

## MALIBU BOATS, LLC'S STANDARD TERMS AND CONDITIONS OF PURCHASE

1. Use; Definitions. These Malibu Boats, LLC's Standard Terms and Conditions of Purchase shall apply to every purchase of goods or services by Malibu Boats, LLC. The word "Purchaser" whenever used herein shall mean Malibu Boats, LLC or its affiliates. The party with which an order is placed is referred to herein as "Seller." The terms "Purchase Order," herein and "hereto" refer to and include any Purchase Order submitted by Purchaser to Seller, these Standard Terms and Conditions, any Supplier Agreement between the parties, and any other documents specifically made a part of or incorporated by reference into this Purchase Order. The products, machinery, equipment, supplies and/or labor or services covered by this Purchase Order are referred to herein as "Goods." This Purchase Order is the contract between Purchaser and Seller relating to the purchase and sale of Goods or services hereunder. Purchaser objects to variations in and additions to any of the terms, conditions, deliveries, prices, quality, and specifications of this Purchase Order, irrespective of the wording of Seller's acceptance, invoice, shipping receipt, packing slip, other written material offer, proposal or by any other means (hereinafter collectively called "Seller's Forms").

2. Acceptance; Entire Agreement. By accepting a Purchase Order, Seller agrees to the terms and conditions as set forth on this Purchase Order including, but not limited to, Required Dates, Prices, Quantities Ordered, Payment Terms and Destination(s). **Further, Seller shall be subject to, and, by agreeing to supply Products or Services to Purchaser, shall be deemed to have read, understood, and agrees to comply with the *Malibu Supplier Code of Conduct* located at Purchaser's website at [suppliers.malibuboats.com](http://suppliers.malibuboats.com), which *Malibu Supplier Code of Conduct* is incorporated herein by reference.** A copy will be provided to Seller upon written request. Seller shall provide Purchaser with said acceptance and commitment in the form of an acknowledgement of this Purchase Order (within 24 hours of receipt) as well as a copy of the Seller's Sales Order from the Seller's MRP/ERP System (within 72 hours of receipt). Purchaser shall not be bound by this Purchase Order until Seller executes and returns to Purchaser the acceptance and commitment copy of this order. No terms and conditions at variance with, or additional to, those contained herein shall be applicable hereto or to this Purchase Order unless specifically agreed to in writing by an authorized representative of Purchaser. Any agreements, negotiations or understandings of the parties prior to the date of this Purchase Order, whether written or oral, are merged herein and superseded hereby. In the event of a conflict between the terms of the Supplier Agreement and this Purchase Order, the terms of the Supplier Agreement shall control; provided, however, that these Terms and Conditions shall not limit any rights or remedies of Purchaser contained in the Supplier Agreement. No modification of the provisions hereof shall result from Purchaser's acceptance of the Goods or receipt from Seller of Seller's Forms containing terms and conditions in additional to, or inconsistent with, the provisions hereof.

3. Changes to Order and Overage. Purchaser reserves the right to change quantities, specifications, delivery dates, materials and other descriptions relating to the Goods and services covered by this Purchase Order. If such changes cause an increase or decrease in the cost or time required for Seller's performance, Seller and Purchaser shall negotiate an equitable adjustment. No other modification, alteration or amendment of this Purchase Order shall be effective unless in a written change order signed by Purchaser. No charges for any changes not so authorized will be paid. Any overshipments shall be at Seller's risk, and Purchaser may delay payment therefor without loss of discount. All costs in returning overshipped items, if so desired by the Purchaser, will be at Seller's expense.

4. Assignment. Seller shall not assign its rights or delegate or subcontract its performance under this Purchase Order in whole or in part without the prior written consent of Purchaser. Any attempted assignment, delegation or subletting without Purchaser's prior written consent shall be void and shall constitute a material breach of this Purchase Order by Seller.

5. Nonconforming Goods. All Goods furnished under this Purchase Order are subject to final inspection and approval at destination by Purchaser. Any Goods not in compliance with any specifications or other requirements of this Purchase Order are subject to rejection by Purchaser, and any or all of such Goods may be returned by Purchaser at Seller's expense. No Goods returned as non-confirming shall be replaced unless authorized by Purchaser. Any payments for Goods made prior to inspection shall not constitute an acceptance of said Goods or impair the remedies of Purchaser hereunder and as provided by law.

