

## TERMS OF BUSINESS

The purchaser's attention is drawn in particular to the provisions of clause 12.

### 1. Definitions and Interpretation

1.1. In these conditions (**Conditions**), the following words and phrases have the following meanings:

<b>Boat</b>	the boat (or any part of it) set out in the Order
<b>Boatsmart</b>	Powerboats Limited trading as Boatsmart
<b>Contract</b>	the contract between Boatsmart and the Purchaser for the sale and purchase of the Goods formed in accordance with clause 2.3 and incorporating these Conditions and the Order.
<b>Order</b>	the Purchaser's order for the Boat, as set out in the Purchaser's purchase order form, the Purchaser's written acceptance of Boatsmart's quotation, or overleaf, as the case may be.
<b>Purchaser</b>	the person or firm who purchases the Boat from Boatsmart.
<b>Specification</b>	any specification for the Boat, including any related plans and drawings, that is set out in the Order or otherwise agreed in writing by Boatsmart.

1.2. In these conditions: (i) The construction and meaning of these Conditions are not to be affected by any headings; (ii) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

### 2. Basis of Contract

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3. The Order shall only be deemed to be accepted when the Purchaser issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4. Any samples, drawings, descriptive matter or advertising produced by Boatsmart and any descriptions or illustrations contained in Boatsmart's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Boat referred to in them. They shall not form part of the Contract nor have any contractual force.

2.5. A quotation for the Boat given by Boatsmart shall not constitute an offer. A quotation shall only be valid for a period of 20 days from its date of issue.

### 3. Specification of the Boat

3.1. Subject to the terms of the Contract, Boatsmart agrees to sell and the Purchaser agrees to purchase the Boat as more particularly described in the Specification for the Purchase Price.

3.2. If there is any inconsistency between the Order and these Conditions, the Conditions shall prevail.

### 4. Purchase Price, Payment and Title

4.1. The price of the Boat is the price set out in the Order (**Purchase Price**). The Purchaser agrees to pay the Purchase Price to Boatsmart in the instalments set out in the Order (**Instalments**).

4.2. Time for payment of any part of the Purchase Price shall be of the essence in the Contract.

4.3. If the Purchaser is a business customer (**Business Purchaser**) it must pay all amounts due to Boatsmart under these terms in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.4. Payment shall be deemed to have been made when Boatsmart receives cleared funds at its bank.

4.5. Title in the Boat will pass to the Purchaser upon full payment of the Purchase Price to Boatsmart. Boatsmart will thereupon give the Purchaser all relevant documentation listed in the Order together with a receipted VAT invoice, where applicable. The conclusion of the aforementioned shall be deemed as "**Completion**".

### 5. Inspection and Survey

5.1. The Purchaser shall have no right to conduct sea-trials of the Boat before delivery unless otherwise agreed in writing by Boatsmart.

5.2. Before entering into the Contract, the Purchaser will have been provided with an opportunity to inspect the Boat. By entering into the Contract the Purchaser acknowledges that the Purchaser has accepted the Boat, that the sale is outright and definite and that, subject only to the terms and conditions of the Contract, the Purchaser will purchase the Boat "as is where is" on the Delivery Date.

### 6. Modifications and Changes to the Boat and/or Specification

6.1. Boatsmart may make minor changes to the Specification, which do not adversely affect the Boat's performance but, otherwise, no modifications or

changes to the Specification shall be binding on the Parties unless and until such changes together with any other relevant changes to the Contract including changes to the Purchase Price, Instalments and Delivery Dates have been agreed in writing by both parties.

6.2. Boatsmart shall have the right to decline to make any modification or change to the Specification requested by the Purchaser after the Contract is formed.

### 7. Delays and Extensions of Time (Force Majeure)

7.1. If construction of the Boat is delayed directly or indirectly due to any cause beyond Boatsmart's reasonable control (including any delay of Boatsmart's suppliers) then the Delivery Date shall be extended by the period of time during which that delaying cause continues.

