

RE: ACCOUNT APPLICATION FORM

To Whom It May Concern:

Please find enclosed your account application form.

The following check list is aimed to assist you in the completion of these forms.

- ☐ **Page 1** - You must include three (3) Trade References.

Please read our Conditions of Sale and sign the Acknowledgement at the bottom of page 1.

- ☐ **Page 2** – Privacy Act 1988 Customer Authority and Acknowledgement, please sign/date.

- ☐ **Page 3 & 4** - When completing the guarantee, please ensure that all signatures are witnessed and witness details are correctly completed.

The Schedule should include the name, address and License or Passport number of the person who has signed above. Please attach a clear copy of your Driver's License or Passport.

The Purchaser is the business or other name and address under which purchases will be made.

Please ensure that all pages have been read and completed before returning the application. The original copy is to be returned for processing; a photocopy will not be accepted.

Incomplete forms will be returned to you, creating more delay. So please take the time to get it right the first time.

If you require further assistance please contact me on 03 9709 8500

Kind Regards,



Lauren Rankin
Accounts Receivable

Australia, New Zealand and South Pacific distributor for these leading brands



POWER EQUIPMENT PTY LTD
ABN 97 005 866 642

10-12 Commercial Drive
Lynbrook VIC 3975

T. 03 9709 8500

info@powerequipment.com.au

www.powerequipment.com.au

COMMERCIAL CREDIT APPLICATION

THE APPLICANT

Applicant Name: ABN

Trading Name (if any) ACN

Credit Required \$.....

Billing Address:

Delivery Address:

Contact Name:..... Years Business Established

Tel No:..... Fax No:.....

Web page:..... Email:.....

OPERATING STRUCTURE (tick appropriate box)

☐ Pty. Ltd. ☐ Sole Trader ☐ Trustee ☐ Public Co. ☐ Partnership ☐ Incorporated Body

DIRECTOR/PARTNER DETAILS (provide details of all directors and partners, if more than 3 please attach details)

Name Address

Name: Address

Name: Address

ADDITIONAL CONTACT INFORMATION

1. Sales - Contact Name:..... Email:.....

2. Spart Parts - Contact Name:..... Email:.....

3. Accounts - Contact Name:..... Email:.....

TRADE/BUSINESS REFERENCES

1. Name Address.....

Contact Tel Fax

Email.....

2. Name Address.....

Contact Tel Fax

Email

3. Name Address.....

Contact Tel Fax:

Email

ACKNOWLEDGMENT

Notwithstanding any decision made by **Power Equipment PTY LTD ("Power Equipment")** in relation to the granting of credit, the Applicant acknowledges and agrees to the exclusive application of Power Equipment's Conditions of Sale which are provided with this Credit Application to all contracts with Power Equipment for the supply of goods and services.

If partnership all partners to sign

.....
Signed by: signed by: signed by: signed by:
On behalf of the Applicant

POWER EQUIPMENT PTY LTD (ACN 005 866 642)
10-12 COMMERCIAL DRIVE
LYNBROOK VIC 3975
PH: (03) 9709 8500
FAX: (03) 9709 8544

PRIVACY ACT 1988 CUSTOMER AUTHORITY AND ACKNOWLEDGMENT

Credit information that may be provided to a credit reporting agency

POWER EQUIPMENT PTY LTD (ACN 005 866 642) ("Power Equipment") may give information about me/us to a credit reporting agency before, during or after the provision of credit to me/us for the following purposes:

- * to obtain a consumer credit report about me/us, and/or
- * to allow the credit reporting agency to create or maintain a credit information file containing information about me/us.

This information is limited to:

- * identity particulars - name, sex, address and the previous two addresses, date of birth, name of employer, and drivers licence number
- * my/our application for credit or commercial credit - the fact that I/we have applied for credit and the amount
- * the fact that Power Equipment is a current credit provider to me/us
- * loan repayments which are overdue by more than 60 days, and for which debt collection has started
- * advice that my/our loan repayments are no longer overdue in respect of any default that has been listed
- * information that, in the opinion of Power Equipment, I/we have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with my/our credit obligations)
- * dishonoured cheques - cheques drawn by me/us for \$100 or more which have been dishonoured more than once

Assessment of Commercial Credit Application

I/we agree that Power Equipment may obtain a consumer credit report containing information about me/us from a credit reporting agency for the purpose of assessing my/our application for commercial credit.

