



## SALES AGREEMENT

### Terms and Conditions

This Agreement is entered into between Fender Marine Australia (ABN 40 648 932 510) (**we, us or our**) and you, the person, organisation or entity described in the Schedule (**you or your**), together the **Parties** and each a **Party**.

#### 1. Acceptance and Term

1.1 You accept this Agreement by the earlier of:

- (a) signing and returning this Agreement to us, including by email or any electronic executions platform acceptable to us;
- (b) confirming by that you accept this Agreement or our Invoice (whether orally or in writing (including by email));
- (c) instructing us (whether orally or in writing) to proceed with the provision of the Goods; and
- (d) making part or full payment of the Price.

1.2 This Agreement will commence on the Commencement Date and will continue until the date we have completed the provision of the Goods to you (as reasonably determined by us), unless earlier terminated in accordance with its terms (**Term**).

#### 2. Goods

- 2.1 We will commence the provision of the Goods within a reasonable time after the later of the Commencement Date and the satisfaction of any other conditions precedent contemplated by this Agreement.
- 2.2 In consideration of your payment of the Price, we will provide the Goods in accordance with this Agreement, whether ourselves or through our Personnel.
- 2.3 If this Agreement expresses a time within which the Goods are to be provided, you agree that such time is an estimate only, and creates no obligation on us to provide the Goods by that time.
- 2.4 You acknowledge and agree that if we are required to order the Goods from our overseas suppliers, such Goods may have a lead time of approximately 30 days from the Commencement Date.

#### 3. Delivery or Collection

3.1 If this Agreement states that:

- (a) we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods to the Delivery Location by the Delivery Time; or
- (b) you are responsible for collecting the Goods from us, we will use reasonable endeavours to make available

the Goods at the Collection Location by the Collection Time.

3.2 If this Agreement states that you are responsible for collecting the Goods from the Collection Location, you agree to:

- (a) collect the Goods from the Collection Location and by the Collection Time; and
- (b) comply with any policies and procedures which apply at the Collection Location from which you collect the Goods.

3.3 If this Agreement states that we are responsible for delivering the Goods to the Delivery Location:

- (a) you agree that the costs of delivery may be payable by you if Delivery Costs are set out in our Invoice; and
- (b) you agree to be available at the Delivery Time to sign for, and accept, the Goods.

#### 4. Variations

4.1 You may request a variation or change to the Goods, by providing written notice (including by email) to us (**Variation Request**). We will discuss the Variation Request with you and we may agree (in writing) to the change, together with any adjustment to the Price (if required).

4.2 If we consider that any instruction or direction from you constitutes a Variation Request, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued in accordance with clause 4.1 and the Parties have agreed on an adjustment to the Price.

#### 5. Your Obligations

You agree to:

- (a) comply with this Agreement, our reasonable requests or requirements, and all applicable Laws; and
- (b) provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under this Agreement or at Law.

#### 6. Payment

6.1 You agree to pay us:

- (a) the Price;
- (b) all Delivery Costs set out in our Invoice (if any); and
- (c) any other amount payable to us under this Agreement,

in accordance with the Payment Terms.

- 6.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
- (a) immediately cease providing the Goods, and recover, as a debt due and immediately payable from you, our additional costs of doing so; and/or
  - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.

## 7. Delivery Location

You agree to provide us (and our Personnel) with unfettered access to the Delivery Location (and the facilities at the Delivery Location), and any other premises reasonably necessary for us to provide the Goods, free from harm or risk to health or safety:

- (a) at the times and on the dates requested by us; and/or
- (b) to enable us to comply with our obligations under this Agreement or at Law,

and you agree to pay us any additional costs that we may suffer or incur if you fail to do so, as a debt due and immediately payable to us.

## 8. Title and Risk

Title in the Goods will pass to you on the date that you pay the Price in full in accordance with this Agreement. Risk in the Goods will pass to you when you have collected the Goods from the Collection Location or when we have delivered the Goods to the Delivery Location (as applicable).

## 9. Contractual lien and security interest

- 9.1 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under this Agreement.
- 9.2 You agree that this Agreement and your obligations under this Agreement create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with this Agreement) being registered on any relevant securities register (and you must do all things to enable us to do so).

## 10. Warranties

You represent, warrant and agree that:

- (a) there are no legal restrictions preventing you from entering into this Agreement;
- (b) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
- (c) you have not relied on any representations or warranties made by us in relation to the Goods (including as to whether the Goods are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
- (d) you are not and have not been the subject of an Insolvency Event;

- (e) if applicable, you hold a valid ABN which has been advised to us; and
- (f) if applicable, you are registered for GST purposes.

## 11. Intellectual Property

- 11.1 As between the Parties we own all Intellectual Property Rights in Our Materials and nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials.
- 11.2 We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use Our Materials that we provide to you, solely for the purposes for which they were developed and for your use and enjoyment of the Goods, as contemplated by this Agreement.
- 11.3 In the use of any Intellectual Property Rights in connection with this Agreement, you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach.

## 12. Australian Consumer Law

- 12.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Goods by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 12.2 **Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.**
- 12.3 If the ACL applies to you as a consumer, nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Goods provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.
- 12.4 Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Goods) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.

