

CONDITIONS OF SALE OF GOODS

1 DEFINITIONS

In these conditions:

"The Company" means Dunlop Oil & Marine Ltd (CRN 3471656) whose registered office is at Moody Lane, Pyewipe, Grimsby, North East Lincs, DN31 2SY.

"IPR" means all patents, rights to inventions, copyright, trade marks, design rights (whether registered or unregistered), rights in computer software, rights in confidential information and any other intellectual property rights.

"The Purchaser" means the person or firm whose offer the Company has accepted, as identified in the Order.

"The Goods" means the goods to be supplied by the Company as identified in the Order.

"Conditions" means the Company's standard conditions of sale set out below.

"The Contract" means the agreement between the Company and the Purchaser consisting of the Order and these Conditions.

"Order" means the order form in respect of the Goods accepted by the Company in writing.

2 GENERAL

- 2.1 No contract shall arise until the Company issues a written acknowledgement of order. No variation to these Conditions shall be binding unless agreed in writing by an authorised representative of the Company. Any special conditions shall be agreed in writing between the parties and take precedence over these Conditions.
- 2.2 Quotations are invitations to do business only and do not constitute offers to contract. Quotations are subject to withdrawal or revision at any time before acceptance of the Purchaser's order by the Company.
- 2.3 The Conditions shall continue to apply notwithstanding any breach thereof or any variation or purported cancellation of the Order or any parts of it.
- 2.4 Where Goods are supplied in accordance with any specifications other than the specifications of the Company, the Purchaser shall supply to the Company, before delivery of the Goods, a written undertaking that the Goods will be safe and without risk to health when put to use.
- 2.5 The Company's employees and agents are not authorised to make any representations about the Goods unless confirmed by the Company in writing and the Purchaser acknowledges that it does not rely on any such representations which are not so confirmed (unless such representations are made fraudulently).
- 2.6 These Conditions do not apply to the supply of services by the Company, which will be governed by the Company's Standard Conditions of Sale of Services.
- 2.7 The Conditions constitute the entire agreement between Purchaser and Company and no terms and conditions enclosed upon, delivered with the Purchaser's order or that the Purchaser may otherwise seek to apply, shall apply unless specifically agreed by the Company in writing.

3 PRICES AND PAYMENT

- 3.1 The prices for each delivery of Goods shall be the price quoted by the Company and stated in the Order.
- 3.2 All prices are exclusive of Value Added Tax and are not subject to any discount.
- 3.3 Payment shall be made without set off or deduction at the Company's offices within 30 days of the date of the Company's invoice. Times of payment are of the essence of the contract.
- 3.4 Interest at the rate of 5% above Bank of England base lending rate from time to time in force shall be chargeable before as well as after judgement on any sums not paid by the due date. The interest will be calculated on a daily basis on overdue accounts from the date of the invoice until payment is received by the Company.
- 3.5 Despite any provision allowing credit, payment is due of costs incurred and payable to the Company immediately upon cancellation or termination of the Contract.
- 3.6 The Company reserves the absolute right to alter any of its selling prices to take into account increases in cost including (without limitation) costs of any goods, materials, carriage and labour or overheads the increase or imposition of any tax duty or other levy and any variance in exchange rates. The Company reserves the right to alter any of these Terms and Conditions or any other terms agreed between the parties by notice in writing to the Buyer.

4 DELIVERY

- 4.1 Subject to the provisions of clause 5:-
 - (a) where no point of delivery is named in the Order, delivery shall be ex works;
 - (b) where the point of delivery is named in the Order, delivery shall be to that point on the incoterms specified in the Order.
- 4.2 Any dates quoted for delivery are approximate, to be confirmed by the Company at the time of purchase and the Company shall make reasonable endeavours to meet any delivery dates specified in the Order or subsequently. The Company shall not be liable for any delay in delivery caused by lack of response or changes made subsequent to the date of the Order. Time of delivery is not of essence of the Contract.
- 4.3 The rights and responsibilities of the parties regarding delivery shall be governed by the provisions of Incoterms (latest Edition)
- 4.4 The Company shall not be required to give the Purchaser the notice relating to insurance specified in Section 32(3) of the Sale of Goods Act 1979.

