

## Terms and Conditions of supply

### 1. OUTLINE

1.1 **Application:** These Terms + Conditions apply to the supply of all Goods and Services by us to you from the date that you accept these Terms + Conditions.

1.2 **Acceptance:** You accept these Terms + Conditions when:

1.2.1 you submit an Order or accept our Quote (whether in writing, verbally or by continuing to instruct us to supply the Goods and Services); or

1.2.2 you accept delivery of any, or any part, of the Goods and Services pursuant to an Order; or

1.2.3 you make Payment, or partial Payment, for any Goods and Services supplied by us; or

1.2.4 when you sign our Quote or these Terms + Conditions, whichever occurs first.

1.3 **Inconsistency:** The following documents comprise the contract with you, and to the extent of any inconsistency, the following order or priority will apply:

1.3.1 Order Details;

1.3.2 Terms + Conditions;

1.3.3 Quote;

1.3.4 Delivery receipt.

### 2. QUOTES + ORDERS

2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods and Services.

2.2 **Providing a Quote:** We may provide to you a Quote relating to the potential supply of Goods and Services. The Quote will be subject to the conditions and assumptions specified. You acknowledge that we rely upon the accuracy and completeness of any Relevant Information provided by you in relation to a Quote and/or an Order.

2.3 **Validity of Quote:** Subject to the terms of the Quote, a Quote is valid until the earlier of:

2.3.1 the date that is 30 days after the Quote was given; and

2.3.2 the end of the financial year.

We reserve the right to withdraw a Quote at any time before an Order becomes binding.

2.4 **Placing an Order:** If our Quote is acceptable to you, you may place an Order for each supply of Goods and Services. Subject to clause 3, an Order for supply of Goods or Services becomes binding when we provide you (in our absolute discretion) with confirmation of the Order Details. The terms on which we will supply the Goods or Services set out in the Order Details may be subject to any additional terms as specified, including but not limited to:

2.4.1 any manufacturer terms or where pricing is subject to third party pricing confirmation;

2.4.2 us receiving the deposit for your Order in accordance with clause 4.3; or

2.4.3 you providing evidence to our satisfaction (in our absolute discretion) of your approval for any finance associated with your payment for the Goods or Services.

2.5 **Additional conditions:** Unless otherwise agreed by us in writing, these Terms + Conditions will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you, whether in an Order or otherwise.

### 3. PRICE

3.1 **Goods Price:** Unless otherwise agreed to in writing by us or by our authorised representative, the prices for supply of Goods specified in the Quote are indicative only. While the quoted price will be based on the current best estimate of the applicable prices for the relevant Goods, the price payable by you for the Goods will vary depending on several factors that are not ascertainable on the date the Order becomes binding, including the price charged to us by our suppliers for the Goods. You confirm that you understand and agree that the price specified in the Quote is not binding until we issue notice of the Final Price for the Goods in accordance with clause 3.2.

3.2 **Final Price:** Once we are able to ascertain the final price for the Goods, we will notify you of the Final Price. The Final Price for the Goods will become binding if you do not notify us of your rejection of the Final Price within 7 days of receiving notification. If you reject the Final Price within that period, your Order and the contract for supply of those Goods will be rescinded. Upon rescission, to the extent your Order is for:

3.2.1 Goods that are not Custom Goods, then clause 8.1 will apply; and

3.2.2 Custom Goods, then clause 8.2 will apply.

3.3 **Services Price:** Unless otherwise agreed to in writing by us or by our authorised representative, the Final Price charged for Services will be the price in Australian dollars specified in the Quote and will become binding on issue by us of an Invoice for those Services.

3.4 **Price Payable:** You acknowledge and agree that the Price Payable for the Goods and Services will be, subject to clause 3.5, the sum of:

3.4.1 for any Services in an Order, the Final Price calculated in accordance with clause 3.3;

3.4.2 for any Goods in an Order, the Final Price calculated in accordance with clause 3.2; and

3.4.3 any applicable taxes, charges and delivery costs in relation to the Goods and Services supplied,

less the agreed value of the Trade-in Vessel, subject to clause 10.

