

General Terms and Conditions of Sale

Diesel Technic UK & Ireland Ltd., Trading address: Bay 1 - 2, Building 92, Second Avenue, The Pensnett Estate, Kingswinford, DY6 7FP, West Midlands, United Kingdom

These terms and conditions ("Conditions") shall apply to the provision of all goods by Diesel Technic to a Customer to the exclusion of all other terms (including those referenced on any of the Customer's documentation, for example its request for proposal or purchase order).

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

"Agreement" has the meaning given to it in clause 2.1;

"Business Day" means a day on which Diesel Technic is open for business in England

"Confidential Information" means any information disclosed by the Disclosing Party to the Receiving Party, or which is received by the Receiving Party under or in connection with an Agreement and relates to the Disclosing Party, and that is marked confidential; that the Receiving Party knows or reasonably ought to know is confidential; or which is of its nature confidential, including the terms of an Agreement, but excluding any information that:

(a) is or becomes generally available to the public other than as a result of its disclosure by the Receiving Party or its agents, officers or employees in breach of:

- (i) an Agreement; or
- (ii) any other undertaking of confidentiality which is addressed to the Disclosing Party and of which the Receiving Party is aware of or reasonably ought to be aware,

and provided that any compilation of otherwise public information in a form not publicly known will nevertheless be treated as Confidential Information;

(b) was lawfully in the possession of the Receiving Party before the information was disclosed to it by the Disclosing Party;

(c) the parties agree in writing is not confidential or may be disclosed; or

(d) is developed by or for the Receiving Party independently of the information disclosed by the Disclosing Party;

"Customer" means a person or firm purchasing Goods from DT under an Order;

"Delivery" means the time at which Goods are deemed to be delivered to the Customer under clause 4.2 or 4.3 (as the case may be);

"Disclosing Party" means a party to an Agreement which (or whose affiliate) discloses or makes available, directly or indirectly, Confidential Information;

"Documentation" means any documentation relating to Goods generally made available by DT or (if different) the manufacturer of the Goods, including documentation packaged with the Goods or made available online;

"DT" or "Diesel Technic" means Diesel Technic UK & Ireland Ltd, a company incorporated in England and Wales under registered number 09486170, whose registered office is at Bay 1 2, Building 92, Second Avenue, The Pensnett Estate, Kingswinford, West Midlands DY6 7FP and whose trading address is Bay 1-2, Building 92, Second Avenue, The Pensnett Estate, Kingswinford, West Midlands DY6 7FP;

"Force Majeure Event" means any event or circumstance not within a party's reasonable control;

"Goods" means the goods (or any part of them) set out in an Order;

"Individual Recipient" means any director, other officer, employee, or subcontractor of the Receiving Party;

"Order" has the meaning given to it in clause 3.3;

"Order Request" means any request made by the Customer to DT for the provision of Goods by DT, including a purchase order and the submission of an online order via all online options DT offers, but excluding a request for quotation;

"Receiving Party" means a party to an Agreement which (or whose affiliate) receives or obtains, directly or indirectly, Confidential Information;

"Specification" means a specification for Goods provided to the Customer by DT, or such other specification for Goods agreed by both parties in writing; and

"Termination" means expiry of an Agreement or termination of an Agreement for any reason, and "Terminated" will be construed accordingly.

1.2 Construction

In these Conditions, the following rules apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms 'including,' 'include,' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 Each Order shall constitute a separate contract between the parties, subject to these Conditions and any Specification (an "Agreement").

2.2 Unless DT agrees otherwise in writing by explicit reference, these Conditions apply to each Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate (including by reference to an Order Request), or which are implied by trade, custom, practice or course of dealing.

2.3 The Customer is responsible for ensuring that any Order Request it submits to DT is complete and accurate, and that any Specification for Goods describes goods fit for the purpose the Customer intends to use them.

2.4 Any samples, drawings, descriptive matter, or advertising produced by DT and any descriptions or illustrations contained in DT's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 DT agrees to supply and the Customer agrees to purchase, Goods on the terms set out in relevant Agreement. The procedure for ordering Goods is set out in clause 3.

2.6 DT reserves the right to amend a Specification if required by any applicable statutory or regulatory requirements or if the amendment will not materially affect the function or quality of the Goods.

3. ORDERS

3.1 A quotation provided by DT to the Customer shall not constitute a binding price offer unless otherwise stated therein.

3.2 The Customer may at any time provide DT with an Order Request for Goods. An Order Request shall constitute an offer by the Customer to purchase the specified Good, subject to these Conditions.

3.3 DT may accept or reject an Order Request at its discretion. An Order Request shall not be deemed accepted, and no binding obligation on DT to supply any Goods shall arise, until the earlier of:

3.3.1 DT's written acceptance of an Order Request, including by confirming despatch; or

3.3.2 Delivery; or

3.3.3 issue by DT of an invoice to the Customer,

such Order Request then becoming an "Order".

4. DELIVERY

4.1 Time is not of the essence for Delivery.

4.2 This clause 4.2 applies unless the Order states that DT will deliver the Goods:

4.2.1 the Customer shall collect the Goods from Diesel Technic UK & Ireland Ltd., Bay 1 - 2, Building 92, Second Avenue, The Pensnett Estate, Kingswinford, DY6 7FP, West Midlands, United Kingdom or such other location as may be advised by DT in writing (the "Collection Location");

4.2.2 the customer shall collect the Goods within three (3) Business Days of DT notifying the Customer that the Goods are ready for collection (the "Collection Window").

4.2.3 delivery takes place when the Goods are made available at the Delivery Location for loading by the Customer; and

4.2.4 if the Customer fails to collect the Goods within the time frame set out in clause 4.2.2, DT may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over, or invoice the Customer for any shortfall of the resale price below, the price of the Goods recovered from the Customer.

4.3 This clause 4.3 applies unless the Order states that the Customer shall collect the Goods:

4.3.1 DT shall deliver the Goods to the delivery location and using the delivery method specified by the Customer in the Order (the "Delivery Location") or shall procure a carrier to do so;

4.3.2 DT shall use reasonable endeavors to deliver the Goods on the date(s) agreed between the parties in writing (the "Delivery Date") but all specified dates are estimates only and time is not of the essence for the Delivery Date;

4.3.3 delivery takes place when the Goods are made available at the Delivery Location for unloading;

4.3.4 If the Customer requires DT to insure the Goods for transport, DT will comply with this request. Provided such request has been communicated by the Customer in advance;

4.3.5 DT may add the costs of transport and any in-transit insurance to its invoice, and the Customer shall pay such costs, unless the parties have agreed otherwise in writing; and

4.3.6 in the event that the Customer is not available to take delivery of the Goods when DT or its appointed carrier attempts to deliver them, the Customer shall be responsible for all additional costs incurred by DT as a result (including costs associated with storage, insurance, return carriage, redelivery and if applicable any import or export duty charges).

4.4 DT may from time to time decide to make goods available or to deliver the Goods by instalments, and each instalment shall be invoiced and paid for separately. Each instalment shall constitute a separate Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.5 Where clauses 4.2 and 4.4 both apply, and the Customer fails to collect the Goods within the original Delivery Window, DT may demand collection of all of the Goods as soon as possible and if the Customer fails to collect the Goods within three (3) Business Days of DT's demand for collection or such other timeframe agreed between the parties in writing, DT may cancel the remaining instalments.

4.6 DT may deliver Goods that are up to and including 10% greater than or less than the quantity of Goods specified in an Order. Where an adjusted volume of Goods is delivered to the Customer, a pro rata adjustment shall be made to the Order invoice or the cash payment on receipt of written notice by the Customer that a different quantity of Goods to those ordered were received.

5. CUSTOMER OBLIGATIONS

5.1 Where clause 4.3 applies, the Customer shall ensure:

5.1.1 It provides DT with adequate instructions for delivery of the Goods;

5.1.2 the Delivery Location is available on the Delivery Date; and

5.1.3 the Delivery Location is prepared as required for delivery.

5.2 The Customer shall ensure that it only uses, installs or modifies the Goods:

5.2.1 using appropriately qualified personnel, equipment and tooling; and

5.2.2 in accordance with any Documentation.

5.3 DT shall not be liable for any breach by it of an Agreement caused by the Customer's failure to comply with the customer obligations set out in this clause 5.

6. QUALITY

6.1 DT warrants that at the time of Delivery the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.2 The above warranty is subject to the Diesel Technic SE Terms and Conditions of Warranty for spare parts of the brand "DT® Spare Parts" and 'Siegel Automotive' which can be downloaded from <https://www.dieseltechnic.com/en/solutions/downloads/>.

6.3 As the Customer's sole and exclusive remedy for DT's breach of clause 6.1, DT shall, at its option, repair, replace, or refund the price of any Goods that do not comply with clause 6.1, provided that the Customer:

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- 6.3.1 notifies DT immediately on collection of the Goods in the case of defects discoverable by a physical inspection; or
- 6.3.2 in the case of latent defects, within one month from the date on which the Customer became aware (or should reasonably have become aware) of the defect;
- 6.4 These Conditions shall apply to any repaired or replacement Goods supplied by DT.
- 6.5 DT gives no warranties or representations other than those set out in these Conditions, whether express or implied, and all warranties and conditions implied by law or trade custom are excluded to the fullest extent permitted.
- 7. TITLE AND RISK**
- 7.1 The risk in the Goods shall pass to the Customer on Delivery
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 7.2.1 DT receiving payment in full (in cash or cleared funds) for the Goods and any amounts payable to DT under any Agreement; and
- 7.2.2 the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer, and label them as DT's property, in such a way that they remain readily identifiable as DT's property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks, and for their full price, from Delivery;
- 7.3.4 notify DT immediately if it becomes subject to any of the events listed in clause 9.2; and
- 7.3.5 give DT such information relating to the Goods as DT may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before DT receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as DT's agent; and
- 7.4.2 title to the Goods shall pass from DT to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy DT may have:
- 7.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 7.5.2 DT may at any time, at the Customer's cost:
- 7.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 7.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8. PRICE AND PAYMENT**
- 8.1 The price of the Goods shall be
- 8.1.1 the price set out in DT's acceptance of an Order Request; or
- 8.1.2 if no price is quoted, the price set out in DT's online published price list in force as at Delivery
- 8.2 DT may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1 any factor beyond DT's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
- 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give DT adequate or accurate information or instructions.
- 8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer. The Customer shall also be responsible for any costs associated with the packaging, insurance and transport of the Goods in connection with any resale of the Goods by the Customer.
- 8.4 The prices for Goods are exclusive of all taxes, duties, levies and other charges imposed by government ("Taxes"). Where Taxes are chargeable or otherwise payable by DT in respect of Goods, DT may add such Taxes to its invoice at the appropriate rate, and the Customer shall pay such Taxes together with the invoiced price(s).
- 8.5 DT may invoice the Customer for the Goods on or at any time after Delivery. The Customer shall pay such invoice in full and in cleared funds within 30 Days of the date of the invoice at the end of the calendar month, unless agreed otherwise in writing. Payment shall be made to the bank account nominated in writing by DT. Time of payment is of the essence.
- 8.6 If the Customer fails to make any payment due to DT under the Agreement by the due date for payment:
- 8.6.1 DT may suspend provision of the Goods under an Agreement; and/or
- 8.6.2 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.7 Both parties shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 9. TERMINATION AND SUSPENSION**
- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, DT may terminate the Agreement with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- 9.2.1 the Customer ceases to do business in the normal course;
- 9.2.2 the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, but disregarding the references in that section to proving it to the court's satisfaction;
- 9.2.3 a notice of appointment of administrator, a notice of intention to appoint an administrator, or an application to appoint an administrator to it is filed at court or served on any person, or it enters administration;
- 9.2.4 the customer requests or suffers the appointment of a Law of Property Act 1925, court appointed or other receiver or similar officer over or in relation to the whole or part of its undertaking, property, revenue or assets or any part thereof;
- 9.2.5 the Customer has a winding up petition issued against it, a liquidator or provisional liquidator appointed to it, or it enters into liquidation;
- 9.2.6 the Customer or its directors resolve to enter into, or it enters into, or it or its directors commence negotiations, or make any requisite application to court in respect of, or if they convene meetings for the approval of, any composition, compromise, scheme, moratorium or other similar arrangement with its creditors or any of them (except for the purposes of amalgamation or reconstruction of a solvent entity);
- 9.2.7 the Customer is dissolved, or is removed from the Register of Companies, or ceases to exist (whether or not capable of reinstatement or reconstitution) or its directors apply for it to be struck-off the Register of Companies; or
- 9.2.8 any event similar, equivalent or analogous to those above occurs in relation to all or part of it or its property in any jurisdiction other than England and Wales.
- 9.3 Without limiting its other rights or remedies, DT may suspend provision of the Goods under an Agreement or any other contract between the Customer and DT if the Customer becomes subject to any of the events listed in clause 9.2.1 to clause 9.2.8, or DT reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under an Agreement on the due date for payment.
- 9.4 Either party may terminate this Agreement at any time if the other party commits a material breach of this Agreement and (if the breach can be remedied) it fails to remedy the breach within 14 days after being notified in writing to do so or such other period as may be agreed in writing.
- 9.5 On termination of the Agreement for any reason the Customer shall immediately pay to DT all of DT's outstanding unpaid invoices and interest.
- 9.6 Termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.7 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these Conditions shall limit or exclude DT's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.1.2 fraud or fraudulent misrepresentation;
- 10.1.3 any matter in respect of which it would be unlawful for DT to exclude or restrict liability.
- 10.2 DT shall have no liability arising under or in connection with an Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- 10.2.1 any loss of profits, revenue, anticipated savings, opportunity or management time;
- 10.2.2 any increased or accelerated costs or goodwill payments;
- 10.2.3 any loss of goodwill or reputation;
- 10.2.4 any destruction, corruption or irretrievability of data; or
- 10.2.5 any indirect or consequential loss
- 10.3 DT's total liability to the Customer in respect of all other losses arising under or in connection with an Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods purchased under that Agreement.
- 11. FORCE MAJEURE**
- If a party is prevented, hindered or delayed in or from performing any of its obligations under an Agreement by a Force Majeure Event ("Affected Party"), the Affected Party will not be in breach of that Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly, and the corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. This clause 11 shall in no event excuse a party from its obligation to pay any amount due under an Agreement.
- 12. COMPLIANCE WITH NON-UK LAW**
- 12.1 Where the Goods are to be delivered to a destination outside of the UK, the Customer shall be responsible for and shall pay all costs in connection with:
- 12.1.1 complying with all local laws;
- 12.1.2 exports and compliance with all associated export legislation (and shall take responsibility for any recipient of the Goods also complying with such legislation);
- 12.1.3 arranging any applicable licences and export documents which are necessary for the resale of the Goods; and
- 12.1.4 ensuring that the technical information complies with all applicable local laws.
- 13. CONFIDENTIALITY**
- 13.1 For a period of 10 years from the last Delivery, the Receiving Party:

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- 13.1.1 shall not use Confidential Information for a purpose other than the performance of its obligations under an Agreement;
- 13.1.2 shall not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or as required by law; and
- 13.1.3 shall make every effort to prevent the use or disclosure of Confidential Information.
- 13.2 The Receiving Party may disclose Confidential Information to any Individual Recipient to the extent that disclosure is reasonably necessary for the purposes of an Agreement or required by law.
- 13.3 The Receiving Party shall ensure that the Individual Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under an Agreement as if the Individual Recipient was a party to that Agreement.

14. GENERAL

14.1 Intellectual property.

Nothing in these Conditions or an Agreement will change the ownership of any intellectual property rights of either party.

14.2 Assignment and other dealings

- 14.2.1 DT may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under an Agreement.
- 14.2.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under an Agreement without the prior written consent of DT.

14.3 Notices

- 14.3.1 Any notice or other communication given to a party under or in connection with an Agreement or these conditions shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier with proof of delivery or e-mail.
- 14.3.2 A notice or other communication shall be deemed to have been received:
 - 14.3.2.1 if delivered personally, when left at the address referred to in clause 14.3.1;
 - 14.3.2.2 if sent by pre-paid first class registered post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 - 14.3.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 14.3.2.4 if sent by e-mail, one Business Day after transmission.
- 14.3.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.4 Severance

If any provision of an Agreement is held to be invalid or unenforceable for any reason, that provision will, if possible, be adjusted rather than voided, in order to achieve a result which corresponds to the fullest possible extent to the intention of the parties. The nullity or adjustment of any provision of an Agreement will not affect the validity and enforceability of any other provision of an Agreement.

14.5 Waiver

The failure of a party to enforce a provision of an Agreement or any rights with respect thereto (or any delay in so doing) will not be a waiver of that provision or right, or in any way affect the validity of that Agreement. A waiver of any claim for a breach of an Agreement will not operate to waive any claims in respect of any other breach.

14.6 Third party rights

Except to the extent that an Agreement expressly provides otherwise, a person who is not a party to that Agreement shall have no right whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of it. Amendments to an Agreement agreed by the parties shall not require the consent of any third party. The consent of a third party having rights under an Agreement shall not be required in order to amend it.

14.7 Variation

Except as set out in these Conditions, no variation of an Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by DT.

- 14.8 Each Agreement contains the whole agreement between the parties, and supersedes all prior agreements, arrangements and understandings between the parties, relating to its subject matter. Each party acknowledges that, in entering into an Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to that Agreement or not) (each, a "Representation") other than as expressly set out in that Agreement. Nothing in this clause 14.8 will limit or exclude any liability for any fraudulent Representation.

14.9 Governing law and Jurisdiction

- 14.9.1 These Conditions and each Agreement, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 14.9.2 For Customers incorporated in the United Kingdom, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these conditions and each Agreement, or its subject matter or formation (including non-contractual disputes or claims).
- 14.9.3 For Customers incorporated outside of the United Kingdom (or in Scotland, in the event of its independence), any dispute arising out of or in connection with these Conditions and each Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause and for that purpose:
 - 14.9.3.1 the number of arbitrators shall be one;
 - 14.9.3.2 the seat, or legal place, of arbitration shall be in London; and
 - 14.9.3.3 the language to be used in the arbitral proceedings shall be English.

Last modified: April 2021