

MR Marine Electronics
STANDARD TERMS AND CONDITIONS OF SALE (AUSTRALIA)
Effective as at 01 January 2006
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1. Interpretation

In these terms and conditions and in any contract to which these conditions apply:

- a) Contract means the contract between MR Marine and the Purchaser for or in relation to the sale and purchase of goods;
- b) goods means any item of whatsoever nature which is sold or to be sold by MR Marine to the Purchaser;
- c) Prescribed Terms means any terms, conditions and warranties which the law expressly provides may not in respect of the Contract be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent;
- d) Purchaser means the person or corporation or person who has an as agent acting for them, or corporation who has an agent acting for them, who buys or has agreed to buy the goods from MR Marine;
- e) MR Marine means MR Marine Electronics (ABN 24 073 276 291) or such other business related to MR Marine which accepts the Purchaser's order by the issue of a Sales Confirmation or Sales Invoice or Email response;
- f) Sales Confirmation means the document so titled issued by MR Marine that formally accepts the order for goods from the Purchaser;
- g) Standard Specifications means MR Marine's standard specification for the goods current at the time the goods are delivered to the Purchaser. Copies of the Standard Specifications are available on request from MR Marine;
- h) Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa; and
- i) The headings in these terms and conditions are provided for convenience only and do not effect the interpretation thereof.

2. General

- a) Subject to any Prescribed Terms, this document together with the relevant Sales Confirmation embodies the sole terms and conditions of the Contract between MR Marine and the Purchaser and supersedes all other conditions and agreements between the parties, unless expressly amended in writing by MR Marine.
- b) These terms and conditions shall without further notice apply to all future transactions between MR Marine and the Purchaser in relation to the sale and purchase of goods, whether or not this document is delivered or executed in the course of the transaction.
- c) For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Purchaser (including without limiting the foregoing those included in any purchase order or like document from the Purchaser) shall apply to or form part of the Contract, except and to the extent otherwise agreed in writing by MR Marine.
- d) All purchase orders supplied by the Purchaser are subject to acceptance by MR Marine and no Contract between MR Marine and the Purchaser comes into existence until MR Marine issues a Sales Confirmation in relation to the order.
- e) No variation or abrogation of these terms and conditions shall be effective unless it is evidenced in writing signed on behalf of MR Marine.

3. Payment

- a) Unless otherwise agreed by the parties in writing payment shall be made on invoice.
- b) Time for payment of the price of the goods shall be of the essence of the Contract and if the Purchaser fails to pay the price when due MR Marine may treat the Contract as repudiated by the Purchaser or may, unless payment in full is made, suspend delivery of the goods the subject of the Contract and any goods the subject of any other Contract with the Purchaser without incurring any liability whatsoever to the Purchaser in respect thereof. In addition, without prejudice to such rights of MR Marine, the Purchaser shall (if so required by MR Marine) pay interest to MR Marine on the outstanding amount of the price at the rate of 24% per annum (2% per month) until the price is paid in full.
- c) Notwithstanding any rights of lien to which MR Marine may otherwise be entitled, MR Marine shall have a specific lien (including a right of sale) over the goods the subject of the Contract and any goods the subject of any other contract with the Purchaser until the price of the goods has been paid in full. The Purchaser shall not be entitled to make any deduction from the price of the goods in respect of any off-set or counter claims.

4. Delivery

- a) Any time or date named and accepted by MR Marine for completion, delivery, dispatch, shipment or arrival of the goods or for tender of any documents is an estimate only and does not constitute a condition of the Contract or part of the description of the goods and is not of the essence of the Contract.
- b) Unless otherwise stated in writing MR Marine may make partial deliveries or deliveries by installments in any amount it may determine and each such partial delivery or delivery by installments shall be deemed to be a separate Contract and these conditions shall apply to each partial delivery or delivery by installments.

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- c) The Company may deliver up to 5% more or less of the amount specified for delivery, subject only to an appropriate adjustment to the price payable, in full satisfaction of MR Marine's obligations pursuant to the Contract.
- d) The Purchaser shall notify MR Marine within 7 days of delivery of any short fall in or loss or damage to goods delivered. Failure to so notify shall, subject to the requirements of any Prescribed Terms, disentitle the Purchaser to any remedy in respect to the shortage, loss or damage.

5. Risk & Title

- a) Goods supplied by MR Marine to the Purchaser shall be at the Purchaser's sole risk immediately on their delivery to the Purchaser.
- b) Property and title in the goods supplied by MR Marine to the Purchaser will not pass to the Purchaser until such time as the goods the subject of the Contract and all other goods supplied by MR Marine to the Purchaser have been paid for in full. Until that time, the Purchaser shall store the goods, including goods into which the supplied goods have been mixed, in such a manner as to show clearly that they are the property of MR Marine and shall upon MR Marine's demand deliver up such goods to MR Marine. In default of such delivery MR Marine may by its servants and agents enter the Purchaser's premises at any time without notice to repossess the goods.
- c) Until such time as the goods have been paid for in full the Purchaser is at liberty to sell the goods, including goods into which MR Marine's goods have been mixed, in the ordinary course of its business, and the Purchaser shall hold the proceeds thereof in trust for MR Marine and promptly account to MR Marine for those proceeds in payment of the purchase price for the goods.
- d) The Purchaser and MR Marine agree that the provisions of this clause apply notwithstanding any agreement between the parties under which MR Marine grants the Purchaser credit.

