Yachting Software

**Terms and Conditions**

**1. Definitions**

The 'Supplier' means Yachting Software Ltd. The 'Customer' means any third party to whom the 'Supplier' may agree to sell goods in accordance with the 'Suppliers' standard conditions of sale.

The ‘Manufacturer’ means the original equipment manufacturer of the goods, or the provider of the goods to Yachting Software Ltd. The 'Goods' means the articles or things or any of them or any part of them to be provided by the 'Supplier' in accordance with the ‘Supplier’s standard conditions of sale.

**2. General**

Customers are accepted, and goods supplied, subject to the following express terms and conditions (the supplier's standard conditions of trade) and save the extent that the exclusion or restriction of duty may be prohibited by statute, all other conditions, warranties and representations, impressed or implied and statutory or otherwise except as to title, are hereby excluded. Any order placed by a customer shall constitute an offer to contract upon these express terms and conditions and no addition thereto or variation thereof whether contained in a customer’s order; or otherwise shall apply unless expressly agreed in writing by the Secretary, a Director, or authorised representative of the Supplier.

**3. Orders**

All orders are subject to availability of the goods and the written acceptance by the Suppliers authorised representative. Any prior confirmation by the Supplier by facsimile or telephone shall be deemed to be provisional only.

The Customer agrees to send to the Supplier a written order in confirmation of any telephone orders duly marked with any confirmation reference given by the Supplier: otherwise the Supplier cannot accept liability for any duplication or delivery that may occur.

Cancellation or amendments of orders are subject to a charge as stated in Clause 16.

The Supplier reserves the right to reject any order where the total value is below £100 + VAT. Notification will be given if will be the case.

**4. Prices**

Catalogues, price lists, and other advertising literature or material as used by the Supplier are intended only as an indication of price and range of goods offered and no prices, descriptions, or other particulars contained therein shall be binding on the Supplier.

All quoted or listed prices are exclusive of Value Added Tax or any other taxes unless otherwise stated and are based on the cost to the Supplier of supplying the Goods to the Customer and if before delivery of the Goods there occurs any increase in any way of such costs in respect of Goods which have not yet been delivered the price payable shall be subject to amendment without notice at the Suppliers discretion.

**5. Manufacturers specification**

1. The Supplier will not be liable in any respect for any loss or damage caused by or resulting from any variation for whatever reason in the Manufacturers specification or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. The Supplier will endeavour to advise the Customer of any such impending variation as soon as it receives notice thereof from the Manufacturer.
2. All goods supplied by the Supplier have been provided on the basis of the Manufacturers specification confirming the same to be RoHs compliant. Whilst the Supplier will endeavour to advise customers of any notice or information coming to its attention which may affect or vary such belief the Supplier accepts no liability whatsoever for RoHs compliance problems which arise as a direct result of a change in the Manufacturers specification.

**6. Carriage and Delivery**

Prices do not include delivery charges to the Customer unless stated otherwise and the Supplier reserves the right to levy a charge for delivery to the destination advised by the Customer.

**7. Passing of Risk and Delivery**

1. Risk In the Goods shall pass to the Customer on delivery.
2. Property in the Goods shall remain in the Supplier until payment in full thereof has been made by the Customer.
3. lf payment in full is not made in accordance with these terms and conditions of trade the Supplier may require the Customer to return the Goods forthwith and if the requirement is not immediately complied with the Supplier shall be entitled at any time and without notice to retake possession of the whole or any part of the Goods (and for that purpose to enter the premises occupied by the Customer and sever the Goods from anything they are attached to without being responsible for any damage thereby caused) without prejudice to any other remedy that may be available to the Supplier.
4. If the customer fails to take delivery of the goods (otherwise by reason of circumstances under our control) the without prejudice to any right or remedy available to the Supplier, the Supplier may:
5. store the goods until actual delivery and charge the Customer for its reasonable costs(including insurance) of storage; or
6. sell the goods at the best readily obtainable price and (after deducting all reasonable all reasonable storage and selling expenses) account to the Customer for any excess over the price agreed with the Customer or charge the Customer for any shortfall below the price the Customer agreed to pay for the goods.
7. Every effort will be made by the Supplier to deliver the Goods as soon as possible after the order has been accepted. Subject to the other provisions of these Conditions, the Supplier shall not be liable for any direct, indirect or consequential loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the negligence of the Supplier), nor shall any delay entitle the Customer to terminate or rescind the Agreement unless such delay exceeds 180 days. In this case the Supplier will inform the Customer as soon as possible.
8. Where goods are supplied by a ‘signed for’ delivery service the Customer will be asked to sign stating the Goods have been received in good condition. If the Customer is unable to check the contents of the package containing the Goods at that moment in time the Customer should sign for the parcel as “UNCHECKED”. Failure to do this may affect any warranty claims that the Customer makes thereafter. It is the responsibility of the Customer to inspect all Gods and report to the Supplier if there is any shortfall or defects in the Goods that the Supplier has delivered.
9. Goods will be dispatched by the Supplier to the address given by the Customer at the time of ordering unless an alternative address is subsequently agreed in writing. The Supplier will not be responsible for any loss of Goods as the result of any error in the address given by the Customer.
10. In most cases delivery will be made using a ‘signed for’ service. In the event that the Customer does not receive the Goods and they are returned to the Supplier the Customer will be liable for any costs associated with redelivery of the Goods.

