

## RUNAWAY BAY MARINE SERVICE

### STANDARD TRADING TERMS AND CONDITIONS

#### 1. Interpretation and General Terms

- 1.1 "goods" shall mean those goods and products of any kind described on the tax invoice issued to the Customer, and goods which are installed, attached or otherwise placed in or on the Customer's equipment or requested by the Customer;
- 1.2 "Customer's equipment" means the equipment of the Customer on which the Works have been requested, which are left with Runaway Bay Marine Service to perform Works and/or install goods.
- 1.3 "Runaway Bay Marine Service" shall mean Marine Sport Pty Ltd ACN 126 836 431 trading as Runaway Bay Marine Service, its successors and assigns,
- 1.4 "Customer" shall mean the person named as the Customer on these terms and conditions, being the person for whom Works are/or performed and goods provided, and where the context requires includes any person acting with the apparent authority of the Customer.
- 1.5 "Terms and Conditions" means these terms and conditions of purchase, and any terms and conditions specified on the invoice issued to the Customer and any other warranty documentation or other documentation provided by Runaway Bay Marine Service.
- 1.6 "Purchase Price" means the price (inclusive of GST) payable by the Customer to Runaway Bay Marine Service for the goods and Works performed, including the amount as stated on the tax invoice issued to the Customer.
- 1.7 "Works" means the works performed on the Customer's equipment or goods for the Customer, or works or services performed for the Customer of any kind, including the service of the Customer's equipment and the installation, modification, alteration or movement of any of the Customer's equipment or goods.
- 1.8 The singular number includes the plural and vice versa. Words importing the masculine gender only include the other genders. Words importing persons include companies and corporations and trusts and vice versa.
- 1.9 Where more than one person is the Customer, those persons shall be jointly and severally liable hereunder.
- 1.10 Where a Customer is the trustee of any trust, they are bound to the Terms and Conditions in their personal capacity, and as trustee of the relevant trust, and agree to exercise any rights of indemnity in favour of Runaway Bay Marine Service.
- 1.11 Notwithstanding any change of trading structure of the Customer, the Customer will remain liable for all goods supplied and Works requested by either the Customer or the Customer's agents and Runaway Bay Marine Service may invoice the Customer directly for all charges incurred, until the Customer finalises all accounts with Runaway Bay Marine Service and provides notice that the Customer no longer wishes to have an account.
- 1.12 The person signing for the Customer warrants that they have the authority of the Customer to execute this document for the Customer and bind the Customer to all provisions of the Terms and Conditions, and hereby indemnifies Runaway Bay Marine Service from any loss incurred by or damage caused to Runaway Bay Marine Service on demand if such warranty is untrue.
- 1.13 The Terms and Conditions shall be construed in accordance with QLD law. The parties agree that any legal action arising from the subject matter of the Terms and Conditions shall be brought in a QLD Court, unless such action is unable to be brought in such Court.
- 1.14 A construction of this document that results in all provisions being enforceable is to be preferred to a construction that does not so result. Otherwise, if a provision of this document is illegal or unenforceable, and it would be legal and enforceable if a word or words were read down, then that word or those words are read down. If reading down is not possible, and it would be legal and enforceable if a word or words were omitted, that word or those words are severed; and in any other case, the whole provision is severed, and the remainder of this document continues in force.
- 1.15 The failure for any period whatsoever of Runaway Bay Marine Service to exercise any right or remedy which they may hereafter have at law against the Customer shall not be deemed at law to be an abandonment or waiver of any right or remedy which Runaway Bay Marine Service may have in respect of such breach or any other breach at any time.

#### 2. Offer, Acceptance and Withdrawal

- 2.1 All quotations made by Runaway Bay Marine Service are, unless stated to be fixed, an estimate only. Runaway Bay Marine Service is not bound by any order given in pursuance of any quotation until the Customer accepts the order. All orders are subject to acceptance by Runaway Bay Marine Service.
- 2.2 Runaway Bay Marine Service may, at any time, refuse to provide any further goods, perform further Works or extend any credit, despite the acceptance of any offer or any application.

