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RAM Group Pty Ltd T/A Nitro Marine ABN 13 080 030 173

## **NITRO MARINE STANDARD TERMS**

**<http://www.nitromarine.com.au/terms.pdf>**

This version of the Standard Terms (“**Standard Terms**”) is applicable from 17 October 2011.

Previous versions of the Standard Terms are available by contacting us at [michael@nitromarine.com.au](mailto:michael@nitromarine.com.au):

*No applicable previous Standard Terms are applicable at this time.*

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## **1. GENERAL**

1. This entire document comprises the Standard Terms which are intended to cover all dealings that you have with us.
2. We, us, our means RAM Group Pty Ltd ACN 080 030 173 trading as Nitro Marine. Where relevant it includes our managers, employees, or any person we authorise.
3. You, your means you (the person and/or entity dealing with us). Where relevant it includes your employees, agents and any person you bring or invite onto our premises.
4. These Standard Terms are incorporated by reference to all dealings with us and where there is any conflict with any other agreement, contract or document these Standard Terms are to prevail to the fullest extent.
5. We may change these Standard Terms from time to time without notice to you and without obtaining your consent and it is your responsibility to regularly check these Standard Terms. We will assume that you agree to the Standard Terms applicable at the relevant time by your continued dealing with us.
6. You must print these Standard Terms at the relevant time of entering into any agreement with us, we will take reasonable measures to ensure that previous Standard Terms are maintained in our database for your reference, however we are not obligated to do so.
7. Interpretation
  - a. Headings are for reference only and do not form part of the Standard Terms.
  - b. Unless the contrary intention appears:
    - i. the singular includes the plural, and the plural includes the singular;
    - ii. reference to a gender includes any other gender;
    - iii. other forms of defined words have corresponding meanings;
    - iv. if an obligation is imposed on two or more parties, each party is liable for the obligation individually and together with each other person;
    - v. reference to a person includes any other entity or association;
    - vi. reference to a party includes that party's personal representatives, successors and assignees;
    - vii. reference to a document includes any variation or replacement of it;
    - viii. reference to something which comprises more than one part or aspect includes a reference to each or any such part or aspect;
    - ix. reference to a group of persons includes a reference to all of them collectively, any two or more of them collectively, and each of them individually;

- x. when the Standard Terms require anything not to be done, this includes not allowing or permitting the thing to be done;
  - xi. if a clause of the Standard Terms is void or voidable, it may be severed from the Standard Terms without affecting the validity of the other provisions of the Standard Terms;
  - xii. sub-sub-clauses are to be read cumulatively; and
  - xiii. a reference to legislation includes an amendment of or substitution for it and a regulation or statutory instrument issued under it.
8. We do not have to notify you if we make changes to the nitromarine.com.au website.
  9. All children must be supervised when on our premises. No children should be allowed to climb or play on boat or other equipment or accessories and it is your sole responsibility to ensure the child's safety at all times.
  10. Unless as required in an emergency, no unauthorised persons are to enter the workshop area as signed in our premises under any circumstances.
  11. All persons are to obey our directions while on our premises.
  12. Our premises including the outside display area is an entirely non-smoking area.
  13. Our dealing with you and these Standard Terms will be governed by the law in force in the State of Queensland, Australia, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts of appeal from them for determining any dispute concerning this agreement.
  14. If we do not act in relation to a breach by you of the Standard Terms, this does not waive our right to act with respect to such breach, subsequent or similar breaches.
  15. You may not assign or transfer your rights or benefits under the Standard Terms to any other person or entity without our prior consent.
  16. Any document referring to these Standard Terms may be signed and sent by facsimile or email and then signed by the other party. A facsimile or email copy of such document may be taken to be an original.

## **2. SALES TERMS**

### **2A. General**

1. This section 2A applies to all sales of goods by us including but not limited to boats, motors, trailers and chandlery.
2. All prices and estimates which are quoted by us are subject to vary at any time and are not binding until accepted by a company director of RAM Group Pty Ltd.
3. It is agreed:
  - a) In the case of used units or where a manufacturer's warranty is applicable you have read, understood and accepted the conditions of the used warranty and/or any manufacturer's warranty applicable to the goods and we have not made any representations as to the applicability of any manufacturer's warranty.

