

TERMS AND CONDITIONS OF SALE

1 Terms of Business

- (A) All contracts for the sale of goods by Auscrew Limited trading as Diverse Yacht Services Limited ("Diverse") are made subject to these Conditions and where applicable to the written terms of any quotation. Provided that where a customer is dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) in relation to a contract for the sale of goods Condition 18 below shall not be incorporated in that contract and Condition 17 shall only have effect as regards that contract subject to sub-clause (A) thereof and the statutory rights of such customer in relation to that contract shall not be affected.
- (B) No other terms conditions or representations will be incorporated into a contract unless made in writing and signed on behalf of Diverse.
- (C) All quotations by Diverse are deemed to be invitations to purchase. All orders made by the customer must be in writing and contracts shall only be made upon acceptance of the customer's order by written acknowledgement of order from Diverse or by dispatch of the goods whichever is earlier.

2 Quotations

- (A) Quotations issued by Diverse remain fixed for 30 days from their date unless otherwise stated in the particular quotation.
- (B) Diverse may withdraw any quotation at any time before the customer's acceptance.

3 Prices

- (A) All prices for goods supplied by Diverse are ex-works.
- (B) Diverse reserves the right to add packaging charges to goods sale invoices.
- (C) Diverse reserves the right to add carriage, insurance, freight documentation and any clearance costs to goods sale invoices or at its choice pass any or all of these costs forward to the customer.
- (D) All prices are based on the current costs to Diverse of labour and materials as at the date of quotation. In the event of any unforeseen change in these costs Diverse reserves the right to change its prices accordingly.

4 Payments

- (A) Unless otherwise agreed Diverse supplies goods on the basis of payment of 50% of quotation price as deposit with order and payment of any balance due before shipment or on delivery at Diverse's option.
- (B) Where credit terms are agreed by Diverse, payment shall be made by the due date. Commencement of any credit term agreed is the date of the relevant goods sale invoice.
- (C) Time for payment shall be of the essence of the contract. Where payment is not made by the due date Diverse reserves the right without prejudice to its other remedies to charge interest from the due date on outstanding amounts at a rate of 1.5% per month or 3% per annum above the base rate of Barclays Bank plc from time to time in force whichever is the greater until payment is made. For the purposes of these terms 'payment' means receipt of value to Diverse's account enabling Diverse to deal freely with the amount received.
- (D) Where Value Added Tax is chargeable on goods sale invoices Diverse will not accept non-payment of Value Added Tax against promises of future production of proof of export. Diverse will refund to the customer the Value Added Tax element of goods sale invoices within 21 days of receipt by Diverse of proof of export (in a form acceptable to H.M. Revenue and Customs) provided that at the time of the making of the contract the customer informs Diverse that the goods are ultimately to be exported and provided that proof of export is submitted to Diverse within 3 calendar months of the original goods sale invoice for the supply of those goods.

5 Delivery

- (A) If no time for delivery is specified in the contract the customer shall be bound to accept the goods when they are ready for delivery by Diverse.
- (B) Diverse will make all reasonable efforts to effect delivery of goods within the time or by the dates stipulated in quotations but these times and dates are given and intended only as estimates and Diverse shall not be liable for any loss or damage indirect or direct caused to the customer by late delivery.
- (C) Delivery times or dates stipulated by Diverse in any quotation may at Diverse's discretion be made subject to the performance by the customer or specific actions as defined in the particular quotation. In the event of non-performance by the customer of any specific action required by a particular quotation Diverse reserves the right to amend the delivery time or date stipulated in that quotation.

6 Warranty

- (A) All goods supplied by Diverse under these terms of business are warranted against failure due to faulty workmanship or materials for 12 months from the sale invoice date. This warranty is subject to the proper and reasonable use by the customer of any goods supplied by Diverse.
- (B) Diverse shall not be liable for any claim in respect of its warranty until and unless payment in full has been made for any goods subject to such claim.
- (C) Any claim by the customer in respect of Diverse's warranty shall be notified in writing promptly to Diverse.
- (D) Where a customer is dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) this Condition shall not in any way restrict or exclude the statutory rights of that customer in relation to goods supplied to it by Diverse.

