



TRULY GLOBAL

**SUNSEEKER INTERNATIONAL LIMITED**

**STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOOD AND SERVICES (VERSION 5.0)**

**1. DEFINITIONS**

- 1.1. "**Agreement**" is the agreement between Sunseeker and the Supplier which may be constituted verbally or by an exchange of letters, emails or other communication, or by the issue to the Supplier of a Purchase Order and to which Agreement these Conditions shall apply.
- 1.2. "**Conditions**" means these Standard Terms and Conditions.
- 1.3. "**Sunseeker**" means SUNSEEKER INTERNATIONAL LIMITED or any associate or subsidiary company thereof.
- 1.4. "**Force Majeure**" is anything beyond the reasonable control of either party.
- 1.5. "**Interest**" is at HSBC Bank plc base rate plus 2% p.a. from time to time in force.
- 1.6. "**Goods**" are the goods referred to in the Agreement.
- 1.7. "**Price**" includes any tax or duty (except Value Added Tax) chargeable in respect of the Goods and/or Services.
- 1.8. "**Services**" are the services referred to in the Agreement.
- 1.9. "**Supplier**" means any person contracting for the supply of Goods and/or Services to Sunseeker and such expression includes (where the context requires) all employees and agents of the Supplier.

**2. ORDERS AND TENDERS**

- 2.1. Acceptance of the Agreement by Sunseeker incorporates these Conditions.
- 2.2. No employee or agent of Sunseeker has the authority to vary these Conditions, which may only be varied in writing signed by a director of Sunseeker.

**3. PRICE**

- 3.1. The Price for the Goods and/or Services shall be as agreed between Sunseeker and the Supplier and (save in the case of manifest or clerical error) the price stated in the Agreement shall be taken to be the Price agreed.
- 3.2. The Supplier may not make additional charges for additional goods or services, for carriage, escalated cost or any other matter whatsoever unless accepted by Sunseeker in writing.

**4. DELIVERY AND CONDITION**

- 4.1. Due to the nature of Sunseeker's business, it is a condition that the Goods and/or Services shall be delivered or provided at the times and/or on the dates and at the places stated in the Agreement and in the condition required by the Agreement. If the Supplier does not comply with this Condition, Sunseeker may either (at its option) reject or accept the Goods and/or Services.
- 4.2. If Sunseeker rejects the Goods and/or Services, it may do so before the Services are provided or before the Goods are delivered or within 30 days of the actual date the Goods and/or Services are delivered. In the case of rejected Goods, the Supplier will collect the Goods (if delivered) immediately at its own cost. Sunseeker shall not pay the Price of those Goods and/or Services and shall be entitled to purchase substitute goods and/or services elsewhere and hold the Supplier accountable for any loss and/or additional costs incurred by Sunseeker.

- 4.3. If Sunseeker accepts the Goods and/or Services, the Price for them shall be reduced by the amount (if any) of any loss and/or additional costs incurred by Sunseeker directly or indirectly arising in remedying the breach of such condition
- 4.4. In respect of defective Goods Sunseeker shall send to the Supplier (by email or first class post) a copy of any Sunseeker inspection report which shall:-
  - 4.4.1. describe briefly the reason for treating the Goods or Services as defective, and
  - 4.4.2. state what action Sunseeker intends to take
- 4.5. Sunseeker's rights under the Agreement are in addition to the statutory terms implied in favour of the customer by the Supply of Goods and Services Act 1982 (as amended by the Sale & Supply of Goods Act 1994) and any other statute.
- 4.6. Title to the Goods shall pass progressively to the extent that any stage payments which are made by Sunseeker under the Agreement are represented by the work in progress in the Goods, as assessed by an independent valuer, appointed in default of agreement by the president of the Society of Auctioneers and Valuers in UK. If no stage payments are made, or if they are, but no such assessment is made for whatever reason, title shall pass in accordance with Section 18 of the Sale of Goods Act 1979. If any container or packaging is returned to the Supplier, the property in such container or packaging shall revert to the Supplier upon dispatch by Sunseeker.
- 4.7. The Supplier shall not be entitled to charge Sunseeker for any reasonable delay incurred by the Supplier in delivering Goods and/or supplying Services to any Sunseeker premises, where such delay is occasioned by operational restrictions caused by Sunseeker's manufacturing processes (eg ship movements) within any Sunseeker premises.
- 4.8. The Goods remain at the Suppliers' risk until delivery to the place stated in the Agreement. Any container or packaging which is intended to be returned to the Supplier remains at the Suppliers risk at all times.
- 4.9. The Supplier shall observe and perform (a) the Delivery and Packaging Standard and (b) the Sunseeker Code of Conduct, each as issued by Sunseeker from time to time.

