

# CONDITIONS OF SALE

## YOUR ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CONDITION 10

### 1. INTERPRETATION

#### 1.1 In these Conditions:

- 1.1.1. 'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between you and us.
- 1.1.2. 'Contract' means the contract for the purchase and sale of the Goods incorporating the Conditions.
- 1.1.3. 'Goods' means the Goods (including any instalment of the Goods or any part or parts of them) which we are to supply in accordance with these conditions.
- 1.1.4. 'we', 'us', 'our' or 'ours' means HT MARINE AND POWER LIMITED.
- 1.1.5. 'Writing' includes letter, telex, cable, facsimile transmission and comparable means of communication but excluding email.
- 1.1.6. 'you', 'your' or 'yours' means the person, firm or company who purchases the Goods from us.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Words in the singular include the plural and the plural include the singular.

1.5 A reference to one gender includes a reference to the other gender.

### 2. BASIS OF THE SALE

- 2.1 We sell and you shall purchase the Goods in accordance with any written quotation of ours which is accepted by you, or any written order of yours which is accepted by us, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by you.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between you and our authorised representatives.
- 2.3 Our employees or agents are not authorised to make any representations concerning the Goods unless confirmed by us in Writing. In entering into the Contract you acknowledge that you do not rely on, and waive any claim for breach of any such representations which are not so confirmed. Nothing in this condition shall exclude our liability for fraudulent misrepresentation.
- 2.4 Any advice or recommendation given by us or our employees or agents to you or your employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by us is followed or acted upon entirely at your own risk, and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.

### 3. ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by you shall be deemed to be accepted by us unless and until confirmed by our authorised representative
- 3.2 You shall be responsible to us for ensuring the accuracy of the terms of any order submitted by you, and for giving us any necessary information relating to the Goods within sufficient time to enable us to perform the Contract in accordance with its terms
- 3.3 The quantity, quality and description of and any specifications for the Goods shall be those set out in our quotation (if accepted by you) or your order (if accepted by us).
- 3.4 We reserve the right to make any changes in the specifications of the Goods which are required to conform with any applicable safety or other statutory requirements.
- 3.5 No order which has been accepted by you may be cancelled by you except with our agreement in Writing and on terms that you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

### 4. PRICE OF THE GOODS

- 4.1 The price of the Goods shall be our quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in our price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, our export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by you or withdrawal by us, after which time they may be altered by us without giving notice to you.
- 4.2 We reserve the right, by giving you notice at any time before delivery, to increase the price of the Goods to reflect any increase in our costs which is due to any factor beyond our control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by you, or any delay caused by any instructions of yours or failure by you to give us adequate information or instructions.
- 4.3 The price is exclusive of any applicable duties and taxes (including Value Added Tax), which you shall be additionally liable to pay to us.
- 4.4 Where we agree to payment of the price of the Goods in the form of bills of exchange, acceptances or other negotiable securities or similar arrangements, you will indemnify us in respect of any duties, fees, taxes, levies, discounts, losses or other charges in connection therewith.
- 4.5 All prices are our ex works prices and where we agree to arrange for the Goods to be sent to you, you shall be responsible for the costs of loading carriage and unloading which you shall be additionally liable to pay to us.

### 5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the parties, we shall be entitled to invoice you for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by you or you wrongfully fail to take delivery of the Goods, in which event we shall be entitled to invoice for the price at any time after we have notified you that the Goods are ready for collection or (as the case may be) we have tendered delivery of the Goods.
- 5.2 You shall pay the price of the Goods (less any discount to which you are entitled, but without any other deduction) within 30 days of the date of our invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to you. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 Where the Goods are supplied for export from the United Kingdom you shall within 7 days of the date of the Contract open an irrevocable letter of credit with a bank to be approved by us in favour of National Westminster Bank plc payable 30 days after sight against production of a commercial invoice for the Goods and a clean on board bill of lading for the Goods.
- 5.4 If you fail to make any payment on the due date then without prejudice to any other right or remedy available to us, we shall be entitled to:
  - 5.4.1. cancel the contract or suspend any further deliveries to you;
  - 5.4.2. appropriate any payment made by you to such of the Goods (or the goods supplied under any other contract between the parties) as we may think fit (notwithstanding any purported appropriation by you);
  - 5.4.3. charge you interest (both before and after any Judgment) on the amount unpaid, at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 and Regulations made pursuant to that Act from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
  - 5.4.4. exercise our statutory right to claim compensation for debt recovery costs under the late payment legislation and/or charge you all costs for recovering monies due to us.
- 5.5 No payment shall be deemed to have been received until we have received cleared funds.
- 5.6 All payments payable to us under the Contract shall become due immediately upon its termination despite any other provision.

