

**Goods** means any goods ordered by you, or supplied by us to you and includes any Services provided by us.

**Owner Property** means the vessel and any other property of yours (or any party for whom you are acting as agent) which is delivered to or made available to us for the performance of the Services (and includes any contents and attachments).

**Services** means any services provided by us to you, including but not limited to the installation, servicing or storage of any Goods or Owner Property.

**Terms** means the terms and conditions contained in this document, as amended by us from time to time and published on our website [www.onboardengineering.com.au](http://www.onboardengineering.com.au).

**We, us or our** means Onboard Engineering Pty Ltd ABN 78 673 684 697.

**Estimate** means any estimate we issue from time to time.

## 1. Estimates

- 1.1 We may from time to time issue Estimates for the supply of Goods. All Estimates and supplies of Goods by us are subject to the Terms.
- 1.2 Unless otherwise stated, any Estimate will remain open for acceptance for the time stated on the Estimate and where no time is stated, for sixty (60) days, unless withdrawn by us earlier.
- 1.3 If you accept an Estimate, you will be regarded as having entered into the Terms. This means that you will be bound by the Terms, including being billed in accordance with it.
- 1.4 An Estimate may be accepted by signing and returning a copy of the Terms, or at our election, in any of the following ways:
  - (a) giving us instructions after receiving the Terms;
  - (b) sending us documents after receiving the Terms;
  - (c) seeking Goods and/or Services from us after receiving the Terms;
  - (d) oral acceptance;
  - (e) submitting a purchase order to us; or
  - (f) full or partial payment of any money to us, including a deposit.
- 1.5 Where specifications, drawings or other particulars are provided by you, our price is based upon estimates of quantities required. If any adjustment in quantities is required, the price stated in any Estimate is adjusted on the unit rate basis as stated in the Estimate or if that Estimate is older than thirty (30) days, at such price as we shall reasonably determine having regard to the usual price at that time.

## 2. Acceptance of Estimates/orders

- 2.1 We reserve the right to refuse any order placed by acceptance of an Estimate within 7 days of receipt of the acceptance.
- 2.2 We may, in our absolute discretion, accept a purchase order from you in respect of the supply of Goods. The Terms apply to any such purchase order accepted to the exclusion of any terms stated on the purchase order.
- 2.3 If you are an individual, by accepting an Estimate or submitting a purchase order, you warrant that you are authorised to accept the Terms on behalf of the relevant person or entity named on the Estimate or purchase order.
- 2.4 If you are an employee or officer of a company, partner in a partnership or acting as agent for another party (such as the owner of the Owner Property), then you warrant that you are authorised to act as their agent and personally indemnify us from all claims we may have against the party for whom you are acting.

## 3. Your obligations

- 3.1 You must ensure that all information provided to us is true, accurate and not misleading.
- 3.2 You must act reasonably and take reasonable care to protect your own interests, including managing all safety risks associated with the operation of the Goods, having them properly installed, properly reading and following any instruction or training manuals, following any reasonable direction we may give and appropriately directing your own employees, servants and agents in relation to these things.
- 3.3 You agree to inspect the Goods immediately upon delivery, or upon collection of your order by your agent or courier.

## 4. Shortage and returns

- 4.1 Details of any Goods as recorded by us upon dispatch will be conclusive evidence of the quantity received by you on delivery unless you provide conclusive evidence proving the contrary within ten (10) days.
- 4.2 You waive any claims in respect of any shortages for any Goods delivered unless a notice of a claimed short delivery is provided to us within ten (10) days of delivery.
- 4.3 No Goods may be returned to us or any agent or representative of ours without our prior written consent. Any requests for the return of Goods to us must be made within ten (10) days of delivery of the Goods to you.
- 4.4 We are not under any obligation to accept the return of any Goods or to provide refunds however, we may do so only on terms satisfactory to us, such as on payment of a restocking and handling fee equivalent to twenty percent (20%) of the price for the Goods.
- 4.5 Goods returned will only be accepted if they are properly and adequately sent to us in the same condition we supplied them and at your expense. They otherwise remain at your risk.

## 5. Delivery and storage

- 5.1 Any dates specified by us for delivery of the Goods are approximate only. If no dates are so specified, delivery will be within a reasonable time. We may deliver the Goods in batches or in instalments. If you wish to request for deliveries by instalments, you must do this within the times stipulated in your written contract with us.
- 5.2 Where Goods are ordered by you in instalments, each instalment delivery is deemed to be a separate order and a separate contract performed by us upon delivery of that instalment.
- 5.3 You have no right of action for damages or otherwise against us and hereby release us from any claim for loss or damage directly or indirectly (including but not limited to consequential losses such as lost income or lost profit) occurring by reason of any failure or delay in delivery or for delivery in batches.
- 5.4 If you fail to take delivery of any of Goods or to provide any instructions to enable the Goods to be delivered, without prejudice to any other rights we may have, we may store or arrange for the storage of the Goods pending delivery but as it relates to the timing of payment for the Goods under these Terms, delivery shall be deemed to have taken place at the date we store or arrange storage of the Goods.
- 5.5 Any costs or expenses incurred in relation to storage, including related insurance, of Goods pending delivery are payable by you.

## 6. Goods and Services Tax

Unless otherwise stated, all amounts and prices provided in an Estimate, any accepted purchase order or otherwise are exclusive of any taxes, duties or levies (including GST). Where the service provided is subject to any taxes, duties or levies (including GST), it will be added and charged to you.

## 7. Price increases

- 7.1 Amounts and prices stated on any Estimate are those at the date of the Estimate. If you require any changes to the Estimate which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Estimate, or if those inputs increase in cost before acceptance or during the currency of our contract, any increase in those amounts are for your account and will increase the price accordingly.
- 7.2 Where a price estimated by us is an estimate only and you will agree to pay us the amount claimed by us on completion of the Services, which amount may vary from the estimated amount and which amount will be based upon the actual work done and materials supplied by or on our behalf.
- 7.3 Where you have requested us to prepare for the provision of an Estimate or Services which requires us to disassemble any goods or property belonging to you, then you agree that in the event that an Estimate is rejected, the goods or property will not be reassembled by us, unless you have agreed to pay us for the reassembly of those Goods or Owner Property.

## 8. Non-Returnable Goods

The following will not be returnable under any circumstance - Goods which are:

- (a) custom made per your specifications, non-standard Goods or Goods made to special orders;
- (b) not in their original shape, form or condition;
- (c) damaged by abnormal use, faulty maintenance or when Goods have not been used or maintained according to the manufacturer or our instructions;
- (d) returned by someone other than you (as the original buyer);
- (e) expressly sold on a non-return basis;
- (f) not installed by us and are damaged during the installation or fitting process; or
- (g) any electrical or electronic parts.

## 9. Accounts and interest

- 9.1 Unless otherwise agreed, all accounts must be paid in full strictly within seven (7) days of the date of issue.
- 9.2 If our accounts are not paid in full by their due date, we may charge you interest on the unpaid amount at the rate of eleven percent (11%) per annum.

## 10. Outstanding accounts

- 10.1 If any account remains outstanding for a period of thirty (30) days or more, without limitation to any other rights and remedies we may have, you hereby charge in our favour any real or personal property in which you have an interest with payment of any outstanding account (Charge) and you irrevocably authorise us to lodge caveats to notify and protect that Charge in relation to any real property in which you have an interest at your cost.
- 10.2 If an account remains outstanding for more than forty five (45) days, you authorise us to provide your particulars and the particulars of the unpaid debt to any credit reporting agency to have the default in payment listed.
- 10.3 All costs and disbursements incurred by us in recovering payment of any overdue account or in enforcing our rights under these Terms, including without limitation, legal costs on a solicitor and client basis, are payable by you (Recovery Costs).
- 10.4 We may retain any documents or Goods held on your behalf pending payment of any outstanding account.

## 11. Retention of title

- 11.1 We reserve the following rights in relation to all Goods provided by us until all amounts owing by you to us in respect of those Goods are paid in full:
  - (a) ownership of the Goods;
  - (b) to enter your premises (or the premises where the Goods are located) without liability for trespass or any resulting damage to retake possession of the Goods; and
  - (c) to keep or resell any of the Goods so repossessed.
- 11.2 You agree to:
  - (a) hold the Goods as a bailee for us;
  - (b) keep the Goods separate from other goods; and
  - (c) label the Goods (or not remove labels) so that they are identifiable as our Goods.
- 11.3 In respect of the resale of the Goods pursuant to this clause 11, we will apply the net proceeds of sale firstly towards the payment of the unpaid invoice with respect to those Goods, then towards any other unpaid invoices, then towards Recovery Costs and if there is any surplus, the surplus will be paid to you. If there is a deficiency, we may recover the deficiency from you as a debt.
- 11.4 You are at liberty to sell the Goods in the ordinary course of business, provided that the money resulting from the sale will:
  - (a) be held in a separate account in trust for us;
  - (b) not be mingled with other monies; and
  - (c) not be placed into an overdrawn account.
- 11.5 If you use the Goods in some manufacturing or construction process whether for you or a third party, then you agree to hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for us. Such part will be deemed to equal in dollar terms to the amount owing by you to us at the time of receipt of such proceeds.

## 12. PPSA Registration

- 12.1 You agree that all Goods supplied to you by us will be subject to a security interest as that term is defined in the Personal Property Securities Act 2009 (PPSA) and will treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- 12.2 Accordingly, you grant us a security interest in the Goods and in any proceeds arising from the sale of the Goods or in any accessions in the Goods or if the Goods become an accession, the accession and the Goods, to secure your obligations to us including, but not limited to, your obligation to make payment for the Goods.
- 12.3 You are responsible for all costs incurred by us in registering our interest under the PPSA and all costs of enforcement however, we may choose to waive this.
- 12.4 You agree not to create or allow another interest in the Goods.
- 12.5 If we, pursuant to the PPSA, take all or any of the Goods in satisfaction of your obligations to us you agree that you will remain liable to us for the difference between the market value of the Goods at the time they are first able to be sold by us free from all rights and interests of you and other persons and the amount of your obligation for which you are in default.
- 12.6 You agree that, to the maximum extent possible, you forever waive at law the following rights under the PPSA to the extent that the law permits:
  - (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (i) we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
    - (ii) sections 142 and 143 are excluded;
  - (b) For the purposes of section 115(7) of the PPSA, we need not comply with sections 132 and 137(3);
  - (c) If the PPSA is amended after the date of these terms to permit either party to agree to not comply with or to exclude other provisions of the PPSA, we may notify you that any

of these provisions are excluded, or that we need not comply with any of these provisions, as notified to you by us;

- (d) You agree not to exercise any rights to make any request of us under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section;
  - (e) any rights to receive any notice that is required by:
    - (i) any provision of the PPSA (including a notice of a verification statement); or
    - (ii) any other law before a secured party or Receiver exercises a right, power or remedy; and
  - (f) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.
- 12.7 If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits us or any Receiver from giving a notice under the PPSA or any other law.
- 12.8 You must immediately notify us of any change in your name, address, contact or personal details to enable us to register a financing change statement if required. In the absence of such notification, the address we hold in our records is deemed to be your relevant address.
- 12.9 You must not agree, encourage or allow any other entity to register a financing statement without our express written consent and you must notify us as soon as you are aware of any other person taking steps to register an interest in the Goods.

### 13. Termination

- 13.1 We may terminate any order at any time without cause and in our absolute discretion
- 13.2 You may only terminate an order with our consent and on terms which indemnify us from all costs and losses in respect of the order sought to be cancelled and pay such amounts within 7 days of the cancellation.
- 13.3 Subject to these Terms, on termination, that part of the price paid (if paid in advance) will be refunded to you within fourteen (14) days of the cancellation of the relevant order, less the costs and losses associated with that order.

### 14. Advice and Information

Any advice, recommendation, information, assistance or service given by us in relation to Goods sold or manufactured by us or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability and we do not accept any liability or responsibility for any loss suffered from reliance on such advice, recommendation, information, assistance or service.

### 15. Release and indemnity

- 15.1 You hereby release and indemnify us and agree to forever keep us indemnified from any loss, cost, damage, liability, or expense, including indirect, consequential and special losses (including loss of use, enjoyment, income or profit), and against all actions, suits, claims and demands against us arising out of loss or damage to the Owner Property,
- 15.2 In the event that the Goods are not for personal or domestic use (and not covered by the Australian Consumer Law) and to the maximum extent possible, you hereby release and indemnify us and agree to forever keep us indemnified from any loss, cost, damage, liability, or expense, including indirect, consequential and special losses (including loss of income or profit), that we may incur in relation to you or any third party, where the loss, cost, damage, liability or expense is caused by or contributed to by the Goods, any defect of fault in workmanship or design or their use or for any other reason whatsoever. You acknowledge and agree that no such loss, cost, damage, liability or expense is reasonably foreseeable other than those stated/limited in clause 18.
- 15.3 We endeavour to keep delivery dates, however where a delivery is delayed for any reason whatsoever, you will not be entitled to claim for any loss or damage (whether direct, indirect, consequential or special), or cancel, rescind or terminate the agreement.
- 15.4 This indemnity applies to Goods we have supplied, that are on loan to you, or are in your possession for demonstration or training purposes.

### 16. Risk and insurance

- 16.1 Risk of damage to or loss of the Goods the subject of an order passes to you immediately upon dispatch from us, that is, whilst on transit for delivery to you or where we are storing the Goods for you pursuant to clause 5 at the date we store or arrange storage of the Goods for you.
- 16.2 Any Owner Property in our possession, custody or control for whatever purpose remains at your risk as regards loss and damage and you agree to effect and maintain appropriate insurances against such loss and damage.
- 16.3 You will be liable for and must maintain at your own cost a policy of insurance with a reputable insurer to cover all such risks as may reasonably arise including damage to the Goods or any Owner Property, public liability for all Goods which are on loan to you or in your possession for the purpose of demonstration or training. In relation to public liability such insurance shall be for an amount not less than \$10,000,000.

