

CONDITIONS OF SALE

E I MARINE (PTY) LTD T/A THE BOATYARD CONDITIONS OF SALE

1 The Customer agrees that this Agreement represents the entire Agreement between the Customer and E I Marine (PTY) Ltd t/a The Boatyard (TBY), and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of TBY

2 This Agreement only becomes final and binding on completion and signature by both parties

3 The signatory hereby binds himself in his personal capacity as an individual, as a Director (in the case of a company), Member (in the case of close corporations) or Owner or Partner as co-debtor jointly and severally for the full amount due to TBY and Agrees that these Standard Conditions will apply mutatis mutandis to him.

4 The Customer acknowledges that it does not rely on any representations made by TBY in regard to the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by TBY in respect of the goods or services orally or in writing are provided for information only and will not form part of the Agreement in any way unless agreed to in writing by TBY.

5.1 The Customer agrees that neither TBY nor any of its employees will be liable for any negligent or innocent misrepresentations made by the Customer.

5.2 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purpose of intended use.

5.3 The Customer agrees to pay all costs resulting from any acts or omission of the Customer including suspension of work, modification of requirements, failure or delay in giving particular requisite to enable work to proceed on schedule or requirements that work be completed earlier than agreed.

5.4 TBY reserves the right at its sole discretion to provide alternative products to those ordered by the Customer should said equipment manufacture be superseded, replaced or terminated.

6.1 All quotations will remain valid for a period of 30 days from the date of the quotation unless superceded by an updated supplier or third party price variation

6.2 All quotations are subject to the availability of the goods or services and subject to correction of bona fide errors by TBY; and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of TBY before dispatch of goods or commencement of services.

6.3 The amount of the increase shall be certified by any independent auditor and such certificate shall be final and binding on the Customer.

6.4 The Customer hereby confirms that the goods or services on the Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects

6.5 Notwithstanding the provisions of section 1 above, all orders or variations to orders, whether oral or in writing, shall be binding and subject to these standard conditions of agreement and may not be cancelled.

6.6 TBY shall be entitled in its sole discretion to split the delivery / performance of the goods or services ordered in the quantities and on the dates it decides

6.7 TBY shall be entitled to invoice each delivery / performance actually made separately

- 6.8 Any delivery note or waybill (copy or original) signed by the Customer or a third party engaged to transport the goods and held by TBY shall be conclusive proof that delivery was made to the Customer.
- 6.9 The risk of damage to, destruction or theft of goods shall pass to the Customer on dispatch of goods and the Customer undertakes to comprehensively insure the goods until paid for in full.
- 6.10 Delivery, installation and performance times given are merely estimates and are not binding on TBY.
- 6.11 If TBY agrees to engage a third party to transport the goods, TBY is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by TBY.
- 6.12 The Customer indemnifies Rutherford against any claims that may arise from such agreement in clause 6.11 against TBY.
- 6.13 Repair times and repair costs given are merely estimates and are not binding on TBY
- 6.14 Any item handed in for repair may be sold by Rutherford to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.
- 6.15 All goods taken on an evaluation basis by the Customer are deemed sold if not returned within 14 days of issue in a perfect condition, in the original packaging and with all accessories and manuals intact. The same shall apply to goods taken on approval (3 days), demonstration (7 days) or on a consignment basis (90 days).
- 6.16 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each attempt shall immediately render the full prevailing price payable to TBY.
- 6.17 The Customer shall indemnify TBY against any claims, costs and expenses arising out of the infringement of copyright, patent, trade mark or design.
- 6.18 All sales are suspensive on the condition that the necessary permits are obtained by TBY.
- 7.1 New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded.
- 7.2 Repairs carry no guarantee unless specified, in writing, on the invoice by an authorised representative of TBY.
- 7.3 Used goods are sold voetstoets unless otherwise specified. New and used electrical and electronic components, used parts, used hulls and used trailers carry no guarantee. Used motors and the motors only of used boat (hull)-motor-trailer combinations will be guaranteed in terms of clause 7.4 only if the original order/agreement specifically states that the motor(s) purchased is covered by a guarantee issued by TBY. All other guarantees including common law guarantees are hereby excluded
- 7.4 The guarantee issued by TBY is a labour only guarantee for a period of three months from the original delivery date of the motor(s) to the customer and liability is restricted to the supply free-of-charge of all labour necessary to complete the repairs. Any parts required to complete the repairs will be sold to the customer at the price paid for them, inclusive of VAT, by TBY.
- 7.5 Liability under Clause 7.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of TBY.
- 7.6 No claim under this Agreement shall arise unless the Customer has, within 14 days of the alleged breach or defect occurring, given TBY 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.
- 7.7 To be valid, claims must be supported by the original Tax Invoice.
- 7.8 The Customer shall return any defective goods to the premises of TBY at the Customer's own cost and packed in the original packaging of the goods and all risks for the duration of repair remain with the Customer.
- 7.9 All guarantees are immediately null and void should any goods be tampered with, repairs attempted or should the seals on goods be broken by anyone other than TBY or should the goods be operated or stored outside the Manufacturer's specifications.

