



## 1. QUOTE

### 1.1 Validity of the Purchase Price

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- 1.1.1 Mackay Boats offers to supply the Goods for the Purchase Price, both as identified in the invoice provided to the Purchaser, on the terms and conditions outlined in these terms and conditions of sale.
- 1.1.2 The Purchase Price lapses if the Purchaser does not confirm the order to Mackay Boats on or before the later of the expiry date identified in the invoice, or 30 days and in such event neither party will have any claim against the other.
- 1.1.3 The Purchase Price identified in the invoice, and any agreement arising from its confirmation, is not assignable by the Purchaser, save with the agreement of Mackay Boats.

### 1.2 Confirmation of the order

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- 1.2.1 The Purchaser may confirm the order by communicating its acceptance (by email or delivery by hand or courier) to Mackay Boats on or before the expiry date identified on the invoice.
- 1.2.2 This agreement, comprising:
- The invoice
  - These Terms and Conditions
  - The Specification (if any) attached to the invoice, and if not, Mackay Boats' standard specification for the Goods

comes into full force and effect on communication of acceptance to Mackay Boats.

### 1.3 Deposit

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- 1.3.1 The Purchaser is to pay the Deposit on confirmation of the order.
- 1.3.2 On receipt of the Deposit, Mackay Boats will confirm the building slot allocated for the manufacture of the Goods (if applicable) and the likely shipping date.
- 1.3.3 The Purchaser acknowledges that Mackay Boats will not allocate a building slot or commit to supply the Goods until the Deposit is paid, and if it is not paid within 14 days of notification of confirmation of the order, Mackay Boats may (at its option) terminate this agreement by notice to the Purchaser.

## 2. CONSTRUCTION AND DELIVERY

### 2.1 Construction

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- 2.1.1 Mackay Boats will construct the Goods in accordance with good boat building practice.
- 2.1.2 The Purchaser understands that Mackay Boats may carry out minor amendments to the Goods (outside the Specification) in order to:
- Meet the class rules for the Goods, and/or
  - Maintain the quality of the Goods to meet the standard of boats supplied generally by Mackay Boats, and/or
  - Address any quality or production issues which may arise.



- 2.1.3 Mackay Boats will endeavour to keep the Purchaser informed of any such amendments.
- 2.1.4 The Purchaser agrees that it may require changes to the Goods only with the agreement of Mackay Boats.
- 2.1.5 The Goods and all work in progress remains the property of Mackay Boats until delivery for shipping.

## 2.2 Delivery

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- 2.2.1 Mackay Boats will deliver the Goods for shipping to the Purchaser within 14 days of the later of:
- Completion of construction, and
  - Payment of any balance of the Purchase Price to Mackay Boats' bank account in cleared funds.
- 2.2.2 Mackay Boats will supply the bill of lading for the shipment of the Goods to the Purchaser within seven days of delivery of the Goods for shipping in terms of the above clause.
- 2.2.3 The Purchaser will inspect the Goods for damage as soon as practicable following delivery, and will notify Mackay Boats of any damage within 21 days of delivery. The Purchaser acknowledges that if any damage is not notified within 21 days of delivery, Mackay Boats will not be liable to rectify such damage.

## 2.3 Delayed delivery by the Purchaser

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- 2.3.1 If shipping is delayed by the Purchaser (through late payment or otherwise) for more than 14 days, Mackay Boats will charge storage fees for each day from the due date for payment until the actual date of payment (or sale, if the following clause applies).
- 2.3.2 If delivery is delayed in terms of the above clause for more than 30 days Mackay Boats may sell the Goods to another.
- 2.3.3 If Mackay Boats sells the Goods in terms of the above clause, it will hold the balance of the Deposit (after deduction of the storage fees and any costs and losses on resale of the Goods) for the credit of the Purchaser. In such event, the Purchaser may, at its option:
- Order new goods pursuant to a new invoice, in which case the balance of the Deposit will be applied to the new order and a new building slot advised, or
  - Notify Mackay Boats that it requires the balance of the Deposit to be refunded to the Purchaser.
- 2.3.4 If delivery is delayed in terms of the above clauses for more than 60 days, and if Mackay Boats has not sold the Goods:
- This agreement will terminate, and
  - The Purchaser will forfeit the Deposit, and
  - The parties will have no further claim against each other.