3.5 **Variation of price:** Prices are based on multiple factors including the current cost prevailing and the specifications supplied at the time of the Quote. Subject to your rights under applicable law including the ACL, we reserve the right to vary the Price Payable if:

3.5.1 the Goods or Services specified in your Order are varied from the Goods or Services specified in our Quote;

3.5.2 your instructions change or further information is provided or it becomes apparent to us that the Order or Quote is not accurate;

3.5.3 we incur any additional costs or expense due to any delay in performance caused or contributed to by you, your employees, offices, agents or contractors;

3.5.4 the third-party costs incurred by us in connection with supply of the Goods or Services (including material costs and freight costs) increase; or

3.5.5 otherwise as provided in these Terms + Conditions,

and we provide you, where reasonably practicable, reasonable notice of any such variation of price and an opportunity to cancel your Order if you do not accept the Price Payable.

3.6 **Rate changes:** We may update our pricing schedule and rates from time to time, in our absolute discretion. Updated pricing will apply to all Orders received after the date we update our pricing schedule, save in respect of Orders received within the validity period of a Quote.

3.7 **Additional costs:** If we are requested to supply additional and/or alternative Goods and Services which fall outside an existing Order or specifications contained in our Quote or otherwise, we will either (as reasonably practicable):

3.7.1 provide a further Quote for the additional services in writing; or

3.7.2 subject to clause 3.6, apply the rates and prices previously Quoted to you (as applicable) to the additional Goods and Services.

### 4. PAYMENT

4.1 **Invoice on delivery:** Unless otherwise agreed in writing or as otherwise stated in these Terms + Conditions, we will issue an Invoice to you after the Final Price is calculable and becomes binding.

4.2 **Payment terms:** You agree to make all Payments to us when due in accordance with the Invoice. You acknowledge and agree that you will not be entitled to take Delivery of the Goods (or your property in connection with which the Services were performed) until we receive payment of each Invoice.

4.3 **Deposit:** You may be required to pay part or all of the Price Payable in advance as a deposit. We reserve the right to refuse to commence, cease or suspend completion of your Order pending receipt of payment of the deposit in full in cleared funds.

4.4 **Credit:** If we provide credit to you for Payments, the terms upon which we provide that credit will be subject to the Credit Agreement.

4.5 **Payment method:** All Payments are to be made to us by either:

4.5.1 direct credit to the bank account nominated by us or as otherwise indicated by us in writing; or

4.5.2 credit card,

or on such other terms as may be agreed in writing by us.

4.6 **No retention:** You hereby irrevocably agree that you are not entitled to withhold payment of the whole or any part of an amount payable to us under these Terms + Conditions by the way of retention or set-off for any reason whatsoever.

4.7 **Lien:** In consideration for the Services, we will have a lien over property held by us in connection with which we performed the Services for the payment of all monies due to us under these Terms + Conditions.

### 5. PAYMENT DEFAULT

5.1 **Payment Dispute:** In the event of any dispute arising between us and you as to whether an amount is payable, you shall, within the relevant period under clause 4.2, pay to us the amount claimed by us to be payable, to be held by us until settlement of the dispute.

5.2 **Costs of enforcement:** We may recover from you any costs we incur in the collection of any Payments of an Invoice.

5.3 **No set off:** You may not set off against any Payment any claims which you may have against us.

### 6. OBLIGATIONS

6.1 **Our obligations:** We will (in providing the Services):

6.1.1 use reasonable skill and care;

6.1.2 comply with all relevant laws applicable to us.

6.2 **Your obligations:** You will:

6.2.1 allow our personnel and sub-contractors (as well as any relevant third party, supplier or service provider) reasonable access to any vessel owned or controlled by you to the extent that such access is necessary for the proper provision of any Goods or Services (including any Trade-in Vessel);

- 6.2.2 provide all information, documents, assistance, resources, facilities and instructions as and when we may reasonably require to enable us to provide the Goods and Services; and
- 6.2.3 perform any obligations assigned to you in a Quote, proposal, Order or other relevant document or agreement or otherwise as reasonably required by us.

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## 7. DELIVERY, RISK + INSURANCE

- 7.1 **Delivery:** Delivery of the Goods shall take place upon pick up by or delivery of the Goods to you at the place specified by you or as otherwise indicated in the Order Details or subsequently agreed.
- 7.2 **Cost of delivery:** We may charge you the cost of delivering the Goods to you (including but not limited to any trucking, shipping and logistics contractor), which will be included in the price of the Goods or as otherwise set out in our Quote. Any transportation costs incurred after the Goods have been Delivered will be paid by you.
- 7.3 **Risk passes on delivery:** The risk in the Goods shall pass to you upon the Delivery of the Goods, and you acknowledge that our responsibility for the Goods will cease at the kerbside nearest to the delivery address provided.

