

**STEBER INTERNATIONAL**  
**Stebcraft Pty Limited**

**Terms and Conditions of Supply – September 2011**

**1. Introduction**

Unless otherwise agreed in writing by Steber, the buyer agrees that it will be bound by these Terms and Conditions if the buyer places an order with Steber and it is accepted by Steber. Steber is not bound by any Terms and Conditions contained in any document issued by the buyer that are contrary to or inconsistent with the terms set out herein.

**2. Order, Quotation and Price**

Once an order has been accepted by Steber, it cannot be cancelled by the buyer and in this regard where a written quotation has been given by Steber, the price for its services and goods associated with the order shall be the price specified in the quotation attached hereto.

**3. Delivery**

- (a) Unless otherwise agreed in writing by Steber, delivery is at Steber's premises and all freight from Steber's premises to the buyer is at the buyer's expense. If Steber arranges for carriage of the goods for delivery to the buyer, Steber will be deemed to contract as agent for the buyer and the buyer will bear all risks with respect to the goods during carriage and will likewise be responsible for effecting any insurance of the goods during carriage. Steber may charge a reasonable handling fee for all orders delivered to the buyer and the buyer indemnifies Steber for the costs of all transport arranged by Steber on the buyer's behalf.
- (b) If a delivery date is specified, that date is an estimate only and Steber is not liable for any delay in delivery. Time is not of the essence in relation to delivery and the buyer must accept delivery and pay for the goods delivered, including transport costs if applicable, even if they are delivered after any specified delivery date.

**4. Special Conditions**

The terms and conditions set out herein are subject to any special conditions agreed to by the parties as set out on the quotation or otherwise attached hereto and such Special Conditions shall form part of these terms and conditions.

**5. Inspection, Acceptance and Returns**

The buyer must inspect the goods immediately following delivery of the goods and the buyer may only return the goods if a claim is made that the goods are not in accordance with these terms and condition (including if they are defective or damaged during delivery) and such claim must be made within 7 days from delivery of the goods to the buyer. If the buyer fails to make a claim then, to the extent permitted by law, the goods are deemed to have been accepted by the buyer and the buyer must pay for the goods or services in accordance with these terms and conditions.

**6. Payment**

Unless otherwise agreed, if the buyer has an approved credit account with Steber, the buyer must pay for the goods or services ordered by the buyer within 30 days from delivery. Where the buyer does not have a credit account with Steber, all goods and services are to be paid for within 14 days from delivery (or immediately on delivery if the quotation so requires). Steber may charge an administration fee and interest at the rate that is 2% above Steber's existing overdraft rate if the buyer fails to pay on or before the relevant payment date. In this regard, time is of the essence in respect to the buyer's obligation to make payment for the goods or services supplied by Steber.

**7. Risk**

- (a) Goods supplied by Steber to the buyer are at the buyer's risk immediately on the earlier of delivery to the buyer or into the buyer's custody, including its carrier or forwarder. The buyer must insure the goods at its cost from delivery of the goods at Steber's premises until they are paid for in full against such risks as are usual in the circumstances and bearing in mind the nature of the goods.
- (b) Property in the goods supplied by Steber to the buyer does not pass to the buyer until goods have been paid for in full. In the meantime, the buyer takes custody of the goods and retains them

only as the fiduciary agent and bailee of Steber. Until all goods have been paid for in full:

- (i) to the extent possible, the buyer must store the goods in a manner that shows clearly they are the property of Steber, maintain records relating to the goods, secure the goods from risk, damage and theft and ensure that the goods are kept in good and serviceable condition;
- (ii) the buyer may sell the goods, in the ordinary course of its business, but only as the fiduciary agent of Steber. The buyer must not represent to any third party that the buyer is acting in any capacity for or on behalf of Steber and the buyer has no authority to bind Steber to any contract or otherwise assume any liability for or on behalf of Steber. The buyer receives all proceeds (including any proceeds from insurance claims) in Trust for Steber and must keep the proceeds in a separate bank account until all liability to Steber is discharged; and
- (iii) if the buyer uses the goods in some manufacturing or construction process of its own or of a third party, the buyer must hold in Trust for Steber that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by the buyer to Steber at the time of receipt of the proceeds.