**8. Import and Export Duties**

1. For goods which are exported to non-EU countries the Customer is liable for any import duties and taxes that may be incurred. The Supplier has no control over these charges and cannot predict their amount. The Customer is advised to contact their local customs office for further information before placing an order. If the Customer fails to accept the Goods by refusing to pay import duties or taxes which are due then the Customer will be charged for any additional shipping costs incurred in returning the Goods to the Supplier in addition to charges that might be levies under Clause 7.
2. The Customer must comply with all applicable laws and regulations for the country for which the Goods are destined including all necessary export licences. The Supplier will not be responsible for any breach by the Customer of such laws.

**9. Defect and Use**

Save as herein expressly provided and save to the extent that the exclusion or restriction of liability may be prohibited by statute; the Supplier shall not be liable for any loss of whatsoever nature or to whomsoever or whatsoever caused arising out of use of the Goods. The customer shall indemnify the Supplier against all claims made against the Supplier by a third party in respect thereof, unless otherwise agreed:

1. Where the Goods are rejected by the Customer for whatsoever reason, the Supplier will only accept the return of such goods provided that it receives written notice thereof within 21 days of receipt of the Goods and provided that that the Goods are returned to the supplier within the same 21 days. Any refunds will be made at the Suppliers discretion. All Goods returned must include all original packaging and manuals and must be returned in the same condition that they were dispatched to the Customer. Any damage or loss to either the Goods, packaging or manuals will affect the amount of refund to be made.
2. In the case of defects or faulty workmanship in the Goods or any part thereof the Customer shall not be entitled to receive any compensation, credit or refund in excess of that received by the Supplier under any guarantee or warranty given to it by the Manufacturer thereof.

**10. Guarantee**

1. where the Supplier is not the manufacturer of the Goods the Supplier shall endeavour to transfer to the Customer the benefit of any warranty given to the Supplier.
2. all goods supplied by the Supplier are warranted for 12 months from the date of supply (unless otherwise stated). The goods shall:
3. be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
4. be reasonably fit for any particular purpose for which the goods are being bought if the Customer has made know to the Supplier in writing and the Supplier has confirmed in writing that it is it is reasonable for the Customer to rely on the Supplier’s skill and judgment.

This warranty does not affect the statutory rights of the Customer as a customer.

1. The Supplier guarantees that the goods supplied to the Customer will be free from defects caused by faulty materials or poor workmanship for a period of one year. Under this warranty the Supplier will, at its option, either repair or give a replacement of equivalent quality or issue credit to the Customer for any Goods found to be defective because of faulty maintenance by the Supplier or poor workmanship provided that:
2. the company is notified in writing within 7 days of the Customer first discovering any such defects.
3. the Goods have been used in an appropriate manner and/or as prescribed in the operating instructions (if any)
4. the defective Goods are returned to the Supplier at the Customers expense
5. examination by the Supplier of such Goods discloses its satisfaction that such defects exist and have not been caused by misuse, neglects, accident, improper storage installation or handling or by repair or alteration not effected by the Supplier
6. the Goods not having been modified or repaired otherwise than by the Supplier or otherwise interfered with and
7. the Customer shall pay to the Supplier the cost (as certified by the Supplier) of any examination of such goods as a result of which the Supplier denies liability.

**11. Return of Equipment Goods**

Return of Equipment Goods will not be accepted by the Supplier until a Return Material Authorisation (RMA) number is obtained and the Goods have been returned to us at the Customers expense. All Goods must be returned in good condition and together with all parts and instruction manuals pertaining to the Goods which are being returned.

**12. Exclusion of Liability**

* 1. Except where provided otherwise in these Conditions, the Supplier shall be under no liability of whatsoever kind howsoever caused whether or not due to the negligence or willful default by the Supplier or its servants or agents arising out of or in connection with the goods. All conditions, warranties or other terms whether expressed or implied, statutory or otherwise, are hereby expressly excluded providing that nothing in this paragraph shall exclude or restrict any liability of the Supplier or its servants or agents.
  2. In any event, the Suppliers liability shall be limited to direct loss and shall not include indirect or consequential loss.

c) The Supplier shall not be liable for the loss of or damage to software programs and/or data stored on all types of storage media, repair or upgrade of any goods whether or not the same are under warranty.

**13. Shortages**

Any shortages must be advised in writing by the Customer to the Supplier no later than 72 hours after taking of delivery, all claims will be deemed void if the shortages are reported after this time.

**14. Payment**

* 1. Punctual payment is the essence of the contract. Provided that the Customer has been granted credit facilities by the Supplier settlement terms are Net 30 days from the date of invoice in the absence of credit facilities having been granted by the Supplier payment shall be in advance.
  2. The Supplier reserves the right to suspend deliveries where payment is not received in accordance with paragraph (a) of this Clause or in accordance with any alternative terms of payment agreed in writing.
  3. Where payment is not made in accordance with the terms of sub-Clause (a) above hereof the Customer shall pay interest on any unpaid amounts calculated at 2.5% above HSBC Plc's base rate for the time being in force calculated on a daily basis in addition to the Customer shall reimburse the Supplier for all costs incurred in the collection of the debt or the recovery of the Goods including the Suppliers solicitors fees and disbursements on an indemnity basis.

**15. Despatch**

Any times quoted for dispatch are to be treated as estimates only and without prejudice, although every endeavour will be made by the Supplier to adhere to them. Quotations or offers of goods ex stock are subject to the Goods being unsold at the time of receipt of the Customers written order.

All dispatch dates are calculated from the date of acceptance of the Suppliers written order.

**16. Customer's Default and Cancellations and Rescheduling of Deliveries**

1. If the circumstances or status of the Customer changes for whatsoever reason, (e.g. Bankruptcy or receivership, change of name, litigation by the Supplier or other parties etc.) the Supplier reserves the right without prejudice, to cancel or suspend trading with the Customer including orders in progress and to demand immediate settlement in full of all outstanding invoices.
2. Requests by a Customer for cancellation or amendment of any order or for the rescheduling of deliveries will only be considered by the Supplier if made in writing and shall be subject to the written acceptance of the Supplier or if cancelled or rescheduled at the request of the Customer, then the Customer shall indemnify the Supplier against all loss costs (including the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of the order and the cancellation amendment or rescheduling thereof to be calculated at 5% of the value of the order with a minimum charge of £50.

**17. Force Majeure**

The Supplier shall not be liable for the cancellation by it of any order or any unfulfilled part thereof or for effecting partial delivery if performance by the Supplier is prevented or delayed whether directly or indirectly by any cause whatsoever beyond the reasonable control of the Supplier whether such cause existed or was foreseeable at the date of acceptance of the Customers order by the Supplier or not and without prejudice to the generality of the forgoing any cause shall be deemed to prevent, hinder, or delay the Supplier if the Supplier is thereby prevented, hindered, or delayed from fulfilling other commitments whether to the Customer or to third parties.

**18. Non-standard Goods**

Unless otherwise agreed the Goods are supplied in accordance with the Manufacturer's standard specification. The Supplier reserves the right to increase its quoted or listed price or to charge accordingly in respect of any orders accepted for products of non-standard specifications and in no circumstances will it consider cancellation of such orders or the return of the Goods.

**19. Severability**

If and to the extent that any provision or any part of the provision of the Supplier's standard Terms and Conditions of Trade is illegal, void or unenforceable for any reason, then such provision or part thereof (as the case may be) shall be deemed to be severable from the remaining provisions or parts of the relevant position (as the case may be) all which remaining provisions shall remain in full force and effect.

**20. Waiver**

The waiver by the Supplier or any breach of any term hereunder shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

**21. Limitation of Liability**

* 1. Subject to clauses 5 and 10 the following provisions set out the Supplier’s entire financial liability. (including any liabilities for the acts or omissions of our employees, agents and sub-contractors). The Supplier’s total liability in contract, tort (including negligence or breach if statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the goods.
  2. All warranties, conditions and other terms implied by statute or common law (save for conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this contract.
  3. Nothing in these Conditions excludes or limits the Supplier’s liability for death or personal injury caused by the Supplier’s negligence or fraudulent misrepresentation or any other matters for which liability cannot be excluded or limited under law.

**22. Intellectual property and Data protection**

a) We (or our suppliers) retain all the intellectual property rights in all goods supplied to the Customer. We may litigate, negotiate and settle all claims in relation to any such intellectual property rights if the litigation is directly related to goods supplied to the Customer.

b) We will take all reasonable precautions to keep the Customer’s details and the details of Customer’s orders and payment secure and in accordance with the data Protection Act 1998.

**23.Forms**

It is hereby acknowledged by the Customer that the only terms and conditions of trade which apply to the supply of goods by the Supplier to the Customer are those contained herein and no other.

**24. Assignment**

The Customer agrees not to assign or transfer this Agreement or any of its rights herein without prior written consent of the Supplier.

**25. Jurisdiction**

The agreement shall be governed by and construed in accordance with English law and the Courts of England shall have exclusive jurisdiction to hear all disputes arising and in connection with the agreement.

**26. Change of Company Status**

It is your responsibility to notify us of any change to your company trading style. Notification must be in writing immediately you commence trading under a different style. You will then be sent a new data sheet to continue trading. You must have evidence of our acknowledgement of this change. Failure to do so may involve prosecution via the VAT Office to comply with VAT rules on purchase ledger practice

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