5 PROPERTY AND RISK

- 5.1 The ownership of the Goods shall remain with the Company until the full price has been received by the Company and all other sums due or owing or which become due to the Company by the Purchaser on any account have been received in full and clear funds by the Company.
- 5.2 Risk in the Goods passes to the Purchaser on delivery in accordance with Condition 4.3 above.
- 5.3 Until ownership of the Goods passes to the Purchaser, the Purchaser must:-
 - (a) store them at its own cost on its premises separately from any other goods and in a manner which makes them readily identifiable as the goods of the Company;
 - (b) not destroy, deface or obscure any identifying mark or packaging of the Goods;
 - (c) maintain the Goods in a satisfactory condition insured on the Company's behalf for their full price against all risks; and
 - (d) hold the proceeds of insurance referred to in condition 5.3(c) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn account.
- 5.4 The Purchaser shall ensure that the Goods are not incorporated in or mixed with or used as part of other goods ("New Goods") before payment for the Goods has been made to the Company although if such incorporation or mixing shall take place the property in those goods will remain identifiable and/or severable from such New Goods shall be and remain with the Company until payment has been made or the New Goods have been sold as aforesaid and all the Company's rights hereunder in the Goods shall extend to the New Goods and to the proceeds of sale thereof, which shall be held by the Purchaser in accordance with Condition 5.5.
- 5.5 The Company, so as to discharge any sums which are wholly or partly overdue under this or any other contract, (without prejudice to its other rights) may recover or resell the Goods or any part of them and the Company shall be entitled, without prior notice, to enter the Purchaser's premises (or other such premises where the Goods are stored) by its employees or agents for that purpose.
- 5.6 If any of the Goods shall be sold by the Purchaser before payment for them has been made that part of the proceeds of sale which represents or is equivalent to the amount owed by the Purchaser to the Company shall be held by the Purchaser in trust for the Company. The Company shall be entitled to trace the proceeds of any such sale(s) into the Purchaser's bank account and the Purchaser hereby authorises the Company to make enquiries of its bankers (or otherwise as appropriate) relating to such proceeds.
- 5.7 The Purchaser hereby assigns to the Company all rights the Purchase has or may have against buyers of the Goods from the Purchaser.
- 5.8 Each of the sub-conditions of this Condition 5 shall, so far as the context thereof permits, be read and construed independently of the other sub-clauses so that if one or more should be held to be so invalid for any reason whatsoever then the remaining sub-clauses shall be valid to the extent that they are not held to be so invalid.

6. HEALTH AND SAFETY

The Purchaser agrees to:

- 6.1 comply with and follow all information supplied by the Company relating to the use of the Goods and/or concerning conditions necessary to ensure the Goods will be safe and without any risk to health at all times when they are being set, used, cleaned or maintained by any person at work;
- 6.2 comply with the General Product Safety Regulations 2005 and the Pressure Systems Safety Regulations 2000 if and to the extent that they are applicable to the Goods;
- 6.3 indemnify the Company in full in respect of any and all claims arising from the Goods being unsafe as a result of the Purchaser's activities or breach of this Condition 6;
- 6.4 monitor the safety of the Goods and to pass on to the Company any information as to the risks of the Goods and to cooperate in any action the Company decides to take to avoid these risks; and
- 6.5 keep records of the customers to whom the Goods are sold and to provide the Company with copies of them as and when requested.

7. DAMAGED OR SHORT DELIVERED GOODS

- 7.1 If the Purchaser informs the Company and the Company's carriers in writing:
 - (a) in the case of partial loss or damage to the Goods, of such loss or damage within five business days after date of delivery of the Goods;
 - (b) in the case of total loss of Goods to be delivered in the United Kingdom, of such total loss within seven business days of the date of despatch of the Goods; and
 - (c) in the case of total loss of the Goods to be delivered outside the United Kingdom, of such total loss within fourteen days after receipt of the Company's invoice, the Company will at its option, and provided that it is satisfied that the damage or loss occurred prior to the passing of risk in the Goods:-
 - (d) repair or replace any damaged Goods or replace any lost Goods; or
 - (e) allow the Purchaser such credit in respect thereof as the Company may reasonably think fit.
- 7.2 The undertakings given above constitute the Company's total liability to the Purchaser for damage to or total or partial loss of the Goods.