7.2. Boatsmart shall give the Purchaser written notice of any event in respect of which Boatsmart claims to be entitled to an extension of time:

7.2.1. within seven (7) days of its commencement, stating the date on which the delay commenced, the cause of it and its estimated duration; and

7.2.2. within seven (7) days of its end, stating the date on which it ended and the total period of the extension to the Delivery Date.

7.3. If Boatsmart (or its suppliers') premises, plant, machinery or equipment shall be so damaged by the operation of a delaying cause so as to make it impracticable or impossible for Boatsmart (or its suppliers) to complete the construction of the Boat or Boatsmart to deliver the Boat to the Purchaser in a timely manner, Boatsmart may, at its option and in any event within twenty one (21) days of the operation of the delaying cause, terminate the Contract by notice in writing to the Purchaser, whereupon the Purchaser shall be entitled by written election either:

7.3.1. to take over and complete the Boat without further liability on Boatsmart whereupon the Purchaser shall pay to Boatsmart all sums then due, whether by way of the Instalments or otherwise; or

7.3.2. to require repayment of all Instalments paid by the Purchaser to Boatsmart up to that date.

### 8. Warranties

8.1. Boatsmart will assign to the Purchaser, so far as is possible, the benefit of any remaining warranty given by the Boat's manufacturer or the manufacturer of the engine or other component parts or equipment.

8.2. Boatsmart will honour its legal duty to provide Purchasers who are consumers (as defined by the Consumer Rights Act 2015) (**Consumer Purchasers**) with boats that are as described in the Order and that meet all the requirements imposed by law.

8.3. In addition to Clause 8.1 (and subject to Clause 8.4), Boatsmart warrants that on delivery of the Boat to the Purchaser, during the warranty period applicable to the Boat or the relevant part of it as specified in the Order (**Warranty Period**), the Boat or relevant part of the Boat will:

8.3.1. conform, in all material respects, with the Specification;

8.3.2. be of satisfactory quality (within the meaning of the Sales of Goods Act 1979, or, if relevant, the Consumer Rights Act 2015) for a vessel of the age and usage of the Boat.

8.4. The Purchaser must give Boatsmart notice in writing during the Warranty Period within seven (7) days of discovery that the Boat or any part of the Boat does not comply with the warranty in clause 8.2 and/or 8.3 and shall:

8.4.1. Give Boatsmart a reasonable opportunity of examining the Boat or the relevant part of the Boat; and

8.4.2. If requested by Boatsmart return the Boat or the relevant part to Boatsmart,

and Boatsmart shall, at its option, repair or replace the defective Boat, or part of the Boat, or refund the price of the defective Boat or part of the Boat in full and if the Purchaser is a business this will be the only remedy for breach of the warranty. These Conditions shall apply to any repaired or replacement products supplied by Boatsmart.

8.5. Boatsmart shall not be liable for the Boat's failure to comply with the warranties set out in Clause 8.2 if:

8.5.1. the Purchaser continues to use the Boat after the defect becomes apparent;

8.5.2. the defect arose because the Purchaser failed to follow Boatsmart's oral or written instructions for the use and maintenance of the Boat or (if there are no such instructions the good trade practice regarding the same);

8.5.3. the defect arose as a result of commercial use of the Boat;

8.5.4. the defect arose as a result of fair wear and tear, wilful damage, negligence or abnormal storage or use since the sale;

8.5.5. the Boat differs from its description as a result of changes made to ensure it complied with applicable statutory or regulatory requirements;

8.5.6. the Boat was used for racing under power since the sale;

8.5.7. the defect arose as a result of the misuse of the Boat;

8.5.8. the defect or regulatory non-conformity in the Boat arose directly as a result of the Purchaser's modification of the Boat or the Purchaser's use of the Boat.

8.6. The Purchaser shall reimburse Boatsmart for all reasonable charges, costs,

- expenses and liabilities incurred by BoatSMART (its sub-contractors or agents) as a result of any work carried out pursuant to Clause 8.4 if the defect arose as set out in clause 8.5.
- 8.7. The warranty set out in clause 8.4 does not apply to antifreeze, oil, fuel, batteries, fuel and air filters and other consumable items.
- 9. Delivery**
- 9.1. BoatSMART shall make the Boat ready for delivery on the Delivery Date. Unless otherwise agreed in writing to BoatSMART the Boat shall be on land at delivery on the Delivery Date.
- 9.2. The Delivery Date is given in good faith and BoatSMART shall use every reasonable endeavour to meet it but it is not guaranteed. In particular, BoatSMART shall not be responsible for a delay in delivery caused by the fitting of extras, making modifications to the Boat or by delays in road or sea delivery or for other causes beyond its reasonable control.
- 9.3. On delivery of the Boat to the Purchaser (**Delivery**) BoatSMART and the Purchaser will both sign a certificate of delivery and acceptance (**Certificate of Delivery and Acceptance**) as evidence of delivery of the Boat to the Purchaser. On Delivery, the Boat and all its gear and equipment shall be the responsibility and at the risk of the Purchaser who will be immediately responsible for insuring it.
- 9.4. The Purchaser shall take delivery of the Boat immediately upon signature by the Purchaser of the Certificate of Delivery and Acceptance. If the Purchaser fails to take delivery of the Boat without good reason then, in addition to any other rights which BoatSMART may have, BoatSMART shall be entitled to require the Purchaser to pay the reasonable berthing and/or storage charges together with any other expenses reasonably incurred by BoatSMART, including insurance, maintenance and lifting of the Boat in or out of the water until actual delivery shall take place.
- 9.5. The Purchaser and BoatSMART expressly agree that BoatSMART shall not be responsible for investigating or otherwise ensuring that the Purchaser is competent and experienced in the proper control and navigation of the Boat.
- 10. Insurance**
- 10.1. BoatSMART shall keep the Boat insured from the date the Contract is formed, or if later the date the Boat is in its possession and control until the Delivery Date.
- 11. Default**
- 11.1. If the Purchaser defaults in paying the deposit specified in the Order (**Deposit**) or any part of the Purchase Price on the due date BoatSMART may serve a written notice on the Purchaser requiring the Purchaser to pay such sum within seven (7) days. If the Purchaser fails to comply with that notice, BoatSMART shall be free to terminate the Contract by giving written notice to the Purchaser and re-sell the Boat by Public Auction or Private Treaty and any Deposit paid shall be forfeit to BoatSMART without prejudice to BoatSMART's right to claim from the Purchaser any loss on re-sale together with all its associated reasonable costs and expenses; in the event of such a claim BoatSMART shall be obliged to give credit for the amount received by way of the forfeited Deposit.
- 11.2. Without prejudice to clause 11.1 if the Purchaser fails to pay the full amount of any instalment or any other sum due to BoatSMART, BoatSMART shall be entitled to suspend the construction of the Boat until all sums due to BoatSMART have been paid in full, and the Delivery Date shall be extended by the period of the delay in payment.
- 12. Liability**
- 12.1. Nothing in these terms shall limit or exclude BoatSMART's liability for:
- 12.1.1. death or personal injury caused by its negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- 12.1.2. fraud or fraudulent misrepresentation;
- 12.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 12.1.4. defective products under the Consumer Protection Act 1987; or
- 12.1.5. any matter in respect of which it would be unlawful for BoatSMART to exclude or restrict liability.
- 12.2. If the Purchaser is a business, then subject to clause 12.1:
- 12.2.1. BoatSMART shall not be liable to the Business Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract between the parties; and
- 12.2.2. BoatSMART's total liability to the Business Purchaser for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to one hundred per cent (100%) the total Purchase Price paid by the Purchaser under the Contract.
- 12.2.3. BoatSMART excludes all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982.
- 12.3. If the Purchaser is a consumer, then subject to clause 12.1 BoatSMART is not responsible for losses suffered by the Purchaser caused by BoatSMART breaking the Contract if those losses were unforeseeable in that it was not obvious that it would happen and nothing the Consumer Purchaser said to BoatSMART before the parties entered the Contract meant BoatSMART should have expected it.
- 13. Termination for Insolvency**
- Either Party shall be entitled to terminate the Contract by written notice if the other Party becomes insolvent or initiates or becomes subject to any formal insolvency procedure.
- 14. Copyright**
- Any copyright or similar protection in manuals, drawings, plans, specifications, including a specification prepared by BoatSMART or their employees or agents, shall at all times remain the property of BoatSMART.
- 15. General**
- 15.1. **Notices:** Any notice to be served under the Contract on either Party shall be in writing and shall be sufficiently served if delivered personally or posted by recorded delivery to the address set out in the Order (unless the Party has by written notice to the other Party substituted a different address in England as the notice address). Any posted notice shall be deemed to have been received on the third business day after the time of posting. Notices may also be served by e-mail or fax, in which case they shall be deemed received upon despatch if despatch was on a business day in the United Kingdom and within 0900-1700 hours UTC and there was no delivery failure notice. If despatched before 0900 hours UTC on a business day the notice shall be deemed received at 0900 hours UTC that day, if despatched after 1700 hours UTC on a business day or on any non-business day the notice shall be deemed received at 0900 hours UTC on the next business day
- 15.2. **Third party rights:** A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.3. **Entire agreement:** If the Purchaser is a Business Purchaser the Contract constitutes the entire agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. The Business Purchaser acknowledges that, in entering into the Contract it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the Contract or not) other than as expressly set out in the Contract and that the Business Purchaser has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this Clause 15.1 shall limit or exclude any liability for fraud.
- 15.4. **Variations:** Any variations or alterations to the Contract must be in writing and signed by the parties.
- 15.5. **Severance:** If any provision of the Contract is deemed for any reason to be invalid, void or deleted, the Contract shall nonetheless remain in full force and effect as if such provision had not originally been included.
- 15.6. **Governing law:** The Contract and any non-contractual obligations arising out of, or in connection with, the Contract shall be governed by and construed in accordance with English law.
- 15.7. **Jurisdiction:** Subject to Clause 15.8 below, each of the Parties irrevocably agrees that any and every dispute (and any non-contractual obligations) arising out of or in connection with the Contract shall be subject to the non-exclusive jurisdiction of the English courts.
- 15.8. **Dispute Resolution Scheme:** Disputes arising out of or in connection with the Contract, when they cannot be resolved by negotiation, may, with the written agreement of the Parties, first be submitted to mediation under British Marine's ("**BM**") Dispute Resolution Scheme. Details of the Scheme are available to current BM members on request from BM and/or on BM's member website.
- 16. Consumer Rights**
- 16.1. To the extent that these Conditions contradict any laws on consumer rights, the rights conferred on any Party who is a consumer shall remain unaffected.
- 16.2. As BoatSMART is acting in the course of its trade then, if the Purchaser is a consumer and the Contract is a distance or off-premises contract, in both cases within the meaning set out in the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013, the Purchaser may be entitled to cancel the Contract within fourteen (14) days from the day on which the Purchaser acquires physical possession of the Boat.
- 16.3. If the right to cancel the Contract does arise and is exercised by the Purchaser, the Purchaser shall bear the cost (if any) of transporting and redelivering the Boat to BoatSMART, as well as any other relevant charges as may be notified to the Purchaser by BoatSMART. If, as a result of the Purchaser's handling of the Boat, beyond what is necessary to establish the nature, characteristics and functioning of the Boat, the Boat's value is diminished by any amount, BoatSMART may recover that amount (up to the Purchase Price) from the Purchaser.