

COPYRIGHT, DESIGNS AND PATENTS ACT 1988

IN THE MATTER OF

an application under Section 247

by Lalizas Marine UK Ltd

for the settlement of terms of a licence of right

in respect of copyright

owned by Norseman Gibb Limited

DECISION

Introduction

1. On 9 February 1998 Lalizas Marine UK Ltd (“Lalizas”) applied to the comptroller to settle the terms of a licence of right to be granted by Norseman Gibb Limited (“Norseman Gibb”) in respect of the design of a safety hook intended for use in a marine environment, for example for linking sailors to their craft via safety lines or safety harnesses. After various exchanges on paper, both parties confirmed that they did not wish to attend an oral hearing, and agreed that I should settle the matter on the basis of the papers on file. I shall now do that, taking full account of all the statements, evidence, and submissions made in correspondence by both sides.

History before filing of application

2. From documents filed with the application, principally a statement in the form of a letter accompanied by copies of correspondence, the relevant history up to the date of the application appears to be as follows. Norseman Gibb patented a safety hook having a particular design in their specification GB1527238. Although the patent expired in 1988, Norseman Gibb considered they continued to have certain unregistered rights in the design. In a letter to Lalizas of 21 October 1997 they said that it had come to their attention that Lalizas were offering for sale in the United Kingdom a safety hook which they considered to be of substantially the same design as their Double Action Safety Hook, product number 1077. Asserting that theirs was the original

design, they alleged that the safety hook being offered for sale by Lalizas was an infringement of their “unregistered design rights” under the Copyright, Designs and Patents Act 1988 (“the CDP Act”). Lalizas took professional advice and undertook to take a licence of right, on terms to be agreed, until August 1999 when, as they said, the rights to the hook would cease. In a letter of 25 November 1997 they formally requested that such a licence be granted and offered 5% of their net cost price in the UK as a royalty payment. Norseman Gibb's response is not contained in the application documents but one can reasonably infer from those documents that it included an opening bid for a royalty of 15%, and an up-front payment of £2,000. Lalizas regarded the £2,000 payment as unacceptable and made a counter-offer of a royalty rate of 5% of the sales price. Both sides then seem to have moved to royalty offers of 7.5% (Lalizas) and 10% (Norseman Gibb) of selling price, after which this application to the comptroller to settle the terms of the licence followed.

Review of the application

3. Lalizas's Managing Director is Mr Barry Stone, who is making this application without professional representation. Norseman Gibb are represented by Hillgate Patent Services. The application as originally lodged with the Patent Office by Mr Stone was deficient in some important respects, chiefly in that the statement accompanying the application did not set out the terms of the licence sought, for example as a draft licence, the design itself was not clearly identified, and the legal basis for the application was not identified. The Patent Office wrote to Mr Stone seeking clarification of the licence terms and identification of the design, and he responded with a letter dated 24 February 1998 containing further information which the Office treated as a supplementary statement. Lalizas's position in this supplementary statement was to revert to its offer of a 5% royalty on selling price for the selling of hooks in the United Kingdom up to and including 31 July 1999. As to what are termed complete lifelines, which I take on the basis of the papers to incorporate the hook together with webbing and incidentals, their position was to offer a 3% royalty on the complete selling price. That remains Lalizas's position.

4. Norseman Gibb responded to the statement on 22 April 1998 with a notice of objection and statement of grounds. They argued for a relatively high royalty rate on the basis that the hook

could be copied at low cost by using an inferior grade of stainless steel and by manufacturing in a low-cost country, but would still be perceived as a high-value product by virtue of the design. They were able to accept that it is logical to have different royalty rates for hooks sold on their own, and for complete lifelines, but proposed royalty rates on selling price of 10% for hooks sold on their own and 6.67% for complete lifelines. They argued that these figures would give much the same result as the single rate of 7.5% that had previously been offered by Lalizas. It was not stated whether their original request for a forward payment of £2,000 was being maintained.

5. Lalizas responded with a counter-statement in the form of a letter dated 12 May 1998, rebutting any accusation of inferior quality of their hooks and alleging that the Norseman Gibb hook was now some 25 years old and no longer the leading design in the market. They confirmed that their former offer of 7.5% was retracted, re-iterated their proposed royalty rates of 5% and 3% of the selling price for hooks sold separately and complete life lines respectively, and strongly objected to payment of any deposit. What may be called "quality issues", in essence allegations and counter-allegations about various aspects of the quality of material and manufacture of the hooks Lalizas were proposing to sell, were then to feature strongly in subsequent exchanges.