6. Breach. Any materials, equipment, articles, Goods or services of any kind purchased hereunder not in accordance with any of the warranties set forth herein may, at Purchaser's election, be treated as a partial or total breach of contract, and Purchaser may avail itself of any and all remedies available to it including, but not limited to, (i) cancellation of the Purchase Order, in whole or in part; (ii) rejection and return to Seller, at Seller's expense, all or any portion of the Goods previously shipped, whether defective or not and whether previously accepted or not, (iii) replacement from other sources of Goods or services covered by this Purchase Order; and (iv) retention of Goods and repair thereof at Seller's expense. In any such event, Seller shall be liable to Purchaser for the full amount of such consequential and/or incidental damages as flow from its breach of contract and Seller shall not be entitled, in diminution of the same, to show that such procedures as Purchaser chose to follow upon such breach resulted in greater damages than might have ensued had Purchaser selected other available alternatives. One

or more waivers (whether by non-enforcement, non-association or otherwise) of the breach of any condition, term or provision of this Purchase Order shall not be construed as a waiver of a further, additional or continuing breach of the same or any other condition, term or provision of this Purchase Order.

7. Cancellation. If at any time Purchaser shall reasonably determine that Seller is, or is about to become, insolvent or bankrupt, then Purchaser may forthwith cancel this Purchase Order. Without limiting any right of cancellation for Seller's breach or default, Purchaser reserves the right to cancel this Purchase Order, or any portion thereof, if, for any reason, delivery or performance is not made or cannot be made when specified, time being of the essence hereof, and to charge Seller for any loss resulting therefrom. Purchaser's right of cancellation includes, the right to cancel future installments, if any, in the event of failure or delay in delivery or performance, if deemed by Purchaser to reasonably impair the value of the entire Purchase Order.

8. Force Majeure. In the event either party, through no fault of its own, is unable to perform hereunder due to an event that is beyond the non-performing party's reasonable control, such nonperformance shall be excused, provided that if any such event continues for more than fifteen (15) days, Purchaser may, at its option, cancel this Purchase Order and all its obligations hereunder. Each party shall promptly notify the other of any inability to perform and the cause thereof.

9. Termination. Purchaser may terminate this Purchase Order, in whole or in part, at any time due to Seller's breach or for any reason or for no reason by written notice, or verbal notice confirmed in writing, to Seller. In the event Seller is not in breach or default hereunder and Section 7 above does not apply, Seller's sole remedy shall be limited to recovery of its reasonable direct costs consisting of a percentage of the order price reflecting the percentage of work authorized and properly performed prior to notice of termination, and actual direct costs resulting from termination.

10. Title and Risk of Loss. All Goods shall be shipped F.O.B. Purchaser's plant, Loudon, Tennessee – Freight Prepaid (or such other destination as Purchaser has expressly stated herein) unless specified to the contrary in the Purchase Order, and title and risk of loss to and with respect to the Goods shall remain with the Seller until the Goods are delivered to Purchaser at Purchaser's plant, Loudon, Tennessee (or such other destination). All Goods must be suitably packed, marked and shipped in accordance with the requirements of applicable common carriers in a manner to secure the lowest transportation cost. No charge shall be made by Seller for packing, boxing, drayage or storage unless otherwise stated herein.

11. Payment. Seller will comply with Purchaser's invoicing requirements as defined by Purchaser. Unless otherwise agreed to, invoices shall be submitted electronically to [malibuacct@malibuboats.com](mailto:malibuacct@malibuboats.com). Sellers shall submit invoices only electronically and shall not duplicate such electronic submissions with hard copy submissions of the same invoice. Unless otherwise expressly stated herein, invoices dated prior to delivery of Goods will not be accepted. Purchaser may withhold any payment due hereunder to such extent as may be necessary to protect Purchaser from loss because of a reasonable doubt (a) that the Goods will meet the requirements of this Purchase Order, or (b) that the Goods will be delivered on the date or dates specified in this Purchase Order. Upon the submission of proper invoices, Purchaser shall be paid the prices stipulated herein for Goods delivered and accepted, or services rendered and accepted, less deductions, if any. Unless otherwise specified, payments will be made on partial deliveries accepted by Purchaser if Purchaser, in its sole discretion, determines that the amount due is sufficient to warrant such partial payments, in connection with any discount offered, time will be computed from date of delivery at destination or from the date a correct invoice is received, if the latter date is later than the date of delivery.

