

General Terms and Conditions of Sale, Delivery and Payment

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

The customer's attention is drawn in particular to the provisions of clause 10.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

Contract: the contract between the Diesel Technic UK & Ireland Ltd. ("DT") and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from DT.

Force Majeure Event: has the meaning given in clause 11.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, whether or not in writing, or the Customer's written acceptance of DT's quotation.

1.2 **Construction.** In these Conditions, the following rules apply:

- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors or permitted assigns.
- 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.
- 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.
- A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- No terms or conditions endorsed upon, delivered with or contained in the Customer's order, specification or similar document shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions. The terms and conditions of a Customer shall only apply if and to the extent that DT has approved such terms in writing.
- The Customer is responsible for ensuring that the terms of the Order and any applicable specification of the Goods submitted by the Customer are complete and accurate.
- The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of DT which is not set out in the Contract.
- 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.

3. FORMATION OF CONTRACT

- A quotation for Goods given by DT shall not constitute a binding price offer unless a period for acceptance of DT's offer is expressly stated.
- The Order shall only be deemed to be accepted when DT issues a written acceptance of the Order, delivers the Goods without prerequisites or conditions or invoices the Customer, at which point the Contract shall come into existence.
- If there is an ongoing business relationship between the parties, the Customer is bound by his Order for four weeks.

4. GOODS

- The Goods are described in the specification that is agreed by the Customer and DT in writing.
- To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify DT against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by DT in connection with any claim made against DT for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with DT's use of the specification. This clause 4.2 shall survive termination of the Contract.
- DT reserves the right to amend any specification if required by any applicable statutory or regulatory requirements. DT reserves the right to amend any specifications regarding design, construction, colour shade and volume of delivery during the delivery time. Such deviations have to be accepted by the Customer insofar as they are reasonable with respect to the interests of both parties and the Customer's interests in particular.
- Any Goods supplied by DT may only be installed by trained staff in specialised workshops using the special tool intended and in accordance with the installation and service regulations of the respective vehicle manufacturer.

5. DELIVERY

- Unless the parties have agreed otherwise in writing, the Customer shall collect the Goods from DT's manufacture premises at Diesel Technic UK & Ireland Ltd., Bay 1, Building 92, Second Avenue, The Pensnett Estate, Kingswinford, DY6 7FP, West Midlands, United Kingdom or such other location as may be advised by DT prior to collection within 3 Business Days of DT notifying the Customer that the Goods are ready.
- If the parties have agreed for the Goods to be delivered by DT, the Customer shall bear the costs of transport unless the parties have agreed otherwise in writing. If the Customer requires DT to insure the Goods for transport, DT will comply with this request at the Customer's expense if it has been communicated in due time.
- Delivery of the Goods shall be completed in the event of collection by the Customer on completion of loading the Goods by the Customer and in the event of delivery to the Customer, on the completion of loading of the Goods by the transport person or company at DT's premises.
- In the event of collection of the Goods by the Customer, the agreed date for collection is of the essence. If 3 Business Days after the day on which DT notified the Customer that the Goods were ready for collection the Customer has not collected them, 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 the price of the Goods recovered from the Customer or charge the Customer for any shortfall below the price of the Goods.
- If the parties agree collection in instalments by the Customer and the Customer fails to collect the Goods in time, DT is entitled to demand collection of all of the Goods at once, cancel the remaining instalments or claim damages, each after having set a deadline to collect the Goods. In the event that DT demands damages, the damages shall amount to 15% of the purchase price of the Goods.

If DT is able to prove that higher or the Customer that lower damages have incurred, the amount of damages shall be adjusted accordingly.

- In the event of delivery by DT, any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. A default in delivery only takes place if the Customer sets a deadline after the quoted date for delivery has passed which DT fails to meet. A binding fixed delivery date has to be stated expressly in writing by the Customer in the Order and has to be confirmed by DT in writing. A delivery period shall not begin before all technical specifications have been determined with the Customer. Delivery on time is subject to the Customer's compliance with its obligations to co-operate.
- DT shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide DT with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If DT is temporarily prevented from meeting an agreed delivery date or period due to a Force Majeure Event, the delivery date or period shall be extended by the time that the Force Majeure Event or its effects persist.
- If DT fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. DT shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide DT with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- The Customer shall not be entitled to reject the Goods if DT delivers up to and including 10% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice or the cash payment on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- DT may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. QUALITY

- DT warrants that on collection or delivery, the Goods shall:
 - be free from material defects in design, material and workmanship; and
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - be fit for any purpose held out by DT.
- The above warranty is subject to the Diesel Technic AG Terms and Conditions of Warranty for spare parts of the brand "DT® Spare Parts" which can be downloaded from <http://www.dieselitechnic.com/services/downloads/>. Except as provided in this clause 6 and subject to clause 10.1, DT shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- If the Goods or parts thereof are faulty, any request by the Customer for supplementary performance must be made in writing. DT is entitled to choose between repair or replacement of the Goods. DT has to be given an appropriate period of time for the repair or replacement of the Goods.
- These Conditions shall apply to any repaired or replacement Goods supplied by DT.

7. TITLE AND RISK

- The risk in the Goods shall pass to the Customer, in the event of collection by the Customer, when the Goods are handed over to the Customer, or in the event of delivery, when the Goods are handed over to the person or company executing the transport.
- Title to the Goods shall not pass to the Customer until the earlier of:
 - DT receives payment in full (in cash or cleared funds) for the Goods and any other goods that DT has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- Until title to the Goods has passed to the Customer, the Customer shall:
 - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as DT's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify DT immediately if it becomes subject to any of the events listed in clause 9.2; and
 - give DT such information relating to the Goods as DT may require from time to time.
- 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:
 - it does so as principal and not as DT's agent; and
 - title to the Goods shall pass from DT to the Customer immediately before the time at which resale by the Customer occurs.
- 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:
 - the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - DT may at any time:
 - require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 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

- The price of the Goods shall be the price set out in the written acceptance of the Order, or, if no price is quoted, the price set out in DT's published price list in force as at the date of delivery.
- 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:
 - any factor beyond DT's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification of the Goods; or
 - any delay caused by any instructions of the Customer or failure of the Customer to give DT adequate or accurate information or instructions.
- The price of the Goods is ex-works and exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

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- 8.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from DT, pay to DT such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 The purchase price becomes due in full on delivery or collection and is payable without deductions with the exception of deposits. Discounts require prior written consent by DT. DT may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.6 The Customer shall pay the invoice in full and in cleared funds within 10 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by DT. Time of payment is of the essence.
- 8.7 If the Customer fails to make any payment due to DT under the Contract by the due date for payment, then 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.
- 8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). DT may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by DT to the Customer.

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 Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer);
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(f) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (k) the Customer's financial position deteriorates to such an extent that in DT's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 Without limiting its other rights or remedies, DT may suspend provision of the Goods under the Contract or any other contract between the Customer and DT if the Customer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(l), 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 this Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to DT all of DT's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract 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:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for DT to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- (a) DT shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) DT's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. EXPORT CONTROL

Any export of the Goods, technical information or documentation procured from DT, e.g. due to their nature or their purpose or final destination, are subject to approval. The Customer shall comply with the relevant export legislation, in particular the legislation of the EU, the EU Member States and the USA. The Customer shall procure all licences and export documents which are necessary for the resale of the Goods at his own expense. The Customer shall procure that all recipients of the Goods and technical information will comply with the relevant legislation and ordinances in the same manner. Access to products, technical information and documentation on the website of DT is only permitted if it is in compliance with the aforementioned legislation; otherwise DT is not obliged to perform.

13. GENERAL

13.1 Assignment and other dealings

- (a) 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 the Contract.
- (b) 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 the Contract without the prior written consent of DT.

13.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) 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, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2 (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 Waiver

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 Third party rights

A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.6 Variation

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

13.7 Governing law

The Contract, and any dispute or claim arising out of or in connection with it or its 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.

13.8 Jurisdiction

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 this Contract or its subject matter or formation (including non-contractual disputes or claims).

Last modified: September 2015