

Osborne Propellers Ltd, Conditions of Sale for Marine Products

1. TERMS OF AGREEMENT

1.1. The quotation remains valid for a period of thirty (30) days from the date of the quotation, unless revoked by OSBORNE PROPELLERS. During this period the Customer may make an offer upon the basis of the quotation by placing an order with OSBORNE PROPELLERS. OSBORNE PROPELLERS's acceptance of this quotation and the Customer's offer shall be made subject to these terms and conditions, except in so far as OSBORNE PROPELLERS expressly alters them. These terms and conditions shall prevail over all terms and conditions of the Customer's order to the extent of any inconsistency.

1.2. The principles governing all terms and condition of this quotation and any subsequent agreement shall be based on the requirements and statutes of the laws applicable in the Province of British Columbia.

2. DELIVERY

2.1. Delivery periods given in a quotation only apply for thirty (30) days from the date of the quotation and must be rechecked if a longer period ensues before placement of the order. Quoted delivery periods run from OSBORNE PROPELLERS's receipt of the Customer's order, complete with all information which OSBORNE PROPELLERS requires for manufacture and deposit.

2.2. The delivery periods made known to the Customer are estimates only and represent the date that the products will be ready for dispatch from OSBORNE PROPELLERS (ex-works). Time is NOT of the essence and OSBORNE PROPELLERS does not guarantee that it will always be able to meet the delivery date. Due to the nature of the manufacturing process, and factors out of OSBORNE PROPELLERS's control, there is a chance during manufacture that a replacement item needs to be manufactured. The re-manufacturing process may result in the delay of the product. OSBORNE PROPELLERS advises all clients to allow a maximum time possible when ordering product and to check regularly with OSBORNE PROPELLERS as to the progress.

2.3. OSBORNE PROPELLERS shall not be liable for late delivery or non-delivery and under no circumstances whatsoever shall OSBORNE PROPELLERS be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery or late installation of the goods (including delivery by installments).

2.4. OSBORNE PROPELLERS reserves the right to make delivery by installments. Where delivery by installments is made, each installment is to be separately paid for in accordance with the provisions of clause 3, unless OSBORNE PROPELLERS waives this requirement. Failure to deliver any goods or any installment whether by the date specified for delivery or otherwise shall not entitle the Customer to repudiate or terminate this contract.

3. PAYMENT

3.1. Payment will be 50% Deposit with the order with the balance payable upon completion, prior to shipping, Unless OSBORNE PROPELLERS approves in writing an account, in which case such payment will be due to OSBORNE PROPELLERS within thirty (30) days from the date of dispatch. Deposits are non-refundable.

3.2. Where delivery of the goods cannot be made for whatever reason, payment will be due at the end of the month following that in which manufacture was completed.

3.3. OSBORNE PROPELLERS reserves the right to make progressive monthly claims for payment.

3.4. No retention monies are allowed under this quotation unless specifically negotiated.

3.5. If the Customer defaults in any payment, the Customer shall be liable for all expenses incurred by OSBORNE PROPELLERS in recovering monies due inclusive of Lawyers fees, debt collectors fees and disbursements, any costs or charges in relation to security documents as well as interest up to and including the date on which the debt is paid in full.

4. VARIATIONS

4.1. No order may be varied except with the consent of OSBORNE PROPELLERS in writing.

4.2. If OSBORNE PROPELLERS consents to a request for a variation, OSBORNE PROPELLERS is entitled to adjust the quotation to such an extent as is necessary having regard to the nature and extent of the variations. OSBORNE PROPELLERS reserves the right to charge variation costs which cover all costs incurred by OSBORNE PROPELLERS, whether these costs have been incurred within OSBORNE PROPELLERS's own manufacturing operations or from other suppliers of goods or services. OSBORNE PROPELLERS also reserves the right to include a reasonable profit margin in the variation costs.

4.3. Upon variation, all other conditions of sale shall continue to apply to the agreement.

5. RISK

5.1. Risk in the goods shall pass to the Customer upon delivery of the order to the Customer or collection of the order by the Customer or his agent or courier as the case may be.

6. TITLE

6.1. OSBORNE PROPELLERS reserves the following rights in relation to the goods until all accounts owed by the Customer to OSBORNE PROPELLERS are fully paid:

6.1.1. Legal ownership of the goods;

6.1.2. To enter the Customer's premises (or the premises of any associated company or agent where the goods are located) without notice and without liability for trespass or any resulting damage and to re-take possession of the goods; and

6.1.3. To keep or resell any goods repossessed pursuant to paragraph (6.1.2) above.

6.1.4. If the goods are resold, or products manufactured using the goods are sold, by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of OSBORNE PROPELLERS and shall pay such amount to OSBORNE PROPELLERS upon request.

6.1.5. Notwithstanding the provisions above OSBORNE PROPELLERS shall be entitled to maintain an action against the Customer for the purchase price of the goods.

7. GOVERNMENT TAXES

7.1. Unless otherwise stated, all prices quoted by OSBORNE PROPELLERS are net, exclusive of government taxes. All government taxes, if applicable, shall be to the Customer's account.

8. WARRANTY

8.1. The goods are warranted for the period of twelve (12) months from the date of first commissioning of the goods against any defect that has arisen solely from faulty materials or workmanship. This warranty does not extend to any other matters whatsoever, including but not limited to mechanical failure and/or loss of performance of the goods due to corrosion, erosion, build-up and like causes, or for defects or depreciation in the goods caused by wear and tear, lightening, dampness, common neglect, misuse or other abnormal conditions due directly or indirectly to circumstances which are out of OSBORNE PROPELLERS's control.

