



## OUR TERMS

### In these Terms and Conditions:

'We', 'us' or 'our' means Lungfish Diving Systems Ltd

'You' or 'your' means the person using our site to buy Products from us.

'Products' means products ordered by and supplied to you by us.

'Services' means the services supplied to you as set out in the order confirmation and confirmed to you in writing.

## 1 THESE TERMS

1.1 **What these terms cover.** These Terms and Conditions shall apply to any purchase or supply of Products or Services by Lungfish Diving Systems Ltd ("**LDS**"). Any variation from these Terms and Conditions shall require the signed consent of an authorised LDS representative.

1.2 **Why you should read them.** Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide Products to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms please contact us to discuss.

1.3 **Our contract with you.** Our contract with you is made up of the following:

(a) These Terms and Conditions

(b) The Warranty Agreement (a copy of which is attached)

1.4 If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

## 2 INFORMATION ABOUT US AND HOW TO CONTACT US

2.1 **Who we are.** We are Lungfish Dive Systems Ltd a company registered in England and Wales. Our company registration number is 06724561 and our registered office is at New Cambridge House Bassingbourn Road, Litlington, Royston, United Kingdom, SG8 0SS. Our registered VAT number is 970702336.



- 2.2 **How to contact us.** You can contact us by telephoning our customer service team by writing to us at sales@divelungfish.com.
- 2.3 **How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address provided to us in your order.
- 2.4 **“Writing” includes emails.** When we use the words “writing” or “written” in these terms, this includes emails.

### 3 OUR CONTRACT WITH YOU

- 3.1 **How we will accept your order.** Our acceptance of your order will take place when we email you to accept it, at which point a contract will come into existence between you and us.
- 3.2 **If we cannot accept your order.** If we are unable to accept your order, we will inform you of this in writing and will not charge you for the Product. This might be because the Product is out of stock, because of unexpected limits on our resources which we could not reasonably plan for, because we have identified an error in the price or description of the Product or because we are unable to meet a delivery deadline you have specified.
- 3.3 **Your order number.** We will assign an order number to your order and tell you what it is when we accept your order. It will help us if you can tell us the order number whenever you contact us about your order.

### 4 OUR PRODUCTS

- 4.1 **Products may vary slightly from their pictures.** The images of the Products on our website are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device’s display of the colours accurately reflects the colour of the Products. Your Product may vary slightly from those images.
- 4.2 **Product packaging may vary.** The packaging of the Product may vary from that shown in images on our website.

### 5 YOUR RIGHTS TO MAKE CHANGES

If you wish to make a change to the Product you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Product, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change. If we cannot make the change or the consequences of making the change are unacceptable to you, you may want to end the contract (see clause 8- Your rights to end the contract).



## 6 OUR RIGHTS TO MAKE CHANGES

6.1 **Minor changes to the Products.** We may change the Product:

6.1.1 to reflect changes in relevant laws and regulatory requirements; and

6.1.2 to implement minor technical adjustments and improvements. These changes will not affect your use of the Product.

6.2 **More significant changes to the Products and these terms.** In addition, as we informed you in the description of the Product on our website, we may make the following changes to these terms or the Product, but if we do so we will notify you and you may then contact us to end the contract before the changes take effect and receive a refund for any Products paid for but not received:

6.2.1 We may source suitable substitutes in the event a Product you have ordered is not available. Substitute Products are provided on the basis that such substitution does not adversely affect the technical nature of the Products.

## 7 PROVIDING THE PRODUCTS

7.1 **Delivery costs.** The costs of delivery will be as displayed to you on our website.

7.2 **When we will provide the Products.** During the order process, we will let you know when we will provide the Products to you.

7.2.1 **If the Products are goods.** If the Products are goods, any dates for delivery, or delivery schedule, for the supply of the Services or Products as communicated to you are subject to written confirmation by us, and until such confirmation delivery dates may change. All confirmed dates are based on the prompt receipt by us of all required information enabling achievement of such dates and we reserves the right to change such dates in the event additional information is necessary or inadequate information was provided.

