

## **Morgan Marine Limited**

### **Terms and Conditions of Sale**

1. In these conditions unless the context requires otherwise:
  - 1.1. 'Buyer' means the person who buys or agrees to buy the goods from the Seller.
  - 1.2. 'Condition' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the seller.
  - 1.3. 'Goods' means the articles which the buyer agrees to buy from the Seller.
  - 1.4. 'Price' means the price for the Goods excluding carriage, packaging, insurance and VAT
  - 1.5. 'Seller' means Morgan Marine Limited.
2. Quotations given by the Seller are not offers capable of acceptance by the Buyer. All orders for goods shall be deemed to be an offer by the buyer to purchase the goods pursuant to these Conditions. There shall be no binding contract until there has been written acceptance of the buyer's order or the goods have been manufactured and/or dispatched by the Seller to the Buyer. Such order shall only take effect on the basis that these Conditions are accepted by the Buyer and shall override any terms or conditions stipulated, incorporated or referred to by the Buyer in the order or in any negotiations.
3. The Price shall be the Seller's quoted price and is exclusive of VAT which shall be at the rate ruling on the date of the Seller's invoice. The Price includes the sum payable for drawings. The original drawing to be produced is Revision A and the Price includes drawings up to Revision C. In the event that the scheme is redesigned or changed beyond Revision C due to changes introduced by any party other than the Seller, additional costs may be incurred depending on the size of the project and the nature of the changes.
4. Delivery and installation prices are based on delivery during normal working hours of 0800 to 1800 Monday to Friday. Deliveries outside these periods will be available at additional cost, which can be advised upon request.
5. Payment terms shall be agreed with the Seller, subject to satisfactory credit rating. If payment terms are not expressly agreed, payment shall be due not later than 30 days from the date of the Invoice. Non-payment on or before the due date (time being of the essence) shall entitle the Seller, without prejudice to any other rights to:
  - 5.1. Suspend any further deliveries of goods whether under this contract or any other.
  - 5.2. To require payment immediately of all unpaid invoices whether in respect of deliveries under this contract or any other.
  - 5.3. To repossess the products (the Buyer granting the Seller all necessary access).

The Buyer shall not be entitled to delay or withhold payment of the price or any part thereof on the grounds that it has a claim or set-off against the Seller.

The company is authorised to use funds received from the Customer to settle the Customer's invoices which are overdue for payment.

6. If payment is not made on or before the due date, the company will exercise its statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2003 or under such equivalent legislation.

7. Each delivery shall be considered a separate transaction and the failure of any one delivery shall not affect the due performance of the contract. All delivery dates, whether agreed in writing or otherwise, are estimates only and, while the Seller will endeavour to comply with any such date, time is not of the essence and the Seller shall not be responsible for late delivery. Without prejudice to the generality of the foregoing, the Seller shall not be liable for late delivery or failure to deliver through any cause which is beyond the control of the Seller.

If the Buyer is unwilling or unable to accept the delivery on the date when it falls due the Seller shall have the right to make a storage charge for products not so delivered.

8. On acceptance of an order the Seller will issue drawings for approval. If for any reason the order is then cancelled by the Buyer there will be a cancellation charge of 10% of the value of the order. If the Buyer cancels the order after the drawings have been approved and released to manufacture the cancellation charge will be dependent on the stage of manufacture at the time of cancellation.
9. All claims for damage to, or partial loss of Goods in transit, must be submitted in writing to both carrier and Seller within three days of delivery. In the case of non-delivery, the whole consignment, claims must be submitted in writing to both the carrier and the Seller within seven days of receipt by the Buyer (or the Buyer's agent) of notification of despatch of the Goods. In the absence of claims within the terms mentioned above, the goods shall be deemed to have been delivered in accordance with these Conditions.
10. The Seller may, without prejudice to its other rights and remedies, terminate the contract if either there shall be any breach by the Buyer of any term or condition hereunder of the financial responsibility of the Buyer shall, in the opinion of the Seller, become impaired or unsatisfactory.
11. The formation, existence, construction, performance, validity and all aspects of the General Terms and conditions shall be governed by the English law and the parties submit to the exclusive jurisdiction of the English Courts.  
The customer shall indemnify the company against all costs incurred by the company in obtaining payment of any overdue invoices. The Customer shall pay all administrative, collection agency or Solicitors legal costs and disbursements.

