

TERMS AND CONDITIONS OF SALE

1 DEFINITION

'Seller' means LEAFIELD MARINE LIMITED (LML).

'Goods' means all Items, Works or Services specified overleaf.

'Buyer' means the person who buys or agrees to buy the Goods.

'Price' means the price of the Goods and any other charges specified overleaf.

'Contract' means the Binding Agreement between the Seller and Buyer for the sale and purchase of the Goods.

2 GENERAL

- a) No Contract is made with the Seller until there has been an acceptance in writing by the Seller of an Order placed by the Buyer.
- b) The terms and conditions herein contained shall only apply to the Contract and no terms or conditions stipulated by the Buyer nor any other variation shall have effect unless agreed to in writing by the Seller.

3 PRICE AND DELIVERY

- a) Prices do not include VAT which will be payable by the Buyer on submission of a tax invoice in the amount for which the Seller has become accountable to HM Customs and Excise.
- b) Unless otherwise stated carriage and packing are charged extra.
- c) With the exception of Goods covered by quotation or tender price all goods will be invoiced in accordance with prices shown on the Seller's price list current at the date of despatch.
- d) All Contracts are accepted and delivered by the Seller Ex-Works.
- e) While the Seller will take all reasonable steps to deliver the goods within the delivery period the Seller accepts no responsibility for any failure to do so.
- f) The Seller reserves the right to deliver in more than one consignment at its discretion.

4 PAYMENT

- a) All accounts are payable on demand but in any case must be paid not later than 30 days from the date of delivery. Payment shall not be withheld in respect of any claims made by the Buyer not acknowledged by the Seller.
- b) The Seller reserves the right to suspend deliveries where payment is not received in accordance with paragraph (a) of this clause or in accordance with any alternative arrangement which shall have been agreed in writing between the parties.
- c) The Seller also reserves the right to withdraw the credit terms in paragraph (a) of this clause and to substitute Cash with Order or Cash on Delivery terms.
- d) In the event of payment not being received in accordance with paragraph (a) of this clause the Seller reserves the right to charge interest on outstanding amounts at the rate of 2% per calendar month.

5 TRANSFER OF PROPERTY

- a) The property of the Goods shall remain in the Seller until the Seller has received payment in full for the Goods and all other sums owing and/or due to the Seller.
- b) If the Buyer (who shall in such case act on its own account and not as agent for the Seller) shall sell the Goods prior to making payment in full for them the beneficial entitlement of the Seller therein shall attach to the proceeds of such sale or to the claim for such proceeds.
- c) So long as the property in the Goods remains in the Seller the Seller shall have the right, without prejudice to the obligation of the Buyer to purchase the Goods, to retake possession of the Goods (and for that purpose to go upon any premises occupied by the Buyer).
- d) Nothing in this condition shall confer upon the Buyer the right to return the Goods said hereunder. The Seller may maintain an action for the price notwithstanding that the property in the Goods may not have passed to the Buyer.

6 CUSTOMER'S FREE ISSUE PARTS

Where materials or components are supplied to the Seller by or on behalf of the Buyer for incorporation in parts to be manufactured by the Seller, such parts or components are supplied at the Buyer's risk. Components and materials are examined before being used but should any such part prove defective or otherwise unsuitable for the intended purpose any work already carried out on the said part shall be the responsibility of the Buyer.

The Seller will not be held responsible for any delays in deliveries arising from delays in the provision of materials or components or delays arising out of necessity for replacing or rectifying incorrect or defective materials or components.

7 VARIATION TO AGREED SCHEDULES

No variations to the agreed delivery schedule shall be accepted by the Seller unless agreed in writing before the effective date of the variation to the schedule.

8 LOSS AND DAMAGE IN TRANSIT

- a) Where specifically requested the Seller will arrange transport and insurance of the Goods as a separate service and not as part of the contract. The Seller will use its best endeavours to select a mode of transport agreeable to the Buyer but reserves the right to vary such selection without notice. Transport and insurance charges will be invoiced to the Buyer.
- b) The Seller will refund the cost of or at its discretion replace or repair free of charge any of the Goods proved to the Seller's satisfaction to have been lost or damaged in transit up to the moment of delivery provided that within two working days of receipt of the goods in the case of damage or within seven working days of receipt of invoice in the case of loss, the Buyer notifies both the Seller and the Carrier in writing of the occurrence of the damage or loss and its nature and extent. Suspected loss in transit of CWO and COD orders must be notified to the Seller with the minimum delay.
- c) Should the Buyer prefer to arrange its own insurance its preference must be notified in writing to the Seller in which case paragraph (b) of this clause will not apply.

9 GUARANTEE

- a) The Seller guarantees at its discretion, either to refund the cost of or to repair free of charge any Goods found to its satisfaction to be defective, owing to faulty design, materials or workmanship for a period of twelve months from the date of delivery. Liability under this clause shall in no circumstances extend beyond the manufacture of such goods.
- b) Goods returned under this guarantee shall be delivered to the Seller's works at the Buyer's expense. Goods returned under the guarantee and found not to be defective will be returned to the Buyer at the Buyer's expense and subject to a charge for testing by the Seller. Goods cannot be accepted under this clause unless accompanied by written

description including type numbers, serial numbers, purchase order numbers and advice note numbers.

- c) Replacement or repairs made under this guarantee shall not extend the original period of guarantee unless specifically agreed to by the Seller in writing on acceptance of the contract.
- d) Every effort is made by the Seller to ensure the accuracy of any technical description made available in relation to the goods. However the Seller accepts no liability for any damage or injury arising from any errors or omissions in such technical descriptions.
- e) In the case of a consumer transaction this condition 9 shall not affect the Statutory Rights of the Buyer as defined in the Consumer Transactions (Restrictions on Statements) order 1976 (as amended).

10 RETURNED GOODS

Except under the guarantee of condition 9 no returns are permitted without the Seller's previous written consent.

11 EXCLUSION OF LIABILITY

- a) Save as expressly provided in clause 9 the Seller shall be under no liability of whatsoever kind howsoever caused whether or not due to the negligence or wilful default of the Seller or its servants or agents arising out of or in connection with the Goods. All conditions, warranties or other terms whether expressed or implied statutory or otherwise are hereby expressly excluded provided that nothing in this paragraph shall exclude or restrict any liability of the Seller for death or personal injury resulting from the negligence of the Seller or its servants or its agents.
- b) If it should be held that in relation to any claim that paragraph a) above is not effective the Buyer shall not be entitled to reject the Goods and any damages recovered by the Buyer shall be limited to the reasonable cost of remedying the breach of contract provided that the seller shall first be afforded the opportunity of itself carrying out such remedial work.

12 FORCE MAJEURE

The Seller shall not be under any liability of whatsoever kind for non performance in whole or in part of its obligations under the contract due to causes beyond the control of the Seller or the Seller's suppliers including but not limited to war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot, other act of civil disobedience, acts of the Buyer or a third party, failure or delay in transportation, acts of any Government or any agency or subdivision, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, delay in delivery to the Seller's suppliers or shortage of labour, fuel or raw material or machinery or technical failure. In any such event the Seller may without liability cancel or vary the terms of the contract including but not limited to extending the time for performing the contract for a period at least equal to the time lost by reason of such event.

13 ORIGIN OF GOODS

The Seller makes no representation and gives no warranty in respect of the source, origin of manufacture or production of the Goods or part thereof.

14 BREACH AND FINANCIAL CONDITION OF BUYER

- a) If any of the Buyer's obligations to the Seller are not fulfilled or if the Buyer's financial condition at the time does not in the Seller's unfettered judgement justify continuance of the contract on the terms of payment specified, the Seller may, without prejudice to any other rights it may have, cancel any outstanding order or suspend delivery or manufacture of any of the Goods unless the Buyer makes such payment for any of the Goods ordered as the Seller may require.
- b) If any order is so cancelled or suspended by the Seller the Buyer shall indemnify the Seller on demand against all losses (including loss of profits) costs (including the costs of all labour

and materials used and overheads incurred) damages charges and expenses arising out of the order and the cancellation or suspension thereof (the Seller giving credit for the value of any such materials sold or utilised for other purposes).

15 INSTALLATION AND USE

For reliable and safe operation all products supplied by LML must be installed and used in accordance with the manufacturer's recommendations.

16 INDEMNITY

The Buyer shall comply with all instructions of the Seller and all legislation in relation to the use, processing, storage and sale of the goods and shall indemnify the Seller against any costs, claim, demand, expenses or liability which the Seller may incur arising out of or in connection with such use, processing, storage or sale.

17 TESTS

If the Buyer requires tests other than those which the Seller may customarily make, such requests must accompany the order. If the Seller agrees to make such tests the costs and expenses involved will be paid for by the Buyer as part of the price. Unless otherwise stated in writing such tests will be carried out at the Seller's works and if the Buyer does not attend having been given at least seven days notice of the intended date for such tests then the Seller may carry out the tests which shall be deemed to have taken place in the presence of the Buyer and to its satisfaction.

18 INTELLECTUAL PROPERTY RIGHTS

The Seller will indemnify the Buyer against any claim for infringement of any letter patent or registered design or trademark granted or used in the United Kingdom at the date of the contract by the use or sale of any article as supplied by the Seller to the Buyer and against normal and reasonable costs, expenses and or damages (but not special or consequential damages) awarded against the Buyer of any action for such infringement provided:

- a) that this indemnity shall not apply to any infringement which is due to the Seller having followed the design or instruction furnished or given by the Buyer or to the use of such article or material in a manner or for a purpose not specified by the Seller.
- b) that this indemnity is conditional on the Buyer making an admission in respect of such infringement and giving the Seller at the Registered address of the Seller the earliest possible notice in writing of any claim being made or action threatened or brought against the Buyer and on the Buyer giving the Seller information and assistance and permitting the Seller at its own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- c) the sale by the Seller of the parts or materials covered by this order does not grant to or confer on the Buyer or any customer of the Buyer a licence express or implied under any patent of the Seller covering or relating to any combination machine or process in which said parts and materials might be or are used.

The Buyer on his part warrants that any design or instruction furnished or given by him shall not be such as will cause the Seller to infringe any letters patent registered design or trademark in the execution of the Buyer's order.

The Undertaking of the Seller to indemnify the Buyer shall not be applicable to acts of alleged infringement occurring subsequent to notice of such alleged infringement having been given to the Buyer nor shall the Seller be required to continue to deliver any article which is the subject of such allegation of infringement. The contract does not grant the Buyer or any other third party any licence express or implied under any patent of the Seller for any product, process, design or machine of which the goods form a part.

19 NOTICES

Any notice to be given hereunder shall be deemed to have been duly given or delivered to the party

concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served if sent by post 48 hours after posting.

20 ASSIGNMENT

The Buyer shall not assign or transfer or purport to assign or transfer the contract or the benefit thereof to any other party.

21 SUB CONTRACTS

The Seller reserves the right to sub contract the performance of the contract or any part thereof.

22 PROPER LAW AND JURISDICTION

The contract shall be governed by and construed in accordance with English law and the Courts of England shall have jurisdiction to hear all disputes arising in connection with the contract.