



DIESEL AND MARINE GROUP

Diesel and Marine Group Terms and conditions for the provision of services

These terms and conditions shall apply to all contracts of Service entered into by DMG.

1. Definitions

“Services Conditions” means these Terms and Conditions for the provision of Services.

“DMG” means Simplex-Turbulo Group Limited trading as Diesel and Marine Group, consisting of all companies within the Group including Simplex-Turbulo Company Ltd, Lincoln Diesels Ltd, Dorman Diesels, Temple Propulsion Services and STW Engineering GmbH, whose registered office is Wherwell Priory, Wherwell, Hampshire, SP11 7JH, United Kingdom, company registration number 00306440, VAT number GB 754910226.

“the Customer” is the person, firm or company ordering the Services from DMG.

“the Services” are all and any of the services, carried out by DMG or contracted personnel, including (without limitation) assembly, fitting and repair installation to be provided by DMG and also goods and components.

“the Price” means the price for the services (exclusive of Value Added Tax) specified in the Confirmation of Order.

“the Order” means the Customer’s instructions to DMG to provide the Services.

“the Confirmation of Order” means the written confirmation by DMG of the Order.

“the Contract” means the contract for the provision of the Services made between DMG and the Customer incorporating the Services Conditions.

“you” and “your” refers to the person acting on behalf of the customer.

“he” and “him” shall include the feminine and the singular shall include the plural.

2. Customer’s warranty

By placing an order with us, you warrant that:

2.1. If you are acting for a third party such as a partnership or company, you are authorised by that third party to place the order with us.

2.2. If you are acting as a sole trader, you warrant that you are over the age of 18.

2.3. The information which you provide to us during the process of placing an order is accurate, complete and not misleading and you agree that you are responsible for the consequences resulting from any inaccuracy or incomplete or misleading information.

2.4. You agree to be bound by these Service Conditions and that all other contractual conditions are excluded unless expressly accepted in writing by DMG.

2.5. The contract has not been induced by any representations orally or in writing made by DMG or its employees, directors or agents.

2.6. You agree to be bound by the laws of England and Wales and that any dispute will be settled exclusively within the jurisdiction of the courts of England and Wales, except in so far as it may be necessary to enforce a decision of the courts of England and Wales in another country.

2.7. Each order by you will be deemed to be an offer by you to purchase the Services subject to these terms. No contract of sale will come into existence until DMG has despatched the service engineers or sent a confirmation of order. Each order placed by you will constitute a separate contract. No variation, amendment or cancellation will be valid unless agreed to in writing by DMG.

3. Acceptance of order

3.1. Customer orders are subject to DMG's confirmation of order. Normally DMG will accept the order by providing a written confirmation of order. However, especially in urgent cases, DMG may confirm the order by despatching the service engineers. No contract of service will come into existence until DMG has sent this confirmation of order or until DMG has despatched the service engineers, whichever shall occur first.

3.2. An Order is accepted by DMG exclusively upon these Goods Conditions and no other conditions, terms, provisions or other representations whatever whether referred to in negotiations or set out in the Order or otherwise shall be incorporated into the Contract unless the Customer and DMG expressly so agree in written memorandum which shall refer to the Contract and be annexed to the Confirmation of Order.

4. Travelling expenses

The Customer shall reimburse DMG 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 DMG its employees, sub-contractors or agents in connection with the provision of the Services.

5. Price

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

5.2. 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 DMG to require or receive any such payment shall be altered, prohibited or hindered in any way DMG may forthwith thereupon terminate the Contract by notice to the Customer.

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

6. Payment

6.1. The price, including, where applicable, travelling and carriage charges and any disbursements by DMG personnel shall be paid on the due date which (in the absence of any agreement to the contrary) is 30 days from the date of DMG'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 DMG, and it includes in full any bank or exchange charges levied against DMG as a result of such conversion.

6.2. Where any advance payment is required by DMG, the Contract shall be conditional upon its receipt by DMG.

6.3. Time for payment as stipulated in the Confirmation of Order shall be the essence of the Contract. In the case of payment by instalments, each instalment shall be paid for separately.

6.4. Where payment is to be made by bill(s) of exchange or cheque(s) payment shall be deemed not to have been made until the said bill(s) or cheque(s) are honoured by the Customer.

6.5. Where full payment has not been received by DMG on the due date DMG 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 five (5) per cent above HSBC Bank PLC's Base Lending Rate for the time being in force.

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

6.7. 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 DMG impaired for any other reason DMG 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 to DMG.
-

7. Hours of work

7.1. DMG shall attempt (so far as possible) to comply with any normal hours or work established by the Customer.

7.2. The Customer shall certify on DMG's standard form the hours actually worked by DMG's personnel as well as the work carried out by them.

7.3. 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.

7.4. 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.

7.5. The customer confirms that DMG's engineer(s) will be granted a break of 15 minutes after every two (2) hours worked with 30 minutes break for lunch, and if DMG's engineer(s) are requested to work overtime, they will be permitted not less than eight (8) hours undisturbed rest after 16 hours of work.

8. Safety regulations

8.1. DMG's employees, sub-contractors and agents are instructed to comply with any safety regulations in force.

8.2. 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 DMG in advance of all existing safety regulations and shall notify DMG of any and all breaches of such regulations by its employees, sub-contractors or agents. In the case of serious breaches, the Customer can (if DMG agrees) refuse the relevant person(s) admittance to the place for performance of the Services.

8.3. It is the right of DMG's employees, sub-contractors or agents to refuse to work in an area they deem unsafe.

9. Technical assistance

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

i. provide all necessary suitable assistance including (without limitation) carpenters, fitters, staging builders and such other skilled workers and assistants as may be required for the provision of Services for the duration of the Services. Such assistants shall comply with all reasonable instructions of DMG. Any loss or damage whatsoever caused either directly or indirectly by such assistants shall be the sole responsibility of the Customer and DMG 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 DMG'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;
- 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 for 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 theft 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 installation and/or adjustment of the object of supply and for the carrying out of a test as provided for in the contract.

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

9.3. If the Customer fails to fulfil its obligations under this Condition, DMG shall have the right to carry out such obligations at the Customer's cost.

10. Extent of services

DMG shall advise the Customer of the extent of the Services. It is agreed that DMG 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.

11. Time limit for provision of services

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

12. 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 DMG of any defect within seven (7) days of the date of receipt by the Customer of notice that the Services have been completed.

13. Force majeure

DMG shall not be liable to the Customer 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 DMG being directly or indirectly prevented, hindered or delayed by reason of any circumstances outside the control of DMG and affecting the provision of all or any part of the Services by DMG's normal means, or other circumstances whatsoever, including (without limitation) any act of God, war (whether declared or not), 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 DMG shall have the option (exercisable by notice to the Customer) to terminate the Contract (whereupon both DMG and the Customer shall be relieved of all liabilities under the Contract) except to the extent that the Customer shall pay for all expenses incurred by DMG prior to the cancellation of the contract. DMG shall have no liability for any loss or damage suffered by the Customer as a result.

14. 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, DMG may cancel further provision of Services and by notice in writing to the Customer may forthwith determine the Contract, without prejudice to its rights under the Contract and otherwise at law.

15. Warranty, liability and indemnity

15.1. DMG warrants that it will exercise reasonable skill and care in executing the Services. If the Services do not conform to the warranty DMG shall take such steps as it deems necessary to rectify any defect PROVIDED THAT

DMG's liability shall in no event exceed the lesser of £10,000 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 DMG's liability under the warranty.

The foregoing warranty is conditional upon: -

- i. DMG receiving from the Customer within seven (7) days of discovery full details of any defect or deficiency, but in any case, within one (1) month following completion of the service;
- ii. the Customer affording DMG reasonable opportunity to make its own inspection;
- iii. the Customer complying with any instructions or recommendations of DMG.

15.2. If it is found in DMG'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 DMG's then current rates and all transportation costs from DMG's premises to the Customer's premises.

15.3. Save as provided in condition 15.1 DMG 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 DMG 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. DMG 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 DMG are given without liability on the part of DMG;
- iii. all drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like, contained in any literature or other material supplied by DMG under or in connection with the Contract or otherwise communicated to the Customer are provided or made by DMG in the belief that they are as accurate as reasonably possible but they shall not be taken as representation by DMG nor are they warranted to be accurate.

15.4. The Customer shall indemnify DMG in respect of any loss or damage whatsoever arising from the claim of any person against DMG in relation to the Services.

16. Confidentiality

16.1. 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 DMG's exclusive property. Such drawings or technical documents may not without DMG'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 DMG.

16.2. In the event that an Order or Contract is not proceeded with for any reason whatever, each party shall upon demand return to the other 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.

17. Assignment and rights of third parties

The Contract is personal to the Customer, which shall not assign or charge the benefit thereof in any manner whatsoever without DMG'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.

18. Law

The Contract shall in all respects be constructed and operate in accordance with the laws of England and Wales. All disputes shall be subject to the exclusive jurisdiction of the courts of England and Wales, except in so far as it may be necessary to enforce a judgement of the courts of England and Wales in another country.

19. Variation

Except as provided in clause 8.3 hereof after formation of the Contract 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.

20. Waiver

The granting by DMG to the Customer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of DMG's entitlement to enforce any of its rights under the Contract except and to the extent that it shall either constitute a variation of these Goods Conditions which has been made in accordance with clause 18.

21. Notices

21.1. Notices shall be made in writing and posted in a first-class pre-paid envelope to the Customer'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.

21.2. 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).

22. General

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

22.2. DMG's rights are cumulative and not exclusive.

22.3. If any provision or part of a provision of this agreement shall be, or held to be by any authority or court of competent jurisdiction, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of the contract, all of which shall remain in force.