6. The Office then allowed three rounds of evidence as is usual practice. After several false starts, these were as follows:

(i) Evidence in chief from Norseman Gibb was filed on 9 September 1998 and comprises a statutory declaration by Mr Mark Swales, Managing Director of Norseman Gibb. Much of this is a repetition of their notice of objection and statement of grounds, with the argument as to the alleged inferiority of the Lalizas hook emphasised and extended.

(ii) Lalizas's evidence in chief was filed in proper form on 28 October 1998 and comprises a statutory declaration from Mr Stone. This is largely concerned with quality issues and with trade advertisements from Norseman Gibb in what might be called the "beware of inferior imitations" vein; but Mr Stone does register his strong objection to paying any form of commission to Norseman Gibb for the licence, which I take to be another reference to Norseman Gibb's proposal for an advance payment.

(iii) Norseman Gibb's evidence in reply was filed on 2 December 1998 and was a second statutory declaration from Mr Swales: it is concerned only with quality issues.

7. Feelings were running so high on quality issues that further statutory declarations were submitted with correspondence, although outside the allotted evidence rounds. Two were by Mr Stone, both photocopies, filed in December 1998 and January 1999; the other was by Mr Swales, filed in January 1999. Again, these are confined to quality issues.

8. With the preliminaries concluded a number of basic points had still to be clarified. On Lalizas's part, the absence of a draft licence made it uncertain what acts they wished licensed. On Norseman Gibb's part, the right on which they were relying had not been satisfactorily identified; although their letter of 21 October 1997 to Lalizas spoke of "unregistered design rights", it seemed unlikely for reasons I shall come to that design right was indeed the relevant right. The Patent Office therefore wrote to both sides on 12 January 1999 explaining these issues in some detail and asking for clarification, while also suggesting that the Office might itself put forward a draft licence for the purposes of further negotiation between the parties and to isolate areas of disagreement. That draft licence would be for the assistance of the parties but without obligation to them.

9. Norseman Gibb responded with a letter dated 15 February 1999 confirming that the right relied on was in fact the copyright they owned in a drawing showing the design of the safety hook; a copy of the drawing was appended to an accompanying statutory declaration by Mr Swales dated 12 February verifying it as a true copy of the engineering drawing of the hook. The page on which the drawing has been reproduced carries the title:

“SPECIFICATION
P. P. E. TECHNICAL FILE 1077 DOUBLE
ACTION SAFETY HOOK”.

Although the page title also carries the date “26/3/96”, the drawing itself includes a box labelled “Drawn” in which there is a barely legible date, while a manuscript annotation, intended I think

to clarify that date, reads "Drawn 30-1-85". I cannot pretend that I find this the clearest evidence of the date of creation of the drawing. However, since there has been no dispute over the existence of copyright in the drawing, the date the drawing was made, or the ownership of the copyright by Norseman Gibb, I believe I need make no further comment on these matters. I conclude that the design in question has been adequately identified as contained in a drawing made in January 1985.

10. Lalizas also replied to the official letter of 12 January. Their letter confirmed that they wished to import and sell the hooks and complete lifelines in the United Kingdom and Channel Islands.

11. The Office wrote to both parties enclosing a draft licence merely as a suggestion for them to comment on. The Office's *prima facie* view was also expressed that Lalizas required a licence under such copyright as subsists in the United Kingdom in order to import and sell there what would otherwise be infringing copies under section 27(3) of the CDP Act, and moreover that a suitable licence could be granted under the CDP Act. In response to the draft licence Lalizas made proposals for two of the clauses which I shall quote:

“3. Royalty

The Licensee shall pay to the Licensor royalties at the rate of 5% for any hooks sold separately and 3% for any complete lifelines sold in the specified period which ends on the 31st July 1999, the royalties will be paid on a nett sales value after any settlement discounts which may apply.

3.2 Payments

We are prepared to pay the licensor within thirty (30) days of the date of the decision settling the licence in respect of royalties accrued in the period from the commencement date for any hooks sold and paid for by the licensee's customers, and thereafter on a monthly basis for any hooks sold and paid for by the licensee's customers up to and including the 31st July 1999.”

Norseman Gibb for their part had just one comment: they proposed for clause 4.2 of the draft licence that the licensor should not always be liable for audit costs, but that the licensee should be liable for them "if it is found on inspection of the records of the licensee that the statements have been inaccurate on the low side by more than 10% ". Finally, the Office wrote summarising the parties' positions and indicating that clauses of the draft licence on which they had not commented were assumed to be acceptable.