#### 3. Time for completion of Works/goods and Delivery

- 3.1 Whilst Runaway Bay Marine Service will use its endeavours to complete Works, or obtain goods for sale by the time specified to the Customer, Runaway Bay Marine Service accepts no responsibility, and the Customer is not entitled to compensation or to bring any claim if the Works are not complete in the time specified, or the goods are not available at the time specified, or at all. Runaway Bay Marine Service is not liable for any loss to the Customer because of a failure to complete Works or provide goods in a specified time even if this arises through negligence.
- 3.2 If Runaway Bay Marine Service provides the Customer with a written quote as to an estimated date of completion of Works, this clause 3.2 applies. If the Works are not completed, or the goods have not arrived, within one (1) month of the date as quoted by Runaway Bay Marine Service, then either party may terminate the engagement to perform the Works and/or supply the goods. Any Works performed to that date, or goods supplied to that date, must be paid. This is the Customer's only remedy.
- 3.3 Unless advised by Runaway Bay Marine Service, the place for delivery of the goods or the Customer's equipment is the premises of Runaway Bay Marine Service.
- 3.4 The Customer will be notified when goods and/or the Customer's equipment are ready for collection/delivery. Should the Customer refuse, be unable to, or not take delivery of the goods or the Customer's equipment within seven (7) days of being notified that the goods are available for delivery, Runaway Bay Marine Service may retain any monies already paid by the Customer by way of pre-estimated liquidated damages, terminate the agreement between the parties and recover from the Customer any loss of profits on resale of the goods at auction or otherwise, in addition to any other remedies available.

#### 4. Payment

- 4.1 The Customer must make payment for the goods supplied and/or Works performed, to Runaway Bay Marine Service by way of cleared funds, on or before the date as specified on the invoice provided to the Customer for such Works and/or goods. If no time for payment is specified, payment must be made at the time of collection, or on demand, whichever the earlier.
- 4.2 Interest will accrue on any amounts outstanding past the date payment is due, at the rate of 1.5% per month until payment is received by Runaway Bay Marine Service. The Customer indemnifies Runaway Bay Marine Service in respect of any loss of any kind caused to Runaway Bay Marine Service due to the failure to make payment within the time required.
- 4.3 A certificate signed by a Director, manager, accountant, secretary, or accounts manager or Runaway Bay Marine Service in respect of any sale or delivery or price of any goods or the provision or price of any Works by Runaway Bay Marine Service or the amount due and owing or payable to Runaway Bay Marine Service in respect of the sale of goods or

provision of Works or on any account whatsoever as at the dates set out in the certificate shall be prima facie evidence of the facts stated therein.