**8. Intellectual Property**

- (a) Steber will retain ownership of all copyright in relation to all designs and drawings prepared for and on behalf of the buyer, despite any payment made in accordance with these Terms of Sale.
- (b) Where Steber has followed a design or instructions furnished by or on behalf of the buyer:
  - (i) Steber gives no warranty as to the utility of the good(s) or if they will be fit for purpose;
  - (ii) The buyer warrants that such design or instructions will not infringe the intellectual property of a third party; and
  - (iii) the buyer indemnifies and will keep Steber indemnified against all claims, damages, losses, penalties, costs and expenses to which Steber may become liable by reason of any work required to be done in accordance with those instructions or design including any infringement of any patent, registered design, copyright or any other right of a third party including moral rights.

**9. Limitation of Liability**

To the extent permitted by law, these terms and conditions exclude all other conditions, warranties, liabilities or representations in relation to the goods and/or services being provided or produced by Steber to the buyer. Where legislation applies in these terms and conditions, any condition or warranty that cannot be excluded or modified, to the extent permitted by law the liability of Steber for a breach of any such condition or warranty is limited at Steber's option to any one or more of the following:

- (a) in the case of goods:
  - (i) replacement of the goods or the supply of equivalent goods;
  - (ii) payment of the costs of replacing the goods or of acquiring equivalent goods, by credit to the buyer's account, in cash or by cheque at Steber's discretion; or
  - (iii) repayment of any part of the purchase price of the goods which has been paid by the buyer, by credit to the buyer's account, in cash or by cheque at Steber's discretion;
- (b) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again, and in this regard, Steber is not liable for any loss or damage of any kind whatsoever and however arising out of or in connection with the supply of goods and services, including

(without limitation and severably) any indirect or consequential loss (including without limitation loss of profit, loss of revenue, loss of contract, loss of goodwill or increase costs of workings) arising out of or in connection with the supply of goods or services, even if due to the negligence of Steber or any of its employees or agents.

#### 10. Miscellaneous

- (a) This agreement together with the quotation and the Special Conditions contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether expressed or implied in any way defining or extending or otherwise relating to these provisions or binding on the parties with respect to the goods or the operation thereof.
- (b) This agreement is governed by, and is to be construed in accordance with, the laws of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of NSW and any court hearing appeals from those courts.
- (c) If any provision of these terms or conditions is unenforceable, illegal or void, that provision, or part thereof, is severed and the other provisions and any part provision remain in force.

#### 11. Staged contracts

In the event that the buyer enters into a staged contract with Steber, the buyer agrees that the provisions set out in this clause 11 shall apply to the extent of any inconsistency with the other Terms & Conditions set out herein.

- (a) The buyer acknowledges that it has not expressly or impliedly made known to Steber any particular purpose for which it requires the vessel components other than for their intended use in the construction of a completed vessel.
- (b) Supply of the component/s pursuant to the staged contract does not entitle the buyer to use the Steber brand or any of its intellectual property on or in association with the completed vessel or any of the components and in this regard:
  - (i) the buyer may not, in any way, copy or reproduce any of the components supplied for commercial purposes;
  - (ii) the buyer may not, in any way, apply the Steber name or any of its trade marks to the completed vessel unless otherwise agreed in writing by Steber.
- (c) Limitation of warranty:
  - (i) any warranty provided by Steber is for the supplied component(s) only and does not cover items into which the component(s) are incorporated, including the completed vessel;
  - (ii) Steber provides no warranty that any supplied component(s) will be able to connect or interface with any components or items of the buyer's choosing.
- (d) The buyer acknowledges that Steber designs its hulls and other vessel components for use in completed vessels of a particular type and that a range of standard specifications has been tested and certified as being appropriate for each type of completed vessel and in this regard the Buyer further acknowledges that in a staged contract Steber is not able to warrant such compliance and all risk associated with the use and operation of the component(s) the subject of this contract, including the completed vessel, shall pass to the buyer and the buyer fully releases Steber and indemnifies Steber against any liability arising from its use of the component(s) as a part of a completed vessel, in particular:

- (i) in connection with any type of vessel for which it was not intended to be used, or
- (ii) non compliance with the vessel specifications as provided by Steber.

