

Dorman Diesels

Terms and conditions for the provision of services

1. Definitions

“DD” means Lincoln Diesels Ltd trading as Dorman Diesels and (where appropriate) its officers, employees and agents.

“the Customer” means the party who has placed the Order with DD

“the Order” means the Customer’s instructions to DD to supply the Goods

“the Goods” means the goods, services or articles which are the subject of the Order

“the confirmation of Order” means the written confirmation by DD of the Order

“the price” means the price for the goods (exclusive of Value Added Tax) specified in the confirmation of Order

“the Contract” means the contract for the sale of goods made between DD and the Customer incorporating the Goods Conditions.

2. Acceptance of Order

2.1 An order will only be valid after it has been accepted and confirmed in writing by DD.

2.2 The order is accepted by DD exclusively upon the terms and conditions set out herein unless otherwise expressly agreed by DD in a written memorandum which shall refer to the Contract and be annexed to the Confirmation of Order. No other conditions, terms, provisions or other representations whatever whether referred to in negotiations or set out in the Customer’s Order shall be incorporated into the Contract unless set out in writing in a memorandum which must be annexed to the Confirmation of Order.

3. Travelling Expenses

The Customer shall reimburse DD in respect of all travelling and transport costs (including but not limited to the cost of insurance and costs of carriage of personal luggage and tools) incurred by DD its employees or agents in connection with the provision of the Services.

4. Prices

(a) The price(s) payable for the Services shall be calculated in accordance with DD's current man/hour rates unless a fixed rate or sum has been agreed.

(b) If by reason of any law, governmental order or regulation the price and/or terms of payment hereunder or any increase change or variation thereto or the right of DD to require or receive any such payment shall be altered, prohibited or hindered in any way DD may forthwith thereupon terminate the Contract by notice to the Customer.

(c) All prices are exclusive of VAT which shall be added at the rate of force at the appropriate time. The Customer shall be liable to pay (or if paid by DD shall reimburse DD in respect of) all taxes, duties and fees payable in connection with the supply of the Services hereunder.

5. Payment

(a) The price, including, where applicable, travelling and carriage charges and any disbursements by DD personnel shall be paid on the due date which (in the absence of any agreement to the contrary) is 14 days from the date of DD's invoice.

(b) The mode of payment of the invoice, and a note of any advance payment received or required by DD may be stated on the Confirmation of Order and unless so stated the invoice shall be paid in full by the Customer no later than thirty (30) days from the date of DD's invoice. The currency of payment shall be the currency of the Contract or (at the election of the Customer) some other currency, provided that it is freely convertible into the currency of the Contract and is to be converted at the rate prevailing of the London Foreign Exchange Market at the time when such payment is received by DD, and it includes in full any bank or exchange charges levied against DD as a result of such conversion.

(c) Where any advance payment is required by DD the Contract shall be conditional upon its receipt by DD.

(d) The Customer shall in no circumstances be entitled to make any deduction from the price payable by way of set-off or otherwise in respect of any claim or counterclaim which it may have against DD.

(e) If the Customer shall default in payment of the price on the due date without prejudice to any other of DD's rights interest shall accrue thereafter from day to day (as well before as after judgement) on any sums outstanding until payment is made at an annual rate of 4% above the HSBC Bank PLC base lending rate for the time being in force.

(f) If the Customer shall at any time default in payment of the price on the due date or if the Customer's credit standing is at any time in the opinion of DD impaired for any other reason DD shall in addition and without prejudice to any other of its rights, have the right:-

(i) to demand forthwith payment for all services provided to the Customer whether or not any such payment is due; and/or

(ii) to supply services on a cash-in-advance basis or require the Customer to provide security for future payments satisfactory of DD.

(g) Where full payment has not been received by DD on the due date DD shall (without prejudice to its rights under the Contract or otherwise) be entitled to charge interest on the amount outstanding at a rate per annum equal to 4 percent above HSBC Bank PLC's Base Lending Rate for the time being in force.

6. Hours of Work

(a) DD's engineers shall attempt (so far as possible) to comply with any normal hours of work established by the Customer, and will do their best within the constraints of the job to co-ordinate their work with the other work which needs to be undertaken. For health and safety reasons DD engineers shall not be asked to work for more than 14 hours in any one day including driving time and recommended rest breaks except in exceptional circumstances with an absolute maximum of 16 hours in any one day. The Customer must also allow adequate uninterrupted rest time between work periods, which will include 8 hours sleeping time per day, which may be reduced with the agreement of the engineer to no less than six hours. In all cases, the engineer shall have the right to stop work if he feels that he can no longer work safely or accurately.

(b) The Customer shall certify on DD's standard form the hours actually worked by DD's personnel as well as the work carried out by them.

(c) Reasonable travelling time (as well as the time spent performing the Services) will be charged to the Customer as if such time was expended performing the Services.

(d) Waiting time, time expended searching for accommodation and time expended reporting to any relevant authorities shall also be charged as working time, in so far as working time is lost thereby.

7. Safety Regulations

(a) DD's employees and agents are instructed to comply with any safety regulations in force.

(b) The Customer shall take all necessary measures for the protection of persons and property at the place where the Services are to be performed. The Customer shall fully inform DD in advance of all existing safety regulations and shall notify DD of any and all breaches of such regulations by its employees or agents. In the case of serious breaches, the Customer can (if DD agrees) refuse the relevant person(s) admittance to the place for performance of the Services.

(c) It is the right of DD's employees, subcontractors or agents to refuse to work in an area which they deem unsafe.

8. Technical Assistance

(a) The Customer shall provide technical assistance at its own cost and in particular (without limitation) shall:

(i) provide all necessary suitable assistants including (without limitation) carpenters, fitters, staging builders and such other skilled workers and assistances as maybe required for the provision of Services for the duration of the Services. Such assistants shall comply with all reasonable instructions of DD. Any loss or damage whatsoever caused either directly or indirectly by such assistants shall be the sole responsibility of the Customer and DD accepts no such liability whatsoever howsoever arising from any damage loss or injury caused by such assistants howsoever arising;

(ii) Undertake staging work including the procurement of the necessary construction materials;

(iii) provide, according to DD's specification, a suitable working platform or pontoon, as the case may be, for outboard work. A motorboat shall remain in constant readiness in the immediate vicinity of the place of work when this work is undertaken afloat;

(iv) provide all necessary heavy appliances and equipment and tools (for example lifting appliances), as well as the necessary requisite materials (for example wood or scaffolding for staging, sealing materials and lubricants);

(v) provide heating, lighting, power current and compressed air, including all necessary connections;

(vi) provide rooms needed for the safekeeping of tools. Such rooms shall be dry and capable of being locked;

(vii) transport to the place of work articles required for the Services that have been delivered in advance. The Customer shall protect such articles required for the Services against injurious influences of all kinds and clean the articles required for the work;

(viii) provide suitable safe and thief proof rest rooms (with heating, lighting, washing facilities and sanitary equipment).

(ix) provide such materials and take all other actions that are necessary for the adjustment of the object of supply and for the carrying out of a test as provided for in the contract.

(b) The technical assistance shall also be such as to ensure that the Services can be commenced immediately after DD's arrival. So far as special drawings or instructions are required from DD, DD shall use its reasonable endeavours to make these available to the Customer in good time.

(c) If the Customer fails to fulfil its obligations under this Condition, DD shall have the right to carry out such obligations at the Customer's cost.

9. Extent of Services

DD shall advise the Customer of the extent of the Services. It is agreed that DD shall be entitled to rely on the opinion of a classification society or of its authorised representative. The Customer shall, however, itself make the decision on the extent and practicality of the Services and to that extent assume the risk for such decision.

10. Time Limit for provisions of the Services

All statements on any time limit for provision of the Services are approximately only. DD shall be under no liability for any loss, injury, damage or expense whatsoever consequent upon any delay from whatever cause including (without limitation) DD's negligence. Delay shall not entitle the Customer to cancel the Contract.

11. Inspection and Rejection

The Customer shall inspect the work effected by the Services as soon as the Customer receives notice that the Services have been completed and that any test which may have been specified in the Contract has been carried out. Such inspection shall be deemed to constitute acceptance by the Customer unless the Customer notifies DD of any defect within seven days of the date of receipt by the Customer of notice that the Services have been completed.

12. Force Majeure

DD shall not be liable to the Buyer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of the Services by DD being directly or indirectly prevented, hindered or delayed by reason of any circumstances outside the control of DD and affecting the provision of all or any part of the Services by DD's normal means, or other circumstances whatsoever, including (without limitation) any act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, failure or shortage of power supplies, fire, flood, drought, explosion, difficulty in obtaining workmen, materials or transport, refusal of any license or permit or any other sanction or request of any Government or government authority. In the event of any such circumstances DD shall have the option (exercisable by notice to the Customer) to terminate the Contract (whereupon both DD and the Customer shall be relieved of all liability under the Contract) in all cases without incurring any liability for any loss or damage suffered by the Buyer as a result.

13. Termination

If the Customer shall fail to make any payment when it becomes due, or shall default in the due performance or observance of any other obligation under the Contract, or shall enter into any composition or arrangement with creditors, or shall pass a resolution or the Court shall make an order that the Customer shall be wound up (otherwise than for the purpose of amalgamation or reconstruction), or if a receiver shall be appointed over any of its assets or undertakings, or (being a natural person) if a receiving order is made against him or he shall be adjudged bankrupt or if the Customer shall take or suffer any similar action in consequence of debt, DD may cancel further provision of Services and by notice in writing to the Customer may forth with determine the Contract, without prejudice to its rights under the Contract and otherwise at law.

14. Warranty, Liability and Indemnity

(a) DD warrants that it will exercise reasonable skill and care in executing the Services. If the Services do not conform with the warranty DD shall take such steps as it deems necessary to rectify any defect. PROVIDED THAT DD's liability shall in no event exceed the lesser of £5,000 or the price(s) payable or paid by the Customer for the Services and performance of the above option (as limited by this provision) shall constitute an entire discharge of DD's liability under the Warranty.

(b) The forgoing warranty is conditional upon: -

(i) DD receiving from the Customer within seven (7) days of discovery full details of any defect or deficiency, but in any case within 3 months following completion of the service;

(ii) the Customer affording DD reasonable opportunity to make its own inspection;

(iii) the Customer complying with any instructions or recommendations of DD.

(c) If it is found in DD's sole judgement that the alleged defect is not covered by the terms of the foregoing warranty or if the warranty claim is made outside of the relevant warranty period the Customer shall pay all cost of repair at DD's then current rates and all transportation costs from DD's premises to the Customer's premises.

(d) Save as provided in Condition 14(a) DD shall have no liability to the Customer (except in respect of death or personal injury resulting from negligence) in respect of any deficiency in the Service or other breach of contract of whatsoever nature or other default or negligence on the part of DD its employees sub-contractors or agents and all conditions warranties or other terms, whether expressed or implied, statutory or otherwise, in relation to the Services, their standard and fitness for any purpose are hereby excluded. Without limiting the foregoing: -

(i) DD shall not be liable in respect of any loss or damage whatsoever arising from the claim of any person, firm or company against the Customer nor for any loss of profits, loss of business, economic loss or other consequential loss or damage suffered by the Customer

(ii) all recommendations and advice given by or on behalf of DD are given without liability on the part of DD

(iii) all drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like, contained in any literature or other material supplied by DD under or in connection with the Contract or otherwise communicated to the Customer are provided or made by DD in the belief that they are as accurate as reasonably possible but they shall not be taken as representation by DD nor are they warranted to be accurate

(e) The Customer shall indemnify DD in respect of any loss or damage whatsoever arising from the claim of any person against DD in relation to the Services.

15. Customer's Undertakings

The Customer accepts full liability for and shall at all times indemnify DD against all actions claims demands costs charges and expenses whatsoever arising out of any loss or damage to any person firm company or property by reason of DD having relied on any data, documents, drawings gauges, samples, models or the like supplied to DD by or at the instigation of the Customer in connection with the performance of the Contract.

16. Health and Safety at Work etc. Act 1974

The Customer hereby undertakes to take all steps sufficient to ensure that the working environment complies with the latest Health and safety Regulations and that the DD Engineer is properly training in the local health and safety procedures.

17. Cancellation by the Customer

In the event that the Customer cancels the Contract. DD shall be entitled to be paid for all expenses and engineer's time spend on the contract up until the time of cancellation as well as any expenses and time required in order to return to his normal place of work.

18. Confidentiality

18.1 Any drawings or technical documents intended for use in the manufacture or construction of the Goods and submitted to the Customer prior or subsequent to the formation of the Contract remain DD's exclusive property. Such drawings or technical documents may not without DD's consent be utilised by the Customer or copied, reproduced, transmitted or communicated to a third party. The said drawings and documents shall become property of the Customer only if it is expressly so agreed in writing by DD.

18.2 At the end of the Contract the Customer shall return to DD all such material as is referred to in the preceding sub-clause and undertake to destroy any copies thereof which may have been made by it.

19. Assignment

The Contract is personal to the Customer, which shall not assign or charge the benefit thereof in any manner whatsoever without DD's express written consent. For the avoidance of doubt all third-party rights which might otherwise have been created under the 1999 The Contracts (Right of Third Parties) Act are specifically excluded. The contract does not confer any rights or benefits to any third party whatsoever.

20. Law

The Contract shall in all respects be constructed and operate in accordance with English law, and the Customer hereby submits to the jurisdiction of the English courts, whose judgements may be enforced in other jurisdictions. The European Union Regulation 1215 / 2012 shall not apply to this contract. The Customer hereby undertakes not to invoke EU regulation 1215/2012 and further undertakes that any legal action or proceeding which they wish to initiate will be brought by the Customer exclusively in England under the Laws of England.

21. Variation

Any alterations amplifications modifications limitations or additions thereto must be agreed by the parties, made in writing, refer to the Contract, and be annexed to the Confirmation of Order. The granting by DD to the Customer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of DD's entitlement to enforce any of its rights under the Contract.

22. Notices

22.1 Notices shall be made in writing and posted in a first-class pre-paid envelope to the Customer's or Seller's address as shown respectively on the Order and Confirmation of Order or failing those to the address at which one party reasonably believes the other to be carrying on business.

22.2 A notice shall be deemed to have been given forty-eight hours after posting (or ninety-six hours after posting where the notice is sent from and/or addressed to an address outside the United Kingdom)

23. Construction

The clause headings hereto shall not affect the construction of these Conditions.