

Boats Ltd

Terms of Business

1 General

All business undertaken including advice, information or services provided, whether gratuitously or not, by Boats Ltd ("the Company") is transacted subject to these terms of business which shall be deemed to be incorporated in any contract between the Company and a customer ("Customer").

2 Price and Contract

- 2.1 A binding contract ("the Contract") for the sale and purchase of goods and/or parts thereof (collectively hereinafter called "Goods") shall come into being on the Company's written acceptance of the Customer's order and accordingly, unless otherwise provided in writing, quotations shall be invitations to treat and not offer capable of acceptance.
- 2.2 The purchase price of the Goods the subject of a Contract ("the Price") shall, subject to Condition 2.3, be the price stated or referred to in the acceptance of the Customer's order and shall be exclusive of Value Added Tax and all other (if any) taxes, customs or other duties, marine freight rates, shipping or lading charged, insurance and (unless otherwise agreed in writing) delivery charges applicable thereto.
- 2.3 The price referred to in Condition 2.2 will have been based on labour, material and other costs ruling at the date of fixing the Price, and the Company reserves the right to increase such Price to cover any increases in such costs occurring up to the date of delivery of the Goods under the Contract.

3 Payment

3.1 Unless otherwise agreed in writing, payment of the full Price of the Goods without any withholding or deduction together with any Value Added Tax and other charges payable under the Contract shall be made by the Customer to the Company as follows:

3.2 In the case of Goods which are vessels:

3.2.1 In part by the payment of non-returnable deposits of the amounts and at the times specified in the Company's acceptance of the Customer's order; and:

3.2.2 The balance one week before completion of the Goods to the Customer ex the Company's works as notified by the Company.

3.3 In all other cases payment shall be made not later than thirty days after the date of the Company's invoice

4 If the Customer shall hinder or refuse delivery of the Goods being made by the Company, whether by failure to provide delivery instructions or transport or otherwise, the Company shall have the right to invoice the Customer of the price and/or the balance of the Price (as the case may be) when the Goods are available for delivery, and payment by the Customer shall be made not later than seven days after the date of that invoice. The Company shall also have the right to make a reasonable charge for mooring, storage, maintenance and insurance of the goods, of which such charges shall be added to the Price. All amounts owing by the Customer and unpaid at the due date shall carry interest at 3% above the Base Rate of Barclays Bank Limited from time to time in force.

5 In the case of all payments due to the Company hereunder time shall be of the essence of the contract.

6 Delivery

6.1 Goods will be delivered ex the Company's premises but at the request of the Customer the Company will, on behalf of and (unless otherwise agreed in writing) at the expense of the Customer, arrange transportation of the Goods to the Customer's premises or such other place or places as the Customer shall direct.

6.2 The Company shall use its best endeavours to deliver the Goods by the time indicated in the Contract (such times being given, however, are intended only as an estimate), and the Company accepts no liability for any loss, expense or damage occasioned by any failure so to do.

7 Title and Risk

7.1 Title to the Goods shall not pass to the Customer until payment of the Price, together with Value Added Tax and all other (if any) taxes, customs and other duties, marine freight rates, shipping or lading charges payable hereunder have been made to the Company in accordance with Condition 2.2.

7.2 Until title of the Goods passes to the Customer, the Customer shall so deal with the Goods that they may be readily identifiable as the Company's property, and shall insure the Goods against risk of loss or damage to the full value thereof, and on twelve hour's notice shall grant access and provide all necessary facilities to a reasonable number of the Company's employees to enable the Company to recover possession of the Goods.

7.3 Notwithstanding the foregoing, the Customer shall be entitled to sell the Goods (but not to a subsidiary of or a company within the same Group as the Customer) in the normal course of his business, on condition that so long as the Customer has not discharged all amounts owing to the Company, the Company shall be entitled to the benefit of all claims the Customer has against its sub-purchaser's emanation from any such transaction which benefit the Customer shall formally assign to the Company when called upon so to do.

7.4 Risk of loss or damage to the Goods shall pass from the Company to the Customer on delivery of the Goods ex the Company's premises.

8 Claims for Shortages

Claims that Goods have been delivered short by the Company or otherwise fail to comply with the Contract must be notified in writing at the time of delivery of the Goods ex the company's premises, or to the Customer's premises if the Company has undertaken transportation.

9 Defects and Warranty

9.1 This Condition and Conditions 10, 11, 12 and 13 shall be construed in accordance with the Unfair Contract Terms Act 1977 ("the Act").

9.2 The Company accepts liability for physical loss or damage to property (real or personal), arising from its proven negligence in the performance by it of its obligations under the Contract up to a limit not exceeding £1,000,000.