7.2.2 **If the Products are one-off Services.** We will begin the Services on the date agreed with you during the order process. The estimated completion date for the Services is as told to you during the order process.

7.3 **We are not responsible for delays outside our control.** If our supply of the Products is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for any delays caused by such event. For the avoidance of doubt, this includes any delays arising from or as a result of the various measures which have already been taken by the UK government to combat the spread of coronavirus 2 (SARS-CoV-2) which causes COVID-19.



- 7.4 **Collection by you.** If you have asked to collect the Products from our premises, we will confirm to you in writing if this can be facilitated and we will specify the date and time when you can collect them from us (note collection times are approximate and may be subject to changes)
- 7.5 **If you are not at home when the Product is delivered.** If no one is available at your address to take delivery of the Products, we will leave you a note informing you of how to rearrange delivery or collect the Products from a local depot.
- 7.6 **If you do not re-arrange delivery.** If you do not collect the Products from us as arranged or if, after a failed delivery to you, you do not re-arrange delivery or collect them from a delivery depot we will contact you for further instructions and may charge you for storage costs and any further delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery or collection we may end the contract and clause 10.2 will apply.
- 7.7 **When you become responsible for the goods.** A Product which is goods will be your responsibility from the time we deliver the Product to the address you gave us or when you collect it from us.
- 7.8 **When you own goods.** You own a Product once we have received payment in full.
- 7.9 **What will happen if you do not give required information to us.** We may need certain information from you so that we can supply the Products to you, for example, a signed and returned copy of the Warranty Agreement or details relating to your diving qualifications. The specific information we require will be made available to you on our Website by filling out the '[Lungfish Information Request] Form' prior to your purchase. If you do not give us this information within a reasonable time of us asking for it, or if you give us incomplete or incorrect information, we may either end the contract (and clause 10.2 will apply) or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying the Products late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.
- 7.10 **Reasons we may suspend the supply of Products to you.** We may have to suspend the supply of a Product to:
- 7.10.1 deal with technical problems or make minor technical changes;
- 7.10.2 update the Product to reflect changes in relevant laws and regulatory requirements;
- 7.10.3 make changes to the Product as requested by you or notified by us to you.
- 7.11 **Your rights if we suspend the supply of Products.** We will contact you in advance to tell you we will be suspending supply of the Product, unless the problem is urgent or an emergency. You may contact us to end the contract for a Product if we suspend it and if the product remains undelivered). We will then refund any sums you have paid in advance for the Product which has not been received.

## 8 YOUR RIGHTS TO END THE CONTRACT

8.1 **You can always end your contract with us.** Your rights when you end the contract will depend on what you have bought, whether there is anything wrong with it, how we are performing and when you decide to end the contract:

8.1.1 **If what you have bought is faulty or misdescribed you may have a legal right to end the contract** (or to get the Product repaired or replaced or a Service re-performed or to get some or all of your money back), see clause 11;

8.1.2 **If you want to end the contract because of something we have done or have told you we are going to do,** see clause 8.2;

8.1.3 **If you have just changed your mind about the Product, see** clause 8.3. You may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions and you will have to pay the costs of return of any goods;

8.1.4 **In all other cases (if we are not at fault and there is no right to change your mind),** see clause 8.7.

8.2 **Ending the contract because of something we have done or are going to do.** If you are ending a contract for a reason set out at (a) to (e) below the contract will end immediately and we will refund you in full for any Products which have not been provided and you may also be entitled to compensation. The reasons are:

8.2.1 we have told you about an error in the price or description of the Product you have ordered and you do not wish to proceed;

8.2.2 there is a risk that supply of the Products may be significantly delayed because of events outside our control; or

8.2.3 we have suspended supply of the Products for technical reasons, or notify you we are going to suspend them for technical reasons.

8.3 **Exercising your right to change your mind (Consumer Contracts Regulations 2013).** For most Products bought online you have a legal right to change your mind within 14 days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail below.

8.4 **How long do I have to change my mind?** How long you have depends on what you have ordered and how it is delivered.

8.4.1 **Have you bought goods** if so you have 14 days after the day you (or someone you nominate) receives the goods, **unless:**

- 8.4.1.1 **Your goods are split into several deliveries over different days.** In this case you have until 14 days after the day you (or someone you nominate) receives the last delivery to change your mind about the goods.

## **9 HOW TO END THE CONTRACT WITH US**

- 9.1 **Tell us you want to end the contract.** To end the contract with us, please let us know by doing one of the following:

- 9.1.1 **Phone or email.** Email customer services at Sales@divelungfish.com. Please provide your name, home address, details of the order and, where available, your phone number and email address.

- 9.2 **Returning Products after ending the contract.** If you end the contract for any reason after Products have been dispatched to you or you have received them, you must return them to us. You must post them back to us at New Cambridge House, Bassingbourn Rd, Litlington, Royston SG8 0SS. If you are exercising your right to change your mind you must send off the goods within 14 days of telling us you wish to end the contract.

- 9.3 **When we will pay the costs of return.** We will pay the costs of return if:

- 9.3.1 the Products are faulty or misdescribed;

- 9.3.2 you are ending the contract because we have told you of an upcoming change to the Product or these terms;

- 9.3.3 there is an error in pricing or description; or

- 9.3.4 you have a legal right to do so as a result of something we have done wrong.

In all other circumstances (including where you are exercising your right to change your mind) you must pay the costs of return.

- 9.4 **What we charge for collection.** If you are responsible for the costs of return and we are collecting the Product from you, we will charge you the direct cost to us of collection.

- 9.5 **How we will refund you.** We will refund you the price you paid for the Products including delivery costs, by the method you used for payment. However, we may make deductions from the price, as described below.

- 9.6 **Deductions from refunds if you are exercising your right to change your mind.** If you are exercising your right to change your mind:

- 9.6.1 We may reduce your refund of the price (excluding delivery costs) to reflect any reduction in the value of the goods, if this has been caused by you mis-handling them in a way which may or has caused damage to the Product. If we refund you the price paid before we are able to inspect the Products and



- later discover you have handled them in an unacceptable way, you must pay us an appropriate amount.
- 9.6.2 The maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method we offer. For example, if we offer delivery of a Product within 3-5 days at one cost but you choose to have the Product delivered within 24 hours at a higher cost, then we will only refund what you would have paid for the cheaper delivery option.
- 9.7 **When your refund will be made.** We will make any refunds due to you as soon as possible. If you are exercising your right to change your mind then:
- 9.7.1 If the Products are goods and we have not offered to collect them, your refund will be made within 14 days from the day on which we receive the Product back from you or, if earlier, the day on which you provide us with evidence that you have sent the Product back to us.
- 9.7.2 In all other cases, your refund will be made within 14 days of your telling us you have changed your mind.

## 10 OUR RIGHTS TO END THE CONTRACT

- 10.1 **We may end the contract if you break it.** We may end the contract for a Product at any time by writing to you if:
- 10.1.1 you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the Products, for example signing and returning the Lungfish Letter Agreement ; or
- 10.1.2 you do not, within a reasonable time, allow us to deliver the Products to you or collect them from us.
- 10.2 **You must compensate us if you break the contract.** If we end the contract in the situations set out in clause 10.1 we will refund any money you have paid in advance for Products we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract depending on the date on which we end the contract, as compensation for the net costs we will incur as a result of your breaking the contract.
- 10.3 **We may withdraw the Product.** We may write to you to let you know that we are going to stop providing the Product. We will let you know at least 14 days in advance of our stopping the supply of the Product (where practicable, providing you have not already received the Product) and will refund any sums you have paid in advance for Products which will not be provided.

## 11 IF THERE IS A PROBLEM WITH THE PRODUCTS

- 11.1 **How to tell us about problems.** If you have any questions or complaints about the Product, please contact us by emailing [sales@divelungfish.com](mailto:sales@divelungfish.com).



11.2 **Your obligation to return rejected Products.** If you wish to exercise your legal rights to reject Products you must post them back to us. Please email us at [Sales@divelungfish.com](mailto:Sales@divelungfish.com).

## 12 PRICE AND PAYMENT

12.1 **Where to find the price for the Product.** The price of the Product (which includes VAT) will be the price indicated to you either in person or on the website when you placed your order. We take reasonable care to ensure that the price of the Product advised to you is correct. However please see clause 12.2 for what happens if we discover an error in the price of the Product you order.

12.2 **What happens if we got the price wrong.** It is always possible that, despite our best efforts, some of the Products we sell may be incorrectly priced. We will normally check prices before accepting your order so that, where the Product's correct price at your order date is less than our stated price at your order date, we will charge the lower amount. If the Product's correct price at your order date is higher than the price stated to you, we will contact you for your instructions before we accept your order. If we accept and process your order where a pricing error is obvious and unmistakeable and could reasonably have been recognised by you as a mispricing, we may end the contract, refund you any sums you have paid and require the return of any goods provided to you.

12.3 **When you must pay and how you must pay.** We accept payment via most major credit and debit cards. You must pay for the Products before we dispatch them. We will not charge your credit or debit card until we dispatch the Products to you. We charge a 50% non-refundable deposit for rebreather unit Products with the balance (50%) paid before delivery. Payment for other Products are based on a proforma basis or direct purchase via our website. All late payments will be subject to interest charges at the rate of two percent (2%) per month. Invoices for pro-rata payments become due on the date of shipment. If at your request, shipments are delayed beyond the scheduled date, payments for the Products and Services completed to date will be invoiced to you, as a percentage of the total purchase order price when we were originally prepared to ship. Products held for you shall be at your sole risk and expense. Failure to pay any applicable payment on its due date shall automatically cause all instalment amounts to become payable and in addition to our other lawful remedies, we reserve the right to suspend and/or cancel the order.

12.4 **What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date

## 13 OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU

13.1 **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our





breaking this contract but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.

- 13.2 **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the Products and for defective Products under the Consumer Protection Act 1987
- 13.3 **We are not liable for business losses.** We only supply the Products for domestic and private use. If you use the Products for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 13.4 **Limit of Liability.** Subject to Clause 13.2, our total liability to you will be limited to the price of the Product or Service supplied to you.

#### 14 HOW WE MAY USE YOUR PERSONAL INFORMATION

**How we may use your personal information.** We will only use your personal information as set out in our Privacy Notice

#### 15 OTHER IMPORTANT TERMS

- 15.1 **We may transfer this agreement to someone else.** We may transfer our rights and obligations under these terms to another organisation.
- 15.2 **You need our consent to transfer your rights to someone else (except that you can always transfer our guarantee).** You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.
- 15.3 **Nobody else has any rights under this contract (except someone you pass your guarantee on to).** This contract is between you and us. No other person shall have any rights to enforce any of its terms.
- 15.4 **If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 15.5 **Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to



- do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Products, we can still require you to make the payment at a later date.
- 15.6 **Which laws apply to this contract and where you may bring legal proceedings.** These terms are governed by English law and you can bring legal proceedings in respect of the Products in the English courts. If you live in Scotland you can bring legal proceedings in respect of the Products in either the Scottish or the English courts. If you live in Northern Ireland you can bring legal proceedings in respect of the s in either the Northern Irish or the English courts.
- 15.7 **Intellectual Property.** You acknowledge that all intellectual property rights (which includes but is not limited to patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks business names and domain names, rights in get-up and trade dress, goodwill confidential information, including know-how and trade secrets, and all other intellectual property rights, in each case whether registered or unregistered are and remain the exclusive property of LDS. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right (as defined in this clause) held, made, obtained or licensable by LDS either now or in the future.
- 15.8 **Export.** If Products are to be shipped or used overseas (outside of the United Kingdom) then it is your responsibility to ensure that the Product is authorised to be shipped, and operated in your country. We do not offer any refund (excluding faulty Products) to countries outside the European Union.
- 15.8.1 We do not accept any responsibility or liability for shipment delays due to issues arising with customs and/or for any indirect taxes levied on a Product consignment.
- 15.9 **Alternative dispute resolution.** Alternative dispute resolution (**ADR**) is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. If you are not happy with how we have handled any complaint, you may want to resolve the dispute by ADR.