8. DESCRIPTION OF GOODS

- 8.1 All Goods are supplied subject to reasonable availability to the Company of suitable materials. The Company may without notice substitute materials, components and units other than those mentioned in the Contract provided that the substitution does not materially affect the quality or performance of the Goods.
- 8.2 All drawings, descriptive matter, samples, weights, dimensions and specifications incorporated in brochures, catalogues and advertising matter are approximate and by way of identification only. They are intended to present a general idea of the goods described. Their use shall not in any circumstances render any sale a sale by description or by sample, nor shall they form part of the Contract.

9. SPECIFICATIONS

Where the Goods are manufactured or where standard goods of the Company are altered, in either case in accordance with information, drawings or instructions supplied by the Purchaser:-

- (a) no guarantee or warranty is given by the Company as to the practicability, efficiency, safety, suitability, or otherwise of the Goods; and
- (b) the Purchaser shall indemnify the Company in full against all liability incurred by the Company as a result of:-
 - (i) the Goods infringing any IPR of third parties or any statutory provision;
 - (ii) any impracticability, inefficiency, lack of safety or defect in the Goods where any of these is due wholly or partly to faults or omissions in any such information, drawings or instructions; and
 - (iii) the Purchaser shall supply to the Company before delivery of the Goods a written undertaking in a form reasonably acceptable to the Company that the Goods will be safe and without risk to health when put to use.

10. IPR AND TOOLING

- 10.1 The Purchaser warrants that any design or instruction furnished or given to the Company shall not be such that will cause the Company to infringe the IPR of any third party in the execution of the Contract.
- 10.2 Nothing in the Contract shall operate to assign or transfer any of the Company's IPR to the Purchaser. Any IPR created by the Company in the course of the Contract shall vest in the Company absolutely.
- 10.3 All tools, dies, patterns and other equipment used in the manufacture of the Goods shall remain the property of the Company.

11. WARRANTY

- 11.1 The Company warrants that the Goods shall comply with all applicable legislation in force at the date and location of their manufacture and correspond with their specification at the time of delivery and for eighteen months from the date of delivery. The Company warrants that the Goods will be free from defects in materials and workmanship during such warranty period and should any such defect become apparent during that period the Company will at its option repair or replace the defective part and the Company shall have no further liability to the Purchaser provided that:
- the Goods have been used in accordance with the Company's recommendations;
 - the Goods have not become defective due to faulty installation by a person other than an authorised representative of the Company; and
 - the price for the Goods has been paid in full.
- 11.2 The Purchaser shall, as soon as possible after a defect has become apparent:-
- notify the Company of that defect giving sufficient details to enable it to trace the manufacture of the Goods in which the defect has become apparent in its records; and
 - at its own expense and risk return the Goods to the Company.
- 11.3 If the design of the Goods has been altered since the delivery of the Goods the Company may supply the goods of the new design.
- 11.4 If the Purchaser does not notify claims in accordance with Condition 11.2 then:-
- the Purchaser shall not be entitled to reject the Goods; and
 - the Company shall have no liability for such defect or failure; and
 - the Purchaser shall be bound to pay the full price for the Goods.
- 11.5 If in the opinion of the Company the goods are satisfactory in operation or not defective, the Purchaser shall, if the Company so requires, pay a reasonable charge for the examination of the Goods and the cost of returning them to the Purchaser.
- 11.6 The decision of the Company shall be final as to whether the Goods are satisfactory in operation or defective.
- 11.7 The Company shall not be liable:
- for any costs of dismantling or re-assembling any equipment into which any of the Goods may have been fitted;
 - for defective materials or workmanship in parts, materials or equipment not manufactured by the Company, but it will use its reasonable endeavours at the Purchaser's sole cost to secure the benefit to the Purchaser of any rights which the Company may have against such other persons;
 - for any defect in the Goods which arises from any information, drawing or specification supplied by the Purchaser; or
 - where the defect or damage arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration or repair of the Goods without the Company's prior approval.

