

CUSTOM CRAFT MINIJETTS
TERMS AND CONDITIONS OF SALE OF GOODS



1. CONTRACT TO SUPPLY GOODS

- 1.1 These terms and conditions are binding and final and can only be amended with our written consent. To the extent that they are inconsistent with these terms and conditions, any stipulation of additional or different terms made by you in a Purchase Order will be of no effect.
- 1.2 By placing a Purchase Order on our website, you offer to buy the Goods described in the Purchase Order from us for the Price. We may send you an email or other message confirming your Purchase Order has been lodged; this is not our acceptance of your offer to buy the Goods. We only accept your offer, and a contract for the sale of the Goods only exists, when we successfully process your Payment Authorisation.
- 1.3 All Purchase Orders are final once Payment Authorisation has been processed by us. After Payment Authorisation has been processed, you may only cancel or vary your Purchase Order with our express written agreement. We reserve the right to charge you for any costs incurred as a result of an agreed variation or cancellation.

2. PRICE AND PAYMENT

- 2.1 The Price excludes GST unless otherwise stated.
- 2.2 We are only required to provide you with Goods if Payment Authorisation is given and payment is duly received from you or your financial institution. We will not be under any obligation to supply Goods where payment is declined for any reason.
- 2.3 If your payment is declined for any reason, you agree to pay us any dishonour or other fees resulting from that payment refusal.

3. DELIVERY

- 3.1 The Price excludes delivery costs unless otherwise stated in your Purchase Order.
- 3.2 Goods will be deemed to have been accepted by you and to be of satisfactory condition unless you advise us of any deficiency within seven (7) days following receipt of the Goods.
- 3.3 Goods will be at your risk and will be deemed to have been received by you:
 - (a) in the case of Drawings and Specifications, on delivery to you of plans and drawings by email to your email address stated in your Purchase Order;
 - (b) in the case of other Goods:
 - (i) on collection of the Goods by you; or
 - (ii) on delivery of those Goods to you at the delivery address specified in your Purchase Order.
- 3.4 Unless otherwise stated in your Purchase Order:
 - (a) where you ask us to arrange delivery of the Goods to you, we will contact you to advise of delivery costs and obtain a further Payment Authorisation in respect of those costs prior to delivery; and
 - (b) estimates of date for collection or delivery are just estimates and are not guaranteed times.

3.5 In the case of an event occurring which results in us being unable to supply the Goods within a reasonable period (e.g. an Act of God, material shortage, government mandate, etc.), we may cancel the Purchase Order and refund your payment.

4. LIABILITY

4.1 You agree that:

- (a) the Goods are provided on the understanding that you will be required to participate in the manufacture (in the case of us supplying only Drawings and Specifications) or assembly (in the case of supply of a kit) of one or more items;
- (b) by reason of you taking part in the manufacture or assembly:
 - (i) we cannot ensure the suitability of the manufactured or assembled product for any general or specific use by you;
 - (ii) we cannot guarantee that you will not damage any Goods we supply in the course of the manufacture and assembly process;
 - (iii) we cannot warrant that the completed item or items will be of a commercial standard or fit for purpose; and
- (c) for these reasons, we will not be liable for any Loss you may suffer arising from the manufacture, assembly, or use of an item that you construct using the Goods.

Explanatory Note: Whilst we can provide assurances as to the quality of the Drawings and Specifications and kit pieces we provide to you, we cannot provide assurance that your manufacture of items from plans, or your assembly / welding of kit pieces, will result in a waterproof or registrable vessel, or that it will accommodate a particular engine / motor, etc., or otherwise be fit for a purpose you have in mind.

4.2 To the extent permitted by law:

- (a) all guarantees, conditions and warranties, express or implied, by law, custom or otherwise are excluded;
- (b) our liability for any Loss arising from a breach of any guarantees, conditions and warranties provided in these terms and conditions, or implied by law and not capable of exclusion, is limited to:
 - (i) replacement of the Goods (or part of the Goods as the case may require);
 - (ii) the supply of products equivalent to the Goods;
 - (iii) the repair of the Goods;
 - (iv) the cost of replacing the Goods or acquiring products equivalent to the Goods; or
 - (v) the payment of the cost of having the Goods repaired, at our election; and
- (c) we will not be liable for any indirect or consequential loss or damage.