4.4 The term as to the payment shall be of the essence.

## 5. Title

- 5.1 Notwithstanding the delivery of the goods or part thereof, all goods sold by Runaway Bay Marine Service in the possession of the Customer, remain the sole and absolute property of Runaway Bay Marine Service as full legal and equitable owner until such time as the Customer has paid Runaway Bay Marine Service the full price of such goods together with the full price of all other goods supplied and Works performed by Runaway Bay Marine Services for the Customer ("all monies").
- 5.2 The Customer acknowledges that they receive possession of and hold goods delivered by Runaway Bay Marine Service solely as bailee for Runaway Bay Marine Service until such time as all monies have been paid.
- 5.3 Until such time as the Customer becomes the owner of the goods, they will:
- 5.3.1 Store them on their premises separately and in a readily identifiable condition;
  - 5.3.2 Ensure that the goods are kept in good and serviceable condition;
  - 5.3.3 Secure the goods from risk, damage and theft; and
  - 5.3.4 Keep the goods fully insured.
- 5.4 The Customer may resell the goods only as a fiduciary agent of Runaway Bay Marine Service, provided that such resale is at arms length and for market value. The Customer must not bind and has no authority to bind Runaway Bay Marine Service to any liability with any third party.
- 5.5 The Customer agrees that if they use the goods in a manufacturing process (which includes using goods to manufacture other goods or by incorporating the goods in or with other goods) of its own or a third party, then the Customer holds such part of the proceeds of sale as relates to the goods on trust for and as a bailee and fiduciary agent of Runaway Bay Marine Service, who will be entitled to payment on demand. 'Such part' shall be deemed to equal in dollar terms the amount owing by the Customer at the time the goods are processed.
- 5.6 The Customer must hold the proceeds of any sale of the goods in a separately identifiable account for the benefit of Runaway Bay Marine Service, who shall be entitled to payment on demand. Upon request, the Customer must assign its rights to receive the sale price in respect of the goods purchased to Runaway Bay Marine Service.
- 5.7 If the Customer does not pay for any goods on the due date then Runaway Bay Marine Service and its agents and employees are hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the customer or as agent of the customer in which the goods are stored) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence, assault and battery or payment of any compensation to the Customer whatsoever, even if the taking of the goods involves the damage to other equipment of the Customer or the Customer's equipment. Runaway Bay Marine Service may then dispose of the goods or sell them in any way it deems fit.

## 6. Risk and Insurance

- 6.1 Risk in goods sold passes to the Customer upon notification by Runaway Bay Marine Service to the Customer that the goods are ready for delivery, or if a later time is mandatory by law, at such later time.
- 6.2 The Customer's equipment is left at the premises of Runaway Bay Marine Service at the Customer's sole risk. The Customer should ensure that all insurance policies in respect of the Customer's equipment are up to date, and adequate. Runaway Bay Marine Service accepts no responsibility for damage, theft or loss of Customer's equipment.

## 7. Uncollected Goods

- 7.1 If the Customer fails to make payment or fails to take delivery of the Customer's equipment at the time specified, then in addition to any other rights available, Runaway Bay Marine Service may take any action allowable by the Collection of Uncollected Goods Act 1967 (as subsequently amended, replaced or superseded).
- 7.2 The Customer warrants that the Customer's equipment is not comprised in a hire-purchase agreement containing a provision prohibiting the creation by the hirer of a lien on the goods.
- 7.3 If any of the Customer's equipment is uncollected, the amount recoverable from the Customer will be increased by the amount actually expended or incurred in transporting, storing, placing on hard stand, insuring and any other costs in Runaway Bay Marine Service holding the Customer's equipment until it is collected or sold. All advertising, selling, legal, Court and other costs are recoverable from the Customer and from the sale price of the Customer's equipment, unless otherwise determined by the Court.

## 8. Return of Goods and Warranty

- 8.1 In addition to any rights the Customer has at law, the returns policy of Runaway Bay Marine Service notified to the Customer from time to time will apply to the Works performed and goods supplied. Such policy shall only apply in respect of the duration of such policy. Otherwise, Runaway Bay Marine Service is under no obligation to accept the return of any goods.
- 8.2 The Customer agrees to accept the terms of warranty issued in respect of the goods (as notified from time to time). Apart from those mandatory at law, no warranties are given to the Customer in respect of the goods supplied or the Works performed, and Runaway Bay Marine Service is not liable to the Customer or any other person for any loss or damage whatsoever. However, until full payment of all monies owing for goods and Works is made, any warranty given is void.
- 8.3 To the extent possible at law, any claim by the Customer for the performance of a warranty or breach of a statutory obligation is limited to one of the following, at the election of Runaway Bay Marine Service:
- 8.3.1 In the case of goods:
    - 8.3.1.1 A refund of the purchase price paid for the goods or the issue of a credit note;
    - 8.3.1.2 A replacement of the goods or supply of equivalent goods;
    - 8.3.1.3 The repair of the goods;
    - 8.3.1.4 The payment of any of the above;
  - 8.3.2 In the case of Works:
    - 8.3.2.1 The performance of the Works again;
    - 8.3.2.2 The cost of the above.