7 Risk

Notwithstanding the provisions of Condition 8 below risk in the goods passes to the customer on delivery.

8 Passing of Property

- (A) Diverse shall retain full legal and beneficial interest and title to the goods the subject of a contract ("the goods") until payment in full thereof by the customer.
- (B) Pending payment in full of the purchase price the customer shall (a) store the goods separately or in such a way that they are clearly the property of Diverse and (b) keep the goods fully insured against all usual risks at the customer's expense and procure that Diverse's interest is noted on the policy. The customer shall hold the proceeds of any insurance claim (to the extent of the customer's outstanding liability to Diverse) on trust for Diverse in a separate designated account.
- (C) The customer shall be entitled to resell the goods to third parties provided that the customer shall remain fully accountable to Diverse for the goods and shall hold the proceeds of sale (to the extent of the customer's outstanding liability to Diverse) on trust for Diverse in a separate designated account and shall when payment is due promptly remit all such proceeds to Diverse until payment in full of all sums (including interest) due for the goods.
- (D) For the purposes of this Condition only where there is doubt as to whether any payment made by the customer to Diverse is made in or towards satisfaction of the purchase price of particular goods then such payment shall be deemed to have been made in payment for particular goods by reference to the date order of Diverse's outstanding invoices delivered to the customer taking the earliest dated invoice first.

9 Default

If in relation to any contract

- (a) payment in full is not made by the due date; or
- (b) the customer commits any other substantial breach of the contract or makes or offers to make any composition with creditors or commits any act of bankruptcy or if (the customer being a company) any resolution or petition to wind up the business of the customer is passed or presented (other than for the purpose of a bona fide amalgamation or reconstruction) or if a receiver of the undertaking or assets of the business of the customer or any part thereof is appointed then Diverse shall be entitled
- (i) to recover damages in respect of any loss or damage caused by the breach by the customer and/or
- (ii) to retain any deposit paid.
- (iii) to cease work on the contract in question and any other contract with the customer and to cease making deliveries to the customer of any goods whether under the contract in question or any other contract and/or
- (iv) to cancel the contract and remove and sell the goods and apply the proceeds of sale and any deposit received towards satisfaction of the customer's liability to Diverse under the contract and/or
- (v) to call on the customer to deliver up to Diverse all goods in the power custody or possession of the customer in respect of which property is vested in Diverse whether by virtue of these Conditions or under the general law and the customer hereby irrevocably authorises Diverse to enter (using reasonable force if necessary but making good any damage thereby caused) the premises of the customer where such goods are situated for the purpose only of taking possession of such goods.

10 Force Majeure

Any contract may be cancelled or suspended in whole or in part by Diverse without liability on its part for any loss or damage arising directly or indirectly from such cancellation or suspension in consequence of the prospect happening or result of any industrial dispute, Act of God, war, civil commotion, legislation, breakdown of machinery, inability to obtain supplies, inability to obtain raw materials, equipment, fuel power or transportation, inability to obtain any necessary import or other licenses or consents of any governmental authority or any other cause or circumstances whatsoever beyond its control.

11 Waiver

Diverse shall not be deemed to have waived the protection of any of these Conditions by reason of any indulgence given to the customer whether as to time or otherwise or by the undertaking of any work for or any delivery of goods to the customer whether undertaken or delivered with or without knowledge of the facts giving rise to a right to cease work or to cease making deliveries.

12 Law and Disputes

These Conditions and any contract between Diverse and the customer shall be governed and construed in accordance with the laws of England and the customer and Diverse shall submit to the jurisdiction of the English Courts. If any part of these Conditions is rendered void or unenforceable at law that part shall be severable from the remainder of these Conditions which shall remain in full force and effect.

13 Storage

Where dispatch of goods is delayed at the customer's request or by reason of the customer's failure to give proper instructions as to delivery within 14 days after Diverse has notified the customer that the goods are ready for dispatch Diverse shall be entitled to arrange storage for the goods either at its own works or elsewhere and all charges for storage insurance and where applicable carriage shall be paid by the customer.