## 2.4 Warranty

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- 2.4.1 Mackay Boats warrants that the Goods will meet the relevant class rules (if any) and the requirements of the Specification (subject to the minor amendments referred to above), and will (save for any shipping damage notified as provided below) be constructed and delivered in accordance with good boat building practice.
- 2.4.2 This warranty is in addition to, and not in substitution for any warranties which the Purchaser may have the benefit of under New Zealand law, and is personal to the Purchaser and can only be assigned with the agreement of Mackay Boats.



- 2.4.3 In the event that there are any defects in the Goods, the Purchaser will notify Mackay Boats of such defect within 180 days of delivery of the Goods to the Delivery Place. Mackay Boats will (at its option) repair or replace the defective part at no cost to the Purchaser as soon as practicable following such notification.

## 2.5 Design and use limits

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- 2.5.1 The Purchaser acknowledges that Mackay Boats designs and constructs racing yachts to class rules and design specifications. In many cases, those designs are developmental, and are at the limits of design and fabrication tolerances.
- 2.5.2 The Purchaser accepts that by buying the Goods, it accepts the rules of the class, reasonable limits on use and care of the Goods (whether outlined in the Specification or not) and that the Goods may be developmental, and at the limits of what is possible.
- 2.5.3 It is possible that the Goods may fail from normal use. Mackay Boats will do everything it reasonably can, within the limits of its liability in clause 2.6 below, to rectify any loss or damage to the Goods in accordance with the warranty set out in clause 2.4 above.
- 2.5.4 Beyond that, the Purchaser accepts that it has purchased and will use the Goods on that basis and in terms of the voluntary assumption of risk outlined in clause 2.7 below

## 2.6 Limitation of liability

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- 2.6.1 The Purchaser acknowledges that Mackay Boats' liability under this agreement (whether in contract, tort or otherwise) is limited to the fullest extent permitted by law (including in terms of section 34 of the Contract and Commercial Law Act 2017), to the amount of the Purchase Price.
- 2.6.2 To the fullest extent permitted by law, Mackay Boats is not liable for:
- any indirect, consequential, pure economic or financial losses, or
  - any loss of opportunity, or
  - any loss of or damage to any person or property, other than the Goods
- arising from or in connection with any alleged failure, act or omission by Mackay Boats in relation to this agreement or the use of the Goods, in contract, tort or otherwise.
- 2.6.3 The limit on liability identified above is inclusive of all claims permitted by law, whether in contract, tort, at common law, in equity or otherwise howsoever.

## 2.7 Voluntary assumption of risk

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- 2.7.1 Mackay Boats takes all reasonable care in designing and constructing racing yachts. It is something we do because we want to make the best and fastest yachts within class rules that we can.
- 2.7.2 In purchasing the Goods, the Purchaser acknowledges that yacht racing and associated activities can be high risk with a high level of danger, including property damage, loss of property and equipment and physical injury (potentially involving permanent disability or death) to the Purchaser and to third parties.
- 2.7.3 Mackay Boats can take no responsibility for any such losses or any claims in respect of them. The Purchaser, and anyone using the Goods, is expected to use the Goods for their intended purposes, within the reasonable limits (including weight limits, sea state, wind strengths and anticipated weather conditions) of the relevant class and the design limits of the Goods. In doing so, the Purchaser acknowledges that it accepts that it has purchased the Goods, uses them and participates in the class in the full understanding of the limits of the class. Mackay Boats cannot be responsible for the Purchaser's decision to purchase the Goods, how the Purchaser uses the Goods, or the decision to participate in the relevant class of yacht racing.



