

Clipper Marine Limited

Terms and conditions of contract for the sale and supply of new vessels, used vessels and ancillary goods

1. DEFINITIONS

- 1.1. The following definitions are used in these terms and conditions of contract and have the following meanings;
Company: Clipper Marine Limited and any subsidiary or associated business;
Contract: any contract between the Company and the Customer for the sale and purchase of the Vessel and/or goods, incorporating these terms and conditions;
Contract Price: the total price payable to the Company by the Customer for the Goods inclusive of tax and duty;
Customer: the person, firm or company named on the order document, or his authorised agent;
Business Customer: a Customer whose transactions with the Company are conducted in the course of or for the purpose of the Customer's business;
Goods: the Vessel and/or any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them); and Premises: any of the Company's premises.

2. APPLICATION

- 2.1. Subject to any variation under clause 17.1 below, the Contract, including the provision of any advice, shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms and / or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

3. CONTRACTS AND QUOTATIONS

- 3.1. A binding contract for any sale by the Company shall come into being only on the Company's confirmed acceptance of a Customer's order. Unless otherwise indicated any quotation given by the Company shall be regarded as an invitation to treat and not as an offer capable of acceptance. Any quotation is valid for a period of thirty (30) days only from its date, provided that the Company has not previously withdrawn it.
- 3.2. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not in writing and set out in the Contract. Nothing in this clause 3.2 shall limit the Company's liability for fraudulent misrepresentation.

4. CONTRACT PRICE

- 4.1. Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 4.2. Where the Contract Price includes an estimate of labour or materials charges the Customer reserves the right to increase the Contract Price to take account of the actual expenditure of labour and materials incurred by the Company in performance of the Contract. The Company will inform the Customer promptly of any increase in estimated prices.
- 4.3. Unless otherwise agreed by the Company in writing, the price for the Goods shall be exclusive of any value added tax and all costs or charges in relating to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.

5. TIME FOR PAYMENT

- 5.1. Payment shall be made by the Customer to the Company in accordance with the payment schedule contained in the order acceptance or other contractual document. Time for payment shall be of the essence.
- 5.2. If no written payment schedule is agreed payment shall be due on the date of the Company's invoice to the Customer. Payment shall be made without deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 5.3. If the Customer hinders or declines delivery of a Vessel or other goods when tendered for delivery by the Company, whether by failing to provide timely delivery instructions, documents, licences, transport or otherwise, risk in the Goods shall pass to the Customer, the Goods shall be deemed to have been delivered, and the Company shall have the right to make reasonable charges for any facilities or services provided during the period between the Company's notification of readiness for delivery and the date of actual delivery to the Customer, including, without limitation, storage and insurance.
- 5.4. Where the Customer fails to make any payment or part payment for more than 30 days the Company reserves the right to charge interest on the outstanding amount at 3% per annum above the Base Rate of Bank Of Scotland accruing on a daily basis from the due date until payment is received, whether before or after any judgment.
- 5.5. In the case of a new vessel purchase or a used vessel purchase, failure by the customer to adhere to the agreed payment terms, as stated in the Contract, entitles the company to retain all monies paid and to revoke the Contract.
- 5.6. The Company shall be entitled to refuse to give delivery of a Vessel or other goods pending payment of the Contract Price; where, but for the non-payment of the Contract Price, a Vessel is ready for delivery the Company shall be entitled to make a reasonable charge for any facilities or services provided to or in respect of the Vessel pending payment of the Contract Price and delivery, including, without limitation, storage and insurance.
- 5.7. Payment shall be deemed to have been made at the time when cleared funds are received in the Company's bank account.

6. PLACE OF DELIVERY AND TRANSPORT TERMS.

- 6.1. Delivery will be given at the Premises identified as the place of delivery on the order acceptance or other contractual document.
- 6.2. The Company shall be entitled to require the Customer to sign for delivery of any Vessel or other goods as a condition of delivery.
- 6.3. The Company will usually be able to arrange the transport of Vessels and other goods from the place of delivery to the Customer's desired destination. Such transport services will be provided by way of separate contract and upon the customary terms of carriage used in the freight and insurance industries. These terms include limitations and exclusions of the Company's liability for loss and damage. A copy of the terms will be made available to the Customer at the time of request of a quotation for transport. Delivery to the carrier shall be treated as delivery to the Customer.