- b) All express and implied conditions or warranties whether statutory or otherwise are hereby negated to the extent permitted by law.
- c) Before purchasing the goods or accepting delivery of the goods you have examined the goods and satisfied yourself that the goods were of a satisfactory quality and in satisfactory order and condition and fit for the purpose for which you require them.
- d) You have relied entirely upon your own skill and judgment in selecting the goods.
- e) No cancellation of orders will be allowed except by us (at our sole discretion):
  - i. where we are unable to reasonably deliver the goods within three (3) months of the date of this order becoming binding on us (unless we agree to a longer lead time); or
  - ii. within three (3) business days after the order being accepted by us we may cancel the order where we find that we have made any error or mistake in preparing the order.
- f) In the case of any cancellation by us then the proceeds of sale received by us prior to your receipt of notice of cancellation of any order which may have been accepted by us in part payment of the purchase price shall be accounted to you **less 5%** thereof in full and final settlement of all claims that you may have against us in respect of such goods.
- g) In the case of any cancellation due to your default then we may elect to have 100% of the proceeds of sale that have been received for the order which may have been accepted by us in part payment of the purchase price (including any deposit payments), **or** 30% of the total purchase price (whichever the lesser), **forfeited** to us completely. Should the amount forfeited not cover our costs hereinafter mentioned then you will be liable to an additional amount for such costs. Any refund we give is strictly without prejudice to the our rights under these Standard Terms and at law to enforce or terminate the order, and recover any and all damages, including loss of profits, resale costs, and legal costs on an indemnity basis which must be paid on demand.
- h) Where an order is “subject to water test” then the order is subject to you being reasonably satisfied with the performance of the goods on a water test at an agreed date which must be during our usual business hours at a location nominated by us. If you wish to elect to cancel the order under this sub-clause then you must:
  - i. give us written notice of your cancellation to [michael@nitromarine.com.au](mailto:michael@nitromarine.com.au), our post office box, or by hand delivery to us at our premises which must be received no later than 5PM on the calendar day following the water test; and
  - ii. include in your written notice the reason or reasons why you are not satisfied with the goods (which reasoning must be not be unreasonably concluded).

Where there is a valid cancellation under this clause then we will refund you all proceeds of sale that have been received by us for the order as part payment of the purchase price (including any deposit payments) **minus** \$350 for our costs associated with the water test. If we do not receive the notice required by this sub-clause then the water test condition will be considered satisfied.

- i) Where an order is “subject to finance” then the order is subject to you obtaining satisfactory finance within ten (10) calendar days of the date of the order (“**Finance Date**”). If you wish to cancel the order under this sub-clause then you must:
  - i. give us written notice of your cancellation to [michael@nitromarine.com.au](mailto:michael@nitromarine.com.au), our post office box, or by hand delivery to us at our premises which must be received no later than 5PM on the Finance Date.

If we require you to then you must provide evidence of your attempts to obtain finance within a reasonable time of our request. If we do not receive the notice required by this sub-clause then the finance condition will be considered satisfied.

- j) Any order is not binding on us until signed by us.

- k) When so accepted, the order form, tax invoice, and these Standard Terms shall constitute the entire agreement between the parties.
- l) The risk in the goods shall pass to you immediately on delivery and/or your acceptance of the goods. When collecting any vessel or trailer from us it is your sole responsibility to ensure that the vessel and trailer are securely fastened, connected to your vehicle and suitable for towing, even if we aid in fastening and/or connecting same. It is your responsibility to ensure your vehicle is suitable for towing any goods and we have made no representations in this regard.
- m) The “goods” shall mean all goods sold by us to you which are detailed on the order form and tax invoice.
- n) The benefit conferred by the “warranty” referred to in 3(a) hereof are in addition to all other rights and remedies had by you at law in respect of the goods.
- o) You must pay us the balance of the purchase price within seven (7) calendar days notice by us that your goods are available for collection or delivery. Your goods must be collected or delivered within seven (7) days of the date due for payment in this clause and subsequent to us receiving cleared funds. If you fail to pay for or collect/arrange for delivery of your goods as required then you must pay us an additional sum of \$150 per week as a liquidated debt due and owing and accruing weekly for our storage.
- p) Payment terms: cash, bank cheque, EFTPOS, direct deposit. A premium will apply to Visa and Master Card credit cards available on request from Nitro Marine.