## 13. Exclusions to liability

- 13.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) your or your Personnel's acts or omissions;
  - (b) any use or application of the Goods by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
  - (c) any works, services, goods, materials or items which do not form part of the Goods (as expressed in this Agreement), or which have not been provided by us;
  - (d) any Third Party Inputs;



- (e) the storage of any uncollected or undelivered Goods, including any Liability for any loss, damage, spoilage or theft of or to those stored Goods;
- (f) the Goods being unavailable, or any delay in us providing the Goods to you, for whatever reason; and/or
- (g) any event outside of our reasonable control.

#### 14. Limitations on liability

14.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) we will not be liable for Consequential Loss;
- (b) our liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of you (or any of your Personnel); and
- (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Goods to you or, in our sole discretion, to us repaying you the amount of the Price paid by you to us in respect of the supply of the relevant Goods to which the Liability relates.

#### 15. Termination

15.1 This Agreement will terminate immediately upon written notice by:

- (a) us, if:
  - (1) you (or any of your Personnel) breach any provision of this Agreement and that breach has not been remedied within 10 Business Days of being notified by us;
  - (2) you fail to provide us with clear or timely instructions or information to enable us to provide the Goods;
  - (3) for any other reason outside our control which has the effect of compromising our ability to provide the Goods; or
  - (4) you are unable to pay your debts as they fall due; and
- (b) you, if we:
  - (1) are in breach of a material term of this Agreement, and that breach has not been remedied within 10 Business Days of being notified by you; or
  - (2) are unable to pay our debts as they fall due.

15.2 Upon expiry or termination of this Agreement:

- (a) we will immediately cease providing the Goods;
- (b) you are to pay for all Goods provided prior to termination, including Goods which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;

- (c) pursuant to clauses 15.1(a)(1), (2) or (4), you also agree to pay us our additional costs arising from, or in connection with, such termination;
- (d) you agree to grant us such rights of access to any premises where the Goods are located to allow us (or our Personnel) to immediately recover or repossess any Goods belonging to us; and
- (e) you agree not to disparage or otherwise make any unfavourable statements or comments regarding us, our Personnel, our clients, either directly or by implication, verbally or in writing.

15.3 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.

15.4 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

#### 16. GST

16.1 If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

16.2 If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.

16.3 If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

16.4 The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

#### 17. General

17.1 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.

17.2 **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

17.3 **Confidentiality:** Both Parties will (and will ensure its Personnel) keep confidential, and not use or permit any unauthorised use of, any confidential information without the other Party's prior written consent, except where the disclosure is required by law.

- 17.4 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute (unless that Party is seeking urgent interlocutory relief, or the Dispute relates to compliance with this clause).
- 17.5 **Entire agreement:** This Agreement contains the entire understanding between the Parties in respect of its subject matter.
- 17.6 **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.
- 17.7 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control.
- 17.8 **Governing law:** This Agreement is governed by the laws of Western Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia.
- 17.9 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 17.10 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 17.11 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.
- 17.12 **Survival:** Clauses 11, 12, 13, 14, 15 and 17.2 survive termination or expiry of this Agreement.

## 18. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, and:

**ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

**Agreement** means these terms and conditions and any documents attached to, or referred to in, each of them.

**Business Day** means a day on which banks are open for general banking business in Western Australia, excluding Saturdays, Sundays and public holidays.

**Commencement Date** means the date this Agreement is accepted in accordance with its terms.

**Consequential Loss** includes any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of

goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

**Delivery Costs** means the costs associated with the delivery or provision of the Goods, including any insurance, customs, tariffs, duties or other such charges that may apply to the Goods, as set out in the Invoice.

**Insolvency Event** means any of the following events or any analogous event:

- (a) a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
- (b) a Party ceases, or threatens to cease, carrying on business;
- (c) a Party is unable to pay the Party's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;
- (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business.

**Intellectual Property** means any domain names; know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not. Including in respect of Intellectual Property.

**Invoice** means an invoice for your payment of the Goods purchased under this Agreement, which includes details of the Goods, the Price and any relevant Delivery Costs.

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the provision of the Goods.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

**Our Materials** means all work, models, processes, technologies, strategies, materials, information,



documentation and services that we may provide to you under this Agreement, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

**Price** means the price set out in the Schedule.

**Schedule** means the schedule to this Agreement.

**Statutory Rights** has the meaning given in clause 12.1.

**Term** has the meaning given in clause 1.2.

**Third Party Inputs** means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the provision of the Goods may be contingent on, or impacted by.

#### 19. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all

annexures as novated, amended, supplemented, varied or replaced from time to time;

- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (d) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (e) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (f) a reference to time is to local time in Western Australia; and
- (g) a reference to \$ or dollars refers to the currency of Australia from time to time.

## SCHEDULE

TERM	MEANING
we, us or our	<b>Fender Marine Australia ABN:40648932510</b> 14 Coastsides crescent Glenfeild beach Geraldton PH:0488035610 Email: <a href="mailto:Fendermarineaustralia@outlook.com">Fendermarineaustralia@outlook.com</a>
you or your	
Goods	As further particularised in the Invoice.
Delivery or Collection	[The Goods will be delivered to you by us, by the Delivery Time and to the Delivery Location, in accordance with this Agreement  OR The Goods will be collected by you, from the Collection Time and Collection Location, in accordance with this Agreement.]
Delivery Time OR Collection Time	
Delivery Location OR Collection Location	
Price	As further particularised in the Invoice.
Payment Terms	You agree to pay the amount in the Invoice, using the payment method set out in the Invoice, within 30 days from the date of the Invoice, or as otherwise agreed between the Parties.