#### 12. Refit and Refurbishment contracts

In the event that the buyer enters into a refit and refurbishment contract with Steber the buyer agrees that the provisions set out in this clause 12 shall prevail over the other Terms & Conditions set out herein to the extent of any inconsistency.

- (a) The buyer acknowledges that it has not expressly or impliedly made known to Steber any particular purpose for which it requires the vessel refit and refurbishment other than for the refurbishing of a second-hand vessel.
- (b) The buyer warrants that it is the owner of all the property supplied for the purposes of the refit and refurbishment or otherwise has the authority to supply the property for the purposes of the refit and refurbishment and to enter into the refit and refurbishment contract with Steber.
- (c) The buyer acknowledges that it has not requested and Steber has not provided any advice or recommendations regarding the proposed refit and refurbishment and that all plans and specifications have been prepared by the buyer or for and on behalf of the buyer by a third party.
- (d) The buyer warrants that it has provided all relevant information to Steber regarding the state of repair of the vessel, including latent and patent defects and prior damage or repairs that may impact upon Steber's ability to carry out the refit and refurbishment works or that may impact upon the quality of such works or the costs associated therewith and in this regard, any additional costs incurred by Steber as a result of the buyers failure to inform Steber shall be borne by the buyer and the buyer shall indemnify Steber in relation to such additional costs and any claims or loss incurred by Steber as a result, consequential or otherwise, of the buyers breach of this clause.
- (e) Steber will not accept the vessel onto Steber's premises if it contains or has on board any items which Steber, in its absolute discretion, considers dangerous and in this regard Steber reserves the right to direct the buyer, at its own expense, to remove the dangerous item(s) from the vessel prior to commencement of the refit and refurbishment.
- (f) The buyer agrees to fully release and indemnify Steber in relation to any claim, loss or damage arising from or associated with the fit-out plans and specifications and the component(s) associated therewith, subject to Steber's compliance with these Terms & Conditions.
- (g) Steber warrants to the buyer that:
  - (i) at all times it and its staff shall be suitably qualified and experienced, and shall exercise due skill and diligence in carrying out the refit and refurbishment works; and
  - (ii) it will carry out the refit and refurbishment works in accordance with the design and refit and refurbishment specification provided by the buyer so that the refit and refurbishment when completed shall:
    - A. be fit for their stated purpose; and
    - B. comply with all requirements of the contract.
- (h) Steber shall be entitled to sub-contract minor portions of the fit-out works, such as electrical, plumbing and pre-fabrication, without the written consent of the buyer.

- (i) In relation to damage to the vessel during the fit-out,
  - (i) except as provided in (iii), Steber shall be responsible for care of the vessel from and including the date of delivery to Steber's premises to the date of collection by the buyer or the buyers agent, contractor or representative;
  - (ii) if damage, other than that caused by an accepted risk as set out in (iii), occurs to the vessel during the period of Steber's care, Steber shall at its cost rectify such damage; and
  - (iii) the accepted risks causing loss or damage, for which the buyer is liable, are: any negligent act or omission of the buyer or its consultants, agents, employees or other contractors; any risks specifically accepted elsewhere in this contract; and defects in the vessel or the design thereof.
- (j) On Steber taking possession of the vessel from the buyer or dealer, and for the period of possession by Steber, the buyer shall insure the vessel and the fit-out works against loss or damage resulting from any cause and with such insurance to be in the name of the buyer and Steber as an interested third party.
- (k) Completion of the fit-out works pursuant to this fit-out contract does not entitle the buyer to use the Steber brand or any of its intellectual property on or in association with the completed vessel or any of the components and in this regard:
  - (iii) the buyer may not, in any way, copy or reproduce any of the fit-out works for commercial purposes;
  - (iv) the buyer may not, in any way, apply the Steber name or any of its trade marks to the completed vessel unless otherwise agreed in writing by Steber.
- (l) In the absence of Steber's explicit authority, the buyer may not and it may not authorise anyone else to enter upon, operate or work upon the vessel while it is in Steber's possession. Such authority is only provided on the condition that the buyer indemnifies Steber for any liability whatsoever arising out of the buyer's activities or those of anyone it has authorised to enter upon, operate or work on the vessel.
- (m) Any warranty provided by Steber is for the fit-out works only. Steber offers no warranty covering items with which Steber's fit-out works are connected or interfaced in any way.