

## TERMS AND CONDITIONS OF SERVICE

1. Scope. The terms and conditions of service ("Terms and Conditions") set forth herein shall apply to all services ("Services") provided by **Smoothjibe Marine Electronics, LLC** ("Servicer") to any person or entity ("Buyer"). No term or condition of the Buyer's purchase order or any other representation or agreement which is different from, or in addition to, the terms and conditions set forth herein or in any applicable quotation shall be binding on Servicer unless, and only to the extent, such different or additional terms or conditions are expressly acknowledged and accepted by Servicer in writing.

2. Term. The term for which Servicer shall provide the Services to Buyer shall be the term that is identified by Servicer in the quotation provided by the Servicer, unless sooner terminated by Servicer ("Term"). Servicer shall not bear any responsibility to Buyer outside of the Term, unless specifically agreed by Servicer.

3. Time of Performance. Service schedules are approximate and are subject to change. Time of service shall not constitute a material term to these Terms and Conditions. Servicer shall use reasonable efforts to provide all Service by the agreed upon date, but in no event shall Servicer be liable in any way for any failure to provide Service by the agreed upon service date.

4. Prices. Price for the Services shall be the price stated in the quotation provided by Servicer to Buyer with respect to such Services ("Price"), exclusive of tax, which shall be borne by Buyer.

5. Payment. Unless otherwise agreed in writing, payment is due within 30 days of the date of any invoice. Invoices may be issued upon the provision of any of the Services. Past due invoices are subject to a monthly service charge at a rate equal to the lesser of 1-1/2% per month or the maximum rate from time to time permitted by applicable law. Servicer may require full or partial payment in advance of the provision of any of the Services, if, in the judgment of Servicer, the financial condition of the Buyer so warrants.

6. Security Interest. Buyer hereby grants to Servicer a security interest in any of the products sold by Servicer and/or any of the Services rendered by Servicer to the extent of the value that the Services increased the Buyer's vessel or other property. Buyer grants Servicer the right to file a financing statement to perfect such security interest.

7. Default. Non-payment of an invoice when due will be considered a "Default" and shall constitute a material breach of the contract.

8. Acceleration. In addition to other remedies otherwise available to Servicer upon a Default, and without notice to Buyer, Servicer may declare any or all amounts owed to Servicer by Buyer immediately due and payable.

9. Termination of the Services. Upon the event of a default, Servicer shall have the right to terminate the provision of any of the Services. Upon any termination hereunder, Buyer shall immediately pay to Servicer the amounts owed to Servicer for any future Service under the contract. Servicer may also terminate the Services without cause at any time. If Servicer terminates this agreement without cause, Buyer shall not be responsible for the cost of any Service that was not performed. Buyer may terminate any agreement with Servicer only with the express written consent of Servicer and, unless otherwise waived by Servicer, Buyer shall be responsible for the cost of any Service that was not performed.

10. Warranty Terms. Servicer warrants for a period of one (1) year that all Services shall be performed in a workmanlike manner in conformity with standard industry practice. The failure of Buyer to properly maintain any products or equipment for which Servicer rendered Service or the Buyer's failure or to use any products or equipment in accordance with Servicer's or any manufacturer's instructions shall void the warranty provided herein. Servicer's obligations for breach of this warranty is limited to, and Buyer's

exclusive remedy shall be, the re-performance of any Service that was performed in breach of this warranty or a refund of Price paid therefore, at Servicer's discretion. The warranty set forth in this Section is in lieu of all other warranties, expressed or implied and Seller expressly disclaims any such warranties, including, without limitation, the warranty of merchantability, the warranty of fitness for a particular purpose, and any warranty that, after the Service, any product or equipment will be in compliance with any law or regulation. Servicer expressly disclaims any warranty for any product that the Buyer purchases, except to the extent that the manufacturer of the product affords a warranty to Servicer, in which case Servicer shall assign its rights under such warranty to Buyer.

11. Buyer's Warranty. Buyer warrants that it will at all times provide a safe working environment for Servicer and its employees, agents or sub-contractors and will comply with all statutory or other regulations in connection therewith and will indemnify Servicer with respect to any loss incurred by Servicer due to Buyer's breach of this warranty. Buyer further warrants that it has sufficient insurance coverage to cover any losses sustained by Servicer in according with these Terms and Conditions, and Buyer shall furnish Servicer with proof of such insurance upon demand by Servicer.

12. Assignment. Servicer reserves the right to sub-contract the Services.

13. Damages and Liability. Servicer shall be entitled to all remedies and damages available under applicable law. Seller's liability for damages shall not exceed the amount of the price received by Servicer from Buyer, if any, for the Services furnished that is the subject of claim or dispute or for the reperformance of the Services, in Servicer's sole discretion. Servicer shall in no event be liable for special, consequential, incidental or punitive damages. Consequential damages shall include, without limitation, loss of use, income or profit or loss of or damage to persons or property. Additionally, Servicer is not responsible for any information, assistance, or advice given to Buyer if such information, assistant or advice was not required by any contract. In the event that either Party initiates litigation in connection with the breach of these Terms and Conditions, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in connection with such litigation.

14. Indemnity. Buyer shall indemnify defend and hold harmless Servicer, its affiliates, and their respective officers, agents, and employees from and against any and all losses, liabilities and damages, including, without limitation, reasonable attorneys' fees, arising out of or in connection with (a) any violation of any governmental laws, rules, ordinances, or regulations with respect to the Services; (b) the negligent acts and/or omissions and/or the willful misconduct of Buyer and/or any of its officers, agents or employees; (c) the breach of the provisions of these Terms and Conditions, any quotation and/or other agreement between Buyer and Servicer with respect to the Services; and/or (d) any injury sustained by the Servicer or any of the Servicer's agents at any property owned or leased by the Buyer.

15. Consent to Jurisdiction. Buyer irrevocably consents to the exclusive jurisdiction and venue of the state a federal courts of California and agrees that the Services shall be governed by the laws of the State of California.

16. Modifications. Any modifications to any service order must be made in writing and signed by all parties, unless otherwise expressly set forth in these Terms and Conditions.

17. Waiver of Jury Trial. **BUYER HEREBY AGREES TO WAIVE ITS RIGHT TO A JURY TRIAL FOR ANY CLAIMS AGAINST SERVICER. BUYER UNDERSTANDS THAT BY ACCEPTING THESE TERMS AND CONDITIONS, BUYER MAY BE SACRIFICING LEGAL RIGHTS.**

Servicer signature and date

Buyer signature and date