
Odessa Marine Pty Ltd ACN 620 372 474
Terms & Conditions of Trade

1. Definitions and Interpretation

1.1 Unless otherwise specified the following words and phrases have the following meanings in these Terms:

- (a) **“Australian Consumer Law”** means Schedule 2 of the CCA as amended from time to time;
- (b) **“Australian Dollars”** or **“\$”** means the lawful currency of the Commonwealth of Australia;
- (c) **“Business Day”** means a day which is not a Saturday, Sunday or Public Holiday in Brisbane, Queensland;
- (d) **“CCA”** means the *Competition and Consumer Act 2010* (Cth);
- (e) **“Customer”** means the person or entity purchasing Goods from Odessa, its successors and assigns or any person acting on behalf of and with the authority of the Customer as described on any application, quotation, or other form as provided by Odessa to the Customer;
- (f) **“Delivery Charge”** means the cost of delivery of the Goods to the Customer’s chosen delivery address;
- (g) **“Goods”** means all Goods supplied by Odessa to the Customer and are as described on the invoices, quotation, or any other forms as provided by Odessa to the Customer;
- (h) **“Guarantor”** means that person (or persons), or entity (if any) who agrees to be jointly and severally liable for the debts of the Customer on a principal debtor basis;
- (i) **“GST”** has the same meaning as given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time;
- (j) **“Naiad Dynamics”** means Naiad Dynamics US, Inc, a company incorporated in the United States of America;
- (k) **“Naiad Goods”** means any Goods which Odessa has obtained from Naiad Dynamics as genuine Naiad-branded products;
- (l) **“Naiad Warranty”** means the Product Limited Warranty – Personal Use (Yacht) Consumer – One Year / Two Year from Naiad Dynamics to the owner of the personal use yacht in which NAIAD Goods are installed, a copy of which shall be provided by Odessa to the Customer.

- (m) **“Odessa”** means Odessa Marine Pty Ltd ACN 620 372 474, its successors and assigns or any person acting on behalf of and with the authority of Odessa;
- (n) **“PPSA”** means the *Personal Property and Securities Act 2009* (Cth) as amended from time to time;
- (o) **“Price”** means the price payable for the Goods as agreed between Odessa and the Customer in accordance with clause 5 of these Terms;
- (p) **“Quote”** means a quote provided by Odessa to the Customer pursuant to clause 3 of these Terms;
- (q) **“Terms”** means these Terms & Conditions; and
- (r) **“Website”** means <https://www.odessamarine.com.au/>

1.2 In these Terms unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) "person" includes the firm and "firm" includes company and "company" includes corporation;
- (c) a reference to one gender includes all other genders and no gender;
- (d) a reference to any party to these Terms or any other document or arrangement includes that party's executors, administrators, substitutions, successors and permitted assigns;
- (e) Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended, extended or re-enacted.
- (f) any words following the terms “include”, “including”, “in particular” or any similar expression are construed as illustrative and do not limit the sense of the words, description, definition, phrase, or term preceding those terms; and
- (g) a reference to clauses, schedules or annexures is to clauses, schedules or annexures of these Terms.

2. Request for Quote

2.1 The Customer may request a Quote for the provision of Goods from Odessa by:

- (a) completing and submitting the enquiry form on the Website; and/or
- (b) contacting Odessa by phone, email, post or in person.

3. Quote

- 3.1 Odessa may provide a quote to the Customer for the provision of Goods.
- 3.2 A quote will include a description of the Goods to be provided. Any diagrams or pictures provided along with a quote are for illustrative purposes only.
- 3.3 Unless previously withdrawn, any quote is open for acceptance by the Customer within the period stated on the quote, or if no such period is stated, within 30 (thirty) days after its date.
- 3.4 If the Customer purports to accept a quote after the stated period, then Odessa may at its sole discretion choose to either accept, refuse, or provide a new Quote.

4. Acceptance

- 4.1 The Customer is taken to have accepted and is immediately bound by these Terms if the Customer communicates acceptance of a Quote to Odessa in writing.

5. Price

- 5.1 Subject to these Terms, the price for the Goods shall be as per the Quote.
- 5.2 Odessa reserves the right to change the Price in the event the Customer requests a variation to the proposed Goods in the Quote.
- 5.3 In the event such a variation is agreed, Odessa will provide a new quotation prior to providing any Goods;
- 5.4 In the event of a variation, Odessa reserves the right to revoke any previous discount due to additional administration costs and/or changes to the scope of works.
- 5.5 In addition to the stated Price, the Customer must also pay any Delivery Charge that Odessa has notified the Customer of.
- 5.6 All Prices and Delivery Charges are quoted in Australian dollars and, unless otherwise stated, are exclusive of GST.

6. Payment

- 6.1 At Odessa's sole discretion:
 - (a) payment shall be due before the Goods are delivered; or
 - (b) payment shall be due on the date specified on the invoice.

- 6.2 Where more than one Customer has entered into these Terms, the Customers shall be jointly and severally liable for all payments of the Price.
- 6.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 6.4 Payment will be made by cash, or by bank cheque, or by direct credit, or by credit card or by any other method as agreed to between the Customer and Odessa.
- 6.5 If the Customer pays by credit card, they must pay any merchant fee charged to Odessa in addition to the total amount charged to the credit card.

7. Delivery of Goods

- 7.1 At Odessa's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Odessa or Odessa's nominated carrier).
- 7.2 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Odessa shall be entitled to charge a reasonable fee for redelivery.
- 7.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms.
- 7.4 Odessa may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these Terms.
- 7.5 The failure of Odessa to deliver shall not entitle either party to treat these Terms as repudiated.
- 7.6 Except to the extent expressly set out in these Terms or otherwise required by law (including, without limitation, the Australian Consumer Law), neither Odessa nor any of its agents will be liable to the Customer, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of any delay in delivery of the Goods to the Customer or delay in the availability of Goods for collection, whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise at all.

8. Risk, use and security

- 8.1 If Odessa retains ownership of the Goods, all risk for the Goods passes to the Customer on delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Odessa is entitled to receive all insurance proceeds (if any) payable for the Goods. The production of these Terms by Odessa

is sufficient evidence of Odessa's rights to receive the insurance proceeds without the need for any person dealing with Odessa to make further enquiries.

8.3 Where the Customer expressly requests Odessa to leave Goods outside Odessa's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

8.4 The Customer shall indemnify Odessa from and against all costs incurred and damages caused as a result of Odessa following the Customer's instructions.

9. Title

9.1 Odessa and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid Odessa all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to Odessa in respect of all contracts between Odessa and the Customer.

9.2 Receipt by Odessa of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Odessa's ownership or rights in respect of the Goods shall continue.

9.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 then the Customer is only a bailee of the Goods and must return the Goods to Odessa on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Odessa and must pay to Odessa the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Odessa and must pay or deliver the proceeds to Odessa on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Odessa and must sell, dispose of or return the resulting product to Odessa as it so directs;
- (e) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Odessa;

- (f) Odessa may recover possession of any Goods in transit whether or not delivery has occurred;
- (g) until such time as ownership of the Goods shall pass from Odessa to the Customer Odessa may give notice in writing to the Customer to return the Goods or any of them to Odessa. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
- (h) if the Customer fails to return the Goods to Odessa then the Customer irrevocably authorises Odessa or Odessa's agent to enter upon and into land and premises owned, occupied and/or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (i) Odessa may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

10. Naiad Warranty

10.1 In this clause, "**Claim**" means a claim made under the Naiad Warranty.

10.2 The terms of the Naiad Warranty will apply to the Customer only if:

- (a) Odessa has advised the Customer in writing that the Goods are Naiad Goods; and
- (b) the Customer is an owner of a personal use yacht in which the Naiad Goods are first installed.

10.3 In the event that the Naiad Warranty applies, the Customer acknowledges and agrees that:

- (a) they have read and agreed to comply with the terms of the Naiad Warranty;
- (b) the Naiad Warranty is provided directly to the Customer by Naiad Dynamics; and
- (c) any costs incurred in making a Claim (including but not limited to shipping) shall be payable by the Customer.

10.4 If the Customer believes that they have a Claim, they must first notify Odessa of the grounds of the Claim. If required by Odessa, the Customer must provide Odessa with

an opportunity to inspect the Naiad Goods, as well as any information or documentation reasonably required to substantiate the Claim.

- 10.5 If Odessa is satisfied under clause 10.4 that there are reasonable grounds for the Customer to make a Claim, Odessa will contact Naiad Dynamics and submit the Claim on behalf of the Customer.
- 10.6 The Customer acknowledges that the final decision to approve or disapprove the Claim will be made by Naiad Dynamics.
- 10.7 The Customer agrees that they will provide such further information and documentation as requested by Naiad Dynamics.

11. Defects, Warranties and Returns, and the Australian Consumer Law

- 11.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Odessa of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Odessa an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be deemed to be free from any defect or damage. For defective Goods, which Odessa has agreed in writing that the Customer is entitled to reject, Odessa's liability is limited to either (at Odessa's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Australian Consumer Law or the *Fair Trading Act* of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the Australian Consumer Law), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the Australian Consumer Law) may be implied into these Terms (**Non-Excluded Guarantees**).
- 11.3 Nothing in these Terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) which cannot by law be excluded, restricted or modified.
- 11.4 Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, Odessa makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Goods. Odessa's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the Australian Consumer Law, Odessa's liability is limited to the extent permitted by section 64A.

- 11.6 If Odessa is required to replace the Goods under this clause or the Australian Consumer Law, but is unable to do so, Odessa may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the Australian Consumer Law, subject to clauses 11.1, 11.9 and the conditions of warranty set out in clause 11.8, Odessa warrants that if any defect in any Goods supplied by Odessa become apparent and are reported to Odessa within twelve (12) months of the date of delivery (time being of the essence) then Odessa will either (at Odessa's sole discretion) replace or remedy the Goods.
- 11.8 The conditions applicable to the warranty given by clause 11.7 are:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Odessa at Odessa's sole discretion;
 - (b) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Odessa; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (c) the warranty shall cease and Odessa shall thereafter in no circumstances be liable under the terms of the warranty if the goods are repaired, altered or overhauled without Odessa's consent.
 - (d) limited to any warranty to which Odessa is entitled if Odessa did not manufacture the Goods, Odessa shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods;
 - (e) in respect of all claims Odessa shall not be liable to compensate the Customer for any delay in either replacing or repairing the goods or in properly assessing the Customer's claim; and
 - (f) otherwise negated absolutely.

- 11.9 Subject to clause 11.1, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) Odessa has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.10 Notwithstanding clauses 11.1 through 11.7 but subject to the Australian Consumer Law, Odessa shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Odessa;
 - (e) fair wear and tear, any accident, or act of God.
- 11.11 In the case of second hand Goods, unless the Customer is a consumer under the Australian Consumer Law, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Odessa as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Odessa has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause.
- 11.12 Odessa may in its absolute discretion accept non-defective Goods for return in which case Odessa may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any shipping costs.
- 11.13 Notwithstanding anything contained in this clause if Odessa is required by a law to accept a return then Odessa will only accept a return on the conditions imposed by that law.

12. Availability of Goods

- 12.1 As Odessa is dependent upon its suppliers to provide stock, Odessa cannot guarantee availability of Goods at all times. The Customer acknowledges and agrees that, from time to time, certain Goods may be out of stock or unavailable.
- 12.2 Odessa reserves the right to cancel any orders where Goods are out of stock or otherwise unavailable due to circumstances outside of the control of Odessa.
- 12.3 In the event that an order is cancelled, the Customer shall be entitled to either:
- (a) a full refund of all money paid to Odessa; or
 - (b) where possible and agreed to by both parties, to receive alternative Goods.
- 12.4 Except to the extent otherwise required by law (including, without limitation, the Australian Consumer Law), Odessa will not be liable to the Customer, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of the unavailability of any Goods at any time, whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise at all.

