

# DIESEL SERVICES N.Z. LIMITED as of JULY 2014

## TERMS OF TRADE

### 1. GENERAL

Any order of goods accepted by or services supplied by the Seller in all instances will be deemed to incorporate these terms and conditions and the buyer acknowledges that any future purchases orders, or services supplied are subject to these terms and conditions unless specifically varied by the Seller in writing. No variation or modification or substitution of these terms of conditions by the buyer will be binding on the Seller unless specifically accepted by the Seller in writing. The Seller may amend these terms and conditions at any time and any further contacts with the buyer will be in the bases of such amended terms and conditions.

### 2. PRICES

[Any price estimate made by any agent or servant of the Seller is not binding on the Seller.] Unless otherwise agreed in writing by the Seller, the Seller reserves the right to vary the contract price to take account of any increase in costs of the materials or services between the dates of the buyer's order and the date of delivery. The buyer accepts and acknowledges that the binding contract price will be that as set out in the Seller's invoice. [Price do not include delivery costs, which are the buyer's responsibility.]

### 3. SALES TAX/GOODS AND SERVICES TAX

Sales tax or goods and services tax will be charged in addition to any stated price.

### 4. DESCRIPTION

4.1 Information on specifications, description measurements and other data generally relating to the goods sold or services supplied by the Seller contained in advertisements, catalogues, price lists, illustrations or other similar matter submitted to the buyer by the Seller, while given in good faith, must be regarded only as an approximate and general guide. The buyer acknowledges that it must rely upon its own judgment as to the nature, quality and condition of the goods sold or services supplied by the Seller as to their sufficiency for any use or purpose and the buyer acknowledges that the Seller is under no duty to ascertain the suitability of the goods or services for any purpose whatsoever and that no such representation has been made by the Seller, its agents or servants.

4.2 Any sample exhibited to or inspected by the buyer is agreed to have been so exhibited or inspected solely to enable the buyer to judge for himself the quality of bulk and does not constitute a representation by the Seller that the goods are suitable for any particular purpose. The exhibition of a sample does not constitute a sale by sample.

4.3 Any warranties or guarantees expressed or implied by the law or statute are excluded to the extent that such law or statute permits exclusion.

### 5. PAYMENT

5.1 Unless otherwise agreed in writing by the Seller, payment in full will be made immediately the Seller has supplied the goods or services (as the case may be).

5.2 Without prejudice to any other rights of action the Seller may have for late payment by the buyer, the Seller may charge interest on a daily basis to the buyer at a rate equal to 5% per annum over the Seller's principal banker's overdraft rate from time to time, until the overdue amounts are paid. Interest will accrue after as well as before any judgement which the Seller may obtain against the buyer. The buyer will also be liable to pay all the Seller's expenses and legal cost in attempting to obtain or obtaining a remedy for the buyer's failure to pay for the goods or services in accordance with these terms and conditions.

5.3 The buyer may not off set any payments owing to the Seller against any payments owed by the Seller to the buyer or any claims which the buyer may have against the Seller.

5.4 Without prejudice to any other remedies which the Seller might have, failure by the buyer to pay any debt in accordance with these terms and conditions will entitle the Seller to cease supply of goods and services to the buyer and cancel any contracts for such goods and services. Upon each cancellation and without prejudice to any other remedies which the Seller might have, all credit in favour of the buyer will cease and all payment outstanding will become immediately due payable to the Seller.

5.5 The Seller may require the buyer to produce such guarantee, indemnities and securities as the Seller considers necessary to secure to the Seller payment of all sums due by the buyer and without prejudice to any other rights as remedies, may refuse to supply or services to the buyer until such guarantees, indemnities and securities are given.

5.6 In accepting any payments from the buyer, the Seller will not be bound by any conditions or qualifications or terms which the buyer attached to those payments.

### 6. RETENTION OF TITLE

6.1 It is expressly agreed that ownership is reserved and legal and equitable title to and property in all goods supplied or agreed to be supplied by the Seller is and remains vested in the Seller until payment in full has been received by the Seller in respect of such goods and all other moneys owing by the buyer to the Seller.

6.2 Notwithstanding that title to and property in the goods remain with the Seller and irrespective of any period of credit granted by the Seller to the buyer the buyer may sell such goods in which case the following provision shall apply to each such sale. As between the buyer and Seller, the buyer is the Seller's agent to bailee. As between the buyer and the purchaser of each item of goods the buyer sells as principal and not agent of the Seller. The proceeds of sale of each item of goods must be held by the buyer in separate bank account in trust for the Seller to the extent of all moneys owing by the buyer to the Seller and the buyer is under a fiduciary duty to account to the Seller for such proceeds. The buyer must immediately account to the Seller for all proceeds of the sale upon the sale of each item of goods irrespective of any terms of credit between the buyer and the Seller.

6.3 Until an item of goods is sold by the buyer the buyer will clearly designate the item of goods as the property of the Seller, store the item of goods in such a way that it is clearly identified as the property if the Seller and keep full and complete records, firstly of the physical location of each items of goods from time to time and secondly, the ownership of each items of goods by the Seller.

6.4 This reservation of the title and ownership is effective whether or not the goods have been altered from their supplied form, or mixed with other goods. Where such goods are mixed with other goods and are severable but not identifiable or incorporated with other goods into another product so that they are not severable (whether such mixture or incorporation or loss of identity is as a result of the buyer's default or otherwise), or in any situation where a similar dealing with goods has resulted in their removal being impossible or impracticable, the Seller is co-owner of the mixed goods or products in proportion to the contribution made by the goods to such mixed goods or products.

6.5 The Seller is irrevocably entitled at any time and from time to time before sale of any item of goods by the buyer to inspect or to recover and retake possession of such item of goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. The Seller and its agent are irrevocably authorised to enter any premises of the buyer or any third party. The buyer agrees to indemnify the Seller and its agents for any liability arising from any act of trespass committed by such entry. The Seller and its agents agree to take all reasonable care in removing the goods fitted or installed in such premises but are not liable for any damage or injury to such premises caused by removal of the goods.

6.6 If the implementation of this clause or any part of it (or of these terms and conditions) is illegal, invalid or unenforceable for any reason whatsoever including but without limitation legislation or other provision having the force of law, any decision of any court or other body or authority having jurisdiction, such terms or provisions or part thereof will be deemed to be deleted from these terms and condition as if such provision had not been incorporated in these terms and conditions and in such case the buyer and the Seller will do all such things and co-operate in every way available to them to obtain substantially the same results or as much of them as may be possible to ensure that the purpose and intention of these terms and condition is given effect including, if necessary, the amendment or alteration of these terms and condition for such purpose. If there is any ambiguity or inconsistency in the interpretation or application of this clause such ambiguity or inconsistency is to be interpreted in the favour of the Seller.

6.7 The exercise by the Seller of any rights pursuant to this clause or otherwise are without prejudice to any other rights or remedies which the Seller may have against the buyer or any other party or in respect of each item of goods and do not constitute an election so as to disentitle the Seller to exercise any other rights which may be available to it.

### 7. LIEN

In addition to any rights of lien to which it may be by law entitled, the Seller will be entitled to a general lien on all goods of the buyer in the Seller's possession (although such goods may have been paid for) for any unpaid debts due by the buyer to the Seller under the same of any other contract. The Seller will be entitled on expiration of 14 days notice to dispose of such goods as it thinks fit and to apply the proceeds towards any debts owed by the buyer to the Seller. The Seller is not under any obligation to obtain the best price for the buyer's goods.

### 8. FORCE MAJEURE

Should the Seller be delayed in supplying any ordered goods or services owing to any cause not reasonably within its control, the Seller will be at liberty to cancel or suspend the contract, without incurring any liability for any loss or damage whatsoever resulting to the buyer or any other person.

### 9. DELIVERY AND RISK

9.1 Any time limit set by the buyer for the delivery of goods or services by the Seller will only be binding if specifically accepted in writing by the seller. However any delay due to circumstances not reasonably within the control of the Seller will not entitle the buyer to cancel the contract or refuse to accept delivery or refuse to make payment.

9.2 Irrespective that the title to goods may not have passed, the risk in goods supplied to the buyers the Seller passes to the buyer upon delivery of the goods by the Seller to a common carrier for transit to the buyer or in event of delivery by the Seller's servants risk will pass on actual delivery to the buyer. In the event that the buyer collects the goods from the Seller, the risk passes immediately to the buyer or its representative take possession of the goods.

9.3 Irrespective of the above. Where the Seller provides a service to the buyer, the risk in any goods provided by the buyer to the Seller for such services always remains with the buyer. It is the buyer's responsibility to insure against loss and damage to the goods.

### 10. LIABILITY

In no circumstances will the Seller be liable to the buyer, whether in contract, tort or otherwise, for any loss or damage or injury arising directly or indirectly from services supplied by the Seller to the buyer or from goods supplied by the Seller to the buyer. The Seller will not be liable to the buyer for any damage to the buyer's goods irrespective of whether such damage is caused by their negligence of the Seller. In any case whether the Seller is found to be liable to the buyer for any reason whatsoever, the extent of the Seller's liability will not exceed the contract price.

### 11. CHANGE ORDERS

11.1 The buyer may not change its order without written consent of the Seller and if the Seller does give such consent it may alter the price payable under the contract.

11.2 Credit for goods returned will be issued only if first approved in writing by the Seller documented by an authorised employee and been purchased within the current or previous calendar month. The seller may impose a 10% handling charge if returned after 14 days from the date of purchase.

### 12. GOVERNING LAW AND LANGUAGE

This contract is subject to New Zealand law and the buyer accepts the non-exclusive jurisdiction of the New Zealand courts.

### 13. LICENCES

13.1 If by law any licence is required to enable the buyer to acquire, or the Seller to sell goods or its services, such licence is obtainable by the buyer.

13.2 In the event the Seller receives directions from a competent authority to the sale of the goods or its services and if in the Seller's opinion such direction prevent or hinder the fulfillment of its obligations under this contract, the Seller may change the contract in whole or in part.

### 14. WEIGHTS AND TOLERANCES

14.1 All goods and services are supplied subject to:

- The Sellers normal tolerances, variations and limitation in respect of dimensions, weight, straightness, mechanical properties, surface and internal conditions, chemical composition and quality;
- Diversions from such tolerances, variations and limitations consistent with practical testing and inspection method;
- The Sellers current packaging practices.

### 15. CONSUMER LEGISLATION

15.1 Where the provisions of the Consumer Guarantees Act 1993 apply, these terms will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply.

15.2 Where the buyer is a business (as "business" is defined by the Consumer Guarantees Act 1993), it agrees that it is acquiring all goods and services from the Seller for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply.

### 16. PRIVACY

The Seller is authorised to obtain credit information about the buyer from credit referees and credit reference agencies and is also authorised to disclose credit information to credit reference agencies or other persons seeking credit references. The credit information is collected to assist the Seller ascertain the buyer's credit status. Failure to provide the requested information may result in credit being refused. Under the Privacy Act 1993 individuals have right of access to and correction or personal information.