



## Terms and Conditions of Sale and Service

### Pre Amble

Below are the standard conditions of service and sale, these conditions are sourced from the Boating Industry Association BIA.

### 1. DEFINITIONS:

“**Customer**” means Customer or his/her agent;

“**Deposit**” means the sum prepaid by the customer

“**Goods**” means the physical property, vessel, trailer and fittings.

“**Papers**” includes any certificates of classification, survey, mechanical engineering

“**Progress Payments**” means the payments set out in the sales contract or other documents.

“**Provider**” means North Coast Boating

“**Total Contract Amounts**” means the sum as the total contact amount on the sales contract, or as agreed in writing, email, fax etc.

“**Storage Charges**” means the daily rate stipulated on the contact or any other communication, email, fax, text message etc.

“**Works**” means the work specified under “Customers Service Request” at Item D in the Schedule of this Contract and “Provider’s Notes/Estimate” at Item E in the Schedule of this Contract.

### 2. PAYMENT

2.1. It is an essential term that the Customer in consideration for the Works undertaken by the Provider must pay to the Provider, noting time is of the essence:

(a) the Deposit on account of the Works on or before the acceptance of this agreement by the Provider;

(b) Progress Payments (if any) on or before the dates set out in the sales contract

### 3. STORAGE COSTS

3.1. The Customer must pay to the Provider any Storage Charges reasonably incurred calculated daily for each day that the Customer leaves the Goods with the Provider.

3.2. All Storage Charges shall be immediately due and payable by the Customer upon presentation of a Tax Invoice in accordance with the terms of the Provider’s Tax Invoice.

### 4. LIEN

4.1. In consideration for any Works, the Provider shall have a lien over the Goods for the payment of all monies due to the Provider under this Contract.

### 5. RETENTION OF TITLE

5.1. Title to and in any Goods, materials or parts supplied or delivered by the Provider to the Customer shall not pass to the Customer, but shall remain with the Provider, until such time as full payment is made and received in cleared funds by the Customer for the Works or Goods and all other amounts owing to the Provider by the Customer have been paid in full, whether such amounts are payable under this or any other contract or agreement between the Provider and the Customer.

5.2. Until title to the Goods passes to the Customer, the Customer acknowledges and agrees to hold the Goods delivered to it by the Provider as bailee.

5.3. Notwithstanding any other provision of these Terms and Conditions, the Customer may sell any Goods to a third party in the ordinary course of the Customer’s ordinary business and deliver them to that third party, provided that:

## Terms and Conditions of Sale and Service

(a) Where the Customer is paid by that third party, the Customer shall hold and shall be deemed to hold the whole of the proceeds on trust for the Provider;  
and

(b) Where the Customer is not paid by that third party, the Customer agrees to assign, at the option of the Provider, its claim against that third party to the Provider upon receiving notice from the Provider that it requires such assignment.

5.4. Until title in such Goods passes to the Provider or the Goods are sold by the Customer to a third party:

a) The Customer agrees to hold and shall hold the Goods as a fiduciary for the Provider;

(b) The Customer agrees to store the Goods and shall store the Goods in a manner which clearly indicates that the Goods are the property of, and that title to it, remains with the Provider;

(c) Notwithstanding that the title to the Goods remains with the Provider, the Customer agrees to hold and shall hold the Goods at its risk and be liable to compensate the Provider for all loss or damage sustained to the Goods whilst it is in the Customer's possession or control;

(d) until such time as the Customer has paid all sums owing to the Provider whether under this or any other contract or agreement, the Provider has the right to call for or recover the Goods, the Customer agrees that the Provider may in its absolute discretion enter upon the Customer's premises and retake possession of the Goods and the Customer hereby irrevocably authorises and directs the Provider's representatives or agents to enter onto the Customer's premises during operating hours in order to repossess the Goods in the event that the Customer fails to make any payment when it is due, or commences to be wound up, or is placed under official management, or a receiver or manager is appointed to the Customer, or any amount in respect of Goods supplied by the Provider is in the Provider's opinion in jeopardy.

(e) For the purposes of facilitation of Clause 5.4(d) the Customer shall raise no objection to the Provider or its representatives' entry onto the Customer's premises or to the repossession of those goods whether in the law of theft or trespass. Where the Customer locks or otherwise would prevent the Provider from retaking possession of its goods, the Customer acknowledges Clauses 5.4(d) and 5.4(e) applies.

5.5. The provisions of this Retention of Title clause apply notwithstanding that the Provider may have allowed credit to the Customer.

5.6. The parties acknowledge that this Retention of Title Clause constitutes a chargeable security interest and a Purchase Monies Security Interest ("PMSI") in favour of the Provider pursuant to the *Personal Property Securities Act 2009* (Cth) ("PPSA").

### 6. SPECIFIC SECURITY INTEREST OVER THE GOODS

6.1. In consideration for entering into this Contract, the Customer as the beneficial owner states that it is absolutely entitled to grant this security interest and hereby charges in favour of the Provider all of its personal property present and future and wheresoever situated with the payment to the Provider of all monies secured by the Contract. Such security interest shall be a non-circulating and specific security interest and a circulating security interest on all other personal property of the licensee.

### 7. PRIVACY ACT WAIVER

7.1. Pursuant to Section 18E of the *Privacy Act 1988* (Cth) the Customer authorises the Provider in waiver of the Customer's rights to make confidential enquiries of and obtain information from finance providers, bankers, insurers, registration authorities, government authorities, Roads and Maritime Services, courts and police with respect to the Goods, their status, title, condition and with respect to the Customer and the Customer's legal status including any proceedings against the Customer and/or the Goods, and any indebtedness of the Customer and/or the Goods as to any specific credit debt and credit generally and to

## Terms and Conditions of Sale and Service

obtain information including but not limited to a payout figure, daily rate of interest, the nature of any security or finance interest claimed over the Goods or with respect to the Customer.

7.2. The Customer authorises the Provider to communicate to and receive from the said persons and entities what would otherwise be confidential information concerning the Customer's indebtedness and the indebtedness of the Goods for the purposes of this Contract including securing payment or repayment as the case may be for the Goods, discharge of indebtedness and remuneration of and payment to the Provider and/or the Provider's costs and expenses including but not limited to legal costs and expenses under this Contract.

### 8. PPSA FACILITATION

8.1. For the purposes of this paragraph:

(a) "**Financing statement**" has the meaning given to it by the PPSA;  
(b) "**Financing change statement**" has the meaning given to it by the PPSA;  
(c) "**Security Contract**" means the security Contract under the PPSA created between the Customer and the Provider whether described as a security interest, charge or other expression herein and without limiting those other expressions; and (d) "**Security interest**" has the meaning given to it by the PPSA and without limiting the meaning in the PPSA includes this document however described.

8.2. The Customer agrees that its execution of the respective parts of this Contract and the provisions set out herein constitute a security Contract for the purposes of the PPSA and create the security interests as set out in the respective executed document.

8.3. The Customer shall indemnify or pay the Provider at the Provider's sole discretion for all expenses incurred or to be incurred in registering a financing statement or financing change statement in the PPSR or releasing any interest thereunder.

8.4. The Customer shall not create or cause or set in chain to be created a financing statement or financing change statement in respect of a security interest without the prior written consent of the Provider.

8.5. The Customer shall not register, cause to be registered or do any action or execute anything which may enable the registration of a financing statement or a financing change statement in relation to the Personal Property secured herein in favour of a third party without the prior written consent of the Provider.

8.6. The Customer shall immediately advise the Provider of any material change in its business practices, corporate structure, directorship, shareholdings, financial structure or solvency which would otherwise jeopardise the security interests of the Provider.

8.7. The Provider and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to any security interest created by this Contract.

8.8. The Customer hereby waives the Customer's rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

8.9. The Customer hereby waives its rights as a grantor and/or a debtor pursuant to sections 142 and 143 of the PPSA.

8.10. The parties agree that the Customer is the debtor for the purposes of section 275(6)(a) of the PPSA and that the parties shall not disclose information of the kind mentioned in section 275(1) of the PPSA. This clause constitutes a confidentiality Contract for the purpose of section 275(6)(a) of the PPSA.

**9. MANUFACTURER'S WARRANTY REPAIRS**

9.1. The Customer must pay for any inspection, examination, and or Works undertaken which may be deemed by the manufacturer of the Goods to works which are not subject to the manufacturer's warranty (if any).

9.2. The Provider does not offer any warranty either implied or written on any product other than that offered by the manufacturer, in the event that the customer has a warranty issue the Provider will assist in resolving this issue and obtain the Manufacturers approval to perform any remedy, the customer acknowledges that that it is the manufacturer of the product who has approval of the rectification of any defect.

9.3. In the event that the issues is not rectified to the customers satisfaction and the customer wishes to pursue the manufacturer, the customer will pay the providers expenses, including but not limited to, Legal, Travel, Accomodation.

9.4. The customer agrees that they will hold the provider harmless for any defect that is in the control of the manufacturer.

**10. SLIPPING AND MOVEMENT:**

10.1. Where the Goods include a vessel, the Customer authorises the Provider to move the vessel from its mooring, Trailer, or berth to the Provider's slipway, yard and for return to the mooring, trailer or berth, at the cost and risk of the Customer.

The customer further authorises the Provider to two, or move the boat to the water for the purposes of water testing, and agrees that this is at the owners risk.

**11. INDEMNITY AND INSURANCE**

11.1. The Customer must indemnify and keep indemnified the Provider against:

(a) loss of or damage to the Goods; and

(b) claims by any person against the Provider in respect of personal injury or death or loss of or damage to the Goods arising out of or as a consequence of the carrying out by the Provider of the Works and to the extent that any act or omission of the Customer contributed to the loss, damage, death, or injury except where such death or personal injury occurred as a direct result of the wilful negligence of the Provider.

11.2. The Customer warrants to the Provider that the Customer holds and shall keep current insurance cover sufficient to indemnify any loss and damage caused referred to in clause 11.1.

**12. AUTHORITY AND COVENANTS**

12.1 The Customer hereby certifies that it is the legal and beneficial owner or duly authorised agent of the owner of the Goods and that the Customer shall be personally liable for all fees, amounts, costs, claims, cross claims, contribution claims or liabilities of whatsoever nature arising out of this Contract. The Customer undertakes to pay all such moneys on demand.

12.2 The Customer states as an essential term of this Contract that the Goods is not the subject of any defect notice, registration cancellation, suspension, levy of debt, proceeds of crime order, injunction, charging order, seizure, confiscation or similar and is not stolen or otherwise illegally obtained or held, nor are there any proceedings against the Customer or the Goods with respect to defect notice, registration cancellation, suspension, levy of debt, proceeds of crime, injunction, charging, seizure, confiscation or similar.

12.3 The Customer covenants that the Goods have not had any alterations or changes its serial number, hull identification (boat code) number or other registration or identification number.

12.4 The Customer covenants that the Goods have not had any alterations or changes to any Australian compliance plate or manufacturer's plate or similar attached to the Goods.

12.5 The Customer covenants that the Goods are of genuine and original trim level, badging and specification ex-manufacturer and has not been modified or built up except as disclosed by the Customer in this Contract.

## Terms and Conditions of Sale and Service

12.6 The Customer covenants that any accessories fitted or existing defects to the Goods are as stated under the headings "Accessories Fitted" and "Existing Defects in Goods" and that there are no other defects whether patent or latent (obvious or not to the naked eye) except those disclosed by the Customer under the heading "Existing Defects in Goods".

12.7 The Customer covenants that any papers, receipts, invoices, log books or service history (the Papers) provided with the Goods are records for the Goods provided under this Contract and are genuine records and that the works, maintenance, and repairs set out in the records were in fact carried out.

12.8 The Customer and Provider covenant to each other that if they are a natural person, they are not insolvent, not bankrupt, has not committed any act of bankruptcy, has not entered into a Personal Insolvency Agreement (PIA), Part X Arrangement under the *Bankruptcy Act 1966* (Cth) or any composition or debt agreement with creditors, is not the subject of receivership.

12.9 The Customer and Provider covenant to each other if a corporation however incorporated that the corporation is not insolvent, has not committed any act of insolvency, is able to pay its debts as and when they fall due, has not entered into any arrangement or other composition or debt agreement with creditors, is not in liquidation, is not in receivership, is not under official management nor under external administration.

