

CUSTOMER APPLICATION FOR CREDIT ACCOUNT

APPLICANT AND REGISTERED VESSEL OWNER'S NAME(S):

\_\_\_\_\_

DETAILS OF REGISTERED OWNER OF VESSEL TO BE WORKED ON:

POSTAL ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

PHYSICAL/DELIVERY ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

PH. #: \_\_\_\_\_ FAX #: \_\_\_\_\_

NAME & ADDRESS OF APPLICANT'S ACCOUNTANT: \_\_\_\_\_

\_\_\_\_\_

NAME & ADDRESS OF APPLICANT'S SOLICITOR: \_\_\_\_\_

\_\_\_\_\_

NAME & BRANCH OF APPLICANT'S BANK: \_\_\_\_\_

\_\_\_\_\_

The applicant(s) hereby agree(s) to accept the delivery of goods and/or services from Boating Marlborough Ltd on the terms and conditions (as attached-page 3 of 3 pages), which the Applicant acknowledges to have read and understood.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

**Guarantee by the Applicant(s) and Registered owner(s) of the vessel:**

In consideration of Boating Marlborough Ltd agreeing to supply goods and/or services to the above named applicant(s), we, the above-named applicant(s), hereby jointly and severally guarantee the due and punctual payment of all monies due by us to Boating Marlborough Ltd, and in signing this application, acknowledge and agree that we are personally liable as principal debtors for all of the obligations of the applicant to Boating Marlborough Ltd.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_



**BOATING**  
MARLBOROUGH LTD.

Ph +64 3 573 8243

Fax +64 3 573 8241

PO Box 511,

Picton 7250

## TERMS and CONDITIONS OF SALE:

The terms and conditions upon which Boating Marlborough Ltd (hereafter referred to as BML) shall supply goods and services are set out as follows. These terms form part of every contract that applicants have with BML. In the event of a conflict between these terms and any other agreement or understanding, whether written or verbal with the applicant, these terms will prevail. No employee or representative of BML is authorised to make any representation which conflicts with these terms without confirmation in writing by the Director and/or owners of Boating Marlborough.

### 1. PAYMENTS AND ACCOUNTS:

- a. Except where alternative arrangements have been made and documented, the applicant will pay BML for all goods and services supplied or any other monies due hereunder, on or before the 20th of the month following delivery or demand as the case may be.
- b. In the event of the applicant failing to make payment as set out above, BML has the right to charge the applicant interest on the monies due at 2% above the overdraft rate charged to BML by its banker, together with any costs, including solicitor's fees, incurred by BML in recovery or attempted recovery of any monies so due.
- c. The applicant shall not be entitled to set off any sum or counterclaim against any amount due to BML for the goods and services supplied.

### 2. EXCLUSION OF LIABILITY:

- a. BML and its employees, agents and subcontractors shall not be liable in contract, tort, under statute or otherwise for any loss howsoever arising which is caused, contributed to, or was attributable to any defects or any negligent act or omission on the part of BML or its employees, agents and/or subcontractors except to an amount strictly limited in respect of all goods and services supplied by BML whether under this contract or otherwise to a total sum of the value invoiced for the goods and services or to a total sum of \$10,000 (whichever is the lesser).
- b. BML recommends applicants talk to their insurer about arranging suitable cover for risks of loss or liability arising from these terms.

### 3. CONSUMER GUARANTEES ACT 1993:

- a. It is acknowledged that where an applicant is acquiring the goods and/or services for the purpose of a business, the applicant and BML agree that the provisions of the Consumer Guarantees Act 1993 shall not apply to the supply of goods and/or services by BML to such business applicants.

### 4. DELIVERY

- a. BML shall not be responsible for any part delivery or delay in delivery of the goods as a result of events occurring beyond BML's control. BML shall not be responsible for any direct or consequential loss or damage arising from such delay or non-delivery.
- b. All delivery expenses of goods supplied are at the applicant's cost, unless otherwise specified.

### 5. RISK AND RESERVATION OF TITLE:

- a. The risk in any goods supplied by BML shall pass to the applicant upon those goods leaving BML's premises, unless otherwise specified.
- b. Title and property in any goods and services supplied by BML shall remain with BML until the applicant has paid in full for the goods and services supplied.
- c. Until paid for, any goods supplied are held by the applicant as bailee and as agent for BML, and the applicant may not sell, dispose of, or charge the goods.
- d. Where the goods or any part of them are completely or partly attached to any other equipment, vessel or structure, BML may nonetheless remove the goods.
- e. In the event that goods supplied have been incorporated or changed into any other product ("altered product") the applicant agrees that title and property in the altered product shall vest in BML until the applicant has paid in full for the goods supplied.
- f. The applicant irrevocably grants BML a licence to enter into premises occupied by the applicant or any vessel in the applicant's ownership or possession without notice and search for and remove any unpaid goods or unaltered

products. The applicant indemnifies BML on demand in respect of any costs or liabilities by us in exercising our rights under this clause.

g. If any goods are sold by the applicant prior to payment of the full amount, BML's portion of the sale price which is due to BML shall be the property of BML. That amount shall be held by the applicant on trust for and on account of BML.

h. Goods and vessels which are stored by BML for the applicant shall be entirely at the risk of the applicant in all respects.

