

INDEL WEBASTO MARINE USA STANDARD TERMS AND CONDITIONS OF SALE FOR ISOTHERM AND ISOTEMP PRODUCTS

The foregoing proposal by *INDEL WEBASTO MARINE USA, INC.* is subject to the following terms and conditions:

- OFFER AND ACCEPTANCE.** *INDEL WEBASTO MARINE USA, INC.* ("Seller") offers to sell and deliver products in accordance with the terms and conditions set forth herein. This proposal by Seller constitutes an offer to sell goods, revocable at any time by Seller prior to acceptance of the Buyer. Seller hereby rejects and/or revokes all prior offers, terms and conditions and objects to any terms and conditions in an acceptance of this offer by Buyer which vary the terms hereof, including those contained in Buyer's Purchase Order, unless Seller expressly agrees to such terms in writing. Buyer's acceptance of delivery of any part of the goods sold hereunder, or any payment by Buyer for such goods shall constitute Buyer's acceptance of this proposal and all terms and conditions herein.
- DELIVERY, TITLE AND RISK OF LOSS.** If Buyer provides Seller with freight carrier account number for collect shipments, the delivery of goods shall be F.O.B. shipping point/point of origin, under which the title and risk of loss of goods passes to the Buyer at the point of shipping. Unless otherwise specified by Buyer, delivery of goods covered hereby shall be F.O.B. destination point (Pre-paid, Pre-paid and added), under which title and risk of loss of goods passes to the Buyer at the point of destination. In the absence of instructions from Buyer, Seller shall have absolute discretion as to mode and routing of shipments and shall not be obligated to incur any fees during shipping when Buyer's preferred method of shipping is not stated on Purchase Order. Delivery dates are estimates and Seller may deliver products in installments and shall not be liable for any damages losses or expenses incurred by the Buyer if delivery dates are not kept.
- TITLE.** The Seller shall retain title to the products as legal and equitable owner until Seller shall receive all monies due.
- FORCE MAJEURE.** Seller shall have no liability for any non-performance or delay in performance caused by circumstances beyond Seller's control including, but not limited to, acts of God, fire, flood, war, government action, accident, labor trouble or shortage, inability to obtain material, equipment or transportation, or failure of Seller's suppliers to furnish the goods.
- TAXES.** Buyer shall pay all personal property, sales, excise, use and other taxes applicable to the sale, purchase, storage, erection, use or ownership of the goods covered hereby regardless of whether such taxes are invoiced by Seller, unless Buyer provides Exemption Certificate prior to sale.
- PAYMENT TERMS.** Any payment not made to Seller by due shall accrue interest at a monthly rate of one percent (1.5%). Unless otherwise agreed upon in writing by Seller all goods and parts must be paid by the Invoice due date. Should Buyer fail to pay any amount the Seller at its exclusive option will suspend any and all technical assistance and service to Buyer including sale of spare parts until any and all outstanding amounts are paid. In the event invoice for monies owed to Seller becomes past due for a period of more than ninety (90) days, Seller may notify Collection Agency and take whatever legal action necessary to collect the debt. In the event legal action is necessary for the Seller to collect the debt, any and all additional expenses incurred including attorney fees, service of process, court costs will hereby be the responsibility of the Buyer.
- LIMITATION OF WARRANTIES.** Seller warrants that the goods sold hereunder shall be free, for a period of twenty-four months, from defects in material and workmanship at the time of delivery to Buyer. Seller guarantees the regular functioning of the machines, the good quality of the employed materials, parts and construction. This limited warranty **excludes** glassware, fuses, light bulbs, batteries, parts broken by misuse, customized parts, improper use or installation, transit damage, or acts of God. Seller will provide for the service and/or replacement of defective parts at no charge at all authorized service locations for a period of one year from the date of original purchase of the product or of the original purchase date of the boat on which it is installed. The original consumer-purchaser must pay all expenses incurred in making the equipment available at one of the service locations or for shipping any defective part directly to Seller. Seller will not be liable for any defects which arise by reason of transit damage, misuse, neglect or accident. In no event and under no circumstances shall Seller be responsible under the Limited Warranty for any other charge whatsoever, including but not limited to charges or claims for labor, lost business, lost time, lost profits, loss of use, or any kind of incidental or consequential damages, however denominated or described. The remedy under this warranty is limited to repair or replacement. The Seller will not be obligated to execute anything further than repair of parts. **Any modification or alteration by the user of the good (s) shall void the limited replacement warranties** herein stated. The repair, replacement, or payment in the manner described above shall be the exclusive remedy of Buyer for breach of Seller's warranty. The guarantee does not extend to damage or breakage due to lack of operating skill, negligence or bad employment of the machine by the Buyer. It is expressly agreed that BUYER shall have no right of recovery against SELLER and SELLER SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, OR COSEQUENTIAL DAMAGES TO PERSONS OR PROPERTY OR LOSS OF PROFITS. For further clarification or full description of limitations, please see *INDEL WEBASTO MARINE'S Warranty Policy and Procedures manual*.
- GOVERNING LAW, VENUE.** This contract shall be deemed to have been made in the State of Florida, and any action arising out of it shall be governed by the law of the State of Florida.
- ARBITRATION.** In the event of any disputes and/or claims relative to the bale of *Isotherm* and *Isotemp* products, BUYER AND SELLER agree to submit any and all such disputes, claims and controversies to arbitration pursuant to the Commercial Rules of the American Arbitration Association. Any arbitration proceeding held pursuant to this arbitration provision shall be conducted in the city nearest to Buyer's address. This arbitration provision shall not limit the right of either party during any dispute, claim or controversy to seek, use and employ ancillary, provisional or preliminary rights and/or remedies, judicial or otherwise, for the purposes of realizing upon, preserving, protecting, foreclosing upon or proceeding under forcible entry and detainer for possession of any personal property, and any such action shall not be deemed an election of remedies. This includes, without limitation, obtaining injunctive relief or a temporary restricting order, invoking a power of sale under any deed of trust or mortgage, obtaining a writ of attachment or imposition of a receivership or exercising rights relating to personal property, including taking or disposing of such property with or without judicial purposes pursuant to Article 5 of the Uniform Commercial Code. The Federal Arbitration Act (Title 9 of the United States Code) shall apply to the construction, interpretation, and enforcement of this arbitration provision.
- COMPLETE AGREEMENT: MODIFICATION.** The provisions hereof are intended as a complete and exclusive statement of the terms of the agreement between Seller and Buyer. This agreement may not be modified, rescinded, or cancelled and no waive by Seller of any claim or right hereunder shall be effective, except by writing signed by an officer of Seller.
- ACCEPTANCE OF CONDITIONS.** The Buyer declares explicitly that, after having read the *INDEL WEBASTO MARINE USA Sales Terms and Conditions* in full, he or she accepts them unconditionally by both in the general and in their detailed form.
- SECURITY INTEREST.** Buyer hereby gives Seller the authorization to sign and file the UCC I Form securing the Interest of Seller to the goods. To secure the payment of purchase price and any other amounts due to Seller from Buyer under the terms of this agreement, Buyer hereby grants to Seller (as Secured Party) a purchase money security interest in the Goods and the Proceeds thereof. To enforce Seller's security interest, Seller shall have all of the rights and remedies available to a secured party under the Uniform Commercial Code and other applicable laws, including but not limited to the following rights: to enter Buyer's premises or any other place where the Goods may be and take possession of assemble, and collect the same; to require Buyer to assemble the Goods and make the same available at a place designated by Seller to allow Seller to take possession or dispose of the Goods; to retain the Goods in satisfaction of the obligations of Buyer thereunder to sell. In one or more transactions and from time to time thereafter, all or part of the Goods at public or private sale, and to purchase at any sale, public or private (and all sales may be at such price or prices, upon such terms, by such terms, by such methods, and manner, and at such time and place as Seller shall determine, provided that the same are commercially reasonable); and to give any notice to Buyer required by Standard Terms and Conditions of Sale applicable, statute by mailing it, postage prepaid, at least five (5) days before the event, if any, which is the subject of the notice, to Buyer's business, address as it appears hereon. Buyer acknowledges that this is a Commercial Transaction arising out of the sales of Goods for business purposes, and, upon Buyer's failure to pay the purchase price, Seller may seek an immediate writ of possession from a court of appropriate jurisdiction without prior notice or hearing. Buyer hereby waives any and all rights which Buyer may have to notice or hearing prior to seizure of the Goods following default in payment of the purchase price when due.

I have read and understood all terms and conditions of this proposal/contract and I hereby accept subject to these Terms & Conditions.