Disclosure to guarantor

I/we agree that Power Equipment may give to a person who is currently a guarantor, or whom I/we have indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the guarantor deciding whether to act as guarantor, or Power Equipment keeping an existing guarantor informed about its guarantee.

I/we understand that the information disclosed can include a credit report and any other information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act including a credit report.

Overdue payments

I/we agree that Power Equipment may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

Exchange of credit worthiness information

I/we agree that Power Equipment may exchange information about me/us to my/our credit providers including those named in a consumer credit report issued by a credit reporting agency :

- * to assess an application by me/us for credit
- * to notify other credit providers of a default by me/us
- * to exchange information with other credit providers as to the status of my/our credit facility with Power Equipment where I/we are in default with other credit providers
- * to assess my/our debt worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

Signing to be signed by the Customer or *all* directors and partners of the

Customer Dated this day of 202_ .

.....
Sole Trader

.....
director/partner

.....
director/partner

.....
director/partner

.....
director/partner

GUARANTEE AND INDEMNITY

TO: **POWER EQUIPMENT PTY LTD (ABN 97 005 866 642)**
10-12 COMMERCIAL DRIVE
LYNBROOK VIC 3975 (the "Supplier").

In consideration of the Supplier at the request of the party named and described in item 1 of the Schedule as the Guarantor ("Guarantor") agreeing to

- supply or continue to supply goods to the party named and described in item 2 of the Schedule as the Purchaser ("Purchaser") and/or
- provide credit to the Purchaser

the Guarantor hereby :

1. Agrees to guarantee to the Supplier the due and punctual payment of all money interest and damages payable to the Supplier by the Purchaser pursuant to or in respect of the sale of goods by the Supplier to the Purchaser (hereinafter called the "guaranteed money").
2. Agrees as a separate severable and additional covenant and obligation to indemnify and keep indemnified the Supplier from and against all losses costs charges and expenses whatsoever that the Supplier may suffer or incur in relation to the supply of goods to the Purchaser and further agrees that each of the provisions hereinafter contained that applies or is capable of application to this Deed when it is construed as an indemnity will apply to the indemnity hereby given by the Guarantor.
3. Covenants acknowledges and agrees with the Supplier as follows :
 - 3.1 The Guarantee hereby given is a continuing guarantee the indemnity hereby given is a continuing indemnity and neither this Deed nor the said guarantee nor the said indemnity will be discharged in any way or be considered or deemed to be discharged in any way by any payment to the Supplier other than the payment to and acceptance by the Supplier of the whole of the guaranteed money.
 - 3.2 Notwithstanding that as between the Guarantor and the Purchaser the position of the Guarantor is that of surety only nevertheless as between the Guarantor and the Supplier, the Guarantor is liable hereunder as a principal and as a primary debtor for the payment of the guaranteed money.
 - 3.3 This Deed is valid and enforceable against the Guarantor and the liability hereunder of the Guarantor continues and may be enforced by the Supplier notwithstanding :
 - (i) that no steps or proceedings have been taken against the Purchaser;
 - (ii) any indulgence or extension of time granted by the Supplier to the Purchaser;
 - (iii) the death or bankruptcy or winding up of the Purchaser;
 - (iv) that payment of the guaranteed money by the Purchaser cannot be legally enforced against the Purchaser.
 - 3.4 The Guarantor will not compete with the Supplier for any dividend or distribution in the event of the Purchaser being declared bankrupt, going into liquidation or being wound up or entering any deed or scheme of arrangement or assignment or composition in respect of its affairs or its assets and liabilities.
 - 3.5 The Guarantor hereby acknowledges having given its consent to the Supplier to obtain from a credit reporting agency a consumer credit report containing information about it for the purpose of the Supplier assessing whether to accept the Guarantor as a guarantor for credit that may be applied for by the Purchaser.
 - 3.6 The term "Supplier" includes its successors and assigns and the terms "Purchaser" and "Guarantor" include their respective executors, administrators and successors.
 - 3.7 In this Deed the singular includes the plural and if there is more than one Guarantor to this Guarantee their obligations are joint and several.
 - 3.8 This Deed will be construed in accordance with and be governed by the laws of Victoria and the parties hereby submit to the exclusive jurisdiction of the Victorian Courts and the Federal Court of Australia (Victoria Registry).

Executed as a Deed

Dated :

SIGNED SEALED AND DELIVERED by)
Guarantor 1)
in the presence of) Guarantor 1 Signature

.....
Signature of witness

.....
Print name of witness

.....
Print address of witness

SIGNED SEALED AND DELIVERED by)
Guarantor 2)
in the presence of) Guarantor 2 Signature

.....
Signature of witness

.....
Print name of witness

.....
Print address of witness

SCHEDULE

Item 1: **THE GUARANTOR**

Name (Guarantor 1):

Address:

Licence or Passport No :
(Attach copy of licence or passport to this Deed)

Name: (Guarantor 2):

Address:

Licence or Passport No:
(Attach copy of licence or passport to this Deed)

Item 2: **THE PURCHASER**

Name:

Address:

TERMS AND CONDITIONS OF SALE

1. Definitions

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

"Agreement" means any agreement for the provision of goods or services by the Supplier to the Customer;

"Conditions" means these Terms and Conditions of Sale;

"Consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

"Customer" means the person, jointly and severally if more than one, acquiring goods or services from the Supplier;

"Customer's Property" means the vessel, including its hull, motors, controls, equipment, accessories, dinghies, tenders and their motors, and any other property of the Customer, delivered to or made available to the Supplier for its performance of the services;

"End User" means any person, firm or corporation who has acquired the goods from the Customer;

"goods" means goods supplied by the Supplier to the Customer;

"GST" means any consumption tax imposed by government, whether at point of supply or at some other specified occurrence, by whatever name, and includes (without limitation) a goods and services tax, a broad based consumption or indirect tax, or value-added tax;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

"services" means services supplied by the Supplier to the Customer, including without limitation all repairs, installation, operation, maintenance, improvements, shipwright work or the removal of parts;

"Supplier" means Power Equipment Pty Ltd (ACN 005 866 642), or any other related entity or business name.

"tax invoice" means a tax invoice which complies with the definition contained in section 29-70 of *A New Tax System (Goods and Services Tax) Act 1999* or any amending legislation.

2. Basis of Contract

2.1 The Conditions apply exclusively to every Agreement and cannot be varied or replaced by any other condition(s) including the Customer's terms and conditions of purchase (if any) unless expressly accepted in writing by the Supplier.

2.2 Any written quotation provided by the Supplier to the Customer for the proposed supply of goods or services is deemed to be an invitation only to the Customer to place an order based upon that quotation. Quotations are valid for 30 days from the quotation date.

2.3 If the Customer authorises the commencement of the services it will be regarded as having accepted the Supplier's quote or estimate and will be bound by the Conditions.

2.4 The Supplier may, at its discretion, subcontract on any terms the whole or part of the services.

2.5 The Supplier has absolute discretion to refuse to accept any offer.

2.6 The Customer must provide the Supplier with its specific requirements, if any, in relation to the goods and services.

2.7 The Supplier may, where reasonably necessary, vary or amend these Conditions by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Customer's Authority

3.1 The Customer warrants that it is the owner of the Customer's Property and has the authority to request the Supplier to perform the services.

4. Pricing

4.1 Prices quoted for the supply of goods or services exclude GST and any other taxes or duties imposed on or in relation to the goods or services.

4.2 Where a price quoted by the Supplier for services is specified to be an estimate, the Customer shall pay the Supplier the amount claimed by the Supplier on completion of the services, which may vary from the estimated amount and which will be based upon the actual work done and materials supplied by or on behalf of the Supplier.

4.3 Where the Customer has requested the Supplier to prepare a quotation for the provision of the services, then in the event that the Customer does not accept the quotation, the Customer shall be responsible for all labour and associated costs and charges incurred by the Supplier in preparing the quote. The Customer's Property will not be reassembled following rejection of a quotation unless the Customer requests the Supplier to do so and agrees, at the time of the request, to pay the Supplier's charges for such work.

4.4 Where there is a change in the costs incurred by the Supplier in relation to the goods or services, the Supplier may vary its price for the goods or services or order to take account of such change.

5. Payment

5.1 Payment for goods must be made within 30 days of the date of the Supplier's invoice, unless otherwise specified by the Supplier in writing.

5.2 Unless otherwise agreed in writing by the Supplier, payment for the services will be:

- 50% of the quoted price immediately prior to commencement of the services ("Initial Payment"); and
- the remaining balance of the quoted price within 7 days of the date of the Supplier's final invoice for the services being issued upon completion of the services as determined in the absolute discretion of the Supplier.

5.3 Time for payment is of the essence.

5.4 The Supplier will not commence the services until the Initial Payment has been made by the Customer.

5.5 For the purposes of the GST, a tax invoice will be provided by the Supplier within 14 days of receipt of full payment in cleared funds from the Customer.

6. Payment Default

6.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent right:-

- charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic.) plus 2% cent for the period from the due date until the date of payment in full;
- charge the Customer for all expenses and costs (including without limitation all legal costs, mercantile agents commission and expenses) incurred by it in taking whatever action it deems appropriate to recover any sum due;
- cease or suspend supply of goods or services to the Customer without liability to the Customer or any third

- party for any loss or damage whether directly or consequentially; and
- (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.
- 6.2 Clause 6.1 may also be relied upon, at the Supplier's option where the Customer becomes bankrupt or insolvent or enters into any scheme of arrangement or with or for the benefit of its creditors.
- 7. Provision of Credit**
- 7.1 The Supplier may, where reasonably necessary, suspend, cancel, reduce or review a Customer's credit facility by providing written notice to the Customer.
- 7.2 The Supplier may, at any time, request additional information or the provision of further security in relation to a credit facility and may suspend or cancel a credit facility if the information or security requested is not provided within a reasonable time.
- 8. Passing of Property**
- 8.1 Until full payment in cleared funds is received by the Supplier for all goods or services supplied by it to the Customer, as well as all other amounts owing on any account to the Supplier by the Customer:-
- (a) title in the goods remains vested in the Supplier and does not pass to the Customer;
 - (b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;
 - (c) the Customer must hold the proceeds of sale of the goods on trust for the Supplier in a separate account with a bank to whom the Customer has not given security, however failure to do so will not affect the Customer's obligation as trustee;
 - (d) in addition to its rights under the PPSA, the Supplier may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods or services not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.
- 8.2 The Supplier will exercise its right of entry under clause 8.1(d) (including the use and extent of force) in accordance with all applicable laws.
- 9. Lien**
- 9.1 The Supplier retains a repairer's lien over the Customer's Property and/or a general lien over any other property of the Customer that comes into the possession of the Supplier for any reason until all amounts owing by the Customer to the Supplier are paid in full.
- 9.2 Without limitation, the repairer's lien entitles the Supplier to:
- (a) refuse to return the Customer's Property to the Customer; and/or
 - (b) charge the Customer transport, rent, storage and all other expenses incurred relating to the possession of the Customer's Property.
- 9.3 Without limitation, the general lien, entitles the Supplier, subject to giving 14 days' notice to the Customer, sell the property by private treaty or public auction, whichever the Supplier in its sole discretion deems appropriate, and apply the proceeds to the repayment of its costs and expenses and any sum which is due and payable by the Customer.
- 9.4 Should the Customer fail to collect any of the Customer's Property within 3 months of notification of the services being completed, the Supplier is authorised to sell such of the Customer's Property as remains in its possession in such manner as it sees fit (and is hereby appointed as the Customer's attorney for this purpose) and shall be at liberty to apply the proceeds of sale towards payment of any money due by the Customer to the Supplier and thereafter refund any excess to the Customer at its last known address.
- 9.5 The sale or delivery of part of the Customer's Property does not affect the repairer's lien.
- 9.6 The lien is in addition to any common law or legislative rights available to the Supplier concerning liens or unpaid invoices or unclaimed goods.
- 10. Personal Property Securities Act**
- 10.1 Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- 10.2 For the purposes of the PPSA:
- (a) terms used in clause 10 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Conditions are a security agreement and the Supplier has a Purchase Money Security Interest in all present and future goods supplied by the Supplier to the Customer and the proceeds of the goods;
 - (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
 - (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by the Supplier on the Personal Property Securities Register.
- 10.3 The security interest arising under this clause 10 attaches to the goods when the goods are collected or dispatched from the Supplier's premises and not at any later time.
- 10.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (notice to grantor in enforcement of security interests in liquid assets), 130 (notice of disposal of collateral), 132(3)(d) (statements of account following disposal), 132(4) (statements of account if no disposal), 135 (notice of retention of collateral) and 157 (verification statements) of the PPSA.
- 10.5 The Supplier and the Customer agree to contract out of and nothing in the provisions of sections 96 (retention of accession when person has interest in the whole), 125 (obligation to dispose of or retain collateral), 129 (disposal by purchase), 142 (entitled persons' redemption of collateral) and 143 (entitled persons' reinstatement of security agreement) of the PPSA will apply to these Conditions.
- 10.6 To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 (enforcement of security interests) of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and
 - (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 10.7 The Customer must immediately upon the Supplier's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.
- 10.8 The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money

- Security Interest it has in the goods supplied by the Supplier.
- 10.9 For the purposes of section 275(6) (secured party to provide certain information relating to security interest) of the PPSA, the parties agree and undertake that these Conditions and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the sale of the goods, except as otherwise required by law or that is already in the public domain.
- 11. Performance of contract**
- 11.1 Any period or date for delivery of goods or provision of services stated by the Supplier is an estimate only and not a contractual commitment.
- 11.2 The Supplier will use its best endeavours to meet any estimated dates for delivery of goods but will not be liable for any loss or damage suffered by the Customer, the End User or any third party for failure to meet any estimated date, except to the extent of any liability imposed under the ACL.
- 11.3 If the Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- 12. Risk in goods**
- 12.1 The goods are provided ex-works with risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer from the time the goods leave the Supplier's premises whether or not the Supplier has arranged freight of the goods to the customer's requested destination. Where goods are supplied on a trial basis, risk in the goods remains at all times with the Customer.
- 12.2 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, End User or third parties arising out of the use, installation or possession of any of the goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.
- 12.3 The Customer's Property will be at the Customer's risk while in the Supplier's possession for the provision of the services and the Supplier will not be liable for any loss or damage to the Customer's Property whilst in its possession, except to the extent of any liability imposed by the ACL.
- 12.4 The Customer agrees to indemnify the Supplier against all actions, suits, claims and demands against the Supplier arising directly or indirectly out of such loss or damage to the Customer's Property under clause 12.3, except to the extent of any liability imposed on the Supplier under the ACL.
- 13. Delivery and Collection of Customer's Property**
- 13.1 The Customer will arrange and pay for all costs associated with the carriage and insurance of the goods or services from the Supplier's nominated collection address unless otherwise specified by the Supplier.
- 13.2 If the Customer does not arrange for the collection of the goods within 7 days of being advised that they are available for collection, the Customer is deemed to have taken delivery of the goods and is liable for reasonable storage charges payable monthly on demand.
- 13.3 Where it is agreed that the Supplier will arrange delivery, the Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.
- 13.4 Unless otherwise agreed, the Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and the Supplier has not used due care and skill.
- 13.5 Where the Supplier arranges the delivery of the Customer's Property, the Customer must accept delivery of the Customer's Property within 2 days of the Supplier providing notification to the Customer that it is ready for delivery and if the Customer's Property is not accepted within such time, the Supplier will be entitled to claim reasonable storage costs for each day that the Customer's Property remains in the custody of the Supplier.
- 13.6 The Customer agrees that by accepting delivery of the Customer's Property it has inspected the end result of the services and satisfied itself that the services have been performed and completed with due care and skill and to a proper and satisfactory standard, subject to any rights available to the Customer under the ACL.
- 14. Security Trade Control**
- 14.1 If the Customer directly or indirectly sells, leases, exports, or otherwise disposes of the goods or services (collectively referred to as "**Transactions**"), the Customer must comply with any applicable laws and regulations of relevant countries ("**Applicable Laws**"). The Customer must provide the Supplier with such information and documentation that the Supplier requests so as to comply with the Applicable Laws.
- 14.2 A Transaction will be prohibited if, to the best of the Customer's knowledge:
- (a) it is highly likely that a customer of the Customer (referred to as a "**Purchaser**") may make use of the goods or services for the design, development, production, use or stockpiling of any weapons of mass destruction such as nuclear weapons, biological weapons, chemical weapons and missiles, and/or
 - (b) it is highly likely that a Purchaser in any country and/or area determined as a country and/or area to which no weapons are to be exported under the resolutions approved by the Security Council of the United Nations ("**UN**"), the Council of the European Union and/or the Organization for Security and Co-operation in Europe, may make use of the goods for military purposes.
- 14.3 If the Customer receives any inquiry as to the Transactions involving the goods or services from the following Purchasers, the Customer must immediately inform and verify with the Supplier prior to acceptance of such Transactions:
- (a) any Purchaser listed on the latest version of the Foreign End User List issued by the Ministry of Economy, Trade and Industry of Japan, which is shown at the following website address: <http://www.meti.go.jp/policy/anpo/englishpage.html>;
 - (b) any Purchaser listed on the latest version of the Denied Persons List and/or the Entity List issued by the Bureau of Industry and Security of the US Department of Commerce, which is shown at the following website address: <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>;
 - (c) any Purchaser located in any countries and/or areas, against which any economic sanctions have been imposed under resolution(s) approved by the Security Council of the UN and/or the Council of the European Union, the Organization for Security and Co-operation in Europe as far as the goods or services remain a "prohibited subject", whose export to such countries and/or area is prohibited thereunder; and/or
 - (d) any ultimate armament end user such as military force, military-related parties and/or organization including Coast Guard.
- 14.4 The Customer hereby agrees to indemnify and hold the Supplier harmless from and against any and all fines, damages, losses, costs and expenses including reasonable legal fees ("**Costs**") incurred by the Supplier as a result of any breach of this clause 14 by the Customer or any of the