10 In the case of Customers who are "Consumers" for the purpose of the Act, the obligations of the Company pursuant to Condition 9.2 shall be in addition to and not in lieu of their statutory rights (particularly those to be implied in the Contract pursuant to the Sale of Goods Act 1979) which remain unaffected.

11 In the case of Customers who buy Goods in the course of a business for the purpose of the Act:

11.1 No Goods supplied by the Company shall carry any warranty or condition of sale express or implied as to quality, or as to fitness for any particular purpose, unless the Customer when he orders the Goods sufficiently explains the purpose for which they are required and makes it clear that he is relying on the Company's skill and judgement.

11.2 No proprietary article ordered from the Company by name, type and/or size shall carry any such warranty or condition of sale, save so far as the Company is able to pass on to the Customer a manufacturer's warranty.

11.3 In no event does the Company accept liability to a Customer who buys Goods in the course of a business, as aforesaid, for consequential damage beyond replacement of any faulty or unsuitable article supplied.

12 If any defect shall become apparent in the Goods or any part thereof within a period of twelve months from the delivery of the Goods, the Company shall, if it is obliged so to do under Conditions 10 or 11, make good free of charge by repair or (at the Company's option) replacement, any such defect in the Goods provided that the obligations of the Company under this condition shall be subject to:

12.1 The Goods being handled, maintained, used and operated properly and carefully, and in accordance with the Company's and its suppliers recommendations and instructions, and on no account being used for racing. Fair wear and tear is hereby agreed to be outside the scope of the benefits conferred on the Customer under this Condition.

12.2 Notice in writing being given to the Company of any defect in the Goods immediately it becomes apparent, and no repair, replacement or modification being made or attempted without the Company's express written permission.

12.3 All parts supplied by the Company not of its manufacture are not covered by this warranty and are subject to the warranty of the makers, beyond which the Company accepts no responsibility.

12.4 It is being understood by the Customer that any repair work undertaken or replacement supplied does not extend the warranty period.

12.5 No warranty expressed or implied is supplied with used Goods unless otherwise confirmed in writing on the original sales contract at the time of purchase.

13 A Customer who buys Goods in the course of a business undertakes that before delivering the same to a Customer who is a "Consumer", for the purpose of the Act, to check such Goods received from the Company in accordance with any pre-delivery instructions as may from time to time be issued by the Company.

14 Performance

Any particulars of weight, measurements, power, performance, speed capacity or fuel consumption given in advertisements, brochures, catalogues or in correspondence, although given in good faith, must always be taken as approximate only and not in any way as a guarantee.

15 Illustration Design and New Models

15.1 Drawings, photographs and other illustrations or advertisement matter supplied represent generally the Goods specified but shall not be taken as representing the Goods, the subject of the Contract, and shall not form part of the Contract.

15.2 The right to change the design, construction or specification of the Goods, the subject of a Contract, without prior notice is reserved to the Company. The Company reserves the right to deliver Goods in fulfilment of the Contract conforming to its prevailing design and specification at the time of delivery.

16 Services

16.1 The Company and its employees accept no responsibility for loss, damage or delay arising from any cause whatsoever unless such loss, damage or delay was caused by, or resulted from, the Company's negligence or deliberate act or that of those for whom the Company is responsible. Subject to that exception, all vessels and gear are repaired, worked on, moved, stored or otherwise managed and kept at the sole risk of the Customer. Customers should therefore ensure that their vessels and /or property are adequately insured against all risks; they also should ensure that they are themselves adequately insured against third party risks as they may be liable for damage caused by their vessels, themselves or their crew whilst on or about the premises.

16.2 In the interest of safety and expedience, the Company reserves the right to move any vessel and/or gear at its discretion.

16.3 All persons using any part of the Company's premises and/or facilities for whatever purpose and whether by invitation or otherwise do so at their own risk, unless any injury or damage to person or property sustained within the premises and/or facilities was caused by, or resulted from, the Company's negligence or deliberate act or that of those for whom the Company is responsible.

16.3.1 Subject to 16.3.2 of this Condition, no work shall be done to the vessel whilst on the Company's premises or mooring without the Company's prior written consent other than minor running repairs or minor maintenance of a routine nature by the Customer, his regular crew, or members of his family not causing any nuisance or annoyance to any other users of the Company's premises or moorings or any other person residing in the vicinity.

16.3.2 Prior written consent for work to be carried out on Company premises will not, without good cause, be withheld where:

- i) the work to be carried out is work for which the Company or its concessionaries or those who normally carry out work on the Company's behalf, would normally employ a special subcontractor; or
- ii) the whole of the work is being carried out under warranty by the manufacturer and/or supplier of the vessel or any part of equipment to which the warranty relates.