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## 8. SUSPENSION + CANCELLATION

- 8.1 **Cancellation before Final Price binding:** Subject to clause 8.2, in the event you cancel your Order prior to the date on which the Final Price becomes binding under clause 3.2, we will return any upfront payments made towards the Price Payable, less an administration fee. Subject to the remainder of these Terms + Conditions, no further amounts will be payable by you in respect of the cancelled Order (or part Order).
- 8.2 **Cancellation of Custom Goods Order:** By their nature, Custom Goods may be difficult or impossible for us to resell in the event you do not choose to proceed with an Order after we have ordered the Custom Goods. Accordingly, in the event you cancel your Order for Custom Goods at any time after we confirm your Order, you confirm that you understand that some or all of the amounts paid for the Custom Goods up to the time of cancellation may be retained by us in satisfaction of our reasonable costs.
- 8.3 **Cancellation after Final Price binding:** In the event you cancel your Order after the date on which the Final Price becomes binding or we cancel your Order under clause 8.4.1, you must pay to us on demand as liquidated damages all reasonable costs incurred by us up to the time of cancellation. In the event the amounts paid up to the date of cancellation are retained by us (under this clause or clause 8.2) but are insufficient to cover our reasonable costs, you agree that we may issue an Invoice to you to cover those additional costs.
- 8.4 **Cancellation by us:** We may in writing cancel an Order or delivery of an Order without liability to us (save as required by relevant Laws) if:
- 8.4.1 you fail to pay any amount for the Goods or Services on the due date; or
- 8.4.2 we reasonably form the opinion that you are insolvent or at material risk of insolvency; or
- 8.4.3 we reasonably form the opinion that supplying Goods or Services to you may have a negative impact upon our business or commercial reputation or image; or
- 8.4.4 we do not have enough inventory or the ability to satisfy your Order, and in such circumstances you must immediately pay to us all monies owing under these Terms + Conditions or any other Order or Quote to that date. If we cancel your Order for Goods under clauses 8.4.2 to 8.4.4, we will refund amounts paid up to the time of cancellation.
- 8.5 **Disputes:** Where a dispute arises between you and us as to the performance of by either party or any term, warranty or condition of any contract, we reserve the right to stop supply pending settlement of the dispute. For the purpose of this clause, we will determine if there is a dispute and at what time the dispute is settled.

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## 9. DEFECTS + RETURN OF GOODS

- 9.1 This clause 9 is subject to clause 12 (*Exclusions + Limitations*), clause 13 (*Statutory Rights*) and any other statutory or legal right whether under these Terms + Conditions or otherwise.
- 9.2 **Manufacturer's warranty:** The guarantee of the manufacturer of the Goods is accepted by the you as the only guarantee given by us in relation to Goods. We agree to assign to you on request the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to us under any contract or by implication or operation of law, to the extent that the benefit of any warranty or entitlement is assignable.
- 9.3 **Defects:** When supplying any Goods we shall not be taken to have approved any Goods as being suitable for any particular purpose and shall not be liable for any loss, delay or costs arising from the defects in or unsuitability of the specification. You warrant that you have formed your own opinion as to suitability of any specification of the Goods, information or advice provided or any representation made by us or our employees and contractors (including as to product design and application) in connection with the supply of the Goods or Services, and do not rely on us in respect of such information, advice or representation.
- 9.4 **Exclusions:** We are not liable for:
- 9.4.1 any defects in the Goods caused by incorrect use of the Goods, damage to the Goods after delivery or failure to maintain the Goods properly after delivery; or
- 9.4.2 any deficiency or fault in any Goods or Services arising, whether directly or indirectly, as a consequence of any deficiency or fault in any goods or services not supplied by us.

9.5 **Inspection:** You should inspect the Goods immediately on Delivery, to check for any difference between the Goods as Delivered and the Order. You may only reject the Goods (in whole or in part) if:

- 9.5.1 they do not materially comply with the Order; or
- 9.5.2 if permitted by law, including the ACL.

9.6 **Rejection:** If there is a difference between the Goods as Delivered and the description or quantity of the Goods appearing on the Order Details, then you must elect whether to accept or reject the Goods in whole or in part, and thereafter:

- 9.6.1 if you accept the Goods, you will be taken to have Ordered what is delivered; and
- 9.6.2 if you reject all or some of the Goods, you must give us details of your reasons for doing so. You are not entitled to take possession or ownership of Goods that you reject.

9.7 **Acceptance:** If you accept the Goods then you must sign the receipt that we present to you upon taking delivery of the Goods.

9.8 **Deemed acceptance:** Notwithstanding any other provisions under these Terms + Conditions, if you are not present at the Delivery location at the time of Delivery, or you are present but do not sign the receipt in accordance with clause 9.7 or, having so signed, recorded details of any disagreement or difference on the receipt in accordance with clause 9.6.2 but still accepted Delivery of the Goods, to the extent permitted by Law:

- 9.8.1 you shall be deemed to have unreservedly accepted both Delivery of the Goods and the accuracy of the Delivery Details in the receipt (if any);
- 9.8.2 we shall have no Liability to you for Loss in respect of any difference between the Goods delivered and the Order Details;
- 9.8.3 you irrevocably waive all of your rights to reject the Goods referred to on the receipt; and
- 9.8.4 the receipt shall be prima facie evidence of all matters recorded.
- 9.9 **Replacement or credit:** If we accept the rejection or return of Goods from you, we will at our option either:

- 9.9.1 replace or repair the returned Goods; or
- 9.9.2 give a credit for such Goods (or a partial refund for any discrepancy in quantity delivered).

9.10 **Costs to return Goods:** You shall bear any expense of transportation of Goods returned to us, unless you have a statutory or other legal right that permits otherwise.

9.11 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a claim for a defect.

9.12 **Non-payment of account:** We will not accept notifications under this clause 9 in the event of your non-payment of an account.

9.13 **Goods damaged in transit:** Except where delivery is arranged by you, if the Goods are damaged in the course of being delivered:

- 9.13.1 you must notify us immediately on Delivery of any claim for Goods damaged in transit; and
- 9.13.2 subject to our acceptance of your claim under this clause 9, we will replace the relevant Goods at no extra charge to you.

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## 10. TRADE-IN VESSEL

10.1 **Warranties:** If we have accepted a vessel from you as a part payment for the sale of Goods and Services to you (**Trade-in Vessel**), you warrant that:

- 10.1.1 you have provided us with all Relevant Information;
- 10.1.2 the information in the Order Details in respect of the Trade-in Vessel is true and correct;
- 10.1.3 on the date we take possession of the Trade-in Vessel, we will be the sole legal and equitable owner of the Trade-in Vessel free from any Encumbrance;
- 10.1.4 the Trade-in Vessel is not and shall not be subject to any other third-party interests;
- 10.1.5 the Trade-in Vessel has not had any alterations or changes to its serial number, hull identification number or other registration or identification number;
- 10.1.6 all accessories are present and in the condition described in the Order Details or as otherwise agreed;
- 10.1.7 any accessories fitted/modifications or existing defects to the Trade-in Vessel are as stated at in the Order Details and that there are no other defects, whether patent or latent (obvious or not to the naked eye);
- 10.1.8 any Trade-in Vessel Papers are genuine and complete;
- 10.1.9 the Trade-in Vessel has not been chartered at all, except as disclosed to us and confirmed in writing; and
- 10.1.10 the Trade-in Vessel description in the Order Details, including any specification level or model name, is a genuine specification level and a model name ex-factory and not otherwise built up.

10.2 **Defects:** If a defect (including a Latent Defect) is discovered by us during our inspections of the Trade-in Vessel when you deliver it to us (or at any time prior to us completing delivery of your Order), which in our reasonable opinion amounts to a major defect in the Trade-in Vessel or a major discrepancy in the description of the Trade-in Vessel, we may elect not to accept the Trade-in Vessel. If we decide not to accept the Trade-in Vessel, you agree that the allowance made in the Order Details for the value of the Trade-in Vessel will be reduced to NIL and the Price Payable will be adjusted accordingly.

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## 11. ABANDONED ITEMS

11.1 If you fail to collect your property held by us, in relation to which Services were performed, within 30 days (or such longer period as agreed by us) after we have communicated to you that are ready for collection, then we may notify you that we consider the property abandoned and that we intend to exercise our rights under this clause.

11.2 If you fail to collect the property within 14 days of having been notified under clause 11.1, then we may sell the property either by public or private sale and collect out of any sale or settlement proceeds any payment in relation to which you are default under these Terms + Conditions, in addition to those costs and expenses incurred by us in taking possession and selling the items under this clause. We will pay you any funds remaining from the net sale proceeds of the items after all debts owed to us under these Terms + Conditions have been discharged.

11.3 You appoint us as your attorney to sign any document required to transfer ownership of the property on the sale of such property arising from the exercise of our rights under clause 11.2 and to execute:

11.3.1 any document required under the *Personal Property Securities Act 2009* (Cth), *Corporations Act 2001* (Cth) and/or any applicable ASIC Form;

11.3.2 any applicable registration transfer and/or any other applicable form under any marine licensing legislation; and

11.4 any document required to discharge any encumbrance over the property.

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## 12. EXCLUSIONS + LIMITATIONS

12.1 **ACL exception:** The exclusions and limitations in this clause 12 are subject to clause 13 (*Statutory Rights*).

12.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms + Conditions, that are not contained in it, are excluded to the fullest extent permitted by law. Except in respect of Orders placed as a 'consumer' which may be subject to clause 13, unless you notify us to the contrary prior to or when placing an Order for the Goods you are and have held yourself out to be acquiring the Goods for the purposes of leisure and recreation.

12.3 **Limitations:** No warranty is given and we will not be liable for:

*In the case of Goods*

12.3.1 alterations to Goods not performed by us;

12.3.2 defects or depreciation caused by wear and tear, weather, accidents, corrosion or other abnormal conditions or effects;

12.3.3 damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or

12.3.4 loss caused by any factors beyond our control; and

*In the case of Services*

12.3.5 interference with our Services for which we are not responsible;

12.3.6 damage or loss caused by unusual or non-recommended use of our Services; or

12.3.7 loss caused by any factors beyond our control.

12.4 **Indirect loss:** We will not, in any circumstances, be liable for any Consequential Loss suffered by you or any other person resulting from any act or omission by us (including breach, negligence, termination or non-observance of the terms of an Order or agreement which incorporates these Terms + Conditions).

12.5 **Total liability:** Our total liability for breach of these Terms + Conditions or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

*In the case of Goods*

12.5.1 the replacement of the Goods or the supply of equivalent goods;

12.5.2 the repair or rectification of the Goods; and

*In the case of Services*

12.5.3 the supply of the Services again.

12.6 Notwithstanding the foregoing, we shall not in any circumstances be liable for any Loss, arising directly or indirectly from delays in Delivery or failure to deliver for any cause or reason including traffic delays, equipment breakdown, unavailability of raw materials, inclement weather and labour disputes.

12.7 If you agree (whether before or after any agreed rectification) to accept defective, non-conforming or non-complying Goods or Services we will have no further Liability in relation to those Goods or Services and you release us and indemnify us against any further Liability in relation to those Goods or Services.

12.8 **No reliance:** You acknowledge and agree that:

12.8.1 you have and will make your own assessment of the fitness for purpose and suitability of any Goods supplied to you; and

12.8.2 you do not rely on any prior negotiations or arrangements in relation to the acquisition of any Goods.

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## 13. STATUTORY RIGHTS

13.1 **Statutory rights:** In circumstances where you are acquiring Goods and Services from us as a 'consumer' for the purposes of (and as defined in section 3 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms + Conditions as applicable and where permitted by relevant laws.

13.2 **No restriction:** Nothing in these Terms + Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL, and any relevant State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

13.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms + Conditions, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

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## 14. TITLE

14.1 **Possession as bailee:** After delivery of the Goods, until payment of full Price Payable has been made you shall possess the Goods as bailee only.

14.2 **Title:** We will retain absolute title over the Goods until we have received payment in full of the Price Payable in respect of the Goods.

14.3 **Conditions:** Until payment of all moneys payable by you to us, the Goods are subject to the following terms:

14.3.1 you hold the Goods as fiduciary, bailee and agent for us and must keep the Goods physically separate from all other of your goods and clearly identified as owned by us.

14.3.2 If a Default Event occurs, then without prejudice to our other rights, we may without notice to you enter any premises occupied by you or any other place where the Goods may be and recover possession of them. If you sell any of the Goods while money is owed to us, you must keep the proceeds of the sale in a separate account and not mix them with any other funds.

14.3.3 If the Goods are resold, you hold the entire debt owed in respect of such sales and proceeds of such sales in trust for us. Such part of the debt and proceeds shall be deemed to equal in dollar terms the amount owed by you to us at the time of the receipt of the debt.

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## 15. INTELLECTUAL PROPERTY

15.1 **Our intellectual property and Background IP:** Nothing in these Terms + Conditions affects the ownership of our Intellectual Property Rights or Third Party IP.

15.2 **Confidentiality:** You shall keep confidential and shall not use any confidential information communicated by us to you without our prior written consent.

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## 16. GST

16.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

16.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods or Services.

16.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

16.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

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## 17. GENERAL + TERMINATION

17.1 **Indemnity:** To the maximum extent permitted by law, you agree to indemnify and keep us indemnified in respect of:

17.1.1 all damages and Loss that we may incur in connection with your negligence, act or omission, or any breach or failure to comply with these Terms + Conditions;

17.1.2 any act or omission of any third-party contractors, service providers, port, shipping carrier or agents in connection with the supply of the Goods and Services to you.

17.2 **Termination:** If a Default Event occurs:

17.2.1 we may, without limiting any other right we have under these Terms + Conditions, terminate any outstanding Order and any contract for the supply of Goods and Services to you; and

17.2.2 all Payments and any other money under these Terms + Conditions becomes immediately payable.

17.3 **After termination:** If these Terms + Conditions are terminated in accordance with clause 17.2, you will be liable for payment expenses incurred by us up to the date of termination. For Services charged on a lump sum or fixed fee basis, you must pay the part of the fee that we reasonably estimate has been incurred in respect of the Goods or Services to date plus any costs, expenses and disbursements.

17.4 **Breach:** If you fail whatsoever or howsoever to comply with any of these Terms + Conditions, we shall have the right at our option to suspend further performance of our obligations to you and/or to terminate any contract with you without affecting any of our other rights or remedies.

17.5 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms + Conditions. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms + Conditions without our prior written consent.

17.6 **Force Majeure:** If a Force Majeure Event occurs, we may:

17.6.1 totally or partially suspend any Order, any part of an Order or any delivery relating to an Order during any period in which we may be prevented or hindered from performing under these Terms + Conditions due to that Force Majeure Event; and



17.6.2 elect to extend at our discretion the period for performance of an obligation under these Terms + Conditions as is reasonable in all the circumstances or terminate this contract,

and we will not be liable to you for any Loss incurred as a result of any such delay, suspension or termination.

17.7 **Severability:** Each clause in these Terms + Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

17.8 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

17.9 **Variation:** These Terms + Conditions may only be varied by written agreement between the parties.

17.10 **Governing law:** These Terms + Conditions shall be governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales.

## 18. INTERPRETATION + DEFINITIONS

18.1 **Personal pronouns:** Except where the context otherwise provides or requires:

18.1.1 the terms **we**, **us** or **our** refers to the Company; and

18.1.2 the terms **you** or **your** refers to the Customer.

18.2 **Limitation:** the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation.

18.3 **Defined terms:** In these Terms + Conditions, unless otherwise provided, the following terms shall have their meaning as specified:

**ACL** means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

**Charges** means any sales tax, excise duties, customs duty, transfer duty, freight, GST or any other taxes, duties or charges applicable in respect of the provision of the Goods and Services.

**Company** means About Boats Pty Limited ABN 89 082 261 756 trading as Newcastle Yamaha Marine / Belmont Boats.

**Consequential Loss** includes:

- (a) any direct or indirect loss of overhead costs, administrative expenses, revenue, profits, anticipated savings, business, data and value of equipment (other than direct cost of repair);
- (b) any direct or indirect loss of opportunity, expectation loss or delay loss;
- (c) any form of consequential, special, punitive or exemplary loss or damages; and
- (d) liquidated damages,

howsoever it arises or is claimed (including as a result of negligence or by the operation of Law).

**Credit Agreement** means the agreement between you and us entered into on or about the date of these Terms + Conditions in respect of credit to be provided by us for Payments under these Terms + Conditions.

**Custom Goods** means any Goods which you have requested:

- (a) be supplied in a form modified from the catalogue version of those Goods; or
- (b) be supplied in a specification not ordinarily sold by us; or
- (c) which we have specifically identified as 'Custom Goods' in our Quote and/or Order Details.

**Customer** means any person or entity that places an Order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms + Conditions, including any related company, related party, officer, employee, contractor, agent, successor, assign and authorised person. The action or signature of any such person appearing to have the authority of the Customer shall bind the Customer.

**Default Event** means any one of the following events:

- (a) you fail to make any payment when due, whether for the Goods and Services or otherwise;
- (b) you are in breach of these Terms + Conditions;
- (c) Winding Up commences against you;
- (d) a receiver is appointed to you;
- (e) you become insolvent, bankrupt or commit an act of bankruptcy;
- (f) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (d) above; or
- (g) a mortgagee or their agent enters into possession of your assets.

**Default Interest** means as defined in clause 5.

**Delivery** means the delivery of the Goods and Services in accordance with clause 7.1.

**Delivery Details** may include, in respect of a Delivery, details of:

- (a) a number uniquely identifying a Delivery to be used as a reference;
- (b) Customer name and account number with delivery address and any specific instructions;
- (c) date and times of delivery;
- (d) description and system codes of Goods or Services that are being supplied; and/or
- (e) quantity of Goods or Services;

**Encumbrance** means includes any bond, mortgage, bill of sale, lien, maritime lien, statutory lien, Other Interest or other charge or encumbrance whatsoever

**Force Majeure Event** means circumstances beyond our reasonable control, which shall include, but not be limited to, compliance with any Laws, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, pandemic or epidemic, acts of God, acts of the public enemy, your acts or omissions, weather, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, inability to obtain goods or materials from the source expected by the Company to be its source of Goods as at the date of this contract, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation or instructions or lack of instructions from you.

**Final Price** means the confirmed price for any Goods in an Order that were unable to be ascertain at the point of our Quote or your Order. This may include the price for a vessel that we need to order from our supplier before receiving a price at a later date.

**Goods** means goods sold by the Company from time to time, including any Goods specified on a Quote or described in the Order Details.

**GST** and **GST Law** have the meaning as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and/or are recognised in the future.

**Invoice** unless otherwise agreed means an invoice issued by us in connection with the Goods or Services.

**Latent Defect** means a fault which could not have been discovered at the time of transfer of possession of the Trade-In Vessel to us by undertaking a thorough inspection.

**Law** includes the common law of Australia, rules of equity and any relevant statute or statutory instrument including a by-law.

**Liability** includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost (including legal costs), expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority.

**Loss** means any Liability incurred or alleged to have been incurred by us, you or a third party in respect of, arising from or connected with any supply of Goods or Services by us or by our failure to supply any Goods or Services or of a breach of these Terms + Conditions, whether arising in Law or otherwise.

**Order** means an Order for Goods and Services received by us whether in writing or otherwise.

**Order Details** means the written confirmation of your Order issued by us to you, setting out the details of your Order.

**Other Interest** means a lease, hire purchase agreement, financial accommodation, charter agreement and any other contracted liability.

**Payment** means payment of any amount relating to Goods or Services in accordance with these Terms + Conditions.

**Payment Terms** means the deadline for payment of the price for our Goods and Services specified in the Details or a relevant Quote, Order or other document and in the absence of any stated frequency shall be payable in full in advance of the provision of the Goods and Services.

**Price Payable** means the full amount payable by you for the Goods and Services plus costs and expenses, calculated under clause 3.4.

**Quote** means a quotation by us for the supply of particular Goods and Services containing details as specified in clause 2.2 and attached to these Terms + Conditions.

**Relevant Information** includes all known specifications, defects and attributes and other matters relating to the Trade-in Vessel that may affect our ability to resell the Trade-in Vessel, of which you ought reasonably to be aware.

**Services** means services provided by the Company from time to time, including maintenance and repair of vessels and watercraft and their mechanical and/or structural components.

as agreed between the parties under a Quote and/or proposal and as set out in the Order Details.

**Terms + Conditions** means these terms and conditions of supply which, together with the Order Details, Quote, and any other document we attach or incorporate by reference, forms a contract between you and us.

**Third Party IP** means IP which is owned by a person other than us, and is used (whether under licence or otherwise), or proposed to be used, for the purpose of supplying the Goods or Services.

**Trade-in Vessel** has the meaning given in clause 10.1.

**Trade-in Vessel Papers** means any certificates of classification, shipping registration papers, plans of the vessel, safety certificate, radio certificates, gas certificates and any other papers and documentation which pertain to the Trade-in Vessel and its outfit;

**Website** means the Company's website at [www.newcastleyamaha.com.au](http://www.newcastleyamaha.com.au); and

**Winding Up** means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.