4.3 Nothing in these terms and conditions is intended to exclude, restrict or modify any non-excludable right or remedy you have under law including the Australian Consumer Law.

4.4 Without obligation to do so, we may make changes to Drawings and Specifications or to Goods in order to comply with safety and statutory requirements from time to time. Unless required by law, we will not be under any obligation to advise you of any changes made to Drawings and Specifications or to Goods after delivery to you.

5. INTELLECTUAL PROPERTY

- 5.1 Where the Goods described in your Purchase Order include Drawings and Specifications, in consideration for payment duly made under these terms and conditions, we grant to you a license to use the Drawings and Specifications on a limited, non-exclusive, royalty-free, non-transferable and non-sublicensable basis for your own personal use and benefit.
- 5.2 You agree:
- (a) that we retain copyright in the Drawings and Specifications;
 - (b) that you will not provide the Drawings to any third party except for the purpose of manufacture or construction of materials for your own personal use;
 - (c) that you will not seek to monetise or on-sell the Drawings and Specifications, or any materials or goods constructed in accordance with or substantially based upon the Drawings and Specifications;
 - (d) that the obligations set out in this clause are fundamental obligations and:
 - (i) you will indemnify us in respect of any breach or purported breach of these terms and conditions; and
 - (ii) we may seek injunctive relief to restraint you from any threatened breach or continuing breach of these obligations.

6. GENERAL

- 6.1 These terms and conditions are governed by, and to be interpreted in accordance with, the laws of Western Australia. The Parties submit to the exclusive jurisdiction of the courts of Western Australia in respect of any matter arising under these terms and conditions.
- 6.2 These terms and conditions may only be varied in writing and supersede all previous agreements in respect of the Goods and the Purchase Order.
- 6.3 We may make changes to our website, these terms and conditions, our policies, and the Goods at any time by posting changes on our website. You will be subject to the terms and conditions and policies available on the website at the time that you order Goods from us.
- 6.4 If any part of these terms and conditions is, or becomes, void or unenforceable that part is or will be, severed from these terms and conditions to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- 6.5 Failure to exercise or delay in exercising any right, power or privilege in these terms and conditions by us does not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.
- 6.6 No waiver or indulgence by any party is binding upon that party unless the waiver or indulgence is in writing and no waiver of, or consent to, a breach of a provision of these terms and conditions operates as a continuing waiver or consent or waiver or consent to a breach of any other provision of these terms and conditions, unless the waiver is expressed to operate in that manner.
- 6.7 Time is of the essence in respect of the rights and obligations of the parties under these terms and conditions.

- 6.8 In relation to each indemnity in these terms and conditions:
- (a) the indemnity is a continuing obligation, separate and independent from the other obligations of a party and survives termination or completion;
 - (b) it is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity conferred; and
 - (c) a party is liable to pay to the party to be indemnified an amount equal to any loss suffered or incurred by an employee, officer or agent of that party.

7. DEFINITIONS AND INTERPRETATION

7.1 Unless the context requires otherwise:

- (a) **we, us, our** means Custom Craft Pty Ltd (ACN 653 898 161) trading as Custom Craft, our successors and assigns and any person acting on our behalf and with our authority;
- (b) **you, your** means you the customer;
- (c) the following words have the following meanings:

Drawings and Specifications means plans, drawings and specifications we provide to you;

Goods includes Drawings and Specifications, as well as any goods that we supply to you in accordance with these terms and conditions;

GST means goods and services tax under *A New Tax System (Goods and Services) Act 1999 (Cwth)*;

Loss means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, consequential or incidental) and includes any economic loss or damage, loss of reputation, loss in connection with any claim against us by any person, loss of revenue or actual or potential profits, any costs of repair, lost opportunity, including the opportunity to enter into or complete an arrangement with a third party, and legal costs and expenses on a full indemnity basis;

Payment Authorisation means you submitting credit card or other electronic authorisation to effect payment on your behalf;

Price means the amount payable for the Goods as stated in the Purchase Order;

Purchase Order means any transaction by which you request us to provide you with Goods and submit Payment Authorisation.

7.2 In these terms and conditions, unless the contrary intention appears:

- (a) **including** and similar expressions are not words of limitation;
- (b) the word person includes an individual, a firm, a corporate entity, an unincorporated entity, a partnership, or government authority;
- (c) no rule of construction of documents applies to our disadvantage on the basis that we put forward these terms and conditions.