

## Terms and Conditions of Sale

1. **Definitions**
  - a. "DES", Diesel Exhaust Solutions Ltd., with company number 16343444 the organisation who is the vendor of the services and or goods to Company.
  - b. "Company", the organisation contracting for goods and services supplied by DES.
  - c. "Goods" means all things to be sold by DES to Company.
  - d. "Services" means all services, including repairs, provided by DES to Company.
2. **Whole Contract**
  - a. These terms shall represent the whole contract between DES and Company. They may be varied only by written agreement between the parties.
2. **Interpretation**
  - a. The singular shall include the plural and the male shall include the female or business entity as may be appropriate.
3. **Enforceability**
  - a. In the event of any one or more of these terms and conditions being declared unenforceable, the remaining terms and conditions shall nonetheless remain in full force and effect.
4. **Estimate**
  - a. Unless specifically agreed in writing, all work is agreed on an estimate basis.
  - b. Unless specifically agreed in writing, time for completion of any work is not essential.
  - c. Any estimate is based on the costs of labour and materials relevant at this date and DES reserves the right to alter the charges to meet any variations, whether due to increase in wages (controlled by national agreements), materials or increased cost from any other cause outside of DES reasonable control.
  - d. Should any additional work or materials be found necessary in the course of these repairs or subsequent testing, it will be necessary to make an extra charge. Where this additional work involves a substantial increase in the amount estimated, a supplementary estimate will be submitted for acceptance.
5. **Special Terms**
  - a. Cores (working Goods in a degraded condition) accepted by DES will be paid only once satisfactory condition is confirmed by DES. Satisfactory condition means that DES can clean or refurbish the parts to bring them back into near-new working condition.
  - b. DES shall not require Company's express permission to clean, remanufacture or to fit cleaned or remanufactured units. The use of repaired units will be recorded in DES service reports.
  - c. Diagnostic data gathered from vehicles may contain errors, omissions or inaccuracies outside of DES control.
6. **Goods Supplied**
  - a. Where the service includes the provision of goods, DES reserves the right to impose a handling charge on goods returned for credit (which have been correctly supplied to order).
  - b. All 'Special Orders' correctly supplied and of satisfactory quality will not be accepted for credit. Goods supplied that are of satisfactory quality will not be accepted for credit more than 7 working days from the date of issue of an invoice.
  - c. All claims or queries pertaining to an invoice must be made within 7 working days of issue of an invoice quoting the invoice number.
  - d. In the event of cancellation, for any reason, Company agrees to return any Goods and equipment to DES's premises.
  - e. The title in any goods/services shall pass when payment has been received by DES (and all cheques/bankers drafts cleared) and not on delivery. Until such time as the property in the goods passes to Company, DES shall be entitled at any time to require Company to deliver up the goods and if Company fails to do so forthwith, to enter upon any premises of Company or any third party (including

where Company is in administration/ receivership). Company must store the goods separately from other goods until paid for.

**7. Variation**

- a. Any variation agreed between DES and Company regarding the Goods to be supplied shall be deemed to be an amendment to this Contract and shall not constitute a new contract.

**8. Delivery**

- a. DES shall give the estimated time for the repair of a vehicle and shall make every effort to inform Company if this estimated time cannot be met, although DES can accept no responsibility for delays outside its control.
- b. Vehicle servicing and maintenance will take place at Company supplied premises. Company will provide DES with suitable premises for it to undertake its work.
- c. Parts cleaning, manufacture and remanufacture will take place at DES premises.
- d. Consulting may be delivered at Company premises, remotely or a combination of the two.

**9. Payment**

- a. Payments shall be made by Company within 30 days of invoice receipt, unless otherwise agreed in writing.

**10. Warranties**

- a. Except where Company is acting as a Consumer, in so far as liability may be placed upon DES by the Consumer Rights Act 2015 or any other statutory provision, or in respect of a vehicle subject to a manufacturer's warranty or other written warranty, no warranty is given or implied as to the quality of Goods or Services or their fitness for any particular purpose whether known to DES or not.
- b. DES will, however, without prejudice to its right hereunder, correct all faults in goods or services carried out by DES and occurring by reason of DES's default or negligence and shown to be such to DES's satisfaction.
- c. Subject to the next clause below, DES assigns to Company, the benefits of any applicable manufacturer's warranty for parts fitted to a vehicle during a repair or service. Further, DES warrants its work free of defects in workmanship for a period of 3 months.
- d. DES's obligations under the contract shall be mitigated or removed if any defect is caused or worsened by any of the following:-
  - i. Failure to notify DES of the defect.
  - ii. Failure to afford DES opportunity to rectify the problem.
  - iii. Subjecting the goods to misuse, negligence or accident or use not in line with the advice of DES or manufacturers operating instructions.
  - iv. Installation of a part into the goods not approved by either the manufacturer or DES, or altering them in a way not approved by either the manufacturer or DES.
  - v. Failure to adhere to maintenance instructions regarding the care, treatment or upkeep of the goods, or in failing to have servicing and preventative maintenance carried out as recommended by either the manufacturer or DES.

**11. Liability**

- a. Where DES contracts to carry out a defined repair or diagnostic operation, DES's liability shall be limited to the performance of such work as may be defined by the standard manufacturer's schedule as coming within the scope of such operation.

**12. Use of Company's Vehicle**

- a. DES and its employees and agents are expressly authorized to use Company's vehicle on the highway and elsewhere for all purposes in connection with the work outlined. DES undertakes to take reasonable care of the vehicle so used, and to provide legally required insurance of the vehicle.

**13. Authority to Contract**

- a. Goods supplied by the order of any person in Company's employment or by any person reasonably believed by DES to be Company's agent or by any person to

whom DES is entitled to make delivery of the goods or vehicle, shall be paid for by Company.

**14. Authority to Uplift**

- a. Where a person who, so far as DES is aware, has authority to uplift Goods or Vehicles and does so, DES shall have no liability to Company for any loss or damage resulting on any grounds whatsoever. It shall not be obligatory upon DES to confirm the authority of any person reasonably believed to be the agent, or to have been at some time, connected with Company.

**15. Lien**

- a. Company acknowledges that DES has a legal lien upon any vehicle or vehicles left with DES for supply of goods and services for all monies due from Company on any account.

**16. Risk / Delay**

- a. Subject to the provisions of the Consumer Rights Act 2015 and any amendment thereof, vehicles, including components, fittings and contents are left with DES entirely at Company's risk. DES shall in no circumstances be liable for loss or damage thereto or for delay in completing service or repairs unless the same is caused by the negligence or default of DES, its employees or agents.

**17. Bankruptcy / Insolvency of Customer**

- a. If Company shall become bankrupt or insolvent or make any agreements with the creditors or allow a Receiver of their effects to be appointed or being a body corporate enter into liquidation, DES shall have the right to terminate any agreement with Company subject to these conditions and henceforth cease to have any further obligation under the contract. In these circumstances the price for all the services rendered and goods supplied shall immediately become payable.

**18. Data Protection**

- a. DES will hold information such as: that shown on the invoice for sales, service and warranty purposes; lists of buses, work and repair records; telemetry and other data supplied. In this regard DES acts as the Data Controller. DES does not expect to hold any personal data except for the contact details of those in Company directly working with DES.
- b. All the agreements between DES and Company are personal to Company. Company may not assign his rights or liabilities to any third party by any means unless agreed in writing.

**19. Distance Selling Regulations**

- a. If this Agreement has been conducted without any face to face contact between DES and Company, or anyone acting on each party's respective behalf, Company has the right to cancel this Agreement without giving any reason. The cancellation period will expire 14 days from the day on which Company first instructs DES to carry out the service and no service can be performed within this period unless Company expressly requests DES does so.
- b. To exercise the right to cancel, Company must inform DES of their decision to cancel this Agreement in writing by clear statement (e.g. a letter sent by post, fax or email).
- c. If Company requests any service to be provided during the 14 day period then they will lose the right to cancel this Agreement. Company shall pay DES an amount which is in proportion to that service performed until they communicated their cancellation of the Agreement.
- d. If Company cancels this Agreement, DES will reimburse to Company all payments received from Company under this Agreement, without undue delay, and not later than:-
- e. 14 days after the date on which DES receives any Goods back; or
- f. (if earlier) 14 days after the day Company provides evidence that Company has returned any Goods; or
- g. if there were no Goods supplied, 14 days after the day on which DES are informed about Company's decision to cancel this Agreement.

- h. DES will make the reimbursement using the same means of payment as Company has used for the initial transaction, unless Company has expressly agreed otherwise, but in any event Company will not incur any fees as a result of the reimbursement.
- i. DES may withhold reimbursement until DES has received any Goods back or Company has sent evidence of having sent back any Goods to DES, whichever is the earliest. Company should send back any Goods or deliver them back to DES at DES address, without undue delay and in any event not later than 14 days after the day on which Company communicates cancellation of this Agreement to DES.
- j. This deadline is met if Company sends back any Goods before the period of 14 days has expired. DES will require that Company bears the cost of returning any Goods to DES.

## **20. Return of Parts**

- a. Company must take reasonable care of any Goods whilst they are in Company's possession. Company will be responsible for any loss or damage from when they are delivered to Company until and when they are returned to DES.
- b. Company is liable for any diminished value of any Goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the Goods.

## **21. Dispute Resolution**

- a. In the event of a complaint or dispute of any kind Company should follow the following complaints handling procedure:
- b. All formal/written complaints relating to DES, its staff or services must be brought to the attention of a Director of DES.
- c. An investigation of the complaint will be carried out by a Director on behalf DES.
- d. A Director, on behalf of DES, will provide a written response to the complainant with his/her findings within 5 working days. Should further time be required for the investigation, the complainant will be contacted before the end of the seventh working day with a progress update explaining the reasons for the time extension. The investigation must be completed by the end of 10 working days since the last contact with the complainant.
- e. Once the investigation has been completed, a letter/e-mail will be sent to the complainant explaining DES's position. The letter/e-mail will explain the details of the investigation including factual details of the findings. The letter/email will summarise DES's position regarding the outcome of the investigation.
- f. If DES has not received feedback from the complainant following the outcome of the letter/email within one calendar month, DES will assume that the matter has been fully resolved.
- g. All complaints' records will be stored electronically and/or on hard copy in a secure folder.
- h. Where Company's complaint cannot be resolved, once Company has exhausted DES's internal process Company may refer the dispute to ADR
- i. Where any dispute cannot be resolved through ADR, a Purchase Order and Contract shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

## **22. Statutory Rights**

- a. Where Company is acting as a consumer, nothing in this contract is intended to exclude or limit Company's statutory rights.