7. TIME FOR DELIVERY

- 7.1. The Company provides estimated dates for delivery and for the

completion of work and services in good faith but these dates are not guaranteed. The Company will use its best reasonable endeavours to deliver Vessels and goods and to complete any services by the time estimated and will make the Customer aware of forecast delays.

- 7.2. Time for delivery shall not be made of the essence by notice.
- 7.3. Subject to the other provisions of these terms and conditions the Company 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 loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract, unless such delay exceeds 180 days or the cause of such delay is due to the Company's wilful acts or omissions.

8. TITLE AND RISK

- 8.1. Sales by the Company:
 - 8.1.1. In the absence of express written agreement to the contrary, and subject to clauses 5.3 and 6.3 above, risk of loss or damage to any Vessel or other goods shall pass to the Customer upon delivery. Ownership of the Goods shall not pass to the Customer until the Company has received in full all sums due to it in respect of:
 - 8.1.2. the Goods; and
 - 8.1.3. all other sums which are or which become due to the Company from the Customer on any account.
 - 8.2. Risk during transport:
 - 8.2.1. Where the Customer has contracted for transport services from the place of delivery to another destination the risk of loss and damage will remain with the Customer during transport subject to the terms and conditions of carriage and the insurance option chosen by the Customer.
 - 8.3. Vessels taken by the Company in part exchange
 - 8.3.1. Title in a Vessel which is taken in part exchange shall pass to the Company at the time that the Company gives credit for the price of the Vessel concerned in the Company's books.
 - 8.3.2. It shall be a condition precedent to any contract of part exchange that the Vessel to be taken by the Company is the unencumbered property of the Customer.
 - 8.3.3. The Customer shall notify the Company of any known material defects in the Vessel taken by the Company prior to the exchange taking place.

9. CLAIMS FOR SHORTAGES

- 9.1. In the case of alleged shortages of goods collected from the Premises the Company must be notified at the time of collection or, if the shortage was not reasonably apparent at collection, as soon as practicable thereafter.
- 9.2. In the case of an alleged shortage in relation to goods which have been the subject of a separate contract for transport services the express terms of the transport contract shall govern the notification procedure to be followed by the Customer.

10. LIMITATION OF THE COMPANY'S LIABILITY

- 10.1. The Company has obtained insurance cover in respect of its own legal liability for loss or damage to property for individual claims not exceeding £1,000,000. Accordingly, and subject to condition 10.3.1, the Company shall be entitled to limit its total liability to the Customer and to any third parties claiming through him (or through rights arising under his Contract with the Company) for loss or damage to any property arising out of the negligent performance of its obligations under a Contract to a maximum aggregate sum equivalent to the Contract Price or £1,000,000 (one million pounds), whichever is the greater sum, in respect of any one event or sequence of events.
- 10.2. Subject to clauses 3.2, 6.3, 10.1, 11 and 12, the following clauses set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - 10.2.1. any breach of these terms and conditions;
 - 10.2.2. any use made or resale by the Customer of the Vessel or the Goods, or of any product incorporating any of the Goods;
 - 10.2.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.3. Nothing in these terms and conditions excludes or limits the liability of the Company.
 - 10.3.1. for death or personal injury caused by the Company's negligence; or
 - 10.3.2. under section 2(3), Consumer Protection Act 1987; or
 - 10.3.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - 10.3.4. for fraud or fraudulent misrepresentation.
- 10.4. Subject to condition 10.3:
 - 10.4.1. the Company's 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 the Contract Price; and
 - 10.4.2. the Company shall not be liable for any: pure economic loss, loss of profit, loss of business, depletion of goodwill, or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract and which are incurred or borne by the Customer, his customer, or any other person.
- 10.5. The Company shall not be liable for any loss or damage caused by any event or circumstance beyond its control (including, without limitation, extreme weather conditions, the actions of third parties not employed by the Company or any defect in any part of a customer's or third party vessel).

11. BUSINESS SALES

- 11.1. Where the Company supplies goods to a Business Customer the provisions of this Clause 11.1 to 11.4 inclusive apply.
- 11.2. No Vessel or goods supplied by the Company shall carry any express or implied term as to its quality, correspondence with description or its fitness for any particular purpose unless the business Customer sufficiently explains the purpose for which they are required and makes it clear that he is relying on the Company's skill and judgement at the

time that he orders the Vessel or goods concerned, and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.

