

ATLANTIC DIESEL SERVICES LIMITED

TERMS AND CONDITIONS OF SALE

1. APPLICATION

(a) These terms and conditions apply to all sales of goods and supplies of services by Atlantic Diesel Services Limited and by all subsidiaries (herein referred to as "the Seller").

(b) Any contract made with the Seller for the sale of goods in the supply of services by the Seller ("Contract") is subject to these terms and conditions and any conflicting terms of business of the Purchaser shall have no effect unless agreed by the Seller in writing. Acceptance of an order placed by the Purchaser for goods or services will constitute acceptance by the Purchaser of these Terms and Conditions.

2. PRICE

(a) Prices supplied in any quotation or in the Seller's catalogue of prices and parts list are subject to variation and the contract price payable by the Purchaser for the goods or services will be determined by reference to the price stated on the invoice.

(b) Value Added Tax will be chargeable to the Purchaser in addition to the price for goods and services supplied.

3. PAYMENT

(a) Orders for United Kingdom purchasers without an account are acceptable if cash is sent with order or payment is made by cash on delivery. Credit Accounts may be opened by the Purchaser on providing the Seller with two trade references and a Bankers reference satisfactory to the Seller and accepting these terms and conditions. For all credit accounts the price is payable on delivery and payment is required within 30 days of the date of invoice. Where an account has been agreed, the Seller may in the absolute discretion alter the Purchaser's credit limit and may withdraw the Purchaser's credit terms at any time. The Seller reserves the right not to deliver the goods or services arranged if the price increases the amount owed by the Purchaser beyond the Purchaser's credit limit.

(b) The method of payment for overseas customers will be agreed prior to confirmation of the order.

(c) The Purchaser shall not make any deductions from the invoice price of goods or services on account of any set off or claim unless both the validity and the amount thereof have been confirmed by the Seller in writing.

(d) The Seller reserves the right to charge monthly interest on overdue accounts for each month or part month when payment is overdue. An amount becomes overdue 31 days after the invoice for goods or services is issued. The rate of monthly interest shall be 4% per annum above the current base rate of Lloyds TSB Bank Plc. Such interest on all outstanding accounts is to be compounded from month to month until payment of the amount outstanding is required.

4. DELIVERY DATE

(a) Stated dates or times for delivery are approximate only.

(b) The Seller will not be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in delivery, not unless such delay exceeded (180) days will any delay entitle the Purchaser to terminate or rescind the Contract.

(c) Failure by the Seller to deliver any instalment under the Contract shall not entitle the Purchaser to cancel or suspend the Contract or any other instalments.

5. RISK AND TITLE

(a) Risk shall pass to the Purchaser so that the Purchaser is responsible for all loss, damage or deterioration to the goods at the time when the goods or a consignment of other parts thereof are placed at the disposal of the Purchaser at the premises of the Seller whether or not the Seller arranges transport.

(b) Property (both legal and equitable) in the goods supplied by the Seller shall not pass to the Purchaser until the prices of the goods and payment to the Seller of any other monies which are owing to the Seller from the Purchaser at the date of the Contract or may thereafter become due or owing from the Purchaser has been paid in full.

(c) Until property in the goods has passed to the Purchaser or until delivery as permitted below, the Purchaser will hold in a fiduciary capacity and will not obliterate any identifying mark on the goods or their packaging and will keep the goods separate from any other items.

(d) Prior to the property in the goods passing to the Purchaser the Seller permits the Purchaser to deliver the goods to a third party pursuant to a bona fide and arms length agreement to resell the goods and allow the Purchaser to convert or incorporate the goods into or mix the goods with other items but such liberty will cease upon the termination of the contract.

(e) Where the Seller is unable to determine whether any goods are the goods supplied by the Seller, the Purchaser shall be deemed to have sold all goods of the kind sold by the Seller to the Purchaser in the order in which they were invoiced to the Purchaser.

(f) The Seller or its agent may at any time after payment of the goods has become overdue, take possession of the goods (including stopping the goods in transit) and remove them and the Purchaser shall be deemed to have granted irrevocable authority to the Seller to enter upon the Purchaser's premises or other premises where the goods may be to take possession of the goods and, if necessary, to dismantle the goods from anything to which are they attached.

(g) If the Seller resells the goods so recovered then the Seller shall not be under any obligation to resell or if it does not resell, to sell at the particular price. Any surplus proceeds of sale after deduction of the Seller's expenses (including legal expenses) in connection with the recovery and sale and of all sums due or owing from the Purchaser to the Seller shall be for the account of the Purchaser.

(h) The Seller will have the right to maintain an action against the Purchaser for the price of the goods notwithstanding that property in the goods has not passed.

(i) Nothing in the contract will constitute the Purchaser the agent of the Seller in respect of any resale of the goods by the Purchaser so as to confer upon a third party rights against the Seller.

6. CARRIAGE

(a) Risk otherwise specified, goods shall be delivered ex works with the Purchaser being responsible for the cost of packaging, insurance and freight.

(b) Export packing for overseas orders will be charged to the Purchaser. Cases are not returnable.

7. DAMAGE, SHORTAGE OR LOSS IN TRANSIT

In respect of goods other than goods sold for export from the United Kingdom, no claim for any damage, shortage or loss in transit will be entertained by the Seller unless the Purchaser has given written notice to the Seller and any carrier employed by the Seller and (if applicable) the carrier's conditions of carriage and claims notification procedure have been complied with by the Purchaser, such written notice to be given to the Seller and any such carrier within 48 hours from the date of receipt of the consignment in question.

8. LIABILITY

(a) The Seller will, free of charge during the guarantee period or at its option, replace or credit the invoice value of any goods which are proved in the reasonable estimation of the Seller to be defective in material or workmanship. In respect of any services which are proved to the reasonable satisfaction of the Seller to be defective in workmanship, the Seller will, during the guarantee period remedy or at its option credit the invoice value of the defective services. For these purposes the guarantee period is twelve months from the date of despatch of goods or completion of the services, as appropriate or such other guarantee period as the Seller may from time to time offer in writing on particular items. These obligations will not apply when:

(i) The goods (or Purchaser's items in connection with which services have been carried out) have been altered or subjected to misuse or unauthorised repair or modification or improperly installed or connected (unless carried out by the Seller); or

(ii) The Purchaser has failed to notify the Seller of any defect or suspected defect within 14 days of the same coming in the knowledge of the Purchaser; or

(iii) The Purchaser is in breach of this or any other contract made with the Seller.

Any goods replaced will belong to the Seller. Any repaired or replaced goods or services replaced or remedied will be guaranteed on these terms for the unexpired portion of the guaranteed period.

(b) Where the Seller has custody of items of the Purchaser for the purpose of carrying out services, the Seller shall reimburse the Purchaser the reasonable cost of repairing or at the Seller's option, replacing any such item which is damaged or lost whilst in the Seller's custody due to the Seller's negligence. Any claim must be made in writing to the Seller within 7 days of the item being returned by the Seller to the Purchaser (in the case of a damage claim) of within 7 days of receiving notice of the item (in the case of a loss claim). All costs must be agreed beforehand by the Seller.

(c) Nothing in these conditions shall affect the statutory rights of the consumer.

(d) Save as provided elsewhere in this clause 8, the Seller hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Purchaser except that such exclusion will not apply to:

(i) Any implied condition that the Seller has or will have the right to sell the goods when the property is to pass; or

(ii) When the Purchaser deals as a consumer (as defined in Section 12 of the Unfair Contract Terms Act 1977) any implied term relating to the conformity of the goods with their description or sample or as their quality or fitness for a particular purpose.

(e) Save as provided elsewhere in this clause, the Seller will be under no liability for any personal injury, death, loss or damage of any kind whatsoever whether consequential or otherwise whether in contract (other than death or personal injury resulting from the Seller's negligence) or tort or whether arising out of the manufacture or supply of the goods and/or services or in connection with any statement given or made (or advice not given or made) other than fraudulent misrepresentation by or on behalf of the Seller.

9. TERMINATION

(a) The Seller shall be entitled without prejudice to its other rights and remedies, either to terminate wholly or in part the Contract, or any or any other contract with the Purchaser, or to suspend any further deliveries under the Contract, or any other or every other such contract in any of the following events:

(i) If any debt due and payable by the Purchaser is unpaid.

(ii) If the Purchaser has failed to take delivery of any goods or services under the Contract or any other contract as aforesaid otherwise than in accordance with the Purchaser's contracted rights.

(iii) If the Purchaser has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the benefit of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has ordered into liquidation except a relevant voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver, manager, administrator or administrative receiver appointed at its undertaking or part thereof or a resolution has been passed or a resolution has been passed or a petition presented to any Court for the winding up of the Purchaser or for the granting of an administration order in respect of the Purchaser or any proceedings have been commenced in relation to the insolvency or possible insolvency of the Purchaser.

(b) On termination under the foregoing provisions, the price of all goods sent and delivered by the Seller to the Purchaser or to a carrier for delivery to the Purchaser and all other sums payable by the Purchaser to the Seller on any account whatsoever shall immediately become due and payable notwithstanding any credit payment otherwise agreed.

10. FORCE MAJEURE

The Seller shall not be under any liability to the Purchaser in respect of any failure to perform or delay in performing any of its contractual obligations to the Purchaser attributable to any reasonable cause of whatsoever nature beyond the Seller's reasonable control and no such failure or delay shall be deemed for any purpose of these conditions to constitute a breach of contract.

11. PRODUCT TESTING

Product testing and certification shall be as detailed in the Seller's acknowledgement of order or quotation if the Purchaser requires further or independent tests to be carried out these shall be chargeable to the Purchaser unless otherwise agreed in writing by the Seller.

12. LIEN

The Seller will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Purchaser a general lien on all property of the Purchaser in the possession of the Seller for whatever purposes and whether worked upon or not and be entitled on the inspiration of not less than 14 days notice in writing to the Purchaser to dispose of such property and to apply the proceeds thereof in satisfaction of such debts.

13. STORAGE

If the Purchaser fails to take delivery of the goods and/or redelivery of the Purchaser's goods when they are made available for delivery, the Seller may at its option, either store them itself or have them stored by third parties on such terms as the Seller may in its absolute discretion think fit. In any event the cost of storage will be borne by the Purchaser and insofar as the storage is done by the Seller then such cost will be the Seller's storage charges current at the time of storage. The cost together with any additional insurance in double handling charges will be added to and form part of the price for the goods and/or the work.

14. SPECIFICATION OR DESIGN

Where the goods are manufactured and/or the works are performed in acceptance with information or drawing supplied by the Purchaser in its design or specification and when standard goods and/or services of the Seller are altered in accordance with the Purchaser's instructions.

(a) No guidance or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the goods and/or the work (this being without prejudice to any other of the Contract Terms).

(b) The Purchaser will indemnify and keep the Seller indemnified against all liability incurred by the Seller as a result of:

(i) such goods and/or works including any intellectual property right without prejudice to the generality of the foregoing, patents, registered designs and copyright or that provision of any statute, statutory instrument or registration.

(ii) any impracticability, inefficiency or lack of safety or other defect in the goods and/or works where such defect is due (whether in whole or in part) in torts or omissions in such information, drawing, design, specification or instructions.

(iii) unless the Seller agrees otherwise in writing, including design, drawings and any ideas, invention or improvement made by or on behalf of the Seller pursuant to the Purchaser's commission or intellectual property rights therein (including any design right in a design created by the Seller in pursuance of the commission shall vest in the Seller.

(c) No variation in that specification or design of any goods and/or works which in the reasonable opinion of the Seller does not affect the suitability of the goods and/or works for the purpose for which they are supplied by the Seller will constitute a breach of contract or impose upon the Seller any liability whatsoever.

(d) The Seller will be under no liability whatsoever to the Purchaser in respect of any loss, damage or claims incurred by or made against the Purchaser should any goods and/or works infringe any intellectual property right including without prejudice to the generality of the foregoing, patents, registered designs, design right and copyright or the provision of any statutory instrument or regulation.

(e) Unless otherwise agreed in writing, all patterns drawings, tools or other similar items produced or other property (whether intellectual property or not) owned or created by the Seller will remain the property of the Seller and must not be used or copied by the Purchaser.

(f) Where it is agreed that ownership in any data, patterns, drawing, tools or other similar items is passed to the Purchaser, property shall only pass when such items have been paid for by the Purchaser in full.

15. RIGHT OF RESALE

If the Purchaser defaults in accepting delivery of or paying for the goods, the Seller reserves the right to re-sell the goods or any of them to a third party without giving notice to the Purchaser of the Seller's intention to re-sell.

16. CANCELLATION

The Purchaser shall have no right under any circumstances to cancel the Contract or any instalment or costs payable hereunder without prior written consent of the Seller. If the Seller shall give such consent (and it shall be under no liability so to do) the Seller may make it a condition of such consent that the Purchaser shall pay with compensation as the Seller may reasonably require but nothing in this clause shall be construed as implying that the Seller conducts business on a sale or return basis.

17. CATALOGUES

The description or guides in any Seller's catalogue or list of parts is given by way of identification only and the use of such description shall not mean that a sale under the contract is a sale by description.

No drawings, descriptions or specifications issued by the Seller or other manufacturer nor any descriptions and illustrations contained in catalogues or other promotional material will form part of the contract nor be required as a warranty or representation relating to the goods and/or the services.

18. PROPER LAW

Every contract to which these conditions apply shall be consistent and take effect in accordance with the Laws of England and the parties shall accept the exclusive jurisdiction of the English Courts.

19. SET OFF

If the Purchaser shall become bankrupt or insolvent or compound with creditors, or in the event of a resolution being passed or proceedings being commenced for the liquidation of the Purchaser or if an administrator, receiver or manager is appointed of all or any part of its assets or undertakings, the Seller shall be entitled to cancel the Contract in writing or in part and also that the Seller shall reserve the right to offset any monetary award to the Purchaser against any outstanding debt existing from the Purchaser to the Seller.

20. GROUP ACCOUNTS

If the Purchaser shall be overdrawn or overdue from the agreed terms of payment on any of its accounts with the Seller then:

(a) The Seller may in its absolute discretion enforce all or any of the following rights:

(i) Charge interest on the overdue sum

(ii) Charge interest on sums outstanding under an account hitherto described as "interest free"

(b) All monies and liabilities under all the Purchaser's accounts with the Seller shall immediately become due and owing and the Seller shall be permitted to immediately close all accounts or any account of the Purchaser with the Seller.

(c) The Seller may appropriate any payment made by the Purchaser and apply it in total or partial satisfaction of any debt then due from the Purchaser to the Seller.

(d) Where the amount paid by the Purchaser is less than the amount due to the Seller under the contract in which it is appropriated, the Seller may appropriate the payment to any individual goods or items supplied under the contract.

21. EXPORT TERMS

(a) The Purchaser shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

(b) The Purchaser undertakes not to offer the goods for resale in any other country notified by the Seller to the Purchaser at or before the time the Purchaser's order is placed, or to sell the goods to any person if the Purchaser knows or has reason to believe that person intends to resell the goods in any such country, unless it is with the Seller's written consent.

22. GENERAL

(a) No waiver by the Seller of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

(b) If any of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.