

6.1 The risk in the Goods shall pass to the Purchaser on Delivery of the Goods and the Purchaser shall properly insure the Goods in its name from the date of Delivery. Subject to Condition 6.2, title to the Goods shall also pass to the Purchaser on Delivery of the Goods.

6.2 Notwithstanding Delivery and the passing of the risk in the Goods, or any other provision in these Conditions, 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.

6.3 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.

6.4 The provisions of this Condition 6 shall survive termination of this Agreement.

7. **SPECIFICATIONS (if applicable for the Goods in question)**
- 7.1 All specifications 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 any specifications prevailing at the time of Contract it reserves the right notwithstanding the above to vary the specifications only 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.
- 7.2 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 after the signing of this Agreement shall be charged for in addition to the Total Price.
8. **WARRANTY**
- 8.1 The Seller shall use its best endeavours to assign any guarantee/warranty provided by a manufacturer/supplier of the Goods to the Purchaser and where possible such warranty/guarantee shall be issued in the name of the Purchaser.
- 8.2 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.
- 8.3 Except as expressly stated in this Agreement, 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.
9. **LIMITATION OF LIABILITY**
- 9.1 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 any Contract, 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 the Contract) or their use or resale by the Purchaser and the entire liability of the Seller shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 9.2 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.
10. **INFORMATION**
- 10.1 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.
11. **FORCE MAJEURE**
- 11.1 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;
- Act of God, explosion, flood, tempest, fire, accident, drought;
  - Legislation, restrictions, regulations, bylaws, prohibitions or measures of any kind on any part of any government, parliament or local authority;
  - War or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - Failure of power supply or breakdown in machinery;
  - 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
  - Difficulties and/or any inability to procure materials/labour, parts or machinery required for the performance of this Agreement.
12. **WAIVER AND SEVERANCE**
- 12.1 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.
- 12.2 The invalidity in whole or in part of any Condition shall not affect the validity of the remainder of such Conditions.
13. **ASSIGNMENT**
- 13.1 This Agreement is 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.
14. **TERMINATION**
- 14.1 If either party becomes insolvent or goes into bankruptcy, receivership, administration or liquidation, the other party may forthwith on written notice terminate a Contract without incurring liability to that party and without prejudice to its rights which may have accrued up to the date of termination.
- 14.2 Either party shall be entitled to terminate the Contract 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 the applicable Contract 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 21.
- 14.3 If the Purchaser seeks to terminate the Contract other than in accordance with Condition 14.1 or 14.2 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.
- 14.4 In the event that the Contract 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 pursuant to clause 14.2, 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.
- 14.5 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 this Agreement, save that notwithstanding termination, no party shall by virtue 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.
15. **INTELLECTUAL PROPERTY**
- 15.1 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.
- 15.2 Photographs reproduced on the Seller's website and promotional material are reproduced with the owner and/or manufacturer's permission and any intellectual property in the same remains with the manufacturer and/or owner as applicable.
16. **PURCHASER WARRANTIES**
- 16.1 The Purchaser hereby warrants that:
- It is legally capable of entering into the Contract and has the person signing on behalf of the Purchaser has full authority, power and capacity to enter into the Contract on behalf of the Purchaser; and
  - any information provided to the Seller, in connection with the Contract, and whether provided before or after the date of the Contract is accurate and complete.
17. **THIRD PARTIES**
- 17.1 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.
18. **NOTICES**
- 18.1 Any notice served and required under a Contract shall be in writing and shall be sufficiently served if delivered personally or posted to the last known address or sent by email. 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.
19. **VARIATION**
- 19.1 No variation or addition to the Contract shall be binding unless contained on the face of the Contract or set out in a written instrument and signed by the Purchaser and a director or authorised representative of the Seller.
20. **COUNTERPARTS**
- 20.1 The Contract may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.
21. **ARBITRATION AND GOVERNING LAW**
- 21.1 The Contract and these Conditions shall be governed by English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London.
- 21.2 In the event that a dispute between the parties arising out of or in connection with this Agreement cannot be resolved between the parties, the parties shall be submitted to and settled by binding Arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof.
- 21.3 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.