Customer's distributors, dealers or retailers (collectively referred to as the "**Customer's Distributors**").

- 14.5 The Customer must include wording at least as stringent as this clause 14 in its agreements with the Customer's Distributors whereby the indemnification obligation by such of the Customer's Distributors for any fines, damages, losses, costs and expenses including reasonable legal fees must not be limited in any way, except to the extent required by law. Such indemnification will not affect the Supplier's rights against the Customer nor its ability to terminate all agreements between the Supplier and the Customer.

15. Liability

- 15.1 Except as the Conditions specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

- 15.2 If the Customer is a consumer nothing in these Conditions restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.

- 15.3 If the End User is a consumer and:

- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

- 15.4 If clause 15.2 or 15.3 do not apply, then other than as stated in the Conditions or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer, End User or any third party.

- 15.5 The Supplier is not liable for any consequential loss or expense suffered by the Customer, End User or any third party however caused, including but not limited to loss of profits, business or goodwill or any liability to the End User or a third party, except to the extent of any liability imposed by the ACL.

- 15.6 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or services or their use or application. Any advice, recommendations, information or assistance provided by the Supplier in relation to the goods or services supplied by it or their use or application is given in good faith, is believed by the Supplier to be appropriate and reliable, however, as far as permitted by law, the Supplier is not liable for any loss or damage arising there from.

- (b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.

- (c) all written or verbal comments made by the Supplier or Supplier's Representative at any testing stage of the goods are provided "as is" and without warranties of any kind either express or implied. Any testing of the goods is provided for informational purposes only and should not be considered a substitute for a comprehensive check of the goods by the Customer.

- 15.7 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

16. Manufacturer's Warranty

- 16.1 The Supplier is not responsible or liable under any manufacturer's warranty however, the Supplier will use its best endeavours to pass on for the benefit of the customer any warranty provided by the manufacturer of the goods.

17. Cancellation

- 17.1 If the Supplier is unable to deliver or provide the goods or services, then the Supplier may cancel the Customer's order (even if it has been accepted) by written notice to the Customer. The Supplier will be under no liability to the Customer, End User or any third party for any damages or losses, direct or indirect, resulting from such cancellation, except to the extent of any liability imposed by the ACL.

- 17.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on the Supplier once the order has been accepted and processed by the Supplier.

- 17.3 If the Customer cancels its order after it has been accepted and processed by the Supplier, the Supplier is entitled to reasonable damages for breach of contract.

18. Engine Operation Test

- 18.1 The Customer agrees to ensure that an on water operational test ("Operational Check") is conducted for every:

- (a) new boat model released, or
- (b) production variant within an existing boat model, or
- (c) vessel re-power;

which is fitted with **an** engine within Yanmar's New engine model range, BY, LH, LP, LY, CX, SY, CH, HA, HY and AY, to determine whether the engine is operating within its main design parameters. This is compulsory and is the Supplier's policy and that of Yanmar Ltd (the manufacturer).

19. Force Majeure

- 19.1 Neither party is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, either party may suspend or terminate the Agreement by written notice to the other party.

20. Jurisdiction

- 20.1 These Conditions will be governed by the laws of Victoria. The parties hereby submit to the exclusive jurisdiction of the Victorian Courts and the Federal Court of Australia Victoria Registry.