

## **TERMS OF AGREEMENT**

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- 1) A customer may request a quotation for manufacture of rowing Equipment ("the Equipment") by Jeff Sykes & Associates Pty. Ltd. / Sykes Racing ("J.S. & A") by giving to J.S. & A. a signed and completed specification on the J.S. & A. Specification Sheet ("the Specification").
- 2) J.S. & A. will give the customer a written quotation for the cost of building the Equipment in accordance with the Specifications selected by the customer.
- 3) A written quotation is open for acceptance by the customer within 30 days of the date it bears, unless it is earlier withdrawn or varied.
- 4) The customer may accept the written quotation by:
  - a) returning to J.S. & A. a signed copy of the quotation on which the Order section has been completed, and,
  - b) paying J.S. & A. a deposit of 10% of the contract price.
- 5) Upon receipt of an Order signed by the customer and the deposit, J.S. & A. will place the order in its list of jobs for construction. In the event that the Specifications fail to provide adequate details of construction, parts, rig, dimensions, fittings or any other matter, J.S. & A. may use and incorporate such suitable construction, parts, rig, dimensions, fittings, etc. as it sees fit to complete the order.
- 6) Unless otherwise agreed, time is not of the essence in filling the order. If the customer intends time of delivery to be a material factor, this fact must be stated in the Specifications. Unless otherwise agreed, J.S. & A. will not be responsible or liable for delays in manufacture or delivery and the customer expressly agrees that there is no binding delivery date for the Equipment.
- 7) Unless otherwise agreed in writing, the customer must first make payment in full of the balance of the purchase price, and such payment must be received by J.S. & A. and the funds constituting such payment must be cleared before the customer becomes entitled to take delivery of Equipment.
- 8) Where written agreement is provided by J.S & A. to vary payment arrangements in accordance with clause 7), the customer agrees and acknowledges that title to all equipment remains with J.S & A. until full payment is received by J.S & A.
  - a) The customer warrants that it will, until title of the equipment is transferred to the customer:
    - i) Protect the equipment from any loss, theft or damage;

- ii) Use the care of a cautious and prudent owner to keep the equipment in good condition and working order;
  - iii) Comply with all requirements of the law relating to the equipment or possession or ownership of the equipment .
- b) Until title to the equipment transfers to the customer, the customer must;
  - i) Enable the equipment to be readily identified as J.S & A. property and cross reference to particular invoices;
  - ii) Not dispose of or sell the equipment to any person
  - iii) Not allow any person to have or acquire any security in respect of the equipment;
  - iv) Keep the equipment insured against theft, damage and destruction
- c) If the customer fails to pay any or all of the total indebtedness to J.S & A. under the Terms and Conditions, J.S & A. may without notice to the customer and without prejudice to any of its rights and remedies;
  - i) Recover and or sell the equipment or may enter upon the customer's premises for that purpose;
  - ii) Recover any difference between the sale of the equipment and the price payable by the customer for the equipment.
- 9) Where written agreement is provided by J.S & A. to vary payment arrangements in accordance with clause 7), the customer further consents to J.S. & A. registering its rights under this Agreement pursuant to the Personal Property Securities Act 2009 (C'th) ("PPSA").
  - a) The customer acknowledges that following the commencement of the PPSA, the following provisions apply to these Terms and Conditions:
  - b) The customer agrees that J.S. & A. has a security interest, for the purposes of the PPSA, created under the Terms and Conditions in relation to the equipment and services supplied to the customer.
  - c) The customer agrees to treat the security interest as a continuing and persisting interest in the equipment, with priority over any registered or unregistered general (or other) security and any unsecured creditor, even if the equipment become fixtures or accessions before paid in full and that this security interest secures all money owing to J.S. & A. under these Terms and Conditions or otherwise;
  - d) The customer agrees to grant J.S. & A., a Purchase Money Security Interest (PPSI) and agrees that the PPSI granted will continue to apply to any equipment coming into existence or proceeds of sales of equipment coming into existence;
  - e) The customer agrees and acknowledges that the PPSI has attached to all the equipment supplied by J.S. & A. to the customer.
  - f) The customer agrees and acknowledges that J.S. & A. has the right to register a financing statement in respect of the equipment and agrees to sign any further documents and provide any further information, such information to be complete, accurate and current in all respects, that Jeff Sykes & Associates Pty Ltd reasonably requires, to register a financing statement and to register its security interest with the priority that J.S. & A. requires, and to maintain those registrations.
  - g) The parties agree that neither will disclose to "interested persons" (as defined in Section 275(9) of the PPSA) or any other person, any information of the kind described

in Section 275(1) of the PPSA).