8.2. This warranty is limited to the replacement or repair of the faulty goods at the factory in which it was made. OSBORNE PROPELLERS shall have the option to repair or replace the goods. The warranty does not cover any other matters whatsoever, including but not limited to:

8.2.1. The cost of transporting the goods to and from the factory for repair;

8.2.2. The cost of removing the goods from any machine or building in which they are installed and/or replacing them therein;

8.2.3. Any damage to other property that may have occurred due to the failure of the faulty goods.

8.3. As there are many vessel operational factors and variables that influence propeller product performance, OSBORNE PROPELLERS has no control over these and therefore cannot guarantee the following (but not limited to):

8.3.1. Vessel performance: As the vessel's engine power and hull resistance including the design, weight and trim are not controlled by OSBORNE PROPELLERS, OSBORNE PROPELLERS is not able to guarantee the vessel's performance. OSBORNE PROPELLERS is however able to predict the performance of its propellers and given accurate and complete vessel data is able to make comment on the vessel's estimated performance. These comments are provided without charge and should be taken as general advice only. Issues relating to vessel performance should be directed to the vessel's designer. Due to the reasons stated above, it is sometimes necessary to make adjustment to propellers to suit the individual vessel and this work is at the Customer's cost.

8.3.2. Cavitation and erosion: Vessel configuration and performance characteristics may also adversely affect propeller cavitation profiles leading to damaging cavitation and erosion. OSBORNE PROPELLERS is unable to guarantee that other aspects of the installation will not adversely affect design characteristics leading to cavitation and erosion.

8.3.3. Anti-singing edges: Propeller singing is a term used to describe a phenomenon where a high-pitched noise is generated by resonance emanating from the propeller. It is generally associated with slower vessel speeds but can be apparent at various speed ranges or specific speeds. OSBORNE PROPELLERS manufactures its propellers with a generic anti-singing trailing edge. This feature is designed to cause the water to flow off the blade and separate at different points, which tends to reduce the chance of propeller singing. Due to the many variables that affect water flow into a propeller, OSBORNE PROPELLERS is unable to guarantee that this generic feature will prevent singing in all applications.

8.4. This warranty is invalidated if any other person or company carries out subsequent work on the goods without the express permission of OSBORNE PROPELLERS.

8.5. Notice in writing of any claim under this warranty must be given to OSBORNE PROPELLERS with full particulars thereof within seven days (7) of the defect becoming apparent. If such notice is not given within this period, the Customer may not claim upon the warranty for that defect.

8.6. OSBORNE PROPELLERS shall not be liable to the Customer for the expenses of repair or replacement of faulty goods incurred without OSBORNE PROPELLERS's authority.

8.7. Except as provided herein, all express and implied warranties, guarantees or conditions under statute, common, or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and OSBORNE PROPELLERS shall not be liable for:

8.7.1. Physical or financial injury, loss or damage; or

8.7.2. To give to the Customer any contribution or indemnity; or

8.7.3. For consequential loss or damage of any kind arising out of the supply, layout, assembly, installation, operation or defects of the goods or arising out of OSBORNE PROPELLERS's negligence or that of its employees or agents or in any way whatsoever.

8.8. OSBORNE PROPELLERS's liability for a breach of condition or warranty is hereby limited to:

8.8.1. In the case of goods:

8.8.1.1. The replacement of the goods or the supply of equivalent goods; or

8.8.1.2. The repair of the goods.

8.8.2. In the case of services, the supplying of the services again,

8.9. The Vendor's liability is expressly limited to a liability to pay to the purchaser an amount equal to:

8.9.1. The cost of replacing the goods;

8.9.2. The cost of obtaining equivalent goods; or

8.9.3. The cost of having the goods repaired, whichever is the lowest amount.

9. CUSTOMER SUPPLIED DATA

9.1. The Customer warrants the correctness of all data and information that is provided to OSBORNE PROPELLERS for use in any design or selection performed by OSBORNE PROPELLERS. It is the Customer's responsibility to verify the correctness of such data or information prior to supplying it to OSBORNE PROPELLERS for use. The Customer absolves OSBORNE PROPELLERS from any liability for any defects in the goods or their performance caused directly or indirectly by incorrect data or information.

10. CANCELLATION CHARGE

10.1. No order and no part of any order may be cancelled except with the consent of OSBORNE PROPELLERS in writing.

10.2. If OSBORNE PROPELLERS consents to any cancellation, OSBORNE PROPELLERS reserves the right to charge the customer for cancellation costs. These costs shall include all costs incurred by OSBORNE PROPELLERS as a result of the cancellation whether within OSBORNE PROPELLERS's own manufacturing operations or due to other suppliers of goods or services.

11. FORCE MAJEURE

11.1. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of OSBORNE PROPELLERS it is unable to perform in whole or in part any obligation under the agreement OSBORNE PROPELLERS shall be relieved of that obligation under the agreement to the extent and for the period that it is so unable to perform, and shall not be liable to the Customer in respect of such inability.

12. SEVERABILITY

12.1. To the extent that any one or more of the provisions contained herein is prohibited by any applicable law such provisions shall to such extent be ineffective without invalidating or modifying the remaining provisions hereof which shall continue in full force and effect as if the provisions so prohibited had not been included herein.

13. NO AGENCY OR PARTNERSHIP

13.1. The quotation and any subsequent purchase order in no way whatsoever constitutes an agency agreement or a partnership. As a result no party is authorized to represent or bind the other party to any legal obligations or responsibilities.