## 12. Warranty.

12.1 Seller warrants that all Goods purchased hereunder shall be new unless otherwise specified, will be free from defects in design, material, and workmanship, will conform to specifications and accepted samples, will be merchantable and, if ordered for a stated purpose, will be fit for such purpose. The warranties set forth in this Paragraph 12.1 or otherwise with respect to the Goods, are conditions to this Purchase Order and are in addition to all other warranties, expressed or implied and shall survive any delivery, inspection, acceptance, or payment by Purchaser for a period of either five (5) years from date of retail sale of the boat or for any such longer period as has been negotiated by the parties. All warranties shall run to Purchaser, its successors, assigns, customers and any third party injured in person or property by reason of any breach hereof.

12.2 All services provided by Seller hereunder shall be satisfactorily performed to Purchaser's specifications, drawings, samples, and any other description furnished or adopted by Purchaser. In the absence of exact specifications, all materials furnished shall be of the highest grade and best quality, and the work shall be performed in a professional and first-class manner best suited for its use and intended purpose. Seller will re-execute, at its own cost and expense, any defective or unsatisfactory work that appears during progress of the work and will remedy and replace, at Seller's own cost and expense, any defects due to faulty materials or workmanship which appear within a period of either one (1) year from the date of acceptance of the completed work by Purchaser or for any such longer period as has been negotiated by the parties. The work will be at Seller's risk until it is accepted by Purchaser.

12.3 Seller warrants that no liens, encumbrances, security interests, or other third party claims shall attach to real or personal property owned or leased by Purchaser as a consequence of Seller's performance of services hereunder. Seller warrants that the Goods do not infringe the intellectual property rights of any third party.

12.4 Seller warrants that all Goods covered hereby are at prices and terms lawful and permissible under the anti-trust laws and any other applicable official price control laws, orders and regulations.

12.5 Purchaser objects to any disclaimer of warranty, fitness for a particular purpose, merchantability, freedom from defects, or other disclaimer of the terms and conditions of this Purchaser Order in Seller's Forms.

13. Compliance with Laws. By accepting this Purchase Order, Seller acknowledges and warrants that all Goods furnished hereunder shall comply with all laws, rules, regulations, treaties and restrictions applicable in the State of Tennessee, the United States of America and any foreign country or territory into which the Goods or any product containing the Goods may reasonably be anticipated to be shipped. Seller acknowledges and warrants that its company, subcontractors, representatives, designees, et al. are in compliance with all U.S. Department of Labor applicable laws and regulations.

14. Infringement. Seller hereby agrees to indemnify and hold harmless Purchaser and its successors, assigns and customers and the users of its products against all costs whatsoever involved in any and all claims and suits for infringement of patent or intellectual property rights arising from the purchase or use of the Goods. Purchaser shall give Seller reasonable notice of any such claim or suit, and Seller agrees to undertake at its own expense the defense of any and all such claims or suits. In addition, upon notification by Purchaser of an infringement claim, Seller shall do one of the following: (a) procure for Purchaser the right to continue using the Goods on a permanent basis, without cost to Purchaser and without any restrictions on the right of Purchaser to use the Goods for the purpose for which they are intended, or (b) replace the same with non-infringing Goods satisfactory to Purchaser, or (c) modify the Goods in a manner satisfactory to Purchaser so that they become noninfringing.

15. Indemnity. Seller agrees to indemnify and hold harmless Purchaser, its subsidiaries, affiliates, successors, assigns, employees, agents, and customers from any and all claims, demands or other liabilities for suits, injuries, losses, damages, recall costs, or expenses (including attorneys fees) to persons or property in any way arising out of or resulting from a defect in the Goods or services purchased hereunder or from any act, fault, or omission of Seller, its agents, employees, or subcontractors in the performance of this Purchase Order, whether or not caused or contributed to, in whole or in part, by the negligent acts or omissions of Purchaser or any of its agents, officers, directors, employees and assigns or any other person or entity, including, but not limited to: (i) actual or alleged infringement of any United States or foreign patents, or any trademark or copyright; (ii) performance of work and labor covered by this Purchase Order; or (iii) breach of any warranty or any other obligation hereunder. Purchaser objects to any limitation of liability in Seller's Forms.

16. Inspection and Acceptance. If this Purchase Order involves manufacture of the Goods, Seller shall provide all shop inspection required and corresponding quality inspection reports to insure compliance with this order, and Purchaser shall have the right at all reasonable times to inspect and test all work in process. Neither the presence nor the absence of an inspector or other personnel of Purchaser in Seller's facility shall relieve Seller of any requirements of this Purchase Order. Purchaser may request from Seller, at Purchaser's discretion, to submit monthly (or more frequently if delivery requirements make it necessary) status reports and engineering production status reports if Purchaser so specifies herein. Notwithstanding any prior inspection, the passage of title or any payments hereunder, all Goods furnished hereunder are subject to final inspection and acceptance by Purchaser upon delivery.

17. Price and Taxes. In the event of a price decline of any of the Goods or services, or should Seller at any time, during the term of this Agreement, agree to sell the same Goods or services at prices below those provided to Purchaser, under similar quantity and delivery conditions, to any other boat manufacturer (a "Competitor"), or to provide goods or services to any Competitor not provided to Purchaser or on more favorable terms, Seller shall immediately extend such lower prices or more favorable services to Purchaser. Further, Seller represents and warrants that the prices to be charged to Purchaser do not exceed those currently charged to other Competitors receiving Goods or services. Unless otherwise provided in this Purchase Order, the price includes any and all taxes whatsoever, whether sales, use, excise or other, or fees, duties or other governmental impositions, whether or not the same are set forth separately on invoices to Purchaser. If Purchaser subsequently is required to pay any taxes or other fees relating to the services to be performed or to the production, sale or transportation of Goods ordered pursuant hereto, Seller will reimburse Purchaser therefor.

18. Confidentiality. In the event Purchaser disclosed to Seller any confidential information, including that which may be disclosed verbally, in writing, or through observation of Purchaser's facilities, Seller shall not use such information for its own benefit or disclose Purchaser's confidential information to any third parties, except to the extent required by law and then only upon prior written notice to Purchaser. No information received by Purchaser in connection with negotiating and filling this Purchase Order shall be deemed to constitute a trade secret, or to have been given in confidence to Purchaser.

19. Ownership. If any molds, dies, tools, special fixtures, jigs, patterns, models or the like, or any photographic negatives or printing artwork or plates, copyrightable material, patents, trademarks, or the like should be furnished by or on behalf of

Purchaser, or by Purchaser to Seller, then Seller (i) shall have no rights, property or interest in the same except to the extent necessary to perform under this Purchase Order, (ii) shall be responsible for maintaining the same in proper working order subject only to normal wear and tear where applicable; and (iii) upon completion of work pursuant hereto, shall promptly account to Purchaser for any and all such items and make such disposition thereof, including any assignments and releases, as Purchaser directs.

20. **Controlling Law and Severability.** The terms and conditions of this Purchase Order shall be construed and interpreted under, and all respect rights and duties of the parties shall be governed by, the laws of the State of Tennessee and United States of America Federal law. If any provision or requirement of this Purchase Order is declared or found to be unenforceable, the balance of this Purchase Order shall be interpreted and enforced as if the unenforceable provision or requirement had never been a part hereof.

21. **Packaging.** Goods will be delivered in appropriate packaging according to industry standards in order to safe guard the contents from damage during transit and storage. This safeguard includes, but is not limited to, stacking boxes on each other during palletization, to protect against lower boxes being damaged as well as, when applicable, protecting palletized shipments from having other pallets stacked onto the subject pallet during shipment. Specific or special packaging or packing may be required. When such is required it shall be documented and agreed to by both the Seller and Purchaser. Each package (box, container, sleeve, roll, etc.) shall be labeled to identify the contents of the package. Labeling shall comply with Purchaser's publication SCP-1401 Shipping/Parts Identification Label Standards.

## 22. Shipping.

22.1 Each shipment made to Purchaser shall be documented as follows:

- a. **Shipment Label(s)** – Each shipment shall be labeled to identify the shipment. Labeling shall comply with Purchaser's publication SCP-1401 Shipping / Parts Identification Label Standards.
- b. **Packing List** – A packing list shall be produced by the Seller, accompany the shipment and shall include the following information, at a minimum;
  - i) Name of Seller
  - ii) Address from which shipment was made
  - iii) Address to which shipment is being delivered to
  - iv) Date of Shipment
  - v) Method of Shipment
  - vi) Purchaser's Purchase Order Number
  - vii) Vendor Document Number
  - viii) The following information will be present on the packing list for each Item within the shipment:
    - a. Purchaser Part Number
    - b. Seller Part Number
    - c. Description
    - d. Quantity Ordered
    - e. Quantity Shipped
    - f. Quantity Back Ordered
    - g. Unit Of Measure
- c. **Bill Of Lading** – Each shipment shall be documented on the commercially acceptable Bill Of Lading (BOL) as prescribed by the specific carrier being utilized.

22.2 The packing slip as described above shall be placed on an external surface of the first box or pallet of the shipment. It shall be secured in a clear envelope and be protected from weather and shipping damage during transit.

22.3 Seller shall provide Purchaser with notice of when Goods are shipped without regard for the method of shipment. Such shipping notices shall be made within twenty-four (24) hours of the shipment departing from the Seller.

22.4 Seller shall be responsible to ensure that all hazardous materials are properly handled, packaged, marked and shipped. This includes, but is not limited to the proper identification, classification, packaging, packing, marking, labeling and shipping of all Goods classified as hazardous materials. The handling of hazardous materials (including but not limited to the proper identification, classification, packaging, packing, marking, labeling and shipping) must follow the latest provisions of prescribed regulations, laws, statutes, guidelines and any and all governing standards which define the proper method of classification, packaging, marking and labeling each package within a specific shipment as prescribed at 49 CFR or elsewhere. Furthermore, the Seller must comply with other standards or regulations having jurisdiction or which are in effect in the United States or other countries at the federal, state, provincial or local levels, as applicable.

### 23. Delivery.

23.1 Purchaser's production schedules, sales plans and promotions are based upon the agreement that the Goods will be delivered to Purchaser in accordance with the delivery requirements set forth in the Purchase Order. Time therefore is agreed to be of the essence, and Seller shall meet the delivery requirements for Goods as set forth in the Purchase Order for said Goods. Delivery will be considered timely only if Goods are delivered in the correct quantity, and at the time, date and location specified in the Purchase Order, subject to the Delivery Tolerance below. If necessary for Seller to meet its delivery requirements, Seller, at its sole expense, will use expedited delivery methods to complete and deliver the Goods.

23.2 Seller shall promptly provide written notification to Purchaser of any possible or actual delay in delivery performance hereunder and shall provide all relevant information concerning the cause for such delay. In no event however, shall such notice relieve the Seller of its obligations under the applicable Purchase Order. Deliveries shall be strictly in accordance with the schedule defined or referred to in the Purchase Order and in the exact quantities ordered.

23.3 Delivery Tolerance – A tolerance around the required delivery date is provided in order to support both Purchaser and Seller. Seller's delivery is said to be on-time if the correct quantity is received by the Purchaser's applicable facility as follows:

- a. Prior to the required delivery date – Deliveries made within a window of the delivery date minus 7 days will be considered on-time.
- b. On the required delivery date – Deliveries made on the required delivery date, prior to 1500hrs (3:00pm) local will be considered on-time.

23.4 If Seller fails to deliver Goods at the time and place set forth on the Purchase Order, Seller shall immediately notify Purchaser and at Purchaser's request locate alternative suppliers which are acceptable to Purchaser for the Goods. Seller shall remain primarily liable for the delivery of such Goods from the third party suppliers, and Seller will reimburse Purchaser for any additional reasonable costs (including but not limited to expedited transportation charges) incurred by Purchaser for such alternative Suppliers. In addition to the foregoing, if deliveries are not made as specified in the Purchase Order, Purchaser may, in its sole discretion, cancel an accepted and acknowledged Purchase Order on a non-cancellation charge basis and purchase replacement Goods elsewhere, in addition to any other remedies provided by agreement, law or equity. Seller shall be liable for any and all consequential and/or incidental damages resulting from the failure to deliver any Goods to Purchaser in accordance with the delivery requirements set forth in the Purchase Order.