### 6. DELIVERY OF GOODS

- 6.1 Delivery of the Goods shall be made by you collecting the Goods at our premises at any time after we have notified you that the Goods are ready for collection or, if some other place for delivery is agreed by us in writing, delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and we shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence unless previously agreed by us in Writing. The Goods may be delivered by us in advance of the quoted delivery date upon giving reasonable notice to you. If no dates are specified delivery shall be within a reasonable time.
- 6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate Contract and failure by us to deliver any one or more of the instalments in accordance with these Conditions or any claim by you in respect of any one or more instalments shall not entitle you to treat the Contract as a whole as repudiated.
- 6.4 Subject to the other provisions of these Conditions we shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation pure economic loss, loss of profits, loss of business, depletion of goodwill and similar costs), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by our negligence), nor shall any delay entitle you to terminate or rescind the Contract unless such delay exceeds 180 days.
- 6.5 If you fail to take delivery of the Goods or fail to give us adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond your reasonable control or by reason of our fault) then, without prejudice to any other right or remedy available to us:
  - 6.5.1 risk in the Goods shall pass to you (including risk of loss or damage caused by our negligence);
  - 6.5.2 the Goods shall be deemed to have been delivered; and
  - 6.5.3 we may store the Goods until delivery, whereupon you shall be liable for all related costs and expenses (including, without limitation storage and insurance or at our absolute discretion, we may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling costs) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.

### 7. NON-DELIVERY

Where the delivery of the Goods takes place anywhere other than our premises, a quantity of any consignment of Goods as recorded by us on dispatch from our premises shall be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary. We shall not be liable for any non-delivery of Goods (even if caused by our negligence) unless the Buyer gives written notice to us of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received. Any liability we have for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

### 8. RISK AND PROPERTY

- 8.1 Risk of damage to or loss of the Goods shall pass to you:
  - 8.1.1 in the case of Goods to be delivered at our premises, at the time when we notify you that the Goods are available for collection; or
  - 8.1.2 in the case of Goods to be delivered otherwise than at our premises at the time of delivery or, if you wrongfully fail to take delivery of the Goods, at the time when we have tendered delivery of the Goods.
- 8.2 Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of:
  - 8.2.1 the Goods; and
  - 8.2.2 all other sums which are or which become due to us from you on any account.
- 8.3 Until ownership of the Goods has passed to you, you shall:
  - 8.3.1 hold the Goods on a fiduciary basis as our bailee;
  - 8.3.2 store the Goods (at no cost to us) separately from all other goods of yours or any third party in such a way that they remain readily identifiable as our property;
  - 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 8.3.4 maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce the policy of insurance to us.
- 8.4 You may resell the Goods before ownership has passed to you solely on the following conditions:
  - 8.4.1 any sale shall be effected in the ordinary course of your business at full market value; and
  - 8.4.2 any such sale shall be a sale of our property on your own behalf and you shall deal as principal when making such sale.

### 8.5 Your right to possession of the Goods shall terminate immediately if:

- 8.5.1 you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or documents are filed with the Court for the appointment of an administrator of you or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), or a resolution is passed or a petition presented to any Court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or
- 8.5.2 you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or you fail to observe or perform any of your obligations under the Contract or any other contract between you and us, or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or
- 8.5.3 you encumber or in any way charge any of the Goods.

8.6 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.

8.7 You grant to us, our agents and employees, an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right of possession has terminated, to recover them.

8.8 Where we are unable to determine whether any Goods are the Goods in question of which your right of possession is terminated, you shall be deemed to have sold all goods of the kind sold by us to you in the order in which they were invoiced to you.

8.9 On termination of the Contract, however caused, our (but not your) rights contained in this condition 8 shall remain in effect.

### 9. QUALITY

- 9.1 Where we are not the manufacturer of the Goods, we shall endeavour to transfer to you the benefit of any warranty or guarantee given to us.
- 9.2 We warrant that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months after the date of delivery, the Goods shall:
  - 9.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - 9.2.2 be reasonably fit for any particular purpose for which the Goods are being bought if you have made known that purpose to us in Writing and we have confirmed in Writing that it is reasonable for you to rely on our skill and judgment.
- 9.3 We shall not be liable for a breach of any of the warranties in condition 9.2 unless:
  - 9.3.1 you give notice in Writing of the defect to us and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when you discover or ought to have discovered the defect; and
  - 9.3.2 we are given a reasonable opportunity after receiving the notice of examining such Goods and you (if asked to do so by us) return such Goods to our place of business at your cost for the examination to take place there.
- 9.4 We shall not be liable for a breach of any of the warranties in condition 9.2 if:
  - 9.4.1 you make any further use of the Goods after giving such notice; or
  - 9.4.2 the defect arises because you have failed to follow our oral or written instructions as to the storage, insulation, commissioning, use or maintenance of the Goods or (if there are none) good trade practices; or
  - 9.4.3 you alter or repair such Goods without our consent in Writing.
- 9.5 Subject to conditions 9.3 and 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 we shall at our option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if we so request, you shall, at your own expense, return the Goods or the part of such Goods which is defective to us.
- 9.6 If we comply with condition 9.5 we shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.