## **2B. Used and Second Hand Boats, Motors and Trailers Warranty**

1. This section 2B applies to all used / second hand sales made by us.
2. Subject to the exclusions set out below this warranty supplied by us provides for rectification on a 50/50 basis, of the relevant goods, for a period of 90 days (where the goods are less than 10 years old), or otherwise for 30 days from the date of sale, to the extent of putting such goods into a reasonably seaworthy or roadworthy (as applicable) condition as determined in the sole discretion of us.
3. 50/50 means that you pay, in cash, half of the retail cost of parts and labour found necessary to correct the performance of the unit. A part or unit may be worn but still quite safe and serviceable. It must be remembered that the unit purchased is used and many of its parts may be worn. It is when a particular item on an engine ceases to perform the function for which it was designed as determined us that it becomes defective and therefore eligible for replacement.
4. It is the responsibility of us to repair the defect “to place the motor in a seaworthy condition having regard to its age”. This could mean in some cases the use of serviceable used parts to effect a repair as determined in the sole discretion of us.
5. All decisions on whether repairs to an engine or vessel or trailer fall within the exclusions below shall be in our sole and final discretion, the following exclusions apply:
  - a. GENERAL – “Cosmetic” items, such as cracks, chips, blemishes and colour fadeout, scratches, etc. Defects caused through wear and tear, misuse, negligence, bad trailering, faulty installation, failure to properly maintain, racing, accident, or repairs carried out by other parties; and
  - b. SPECIFIC ITEMS – Because of the unknown environment in which the motor may be operated (e.g. sand, mud, rocks, weed) and the accidental misuse to which the electrical components may be subjected (e.g. batteries connected with reverse polarity, also the unknown road and ramp conditions to which a trailer may be subjected), all of which are uncontrollable and unascertainable by the dealer, then the following items must also be excluded:- propeller damage, water pump failure, together with any subsequent damage resulting from failure thereof, batteries and all electrical components either directly or indirectly connected thereto, including lights, instruments, gauges, radios, GPS units and aerials, sounders, stereos, transducers, alternators and ignition components, trailer springs and wheel

bearings, osmosis, electrolysis, damage as a result of damage from the use of incorrect oil and/or fuel or both, ethanol blended fuels are not to be used. Refer to the engine manufacturer if in doubt.

6. Warranty repairs must be effected by, or done at the written direction of us, and we have no liability for repairs performed without our knowledge or written authority, nor for any towage or transport or salvage costs incurred without our consent.
7. You must inform us promptly of any damage requiring repair within this warranty. The following procedure must be strictly followed:
  - a. you must notify us in writing (to [michael@nitromarine.com.au](mailto:michael@nitromarine.com.au) or to our postal address) detailing the specific problems that you wish us to repair under this warranty;
  - b. if we determine the problem is not excluded then we will book in the goods and notify you accordingly; and
  - c. you must arrange at your cost to transport the goods to our premises or arrange a suitable alternate location agreed to by us (eg marina hardstand).
8. The Service Terms (section 3 of these Standard Terms) will also apply to all work done under this warranty.

### **3. SERVICE TERMS**

1. You hereby authorise the repair work listed on the relevant job card, and any other work required or agreed (whether or not this is subsequent to the job booking), to be done along with the purchase of materials and parts and hereby grant us permission to operate the vessel/unit for any purpose. Where we provide any estimate or quote for work to be done then this is not binding and is intended as a guide only. We are not able to provide accurate estimates for repairs as some factors remain unknown until work has commenced and the engines have been tested however we will attempt to provide you with estimates of the work as the work proceeds. You may tell us to stop work at any time which we may require you to confirm in writing.
2. We are not to be held responsible for any damage or loss of the vessel or equipment and/or contents in the case of fire, theft and/or any other cause, including negligence, but in any case liability is limited to resupply, replacement or repair of the goods or services supplied or payment of the cost of having the service supplied again.
3. Payment will be at unit pick up or at completion, whichever occurs first.
4. All works carried out off site will require a completed Credit Card Authority available on request.
5. You indemnify us against and release us from any action or demand due to any damage, loss, costs, injury or death caused by (either directly or indirectly) any:
  - a. work done by us;
  - b. installation of goods or equipment carried out by us; or
  - c. goods or equipment supplied by us.
6. The title to the goods delivered or supplied to you shall remain in us until the total of all invoices of all goods delivered or supplied to you have been fully paid by you and you hereby grant us an irrecoverable licence to access your premises and vessels to recover any goods under this clause and the Standard Terms. You also

acknowledge a maritime lien to us (where applicable) and you agree that we may place any security over the goods and your vessel as we see fit.

7. Your vessel/unit must be collected or delivered within seven (7) days of us notifying you that it is ready to collect. If you fail to pay for or collect/arrange for delivery of your vessel/unit as required then you must pay us an additional sum of \$150 per week as a liquidated debt due and owing and accruing weekly for our storage. If you have not paid your bill for the work completed and we do not allow you to collect your vessel/unit due to non-payment then you still must pay our storage fee under this clause.

#### **4. WATER TEST TERMS**

It is possible that the boat or the engine on the boat which you test drive, is unfamiliar to you. Even if it is not, you will understand that, in the test-driving of any boat, you do so at your own risk. To cover us against any loss or damage which you may suffer in connection with or during the actual testing of the boat including arising from our negligence, you indemnify and hold us harmless against all liabilities, losses, damages, cost or expenses incurred or suffered by you and against all actions, proceedings, claims or demands made against us arising directly or indirectly out of your participation (whether as driver, passenger or spectator) in the test-driving of any boat.

#### **5. WEBSITE TERMS OF USE**

From time to time, we may make services and information available via the nitromarine.com and nitromarine.com.au websites. These nitromarine.com.au services and information, the nitromarine.com, and nitromarine.com.au websites, will be collectively referred to as "nitromarine.com.au" in these terms of use.

Your access to and use of nitromarine.com.au is subject to these terms, our Privacy Statement and the our copyright, whether or not you become a member of nitromarine.com.au. Prior to using nitromarine.com.au, you should read and understand the Terms of Use.

Unless expressly stated otherwise in these terms, nitromarine.com.au is for residents of Australia only.

##### **What you must do**

- 1.1 You must use nitromarine.com.au in accordance with these terms of use.

##### **What you must not do**

- 2.1 You must not:

- a) use nitromarine.com.au for any activities, or post or transmit to or via nitromarine.com.au any information or materials, which breach any laws or regulations, infringe a third party's rights or privacy, or are contrary to any relevant standards or codes;
- b) use nitromarine.com.au in a way, or post to or transmit to or via nitromarine.com.au any material, which interferes with other users or defames, harasses, threatens, menaces or offends any person or which inhibits any other user from using or enjoying nitromarine.com.au;
- c) use nitromarine.com.au to send unsolicited commercial or bulk electronic mail messages to anyone;
- d) make any fraudulent or speculative enquiries, bookings, reservations or requests using nitromarine.com.au;
- e) provide false information when registering or changing your nitromarine.com.au registration details;

- f) impersonate another person when using nitromarine.com.au;
- g) post to or transmit to or via nitromarine.com.au any obscene, indecent, inflammatory or pornographic material or material that could give rise to civil or criminal proceedings;
- h) tamper with, hinder the operation of or make unauthorised modifications to nitromarine.com.au;
- i) knowingly transmit any virus or other disabling feature to or via nitromarine.com.au; and
- j) attempt any of the above acts or permit another person to do any of the above acts.

### **Third party content**

3.1 Many of the products and services offered for sale or advertised and much of the information provided via nitromarine.com.au are the products, services and information of third parties.

3.2 The third party products, services and information are not provided or endorsed by us. Where it is apparent that products, services and information are not provided by us, your legal relationship in respect of those products, services and that information is with the third party supplier.

3.3 We have not checked the accuracy or completeness of the information or the suitability or quality of the products and services of the third parties. You must make your own enquiries with the relevant third party supplier direct before relying on the third party information or entering into a transaction in relation to the third party products and services supplied via nitromarine.com.au. You should check with the third party supplier whether there are additional charges and terms which may apply.

3.4 We may receive fees and/or commissions from third parties for goods and services of such third parties displayed or made available on nitromarine.com.au or accessible through a hyperlink on nitromarine.com.au. You acknowledge and consent to us receiving the fees.

### **Prices and products and services are subject to change**

4.1 All prices displayed and products and services offered for supply on nitromarine.com.au are subject to change without notice. You should check the price of a product or service before placing an order for it.

### **Privacy**

5.1 We may use and provide personal information about you that is collected by us on nitromarine.com.au. The collection and provision of this information is subject to privacy laws. We will comply with the our Privacy Statement in dealing with any personal information provided by you via nitromarine.com.au.

5.2 By requesting via nitromarine.com.au that we send billing and payment information to a person's email address or phone number, you authorise us to disclose to that person your personal information, in each case including information related to your billings and payments.

### **Email Bills**

6.1 You can register for email billing by calling us. You will need to notify us of the email address you would like your email bill to be sent to.

6.2 We will use our best endeavors to deliver your email bill to the email address nominated by you to receive it. If we cannot deliver your email bill to that email address, we may send you a paper bill copy or, in our discretion, change your billing preference to a paper bill for future bills or contact you to request that you update your email address. The paper bill will be sent to the billing address on your account so you should also notify us of any changes to this address.

6.3 Your account(s) remain payable by you, whether or not you receive or read your email bill or any emails from us regarding your email bill. Please refer to clause 6.4 for ways to minimise the inconvenience associated with a failure to receive your email bill.

6.4 To help ensure you can continue to receive your email bill, it is your responsibility to:

- a) notify us if your email bill email address changes;
- b) ensure that you have sufficient space available in your email mailbox to receive your email bill;
- c) check your junk email folder to see if your email bill has been delivered there instead of your inbox;
- d) contact us if you do not receive your email bill; and
- e) keep your email account secure to protect the privacy of your personal and credit information contained in the email bill.

6.5 If you request that we send your email bill to a person's email address, you nominate that person as your agent for the purpose of receiving your billing and payment information.

## **Other**

7.1 Given the nature of telecommunication systems, particularly the internet, we cannot guarantee that nitromarine.com.au will always be available or fault or virus free.

7.2 The terms that apply to the supply of nitromarine.com.au are those that are expressly set out in this document and those implied by consumer protection laws to the supply of this service that are unable to be excluded. No other terms apply.

7.3 We are not responsible for: loss caused by factors which could reasonably be considered to be outside our control such as faults in third party equipment loss of data or loss of profits or revenue and any loss to the extent that it is caused by you, for example, through your negligence or breach of contract.

7.4 You must take reasonable steps to minimise the extent of the loss you may suffer as a result of nitromarine.com.au.

7.5 You must notify us in writing of your loss as soon as is reasonably possible.

## **Your liability to us**

8.1 You are liable to us for breach of contract or negligence under the principles applied by the courts.

8.2 You are not liable for any loss to the extent that it is caused by us, for example, through our negligence or breach of contract.

## **Termination**

9.1 You may stop using nitromarine.com.au at any time, for any reason.

9.2 We may stop making nitromarine.com.au, or a part of nitromarine.com.au, available at any time.

9.3 If you enter a contract for the supply of goods and/or services via nitromarine.com.au, that contract will not be affected if we stop making nitromarine.com.au or part of nitromarine.com.au available to you, unless the goods and/or services are supplied via nitromarine.com.au.

## **Communication with you**

10.1 As part of some nitromarine.com.au services available via nitromarine.com.au, we may communicate with you via email, or an SMS, or both, to an email address or a mobile phone number nominated by you. When we do this, the following will apply:

- a) you are responsible for ensuring that your contact details for the online service/s are current, your email service or mobile phone account is operational and that you check your emails or mobile phone regularly for messages; and
- b) you must notify us as soon as possible of any changes to your contact details for the online services using the online method provided by us.

## **Use of your information and material**

10.2 When you send us any feedback, suggestions, ideas or other materials in relation to or via nitromarine.com.au, you agree that we can use, reproduce, publish, modify, adapt and transmit them to others free of charge and without restriction, subject to our obligations in our Privacy Statement.

## **Goods and Services Tax**

11.1 If GST is imposed on any supply made by us through nitromarine.com.au, you must pay to us, in addition to any consideration payable or to be provided by you for this supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable or to be provided (without any deduction or set off) by you under any other clause in the Terms of Use. Any amount payable by you is payable on demand by us, whether such demand is made by an invoice or otherwise.

## **5. PRIVACY STATEMENT**

This policy sets out how we comply with the requirements of the Privacy Act 1988 (Cth) and how that compliance is incorporated within policy and procedural documents for the use of our team members.

### **Policy snapshot**

1.1 We are committed to the principles and practice of privacy, as set out in the National Privacy Principles described in the Privacy Act 1988 (Cth) as amended. This document sets out the detail that backs up that commitment. Personal information which is collected, stored and used in our operations is any information that may be identified with an individual, that extends beyond what information exists about that individual in the public domain, eg what is in the phone book. Sensitive information is personal information about a person's ethnicity, colour, sex, sexual orientation, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, trade union membership & activity, nationality, social origin, health record, credit record or criminal record. The rules set out in this document apply to all personal and sensitive information held by us.

### **The information that is held**

2.1 Personal information that is held may include, but is not limited to:

- a) account information, file notes and databases;
- b) applications, and associated documentation and background information about customers, applicant and team members;
- c) resumes, documentation associated with job applications, training notes and other personnel records;
- d) correspondence;
- e) mailing lists and databases containing information other than basic contact details; and
- f) details supplied when making a complaint.

### **Collecting information**

3.0 Whenever personal information is collected and intended to be recorded, we will ensure that the information is collected from the person directly, and not from third parties, unless the individual consents for the information to be collected from others.

## **Storing information**

4.0 All personal information will be handled securely. This means it will be:

- a) handled only by those whose job role requires them to use it;
- b) where possible, used only in the work area of the personnel authorised to use it; and
- c) stored in an environment where it is secure from casual or deliberate unauthorised access.

## **Using information**

5.0 Use of information will be governed by the following:

- a) If personal information is used for research, marketing or media purposes, it will be de-identified unless written permission from the relevant individual for its use is gained.
- b) Personal information about customers and team members is not to be disclosed to any outside parties, unless their written consent to do so is obtained, or it is a reasonable disclosure under legislation or required for us to conduct our legitimate activities.
- c) Files or data containing personal information is not to be removed from the premises unless there is a legitimate reason to do so, and security is assured.
- d) Personal information is to be used only for the purpose for which it was originally obtained, or for something that is reasonably related (such as administering accounts). If personal information is going to be used for something that the individual would not reasonably expect, their consent for the use must be obtained in writing.
- e) It is possible for us to disclose sensitive health information about individuals even where consent has not been given, provided it is to ensure that they receive appropriate care or treatment or where it is necessary for compassionate reasons.
- f) Where feasible and indicated, before personal information that is recorded is used, check that it is accurate and current.

## **Opt out rules**

6.0 An individual can opt to be removed from the our information mailing or SMS list.

## **Requests for access to records**

7.0 We ask you to contact us with privacy related requests by phoning, faxing or emailing us.