6. Warranties and Exclusions of Liability

- a) The Company warrants that the goods when delivered to the Purchaser will comply with any description for the goods contained in the relevant Sales Confirmation (if any) and with the Standard Specification for the goods. MR Marine is not required to supply goods with any specification or characteristics that are outside any such description for the goods (if any) or the Standard Specifications.
- b) The Purchaser acknowledges, agrees, represents and warrants that: (i) as the use of the goods is outside the control of MR Marine, the Purchaser is satisfied that the goods when supplied in accordance with clause 6a) will have the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those goods, even if that purpose is made known to MR Marine at any time;
(ii) the Purchaser has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the goods and any product that is produced from them will be without defect and suitable or fit for any purpose required for them; and
(iii) the Purchaser has not relied upon any statement, representation, warranty, condition, advice, recommendation, information, assistance or service provided or given by MR Marine or anyone on its behalf in respect of the goods, other than those that are expressly contained in the Contract.
- c) The Purchaser releases and indemnifies MR Marine and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Purchaser and whether at common law, under tort including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of any breach by the Purchaser of any warranty provided by it under paragraph b) of this clause.
- d) Except as expressly set out in the Contract and except for liability under any Prescribed Terms, to the full extent permitted by law:
 - (i) all conditions, warranties, terms and obligations expressed or implied by law or otherwise relating to the Contract or the performance of MR Marine's obligations under the Contract or to any goods or services supplied or to be supplied by MR Marine under the Contract are excluded, except for those conditions and warranties as to title in the goods; and
 - (ii) without limiting the generality of the foregoing, MR Marine gives no condition or warranty whatsoever as to the suitability, performance or fitness of the goods for their ordinary or any special use or purpose, and the description of the goods in any Contract or any other document shall not import any such condition or warranty on the part of MR Marine.
- e) To the extent permitted by law the liability of MR Marine for a breach of any condition or warranty contained in the Contract including (without limiting the generality of the foregoing) any Prescribed Term implied into the Contract is limited, at MR Marine's option, to:
 - (i) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods or the cost of repairing or replacing the goods or of acquiring equivalent goods; and
 - (ii) in the case of services, the re-supply of the services or the payment of the cost of re-supplying the services.

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- f) To the extent permitted by law, MR Marine will have no liability to the Purchaser, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity arising out of or in connection with the Contract or its performance.
- g) All goods supplied will carry the manufacturer's warranty, Purchaser will contact the manufacturer for any warranty claims or service of those goods. MR Marine is a reseller and does not carry warranty on goods.

7. Return of Goods

- a) Goods supplied to the Purchaser are not returnable except as provided in clause 6 above.
- b) If the goods are in accordance with clause 6a) and all Prescribed Terms and are otherwise in compliance with the provisions of the Contract, MR Marine may from time to time under exceptional circumstances choose to accept the return of the goods from the Purchaser. A cancellation fee will apply and the Purchaser will also reimburse MR Marine for all costs associated with the delivery and return of the goods.

8. Indemnity

The Purchaser shall keep MR Marine indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Purchaser or which the Purchaser may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the goods unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract by, or negligence of, MR Marine or its duly authorised employee or agent.

9. Licenses, Duties, etc.

The payment of any taxes and the obtaining and maintenance in full force and effect of any necessary export or import licenses, authorisations or consent in respect of the goods is the sole responsibility of the Purchaser and MR Marine shall be under no liability whatsoever in respect of goods exported or imported without any necessary licenses, authorisations or consent.

10. Health and Safety

It is the Purchaser's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and the use of the goods and, where information is supplied to the Purchaser on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, sub-contractors, visitors and customers. Without prejudice to the foregoing, it is also the Purchaser's responsibility to provide safe facilities for the reception of goods into storage.

11. Goods & Services Tax (GST)

Goods and Services Tax (GST) will be charged on those products that attract GST at the applicable rate.

12. Industrial Property Rights

The Purchaser shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of MR Marine attached to or placed upon the goods.

13. Force Majeure

MR Marine shall not be under any liability whatsoever for the consequences of any failure on its part to perform or delay in performing any obligation under the Contract when due, whilst and to the extent that such failure or delay is due directly or indirectly to any event of force majeure. Without limiting the generality of the foregoing, this includes any liability whatsoever for any delay in completion, delivery, dispatch, shipment or arrival of the goods or in the tender of any documents or the like. "event of force majeure" includes any acts of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above, outside the reasonable control of MR Marine. If there is an event of force majeure, MR Marine will notify the Purchaser of the event and the likely impact on its performance under the Contract. If the event affect the capacity of MR Marine to complete its material obligations under the Contract in a timely manner, MR Marine may by notice to the Purchaser terminate the Contract without any liability whatsoever on its part arising from such termination.

14. Notices

Any notice to be given to the Purchaser shall be deemed to be given upon its being emailed to Purchasers supplied email address or posted or sent by facsimile to the address or facsimile number of the Purchaser set out in the Contract or to the Purchaser's registered office or to the Purchaser's last known address.

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15. Assignment

The Purchaser may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person or corporation whatsoever.

16. Sub-contract

MR Marine reserves the right to sub-contract the performance of any Contract or part thereof to any other party or person or corporation it may determine.

17. Proper Law and Jurisdiction

All Contracts made between MR Marine and the Purchaser shall be governed by and construed in accordance with the laws of New South Wales, Australia. The Purchaser agrees to submit to the nonexclusive jurisdiction of the New South Wales Courts and courts of appeal there from for all purposes of or in connection with such Contracts.

18. Cost Recovery

Any expenses, costs or disbursements incurred by MR Marine in recovering any outstanding monies owing by the Purchaser including debt collection fees and solicitors costs shall be paid by the Purchaser, providing that those fees do not exceed the scale charges as charged by that debt collection agency or solicitor plus any out of pocket expenses.