12.10 The Customer and Provider covenant to each other that they individually are not subject to any legal proceedings however described, has not received any statutory demand for payment of debt, has not received any Statement of Claim, Summons, Interim Order or Interim Injunction and is not the subject of any legal proceedings however described.

12.11 Where a natural person signs for themselves and/or a representative signs on behalf of an individual, trust, estate, or corporation however that individual, trust, estate or corporation is described, the natural person or representative whether under a power of attorney, company authorised officer in writing or other authority or agency instrument declares that they have full knowledge of all relevant matters given by them in this Contract and that they have full authority to bind the natural person, individual, trust, estate or corporation and that their authority or agency however described has not been revoked or limited in any way and that they act with the express consent of their principal, board of directors or legal personal representatives however described.

### 13. NOTICES

13.1. Any notice to be served hereunder shall be duly served if delivered personally to the other party or sent through the post in a prepaid envelope addressed to that party, or sent by electronic media (email and text) at its address set out in this Contract or any other address notified by one party to the other in writing as being its address for service of notices and any notice sent through the post shall be deemed to have been duly served at the time when such letter would in the ordinary course of the post be delivered.

13.2. The Customer agrees to notify the Provider of change of address and contact details within 7 days.

13.3. For the purposes of interpretation of this Clause and for any legal proceedings, the provisions of the *Evidence Act 1995* (Cth) shall prevail.

### 14. DEFAULT

14.1. In the event of the Customer's default of the Contract, the Provider may appoint a receiver and or manager of the Customer as the case may be without derogating from its other rights under this Contract.

14.2. The Customer irrevocably appoints the Provider and any receiver or manager appointed by the Provider to be the Customer's joint and several attorneys to execute, sign and perform in its name and on its behalf all Contracts, instruments, acts and things whatsoever which the Customer is required or reasonably expected to execute, sign and perform under the covenants contained in this Contract and generally to use

## Terms and Conditions of Sale and Service

to use the Provider's name in the exercise of all or any of the powers conferred on the Provider or any receiver or manager appointed by the Provider.

14.3. Notwithstanding the Provider's rights under clause 14.1 and 14.2 above, the Customer authorises the Provider to take possession of the Goods on default in payment of an account and authorises the Provider to sell the Goods either by public or private sale if the account remains unpaid for 21 days after demand for payment has been made in writing by the Provider to the Customer. Any such taking of possession shall be at the cost and risk of the Customer including all costs of storing the Goods and any expenses and costs including but not limited to Legal Costs and expenses shall be a debt due and owing to the Provider. The Provider may and the Customer authorises the Provider to collect out of any sale or settlement proceeds however described the costs and expenses of taking possession and sale and the Customer charges to the Provider under this Contract those costs and expenses against the Goods and the Customer. The Provider will pay the Customer any funds remaining from the net sale proceeds of the Goods after all debts owed to the Provider have been discharged.

14.4. Notwithstanding any of Provider's rights under clause 14.1 to 14.3 inclusive, the Customer appoints the Provider as the Customer's attorney to sign any document required to transfer ownership of the Goods on the sale of such Goods arising from any default hereunder and to execute any document required under the *Personal Property Securities Act 2009* (Cth) (PPSA), *Corporations Act 2001* (Cth) and/or any applicable ASIC Form and/or any applicable registration Transfer or other applicable form under Marine Goods Registration, Australian Shipping Register and/or Licensing Legislation and/or any finance encumbrance bank building society of finance company (or similar) documentation.

14.5. Where the Goods are under finance or encumbrance, the Customer covenants that the Customer is not in default or arrears of any term of any applicable finance or encumbrance Contract and that the encumbrance or finance provider as the case may be is aware of and consents to this Contract.

14.6. The Customer authorises the Provider to undertake and the Customer agrees to pay to the Provider whether in advance or in arrears at the discretion of the Provider for searches undertaken of the Personal Property Securities Register (PPSR) maintained under the PPSA, insurers, registration authorities, government authorities, Roads and Maritime Services, courts and police for the purposes of ascertaining as to the Customer's and the Goods status, applicable finance, encumbrances or other noted items in the PPSR and relevant information as to title and condition concerning the Goods.