12. LIMITS OF THE COMPANY'S LIABILITY

- 12.1 Subject to condition 12, the following sets out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Purchaser in respect of any breach of these Conditions, any representation or statement made, or any act or omission relating to or done in connection with the Contract, including negligence and other tortious liability.
- 12.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law, but this exclusion does not apply to any implied condition that the Company has or will have the right to sell the Goods when the property is to pass.
- 12.3 Nothing in these Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence, for fraudulent misrepresentation or any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 12.4 Subject to conditions 12.2 and 12.3, the Company shall not be liable to the Purchaser for any loss of profit, loss of production or depletion of goodwill or (b) any indirect loss, damage, costs, consequential loss or expenses whatsoever, in each case which arise out of or in connection with the Contract.
- 12.5 Subject to condition 12.4, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the relevant Goods.
- 12.6 The Purchaser shall indemnify the Company in full from and against any and all liability, costs, claims, expenses and demands incurred by the Company towards any third party including legal costs, loss of profits, incidental expenses or any other consequential loss arising out of or in connection with the supply of the Goods or their use or resale by the Purchaser.

13. TERMINATION

If the Purchaser fails to pay any money due to the Company either payable under this Contract or any other contract by its due date, materially breaches any of these Conditions, dissolves or becomes insolvent, makes any voluntary arrangement with its creditors, becomes subject to an administration order, goes into liquidation (voluntary or compulsory), if an application is made for the appointment of a receiver, manager or administrative receiver over the whole or any part of the undertaking, property or assets of the Purchase, a resolution is passed or a petition presented to any court for the winding up of the Purchaser or an event analogous to these events occurs in any jurisdiction to which the Purchaser is subject or if the Purchaser ceases or threatens to cease to carry on business, the Company may without prejudice to its other rights and remedies, either terminate forthwith the whole or any part of this Contract or delay, suspend or cancel further deliveries.

14. INSURANCE

- 14.1 The Purchaser shall maintain the insurance necessary to cover any liability arising under the Contract and insurance in respect of the Goods with effect from risk in the Goods passing to the Purchaser.
- 14.2 The Company shall effect and maintain the following insurances for the duration of the Contract:
- employer's liability insurance;
 - product liability insurance; and
 - public liability insurance.

15. CANCELLATION AND DELAY

- 15.1 No Order may be cancelled by the Purchaser except with the agreement in writing of the Company and on terms that the Purchaser shall indemnify the Company 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 the Company as a result of cancellation or in preparation for the Contract.
- 15.2 If the Purchaser extends or delays the Contract or fails to take delivery of any Goods at the agreed time or (if no time is agreed) within a reasonable time then the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges or expense incurred by the Company as a result of such extension, delay or failure.

16. FORCE MAJEURE

Each party reserves the right to defer the date of delivery or performance, without liability to the other if it is prevented from or delayed in carrying on its business by any cause beyond its reasonable control (which includes Act of God, explosion, flood, tempest, fire or accident, war or threat of war, terrorist acts, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes or lock-outs). In such circumstances, either party may also give written notice to cancel the Contract if the cause in question continues for a continuous period in excess of 180 days but in any event shall remain liable to pay for Goods delivered or supplied prior to such cancellation by the Company or the Purchaser.

17. ASSIGNMENT

- 17.1 The Company may assign or subcontract the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 17.2 The Purchaser may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it without the prior written consent of the Company.

18. CONFIDENTIALITY

- 18.1 Each party agrees to keep in strict confidence and not disclose all information marked as confidential or which is confidential in nature (which shall include all specifications and information relating to IPR) that is disclosed to it by the other party.
- 18.2 The obligation in Condition 18.1 shall not apply to information which, at the time of disclosure, is in the public domain, or which is required by law or regulatory requirement.

19. GOVERNING LAW

- 19.1 The Contract shall in all respects be construed and operated as an English contract governed by English Law and the Purchaser submits to the non-exclusive jurisdiction of the English Courts.
- 19.2 Any notices served by the Buyer under the Terms and Conditions should be in writing to the Company's registered office.

20. GENERAL

- 20.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company, whether or not under the Contract.
- 20.2 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 20.3 The Company's rights under this Contract shall not be deemed to be waived or abrogated by reason of any forbearance or failure by the Company to enforce any Condition or Conditions.