## **5. INVOICES AND STATEMENTS**

- 5.1. Invoices addressed to Sunseeker's Accounts Department are to be sent by the Supplier by first class post in accordance with the Agreement and must refer to Sunseeker's order number.
- 5.2. If appropriate, statements addressed to Sunseeker's Accounts Department are to be sent on a monthly basis and shall list all invoices issued but then unpaid with cross references to the appropriate Sunseeker order number.

## **6. PAYMENT**

- 6.1. Sunseeker shall pay the Price as agreed between the parties in accordance with the Agreement or if no provision has been stipulated, within 60 days from receipt of a valid invoice submitted by the Supplier in accordance with Clause 5.

## **7. OCCUPIERS LIABILITY**

- 7.1. The Supplier shall comply with all requirements imposed upon occupiers of premises, and shall indemnify Sunseeker against any liability arising under such requirements and shall maintain adequate insurance cover in respect of such risks and produce to Sunseeker on demand a copy of the policy and certificate of insurance demonstrating such insurance.
- 7.2. If the Supplier works on Sunseeker's premises, the Supplier will observe and perform all Sunseeker's requirements for contractors and visitors to Sunseeker's premises.

## **8. INDEMNITY**

- 8.1. The Supplier shall indemnify Sunseeker in full against any claims, loss, costs, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, Sunseeker as a result of:-
- 8.1.1. a breach or negligent performance or failure or delay in performance of the Services;
  - 8.1.2. loss or damage or injury of any nature caused to Sunseeker or for which Sunseeker may be liable to third parties, due to defective workmanship or unsound quality or other defect of the Goods supplied or in the Services provided;
  - 8.1.3. claims in respect of death or injury, however caused, to any of the employees of the Supplier (or those of its agent or sub-contractor) while at Sunseeker's premises or other places of business,
  - 8.1.4. consequential loss or damage sustained by Sunseeker (or for which Sunseeker may be liable) as a result of the failure of the Supplier to provide the Services or supply the Goods in accordance with the terms of the Agreement,
  - 8.1.5. a breach of any warranty given by Sunseeker in relation to the Goods and/or Services, including any warranty given by Sunseeker in respect of any products incorporating the Goods (typically, in the case of power boats, such warranty will be for a period of two years from the sale of the boat, but the period may vary from time to time or in specific cases),
  - 8.1.6. any liability under the Consumer Protection Act 1987 in respect of the Goods,
  - 8.1.7. any act or omission of the Supplier or its employees or agents in supplying, delivering and installing the Goods, and
  - 8.1.8. subject to clause 12.2, any infringement or alleged infringement of any intellectual property or other protected right (including copyright) of a third party arising out of the manufacture of the Goods and/or provision of the Services to Sunseeker.
- 8.2. The Supplier shall maintain adequate insurance cover against the risks set out in this clause 8 at the Supplier's own cost and shall produce on demand for inspection by Sunseeker the policy and certificate of insurance in respect of such cover.

## **9. TERMINATION**

- 9.1. Without prejudice to any other rights or remedies which Sunseeker may have, Sunseeker may terminate the Agreement without liability to the Supplier immediately on giving notice to the Supplier if:-
- 9.1.1. the Supplier commits a material breach of any of the terms of the Agreement and fails to remedy that breach within 30 days of being notified in writing of the breach; or
  - 9.1.2. the Supplier is put into liquidation or has an administrator appointed to it or is insolvent or suffers any action analogous thereto.
- 9.2. Sunseeker shall not be liable for any loss (including consequential loss) to the Supplier if the Agreement is terminated under clause 9.1 above.
- 9.3. Sunseeker may terminate the Agreement at any time before delivery of Goods or the commencement of performance of the Services by written notice or email to the Supplier . Upon termination under clause 9.3 above, Sunseeker may pay to the Supplier (subject to setoff of any monies or liabilities due to Sunseeker otherwise arising under the Agreement) the amount if any (assessed by a valuer appointed as per clause 4.6) by which the value of work-in-progress in the Goods exceeds the amount then paid by Sunseeker to the Supplier, including a fair price for unused raw materials purchased to fulfil the Agreement,
- 9.4. The phrase "unused raw materials" excludes items which: -
- 9.4.1. can be used by the Supplier for another purpose, or
  - 9.4.2. can be returned to the Supplier's supplier for a full refund.

- 9.5. For the purposes of this clause, a fair price for unused raw materials is either: -
- 9.5.1. the cost price of those materials, or
  - 9.5.2. (at Sunseeker's option) all costs and expenses reasonably and properly incurred in returning those materials to the Supplier's supplier (including packaging, transport and any lawful penalty imposed by that supplier)
- 9.6. For the purposes of this clause, any materials in the possession of the Supplier, being components of the Goods (but neither unused raw materials or finished goods) and which comply in all respects with any specification provided by Sunseeker (so far as it is possible for such goods to do so) shall be treated as unfinished Goods.
- 9.7. For the purposes of this clause, a fair price for unfinished Goods is either: -
- 9.7.1. the Price (when such materials are converted into or incorporated in finished Goods produced by the Supplier at the request of Sunseeker), or
  - 9.7.2. (at Sunseeker's option) a fair and reasonable price, taking account of the stage of manufacture reached, for such materials.
- 9.8. The Supplier grants Sunseeker the right of access to any premises of the Supplier and shall procure the same right of access for any 3<sup>rd</sup> party's premises to enable Sunseeker to inspect the stage of construction, and to lift and take away (subject to payment in accordance with clause 9.3, all work-in-progress and raw materials at the date of termination, and accordingly, the Supplier waives all its liens and rights (howsoever arising) in connection with such work-in-progress, and raw materials
- 9.9. The Supplier may not terminate or cancel the supply of the Goods and/or provision of the Services unless agreed by Sunseeker in writing.
- 9.10. The Supplier shall unless otherwise specified in the Agreement or Sunseeker otherwise agrees in writing, retain tooling (in this Agreement including templates mould tools and samples) and the methods of reproducing the Goods for a period of 10 years from last date of delivery of the Goods and agrees to hand the same on request, without payment, to Sunseeker on demand
- 9.11. Either party's rights in respect of antecedent breach shall survive termination of the Agreement (howsoever caused).

## **10 PROGRESS CHECKS/INSPECTION**

- 10.1 Sunseeker may at its discretion and on giving reasonable notice, check progress of the production of the Goods and/or Services. Any such progress check shall not in any way relieve the Supplier from any of its obligations under the Agreement and the Supplier shall, without delay carry out any alterations, modifications or remedial work required by Sunseeker.

## **11 QUALITY**

- 11.1 The Supplier warrants to Sunseeker that:
- 11.1.1 the Supplier will perform the Services with utmost care and skill, in a timely manner, in accordance with Sunseeker's instructions and in accordance with generally recognised commercial practices and standards;
  - 11.1.2 the Goods and Services will conform with all descriptions and specifications provided by Sunseeker to the Supplier (or vice versa) and the Goods and Services will be provided in accordance with the Agreement and with all applicable legislation from time to time in force.
  - 11.1.3 all Goods will be of the very best quality and free from defects in design materials, finish, tolerances and workmanship,
- 11.1 It is a condition that all Goods shall perform in all respects in accordance with or better than, and in all respects shall comply with any description or specification provided by Sunseeker, including dimensions, finish, materials and tolerances and all terms implied by statute as to

the fitness for purpose of the Goods or the quality of the Goods shall be extended accordingly.

- 11.2 The provisions of this Condition 11 shall survive any performance, acceptance or payment pursuant to the Agreement and shall extend to any substituted or remedial Goods or Services provided by the Supplier.

## **12 INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Supplier agrees that all the Intellectual Property rights including copyright in all Goods and/or Services (including all tooling) supplied to Sunseeker vest in Sunseeker on payment.
- 12.2 Sunseeker shall hold the Supplier indemnified in full from and against all claims, proceedings and demands made or brought against the Supplier arising out of any infringement or alleged infringement of any intellectual property or other protected right of a third party arising out of the provision to the Supplier by Sunseeker of any drawing, specification or other drawing for use in making the Goods and/or providing the Services
- 12.3 The Supplier will not claim any intellectual property right of any nature in any documents or any physical reproduction derived from any drawings, specification or other document supplied to it by Sunseeker
- 12.4 The Supplier shall hold Sunseeker indemnified in full from and against all claims, proceedings and demands made or brought against Sunseeker arising out of any infringement or alleged infringement of any intellectual property or other protected right arising out of any use of the Goods and/or Services by Sunseeker.
- 12.5 The Supplier shall not disclose to any third party any information of whatever nature relating to the supply of the Goods and/or Services (including the fact of such supply) or relating to Sunseeker, its customers, suppliers or group companies unless lawfully allowed or required to do so.
- 12.6 The Supplier shall not use Sunseeker's name or trade marks in any marketing or promotional material, stationery, on its vehicles or on its website.

## **13 SUNSEEKER'S MATERIALS**

- 13.1 If the Supplier has any items (including without limitation, tooling, drawings and documents showing technical information) supplied by Sunseeker for the purposes of fulfilling the Agreement ("Items") the Items will at all times remain the property of Sunseeker and shall be clearly marked as such and stored by the Supplier apart from its own property.
- 13.2 All the Items are at the sole risk of the Supplier at all times whilst they are in the possession of the Supplier and must be kept securely and returned to Sunseeker upon request.
- 13.3 The Supplier may use the Items for the purposes of the Agreement only and in particular, may not use such materials, tools or equipment for the supply of goods or the provision of services to any other person.

## **14 FORCE MAJEURE**

- 14.1 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.
- 14.2 Notwithstanding any other provision of the Agreement, neither party shall be deemed to be in breach of the Agreement, or otherwise be liable to the other, for any delay in its obligations to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party.
- 14.3 If either party claims Force Majeure and is accordingly relieved under clause 14.2 from performing any of its obligations under the Agreement for a continuous period in excess of one month, then the other party may, notwithstanding any other provision of the Agreement, terminate the Agreement by giving to the party which has claimed Force Majeure not less than fourteen days' notice after which neither party shall be under any liability to the other in respect of the Agreement, save for antecedent breach.

**15 GENERAL**

- 15.1 The Agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties with respect to the Agreement.
- 15.2 No variation of the Agreement shall be effected unless agreed by Sunseeker.
- 15.3 The Supplier shall not transfer, assign, sub-contract or sublet any part of the Agreement or any rights or obligations thereunder without the prior written consent of Sunseeker.
- 15.4 Failure of Sunseeker to exercise any of its rights under the Agreement shall in no way constitute a waiver of these rights, nor shall such failure excuse the Supplier from any of its obligations under the Agreement.
- 15.5 The rights and remedies of Sunseeker under the Agreement are not exclusive and are in addition to other rights and remedies.
- 15.6 If any provision (or part of a provision) of the Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, the Agreement shall be varied so as to delete such provision (or part) and the remaining provisions of the Agreement shall continue to be valid and enforceable.
- 15.7 The Agreement shall be governed by and construed in accordance with English law and each of the parties irrevocably submits to the exclusive jurisdiction of the English courts.