

# HAWKES BAY MARINE - FULL TERMS & CONDITIONS OF SUPPLY OF GOODS AND SERVICES

## 1. Definitions

In these conditions unless the context otherwise requires:

**Company** shall mean HAWKES BAY MARINE (2016) LTD

**Customer** shall mean the person (includes a corporation, association, firm, company, partnership, Trustees of a Trust or an individual) or any person acting on behalf of and with the authority of the Customer.

**Goods** shall have the same meaning as in s119 Contract and Commercial Law Act 2017 and are goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).

**Services** shall mean all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

**Date of the contract** means:

- (1) where the contract does not arise from a quotation\* given by the Company (i) the date of acceptance of the order by the Company; or
- (2) where the contract does arise from a quotation given by the Company (i) the date upon which either written or verbal notification of acceptance of the quotation is received by the Company.

**PPSA** means the Personal Property Securities Act 1999, and associated regulations, as amended from time to time.

**PPSR** means the Personal Property Securities Register under the PPSA.

**Contract price** means the price of the Goods and/or Services as agreed between the Customer and the Company.

- \*Quotation shall mean price on offer for a fixed term
- \*\*Manager is the Company's appointed decision maker

## 2. Quotation

The Customer may request a Quotation from the Company, setting out the price of the Goods and/or Services to be supplied. If the Quotation is acceptable to the Customer, the Customer may place an order within the timeframe as identified upon the quotation.

## 3. Acceptance

If any instruction is received by the Company from the Customer for the supply of Goods and/or Services such instruction shall constitute acceptance of the Terms and Conditions contained herein. Upon acceptance, these Terms and Conditions are definitive and binding.

## 4. Terms and Conditions

These Terms and Conditions and any subsequent Terms and Conditions issued by the Company shall apply to all orders for Goods and/or Services made by the Customer after the date and time at which these conditions are first brought to the notice of, any employee, staff member or representative of the Customer. It shall be the Customer's responsibility to ensure that these conditions are promptly brought to the attention of any appropriate staff member of the Customer, and accordingly any order made by the Customer after the date and time described above in this clause shall be deemed to be an acceptance of these Terms and Conditions.

## 5. Price

The Price shall be either as indicated on the invoices provided by the Company to the Customer in respect of the Goods and/or Services supplied, or the Company's current price at the date of delivery of any Goods according to the Company's current price list.

Time for payment for the Goods and/or services shall be of the essence and will be required at time of collection of goods. If no timeframe for payment is stated, then payment shall be due within 7 days of the invoice date.

The Customer agrees that the cost Price shall be determined by the Company and shall take into consideration "one-off" costs such as design and production.

The Company reserves the right to implement a surcharge for alterations to specifications of products and/or services after the order has been placed.

The Company reserves the right to implement a re-stocking charge of 5% of the purchase price of any goods correctly supplied by the Company but later returned by the Customer for credit.

The Company reserves the right to request a deposit for special orders, special project work, or any other piece of work, special in nature where considerable outlay or expense is expected to incur, prior to work or order commencing. This deposit is non-refundable in nature and payment will be deemed as acceptance of the terms and conditions contained herein.

## 6. Payment, Late Payment, Default of Payment, and Consequences of Default of Payment

The method of payment may be made by cash (up to a maximum of \$9,999), or electronic means (debit/credit card) or by direct credit to our bank account (details of which will be provided on invoice), or by any other method as agreed to between the Customer and the Company. Note that a bank surcharge applies to credit cards or contactless payment methods.

Subject to any contractual provision to the contrary, payment [unless otherwise arranged in advance in writing by the Manager\*\* or his appointee] shall be received on or before collection of goods or services, or 7 days following the date of the Company's invoice to the Customer, which shall be issued promptly on or after the Goods and/or services have been supplied (whichever is first).

Late payment shall incur late payment charges per month calculated on a daily basis and invoiced monthly. This shall be payable on any monies outstanding under the Contract from the date payment was due, until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies due under the contract. The Company reserves the right to undertake this action without prior notice to the Customer.

Any monies that remain outstanding to be paid once the date of payment has fallen due may be referred to a debt collection agency. The Company reserves the right to undertake this action without prior notice to the Customer. The Customer will be held liable for all costs associated with the collection of any outstanding monies; including but is not limited to debt collection agency costs, legal fees, Court costs and all reasonable sums incurred by the Company in the pursuance of satisfying payment.

Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Goods and/or services to the Customer and any of its other obligations under the Terms and Conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.

In the event that:

- Any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Company's other remedies at law –
  - the Company shall be entitled to cancel all or any part of any order of the Customer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.
  - The Customer shall not at any time set off as against any amount payable by the Customer pursuant to this contract or any other contract between us any amount owed or allegedly owed by the Company to the Customer.

## 7. PPSA

These Terms and Conditions constitute a security interest in the Goods supplied by the Company to the Customer for the purposes of the PPSA as security for payment by the Customer of all amounts due under the Contract, including any future amounts and shall apply to both all Goods previously supplied to the Customer (if any) and all Goods that will be supplied by the Company in the future.

The Customer agrees to sign any further documentation and/or provide further information which the Company may reasonably require to register and/or renew a registration of a financing statement or financing change statement on the PPSR in favour of the Company.

To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations upon the Company in the Customer's favour, will not apply; and when the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA, and its rights to receive a copy of the verification statement under section 148 of the PPSA in respect of any financing statement or change statement registered by the Company.

The Customer agrees to treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

The Customer shall indemnify, and upon demand reimburse, the Company for any and all costs incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby.

## 8. Governing Laws

These Terms of Trade will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the Goods and/or services provided and/or these Terms of Trade.

If the Customer is acquiring Goods and/or services for the purposes of a trade or business, the Customer has been given the opportunity to decide and agrees that the provisions of the Consumer Guarantees Act 1993 do not apply.

Under the Privacy Act 1993 the Customer has the right to access and correction of any personal information regarding the Customer that the Company holds. The Customer authorises the Company to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing Goods and Services to the Customer.

#### **9. Cancellation**

The Company may cancel these Terms and Conditions or cancel the delivery of the Goods or provision of the Services at any time before the Goods are delivered or the Services are provided by giving written notice. On giving such notice, the Company shall promptly repay to the Customer any sums paid in respect of the Price for those Goods and/or Services (less any agreed deposits). The Company shall not be liable for any loss or damage whatsoever to the Customer arising from such cancellation.

#### **10. Dispute Resolution**

The Company will endeavor to resolve any dispute between the Customer and itself without the need for Court proceedings. Any such attempt is without legal prejudice. If the matter cannot be resolved without intervention the matter will be referred to the appropriate authority. All costs associated with such proceedings shall be borne by the Customer.

#### **11. Reservation of Title**

All risks associated with the products supplied pass to the Customer at the date of supply. However, the Company retains full legal ownership and equitable title of any Goods supplied to the Customer until the purchase price and all other monies due under the contract have been paid in full.

Until the fulfilment of its obligations under the contract by the Customer; the Company reserves the right to enter upon the premises where the Goods supplied are located and to take possession of any such Goods without any responsibility for the consequences to the Customer of doing so and to resell the Goods and apply the proceeds of sale towards payment of the contract price.

#### **12. Intellectual Property**

Where the Company has designed, drawn or written Goods for the Customer, then the copyright of those designs, drawings and written documents shall remain vested in the Company and shall only be used by the Customer at the Company's discretion.

The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company in respect of any such infringement.

The Customer agrees that the Company may use any documents, designs, drawings or products created by the Company for the purposes of advertising, marketing, or entry in to any competition.

#### **13. Warranty**

The Company warrants that it will repair, replace, alter, or make good [at our option, but free of charge except for matters specified later in this clause] any defects in the Goods and/or Services provided by us which are defective or deficient in any way due to our workmanship and/or materials.

The Company must receive written notice of the claim from the Customer within three (3) months from the date the Goods and/or Services were provided.

This warranty undertaking is subject to the following conditions:

- No attempt to repair the defective Goods and/or Services is to have been made by any person not authorised by the Company.
- All Goods supplied must not have been misused.
- The Goods supplied must not have been modified in any way by the Customer, its Agent or representative or by any person whatsoever not authorised by the Company.
- The Goods supplied must have been adequately maintained in accordance with the Company or Supplier provided maintenance and operating instructions which are inclusive of standard good practice guidelines.
- Identification or serial numbers on any defective Goods must not have been altered, defaced, or interfered with in any way whatsoever.
- If required by us, [written notice will be given] the Customer must return to the Company, at the Customer's own expense and risk, any alleged faulty materials, such materials shall immediately become the property of the Company; damage caused to Goods or to its electrical and electronic components and apparatus resulting from the incorrect use of utilities (including water, steam and compressed air) and from over voltage or voltage surcharges are excluded from this undertaking;
- Damage caused to the Goods supplied by corrosion (either chemical or otherwise) is excluded from this undertaking.
- Damage caused to the Goods supplied by the Customer's faulty design or installation is excluded from this undertaking.
- Damage caused to the Goods supplied by the Customer, in whatever form taken, is excluded from this undertaking.

If the Company elects to repair or replace any defective Goods, such work shall be undertaken at such place as the Company may reasonably specify and the Customer shall be responsible at its cost and risk for shipment of the defective Goods to the place specified.

The undertakings given in clause 13 shall apply, under the same terms and conditions as those originally applicable, to any of the Goods and/or Services [or part thereof] that have been repaired, replaced, altered, or made good under this clause but only to the extent of the unexpired portion of the undertaking specified under the warranty clause.

#### **14. Limitation of the Company's Liability**

The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties, consumer guarantees or conditions or impose obligations upon the Company which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, consumer guarantees, conditions or terms imposed on the Company, the Company's liability shall, where it is allowed, be excluded or if not able to be excluded only to the minimum extent as required by the relevant statute.

Except as otherwise provided the Company shall not be liable for any loss of any kind whatsoever to the Customer arising as a result of any breach of any of the Company's obligations under the contract, including any cancellation of the contract or any negligence on the part of the Company, its servants, agents or contractors, nor shall the Company be liable for any loss, damage or injury caused to the Customer's servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Customer shall indemnify the Company against any claim by any such person.

The Company shall not be liable for any loss, damage or theft caused to the Customer's property whilst in the possession of the Company.

Notwithstanding the provisions of these Terms and Conditions, if it is determined by any court of competent jurisdiction that we the Company is liable to the Customer, whether in contract, or in tort (including negligence), strict liability or by virtue of the breach of any statutory duty or otherwise, then it is agreed that our total liability in respect of all claims that the Customer, its servants, agents, or contractors may make against us will be limited to the contract price actually paid by the Customer and received by the Company.

The Company's liability to its customer is strictly limited by the undertakings given to the Customer in clause 13. Any condition, warranty or other implied term not expressly contained within these Terms and Conditions is excluded. The only exception to this is where there is an express Term contained within a signed contract agreed to by both the Company and the Customer.

If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, or enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

#### **15. General**

All Customers and potential Customers agree that when emailing the Company, either directly or indirectly, your email may be added to our database for future emailing campaigns and offers.