



SUNSEEKER INTERNATIONAL LIMITED

Standard terms and conditions
for the supply of after-sales goods

February 2024

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Collection Location: has the meaning given in clause 4.3.

Commencement Date: has the meaning given in clause 2.2.

Confidential Information: means any information received by either party in connection with the performance of the Contract relating to its business, prices, finances, affairs, customers, potential customers or the Goods, and includes the commercial terms of the Contract and any Goods Specification.

Contract: the contract between the Supplier and the Customer for the supply of Goods in accordance with these Conditions.

Customer: the person or entity who purchases the Goods from the Supplier.

Data Protection Guidance: means any guidelines, opinions, codes of practice, checklists and guidance issued by the Information Commissioner or any other regulatory authority or body with jurisdiction over the personal data processing activities contemplated by the Contract.

Data Protection Law: means all applicable: (i) laws and regulations; and (ii) Data Protection Guidance, in each case pertaining to the security, confidentiality, protection or privacy of personal data, as amended or re-enacted from time to time, including (to the extent applicable) the Data Protection Act 2018 and the European General Data Protection Regulation (Regulation (EU) 2016/679).

Delivery Location: has the meaning given in clause 4.2.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Order: the Customer's order for the supply of Goods, as set out in the Customer's request for a quote and written acceptance of the Supplier's quote on Salesforce or otherwise.

Order Confirmation: the Supplier's written confirmation on Salesforce or otherwise of the Customer's Order.

Supplier: Sunseeker International Limited registered in England and Wales with company number 675320.

Warranty Period: has the meaning given in clause 5.1.

2. Basis of contract

- 2.1 The Customer's acceptance of the Supplier's quote on Salesforce or otherwise constitutes an offer by the Customer to purchase Goods in accordance with these Conditions.
- 2.2 The Contract shall come into existence when the Supplier accepts the Customer's offer made under clause 2.1 by issuing an Order Confirmation on Salesforce or otherwise (**Commencement Date**).
- 2.3 Without prejudice to the generality of clause 9, Orders confirmed by the Supplier in accordance with the terms contained herein cannot be revoked by the Customer without the prior written consent of the Supplier, which consent may be withheld in the Supplier's sole discretion.
- 2.4 The Customer shall ensure that the terms of the Order and any information it provides in the Goods Specification are complete and accurate.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6 Any quote given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue or until the date specified on the quote.

3. Goods

- 3.1 The Goods are as described in the Supplier's parts catalogue, sales brochure, sales options list and/or relevant boat specification, as modified by the Order and any applicable Goods Specification.

4. Delivery/Collection of Goods

- 4.1 The Supplier shall ensure that each delivery or collection of the Goods is accompanied by a delivery/collection note which shows the Purchase Order number, the type and quantity of the Goods (including the code number of the Goods, where applicable), and any special storage instructions.
- 4.2 Where the Goods are to be delivered, the Supplier shall deliver the Goods to the location specified in the Order and/or Order Confirmation or such other location as the parties may

agree in writing (**Delivery Location**), and on a date agreed by the parties in writing, without prejudice to clause 4.6.

- 4.3 Where the Goods are to be collected, the Customer shall collect the Goods from a location (**Collection Location**) to be agreed by the parties in writing, and in accordance with clause 4.6.
- 4.4 Any dates quoted for delivery of the Goods or the Goods' readiness for collection, on Salesforce or otherwise, are approximate only, and the time of delivery/readiness for collection is not of the essence. The Supplier disclaims any responsibility for any delay in delivery, and non-compliance of the delivery terms indicated on Salesforce or otherwise shall not entitle the Customer to recover damages from the Supplier or to cancel any Order.
- 4.5 The Supplier's liability for failure to deliver the Goods shall be subject in all cases to the provisions of clauses 4.1 to 4.4 provided that in the event that it is determined by a court of competent jurisdiction that the Supplier failed to comply with these Conditions, the Supplier's liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the least expensive market available, less the price of the Goods.
- 4.6 Unless otherwise agreed in writing between the parties, if 10 Business Days after the day on which the Supplier notifies the Customer that the Goods are ready for delivery or collection (as the case may be), the Customer has not collected or accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods, together with any costs associated with storing and insuring the Goods until resale/disposal.

5. **Quality of Goods**

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery or for a period otherwise agreed in writing between the parties (**Warranty Period**), the Goods shall comply with the following warranties (**Warranties**):
 - (a) conform in all material respects with their description and any applicable Goods Specification;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for the purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the Warranties set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's sole cost and expense,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. The Customer acknowledges and agrees that the Goods may contain, be contained in, incorporated into, attached to or packaged together with products manufactured by a third party. For the avoidance of doubt, unless instructed otherwise by the Supplier, the Customer shall deal exclusively with the Supplier and shall not deal with any such manufacturer with respect to the Warranties.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the Warranties set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's verbal or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the Warranties set out in clause 5.1. For the avoidance of doubt, Customer shall be deemed to have waived any fault, defect, non-conformity, mishandling or shortage of any Goods if notice is not given to the Supplier within the Warranty Period.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier, save that any repaired or replacement Goods shall not extend the Warranty Period.

6. Title and risk

- 6.1 Risk in the Goods shall pass to the Customer on completion of delivery or collection (as the case may be).
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full for the Goods (in cash or cleared funds) provided that Customer shall be responsible in all cases for any damage arising out of or in connection with the Goods or their use immediately upon delivery or collection.

7. Charges and payment

- 7.1 The price for the Goods shall be the price set out in the Supplier's quote on Salesforce or otherwise, as accepted by the Customer under clause 2.1, and shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.2 The Customer is responsible for all costs and charges to transport the Goods. The Supplier will provide the Customer, with its quote, on request, an estimate of the costs and charges to transport the Goods. Any such costs and charges are approximate only and may be adjusted based on the actual costs therefor. Any changes between the estimated and the actual costs to transport the Goods shall not entitle the Customer to recover damages from Supplier or to cancel any Order.
- 7.3 The Supplier reserves the right to:
 - (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery/readiness for collection date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 7.4 The Supplier shall invoice the Customer on or at any time after shipping or collection (as the case may be).

- 7.5 Unless the Supplier requires or agrees otherwise in writing, the Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice (**Due Date**) and in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.
- 7.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).
- 7.7 If the Customer fails to make a payment due to the Supplier under the Contract by the Due Date, then the Customer shall pay interest on the overdue sum from the Due Date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. Supplier shall be entitled to recover and Customer shall pay Supplier's reasonable legal fees and costs of collecting any amounts due to Supplier which are not timely paid by Customer in accordance with these Conditions.
- 7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Limitation of liability

- 8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2 and any other limitations of liability in these Conditions, the Supplier's total liability to the Customer shall not exceed the price of the Goods as set out in the Order.
- 8.4 The Supplier shall not be liable for:
- (i) loss of profits;

- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill; and
- (vii) indirect or consequential loss.

8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.6 This clause 8 shall survive termination of the Contract.

9. Cancellations

9.1 Once the Contract is formed in accordance with clause 2, any cancellation of an Order will have the following consequences:

- (a) The Contract will be terminated with immediate effect;
- (b) Where the Order is cancelled by the Customer for any reason whatsoever, the Customer will be liable for the full price of the Goods plus any additional costs, losses and expenses incurred by the Supplier as a result of the cancellation, unless otherwise agreed in writing by the Supplier, at the Supplier's absolute discretion;
- (c) Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (d) Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

9.2 Without prejudice to the generality of clause 9.1 above, any Orders containing personalized and/or custom Goods are non-cancellable and non-refundable, including but not limited to, any Orders which the Supplier is not able to cancel at its end. If the Customer fails to complete a purchase of personalized or custom Goods, the Supplier shall be entitled to recover any costs or expenses incurred in connection with such Order.

10. Force majeure

10.1 Neither party shall be in breach of the Contract, or otherwise liable for any failure or delay in the performance of its obligations, if such delay or failure results from events,

circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly.

- 10.2 In the case of any Force Majeure Event, Supplier shall have the right, but not the obligation, to immediately cancel any Order, without liability for any damages that may be incurred, directly or indirectly, by Customer.

11. Confidentiality

- 11.1 Both parties acknowledge that, during the term of the Contract, they may have access to Confidential Information in respect of the other party. Each party shall:

- (a) use any Confidential Information belonging to the other party solely for the purposes of performing its obligations under the Contract; and
- (b) keep the Confidential Information belonging to the other party secret and confidential and in particular not to divulge, publish or disclose the same whether in whole or in part however directly or indirectly to any person other than the other party, or in confidence on a need to know basis to employees, agents and/or subcontractors who are subject to confidentiality obligations in respect thereof.

- 11.2 The above undertakings as to confidentiality shall not apply to any information which the receiving party can establish to the disclosing party's reasonable satisfaction:

- (a) is at the date of disclosure in or subsequently enters the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the receiving party; or
- (b) is required to be disclosed by a government authority or by law.

- 11.3 The provisions of this clause 11 shall survive the expiry or termination of the Contract howsoever arising.

12. Data protection

- 12.1 The parties shall comply with Data Protection Law when processing any personal data pursuant to or in connection with the Contract.

- 12.2 The term **personal data** shall be interpreted and construed by reference to Data Protection Law.

13. General

- 13.1 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract

is deemed deleted under this clause 13.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

13.2 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

13.3 **Entire agreement.**

(a) The Contract constitutes the entire agreement between the parties.

(b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

13.4 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties Act 1999) to enforce any term of the Contract.

13.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

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

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