Legal basis

12. I should begin by reviewing the legal basis on which this settlement of licence terms is conducted. The CDP Act made fundamental changes to the way in which designs recorded in drawings (also known as "design documents") were protected. It created from 1 August 1989 a new right called unregistered design right. Under section 213(7) such design right did not apply to a design which before that date was either recorded in a design document or had articles made to the design. Under legislation previous to the CDP Act, it used to be the case that, where the design of an article had been recorded in a drawing or "design document", copyright in the design document could be asserted to prevent the article being made or copied, as this would constitute what is known as primary infringement of copyright. Such rights could be pursued long after any patent rights which might have been granted on the article had expired. Section 51 of the CDP Act came into force on 1 August 1989 and ended such primary infringement. I quote the words relevant to this case:

"51.- (1) It is not an infringement of any copyright in a design document or model recording or embodying a design ... to make an article to the design or to copy an article made to the design.

(2) Nor is it an infringement of the copyright to issue to the public ... anything the making of which was, by virtue of subsection (1), not an infringement of that copyright."

13. The application of section 51 was, however, subject to a transitional provision set out in paragraph 19 of schedule 1 to the CDP Act: if a design was recorded in a design document before

1 August 1989 then section 51 did not apply for ten years after 1 August 1989. Primary infringement of copyright in such a document was therefore possible during that period of ten years, which expired on 31 July 1999, but its effect from 1 August 1994 was mitigated by licences of right being made available also by paragraph 19. The licence of right provisions which apply to this transitional copyright are the same as those that apply to design right, and section 247 provides for the present procedure of settling licence terms, subject to the limitation in paragraph 19(7) of schedule 1, which reads:

“(7) A licence granted by virtue of this paragraph shall relate only to acts which would be permitted by section 51 if the design document or model had been made after commencement” [which was 1 August 1989].

14. Several points follow from applying that law to the facts of the present case. First, the right which Norseman Gibb are seeking to enforce arises from a design document, that is the drawing of the safety hook, made in January 1985. That being before 1 August 1989, unregistered design right cannot subsist in it. On the other hand, Norseman Gibb have asserted, without Lalizas disputing, copyright in that drawing, and the provisions of paragraph 19 of schedule 1 apply to it. Put simply, Norseman Gibb can (under paragraph 19(1)) enforce that copyright until 31 July 1999, but Lalizas are entitled (under paragraph 19(2)) to a licence as of right under it in respect (under paragraph 19(7)) of acts which would be permitted by section 51. It is worth emphasising that the right, and the maximum period of any licence of right, both end on 31 July 1999.

15. Secondly, the present licence of right can only explicitly permit Lalizas to do the acts of primary infringement mentioned in section 51, *viz* to make or copy articles to Norseman Gibb's design or to issue those articles to the public, in the United Kingdom. (I note that section 18(2) of the CDP Act makes clear that the act of "issuing to the public" does not include sale or distribution of the articles; that is classified as secondary infringement in section 23.) In fact Lalizas have confirmed that they wish to do is import and sell the hooks and complete lifelines in the United Kingdom and Channel Islands. I should say straight away that the licence will not extend to the Channel Islands: the CDP Act has not been extended there and the rights on which

Norseman Gibb rely here (which are transitional rights under the CDP Act) do not extend there. The bigger point though is that the articles Lalizas are intending to import and sell are being manufactured abroad, so that Lalizas would not be primary infringers: as far as the United Kingdom goes they are only interested in importation, distribution and sale, which are all secondary infringements under sections 22 and 23 of the CDP Act. Again I note that making the articles abroad does not avoid secondary infringement that may subsequently arise in the United Kingdom. This is clear from section 27(3) of the CDP Act, which reads:

“27.- (3) An article is also an infringing copy if-

(a) it has been or is proposed to be imported into the United Kingdom, and

(b) its making in the United Kingdom would have constituted an infringement of the copyright in the work in question, ...”

16. However, the wording of sub-section (3)(b) of section 27 provides the answer for Lalizas: if the licence allows Lalizas to manufacture in the United Kingdom then sub-section (b) cannot apply to Lalizas's hooks. Those hooks cease to be infringing copies because, had they instead been made in the United Kingdom by Lalizas, that making would not have constituted an infringement, by virtue of the licence. I am therefore satisfied that the licence will have the effect that Lalizas require, of (implicitly) authorising acts which would without it have constituted secondary infringements as well as those which would be primary infringements. In fact it has been customary for licences to specify the acts licensed in very general terms, which might be characterised as "anything that would (otherwise) infringe", so any distinction between primary and secondary infringements will not be explicit. I believe though that it was necessary for me to be satisfied as to the legal basis for the licence sought by Lalizas.

Settlement of licence terms

17. I turn now to the settlement of licence terms. As I have explained, as an aid to the parties the Office put forward a draft licence; the parties commented only on certain parts of it. It seems to me that the terms of the draft licence put forward by way of example by the Office are lawful and proper, and I do not believe it necessary or desirable that I should consider in any detail terms

other than those on which the parties have expressed an opinion.

Royalty rate

18. The primary area of disagreement between the parties is of course the royalty rate, where there are currently on the table opposing bids of 5% and 10% for the hooks alone, and 3% and 6.67% for the complete lifelines. Norseman Gibb have also proposed a single (advance) payment of £2,000.

19. It is usual in licence of right cases in which the royalty rate is in dispute for the parties to put forward detailed financial information and to encourage the comptroller to adopt a particular approach in deducing an appropriate royalty from it. One approach, usually the preferred one if circumstances permit it, is to look at comparable licences which have already been agreed. Another attempts to base the royalty on a division as between the licensor and licensee of the profits available to the licensee. Both of these approaches require detailed evidence of different sorts, and in cases where that has been lacking recourse has sometimes been made to a far less preferable, but sometimes unavoidable, approach of considering the “going-rate” for licences in the relevant field of technology.

20. In earlier cases, there has generally been some attempt to justify the choice of royalty rate by calculations or deductions which have been made from various starting points founded in evidence. In the present case the only argument that has been advanced to support the figures asked for is Norseman Gibb's reasoning based on what I have called quality issues. The implication in this argument is that the Norseman Gibb design of safety hook carries with it associations of a high level of quality, based perhaps on how the design has long been implemented by Norseman Gibb, and that that level is not being reached by the Lalizas implementation. Whether that is true or not I do not believe I am able on the evidence to judge, but in any case I am not persuaded that it is central to the royalty question. I have considered this quality point carefully but I am unable to establish a logical *primary* connection between the reputed quality of the Norseman Gibb implementation and the royalty to be expected of a licensee implementing the design. At bottom, what Norseman Gibb own is copyright in a drawing. This,

for a transitional period, gave them certain rights over the hook in the drawing; those rights do not, however, extend to control of the quality of hooks made to their design. It may be objectionable to Norseman Gibb to have their established design implemented to what they perceive to be lesser quality, but that is plainly outside the influence of their copyright. I conclude that it would not be proper to make quality a *primary* determinant of the royalty rate, nor therefore to impose a higher royalty on the basis either of the high quality of manufacture by the licensor or the alleged lower quality of manufacture by the licensee. I might consider, having reached a general conclusion on royalty rate, that it might be reasonable, in appropriate circumstances, to apply an uplift to that rate, based on the reputation the original item might enjoy in the market place based in turn, for example, on its quality. But that would be very much a *secondary* factor. In the present case, where the evidence on any issue is so scant, I believe it would be incorrect for me to take alleged quality issues into account in settling the royalty rate. Before I leave the point, however, I would make the general observation that if a licensee's product trades at an elevated price because of the perceived quality conferred by its design, the royalty payable to the licensor, if the rate is expressed in percentage terms, will similarly be elevated.

21. In the absence of any real relevant evidence, I am forced back onto general considerations of the broadest, and necessarily somewhat subjective, kind. The only context I have is the "going rate" provided by previous licence of right decisions. In general terms, the royalty rate of 5% offered by Lalizas is comparable with the rates arrived at in several design copyright cases (and many patent ones) in the mechanical field. Reluctant though I am to follow the "going-rate" path, in a case such as this where I have no financial evidence I feel first that I have no choice, and secondly that I should be cautious about elevating the royalty rate above it. I therefore believe it would be appropriate for me to settle on a rate of 5% of the net sales value for hooks sold individually. As regards complete lifelines incorporating such hooks, I have not been told what proportion of the lifeline sale price is accounted for by the hook, but I accept that a lower royalty is appropriate for the lifelines. Lalizas's proposed figure of 3% seems not unreasonable and I adopt it.

Other royalty matters

22. Norseman Gibb had also sought an advance single payment of £2,000. Regardless of the merits or otherwise of their proposal when it was originally made, it has now been overtaken by the fact that the licence period has already expired, on 31 July 1999. On the other hand, the scheduling of royalty payments is now an important issue in itself.

23. As I mentioned earlier, Lalizas had suggested, before the end of licensing period, a slightly altered timetable for paying royalties, namely an initial payment followed by monthly settlements. As the end of the licence period has now already passed, it does not seem sensible to provide for monthly payments. Equally, I do not think it would be fair to Lalizas to have to pay all the outstanding royalties in one lump. For simplicity I will therefore divide the accrued royalty into two payments: the first to cover the period from 9 February 1998 to 30 September 1998 (inclusive), to be paid within 30 day of the date of this decision; the second to cover the period from 1 October 1998 to 31 July 1999 (inclusive), to be paid within 60 days of the date of this decision.

24. Lalizas have also, as I have mentioned, suggested alternative wording for the royalties clause of the licence. Although the intended effect appears much the same as the wording suggested by the Office, Lalizas's wording is somewhat less precise in some respects, for example geographical scope, and I will therefore retain most of the wording supplied by the Office. The Lalizas suggestion additionally refers to "nett sales value after any settlement discounts which may apply": the definition of "net sales value" which is already included in the licence at clause 1.4 already provides for trade discounts, but I have added the words "or settlement" there to accommodate Lalizas's point.

Other licence terms

25. Norseman Gibb has made a proposal in relation to audit costs. Clauses whereby the licensee is to reimburse the licensor for reasonable audit expenses if the inspection reveals an understatement or underpayment of royalties are indeed common in such licences, and I think the Norseman Gibb proposal is reasonable, subject to the addition that the licensee's auditor should be involved in the determination as well as the licensor's. I will therefore add wording to the

effect that all the licensor's auditing expenses shall be paid by the licensee if the actual payments made to the licensor are more than 10% less than the correct figure as certified by both the licensor's and the licensee's auditors.

26. I have made further changes to the licence that are required (a) to specify the design document and (b) to distinguish the royalty rates applicable to hooks and to complete lifelines. I have also made a few small amendments to simplify the terminology a little and improve consistency. It is also at this point perhaps worth my making clear, in case it is not already, why the licence commences on 9 February 1998 and ends on 31 July 1999. By virtue of section 247 and paragraph 19 of schedule 1 to the CDP Act, the licence has effect from the date on which the application to the comptroller was made, which in the present case was 9 February 1998; and the transitional period during which paragraph 19 has effect expires, as I have already explained, on 31 July 1999.

Conclusions

27. Having carefully considered all the statements, evidence and submissions put in by both parties, and taking account of my findings above, I order that in respect of the period 9 February 1998 to 31 July 1999 Norseman Gibb grant Lalizas a licence of right in the terms appended to, but forming part of, this decision.

28. Neither party has sought an award of costs. It is customary in licence of right proceedings settled by the comptroller to make no award of costs unless there are very special circumstances. That is not the case here and I therefore make no order for costs.

29. Under section 249 of the CDP Act any appeal from this decision lies to the Appeal Tribunal constituted under section 28 of the Registered Designs Act 1949. Since this decision is not on a matter of procedure, any appeal shall be filed within six weeks of the date of this decision.

Dated this 12th day of June 2000

S N DENNEHEY

Divisional Director, acting for the comptroller

THE PATENT OFFICE

LICENCE OF RIGHT

THIS LICENCE is made between

- (1) **NORSEMAN GIBB LIMITED**, whose registered office is at Ollerton Road, Ordsall, Retford, Nottinghamshire DN22 7TG ("the Licensor"); and
- (2) **LALIZAS MARINE UK LIMITED**, whose registered office is at 27 Britannia Road, Poole, Dorset BH14 8AZ ("the Licensee")

WHEREAS:

- (A) The Licensor asserts that copyright subsists in the relevant Drawing (as defined below) and that it is the owner of that copyright in the United Kingdom;
- (B) The Licensor's copyright is subject to Licences as of Right under paragraph 19, Schedule 1 to the Copyright, Designs and Patents Act 1988;
- (C) The Licensee seeks a Licence and has applied to the Comptroller-General of Patents, Designs and Trade Marks under Section 247 of the Copyright, Designs and Patents Act 1988 to settle its terms;

the Comptroller orders that a Licence be granted on the following terms.

1. Definitions

In this licence:

- 1.1 "relevant Drawing" means the drawing attached as exhibit MS1 to the Statutory Declaration of Mark Swales dated 12 February 1999 in the proceedings for settlement of these licence terms, being a design document which records a design of safety hook and

which was made prior to 1 August 1989.

- 1.2 "Relevant Articles" means safety hooks made to the design recorded in the relevant Drawing, and lifelines incorporating such hooks.
- 1.3 "The Act" means the Copyright, Designs and Patents Act 1988 including any amendment to it or re-enactment of it.
- 1.4 "Net Sales Value" means the price invoiced by the Licensee to its purchaser, lessee, distributor or agent as the case may be after the deduction of trade or settlement discounts and (where applicable and shown on the invoice) Purchase, Sales or Value Added Taxes and the costs of delivery.
- 1.5 "Commencement Date" means 9 February 1998, being the date on which the Licensee applied to the Comptroller-General to settle the terms of this licence.

2. Licence

- 2.1 The Licensor hereby licences the Licensee to do all such acts as would otherwise constitute an infringement of the copyright pursuant to the Act in the relevant Drawing.
- 2.2 The Licensee shall have the right to grant sub-licences under the foregoing licence to third party sub-contractors provided that all such Relevant Articles as are manufactured or dealt in or by such sub-licensee are recorded in the records which the Licensee shall cause to be kept pursuant to Clause 4.1 below.
- 2.3 This Licence shall have effect for the term from the Commencement Date and shall continue until 31 July 1999.
- 2.4 Nothing in this Licence shall be construed as a licence to the Licensee under any other rights of the Licensor.

3. Royalty

- 3.1 The Licensee shall pay to the Licensor royalties (I) at the rate of 5% of the Net Sales Value for each safety hook under Clause 1.2 sold or otherwise supplied in the United Kingdom of Great Britain and Northern Ireland for money or money's worth by the Licensee during the term of this Licence, and (ii) at the rate of 3% of the Net Sales Value for each lifeline under Clause 1.2 sold or otherwise supplied in the United Kingdom of Great Britain and Northern Ireland for money or money's worth by the Licensee during the term of this Licence
- 3.2 Payments due under Clause 3.1 above shall be made (I) within thirty (30) days of the date of the decision settling this licence in respect of royalties accruing in the period from the Commencement Date up to 30 September 1998, and (ii) within sixty (60) days of the date of the decision settling this licence in respect of royalties accruing in the period 1 October 1998 to 31 July 1999.
- 3.3 Each such payment shall be accompanied by a statement setting out the amount of royalties due.

4. Accounts

- 4.1 The Licensee shall cause to be kept full and accurate records pertaining to its operation under this Licence from which the accuracy of the statements in Clause 3.3 may be verified.
- 4.2 The Licensee shall permit the Licensor and his duly authorised agents to inspect and audit such records at all reasonable times at the Licensor's expense, except that the Licensor's auditing expenses shall be paid by the Licensee if the actual payments made to the Licensor are more than 10% less than the correct figure as certified by both the Licensor's and the Licensee's auditors.

5. Termination

5.1 The Licensor shall have the right to terminate this Licence with immediate effect by written notice to the Licensee if:

- (a) the Licensee is in breach of any term of this Licence and fails to remedy that breach within one month of a notice from the Licensor calling upon the Licensee to remedy the breach; or
- (b) the Licensee shall enter into liquidation (other than for the purposes of reconstruction or amalgamation).

6. Service

6.1 Service may be by registered first class post from within the United Kingdom in which case it shall be deemed for the purposes of this Licence to have been received on the third working day after posting or by acknowledged facsimile transmission in which case it shall be deemed to have been received on the date of the acknowledgement.

6.2 Service upon the Licensee shall be to the Licensee's address at

27 Britannia Road, Parkstone, POOLE, Dorset BH14 8AZ

or to such other address in the United Kingdom as the Licensee shall give by notice in writing to the Licensor.

6.3 Service upon the Licensor shall be to the Licensor's address at:

Ollerton Road, Ordsall, RETFORD, Nottinghamshire DN22 7TG

or to such other address in the United Kingdom as the Licensor shall give by notice in

writing to the Licensee.

7. Governing law

This Licence is governed by and shall be construed in accordance with English law and the parties hereby submit to the jurisdiction of the English courts.

Executed this day of 2000

on behalf of Norseman Gibb Ltd

Signed _____

Name _____

Executed this day of 2000

on behalf of Lalizas Marine UK Ltd

Signed _____

Name _____