

TERMS AND CONDITIONS OF BUSINESS

The customer's attention is drawn in particular to the provisions of clause 9

1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

Approximate Delivery Date: the delivery date as specified in the Order, as then updated and notified to the Customer from time to time pursuant to clause 8.3.

Boat: the boat as described in the Order (and if more than one boat is described in the Order then "Boat" shall mean each boat respectively).

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.7.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Boat in accordance with these Conditions.

Customer: the person or firm who purchases the Boat from the Supplier.

Deposit: the amount payable by way of deposit, as specified in the Order.

Force Majeure Event: has the meaning given in clause 10.

Order: the Customer's order for the Boat, as set out in the Customer's purchase order form.

Specification: the specification for the Boat, including any related plans and drawings, as provided to the Customer by the Supplier in the Order (as such specification may be updated by the Supplier from time to time).

Supplier: IT SHOULD BE FUN LIMITED (registered in England and Wales with company number 09749080).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes emails and any reference to notice to be given, is to be construed as a notice to be given in writing.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order and payment of the Deposit constitutes an offer by the Customer to purchase the Boat in accordance with these Conditions. The offer as so made will only be accepted after written acceptance has been issued by the Supplier in accordance with clause 2.3 below. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order (the "Acceptance"), at which point the Contract shall come into existence unless the Supplier shall receive written notice from the Customer that it does not wish to proceed, within 14 days of issue of the Acceptance in which case the Deposit will be returned. Prior to the Contract coming into existence in accordance with this clause, there shall be no Contract between the Supplier and the Customer save to give effect to the provisions of clause 2.4 below.

2.4 If the Supplier does not issue the Acceptance referred to in clause 2.3 on or before the date that is 6 months after the date that the Deposit is paid, the Supplier shall return the Deposit. The Supplier shall have no other obligations on any account whatsoever to the Customer, unless and until it shall issue the Acceptance referred to in clause 2.3.

2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.6 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Boat described in them. They shall not form part of the Contract or have any contractual force.

2.7 In the event of any conflict between the Order and these terms and conditions, these terms and conditions shall prevail.

3. Boat

3.1 The Boat is described in the Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

4.1 Any time given by the Supplier for the delivery of the Boat will be given in good faith but is not guaranteed. Any such time will be approximate only, and the time of delivery is not "of the essence". The Supplier will not be responsible for any delay in delivery unless it arises from the Supplier's willful default or gross negligence.

4.2 The Supplier shall use best endeavors to give the Customer at least 14 days' notice of the Approximate Delivery Date and place of delivery and at least one day's notice of the actual delivery date and place of delivery. The Customer shall either: (a) collect the Boat from the Supplier's premises at such location as is advised by the Supplier within 3 Business Days of the actual delivery date; or (b) the Supplier shall deliver the Boat to the Customer to such location as the Customer shall advise but always at the Customer's cost and risk and provided that transportation costs are pre-funded (or paid by the Customer direct).

4.3 Without prejudice to clause 4.1, the Supplier shall not be liable for any delay in delivery of the Boat that is caused by a Force Majeure Event or the Customer's failure to pay any sums when due or to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Boat.

4.4 If the Customer fails to accept delivery of the Boat within three Business Days of the Supplier notifying the Customer that the Boat is ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

(a) delivery of the Boat shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which the Supplier notified the Customer that the Boat was ready; and

(b) the Supplier shall store the Boat until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.5 If 10 Business Days after the day on which the Supplier notified the Customer that the Boat was ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Boat and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Boat or charge the Customer for any shortfall below the price of the Boat.

5. Quality

5.1 The Supplier warrants that on delivery the Boat shall:

- (a) conform with the Specification in all material respects; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery (and in any event within 365 days of delivery) that the Boat does not comply with the warranty set out in clause 5.1, together with reasonable particulars of the defect/s in question;
- (b) the Supplier is given a reasonable opportunity to examine the Boat; and
- (c) the Customer (if asked to do so by the Supplier) returns the Boat to the Supplier's place of business at the Customer's cost,

the Supplier shall, if and to the extent that it shall accept that the defects specified in the notice are covered by the warranty in clause 5.1, at its option, repair or replace the defective Boat, or refund the price of the defective Boat in full. If the Boat is repaired, then the warranty in clause 5.1 shall apply only as regards that repair, for a maximum period of 90 days after the Boat is redelivered following such repair.

5.3 The Supplier shall not be liable for the Boat's failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) notice of the warranty claim is not given in accordance with clause 5.2;
- (b) the Customer makes any further use of the Boat after giving notice in accordance with clause 5.2;
- (c) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, use and maintenance of the Boat or (if there are none) good trade practice regarding the same;
- (d) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (e) the Customer alters or repairs the Boat without the written consent of the Supplier;
- (f) the defect arises as a result of:
 - (i) fair wear and tear and discolouration;
 - (ii) willful damage, negligence, or abnormal storage or storage in water or working conditions;
 - (iii) hitting submerged or floating objects or landing on a beach/slip way without retracting central foil and/or rudder;
 - (iv) pulling ropes where there is more than a 2 x block;
 - (v) improper transportation;
 - (vi) weather related events such as freezing, prolonged sun exposure, high winds or lightning; or
 - (vii) rental or commercial use.
- (g) the Boat differs from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Boat's failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Boat supplied by the Supplier.

6. Title and risk

6.1 The risk in the Boat shall pass to the Customer on delivery.

6.2 Title to the Boat shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Boat in which case title to the Boat shall pass at the time of payment of all such sums.

6.3 Until title to the Boat has passed to the Customer, the Customer shall:

- (a) store the Boat separately from all other property held by the Customer so that it remains readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Boat;
- (c) maintain the Boat in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events described in clause 8.1; and
- (e) give the Supplier such information relating to the Boat as the Supplier may require from time to time.

6.4 If before title to the Boat passes to the Customer the Customer becomes subject to any of the events described in clause 8.1, then, without limiting any other right or remedy the Supplier may:

- (a) have the Customer's right to resell the Boat or use it in the ordinary course of its business cease immediately; and
- (b) at any time:
 - (i) require the Customer to deliver up the Boat; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Boat is stored in order to recover it.



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7. Price and payment

- 7.1 The price of the Boat shall be the price set out in the Order.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Boat to reflect any increase in the cost of the Boat that is due to:
- any request by the Customer to change the delivery date or the Specification; or
 - any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Boat is exclusive of the costs and charges of packaging, insurance and transport of the Boat (if any), which shall be invoiced to the Customer.
- 7.4 The price of the Boat is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Boat.
- 7.5 The Supplier may invoice the Customer for the Boat in stages prior to delivery or on or at any time after delivery as specified in the Customer's purchase order form.
- 7.6 Unless otherwise agreed, the Customer shall pay each invoice in full, in cash or cleared funds, on the invoice date. Time for payment is of the essence. Payment deemed to be made when the Supplier receives cash or cleared funds at its bank.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4.0% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. Termination and suspension

- 8.1 If the Customer:
- becomes subject to any form of insolvency or (being an individual) bankruptcy event; or
 - ceases or suspends (or threatens to cease or suspend) business; or
 - is unable (or is deemed unable) to pay its/his debts as and when they fall due for payment; or
 - (being an individual) dies or becomes incapacitated,
- then in each case at any time as at and from such event, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer. In such case the Deposit shall be non-refundable and the Supplier shall owe no further obligations to the Customer.
- 8.2 Without limiting its other rights or remedies, the Supplier may suspend delivery of the Boat under the Contract if the Customer becomes subject to any of the events described in clause 8.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 The Supplier shall keep the Customer informed from time to time of the Boat's approximate/definite delivery date. If the Supplier anticipates that the actual delivery date may be materially different to the Approximate Delivery Date, then it may (but shall not be obliged to) by notice to the Customer:
- grant the Customer an option to terminate the Contract; or
 - terminate the Contract, whereupon the Contract shall be so terminated and the Supplier shall owe no further obligations to the Customer other than to return the Deposit and other amounts paid by the Customer prior to such termination.
- 8.4 The Customer shall, by notice to the Supplier, be entitled to terminate the Contract:
- by exercising an option to terminate granted in accordance with clause 8.3(a) provided that such exercise is notified to the Supplier within 14 days of such grant; or
 - for any other reason, prior to the Approximate Delivery Date, whereupon the remaining provisions of this clause 8 shall apply.
- 8.5 Upon notice of termination being received by the Supplier:
- pursuant to clause 8.4(a), the Supplier shall return the Deposit to the Customer in full; or
 - pursuant to clause 8.4(b), but more than 63 days before the Approximate Delivery Date, the Supplier shall return 50% of the Deposit less the amounts referred to in clause 8.6 (if any) and on the basis that if the Deposit is not sufficient to cover such amounts then the balance shall be payable by the Customer on the Supplier's first demand; or
 - pursuant to clause 8.4(b) but 63 days, or less than 63 days, before the Approximate Delivery Date, the Supplier shall be entitled to retain the Deposit and the Customer shall pay the amounts referred to in clause 8.6 (if any) in full on the Supplier's first demand.
- 8.6 Unless the Supplier shall terminate the contract in accordance with clause 8.3(b) or the Customer shall terminate the Contract in accordance with clause 8.4(a), the Customer shall pay the full cost of all accessories, parts and other construction materials purchased by the Supplier in respect of the Boat, prior to receipt of the cancellation notice.
- 8.7 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.8 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.9 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of liability

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - defective products under the Consumer Protection Act 1987; or
 - any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1 if the Customer is a partnership or company or acting in the course of a business or a commercial operation (a "Business Customer") then:
- no item supplied by the Supplier to a Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply the Business Customer has sufficiently

explained the purpose for which it is required and made it clear that he is relying on the Supplier's skill and judgement;

- no item specified by name, size or type by a Business Customer shall carry any such express or implied term but the Supplier will assign to the Business Customer any rights it may have against the manufacturer or importer of that item; and
 - the Supplier accepts no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied by the Supplier.
- 9.3 Subject to clause 9.1 and whether the Customer is or is not a Business Customer:
- the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 50% (fifty per cent.) of the price of the Boat.

10. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. General

11.1 Assignment and other dealings.

- The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

- Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the two Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 11.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 11.5 **Intellectual Property.** The Customer acknowledges that the "Flying Mantis" trademark and logo as well as the boat's shape, model and design (the "Supplier's IPR") are the sole and exclusive ownership of the Supplier. Purchase of the Boat does not constitute the grant of any rights whatsoever to the Customer over the Supplier's IPR. The Customer shall not copy, reproduce or use in any way whatsoever the Supplier's IPR without the Supplier's written consent and shall not contribute to, facilitate, abet, induce or otherwise cooperate with or take part in any third party infringement of the Supplier's IPR.

- 11.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 11.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

- 11.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

- 11.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