## 9. Default

- 9.1 Upon the occurrence of a default by the Customer of any of the Terms and Conditions, without prejudice to any other right or remedy which is available to Runaway Bay Marine Service at law or in equity, the Customer hereby indemnifies Runaway Bay Marine Service against any costs, fees, charges and disbursements charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery or attempted recovery of monies due and payable by the Customer to Runaway Bay Marine Service on an indemnity basis and all such costs shall be recoverable as a liquidated debt.
- 9.2 Should the Customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoint an external controller, Runaway Bay Marine Service may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights, suspend or cancel any current agreement with

the Customer or require immediate payment of all monies notwithstanding the term of payment previously specified, in which case those monies will become immediately due and owing.

**10. Notices**

- 10.1 Runaway Bay Marine Service may, in addition to any manner stated at law, serve notice on the Customer in the following ways:
  - 10.1.1 By sending a notice by post to the Customer at the address as specified by the Customer or Customer's agent/representative;
  - 10.1.2 By emailing the Customer at the Customer's email address as specified by the Customer or Customer's agent/representative;
  - 10.1.3 By sending a notice by fax to the Customer at the number as specified by the Customer or Customer's agent/representative;
  - 10.1.4 In the case of notifying the Customer that the goods or Works are ready for delivery, by telephoning the Customer or Customer's representative and if they do not answer, leaving a message on the answering machine or voicemail service.
- 10.2 Notice will be deemed given in the case of post, on the second business day after posting, in the case of email, upon the email being sent (provided no undeliverable receipt is received), in the case of fax, upon the sender's machine confirming the message has been sent correctly, and in the case of phone at the time of the call.

**11. Charge**

- 11.1 The Customer grants Runaway Bay Marine Service a lien on the Customer's equipment for all amounts owing by the Customer, and all amounts incurred by the Customer in the Customer enforcing any rights at law or in equity against the Customer.

**12. Variation and Entire Agreement**

- 12.1 Runaway Bay Marine Service may from time to time vary the Terms and Conditions, and upon notification to the Customer of the varied form of Terms and Conditions, those Terms and Conditions will apply in respect of any transaction taking place after, or continued after, the notification of those new Terms and Conditions. Such variation must be in writing to be effective.
- 12.2 Unless notice is given in writing of any change, the Terms and Conditions are the entire agreement between the parties.

**EXECUTED AS A DEED:**

\*By signing this document, you acknowledge that you have read, understood and accepted for the Customer, the Standard Trading Terms and Conditions, and warrant that any information given to Runaway Bay Marine Service is true and correct:

Company Customer

**EXECUTED** by \_\_\_\_\_ PTY LTD )  
ACN \_\_\_\_\_ )

As trustee of \_\_\_\_\_ (if applicable) )

In accordance with Section 127 of the )  
Corporations Act (Cwlth); or )

By its authorised agent; or )

In accordance with the authority of the Company

\*cross which is inapplicable

Individual Customer

**SIGNED, SEALED AND DELIVERED** by the said )  
\_\_\_\_\_ (name) )

in the presence of )

\_\_\_\_\_ )

.....  
Signature Name/Position

.....  
Signature Name/Position

.....  
Signature Authority to Bind Customer

An Independent Witness

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**OFFICE USE ONLY**

CREDIT ACCOUNT: APPROVED / DECLINED / COD

ACCOUNT HAS BEEN AUTHORISED BY \_\_\_\_\_ (Insert name)

Signature of Dept. Head: \_\_\_\_\_

CREDIT LIMIT: \$ \_\_\_\_\_

CUSTOMER CODE (MAX 8 Chars):

DATA ENTRY BY:

DATE OF ENTRY:

SPECIAL REQUESTS/NOTES: