

1. Applicable Terms and Acceptance of Order

These terms of contract between GENERAL MARINE SERVICES LIMITED (GMS) and the Customer (the **Customer**) shall apply to all orders for marine parts and accessories (**Goods**) purchased from GMS and any supporting workmanship for repair or installation or dealing with Insurance or Classification Societies (**Services**) accepted by GMS and that in the case of conflict or dispute these terms and conditions shall prevail and take precedence over any document or oral message from the Customer. Where GMS fails to enforce any terms or conditions under this contract GMS will not be deemed to have waived these rights with respect to any term or condition or right.

The Customer will contact GMS immediately should further information on an invoice for Goods or Services provided by GMS be required.

No agent, individual or representative of GMS is permitted to make any agreements, representations, conditions or warranties which are not expressly confirmed by GMS in writing.

2. Personal Property Securities Act (PPSA)

The Customer acknowledges that these terms constitute a Security Agreement as defined by s.36 of the Personal Property Securities Act 1999 (**PPSA**). For the purposes of the PPSA, Collateral shall include all and any Goods and Services sold by GMS to the Customer and the proceeds thereof. The Customer agrees to give GMS a security interest in all of the Customer's present and after-acquired property that GMS has supplied and not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of GMS. GMS may register a Purchase Money Security Interest over the Goods and Services and the Customer agrees to waive the right to a verification statement for the purposes of s.148 of the Personal Properties Securities Act.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until GMS has signed a release. The security interest granted in the Collateral has the same priority in relation to all and any Goods supplied to the Customer by GMS at any time.

The Customer shall inform its creditors of the terms upon which it buys Goods from GMS including that GMS may create and register a Purchase Money Security Interest over the Goods under the Personal Property Securities Act and that the Customer agrees to waive the right to receive a verification statement for the purposes of s.148 of the Act and shall also inform any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of GMS and title to the proceeds of sale.

3. Quotations and Price

GMS shall publish a price list of its Goods plus GST ruling at the time of the order or shall confirm the price of Goods and Services as a quotation and the Customer shall confirm acceptance by providing an order to GMS stating an order number or signing the quotation or sending an electronic confirmation to GMS. Quotations of Goods and Services shall be valid for thirty (30) days from the date of publication and GMS may withdraw any quotation before the Customer's signed acceptance. The quotation or price may be increased if GMS suffers any cost increases which are beyond its control in the supply, production and delivery of Goods (due to currency changes or supplier price increases or taxation and duties) between the date of contract (or where the contract arises from a quotation, the date of quotation) and the date of delivery, or if the Customer varies or alters the specifications or scope of the quotation or the requirements for the Goods or Services. All prices are exclusive of GST, insurance, freight and other handling charges unless specified in the quotation or the Customer electronic confirmation.

4. Payment

The Customer agrees to pay the quoted price of the Goods and the hourly rate or after hours rate for Services and comply with the payment terms stated in the quotation being one of the following:

- (i) deposit and final payment terms as negotiated
- (ii) full payment upon delivery/uplift
- (iii) full payment within seven (7) days of delivery
- (iv) full payment by the 20th of the month following delivery

The Customer shall make payment of all amounts due to GMS without any delay or deduction whether by way of set-off, counterclaim or otherwise.

The Customer agrees that GMS has sole discretion to apply payments from the Customer to any transaction or GMS invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

If at any time GMS reasonably deems the credit of the Customer to be unsatisfactory, it may require the Customer to provide at the Customer's cost, security for payment and/or GMS may suspend performance of its obligations under this contract until security is provided to its satisfaction and GMS may require the Customer to pay all costs incurred as a result of suspension and re-commencement of supply including legal and debt collection costs.

5. Interest for Late Payment

GMS may charge interest on any monies outstanding under this contract on a daily basis at a rate equal to 5% above the bank indicator lending rate of GMS. Interest is payable from the date payment was due until the date that GMS receives payment. The right of GMS to charge interest is without prejudice to its other rights or remedies for the Customer's default in failing to pay on the due date.

6. Delivery of Goods and Services

When GMS advises the Customer that the Goods and Services are completed shall constitute delivery. Delivery to the site designated by the Customer shall also constitute delivery. GMS will make every effort to ensure that Goods and Services are supplied on time, but will not be responsible for any loss to the Customer arising in any way from delays in delivery. The Customer agrees that where the Goods or Services are delivered in instalments each delivery will be regarded as a separate contract and subject to the same payment terms.

Delivery will be deemed to be accepted by the Customer unless the Customer notifies GMS within ten (10) days from the date of invoice. The Customer agrees that any employee or agent of the Customer who signs for delivery shall be authorised to accept delivery and GMS will not be held liable for missing Goods where a signature has proven delivery.

Where the Customer or its agents has arranged for the supply of plans, layouts or drawings for the installation of the Goods or application of Services OR where the Goods are to be applied to or mixed with second hand or existing goods being the property of the Customer, by declaration in the quotation, it shall be the sole responsibility of the Customer that supply is satisfactory for the purposes they are intended and if GMS uses such supply and incurs costs where supply is not fit for the purpose intended by the Customer, the Customer shall pay GMS for all costs incurred in GMS supply.

7. Claims for Goods Incorrectly Ordered

GMS reserves the right to allow claims for Goods that are incorrectly ordered by the Customer (provided that they are not made to order) by retaining twenty per cent (20%) of the invoice price as an administrative charge and handling fee. Claims for Goods incorrectly ordered will not be recognised by GMS unless the Goods are in original conditions and unless the Customer advises GMS within thirty (30) days of delivery.

8. Claims for Damaged or Defective or Deteriorated Goods

GMS, at its discretion, will repair or replace any damaged or deteriorated Goods meaning Goods that are not of merchantable quality or fit for the purposes described in its catalogue or published material or make a reasonable allowance on the purchase of goods to replace the Goods provided:

- (a) that the Customer contacts a GMS Representative and obtains authorisation prior to returning the Goods and that a copy of the invoice is sent with the claim and that the claim specifically identifies the damage or defect(s) within thirty (30) days of the damage of defect occurring; and
- (b) that GMS has reasonable opportunity to investigate the claim.

If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and GMS will not incur any liability whatsoever in relation to the Goods.

The Customer agrees that claims shall not be considered in respect of Goods which:

- (i) are not intact and in original condition and packaging unless installed by GMS,
- (ii) have been improperly stored causing damage or deterioration,
- (iii) have been altered in any way different to the conditions in which they have been supplied,
- (iv) have been mixed with or attached to other goods of the Customer by the Customer causing damage or deterioration to the Goods,
- (v) have not been used in accordance with GMS or manufacturer publications.

9. Claims for unsatisfactory workmanship or failed repair

GMS, at its discretion, will repair or replace any faulty goods installed by GMS or make good on work previously carried out by GMS that has failed or was unsatisfactory provided the following requirements are met:

- (i) the Customer contacts GMS in writing with a clear outline of the claim, within 7 days of the work being completed;
- (ii) all equipment that was installed, repaired or serviced is tested in accordance with GMS or manufacturer publications, which may include a sea trial attended by the customer or their appointed representative;
- (iii) no other service provider has worked on the equipment following the work GMS has performed;
- (iv) the equipment that was repaired or serviced by GMS has not been tampered with or used in a manner that may have caused damage not associated with the repair or service work done by GMS.

10. Risk, Ownership and Title

The Customer agrees that GMS has legal and equitable right to title in the Goods and value of Services and ownership shall only pass to the Customer when the invoice for all associated goods and or services is paid. As long as ownership in the Goods is retained by GMS the Customer will store the Goods separately and in such a way that they are identifiable as the property of GMS.

Regardless of ownership of the Goods by GMS the Customer agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods upon delivery and while in the possession of the Customer. This means that the Customer agrees to properly store, protect and insure the Goods under its risk policy. Failure by the Customer to properly protect and insure the Goods shall not absolve the Customer of the legal responsibility to GMS to pay for the Goods and value of Services in the event of fire, loss, damage or theft while under the care and responsibility of the Customer.

Notwithstanding that property in the Goods and value of Services is retained by GMS, the Customer is hereby authorised to use the Goods in the ordinary course of business but cannot alter the Goods or mix with or attach with other goods or property of the Customer without the written permission of GMS, and can only use or sell the Goods as the fiduciary agent and bailee of GMS until the Customer pays GMS in full without deduction or setoff.

In any event where Goods or Services remain unpaid by the Customer, GMS has unreserved right to enter the property of the Customer or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the Credit (repossession) Act or the provisions of the Personal Property Securities Act and the Customer will not hold GMS responsible for any economic or consequential loss that the Customer may suffer as a result, whether the Goods are attached to other goods or property owned by the Customer, or not. GMS may resell the Goods notwithstanding that the Goods may have deteriorated or are damaged by the Customer. The proceeds of such sale shall be applied against monies owed by the Customer and shall otherwise not release the Customer from its obligations to pay the full contract price for the Goods.

The Customer shall inform its creditors of the terms upon which it buys Goods from GMS and must declare GMS's reservation of title to any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of GMS and title to the Goods.

11. Retention of Title upon resale of the Goods

Where Goods (or Goods including the value of Services) in respect of which title has not passed to the Customer are sold by the Customer any book debt created upon sale of such Goods and the proceeds of sale of such Goods, when received by the Customer, shall be held upon trust by the Customer for GMS and any proceeds of sale so received by the Customer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Customer to GMS.

If the Goods (including the value of Services) the subject of this contract, meaning Goods that are sold by GMS, have become the constituent of mixed with or attached to any other goods, and those goods are sold by the Customer prior to GMS receiving payment, then a portion of the proceeds of that sale, attributable to GMS's Goods or Services shall be the property of GMS, and the Customer shall ensure that such proceeds are at all times held in a separate fund in trust for GMS.

This reservation of title and ownership is effective whether or not the Goods have been altered from that supplied or mixed with other goods or materials or fixed to a marine vessel or property owned by the Customer. Where such Goods are altered or mixed and are severable but not identifiable or where it is impractical to remove the Goods without incurring loss to an innocent third party, or the Customer shall agree to give GMS an ownership interest in the property of the Customer in proportion to the contribution made by the Goods to the value of the Customer's property.

12. Company Guarantee & Warranty

The Customer may use published material, technical data sheets and instructions for care of the Goods and maintenance guidelines provided by GMS but shall not give or make any undertaking assertion or representation in relation to the Goods to any other person or company without the prior approval in writing of GMS and the Customer shall indemnify GMS against any liability or cost incurred by GMS as a result of any breach by the Customer of this provision.

The warranty of Goods as to merchandisable quality and fit for the purposes described in its catalogue or published material shall be the warranty of the original manufacturer of the Goods for manufacture to the standards published in the technical data sheet otherwise the warranty shall be for a period of twelve (12) months from delivery. The warranty of Services shall be twelve (12) months from

the date of delivery of Services. The Customer shall accept responsibility and liability for determining the fitness of the Goods for their purposes or the purposes of a third party upon resale of the Goods.

Where GMS accepts liability for damage or defect covered by its guarantee and elects to repair or replace Goods it may repair or replace by other articles of similar description and value (but can be of a standard type) as soon as reasonably practicable and such substituted articles shall become subject to the provisions of this contract, in that GMS will conduct the repair or replacement at no charge to the Customer.

GMS shall not be liable for any economic or consequential loss to the Customer arising out of any breach of the obligations of GMS and the liability of GMS whether in contract or pursuant to any cancellation of the contract or in act or otherwise in respect to all claims for loss, damage or injury the Customer may regard, shall be linked at the option of GMS to the repair or replacement of the Goods or to the price of the Goods.

GMS shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock-out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond GMS's reasonable control. The occurrence of such an event shall not give the Customer a right of cancellation of the contract.

13. Consumer Guarantees Act 1993

Where the Customer acquires the Goods or Services for the business purposes of a business the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act. Where the Customer acquires the Goods or Services for personal, domestic or household use the provisions of the Consumer Guarantees Act will apply.

14. Grounds for Termination

This contract may be terminated by GMS immediately by written notice to the Customer if an Event of Default of payments due to GMS by the Customer occurs for any reason.

Upon the termination of this agreement for any reason, all rights of the Customer granted by this agreement shall terminate. Terminations of this contract shall not relieve the Customer of its obligations to pay all moneys owed by it to GMS on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Customer from liability arising from any antecedent breach of the terms of this contract.

15. Applicable Law for Dispute and Arbitration

In the event of any dispute between GMS and the Customer arising out of this contract, the substantive laws of New Zealand shall apply and such dispute shall be heard in Auckland and referred to a Mediator to be agreed between the parties on a shared cost basis and upon failure to accept the resolution of the Mediator shall be referred to an Arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996.

16. Liability for Indirect Loss

GMS's liability in any case of defect or fault shall be limited to the purchase price of the Goods or Services in respect of which such liability arises, and GMS shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage (including loss of profit) whatsoever and howsoever arising. Should GMS be prevented or delayed from carrying out its obligations as a result of any cause whatsoever beyond its control, it shall be relieved of all obligation and liabilities incurred under this Agreement insofar and so long as the performance of GMS's obligations is impeded, prevented or delayed.

17. Indemnity

The Customer indemnifies GMS and shall keep GMS indemnified in respect of any liability to any person for:

- any damage whatsoever including injury, delay or loss of any nature arising out of or incidental to the Goods and Services whether due to misconduct or negligence on the part of GMS or not or whether or not the cause of the damage is known or unknown to GMS; and
- any other cause whatsoever under or arising out of or in relation to or incidental to the Goods and Services provided.

The Customer acknowledges this signed agreement will be held on file to record the acceptance by the Customer of the Terms and Conditions of Trade for any Goods or Services provided by GMS. Any subsequent signed Service/Repair Authorisation shall also be subject to these Terms and Conditions of Trade.

Signed by the Customer

Name:

Signature:

Date: