



**SUNSEEKER INTERNATIONAL LIMITED**

Standard terms and conditions  
for the purchase of goods and services

(Version 16.0 – February 2024)

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## 1 DEFINITIONS

In these Conditions the following words and expressions shall have the following meanings, unless the context otherwise requires:

- 1.1 **"Agreed Lead Time"** means the period required by a Supplier to supply the Goods by the specified delivery date, as agreed in writing between Sunseeker and the Supplier from time to time.
- 1.2 **"Agreement"** means the contract between Sunseeker and the Supplier for the purchase of the Goods and/or the Services, constituted by the issue to the Supplier of a Purchase Order from Sunseeker, in each case which is accepted by the Supplier in accordance with Condition 2, and to which the Conditions shall apply.
- 1.3 **"Business Day"** means any day (other than Saturday, Sunday or a bank or public holiday in England) on which clearing banks in London are open for business.
- 1.4 **"Code of Conduct"** means the Sunseeker Code of Conduct for Suppliers, as amended or replaced from time to time by Sunseeker.
- 1.5 **"Conditions"** means these standard terms and conditions, the Annex to these standard terms and conditions, the Supplier Manual, any confidentiality agreement between Sunseeker and the Supplier and any other agreement which may be signed between the parties.
- 1.6 **"Confidential Information"** means any information received by either Party in connection with the performance of the Agreement relating to its business, prices, finances, affairs, customers, potential customers, the Goods and/or the Services and includes the commercial terms of the Agreement, any Specification and Materials.
- 1.7 **"Data Protection Law"** means all applicable laws and regulations, 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 European General Data Protection Regulation (Regulation (EU) 2016/679) (the **GDPR**).
- 1.8 **"Delivery"** means the delivery of the Goods and/or Services to Sunseeker on the date and at the address specified in accordance with Condition 8, in the case of Goods DAP (Incoterms 2020) or as otherwise agreed in writing by the Parties.
- 1.9 **"Delivery Note"** shall have the meaning given to that term at Condition 8.1.3.
- 1.10 **"Export Controls"** means all laws, regulations, binding regulatory decisions and/or rules with equivalent effect to which Sunseeker is subject in any territory (including but not limited to the United Kingdom, European Union and United States of America), which restrict the transfer of goods to, or the performance of services for, certain persons and entities.
- 1.11 **"Force Majeure"** means an event or circumstance which is beyond the reasonable control of a Party which by its nature could not reasonably have been foreseen by that Party and which prevents or delays that Party from performing its obligations under the Agreement, including without limitation acts of God, fire, unexpected flooding and other extreme weather conditions, explosion, power failure or severe reduction in power supplies, war or acts of

terrorism, pandemics, the act of any government or authority and strikes, lock-outs and labour disputes (in each case, of national and not merely local effect).

- 1.12 **"Goods"** means all materials, components, goods, equipment and other items (including any part or part supply of them) set out in, and/or which are supplied under, the Agreement.
- 1.13 **"Goods In Receipt Desk"** has the meaning given to that term at Condition 8.1.4.
- 1.14 **"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade-marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.15 **"Losses"** means all losses, liabilities, costs (including (without limitation) legal and other professional fees and costs and VAT), charges, expenses, actions, procedures, claims, fines, penalties, interest, demands and damages (including (without limitation) the amount of damages awarded by a court of competent jurisdiction).
- 1.16 **"Modern Slavery Practices"** means any practice that amounts to (i) slavery, servitude, forced or compulsory labour (each as construed in accordance with Article 4 of the European Convention on Human Rights as amended or supplemented from time to time, and with Section 1 of the Modern Slavery Act 2015); (ii) economic exploitation of a child (as defined in Article 32 of the United Nations Convention on the Rights of the Child); and/or (iii) any other slavery-like behaviours (including but not limited to debt-bondage, forced marriage, human trafficking and slave-trading).
- 1.17 **"Party"** means Sunseeker or the Supplier, as the case may be, and **"Parties"** means both of them.
- 1.18 **"Personal Data"** means the personal data that is processed by the Supplier on behalf of Sunseeker in accordance with the Agreement, as further described in the Purchase Order.
- 1.19 **"Price"** means the price for the Goods and/or the Services set out in the Purchase Order.
- 1.20 **"Production Items"** means Goods used in boat production.
- 1.21 **"Purchase Order"** means the written or verbal order for Goods and/or Services issued by Sunseeker (where Sunseeker issues a verbal order it will be followed up with a written purchase order).
- 1.22 **"Receipt"** means the process whereby the Delivery Note is verified and approved by Sunseeker's third party logistics provider in accordance with Condition 8.1.4 using the identifier notified by Sunseeker's Supply Chain Director to the Supplier's contract manager from time to time, and reference to "Receipted" shall be construed accordingly.

- 1.23 **"Safe Countries"** means the countries that comprise the European Economic Area, and in the event that the United Kingdom or any part of it falls outside the European Economic Area, those countries and the United Kingdom or that part of it.
- 1.24 **"Sanctions"** means any sanctions, prohibitions or restrictions imposed by any State, Supranational or International Governmental Organisation, including the United Kingdom, United States of America or European Union;
- 1.25 **"Sanctions Authority"** means the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury and the UK's Office of Financial Sanctions Implementation and Department of International Trade, or other relevant authority.
- 1.26 **"Sanctions List"** means any of the lists issued or maintained by a Sanctions Authority designating or identifying individuals or entities that are subject to Sanctions, in each case amended, supplemented or substituted from time to time.
- 1.27 **"Sanctions Target"** means a person or entity that is either listed on or owned or controlled by (either directly or indirectly) or acting on behalf of a person or entity listed on a Sanctions List; resident, domiciled or located in, or incorporated or organised under the laws of, a Sanctioned Territory; or otherwise identified by a Sanctions Authority as being subject to Sanctions.
- 1.28 **"Sanctioned Territory"** means a country or territory that is subject to any general financial, trade or investment restrictions or embargoes under any Sanctions.
- 1.29 **"Services"** means all services to be performed by the Supplier, which may include some or all of the following: engineering, construction, installation and/or commissioning, pursuant to the Agreement.
- 1.30 **"Specification"** means any plans, drawings, data, samples or other descriptions, including dimensions, colour, finish, materials and tolerances and including written instructions or information in each case supplied by one Party to the other Party relating to the Goods and/or Services.
- 1.31 **"Sunseeker"** means SUNSEEKER INTERNATIONAL LIMITED (registered in England and Wales with company number 00675320) or, as the case may be, any of its associate or subsidiary companies.
- 1.32 **"Sunseeker Address"** means Sunseeker House, West Quay Road, Poole, Dorset, BH15 1JD, England and, in the case of email correspondence, means [procurement@sunseeker.com](mailto:procurement@sunseeker.com).
- 1.33 **"Supplier"** means any person (whether an individual, a company or another legal entity) with whom Sunseeker enters into an Agreement and such expression includes (where the context requires) all officers, employees, representatives, affiliates or agents employed or acting on behalf of the Supplier.
- 1.34 **"Supplier Manual"** means Sunseeker's policies, standards and procedures (as amended from time to time by Sunseeker) relating to the purchase of Goods and Services, including (without limitation) delivery and packaging standards.
- 1.35 **"UKCA"** means UK Conformity Assessed.

1.36 "VAT" means value added tax or other applicable indirect sales tax.

## **2 THE AGREEMENT**

2.1 The Purchase Order constitutes an offer by Sunseeker to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier issuing written or verbal acceptance of the Purchase Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Purchase Order,

at which point the Agreement shall come into existence. If the Supplier is unable to accept a Purchase Order, it shall notify Sunseeker promptly.

2.3 Without prejudice to Sunseeker's rights at Condition 8 in relation to Future Production Items, a Purchase Order may be:

2.3.1 withdrawn or amended by Sunseeker at any time before acceptance by the Supplier;

2.3.2 amended by Sunseeker after it has been accepted by the Supplier, with the agreement of the Supplier (such agreement not to be unreasonably withheld or delayed);

2.3.3 cancelled by Sunseeker after it has been accepted by the Supplier, in which case clauses 12.3 and 12.4 will apply in respect of the cancelled Purchase Order.

2.4 Unless otherwise mutually agreed in writing these Conditions shall apply to all Purchase Orders placed by Sunseeker with the Supplier for the purchase of Goods and/or Services, to the exclusion of any other terms that the Supplier seeks to impose or incorporate unless such terms are signed by an authorised representative of Sunseeker, or which are implied by trade, custom, practice or course of dealing. These Conditions supersede any terms and conditions of purchase or supply previously issued by Sunseeker.

2.5 The Supplier shall ensure that at all times it: (i) has and maintains all the necessary licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the supply of the Goods and/or Services; (ii) complies with all applicable laws, regulations, standards, Sanctions and Export Controls; and (iii) complies with the Code of Conduct and such other policies as Sunseeker may notify to the Supplier from time to time. The Code of Conduct and such other policies shall be deemed incorporated within the Agreement.

2.6 Supplier acknowledges that it has received a copy of the Supplier Manual and Sunseeker will provide the Supplier with any amendments to the Supplier Manual from time to time. The Supplier will comply with those requirements of the Supplier Manual that are applicable to it and its supply of the Goods and/or Services. The Supplier Manual shall be deemed

incorporated within the Agreement. In the event of any conflict between the terms of the Supplier Manual and these Conditions, the terms of the Supplier Manual shall prevail.

### **3 PRICE AND PAYMENT**

- 3.1 The Price shall be the full, fixed and exclusive remuneration of the Supplier.
- 3.2 The Price is exclusive of any VAT. Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to Sunseeker, Sunseeker shall after receipt of a valid VAT invoice from the Supplier pay to the Supplier (at the same time as payment of the Price is due) such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 3.3 With respect to Goods, unless otherwise agreed in writing between the Parties, the Price is inclusive of the costs of packaging, insurance, carriage and Delivery.
- 3.4 The Price shall not be increased without the prior written consent of Sunseeker, whether due to an increase in the Supplier's direct or indirect costs and expenses in connection with the performance of the Services, additional Goods or Services being required due to an error of the Supplier, increased material, labour or transport costs, fluctuation in rates of exchange or otherwise howsoever arising.
- 3.5 If the Supplier fails to supply the Goods and/or Services in accordance with Condition 8.2.1, then strictly without prejudice to its other rights and remedies Sunseeker will be entitled to a reduction in the Price of the Goods and/or Services affected by the delay of 0.5% per day's delay up to a maximum of 5% of the Price, to be reflected in the corresponding invoice or in a credit note to be issued by the Supplier within 7 Business Days of the date on which delivery was due under Condition 8.2.1 where the corresponding invoice is not due to be issued until after that 7-day period.

### **4 SUPPLY OF GOODS**

- 4.1 It shall be a condition of the Agreement that all Goods shall:
  - 4.1.1 comply in all respects with their description and any applicable Specification;
  - 4.1.2 be of best quality for use in the manufacture of products for the marine industry;
  - 4.1.3 be fit for any purpose expressly or impliedly made known to the Supplier by Sunseeker;
  - 4.1.4 be free from defects in design, materials and workmanship;
  - 4.1.5 originate, or be manufactured from raw materials that originate, in the country specified in the Purchase Order or as otherwise agreed in writing between the Parties;
  - 4.1.6 comply with all applicable statutory and regulatory requirements, together with applicable standards (including ISO) relating to the manufacture, labelling, packaging, storage, handling, operation and delivery of Goods; and



- 4.1.7 not breach any Sanctions, Export Controls or other applicable laws or regulations.
- 4.2 The provisions of Condition 4.1 shall be in addition to, and not in substitution for, any terms implied by statute as to the quality of the Goods.
- 4.3 The Supplier shall provide such assistance as may be reasonably requested by Sunseeker to assist Sunseeker in ensuring and, where necessary, demonstrating that the Goods meet all laws and regulations, applicable regulatory approvals and environmental, health and safety and emissions standards, and do not breach any Sanctions or Export Controls.
- 4.4 The Supplier will complete Sunseeker's Request for Information form in respect of the Goods where requested to do so by Sunseeker or its authorised representative and will promptly notify Sunseeker and its authorised representative of any changes to its supply chain or any other information provided therein.
- 4.5 If the Goods are to be supplied from outside the United Kingdom, the Supplier shall, free of charge, automatically provide proof of origin satisfactory to Sunseeker (acting reasonably), including but not limited to the following:
- 4.5.1 movement certificate;
  - 4.5.2 certificate of origin (certified by the competent chamber of commerce and the competent consulate or embassy, as applicable);
  - 4.5.3 confirmation of origin;
  - 4.5.4 declaration of origin; and
  - 4.5.5 supplier's declaration
- in order to satisfy the requirements for preferential clearance upon import in the country of destination.
- 4.5A If the Goods are supplied by a UK Supplier, the Supplier shall, free of charge, automatically provide a supplier's declaration satisfactory to Sunseeker and which shall detail invoices, delivery notes and any other information necessary to identify goods.
- 4.6 Any certificates or documents listed at Condition 4.5 and 4.5A will include the Purchase Order number and project or boat number (if any). The value of the Goods shall not be listed on any such certificates or documents.
- 4.7 If the certificate of origin is completed by Sunseeker, the Supplier shall provide, upon request, a confirmation of origin for each individual part of the Goods specifying the manufacturer (including exact address) and/or the country of origin.
- 4.8 Goods which require a (i) CE mark shall be CE-compliant and/or (ii) a UKCA mark shall be UKCA compliant, and shall have the appropriate CE mark and/or UKCA mark and a EU Declaration of Conformity (in the English language) and/or UK Declaration of Conformity (as the case may be) will be provided by the Supplier.

- 4.9 All fees, duties, taxes and extra charges resulting from failure to supply the documents listed at Conditions 4.4 to 4.8 or from incorrect statements, or inaccurate statements of origin shall be borne by the Supplier.
- 4.10 If so requested by Sunseeker, the Supplier will supply user manuals for the Goods in an agreed form, suitable to be passed to Sunseeker's end purchaser.
- 4.11 The Supplier confirms that the Goods shall be capable of being lawfully resold, whether separately or as part of Sunseeker's products, to the jurisdictions notified to the Supplier by Sunseeker from time to time and the Supplier will provide such documentation as Sunseeker may reasonably require to facilitate such resale of the Goods.
- 4.12 If the Goods incorporate any components sourced from third parties ("**Third Party Components**"), the Supplier will remain responsible for checking the Third Party Components which it receives to ensure that they: (i) match the relevant specification and description for those items; (ii) are of satisfactory quality; (iii) are fit for their usual purpose or the purpose (if any) advised to the Supplier by Sunseeker; and (iv) do not breach any Sanctions, Export Controls or other applicable laws or regulations.
- 4.13 The provisions of this Condition 4 shall survive any performance, acceptance or payment pursuant to the Agreement and shall extend to any substituted or remedial Goods provided by the Supplier.

## **5 SUPPLY OF SERVICES**

- 5.1 In providing the Services, the Supplier shall:
- 5.1.1 co-operate with Sunseeker in all matters relating to the Services, and comply with all of Sunseeker's instructions;
  - 5.1.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 5.1.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement and shall ensure that such personnel conform to all applicable health and safety requirements (including use of personal protective equipment whether specifically notified to the Supplier or not) of Sunseeker when present at any of the Sunseeker sites;
  - 5.1.4 only use personnel who have a right to work in the UK and be able to demonstrate to Sunseeker, when requested to do so, that it has carried out all proper right to work checks;
  - 5.1.5 ensure that the Services will conform with any description and Specification and shall be fit for any purpose expressly or impliedly made known to the Supplier by Sunseeker;
  - 5.1.6 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

- 5.1.7 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to Sunseeker, will be free from defects in design, materials, workmanship and installation; and
- 5.1.8 not do or omit to do anything which may cause Sunseeker to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Sunseeker may rely or act on the Services.
- 5.2 The provisions of Condition 5.1 shall be in addition to, and not in substitution for, any terms implied by statute as to the title, quality and fitness for purpose of any goods used in the supply of the Services.
- 5.3 The provisions of this Condition 5 shall survive any performance, acceptance or payment pursuant to the Agreement and shall extend to any substituted or remedial Services provided by the Supplier.
- 5.4 The Supplier shall have an ongoing obligation to declare to Sunseeker if, to the best of their knowledge and belief, any of their employees who may be involved in delivering Goods or Services, were previously employed by Sunseeker.

## **6 INSPECTION AND TESTING PROTOCOL**

- 6.1 Sunseeker shall have the right to inspect and test the Goods at any facility of the Supplier at any time before Delivery, upon reasonable notice being given to the Supplier.
- 6.2 If, following inspection and/or testing, Sunseeker considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Condition 4, Sunseeker shall notify the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 6.3 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement and Sunseeker shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 6.4 The Supplier will carry out any and all testing requested by Sunseeker to demonstrate the country of origin of every consignment of Goods, or raw materials received by the Supplier for the purposes of manufacturing the Goods, and will provide the test results to Sunseeker prior to Delivery. If the Supplier fails to comply with this Condition 6.4, or if the test results evidence a different country of origin from that specified in the Purchase Order or as otherwise agreed in writing between the Parties, Sunseeker shall have the right to terminate the Agreement with immediate effect, and any and all Losses incurred by Sunseeker as a result of such termination shall be for the Supplier's account.

## **7 PERFORMANCE TESTS AND ACCEPTANCE PROTOCOL**

- 7.1 Sunseeker shall have the right to inspect and test the Goods upon Delivery to ascertain whether the Goods comply with the Supplier's undertakings under Condition 4.

- 7.2 Sunseeker shall not be obliged to inspect and test the Goods immediately upon or following Delivery and shall be entitled to leave the Goods packaged and wrapped until such time as they are required for installation or use in the manufacturing of Sunseeker's products. If, following inspection and/or testing, Sunseeker determines that the Goods do not comply with the Supplier's undertakings at Condition 4, Sunseeker will have the right to reject the Goods in accordance with Condition 9, and the Supplier will collect the Goods without delay.
- 7.3 The rights of Sunseeker as set out at Condition 7.2 will not be affected by section 35(4) of the Sale of Goods Act 1979 (as amended), which is hereby excluded.

## **8 DELIVERY**

- 8.1 The Supplier shall ensure that:

- 8.1.1 it complies with the Sunseeker Delivery and Packaging Standards which shall form an integral part of the Agreement and which are freely available to the Supplier as part of the Supplier Manual and on Sunseeker's website at [www.sunseeker.com](http://www.sunseeker.com);
- 8.1.2 the Goods are properly packaged and secured in such manner so as to enable them to reach their destination in good condition;
- 8.1.3 it issues a delivery note to accompany the Delivery of Goods, precisely itemising the Goods delivered, the quantities in which they are delivered and the Sunseeker site to which they are delivered together with the corresponding Purchase Order number ("**Delivery Note**"); and
- 8.1.4 it presents the Delivery Note at the relevant Sunseeker receipt desk ("**Goods In Receipt Desk**") to be Receipted by Sunseeker's third party logistics provider's representative. It is the Supplier's responsibility to present the Delivery Note at the correct Goods In Receipt Desk. A list of Goods in Receipt Desks by Sunseeker location is at Annex 2. Without prejudice to its other rights and remedies, Sunseeker reserves the right to withhold payment for any Goods not Receipted on Delivery.

- 8.2 The Supplier shall deliver the Goods and/or supply the Services:

- 8.2.1 on the date(s) and if specified, at the time(s), set out in the Purchase Order, as amended where applicable under Condition 8.5 or as otherwise agreed by the Parties in writing;
- 8.2.2 to the address specified in the Purchase Order or as instructed by Sunseeker before the time for delivery ("**Delivery Location**").

- 8.3 If a Purchase Order includes Production Items to be delivered up to and including 8 weeks from the date of the Purchase Order ("**Order Date**"), Sunseeker will be bound to buy, and the Supplier will be bound to sell, those Production Items in accordance with the Purchase Order.
- 8.4 If a Purchase Order includes Production Items to be delivered more than 8 weeks from the Order Date ("**Future Production Items**"), the Purchase Order will only become binding on Sunseeker for Future Production Items from the date which is 8 weeks from the date of

delivery specified in the Purchase Order or from the first day of the Agreed Lead Time applicable as at the Purchase Order date, whichever is the longer ("**Binding Order Date**").

- 8.5 Prior to the Binding Order Date, Sunseeker may, in relation to Future Production Items, in writing: (i) cancel the Purchase Order; or (ii) delay the delivery date and/or amend the quantity.
- 8.6 Risk in the Goods shall pass to Sunseeker upon Delivery of the Goods to the Delivery Location.
- 8.7 Ownership of the Goods shall pass to Sunseeker upon the earlier of payment or Delivery of the Goods.
- 8.8 Sunseeker shall not be liable to the Supplier for any reasonable delay caused to the Supplier in delivering Goods and/or supplying Services to any Sunseeker premises where such delay arises out of operational restrictions resulting from Sunseeker's manufacturing processes (for example, ship movements).
- 8.9 Any container or packaging which is intended to be returned to the Supplier remains the property of the Supplier and at the Supplier's risk at all times.
- 8.10 Upon Delivery or in advance of Delivery, at Sunseeker's election, the Supplier shall provide Sunseeker with all relevant inspection documentation, which shall include but not be limited to reports on quality control, test certificates, time schedules, progress reports and any danger/ risk analysis documentation in respect of CE marks.

## **9 REJECTION OF GOODS AND/OR SERVICES**

- 9.1 If the Supplier has delivered Goods that do not comply with the undertakings set out in Condition 4.1 then, without prejudice to its other rights or remedies, Sunseeker may:
  - 9.1.1 reject the Goods (in whole or in part) whether or not title has passed and return them to the Supplier, at the Supplier's risk and expense;
  - 9.1.2 terminate the Agreement with immediate effect by giving notice to the Supplier;
  - 9.1.3 require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (to the extent paid);
  - 9.1.4 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 9.1.5 recover from the Supplier any expenditure incurred by Sunseeker in obtaining substitute goods from a third party; and/or
  - 9.1.6 claim damages for any additional costs, loss or expenses incurred by Sunseeker arising from the Supplier's failure to deliver the Goods in accordance with Condition 4.1.

## **10 DELAY**

- 10.1 It is agreed that time is of the essence in respect of the time for delivery of Goods and/or Services under the Agreement. If the Supplier fails to supply the Goods and/or Services by the

applicable date(s) and time(s), then strictly without prejudice to its other rights and remedies Sunseeker may:

- 10.1.1 terminate the Purchase Order and/or the Agreement with immediate effect by giving notice to the Supplier;
- 10.1.2 refuse to accept any subsequent supply of the Services and/or the Goods which the Supplier attempts to make;
- 10.1.3 recover from the Supplier any costs incurred by Sunseeker in obtaining substitute goods and/or services from a third party;
- 10.1.4 where Sunseeker has paid in advance for Services and/or Goods which have not been supplied by the Supplier, to have such sums refunded by the Supplier; and/or
- 10.1.5 claim damages for any additional costs, loss or expenses incurred by Sunseeker which are in any way attributable to the Supplier's failure to meet such date(s) and time(s).

## **11 INVOICES, STATEMENTS AND PAYMENT**

- 11.1 Invoices shall be addressed and sent to Sunseeker's Accounts Department by: (i) first class post; or (ii) email to [invoice@sunseeker.com](mailto:invoice@sunseeker.com), in accordance with the Agreement and referring to the relevant Purchase Order number (if any).
- 11.2 Statements of ongoing accounts shall be addressed and sent to Sunseeker's Accounts Department at the Sunseeker Address on a monthly basis. The statements shall list all invoices issued to Sunseeker which are unpaid with cross references to the appropriate Purchase Order number (if any).
- 11.3 In consideration of the supply of Goods and/or Services by the Supplier in accordance with the Agreement, Sunseeker shall pay the Price within 60 days from the end of the month in which a valid invoice is received by Sunseeker.
- 11.4 If Sunseeker fails to pay any amount properly due and payable by it under the Agreement (and which amount is not disputed by Sunseeker in good faith), the Supplier shall have the right to charge interest on the overdue amount at its usual rate subject to a maximum rate of 2% per annum above the base rate for the time being of the Bank of England, accruing on a daily basis from the date of receipt by Sunseeker of notice that the amount is overdue and that accordingly interest at the stated rate will apply, up to the date of actual payment.
- 11.5 Sunseeker may, without limiting its other rights or remedies, set-off any amount owing to it by the Supplier (whether under the Agreement or otherwise) against any amount payable by Sunseeker to the Supplier under the Agreement.

## **12 TERMINATION**

- 12.1 In addition to such rights as it may have in law or under other provisions of the Agreement, either Party may terminate the Agreement immediately if the other Party:

- 12.1.1 commits a material or persistent breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice of the breach;
- 12.1.2 is dishonest or fraudulent in relation to the Agreement;
- 12.1.3 has a genuine petition presented, order made or resolution passed for the winding up, liquidation or dissolution of it or if a receiver, receiver and manager, administrator or comparable official is appointed over the whole or a material part of the Party's undertaking, property or assets;
- 12.1.4 suspends or threatens to suspend payment of its debts, is unable to pay its debts as they fall due or ceases to carry on its present business or states or intimates any intention of so doing;
- 12.1.5 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 12.1.6 being an individual, is the subject of a bankruptcy petition order, or dies or by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- 12.1.7 the other Party suffers any analogous event to those set out in Conditions 12.1.3 to 12.1.6 (inclusive) in any other jurisdiction.
- 12.2 Without prejudice to its other rights or remedies, Sunseeker may terminate any Purchase Order and/or the Agreement:
  - 12.2.1 in respect of the supply of Services, by giving the Supplier one month's notice; and
  - 12.2.2 in respect of the supply of Goods, with immediate effect by giving notice to the Supplier, in which case Condition 12.3 shall apply.
- 12.3 Upon termination under Condition 12.2.2:
  - 12.3.1 Sunseeker shall pay to the Supplier (subject to any set-off in accordance with Condition 11.5) the amount if any 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 relevant Purchase Order but excluding loss of anticipated profits or any consequential loss. The phrase "**unused raw materials**" excludes items which can be used by the Supplier for another purpose, or returned to the Supplier's supplier for a full refund;
  - 12.3.2 the Supplier grants Sunseeker the right of access to any premises of the Supplier and shall procure the same right of access to any third party's premises to enable Sunseeker to inspect the stage of construction, and to lift and take away (subject to payment in accordance with Condition 12.3.1) 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.

12.4 For the purposes of Condition 12.3:

12.4.1 a fair price for unused raw materials is either the cost price of those materials or, 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);

12.4.2 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;

12.4.3 a fair price for unfinished Goods is either the Price (when such materials are converted into or incorporated in finished Goods produced by the Supplier at the request of Sunseeker) or, at Sunseeker's option, a fair and reasonable price taking account of the stage of manufacture reached, for such materials;

12.4.4 if the parties are unable to agree the value of the work in progress in relation to Condition 12.3.1, the value of the work in progress will be determined by a valuer appointed by the parties, or in default of agreement, appointed by the UK Society of Auctioneers and Valuers.

12.5 Any termination of the Agreement will be without prejudice to any other rights or remedies of either Party under the Agreement or at law and will not affect any accrued rights or liabilities of either Party at the date of termination.

12.6 The termination of the Agreement for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after the termination.

**13 WARRANTY OF FREEDOM FROM DEFECTS**

13.1 The Supplier guarantees all Goods against defects in design, materials and workmanship for a period expiring 24 months after delivery of the product in which the Goods are incorporated by Sunseeker to its end purchaser or 36 months from the date of delivery of the Goods to Sunseeker, whichever is the later.

13.2 The Supplier guarantees all goods and materials supplied and/or used in the performance of the Services against defects in design, materials, workmanship and installation for a period expiring 24 months after delivery of the product to which the Services relate by Sunseeker to its end purchaser or 36 months after supply of the Services, whichever is the later.

13.3 In the event of a defect occurring in the Goods or Services within the guarantee periods specified in Conditions 13.1 and 13.2, the Supplier will, without delay, either replace or repair the defect at Sunseeker's election. Unless otherwise agreed by Sunseeker the repair or replacement will take place at an address designated by Sunseeker (usually at a place where the boat is moored). All costs arising from and out of the replacement or repair of the defect shall be for the Supplier's account, including but not limited to transport, customs, dismantling and erection.



- 13.4 Condition 13.3 will apply to serial defects, including circumstances where the defects have not yet been found in all the supplies of the same kind.
- 13.5 Notwithstanding Condition 13.3, if:
- 13.5.1 the defect is a minor defect, being a replacement or repair with a value of no more than £10,000, such value to be assessed by Sunseeker (acting reasonably);
  - 13.5.2 if the defect's rectification or replacement is required for safety reasons; or
  - 13.5.3 the Supplier fails to repair or replace any defect within a reasonable time pursuant to Condition 13.3,
- Sunseeker may remedy the defect immediately and without notification to the Supplier and will be entitled to recover the costs arising from such remedy from the Supplier without affecting Sunseeker's rights or the Supplier's obligations, including warranty obligations, under the Agreement.
- 13.6 If the parties are unable to agree on the existence of a defect, the Supplier will in any event be obliged to repair or replace the defect at its cost. If, after repair or rectification of the alleged defect, the Supplier is able to prove that the alleged defect was incorrectly claimed as a defect, Sunseeker will refund the reasonable costs of the Supplier in remedying the defect.

#### **14 LIMITATION OF LIABILITY**

- 14.1 Subject to Condition 15, neither party shall be liable to the other for indirect losses, consequential losses, loss of profits and/or loss of production arising under or in accordance with the Agreement.

#### **15 INDEMNITY**

- 15.1 The Supplier shall fully indemnify, keep indemnified and hold harmless Sunseeker in full and on demand from and against Losses (whether direct or indirect) awarded against or incurred or paid by Sunseeker as a result of or in connection with:
- 15.1.1 any claim against Sunseeker by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its employees, agents or subcontractors ;
  - 15.1.2 any claim made against Sunseeker by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - 15.1.3 claims in respect of death, personal injury or damage to property (in each case to the extent due to the act or omission of the Supplier or any of its employees, agents or subcontractors) of any employee, agent or subcontractor of the Supplier whilst at Sunseeker's premises or other places of business;
  - 15.1.4 breach of any warranty given by Sunseeker in relation to the Goods and/or Services (including, without limitation, any warranty given by Sunseeker in respect of any

products incorporating the Goods and/or Services) which arises out of, or is connected with, breach of a warranty given by the Supplier to Sunseeker;

- 15.1.5 any claim made against Sunseeker for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods and/or receipt, use or supply of the Services;
  - 15.1.6 the Supplier's (or its subprocessor's) failure to comply with the provisions of Condition 25 (Data Protection) or Data Protection Law;
  - 15.1.7 any claim brought or assessment made by HMRC against Sunseeker, or liability to tax incurred by Sunseeker, based on worker status (including reasonable costs and expenses) arising out of or in connection with the supply of the Goods and/or Services; and
  - 15.1.8 any breach by the Supplier of Conditions 4.1 or 5.1.
- 15.2 The Supplier shall maintain in force at its cost employer's liability insurance, product liability insurance, public liability insurance and where relevant professional indemnity insurance, each for no less than GBP £10 million (or such other amount as may be agreed in writing between the Parties) with a reputable insurer to cover against the risks set out in this Condition 15 and the Agreement. The Supplier shall produce on demand documentary evidence satisfactory to Sunseeker (acting reasonably) of details of cover and the payment for the current year's premium in respect of each insurance.
- 15.3 The provisions of this Condition 15 shall survive the expiry or termination of the Agreement howsoever arising.

## **16 INSPECTION OF RECORDS AND DOCUMENTATION**

- 16.1 The Supplier shall maintain complete and accurate records of the time spent and materials used in providing the Services and shall allow Sunseeker to inspect such records at all reasonable times on request.
- 16.2 The Supplier confirms that it is fully aware of the need for timely submission and correctness of documentation for Goods and Services and that it will be liable to Sunseeker for any damages resulting from delays or errors.

## **17 HEALTH AND SAFETY**

- 17.1 If the Supplier works at, or visits, Sunseeker's premises, the Supplier will strictly observe and follow all Sunseeker's requirements for contractors and visitors to Sunseeker's premises and shall adhere to guidance contained in Sunseeker's Health and Safety policies. The Supplier shall be responsible for supplying any required personal protective equipment required for its work or visit.

## **18 ANTI-BRIBERY & CORRUPTION**

- 18.1 The Supplier agrees that it will not, in connection with the Agreement, bribe, or attempt to bribe (which shall include, without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage (whether of money or anything of value))

Sunseeker, or any of Sunseeker's employees, agents, representatives, affiliates or persons employed by or acting on behalf of Sunseeker, any customers, potential customers, any public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Parties**").

- 18.2 The Supplier represents and warrants to Sunseeker that it has not, prior to the date of the Agreement, bribed or attempted to bribe any Relevant Parties in order to secure and/or retain any business for the Supplier or Sunseeker whether in connection with the Agreement or otherwise.
- 18.3 The Supplier acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business, including without limitation The Bribery Act 2010.
- 18.4 The Supplier agrees that it will not take or knowingly permit any action to be taken that would cause Sunseeker to be in violation of any applicable anti-bribery or anti-money laundering laws.
- 18.5 The Supplier agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Supplier whether under the Agreement or otherwise, and Sunseeker (and Sunseeker's authorised representatives) shall have the right to inspect audit and to take copies of the Supplier's books, records and accounts at any time on prior notice.
- 18.6 If the Supplier discovers that it has or may have violated any of the provisions in this Condition 18, the Supplier shall immediately notify Sunseeker and cooperate with any investigations by Sunseeker into such matters.
- 18.7 Without prejudice to the generality of Conditions 18.1 to 18.6 inclusive, the Supplier will establish and at all times maintain and implement such anti-bribery policies and procedures as may be reasonably required to ensure that it prevents bribery or attempted bribery taking place on the Supplier's behalf.
- 18.8 Sunseeker may terminate the Agreement immediately upon notice in the event of a breach of this Condition 18 by the Supplier.
- 18.9 Sunseeker shall not be required to make any payments to the Supplier that might otherwise be due from Sunseeker if such payments are related to a transaction in connection with which the Supplier has breached this Condition 18.

## **19 PREVENTION OF FACILITATION OF TAX EVASION**

- 19.1 The Supplier represents and warrants to Sunseeker that it complies with and has, since 30 September 2017, complied with all applicable laws, statutes, regulations, guidance, recognised practice and codes relating to the prevention of tax evasion and/or the prevention of the facilitation of tax evasion (whether within, or outside of, the United Kingdom), including but not limited to the Criminal Finances Act 2017 ("**CFA 2017**").
- 19.2 The Supplier and its associated persons will not do, fail to do, or engage in, any practice, activity, conduct or thing which would (or the omission of which would) constitute either:

- 19.2.1 a UK tax evasion offence within the meaning of section 45(4) of the CFA 2017 ("**UK Tax Evasion Offence**");
  - 19.2.2 a foreign tax evasion offence within the meaning of section 46(5) of the CFA 2017 ("**Foreign Tax Evasion Offence**");
  - 19.2.3 a facilitation of a UK Tax Evasion Offence within the meaning of section 45(5) of the CFA 2017;
  - 19.2.4 a facilitation of a Foreign Tax Evasion Offence within the meaning of section 46(6) of the CFA 2017; or
  - 19.2.5 a failure to prevent a Facilitation Offence within the meaning of sections 45 or 46 of the CFA 2017.
- 19.3 The Supplier agrees that it and (where applicable) its associated persons will carry out periodic assessments of the risk of one or more of it and its employees and other associated persons committing a Facilitation Offence.
  - 19.4 The Supplier agrees to have in place (and at all times maintain and implement) policies and procedures, including prevention procedures under the CFA 2017, to ensure continued compliance with the CFA 2017, and will take steps, so far as it is reasonably practicable to do so, to ensure that its associated persons adhere to those policies and procedures.
  - 19.5 For the purpose of this Condition 19, the meaning of prevention procedures and associated persons shall be determined in accordance with sections 44(4), 44(5), 45(3) and 46(4) as applicable of the CFA 2017 (and any guidance issued under section 47 of the CFA 2017).
  - 19.6 Sunseeker may terminate the Agreement immediately upon notice in the event of a breach of this Condition 19 by the Supplier.

## **20 MODERN SLAVERY**

- 20.1 The Supplier shall not, and shall use best endeavours to procure that its agents, sub-contractors, and participants in its supply chain shall not, engage or participate in or benefit from any Modern Slavery Practices.
- 20.2 If the Supplier discovers that it has or may have violated Condition 20.1, the Supplier shall immediately notify Sunseeker and cooperate with any investigations by Sunseeker into such matters.
- 20.3 Sunseeker may terminate the Agreement immediately upon notice in the event of a breach of this Condition 20 by the Supplier.

## **21 SANCTIONS & EXPORT CONTROLS**

- 21.1 The Supplier warrants and represents that:

- 21.1.1 it is not included on, and is not owned or controlled by, directly or indirectly, or acting on behalf of, an individual or entity which is included on any Sanctions List or falls within the scope of any Export Controls;
  - 21.1.2 it has not, within the five (5) years preceding this Agreement, knowingly engaged in any direct or indirect dealings or transactions in violation of any Sanctions or Export Controls.
  - 21.1.3 it will not contravene any Sanctions or breach any Export Controls during the term of this Agreement and its supply of Goods or Services under this Agreement does not and will not expose Sunseeker to any direct or indirect violation of any Sanctions or breach of any Export Controls.
  - 21.1.4 it will not supply Goods or Services to, source products from, or engage in any direct or indirect dealings or transactions with, a Sanctions Target or any person or entity subject to Export Controls, or with any person or entity which is owned or controlled by, directly or indirectly, or which is acting for or on behalf of, a Sanctions Target or any person or entity subject to any Export Controls.
- 21.2 Sunseeker may terminate the Agreement or any Purchase Order immediately upon notice, and refuse Delivery of and to pay for any Goods, in the event of a breach of this Condition 21 by the Supplier.

## **22 INTELLECTUAL PROPERTY RIGHTS**

- 22.1 All Intellectual Property Rights in any Specification or other information or documentation that either Party develops under or in connection with the Agreement will vest absolutely in the developing Party or such other person(s) as it may direct provided that the Supplier irrevocably licenses Sunseeker to use the Supplier's Intellectual Property Rights in the Goods and Services for the purposes of designing, constructing and/or fitting out, repairing and maintaining Sunseeker's product for its end purchaser.
- 22.2 Notwithstanding Condition 22.1, all Intellectual Property Rights and title in any drawings, plans or designs for a bespoke design ordered for Sunseeker, shall vest absolutely in Sunseeker on delivery.
- 22.3 The Supplier will not, in breach of Sunseeker's Intellectual Property Rights (or otherwise unlawfully), manufacture, distribute or sell to any third party products which are the same as, or materially similar to, the Goods.
- 22.4 The Supplier shall not use Sunseeker's name or trade marks in any marketing or promotional material, stationery, vehicles or on its website without the express prior written consent of Sunseeker.

## **23 SUNSEEKER'S MATERIALS**

- 23.1 If the Supplier has any items (including without limitation, tooling, templates, mould tools, samples, drawings, equipment, data and documents showing technical information) supplied by Sunseeker for the purposes of fulfilling the Agreement ("**Materials**") the Materials 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.

- 23.2 The Supplier shall unless otherwise specified in the Agreement or otherwise agreed in writing, retain the methods of reproducing the Goods for a period of 10 years from the last date of delivery of the Goods and thereafter or at any time during the course of the Agreement shall deliver the same, without payment, if requested by Sunseeker.
- 23.3 All the Materials shall be at the sole risk of the Supplier at all times whilst they are in the possession of the Supplier and must be kept securely.
- 23.4 The Supplier may use the Materials for the purposes of the Agreement only and in particular, may not use the Materials for the supply of goods or the provision of services to any other person. For the avoidance of doubt, this shall prevent the supply of goods and/or provision of services by the Supplier in which the Supplier uses the Materials, to a Sunseeker distributor or an end purchaser, either directly or indirectly, without the prior written consent of Sunseeker.

## **24 CONFIDENTIALITY**

- 24.1 Both parties acknowledge that, during the term of the Agreement, they may have access to Confidential Information in respect of the other party. Each party shall:
  - 24.1.1 use any Confidential Information belonging to the other party solely for the purposes of performing its obligations under the Agreement; and
  - 24.1.2 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.
- 24.2 The above undertakings as to confidentiality shall not apply to any information which the Supplier can establish to Sunseeker's reasonable satisfaction:
  - 24.2.1 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 Supplier; or
  - 24.2.2 is required to be disclosed by a government authority or by law.
- 24.3 The provisions of this Condition 24 shall survive the expiry or termination of the Agreement howsoever arising.
- 24.4 The Supplier may be required to enter a separate Confidentiality Agreement, in which case, that Confidentiality Agreement shall take precedence over the above provisions of this Condition 24 and shall form an integral part of the Agreement.