### **15. TERMINATION**

15.1. The Provider may forthwith terminate this Contract by written notice to the Customer without any penalty if the Customer breaches an essential term of this Contract.

### **16. VARIATIONS**

16.1. This parties may only amend this Contract by written agreement.

### **17. ACCURACY OF INFORMATION**

17.1. All information contained in this Contract is true, correct and accurate in all material respects to the best of the Parties' knowledge, and is not misleading because of any omission or ambiguity or for any other reason.

### **18. WHOLE CONTRACT**

18.1. This Contract constitutes the whole agreement between the Provider and the Customer in relation to its subject matter and the Customer warrants that it has not relied upon any statement, representation or warranty made by the Provider or its servants or agents which is not expressed in this Contract except those that are permitted by law.

18.2. The Goods are provided by the Provider and purchased by the Customer on an "as is and where is" *caveat emptor* basis. Any warranty or representation (other than a statutory guarantee under the *Australia*



## Terms and Conditions of Sale and Service

*Consumer Law* similar if applicable) as to the Goods' state or condition is hereby excluded.

### 19. SEVERABILITY

19.1. If any term, agreement or condition of this Contract becomes illegal, invalid or unenforceable in any jurisdiction, it will be severed and none of the remaining terms, agreements, conditions or applications in any other jurisdiction will be affected.

### 20. TIME IS OF THE ESSENCE

20.1. Time is of the essence in this document in respect of any obligation to pay monies.

### 21. GOVERNING LAW

21.1. This Contract shall be governed by and construed in accordance with the laws in the State or Territory:

- (a) in which the agreement was executed (if executed in the same State or Territory); or
- (b) in which the majority of the agreement is performed (if the agreement is executed in counter-parts in different States or Territories),  
and the parties agree to submit to the jurisdiction of the courts and tribunals of that State or Territory.

### 22. INTERPRETATION

22.1. If anything in this Contract is unenforceable, illegal or void then it may be severed and the rest of this Contract shall remain in force with any necessary interpretive amendments being made. Where there is a minor defect in the form of execution or completion of this Contract or any variation or document executed pursuant to this Contract, this Contract or any variation or document executed pursuant to this Contract shall still have full effect and validity notwithstanding the minor defect in form or execution.

22.2. In the interpretation of this Contract or any part of it, no rule of construction shall apply to the disadvantage of any party on the basis that a party:

- (a) Prepared this Contract or any part of it, or any amendment thereto;
- (b) Seeks to rely on this Contract or any part of it or any amendment thereto.

### 23. ACCOUNTS

23.1. All accounts and/or invoices rendered by the Provider to the Customer are on the basis of "errors and omissions excepted" ("E & OE") and may be amended subsequently notwithstanding any error or omission and the parties hereto shall be responsible to pay or be credited such properly amended account and/or invoices.

### 24. ASSISTANCE AND GOOD FAITH.

The parties to this Contract agree to do all things, take all steps necessary and execute all relevant documents to give commercial effect to this Contract. The parties shall act honestly and in good faith to achieve the commercial intention of this Contract.

### 24. PURCHASE SUBJECT TO FINANCE.

Where a sales contract is "Subject to Finance" this means the pre-approval of the customer by a financial institution to provide finance for the purchase, once this point approval has been received the contract is unconditional and the customer may not cancel the contract for any reason, if the customer has ordered a new boat that has to be purchased especially for them, it is the customer's obligation to ensure that finance is available and that should the transaction not complete the customer acknowledge and agrees that they forfeit any deposit paid and the Provider has the right to pursue them for full payment. If full payment is not received within 90 days the Provider can dispose of the product any way they wish and the customer shall have no rights or ownership of the product.



## Terms and Conditions of Sale and Service

### **25. PURCHASE OF NEW PRODUCT AND OR SERVICES.**

Where the customer purchases new (and or used product being sold by the provider) on signing the sales contract they are agreeing to these terms and conditions, and unless explicitly detailed on the contract shall not be subject to cancellations, in the event that the customer does not take delivery of the stated products and or services they acknowledge that any deposit paid shall be forfeit and that the provider may pursue them for the full amount of the contract.