### 10. LIABILITY

- 10.1 Subject to condition 6, condition 7 and condition 9, the following provisions set out our entire financial liability (including any liability for acts or omissions of our employees, agents and subcontractors) to you in respect of:
  - 10.1.1 any breach of these Conditions;
  - 10.1.2 any use made or resale by you of any of the Goods, or any product incorporating any of the Goods; and
  - 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits our liability:
  - 10.3.1 for death or personal injury caused by our negligence; or
  - 10.3.2 under section 2(3) of the Consumer Protection Act 1987; or
  - 10.3.3 for any matter which it would be illegal for us to exclude or attempt to exclude our liability; or
  - 10.3.4 for fraud or fraudulent misrepresentation.
- 10.4 Subject to Condition 10.2 and 10.3:
  - 10.4.1 our total liability in contract, tort, (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 150% of the price of the Goods; and
  - 10.4.2 we shall not be liable to you for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or for any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.5 Except in respect of death or personal injury caused by our negligence we will not be liable to you by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by our negligence, or of our employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by you, except as expressly provided in these Conditions and our entire liability under or in connection with the Contract shall not exceed 150% of the price of the Goods except as expressly provided in these Conditions.
- 10.6 We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Goods, if the delay or failure was due to any cause beyond our reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond our reasonable control:
  - 10.6.1 import or export regulations or embargoes;
  - 10.6.2 strikes, lock outs or other industrial actions or trade disputes (whether involving our employees or those of a third party);
  - 10.6.3 difficulties in obtaining raw materials, labour, fuel, parts or machinery.

### INSOLVENCY

- 11.1 This Condition applies if:
  - 11.1.1 you make any voluntary arrangement with your creditors or become subject to an Administration Order or (being an individual or firm) you become bankrupt or (being a Company) you go into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
  - 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets;
  - 11.1.3 you cease, or threaten to cease, to carry on any business; or
  - 11.1.4 we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly.
- 11.2 If this Condition applies then, without prejudice to any other right or remedy available to us, we shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to you, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### EXPORT TERMS

- 12.1 In these Conditions 'Incoterms 2000' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any terms or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 12 shall (subject to any special terms agreed in writing between parties) apply notwithstanding any other provision of these Conditions.
- 12.3 You shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 12.4 Unless otherwise agreed in Writing between the parties, the Goods shall be delivered F.O.B. or sea port of shipment or in the case of shipments by air F.C.A. the airport of shipment and we shall be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- 12.5 You shall be responsible for arranging testing and inspection of the Goods at our premises before shipment. We shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

### ASSIGNMENT

- 13.1 We may assign the Contract or any part of it to any person, firm or company.
- 13.2 You shall not be entitled to assign the Contract or any part of it without our prior written consent.

### COSTS OF CURRENCY CONVERSION

- 14.1 This Condition applies if the price of the Goods in the Contract is stated in a currency other than pounds sterling
- 14.2 If you fail or threaten to fail to observe any of the terms of the Contract as a result of which we issue legal proceedings against you in the courts of England in circumstances where we either elect to make our claim against you in pounds sterling or we are required by any rule of court or other authority to make our claim against you in pounds sterling you shall be liable to pay to us in addition to any other sum owing or claimed the sum which we calculate to be our cost or loss arising from converting the currency of the Contract in pounds sterling including without limitation costs or losses arising as a result of exchange rate fluctuations, exchange rate commissions, bank and any other charges whether those costs and losses are incurred before or after judgement.
- 14.3 In any legal proceedings we commence against you we shall be entitled to include a claim for the additional sum you are liable to pay under Condition 14.2 without any requirement to make any prior demand for payment.

### GENERAL

- 15.1 We may perform any of our obligation or exercise any of our rights hereunder by ourselves or through any other associated company provided that any act or omission of such other associated company shall be deemed to be our act or omission.
- 15.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.3 No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 15.5 The Contract (Rights of Third Parties) Act 1999 shall not apply to this Contract.
- 15.6 Each of our rights or remedies under the Contract is without prejudice to any other right or remedy we have whether under the Contract or not.
- 15.7 Failure or delay by us in enforcing or partially enforcing any provisions of the Contract shall not be construed as a waiver of any of our rights under the Contract.
- 15.8 The Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.