- 2.7.4 Similarly, the Purchaser agrees to use, care for and maintain the Goods in accordance with any instructions provided by Mackay Boats and the reasonable requirements of yachts of the same class as the Goods. We want you to enjoy your sailing, win races and succeed in competitions, but to do so sensibly.

## 3. PAYMENT

### 3.1 Purchase Price

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- 3.1.1 In consideration for the supply of the Goods, the Purchaser agrees to pay the Purchase Price in the currencies and at the times identified in the invoice.
- 3.1.2 If any instalment of the Purchase Price is not paid within 14 days of the due date, the Purchaser will pay interest at the rate charged by Mackay Boats' bank for commercial overdrafts plus 2% from the due date for payment until such sum is actually paid in cleared funds to Mackay Boats' bank account.

### 3.2 Taxes and duties

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- 3.2.1 The Purchaser is liable for any duties, taxes or other impositions payable as a result of or in connection with the delivery of the Goods for shipping. Where delivery is delayed as a result of a failure or delay in payment of such duties, taxes or other impositions, the Purchaser is responsible for the cost and consequences of such delay.
- 3.2.2 The Purchaser will pay any goods and services tax payable on the supply of the Goods in terms of the Goods and Services Tax Act 1985.
- 3.2.3 In the event that the Goods are to be shipped to a place outside New Zealand, the Purchaser agrees to provide all documentation or other information reasonably required to have the supply of the Goods zero-rated in terms of section 11 of the Goods and Services Tax Act 1985.
- 3.2.4 In the event that Mackay Boats supplies the Goods on the basis that such supply is zero-rated, and goods and services tax becomes payable as a result of some act, omission or failure by the Purchaser, the Purchase agrees to indemnify Mackay Boats for any such tax, penalties, interest and other imposition in relation to the supply.

## 4. GENERAL

### 4.1 This Agreement

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- 4.1.1 This agreement is the entire agreement between the parties and it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties in relation to its subject matter.
- 4.1.2 No change to this agreement, unless specifically provided for in these terms and conditions, shall have any effect unless they are in writing and signed by the Parties.
- 4.1.3 In the event that there is any occurrence or event which is not covered in this agreement, the parties agree to work together in good faith and in the spirit of mutual trust and cooperation to deal with that occurrence or event and to achieve the intended outcome of this agreement.



- 4.1.4 If any provision of this agreement is held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability of that provision is not to affect the operation, construction or interpretation of any other provision of this agreement, with the intent that the invalid, illegal or unenforceable provision is to be treated for all purposes as severed from this agreement.
- 4.1.5 A waiver of any provision of this agreement will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.
- 4.1.6 Wherever a matter is to be agreed between the parties, the parties shall discuss and negotiate such matter in good faith and with due urgency with a view to reaching mutual agreement.

## 4.2 Communication

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All communications between the parties are to be in writing, in English and sent by email, other electronic communication capable of permanent storage and retrieval or delivered by courier.

Where urgent communication is required, any matters communicated or agreed orally (whether in person, over the phone or by any other electronic communication) will have effect only if confirmed in writing as set out above.

## 4.3 Disagreement

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- 4.3.1 All disputes and disagreements in connection with this agreement (disputes) will be referred to arbitration in accordance with the following clauses.
- 4.3.2 Arbitration
- Either party may then refer a dispute to arbitration in terms of the Arbitration Act 1996.
- (i) The arbitration is to be held in Auckland, before a sole arbitrator experienced in yacht construction, appointed by the Arbitrators' and Mediators' Institute of New Zealand if the parties are unable to agree on such arbitrator within 30 days of notification of referral of the dispute.
  - (ii) The arbitration is to be conducted on an expedited basis, on the papers, without the requirement for a hearing, if possible.
- 4.3.3 This agreement, any claims arising in connection with this agreement (including in tort) and any arbitration shall be governed by the laws of New Zealand.