14 Indemnity

If the customer supplies Diverse with a design or any other instructions in accordance with which the goods specified in the order are to be manufactured then the customer shall indemnify Diverse against all damages costs and expenses arising out of any claim for infringement of any copyright patent trade mark registered design or similar right of any third party.

15 Separability

- (A) Any delivery or consignment of goods shall be deemed to constitute a separate contract to which these Conditions and the special terms of any quotation shall apply including those relating to payment.
- (B) Diverse may at its discretion make deliveries by installments whether or not this is provided for in the relevant quotation or acknowledgement of order.
- (C) Diverse may at its discretion delay a delivery or consignment of goods beyond a time or date stipulated in a quotation or acknowledgement of order. Diverse's exercise of its discretion under this Condition shall not terminate any agreement as to other deliveries.

16 Cancellation

Where a contract has been made between the parties and the customer subsequently cancels or postpones its order or otherwise terminates its agreement with Diverse the customer shall compensate Diverse to the extent of all costs or charges incurred by Diverse by reason of the cancellation or postponement or, at its option Diverse may instead retain any deposit paid. For the removal of doubt these costs include the cost to Diverse of any special tools, dies or jigs purchased by Diverse and any finished product manufactured by Diverse in order to fulfill the customer's order. Should Diverse be able to dispose of these items subsequently then the customer (provided that it has compensated Diverse pursuant to this Condition) shall be credited with the amount received on the disposal up to but not exceeding the amount of compensation actually paid to Diverse.

17 Liability

- (A) Any limitations of liability contained in this Condition shall not apply where Diverse is held to be liable to a customer dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) for the breach of any condition implied by statute and accordingly the statutory rights of consumers shall remain unaffected by this Condition.
- (B) Except in the case of death or personal injury resulting from Diverse's negligence the liability of Diverse to the customer whether in respect of negligence, breach of contract, misrepresentation or otherwise howsoever shall not in any case exceed the price of the goods supplied to the customer under the contract and except as aforesaid the customer shall indemnify Diverse against all liability to any third party.
- (C) Diverse shall not be liable (and the price if unpaid shall remain payable) for any loss of or damage to goods in transit unless the succeeding terms of this Condition are complied with.
- (D) Any claim by the customer in respect of non-delivery of the whole or part of any consignment shall be made in writing to Diverse within ten days of the date of the relevant sale invoice or receipt of the consignment as the case may be.
- (E) Any claim by the customer in respect of damage in transit shall be notified both to the carrier and Diverse in writing by the customer (otherwise than on the carrier's documents) within 5 days of the delivery of the consignment to which the claim relates. The customer shall not accept the carrier "in good condition" if there is any evidence of injury to packaging or contents upon the customer's reasonable inspection on delivery but shall give a receipt according to the facts which its own examination discloses.
- (F) In the case of loss of or damage to goods in transit Diverse shall not in any event whatsoever be liable to the customer beyond the amount which Diverse is able to recover from its insurers, carriers or other third parties.
- (G) Diverse shall not be liable for any indirect or consequential loss whatsoever, however arising and in particular but without prejudice to the generality of the foregoing shall not be liable for any injury loss expense or damage existing out of the storage application or use of any goods supplied.

18 Warranties

- (A) All express or implied terms conditions representations or warranties not stated in these conditions and capable of exclusion (whether statutory or otherwise) are hereby excluded.
- (B) Notwithstanding that any item of the goods has been shown or supplied to the customer no contract shall constitute a sale by description or by sample.
- (C) Diverse gives no warranty as to the quality or fitness for any particular purpose of the goods other than the warranty given under Condition 6 above.

19 Labour

Where an engineer working for or on behalf of Diverse, is booked to start work on a certain date, and that date is delayed through no fault of Diverse, the customer must give notice of the delay to the start date no later than 2 weeks in advance. If the customer fails to comply with this notice period, Diverse may seek reparation for any costs incurred by the delay, including but not limited to, the cost of transport previously arranged and anything up to 50% of the predicted labour costs.