### 17. Warranties

- 17.1 We do not provide any warranties in relation to any Goods. The only warranties in relation to the Goods are those of the manufacturer and not us and to that end, the rights in any manufacturer's warranty are required to be assigned to you, to the extent possible, they are assigned and title passes with the Goods subject to these Terms.
- 17.2 Any warranty or condition which would otherwise be implied in any agreement between us or in these Terms (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise) is expressly denied and is excluded to the maximum extent permitted by law.
- 17.3 To the maximum extent permitted by law, we do not warrant or guarantee the quality or workmanship or fitness for purpose of any Goods. Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. Any warranties provided in relation to Goods are those of the manufacturer.

### 18. Contractual limitation of liability

To the extent permitted by law, and notwithstanding Clauses 15 and 17, our liability to you in respect of any cost, damage, liability, expense or loss (including those caused or contributed to by our negligence or breach of any condition or warranty) is limited to, at our absolute discretion:

- (a) replacement of the Goods or the supply of equivalent goods;
- (b) repair of the Goods supplied;
- (c) repay the purchase price to the extent payment has been received from you;
- (d) payment of the cost of replacing, repairing or acquiring equivalent goods;
- (e) supplying the Services again; or
- (f) payment of the costs of having the Services supplied again.

### 19. Force majeure

Each of us will be released from our respective obligations under the Terms (except your obligations as to payment and indemnity) in the event of national emergency, war, prohibitive governmental regulations or where any other cause beyond the reasonable control of either you or us, including (but not limited to) strike, riot, lockout, trade disputes, rebellions, fire, acts of God, shortages of raw materials, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems for a period of seven (7) days or more renders provision of the Goods the subject of an accepted Estimate or purchase order impossible.

### 20. No agency

You are not, and will not hold yourself out as being, our agent.

### 21. General

#### Information

- 21.1 Further, you expressly consent to us using any personal information or any other information we hold on you for the purposes of investigating your creditworthiness, including but not limited to conducting a credit check on you.

#### Notices

- 21.2 All notices required or permitted to be given under our Terms must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in communications between us from time to time.

#### No waiver

- 21.3 No right under our Terms will be waived except as expressly agreed in writing and signed by us. We will not waive a right if we grant an extension or forbearance to you.
- 21.4 A waiver by us of any matter does not prejudice our rights in respect of any subsequent or other matter. Any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.
- 21.5 These Terms may only be amended in writing signed by each of us.

#### Independent legal advice

- 21.6 You acknowledge that you have had adequate opportunity to obtain independent legal advice as to the meaning and effect of our Terms before they were accepted.

#### Entire agreement

- 21.7 The Terms apply to all transactions (including any future supplies of Goods and/or Services) between us and you and supersede any previous agreements between us and embody the entire agreement in relation to any accepted Estimate, offer, order or sale or any other arrangement between us (except that other arrangement is governed by specific terms identified in a separate signed agreement between us in relation to that other arrangement).
- 21.8 Any previous correspondence, negotiations or representations between us do not bind either us or you and neither we nor you can rely on them.

#### Delegation

- 21.9 We may delegate or sub-contract the performance of any obligation or assign the benefit of this agreement in our absolute discretion.

#### No assignment

- 21.10 You may not assign the benefits or obligations under any agreement with us to any entity without our consent, which may be withheld in our absolute discretion.

#### Severance

- 21.11 If (but for this clause) a provision of the Terms would be illegal, void, unenforceable or contravene any law, the Terms are to be varied so as to give effect to the intention of the Terms or severed without affecting the enforceability of the other provisions and failing that, the offending provision is to be interpreted as if the provision was omitted.

#### Disputes and arbitration

- 21.12 All questions, disputes or differences which arise between us with respect to these Terms or its subject matter are to be referred to a single arbitrator in accordance with the provisions of the *Commercial Arbitration Act 1984* (NSW) or any re-enactment or statutory modification of that law for the time being in force.

#### Governing law and jurisdiction

- 21.13 These Terms and the transactions contemplated by them are governed by the law of New South Wales, Australia.
- 21.14 We each irrevocably submit to the jurisdiction of the courts of New South Wales, Australia and all courts called to hear appeals from the courts of New South Wales in respect of the Terms or its subject matter.

### 22. Acceptance

- 22.1 By signing below, the person signing warrants that they have authority to enter into this agreement (both personally and as the duly authorised agent for the owner of the Owner Property) and to accept these terms and conditions on their behalves.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_