- 11.3. No proprietary article ordered from the Company by name, type and/ or size shall carry any express or implied term but the Company will endeavour to assign to the Business Customer any rights which it may have against the manufacturer or importer of that article.
- 11.4. A Business Customer undertakes to indemnify the Company and hold it harmless against any claims from a subsequent purchaser arising from or contributed to by a failure on the part of the Business Customer to check the Vessel or any Goods received from the Company in accordance with any pre-delivery instructions issued by the Company.

12. NON-BUSINESS CUSTOMERS

- 12.1. Where a Customer is also "a consumer" or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom he has certain minimum statutory rights regarding the return of defective goods and claims for losses. Those statutory rights are not affected by these terms and conditions.
- 12.2. Where the Company has taken a used Vessel in part-exchange for onward sale, or where the Company is selling a used Vessel of which it is not the immediate prior owner, any engine usage statements cannot be guaranteed and are given as estimates only. In such cases, the Company cannot verify that the manufacturer's instructions regarding the commissioning, maintenance, storage or use of the Vessel have been followed. Used Vessels are sold as they appear to the Customer, with such defects (if any) as are declared in the pre-delivery inspection report delivered to the Customer, and as would reasonably be apparent from a survey of the Vessel carried out by a competent qualified surveyor. The Customer is strongly advised to arrange for the carrying out of its own survey.

13. PUBLISHED SPECIFICATIONS

- 13.1. Indications of weight, measurement, power, performance, speed capacity, range, fuel capacity or consumption contained in advertisements, brochures, catalogues, web sites or in correspondence are made available in good faith, but must always be regarded as indicative only and not specified characteristics of a Vessel or other goods. The Customer shall make clear any particular characteristic required at the time of placing an Order with the Company so that the same may be incorporated into the contractual specification if practicable.

14. ILLUSTRATIONS, DESIGN AND NEW MODELS

- 14.1. Drawings, photographs and other illustrations or advertisement matter supplied, represent generally the range of Goods available but shall not be regarded as representing the actual Goods, the subject of the Contract, and shall not form part of the Contract description.

15. CHANGES IN MANUFACTURERS' SPECIFICATIONS AND LIEN

- 15.1. Where a manufacturer makes minor changes to the design, construction or specification of any Vessel or goods which are the subject of a Contract between the Company and its Customer the Company shall be entitled to deliver that Vessel or other goods in performance of its obligations to the Customer and the Customer shall not be entitled to reject the Vessel or other goods on account of such minor changes in the design and specification. Where the Company receives notice of major changes of design or specification from the manufacturer of a Vessel or other goods which are the subject of the Contract the Company shall notify the Customer of the same and the Parties will negotiate in good faith regarding the changes. For the purposes of this clause "minor changes" shall mean changes which would cost no more than 5% of the Contract Price of the Vessel or other goods.
- 15.2. The Company shall have a general lien on all Goods in respect of money due to the Company, whether in respect of the Contract or any other contract with the Customer, or for other charges or costs payable by the Customer, and if the general lien is not satisfied within one month after notice has been given to the Customer or other person from whom the monies are due, that such goods are being detained the Goods may be sold by the Company as agents for the Customer by auction or otherwise, and the proceeds of the sale applied to the satisfaction of the lien and the expenses of mooring, storage, maintenance, insurance and sale.

16. GOVERNING LAW

The Contract shall be governed by and interpreted in accordance with English law.

17. AUTHORITY

- 17.1. No representative, agent or employee of the Company below the level of Director has the Company's authority to agree to vary or add to these terms of business or the specifications of the Goods ordered without recording the changes in writing.
- 17.2. It is understood that any Dealer appointed by the Company is an independent business acting in its own right and is not employed or acting as an agent of the Company and is not authorised to commit the Company by any express or implied undertaking or representation.

18. NOTICES

- 18.1. Notices which are required to or may be given by the Company to the Customer shall be sufficiently served if delivered to the Customer's last known address or sent there by registered post, recorded delivery or airmail. Notices which are required to or may be given by the Customer to the Company shall be sufficiently served if delivered to the Company Secretary at the Company's registered office as shown on the letterhead or sent there by registered post or recorded delivery.

19. JURISDICTION

- 19.1. Any dispute arising between the Company and the Customer shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Customer	_____
Address	_____

Date	_____
Signature	_____