#### 6. PERSONAL PROPERTY SECURITIES ACT 1999

a. The applicant grants to BML a Security Interest in the goods and their proceeds to secure the obligation of the applicant to pay the purchase price of the goods and any other obligations of the applicant to BML under this contract (together "the Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the indebtedness, the security interest shall also extend to all the applicant's present and after acquired property, of which the goods form part, to the extent required to secure the indebtedness.

b. As and when required by BML, the applicant shall, at its own expense, provide all reasonable assistance and relevant information to enable BML to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce BML's Security Interest in respect of the goods required, in accordance with the Personal Property Securities Act 1999 ("PPSA").

c. The applicant shall not change their name without first notifying BML of the new name not less than 7 days before the change takes effect.

d. Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Applicant on more than one invoice/order, any payments received from the Applicant shall be deemed to be made by the Applicant and applied by BML in respect that each unpaid invoice/order on a pro rata basis PROVIDED THAT where BML applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.

e. Until the applicant has paid all money owing to BML the Applicant shall at all times ensure that:

i). The goods supplied by BML while in the Applicant's possession, can be readily identified and distinguished; and/or

ii). All Proceeds (in whatever form) that the applicant receives from the sale of any of the goods are readily identifiable and traceable.

f. Where the goods are purchased by the applicant as stock in trade for sale or lease in the ordinary course of the Applicant's business, nothing in this clause shall prevent the applicant from selling or leasing and delivering the goods in the ordinary course of the Applicant's business. Otherwise, until the applicant has paid all money owing to BML, the applicant shall not sell or grant a Security Interest in the goods without BML's written consent.

g. The parties agree to contract-out of the PPSA in accordance with Section 107 of the PPSA to the extent that Section 107 applies for the benefit of, and does not impose a burden on, BML. The Applicant waives it's rights to receive a Verification Statement in any of the Financing Statement or Financing Change Statement registering by or on behalf of BML in respect of the Security Interest created by these terms and conditions of trade.

h. For the purpose of this clause, words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

#### 7. QUOTATIONS

a. BML shall be entitled to add to any quotation issued, all increases notified to BML including increases:

i). Due to tariffs, duties, imports, or other government charges imposed on goods and services supplied.

ii). Due to overseas freight charges.

iii). Due to exchange rate fluctuations.

iv). By any other supplier after the date of the quotation.

#### 8. ADDRESS FOR SERVICE OF NOTICES

a. Any notice or demand given by BML to the Applicant may be served by BML posting such notice to the Applicant's address as advised by the Applicant in the application for credit account facilities.

#### 9. WARRANTY

a. BML warrants that subject to the limitation of liability in clause 2(a), it will repair any defects in its workmanship provided that written notification of any defect is advised within 30 days of completion of the work or receipt of goods if relating to serviced components rather than a complete motor(s).

b. No claim will be available under this warranty unless written notice of the claim is received by BML within 30 days of discovery of the defect nor will any claim be available if the defective work has been modified or incorrectly maintained, installed or operated, and that is the cause of the defect.

c. If under this warranty BML is required to repair any defect the repair will be carried out at such place as BML shall reasonably specify and the Applicant is responsible for shipment of defective goods or conveying the vessel to the place specified.

d. This warranty does not apply to any defective goods or components not manufactured by BML and no warranties are given by BML in respect of such goods or components. In the case where the manufacturer or supplier of any such goods or components provides any warranty, then BML (to the extent that it is able to do so) will make such warranty available to the Applicant.

#### 10. FORCE MAJEURE

a. BML is not liable for any failure in its obligations to an Applicant by reason of circumstances beyond BML's control including but without limitation:

- (i) strike, lockout or labour disturbance;
- (ii) failure or delays by suppliers or subcontractors;
- (iii) fire, earthquake, flood or similar natural disasters;
- (iv) hostilities, commotions, or similar civil strife.

#### 11. PERSONAL GUARANTEE

Where the applicant is a duly incorporated company, BML reserves the right to require personal guarantees of the Applicant's Directors prior to the provision of goods or services. The personal guarantee shall be in the form annexed hereto.