

# DIESEL MARINE INTERNATIONAL LIMITED – CONDITIONS OF SALE

## 1 DEFINITIONS

In these conditions

- (a) "the Company" means Diesel Marine International Limited trading under its own name or under any other name including DMI (UK) Limited save in condition 14 where "the Company" means Diesel Marine International Limited (trading as DMI (UK) Limited) and its officers, servants, agents, subsidiaries and subcontractors, on whose behalf the Company additionally contracts for the purpose of Condition 14.
- (b) "the Customer" means the company firm, person or persons placing any order, whether oral or in writing on the Company, including principals thereof, whether disclosed or not otherwise agrees to buy any Goods from the Company.
- (c) "Goods" shall mean all or any of the goods and/or services which from time to time the Company offers for sale or offers to perform and which form the subject matter of the Contract.
- (d) "the Special Conditions" shall mean the terms and conditions (in addition to the General Conditions) set out overleaf or otherwise agreed in writing signed by a Director of the Company.
- (e) "the General Conditions" shall mean these conditions of sale as from time to time amended by the Company and which shall apply to all contracts for the sale or supply by the Company of Goods.
- (f) "the Contract" shall mean the Contract on the terms of these General Conditions and (if any) the Special Conditions for the sale or supply by the Company to the Customer of any Goods. The Contract is constituted by the Company's acceptance, whether by the Company's form of acknowledgement or order or otherwise, of the Customer's order. No estimate or quotation given by the Company forms part of the Contract.

## 2 APPLICATION

- (a) The Contract, the General Conditions and the Special Conditions constitute the entire Agreement between the Company and the Customer and shall take precedence over any conditions contained or incorporated by reference in or on any letter, purchase order or other documents issued by the Customer (whatever their respective dates) unless it is specifically agreed in writing signed by a Director of the Company to the contrary.
- (b) No variation of the Contract or of the General Conditions or the Special Conditions shall be effective unless agreed in writing by a Director of the Company.
- (c) Any inconsistency between the General Conditions and the Special Conditions shall be resolved in favour of the Special Conditions.

## 3 ACCEPTANCE PERIOD

Unless previously withdrawn, the Company's quotations are open for acceptance within thirty days after the date thereof.

## 4 PRICE

- (a) In the event that work is suspended on the Customer's instructions or because of lack of instructions or any other circumstances which are within the Customer's control or should any material variation or discrepancy in data supplied by the Customer arise after the date of quoting, the Company reserves the right to amend the quoted prices or the price specified in the Contract to cover any related increase in costs. (b) Where separate instalments of Goods are made or performed under an instalment contract the price of each delivery or part performance is subject to alteration by the Company to conform with the Company's price ruling at the time of despatch or performance. Within one week of being notified of any such alteration the Customer may by notice in writing to the Company cancel any future instalments.
- (c) The Company reserves the right to correct all typographical or clerical errors which may be present in the prices or specification in the quotation or the Contract.
- (d) All charges are subject to the addition of Value Added Tax (or any replacement thereof) at the rate in force at the date of payment, whether or not invoiced at a different rate.

## 5 PAYMENT

- (a) Unless otherwise provided in the Special Conditions payment shall be made before the 20<sup>th</sup> of the month following the date of the Company's invoice. No discount shall be allowed from the price specified in the Contract and no special payment terms shall be permitted.
- (b) If full payment is not received by the due date as provided in sub-clause (a) above, without prejudice to any other right of the Company against the Customer:
- (i) the Company shall be entitled to stop all deliveries to the Customer and to rescind the Contract and/or any other contract with the Customer without prejudice to the Company's right to full compensation and to take back from the Customer the goods which by virtue of General Condition 6 are still the Company's property.
- (ii) the Company reserves the right to charge interest on the full invoice price from the due date for payment as provided in sub-clause (a) above up to the date of payment as well as after before judgement at the rate of 4% per annum above the Base Rate of Barclays Bank PLC for the time being in force.
- (iii) the Company shall be entitled to recover from the Customer all costs incurred by the Company in enforcing payment for the Goods or for any sum outstanding hereunder.
- (iv) the Company shall be entitled to set off any sum owing by the Customer to the Company under this or any other Contract with the Customer against any sum owing from the Company to the Customer including but not limited to sums owing under the Contract or any other contract with the Customer.

## 6 RESERVATION OF TITLE

- (a) The ownership of the Goods shall remain with the Company until payment in full for the Goods has been received by the Company in accordance with the terms of the Contract, or at the Company's option until payment has been made of all other sums owing to the Company by the Customer at the date of the Contract on any account whatsoever and howsoever arising.
- (b) While the ownership of the Goods remains with the Company the Customer shall store them upon its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company.
- (c) If any payments due hereunder are overdue in whole or in part the Company may (without prejudice to its other rights) recover or resell the Goods or any part of them and may enter upon the Customer's premises (or such other premises where the Goods are stored) by its servants or agents for that purpose.
- (d) The Customer shall not be at liberty to sell on the Goods before effecting payment therefor to the Company unless such on-sale is at a price not less than the price agreed between the Company and the Customer Without prejudice and subject to the rights of the Company in law and equity, if any of the Goods shall be sold by the Customer before payment for them has been made that part of the proceeds of sale which represents or is equivalent to the amount owed by the Customer to the Company shall be held by the Customer upon trust for the Company and shall be paid into a separate bank account designated for that purpose. The Company shall be entitled to trace the proceeds of any such sale(s) into the said bank account (or wherever such proceeds may in fact be located) and the Customer hereby authorises the Company to make enquiries of its bankers relating to such proceeds.
- (e) The Customer shall ensure that the Goods are not incorporated in or mixed with or used as part of other goods ("New Goods") before payment for the Goods has been made to the Company although if such incorporation or mixing shall take place the property in those Goods which remain identifiable and/or severable from such New Goods shall be and remain with the Company until payment has been made or the New Goods have been sold as aforesaid and all the Company's rights hereunder in the Goods shall so extend to the New Goods and to the proceeds of sale thereof, which shall be held by the customer in accordance with sub-clause (d) hereof.
- (f) The Customer or any director(s) thereof shall not apply to the court under section 9 (1) of the Insolvency Act 1986 for the appointment of an administrator without giving 14 days notice to the Company. From the date of the said notice the Customer shall not be entitled to remain in possession of any

of the Company's Goods and the Company may recover or resell the goods and enter upon the premises where the Goods are stored in accordance with sub-clause (c) above. The appointment of an administrator without the aforesaid notice shall be deemed to be a fundamental breach of contract.

(g) The Customer hereby assigns to the Company all rights the Customer has or may have against purchasers of the Goods from the Customer.

(h) If the Customer or its trustee in bankruptcy, supervisor, trustee under a deed or arrangement, receiver, administrative receiver or liquidator or any other person acting for the Customer fails on demand to return any Goods for which payment in full has not been made to the Company, he shall pay the Company as agreed and liquidated damages for wrongful interference, double the invoiced price of the Goods.

(i) Any failure by the Company to require a separate account under sub-clause (d) and/or (e) above shall not constitute a waiver or variation of its rights under this clause.

(j) Each of the foregoing sub-clauses shall so far as the context thereof permits be read and construed independently of the other sub-clause so that if one or more should be held to be invited for any reason whatsoever then the remaining sub-clause shall be valid to the extent that they are not held to be so invalid.

## 7 LIEN OVER THE CONTRACT PROPERTY

The contract property delivered to the Company will be received and held by the Company subject to a lien for monies due to them for the repair, reconditioning, refurbishment or any other work carried out by the Company and any other proper charges or expenses upon or in connection with the contract property. If the lien is not satisfied within one month from the date upon which the Company first gave notice of the exercise of their lien to the customer, the contract property may be sold and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation thereto, and the Company shall account to the customer for any surplus.

## 8 TIME FOR PERFORMANCE

(a) Whilst the Company shall use its best endeavours to despatch or deliver the Goods within any time stated by it, any time or date specified for despatch, delivery or completion of Goods is an estimate only and shall not form part of the Contract.

(b) Contracts for Goods shall be deemed to have been completed when the goods are delivered or put into storage at the Customer's request.

## 9 TERMINATION OF CONTRACT

- (a) If for any reason whatsoever completion of the Contract is in the Company's reasonable opinion rendered impracticable as a result of circumstances beyond the control of the Company, the Company shall be at liberty to terminate the Contract by written notice to that effect.
- (b) In addition to the rights conferred by General Condition 6, the company shall have the right to cancel all future performance by the Company of any future obligation of the Company under the Contract or any other contract between the Company and the Customer if:
- (i) the Customer shall make any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual of firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer, or
- (iii) the Customer shall cease, or threaten to cease, to carry on business or
- (iv) the Customer shall be the subject of an adverse credit status report by the Company's Bank or a reputable credit status organisation or
- (v) the Customer shall commit any default hereunder.
- (c) Upon termination of the Contract under this condition, the Customer will forthwith at its own expense take delivery at the Company's premises (or such other place as the Company shall reasonably specify) of the goods or any part thereof as shall be ready for delivery and will pay the Company a sum which together with any other sums paid previously bears the same proportion to the contract (including any variation thereof) price as the work done bears to the Goods contracted for and will, in addition, compensate the Company for all costs it has incurred in or in connection with the performance of the Contract.

## 10 RISK

- (a) Unless the Special Conditions specify otherwise risk in the Goods shall pass to the Customer at the moment when the first of the following events shall happen
- (i) the Goods are pointed out at the Company's premises to the Customer or the person (not being an employee of the Company) who is to load and/or deliver them to the customer,
- (ii) the Goods leave the Company's premises in the charge of an employee of the Company who is to deliver them to the Customer pursuant to the Special Conditions,
- (iii) the Company notifies the Customer that the Goods are ready for delivery at the Company's premises and the Customer does not take delivery within 30 days after the date of the Notice.
- (b) Where the Goods remain in the possession of the Company after risk has passed to the Customer the Company shall not be liable for the loss of, damage to or destruction of the Goods howsoever caused. The Customer shall in all circumstances remain liable to pay the full price of the Goods and to indemnify the Company against all loss or damage suffered by the Company as a result of the Customer's failure or refusal to take delivery.

## 11 PHYSICAL DELIVERY

- (a) Unless otherwise agreed in the Special Conditions Goods shall be delivered ex-works and the Customer shall be responsible for:
- (i) inspecting the Goods at the Company's premises,
- (ii) arranging and paying for packing, transport and insurance of the Goods from the Company's premises,
- (iii) loading the Goods on to such transport.
- (b) Where the Special Conditions require the Company to transport or to arrange and pay for transport of Goods from the Company's premises or to load the Goods shall be so loaded and/or transported entirely at the Customer's risk and
- (i) all claims for damage to or partial loss of Goods in transit must be submitted in writing to the carrier and the Company within three days of delivery,
- (ii) all claims for non-delivery of the whole of any consignment or of any separate package forming part of a consignment must be submitted in writing to the carrier and the Company within seven days of the due date for delivery thereof.
- (c) In the absence of notification of claims within the periods mentioned in paragraph (b) above the Company shall be under no liability to the Customer in respect of any loss, non-delivery or other claim.
- (d) The delivery by the Company of plus/minus 5% by quantity of Goods ordered shall be due and proper compliance by the Company of its obligations hereunder.

## 12 SPECIFICATION AND INFORMATION

(a) Where the Contract provides that the Company is to supply manufacture of perform Goods to the Customer's specification the Customer shall be under an obligation to provide the Company with sufficiently accurate information, drawings and the like to enable the Company to perform the Contract and shall indemnify the Company against any liability arising out of any alleged infringement of any patent, registered design or similar intellectual property right. The Company shall not be liable for any defect in the goods which arises out of any failure or defect in the design or specification of the goods.

(b) The Company shall not be under any liability in respect of descriptions of specifications or other matters in relation to Goods contained in any material such as price-lists, catalogues, trade publications and advertising matter, other than the Contract itself.

(c) The Company's policy is one of continuous improvement. It therefore shall be entitled without notice (save where the Company is working to the Customer's specification as provided in (a) above in which case it shall consult with the Customer) to make changes in dimensions, materials and design which it thinks reasonable or desirable without affecting the validity of the Contract. The Customer shall have no cause of action in respect of any such change.

## 13 INSPECTION

Where third party/customer inspection forms part of any Order/ Contract a period of 14 days will be allowed from notice of readiness. After such period the Company reserves the right to charge for storage at a rate of 0.5% per week of the total Contract price provided that this sum shall not exceed 5% of the Contract price.

## 14 GENERAL LIABILITY

(a) It is entirely the Customer's responsibility to ensure that the kind and/or class of Goods ordered by it are suitable for its purpose. The Customer shall not place any reliance on the Company's skill or judgement or that of its employees or agents in respect of Goods. The Company shall not be under any liability for any loss or damage however arising from or attributable to any advice, statement or representation given by the Company, its employees or agents to the Customer in respect of Goods whether regarding performance, capability or suitability for any purpose. Such liability is hereby expressly excluded to the extent permitted by law.

(b) In the event that the Goods appear to the Customer to be defective or not reasonably fit for their purpose the Customer shall give notice in writing of the alleged defect or unfitness to the Company within fourteen days of the date when it first became apparent, or ought reasonably on inspection to have become apparent.

(c) Provided notice in writing has been given in accordance with sub-clause (b) above where the Goods are demonstrated to the Company's reasonable satisfaction to have been materially defective (fair wear and tear excepted) or (subject to (a) above) not reasonably for their purpose or unmerchantable, the Company's liability to the Customer shall be limited (subject always to sub-clause (g) below) to the repair or re-execution (as the case may be) of the Goods or to replacing the Goods free of charge provided that it is reasonably practicable to repair.

re-execute or replace (as the case may be) the same. If in the opinion of the Company it is not so practicable in the circumstances the Company shall give credit to the Customer for the amount otherwise payable by the Customer for such goods (being the amount originally agreed between the parties as the price therefor and/or subsequently invoiced by the Company to the Customer. The Company shall not be liable to make any payment to the Customer for any repair, re-execution or replacement carried out or made by any third party.

(d) Save as herein otherwise provided and except to the extent that the Company is prevented by statute from doing so the Company gives no conditions or warranties whether express or implied of whatsoever kind howsoever in connection with the Goods and in particular as to the quality, suitability or fitness of the Goods for any purpose.

(e) In no circumstances will the Company be responsible for loss of profits, incidental expenses or any consequential loss whether direct or indirect and howsoever arising attributable to defects in any Goods or delay in delivery or performance thereof, and the Company's liability for injury, loss or damage arising howsoever in connection with the Goods whether in contract or in tort is hereby excluded to the extent permitted by law.

(f) The Company does not warrant that the Goods do not infringe patents owned by third parties and shall not be responsible for any loss or damages suffered or incurred by any person by reason of such infringement.

(g) The liability of the Company (if any) whether in contract tort or otherwise in relation to a supply of Goods and/or any representation or advice in relation thereto of any failure to supply or perform the Goods, or any defective supply or performance of the Goods, or any breach of the Contract and/or under sub-clause (c) above, shall be limited to the amount otherwise payable by the Customer for such goods (being the amount originally agreed between the parties as the price therefor and/or subsequently invoiced by the Company to the Customer.

(h) The Company shall be under no responsibility nor liability for the Customer's goods while held by the Company as bailee or in trust for the Customer either on the Company's premises or under its control or in transit.

## 15 INDEMNITY

The Customer will indemnify the Company against each and every liability, claim or judgement made against the Company by or in favour of any third party or the Customer arising out of the supply or provision of the Goods by the Company and/or any representation or advice given by or on behalf of the Company in relation to the Goods. This indemnity shall extend to any costs and expenses incurred by the Company and shall continue in force notwithstanding the termination of the Contract.

## 16 UNDERTAKING

The Customer is required to give written undertaking that he will ensure that the Goods will at all times be used in accordance with the Company's current installation, operational and maintenance instructions and it shall be the duty of the Customer to take steps to ensure, so far as is reasonably practicable, that the Goods will be safe and will not cause risk to health when properly used in accordance with the said instructions. In the event that the Customer shall fail to comply with the above the Company shall not be under any liability under the contract or otherwise for injury, loss or damage howsoever caused and whether or not arising by reason of such failure.

## 17 FORCE MAJEURE

Notwithstanding any other provision of the Contract, the Company shall not be liable in any way for any loss or damage resulting from failure to supply or perform any Goods or any delay or defect in the supply or performance of any Goods caused by Force Majeure, war, strike, lock out, other industrial action, accident, fire, scarcity of materials or labour or any other cause not within the Company's direct control.

## 18 MISCELLANEOUS

- (a) Failure by the Company to enforce any of the terms of the Contract shall not be construed as a waiver of any of the Company's rights hereunder.
- (b) All matters concerning the Contract are to be construed according to and governed by the law of England (including English conflict of Laws) which shall be the proper law of contract.
- (c) The attention of the Customer is particularly drawn to Conditions 6.9,10,11,13,14 and 15 above. The Customer should ensure that it has adequate insurance cover against the matters specified in those conditions. The cost of the Customer of insuring those matters under its own policy of insurance is substantially less than if the Company accepted greater liability than the cost it would have to bear and pass on to the Customer the cost of insuring against that liability.