13. Default & Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the standard default contract rate as notified by the Queensland Law Society from time to time. Such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Odessa from and against all costs and disbursements incurred by Odessa in pursuing the debt including legal costs on a solicitor and own Customer basis and Odessa's collection agency costs.
- 13.3 Without prejudice to any other remedies Odessa may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Odessa may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms. Odessa will not be liable to the Customer for any loss or damage the Customer suffers because Odessa has exercised its rights under this clause.
- 13.4 Without prejudice to Odessa's other remedies at law Odessa shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Odessa shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Odessa becomes overdue, or in Odessa's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Security and Charge

14.1 Despite anything to the contrary contained within these Terms or any other rights which Odessa may have:

- (a) where the Customer and/or the Guarantor (if any) is now or in the future the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Odessa or Odessa's nominee to secure all amounts and other monetary obligations payable under these Terms. The Customer and/or the Guarantor acknowledge and agree that Odessa (or Odessa's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Odessa elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Odessa from and against all Odessa's costs and disbursements including legal costs on a solicitor and own Customer basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Odessa or Odessa's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Personal Property Securities Act 2009 ("PPSA")

15.1 In this clause, the following words have the same meaning as the definitions in the PPSA: *collateral, secured party, security interest, account, accession, personal property, possession, proceeds, secured party, and security interest.*

15.2 The Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Odessa to the Customer.

15.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Odessa may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

- (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.2(a)(i) or 15.2(a)(ii);
- (b) indemnify, and upon demand reimburse, Odessa for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged under it;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Odessa;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Odessa;
 - (e) immediately advise Odessa of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.4 Odessa and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 15.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Odessa, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 If it is held that section 125 of the PPSA must apply, the Customer agrees that at any time after any security interest provided for by these Terms has become enforceable, Odessa may delay taking action to remain the whole or part of the Collateral to the extent permitted by law.
- 15.9 The Customer's right to possession of Goods still owned by Odessa shall cease if:
- (a) the Customer being an individual, commits an act of bankruptcy;
 - (b) the Customer being a company, circumstances arise where a receiver, manager, administrator, liquidator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a Deed of Odessa Arrangement;
 - (c) the Customer ceases or threatens to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice;

- (d) any cheque the Customer provides Odessa is dishonoured;
- (e) the Customer fails to comply with any demand for payment issued by Odessa;
or
- (f) the Customer breaches any of these Terms.

15.10 The Customer must unconditionally ratify any actions taken by Odessa pursuant to this clause.

15.11 Subject to any express provisions to the contrary nothing in these Terms is intended to have the effect of contracting out of any of the provisions the PPSA.

16. Privacy

- 16.1 Under the *Privacy Act 1988* (Cth) and the Australian Privacy Principles (“APP”), Odessa and its associated entities have obligations in respect to the collection, storage and use of personal information.
- 16.2 For more information, please see [<link to Privacy Policy>](#).

17. General

- 17.1 Odessa reserves the right to amend these Terms at any time. Any amendment will take effect from the time that it appears on the Website. The Terms which apply at the time that the Customer accepts our Quote are the Terms which will apply to the supply of Goods pursuant to that Quote. It is the Customer’s responsibility to ensure that they read the current Terms on the Website before accepting our Quote.
- 17.2 Any provision in these Terms which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms or affecting the validity or enforceability of that provision in any other jurisdiction.
- 17.3 The expiry or termination of these Terms does not affect the rights which have accrued before that expiry or termination or any rights and obligation of the parties which survive the expiry or termination.
- 17.4 These Terms and any contract to which they apply shall be governed by the laws of the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of the State of Queensland.
- 17.5 Odessa shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Odessa of these Terms.
- 17.6 In the event of any breach of these Terms by Odessa the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.7 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Odessa nor withhold payment of any invoice because part of that invoice is in dispute.
- 17.8 Odessa may license, sub-contract or assign all or any part of its rights and obligations without the Customer’s consent and in so doing Odessa is fully discharged from its obligations to the Customer.
- 17.9 These Terms are personal to the Customer and the Customer may not assign these Terms without Odessa’s written consent.

- 17.10 Neither party shall be liable for any breach of contract or liable for any defaults, delays, or failures to perform any of the party's obligations under these Terms due to but not limited to any act of God, war, terrorism, riot, civil unrest, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.11 The Customer warrants that it has the power to enter into these Terms and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these Terms create binding and valid legal obligations on it.
- 17.12 These Terms shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Odessa.
- 17.13 The failure by a party to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.