CONDITIONS OF BUSINESS

1 Interpretation

1.1 In these Conditions the following words have the following meanings: **'Buyer'** the person(s), firm or company who purchases the Goods from the Company; **'Company'** Hyde Sails Limited (Company No 1530833) whose registered office is at Unit 2 Eastlands Boatyard, Coal Park Lane, Swanwick, Southampton SO31 7GW; **'Contract'** any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions; **'Delivery Point'** the place where delivery of the Goods is to take place under condition 4; and **'Goods'** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

2 Application of terms

2.1 Subject to any variation under condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written confirmation of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches a written confirmation of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3 Description

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or confirmation of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract and this is not a sale by sample.

4 Delivery

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.4 Subject to the other provisions of these Conditions, the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations: **4.5.1** risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence); **4.5.2** the Goods will be deemed to have been delivered; and **4.5.3** the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.

4.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.8 The Company may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment.

5 Non-delivery

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 3 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6 Risk/title

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of: **6.2.1** the Goods; and **6.2.2** all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must: **6.3.1** hold the Goods on a fiduciary basis as the Company's bailee; **6.3.2** store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; **6.3.3** not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and **6.3.4** maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: **6.4.1** any sale shall be effected in the ordinary course of the Buyer's business at full market value; and **6.4.2** any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if: **6.5.1** the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; **6.5.2** the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or **6.5.3** the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 will remain in effect.

7 Price

7.1 Unless set out in writing in the Contract or otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

8 Payment

8.1 Subject to condition 8.4, unless otherwise agreed by the Company in writing payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9 Quality

9.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.3 The Company shall not be liable for a breach of the warranty in condition 9.2 unless: **9.3.1** the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 3 days of the time when the Buyer discovers or ought to have discovered the defect; and **9.3.2** the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of the warranty in condition 9.2 if: **9.4.1** the Buyer makes any further use of such Goods after giving such notice; **9.4.2** the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or **9.4.3** the Buyer alters or repairs such Goods without the written consent of the Company.

9.5 Subject to conditions 9.3 and 9.4, if any of the Goods do not conform with the warranty in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods.

9.7 Any Goods replaced will belong to the Company.

10 Limitation of liability

10.1 Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: **10.1.1** any breach of these Conditions; **10.1.2** any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and **10.1.3** any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company: **10.3.1** for death or personal injury caused by the Company's negligence; **10.3.2** under section 2(3) Consumer Protection Act 1987; **10.3.3** for any matter which it would be illegal for the company to exclude or attempt to exclude its liability; or **10.3.4** for fraud or fraudulent misrepresentation.

10.4 Subject to conditions 10.2 and 10.3: **10.4.1** the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price; and **10.4.2** the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 Assignment

11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

11.2 The Company may assign the Contract or any part of it to any person, firm or company.

12 Force majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, tsunami, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 120 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13 Intellectual property rights

13.1 Subject to condition 13.2, as between the Company and the Buyer all intellectual property rights in the Goods shall be owned by the Company and the Company licenses all such rights to the Buyer free of charge and on a non-exclusive worldwide basis to such extent as is necessary to enable the Buyer to make reasonable use of the Goods. If the Contract is terminated for any reason this licence will automatically terminate.

13.2 The Buyer acknowledges that where the Company does not own any intellectual property rights in the Goods the Buyer's use of the Goods is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Buyer.

14 General

14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

14.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15 Communications

15.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission: **15.1.1** (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or **15.1.2** (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

15.2 Communications shall be deemed to have been received: **15.2.1** if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); **15.2.2** if delivered by hand, on the day of delivery; or **15.2.3** if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

15.3 Communications addressed to the Company shall be marked for the attention of the Contracts Manager.

IF THE BUYER IS A CONSUMER THE BUYER'S STATUTORY RIGHTS ARE NOT AFFECTED