- h) The customer waives its right to receive any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that the requirement cannot be excluded.
- 10) The customer shall be responsible for removing the Equipment from the premises of J.S. & A. and J.S. & A. shall not be liable in any way for any damage caused to or suffered by the Equipment once it leaves the premises of J.S. & A. The purchase price does not include, and J.S. & A. shall not be liable for, any delivery charges, packaging, insurance, or any special accessories, decals, painting, sign writing or finishing unless such items are contained in the Specification or are otherwise agreed to in writing.
- 11) The customer agrees to remove the Equipment from the premises of J.S. & A. not later than 7 days after becoming entitled to take delivery.
- 12) The customer agrees that J.S. & A. shall not be held liable for any loss or damage caused to or suffered by the Equipment after 7 days from the date that the customer is notified that the Equipment is available for collection, and the customer is advised to insure against the risk that the Equipment may be damaged as from that date.
- 13) In addition to any non-excludable conditions or warranties imposed by reason of the Trade Practices Act 1974, the Fair Trading Act 1985 and any other applicable legislation, this agreement is made on the following terms and conditions:
- a) J.S. & A. warrants that the Equipment shall be free from defects in workmanship and materials suffered under normal use (not being use contrary to the Manual or other recommendations which may be given or made by J.S. & A. from time to time) for the period of time as detailed in the J.S. & A. 2005 Warranty statement for the particular class of equipment manufactured, namely.
- I. The 2005 J. S. & A. Warranty statement for all Carbon and Kevlar Boats
- II. The 2005 J. S. & A. Warranty statement for all Glass Honeycomb, Reinforced Fibreglass and Training / Racing Boats
- b) This warranty is for the benefit of the customer only. J.S. & A. shall not be liable for any loss or damage suffered by a third party arising from any use of the Equipment howsoever caused.
- c) Subject to clause 13a) J.S. & A. shall repair or replace, at its option, any item which in the opinion of J.S. & A. contains a defect in workmanship or materials within the warranty period and which is brought to its premises during the warranty period.

- d) The customer agrees that he/she is solely responsible for transporting the Equipment to and from the premises of J.S. & A. upon a claim being made by the customer of defects in workmanship or materials. The customer shall pay all transportation, packaging, insurance and other charges arising from the return of the Equipment to J.S. & A. J.S. & A. shall not be liable for any loss or damage to the Equipment suffered during the period that it is left at the premises of J.S. & A. and the customer is advised to obtain insurance against same.
- e) J.S. & A. shall not be liable for any personal injury, loss or damage or other injury, loss or damage caused by neglect, misuse, collision, impact, alteration, improper maintenance, unsuitability of the Equipment for any person using it, incorrect assembly or adjustment, use of unauthorised or improper replacement parts, normal wear and tear or howsoever otherwise and further the customer agrees to use the Equipment at his/her own risk and J.S. & A. shall not be liable for any personal injury, loss or damage or other injury, loss or damage resulting there from howsoever caused.
- f) In the event that the Equipment is rented, leased or subject to any like arrangement J.S. & A. shall not be liable for any personal or other injury, loss or damage whatsoever whether suffered by the customer or any other party or parties.
- g) The customer acknowledges that the Equipment is manufactured to competition standards. This results in the Equipment being lightweight and fragile. The customer acknowledges that the Equipment is inherently fragile. The Equipment may be damaged by misuse. The customer agrees to read the Manual provided with the Equipment upon delivery and not to use the Equipment otherwise than in accordance with the manual. This warranty will be made void and of no effect where the Equipment is used otherwise than in accordance with the manual. Any warranty implied by law will to the extent permitted by law be made void and of no effect where the Equipment has been used otherwise than in accordance with the Manual.
- h) The customer agrees to read the Manual and any other written material provided by J.S. & A. immediately on taking delivery of the Equipment and further agrees to use, store, transport and maintain the Equipment in accordance with the Manual and any such material. J.S. & A. shall not be liable for any loss or damage resulting from the customer using, transporting, storing or maintaining the Equipment otherwise than in accordance with the Manual and such material.
- i) Items that are not produced by J.S. & A. such as electronic items will be subject to their own manufacturer's warranties and will not be covered by the warranty of J. S. & A. Bearing wheels, shoes, oarlocks, and oar grips are also not included by the J. S. & A. warranty
- j) Any warranty, term or condition implied by law or statute which can be excluded is hereby excluded to the extent permitted by law and the customer agrees that the express terms

herein constitute the whole of the terms, warranties and conditions together with any non-excludable statutory, warranty, term or condition.

k) Notwithstanding the above any warranty implied by law is limited in duration to the duration of this express warranty.

14) This written agreement comprises the whole of the contract between the customer and J.S. & A. All variations, alterations or additions to the contract shall be in writing and no oral or implied terms shall affect the operation of these written provisions.

15) J.S. & A. retains and reserves ownership of and all rights in the design configuration, format, specification, shape, materials use and manufacturing methods of the Equipment. The Equipment is sold for use by the customer as a rowing boat only. The customer does not obtain any right or entitlement to use or exploit the design, configuration, format, specification, shape, materials use or manufacturing methods of the Equipment or any part thereof for any purpose related to or in connection with manufacture, sale, duplication, production of any replica, duplicate, copy, imitation, variation, development, derivation or the like. The customer agrees with J.S. & A. that it will not use or permit to be used the Equipment for or in connection with manufacture or production of any replica duplicate, copy, imitation, variation, development or the like of the design, configuration, format, specification, shape, materials use or manufacturing methods. The customer agrees in the event of breach of this clause or any part thereof to pay to J.S. & A. such sum as is equal to the whole of the loss or damage accruing to or suffered by J.S. & A. by reason of or in consequence of or in relation to any such breach including (but not limited to) damages for loss of sales, economic loss, damage to trading position or market standing or reputation, interest and legal costs on an indemnity basis. The customer agrees that J.S. & A. may at its sole election in the event of manufacture or reproduction of any replica, duplicate, copy, imitation, variation, development, derivation or the like nominate that the customer pay by way of liquidated damages a sum equivalent to the profit of J.S. & A. on sale by it of an equivalent or comparable boat to that which was replicated, duplicated, copied, imitated, varied, developed, derived or the like, calculated on the basis of the list sale price for such equivalent or comparable boat of J.S. & A. as at the date on which J.S. & A. elects that such liquidated damages be payable.