## **25 DATA PROTECTION**

- 25.1 In these Conditions, unless the context otherwise requires, the terms **controller, processor, processing/process, personal data** and **data subject** shall be interpreted and construed by reference to Data Protection Law.
- 25.2 The Personal Data processing activities contemplated by the Agreement are set out in Annex 1 to these Conditions. Sunseeker may from time to time, by written notice to the Supplier, make such amendments to Annex 1 as Sunseeker reasonably considers necessary to meet the requirements of Data Protection Law. Nothing in the Annex (including as amended pursuant to this Condition 25.2) confers any right or imposes any obligation on any Party to the Agreement. The provisions of this Condition 25 shall apply notwithstanding any error or omission in Annex 1 (including as amended pursuant to this Condition 25.2).
- 25.3 The Supplier shall comply with its obligations under Data Protection Law when processing Personal Data.
- 25.4 The Supplier shall only process the Personal Data for the purposes of performing its obligations under this Agreement and in accordance with the written instructions given by Sunseeker, unless the Supplier is subject to an obligation under applicable law of the UK, European Union or a member state of the European Union to do otherwise, in which case the Supplier shall notify Sunseeker in advance of that legal obligation (unless prohibited by that law on important grounds of public interest). The Supplier shall notify Sunseeker immediately if, in the Supplier's opinion, an instruction from Sunseeker breaches a requirement of Data Protection Law.
- 25.5 The Supplier shall at all times process the Personal Data in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures. The Supplier shall ensure that, at a minimum, the measures required under this Condition 25 meet the standard required by Data Protection Law, including Article 32 of the GDPR.
- 25.6 The Supplier shall ensure that all personnel with access to Personal Data are subject to a contractual duty of confidence to hold the Personal Data in strict confidence and only process the Personal Data in the manner permitted by this Condition 25.
- 25.7 The Supplier shall, at Sunseeker's request and in accordance with Sunseeker's instructions, assist Sunseeker: (i) in responding to, and complying with, all data subject rights requests relating to the Personal Data (each a **Request**), including by providing to Sunseeker such assistance as is contemplated by Article 28(3)(e) of the GDPR; and (ii) in ensuring compliance with the obligations in Articles 32 to 36 of the GDPR (and equivalent requirements of other Data Protection Laws). The Supplier shall promptly (and in any event within twenty four (24) hours) notify Sunseeker of each Request it receives and shall not respond to the Request, except as instructed by Sunseeker.
- 25.8 The Supplier shall promptly (and in any event within twenty four (24) hours) notify Sunseeker in writing of each personal data breach (as defined in the GDPR) of which it becomes aware. The Supplier shall (to the extent feasible) ensure that the initial notification contains the

information required under Article 33(3) of the GDPR and such other information as Sunseeker may require. The Supplier shall take such steps and provide such support, assistance and information to Sunseeker as Sunseeker requires to deal with and respond to the personal data breach, including conducting a full investigation and taking steps to contain and mitigate the impact of the breach.

- 25.9 The Supplier shall not transfer, access or process the Personal Data outside the Safe Countries, except where expressly authorised by Sunseeker in writing to do so and after taking such steps as are requested by Sunseeker to ensure that the transfer, access or processing complies with Data Protection Law.
- 25.10 The Supplier shall not subcontract the processing of Personal Data to a subprocessor without the prior written consent of Sunseeker. In the event that Sunseeker provides its consent, the Supplier shall (prior to the subprocessor processing the Personal Data) enter into an agreement with the subprocessor on terms that provide at least the same level of protection for the Personal Data as this Condition 25 and meet the requirements of Data Protection Law; the Supplier shall ensure that the agreement remains in force for the duration of the subprocessor's processing of Personal Data. The Supplier shall remain fully liable for the acts and omissions of each subprocessor.
- 25.11 The Supplier shall (at Sunseeker's option) securely return to Sunseeker or securely destroy the Personal Data, together with all copies in any form and in any media, in the Supplier's power, possession or control promptly following the earlier of: (i) termination or expiry of the Agreement; or (ii) a request from Sunseeker.
- 25.12 The Supplier shall provide Sunseeker with all information requested by Sunseeker to enable Sunseeker to verify the Supplier's (and each subprocessor's) compliance with this Condition 25. Without prejudice to the foregoing, Sunseeker shall be entitled to inspect, test and audit or appoint representatives to inspect, test and audit, all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Personal Data by or on behalf of the Supplier and the Supplier shall cooperate and assist Sunseeker (and its representatives) with each inspection, test and audit.
- 25.13 Without prejudice to Sunseeker's other rights and remedies, in the event that Sunseeker identifies any non-compliance with this Agreement as a result of the exercise of its rights under Condition 25.12, the Supplier shall: (i) remedy the non-compliance and shall take such steps as Sunseeker reasonably requests for this purpose; and (ii) reimburse Sunseeker for the costs and expenses incurred by Sunseeker in connection with the exercise of those rights.
- 25.14 If there is any inconsistency or conflict between any of the provisions of this Condition 25 and the other provisions of the Agreement, the provisions of this Condition 25 shall prevail to the extent required to enable the Parties to comply with Data Protection Law.
- 25.15 This Condition 25 shall survive termination or expiry of the Agreement.



## **26 FORCE MAJEURE**

- 26.1 If either Party is affected by Force Majeure ("**the Affected Party**") it shall promptly notify the other Party of the nature of the Force Majeure and an estimate of the effects and likely duration thereof.
- 26.2 The Affected Party shall not 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 provided that the Affected Party has not defaulted in performing the obligation before the Force Majeure event occurs.
- 26.3 The Affected Party shall use reasonable endeavours to continue to perform the obligation and shall promptly take steps reasonably required by the other Party to avoid or mitigate losses to that other Party arising from the delayed performance.
- 26.4 If the Force Majeure delay claimed by the Affected Party continues for a period in excess of 45 days, notwithstanding any other provision of the Agreement the other Party shall be entitled to terminate the Agreement upon not less than fourteen days' notice to the Affected Party, after which neither Party shall be under any liability to the other Party under the Agreement, except in respect of accrued rights.

## **27 LAW AND JURISDICTION**

- 27.1 The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
- 27.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

## **28 DISPUTE RESOLUTION**

- 28.1 If any dispute (including any non-contractual dispute) ("**Dispute**") arises out of or in connection with the Agreement, the parties agree to enter into mediation to settle the Dispute and will do so in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the Dispute, the mediator will be nominated by CEDR.
- 28.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute in accordance with Condition 27.2 which Condition shall apply at all times.

## **29 NOTICES**

- 29.1 Except as expressly stated herein to the contrary, all notices required or permitted to be given under the Agreement shall be in writing and shall be delivered by hand, by courier or sent by pre-paid registered mail to, in the case of Sunseeker, the Sunseeker Address and, in the case of the Supplier, at its address set out in the Purchase Order, or to such other address notified in writing to Sunseeker.

- 29.2 Any notice shall be treated as having been received
- 29.2.1 if delivered by hand, on delivery
- 29.2.2 if sent by courier, two (2) Business Days after despatch
- 29.2.3 if sent by pre-paid registered mail, four (4) Business Days after posting
- 29.3 Day to day communications which do not constitute formal notice under the Agreement may also be given by email.
- 29.4 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

### **30 GENERAL**

- 30.1 The Agreement contains the entire agreement between the Parties and supersedes all previous agreements and understandings between the Parties with respect to the Agreement.
- 30.2 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. Sunseeker shall be entitled to rely on the execution by any individual purporting to bind the Supplier to a Purchase Order or any variation of these Conditions, unless otherwise notified in advance by a director of the Supplier.
- 30.3 Except as set out elsewhere in the Agreement, a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 30.4 The Supplier shall not transfer, assign, sub-contract or sublet any part of the Agreement or any rights or obligations hereunder without the prior written consent of Sunseeker. Any such consent shall not release the Supplier from any of its duties and obligations under the Agreement. The Supplier shall remain responsible for the full and complete performance of its duties and obligations under the Agreement and shall require any transferee, assignee, sub-contractor or sub-licensee to comply with measures at least as stringent as those set out at Condition 19.
- 30.5 The Supplier shall not be entitled to create or do anything which will result in the creation of any lien, encumbrance, right of retention or any other kind of security over the Goods or in respect of the Services and will ensure that a similar condition is included in all contracts with its sub-contractors.
- 30.6 A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. Failure by Sunseeker to exercise any of its rights under the Agreement or by law 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.
- 30.7 Unless otherwise specified any rights arising under the Agreement are cumulative and do not exclude rights provided by law.

- 30.8 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.
- 30.9 Neither of the Parties shall, during the continuance of the Agreement or for a period of one (1) year thereafter, procure or induce or attempt to procure or induce (either on its own behalf or on behalf of any other person, firm, company or group) any senior employee, officer or other personnel of the other Party who has been directly involved in the Agreement to leave the employment of that Party.

## ANNEX 1

### DESCRIPTION OF DATA PROCESSING

<b>Roles of the parties for the purposes of Data Protection Law</b>	The Supplier acts as a processor in its processing of Personal Data on behalf of Sunseeker (as controller) in the performance of the Supplier's obligations under the Agreement
<b>Subject matter, nature and purpose of the processing of Personal Data under the Agreement</b>	<p><b>Subject matter / purpose</b></p> <p>The Supplier processes the Personal Data under the Agreement for the purposes set out in the Agreement (if any), and otherwise in the furtherance of the arrangements between the Parties, in each case in connection with the provision of Goods and/or Services to Sunseeker.</p> <p><b>Nature</b></p> <p>Processing activities such as storage, retrieval, analysis, data collection and data transfer may all be undertaken by the Supplier for these purposes.</p>
<b>Duration of the processing of Personal Data under the Agreement</b>	For as long as is necessary for the Supplier to comply with its obligations under the Agreement and for the furtherance of the arrangements between the Parties, and as otherwise permitted by the Agreement.
<b>Type of Personal Data processed under the Agreement</b>	<p>Depending on the circumstances, the Personal Data may concern one or more of the following categories of data (as determined by Sunseeker) and such other categories as Sunseeker may specify or the Parties may agree from time to time. Against each category are examples of the types of Personal Data that could fall within that category.</p> <ul style="list-style-type: none"> <li>• <b>Personal details:</b> Name, employee identification number, work and home contact details (email, telephone numbers, address), gender, date of birth, place of birth, national insurance number, marital/civil partnership status, domestic partners, dependants, disability status, emergency contact information and photograph.</li> <li>• <b>Pay and other compensation:</b> Salary, bonus, benefits, compensation type, grade, other awards, pay frequency, effective date of current compensation, salary reviews, banking details, working time records (including holiday, absence records and hours worked), pay data and termination date.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Position:</b> Description of current position, job title, pay grade or level, job function(s), department, location, employment status and type, terms of employment, work history, and termination date(s) and reason, length of service, retirement eligibility, promotions and disciplinary records and line manager(s) information.</li> <li>• <b>Documentation required under applicable laws:</b> Citizenship, passport data, details of residency or work permit, know your client information.</li> <li>• <b>HR management information:</b> Application forms and CV information (including previous employment background, education history, professional qualifications and other relevant skills), information necessary to complete a background check, details on performance management, skills and experience, training received, performance and development reviews and comments, including dates for the foregoing, details of any shares or directorships and driver's licence information.</li> <li>• <b>Financial Information:</b> Bank account number and account details; payment card number; salary; assets and income; credit history and credit score.</li> <li>• <b>Special categories of personal data as required and permitted by applicable law:</b> Health/medical information (including results of drug and alcohol testing), trade union membership information, criminal records, sexual life (e.g., sexual orientation), religion (or similar beliefs), race and ethnicity.</li> </ul>
<b>Categories of data subjects of the Personal Data processed under the Agreement</b>	<p>Depending on the circumstances, the Personal Data may concern one or more of the following categories of data subjects (as determined by Sunseeker) and such other categories as Sunseeker may specify or the Parties may agree from time to time:</p> <ul style="list-style-type: none"> <li>• past and present employees, directors and officers;</li> <li>• past and present contractors or consultants;</li> <li>• job applicants and candidates;</li> <li>• individuals identified by employees as beneficiaries, spouse, domestic/civil partner, dependants and emergency contacts;</li> <li>• dealers, suppliers and vendors including past and present employees of the same; and</li> <li>• past and present customers and prospective customers and representatives of those individuals.</li> </ul>

## ANNEX 2

### GOODS IN RECEIPT DESKS

#### Sunseeker Inbound Desk Template

Address -	Goods In Location
Ship Yard 1,3,4 - 1 New Quay Rd, Poole BH15 4AB	Shipyard 3 DHL Hub, Entrance opposite Greenslades Fish Merchants
Ship Yard 2 - 1 New Quay Rd, Poole BH15 4AB	Shipyard 2 DHL Stores, Entrance after main security on the left, opposite cross roads
Ship Yard 5 - 1 New Quay Rd, Poole BH15 4AB	Shipyard 5 DHL Stores, Located in Shipyard 5 left of main doors
West Quay Road Poole BH15 1HW	Report to Security to get SIL Team Member to attend - No DHL Inbound
Tech Centre, Mannings Heath Road, Poole, England BH12 4FL	DHL Stores Inbound located on site off Herbert Avenue
Ship Yard Willis Way, 29-33 Poole, BH15 3TD	DHL Stores Inbound located at the rear of the site, Turn left before main entrance and follow road around to the right
Osprey Quay, Coode Way, Portland, Dorset, DT5 1BL	Report to Security Gatehouse for directions to DHL Stores
Hythe Marine Park, Shore Rd., Hythe, Southampton SO45 6HE	Report to Security Gatehouse for directions to DHL Stores

Note - Site Security at each Site can provide clear directions