## 12. Risk and Property

- 12.1. Risk of damage or loss of the Goods shall pass to the Buyer.
- 12.2. In case of the Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 12.3. In case of the Goods to be delivered otherwise than at the Seller's premises at the time of delivery or the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered of the Goods.
- 12.4. Notwithstanding delivery and the passing of the risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods to be sold by the Seller to the Buyer for which payment is then due.
- 12.5. Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods from those of the Buyer and third parties and property stored protected and insured and identified as the seller's property both shall be entitled to resell or use the Goods in the ordinary course of its business.
- 12.6. Until such time as the property in the Goods to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time require the Buyer to deliver up the

Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the buyer or any third party where the Goods are stored and repossess the Goods.

- 12.7. The Buyer shall not be entitled to pledge or in any way to change by way of security for any indebtedness any Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy to the Seller) forthwith become due and payable.
13. When the Goods are made or adapted by the seller in accordance with the Buyer's specification, the Buyer shall indemnify the Seller against all costs, claims and expenses incurred by Seller in respect of the infringement or alleged infringement by such Goods of any patents, registered designs, trademarks or other rights belonging to third parties which results from the Seller's use of the Buyer's specification.
14. Tools made for the manufacture of Goods to be supplied by the Buyer shall remain the property of the Seller even though the Buyer may have been charged with a sum in respect of such tools.
15. The copyright, design right and all other intellectual property rights in any materials and other documents or items prepared or produced for the Buyer by or on behalf of the Seller in connection with these Conditions shall belong to the seller absolutely and any such materials, documents or items shall be or remain the sole property.
16. We reserve the right to change specification without notice.
17. Warranties and liabilities

Subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free defects in material and workmanship for a period of 12 months from delivery.

The above warranty is given by the Seller subject to the following conditions.

- 17.1. The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
- 17.2. The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 17.3. The Seller shall be under no liability under the above warranty (or any other warranty, conditioner guarantee) if the total price for Goods has not been paid by the due date for payment.
- 17.4. The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 17.5. Subject as expressly provided in these Terms, and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 17.6. Where the Goods are sold under a consumer transaction (as defined by the consumer Transactions (Restrictions on Statements Order 1976) the statutory rights of the Buyer are not affected by these Terms.
- 17.7. A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not

refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 17.8. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods (or part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 17.9. Except in respect of death or person injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the contract shall not exceed the price of the goods, except as expressly provided in these Terms.
- 17.10. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, Act of God, explosion, flood, tempest, fire or accident; War or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, regulations, bye-laws, prohibition or measures of any kind on the part of the governmental, parliamentary or local authority; Import or Export regulations or embargoes: Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel or machinery; Power failure or breakdown in machinery.

#### 18. Specifications of Concrete Base Enclosure

- 18.1. Trowelled or smooth floated finish to an even surface with no ridges or steps and free from trowel marks and other blemishes and spot levels relative to site TBM should be accurate to +/- 5mm.
- 18.2. Position in plan and diagonal check measurement at any point should be accurate +/-5mm.
- 18.3. The perimeter of the concrete base upon which the enclosure will be attached must be effectively sealed.
- 18.4. A stepped concrete base is recommended to prevent water ingress past the enclosure base flange. Morgan Marine Ltd cannot be held responsible for sealing the enclosure on a flat plinth.

#### 19. Jurisdiction

The formation, existence, construction, performance, validity and all aspects of the general Terms and Conditions shall be governed by the English law and the parties submit to the exclusive jurisdiction of the English Courts.

#### 20. General Data Protection Regulations

The Seller's aggregate liability to the Buyer in any one year for breach of the General Data Protection Regulation (GDPR) (EU) 2016/679 including but not limited to costs of notifications, costs of reasonable mitigation for affected data subjects, any governmental fines or penalties, and costs and expenses of recreating or reloading any lost or stolen or damaged data shall not exceed 25% of the buyer's purchase order (excluding VAT).