



## AUSTMARINE'S POLICIES

### ***Terms and Conditions of Sale, Service and Technical Support*** ***("Terms and Conditions")***

Please note these terms and conditions of sale do apply to resellers described as an individual or company who purchases the Austmarine product on behalf of the end user of the Austmarine equipment, and the individual or company will install and service the Austmarine equipment. Resellers purchasing on behalf of a third party please refer to the additional Resellers Terms & Conditions. Licensees and/or agents have a separate Licensee Agreement.

#### **DEFINITIONS**

**"Austmarine"** means the Austmarine Manufacturing Pty Ltd subsidiary company selling products to the Purchaser as identified in Austmarine's Quotation, Proposal, Sales Confirmation Order or Invoice.

**"Purchaser"** means the person or legal entity identified in Austmarine's Quotation, Proposal, Sales Confirmation Order or Invoice.

**"Contract"** means a contract for sale by Austmarine to the Purchaser of the products and/or services incorporating the Terms and Conditions.

#### **1. FORMATION OF CONTRACT**

- I.** No Contract shall come into existence until the Purchaser's Sale Order Confirmation has been accepted by Austmarine and such acceptance has been received by the purchaser. The contract shall be deemed to be concluded at the time and place where such acceptance is received by the Purchaser. The Purchaser warrants that it is buying for its own use only and not for re-sale purposes.
- II.** The products sold and/or services rendered are subject to the Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by Purchaser. The Purchaser acknowledges that it is aware of the contents of and agrees to be bound by the Terms and Conditions.

#### **2. ORDERS, PRICE AND PAYMENT**

- I.** Unless a Lease or Letter of Credit have been expressly agreed by Austmarine, payment for the products or services shall be made in full before physical delivery of products or services.
- II.** For Retail Units a 40% deposit is payable at Sale Order Confirmation and 60% payable in full before physical delivery (or dispatch in the case of export) of products or services.
- III.** For Bulk Holding Tanks/Plants a 40% deposit is payable at Sale Order Confirmation, a further 40% payable 30 days after commencement of production, and 20% payable in full before physical delivery (or dispatch in the case of export) of products or services.
- IV.** Another payment structure may be specified but only at the agreement of the two parties. All payment structures must be on a signed or accepted sales order confirmation
- V.** In the case of Leasing or Finance, the purchaser shall provide a 40% deposit to Austmarine with the Sale Order Confirmation. The products will be delivered after notification has been given to Austmarine by either the Finance Broker or Finance Company that Finance documents have been signed and first instalment paid.
- VI.** Purchaser shall pay for all shipping and handling charges.

- VII.** The freight price quoted is based upon the freight rates in effect at the date of the Sale Order Confirmation and any increase or decrease in the freight rates at the time of dispatch are for the account of the purchaser.
- VIII.** Purchaser shall bear all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege, stamp duty and similar levies/taxes.
- IX.** Time for payment is of the essence. Austmarine reserves the right to charge interest at the rate of 18% per annum on all moneys payable hereunder from the day on which the same are due for payment hereunder up to and including the date of payment and such interest shall be paid by the purchaser to Austmarine together with such moneys payable hereunder but this provision shall not in any way affect or prejudice the rights of Austmarine to enforce the benefit of this agreement so far as Austmarine shall be entitled to do so or to proceed under the powers contained in clause 3V "termination" hereof.
- X.** Provided always that should the purchaser not proceed with the purchase or lease application the initial deposit shall be forfeited and the purchaser shall be liable to pay to Austmarine immediately an additional amount representing 27.5% of the purchase price as liquidated damages for Austmarine commitment of time and materials.

### **3. DELIVERY AND/OR INSTALLATION**

- I.** Austmarine shall either make the products available ex-factory or deliver the products to the place of delivery designated by the Purchaser and agreed to by Austmarine ("Purchaser Address").
- II.** The date and place of delivery shall be agreed between the purchaser and Austmarine and shall be the date specified in the Sale Order Confirmation or such later date as may be agreed between Austmarine and the purchaser.
- III.** On the date of delivery nominated in the Sale Order Confirmation the purchaser or his agent shall be ready to take delivery of the products. If the purchaser or his agent shall not be at the agreed place on the date of delivery such delivery may be given to some other person to be in the interim nominated by the purchaser pending new arrangements for delivery being made by the parties and the purchaser shall be fully responsible for all additional transportation and handling cost involved.
- IV.** Austmarine shall not be liable for any failure to deliver the products and/or services on time where such failure has been occasioned by fire, embargo, strike, differences with workmen, failure to secure materials from usual sources of supply or any circumstances beyond Austmarine's control which shall prevent Austmarine from making delivery in the usual course of business. Austmarine is not relieved from making delivery or the purchaser from accepting delivery as soon as practicable after the cause interfering with delivery shall have been removed.
- V.** *Termination:* Should Austmarine be prevented from delivering the product in accordance with these conditions within a reasonable time by reason of war, strike, lockout, combination, destruction or damage to Austmarine's plant or premises or any other unexpected or exceptional causes existing either at Austmarine's premises or at the point of dispatch or delivery, Austmarine shall be entitled to determine this agreement and the purchaser shall not in consequence have any claim for damages against Austmarine. Austmarine shall be the sole judge of whether it is able to deliver the product.
- VI.** Installation of the product is to take place within fourteen days of delivery and the parties covenant they will use their best endeavours to ensure that the installation is effected within this time.

### **4. INSURANCE**

Price does not include insurance unless otherwise stated.

## 5. EXTENT OF WORK

Please note that the extent of work carried out by Austmarine on the above project shall be for the items of equipment only as specified in our quotation and /or Sale Order Confirmation. Anything not specified but necessary to comply with the requirements of any law or regulation at the time in force by any government, local or statutory relating authority to the installation, use of machinery, materials or equipment that Austmarine does not specifically agree in supply shall be the responsibility of the purchaser.

## 6. TITLE IN GOODS

- I. It is expressly agreed that no property or possession in or to the said product and/or services shall pass to or in the purchaser until payment of the balance of the purchase money and any other moneys payable under these conditions as hereinbefore provided not only under this Contract but under any previous Contract or Contract entered into in future between the parties (provided that in the case of tender of a cheque payment shall not be deemed to be made until the cheque is honoured).
- II. The risk in the goods (but not title) the subject of this sale shall pass to the purchaser upon delivery by Austmarine to the Carrier, whether Austmarine arranges, procures or effects the cartage of the goods at the request of the purchaser, or otherwise.
- III. Any resale of the goods by the purchaser to a purchaser, for which payment has not already been made to Austmarine, shall be affected by the purchaser as agent for Austmarine, to the intent that the proceeds of re-sale shall become the property of Austmarine upon receipt thereof by the purchaser, and so that the same shall be accounted for to Austmarine to the extent of the Austmarine's invoice price to the purchaser.
- IV. Until the property in the goods has passed or been transferred from Austmarine to the purchaser, the purchaser shall hold and maintain the goods as bailee of Austmarine.
- V. In the case the purchaser shall make default in payment of the said purchase money or any parts or part thereof as and when the same becomes due as hereinbefore mentioned or if the purchaser shall fail or neglect to comply with any of the conditions herein all moneys which he/she shall have paid to Austmarine by way of deposit or on account of the purchase price shall be absolutely forfeited and shall be retained by Austmarine who shall be at liberty to sue the purchaser for damages for breach of agreement.
- VI. In the case of default Austmarine can so elect to rescind the agreement and at its option to resell the product bought by the purchaser with or without notice at such time and place and subject to such conditions and in such manner as Austmarine shall see fit for the purpose of such resale and to retake possession of the product the subject matter of this agreement and the deficiency in price (if any) occasioned by such second sale together with all expenses attending the same or any abortive attempt to sell the product shall immediately after resale be made good and be paid to Austmarine by the present purchaser and in case of the non-payment of the amount of such deficiency the same shall be recoverable by Austmarine as and for liquidated damages and not as a penalty and it shall not be necessary for Austmarine previously to tender delivery of the product to the purchaser and any profit on such resale shall belong to Austmarine as liquidated damages in addition to the forfeited moneys AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that the remedies herein given to Austmarine shall be considered as being con-current and not alternative.
- VII. The purchasers hereby irrevocably grants to Austmarine, its agents and servants, an unrestricted right and licence, without notice to enter the premises occupied by the purchaser to identify and remove any of the goods the property of Austmarine at its option without in any way being liable to the purchaser or any person claiming through the purchaser.

## **7. PACKAGING**

The product is to be delivered in a package or container acceptable to Austmarine. If the purchaser should request delivery in a package or container other than the type acceptable to Austmarine the risk of all damage, destruction or loss of or to the said product from whatever cause arising at all times shall be borne by the purchaser and Austmarine shall not be liable to make any abatement of price or otherwise compensate the purchaser.

## **8. WARRANTY**

Austmarine warrants that the unit delivered pursuant to these conditions shall conform to the specifications or drawings (if any) furnished by Austmarine provided that Austmarine reserves the right to make any alteration or modification which in its sole discretion constitutes an improvement or necessary departure from the product the subject of sale. Austmarine provides a two year warranty on defective parts and labour. Austmarine does not warrant scratches in glass or polycarbonate sneeze barriers. A separate Warranty is provided in respect of each product.

## **9. LIABILITIES**

It is the responsibility of the 'purchaser' to bring to the attention of Austmarine, any country, state, emirate or territory legislation that may affect the design, operation, manufacture, construction or installation of any equipment or structure. Austmarine will not be responsible for any region specific requirements that are not specified to Austmarine before the sales order contract is signed.

Austmarine will not be liable for any damages that may occur due to incorrect supplied drawings or site measurements. It is the responsibility of the purchaser to advise his contractors to take site measurements before works begin.

## **10. TITLE TO DRAWINGS & SPECIFICATIONS**

Austmarine shall at all times have the title to any drawings and specifications furnished to the purchaser. The purchaser shall use any such drawings and specifications only in connection with the operation and maintenance of the product, and shall not disclose such drawing and specifications to any other person firm or corporation. The purchaser shall, upon Austmarine's request or upon the completion of the transaction promptly return all drawings and specifications to Austmarine. All drawings remain the property of Austmarine until all fees are paid for the drafting services. Until all monies are paid the drawings are not to be distributed, copied or used in any way other than viewing by the client.

## **11. AUSTMARINE NOT BOUND BY REPRESENTATIONS**

These conditions constitute the entire agreement between the parties and Austmarine shall not be bound by any representation, promise or inducement made by any agent or employee of Austmarine not contained in these conditions. It is expressly understood and agreed between the parties that Austmarine has not stated, made or represented to the purchaser for the purpose of inducing the sale of the product or the making of the agreement, any statements or representations verbally or in writing in respect of the product other than as in these conditions.

## **12. APPLICABLE LAW**

The applicable law shall be the Law of the State of Queensland, Australia.

## **13. INTERPRETATION**

Except to the extent that such interpretation shall be excluded by or be repugnant to the context when herein used the expression "Austmarine" shall mean and include Austmarine Manufacturing Pty Ltd and its successors, the expression "the purchaser" shall mean and include the purchaser and its successors, his/her executors or administrators, words importing a person shall include a company, words importing the singular number or plural number shall include the plural number and singular number respectively, words importing the masculine only shall include the feminine gender. Agreements and undertakings on the part of the purchaser shall be jointly and severally binding on each purchaser.