7.10 Any item delivered to TBY shall serve as a pledge in favour of TBY for present and past debts and TBY shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in 15.1. The sworn or realised value of pledged goods will be offset against the Customer's debts and any remaining balance will be paid to the Customer.

8.1 Under no circumstances shall TBY be liable for any consequential damages or for any delictual liability of any nature whatsoever.

8.2 Under no circumstances shall TBY be liable for any damage arising for any misuse or abuse of the goods.

9 Delivery of the goods to the Customer shall take place at the place of business of TBY.

10.1 The Customer agrees that the amount contained in a Tax Invoice issued by TBY shall be due unconditionally and shall be payable prior to the goods leaving the premises of TBY

10.2 The Customer agrees to pay the amount on the Tax Invoice at the offices of TBY.

10.3 The risk of payment by cheque through the post rests with the Customer

11.1 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by TBY, reduced to writing and signed by the Customer and a duly authorised representative of TBY.

11.2 The Customer is not entitled to set off any amount due to the Customer by TBY against this debt.

11.3 All discounts shall be forfeited if payment in full is not made on due date.

12.1 The Customer agrees that the amount due and payable to TBY may be determined and proven by a certificate issued and signed by any independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.

12.2 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.

13.1 The Customer agrees that interest shall be payable on any moneys due to TBY at the maximum legal rate prescribed in terms of the Usury Act, from the date it falls due. In the case of late payment interest shall be calculated from the date of order.

13.2 The Customer expressly agrees that no debt owed to TBY by the Customer shall become prescribed before the passing of a period of ten years from the date the debt falls due.

14.1 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 10 or 11 above, TBY is: (i) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel the agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right TBY may be entitled to in terms of this agreement or in law.

15.1 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.

15.2 The Customer irrevocably authorises TBY to enter its premises to repossess any goods delivered and indemnifies TBY completely against any damage whatsoever relating to the removal of the repossessed goods.

15.3 In the event of cancellation TBY is entitled not to produce any unmade balance of a contract and to recover any loss thereby sustained by the Customer.

16.1 All goods supplied by TBY remain the property of TBY until such goods have been fully paid for whether such goods are attached to other property or not.

16.2 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of TBY.

16.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of the law (*confusio* or *commixtio*) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to TBY.

16.4 The Customer agrees to accept any bulk quantity that does not exceed or fall short of the quantity ordered by more than 3% as good and complete performance and may request TBY to pay only the pro rata contract price for the quantity dispatched which request will not be unreasonably withheld.

17.1 The Customer shall be liable to TBY for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by TBY in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that TBY may demand.

17.2 The Customer shall pay three thousand Rand into court or furnish enough security in lieu of costs in any action instituted by or against the Customer.

17.3 The Customer agrees that TBY will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.

18 The Customer agrees that no indulgence whatsoever by TBY will affect the terms of this agreement or any of the rights of TBY and such indulgence shall not constitute a waiver by TBY in respect of any of its rights herein. Under no circumstances will TBY be stopped from exercising any of its rights in terms of this Agreement.

19 TBY shall have the right to institute any action in either the Magistrate's Court or the Supreme Court at its sole discretion.

20.1 Any document shall be deemed duly presented to the Customer within (i) 3 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers; (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; (iv) within 48 hours if sent by overnight courier; or (v) within 24 hours of being telexed to the Customer's telex number.

20.2 The Customer chooses *domicilium citandi et executandi* at his physical address, the business address or the physical addresses of any Director (in the case of a company), Member (in the case of close corporations) or of the Owner(s) or Partner(s).

20.3 The Customer undertakes to inform TBY in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this agreement.

20.4 The Customer hereby consents to the storage and use by TBY of the personal information that it has provided to TBY for establishing its credit rating and to TBY disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that TBY will not be held liable for the bona fide disclosure of any of this information to such a third party and that no further specific consent need to be obtained for the transfer of such information to a specific third party.

21 The Customer agrees to the Standard Rates of TBY for any goods or services rendered, which rates may be obtained on request.

22 The invalidity of any part of this Agreement shall not affect the validity of any other part.

23 Any order is subject to cancellation by TBY due to force majeure from any cause beyond the control of TBY, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

24 Any order is subject to cancellation if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the Customer or any of its principals.

25 The Customer agrees that TBY will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 23 or 24 occur.

26 This Agreement and its interpretation is subject to South African law.