- 16.4** In all cases where a contract of hire or licence to occupy any moorings, berth, storage space, property or facilities may be lawfully terminated by notice, the same shall be deemed to be lawfully served if served personally or sent by registered post or recorded delivery service to the last known address in the United Kingdom of the Hirer or Licensee.
- 16.5** Where a Customer's vessel is lying at a location other than a Company berth, any charges levied against that vessel will be settled by the owner prior to its removal to a Company berth. Upon settlement of all accounts, the Company will supply a free mooring whilst the boat is on brokerage of a period on one month. Thereafter, charges for mooring and maintenance shall be payable at the rate applicable to vessels moored in a Company berth from time to time.
- 16.6** Vessels stored at seasonal rates ashore or in mud berths will be launched or put afloat as near the end of the seasonal period as, in the Company's opinion, tide, weather conditions and available facilities permit and in such sequence as to avoid moving other vessels of this purpose and also so as to make the most economical use of the facilities at the Company's disposal. At the Customer's request, the Company will, if possible, launch the vessel at any suitable tide and weather conditions, but the cost of moving other vessels for this purpose and/or any attendant expenses must be paid for by the owner. Moorings are at all times subject to River and Harbour Authority Rules and Regulations.
- 16.7** Subject to express agreement in writing to the contrary, all quotations given by the Company are subject to the cost of labour and materials remaining at the same level as those prevailing at the time of the quotation, and the quoted price shall be increased or decreased by the amount by which the actual cost of labour, materials and overheads has increased or decreased by reason of variation of the aforesaid levels since the date of the quotation. However, the quotation shall not be adjusted to meet increased costs which would not have occurred but for the Company failure to proceed with the work with reasonable dispatch.
- 16.8** Any quotation is subject to acceptance within seven days from the date thereof.
- 16.9** In the absence of any written agreement or arrangement to the contrary, delivery is given at the Company's yard or in the water adjacent thereto.
- 16.10** Quotations cover only the work and/or items specified thereon, and all additions, alterations, waiting time and any additional costs due to modified instructions will be charged to the Customer at ruling prices. If, in the course of executing any work, the Company finds any defect in a vessel and/or its gear that in our opinion should be rectified without delay, and before Customer's consent can be obtained, the Company reserves the right to carry out such necessary repair at its discretion and to charge same to the Customer. Notice of any such rectification will be forwarded to the Customer forthwith.
- 16.11** Acceptance by the Company of Goods (including vessels and/or their engines, gear and equipment) for repair or other treatment, or for mooring or storage, is subject to the provisions of the Torts (Interference with Goods) Act 1977, which confers on the Company as Bailees a right of sale exercisable in certain circumstances. Such sale will not take place until the Company has given notice to the Customer in accordance with the Act. For the purpose of the Act it is hereby recorded that:
- 16.11.1** Goods for repair or other treatment are accepted by the Company on the terms that the Customer will take delivery of the Goods in accordance with Clause 16.9 of these terms when the repair or other treatment has been carried out;
- 16.11.2** The Company's obligation as custodian of Goods accepted for mooring or storage ends upon the expiry or lawful termination of the grant to the Customer of facilities for mooring or storage.
- 16.12** Save as provided for business Customers under Clause 11, all Goods are supplied with the benefit of the appropriate undertakings (particularly as to conformity of goods with description or sample, and as to their quality or fitness for a particular purpose) which are implied by the Sale of Goods Act 1979 as amended. Nothing in these terms shall affect those statutory rights.
- 16.13** Except where notice is required to be given under Clauses 16.10 or 16.11, the word "Customer" shall include a Charterer, Master or Authorised Agent.
- 17 Lien and Right of Sale**
The Company shall have a general lien on all Goods in respect of money due to the Company, whether in respect of the contract or any other contract with the Customer, or of other charges or costs payable by the Customer, and if the general lien is not satisfied within one month after notice has been given to the Customer or other person from whom the monies are due, that such Goods are being detained the Goods may be sold by the Company as agents for the Customer by auction or otherwise and the proceeds of the sale applied to the satisfaction of the lien and the expenses of mooring, storage, maintenance, insurance and sale.
- 18 Legal Construction**
18.1 The Contract shall in all respects be constructed and operate as an English Contract and shall be subject to and interpreted in accordance with English Law.
18.2 No representative or agent of the Company has any authority to vary or add to these terms of business or the specifications of the Goods ordered, except when confirmed by the Company's official confirmation in writing.
- 19 Force Majeure**
The Company will not be liable for any loss or consequential liability or damage sustained by the Customer, by reason of act of God, war, riot, fire, strike, lock-out, government control or regulation, abnormal weather conditions, accident, breakdown or any other circumstances beyond the Company's control.
- 20 Acceptance**
Subject to express agreement to the contrary, all orders written or verbal are accepted on the understanding that the foregoing terms of business shall apply to each and every transaction.