

TERMS & CONDITIONS OF SALE

In these terms and conditions "the Supplier" refers to Simms Diesel and Turbocharger Services Limited and "the Customer" to any person receiving goods, services or both goods and services from Simms Diesel and Turbocharger Services Limited.

1 ACCEPTANCE

1.1 Any instruction received by the Supplier from the Customer for the supply of goods constitutes a binding contract and acceptance of these terms and conditions.

2 STATUS OF THESE TERMS AND CONDITIONS:

2.1 These terms and conditions prevail over any other estimate, quotation, invoice, sales docket or form.

2.2 Acceptance of these terms and conditions means that they will prevail over any terms and conditions provided in any document of the Customer or its agent regardless of when those may have been supplied or any provision that conflicts with these terms and conditions.

2.3 In the event that the Customer is an accredited franchisee, these terms and conditions of trade shall take preference over the franchise agreement.

3 PRICE

3.1 All prices are in New Zealand dollars.

3.2 Unless otherwise stated all prices quoted are exclusive of GST and insurance and are based on the Suppliers current prices as at the date of the quotation.

3.3 The Supplier reserves the right to revise its prices for an order at any time prior to the acceptance by the Customer to accommodate any increases in the exchange rate affecting the original quoted price.

3.4 The Supplier will not be bound by any oral estimates provided by its employees.

4 PAYMENT

4.1 Unless otherwise agreed in writing payment for goods, services or both is due when the goods are supplied or the services are completed or on presentation of an invoice from the Supplier.

4.2 Where the Supplier presents an invoice, payment is due on the 20th calendar day of the month following that in which the invoice is presented.

4.3 The Supplier may charge default interest at a rate of 2 % per month on any overdue amounts owing after the due date.

4.4 The Customer agrees to pay all collection costs including any commission due to any debt collection service and any legal costs on a full indemnity basis.

4.5 A cheque, bill of exchange or negotiable instrument only constitutes payment once it is honoured by the Customer's bank.

4.6 A 50% deposit is required for all goods and services over \$1000.00 unless the Supplier agrees otherwise.

4.7 Progress payments will apply to any contracts over \$10,000.

5 TITLE & SECURITY (PERSONAL PROPERTY SECURITY ACT 1999)

5.1 Title in all goods supplied by the Supplier will only pass to the Customer once the purchase price for the goods is paid in full.

5.2 Until payment is received, the Customer agrees that the Supplier will retain a secured interest in all goods supplied in terms of this agreement.

5.3 The Supplier and the Customer agree that the Supplier's ownership of goods remains in force, even in circumstances where the goods would normally accede to or become merged with other property. Should this happen the parties agree that in addition to any other right, the Supplier then obtains a security interest in the principal thing or the merged goods.

5.4 In the event of a default by the Customer or before a default occurs, if the Supplier reasonably believes a default is likely, the Customer irrevocably authorizes to the Supplier and / or their agent:

5.4.1. to enter any premises occupied by the Customer or where goods are situated at any reasonable time and

5.4.2. to remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated.

5.5 The Customer agrees to indemnify the Supplier for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action.

5.6 The Supplier may either resell any repossessed goods and credit the Customer's account with the nett proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed goods and credit the Customer's account with the invoice value thereof less such sum as the Suppliers reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

5.7 Where goods are retained by the Supplier pursuant to clause 5.6, the Customer waives the right to receive notice under S.120 of the Personal Property Security Act 1999 ("PPSA") and to object under S.121 of the PPSA.

5.8 The Customer also gives the Supplier a security over all property that the Supplier has performed services on.

5.9 The Customer agrees that the Supplier may register a security interest on the PPSR over such goods.

6 RETURN OF GOODS

6.1 This clause applies to the return of any goods by the Customer. Goods can only be returned on the terms set out in this clause.

6.2 The Supplier has the right in its sole discretion to refuse to accept goods returned more than (7) days from the date of delivery.

6.3 Any returned goods must be unused, undamaged and in its original condition and packaging.

6.4 A 10% handling fee may be charged for goods returned after seven (7) days.

6.5 PROCURED OR INDENTED ITEMS ARE NOT RETURNABLE FOR CREDIT

6.6 Goods must be returned with the original invoice/ packing slip or the number and date of the invoice/ packing slip

7 WARRANTY

7.1 The Supplier gives no warranty or guarantee on any goods beyond those offered by the manufacturer of the parts/ goods.

7.2 The decision of the manufacturer as to the validity of any claim is final and binding on both the Customer and Supplier.

7.3 The liability of the Supplier in the event of a valid claim will be limited to and not exceed the sale price of the goods concerned plus the cost of labour charged by the Supplier.

7.4 In respect of services performed by the Supplier, liability of the Supplier is limited to the cost of labour originally provided by the Supplier.

7.5 The Customer agrees that:

7.5.1. There are no oral or written understandings or agreements as to the merchantable quality and;

7.5.2. The Supplier gives no warranty that the goods are fit for any purpose or suitable for any purpose or any warranty other than that referred to in clause 7.1.

8 RISK

8.1 The goods remain at the Suppliers risk until delivery to the Customer.

8.2 Delivery of goods takes place when:

8.2.1. the Supplier gives possession of the goods to the Customer; or;

8.2.2. possession of the goods is given to a carrier, courier or other person nominated by the Customer to handle the goods on its behalf.

8.3 All property of the Customer in possession of the Supplier is stored and worked on solely at the Customers risk. The Customer is responsible for keeping all goods insured at all times.

9 EXCLUSION OF LIABILITY

9.1 Except as specifically stated otherwise in this agreement, the Supplier is not liable for any loss or damage of any kind, directly or indirectly arising from the supply or non-supply of goods and services by the Supplier to the Customer including consequential loss ; and;

9.2 The Customer agrees to indemnify the Supplier against all claims; and;

9.3 The Customer has entered into the contract with the Supplier in reliance on the Customers own skill and judgment.

10 CONSUMERS GUARANTEES ACT

10.1 The provisions of the Consumer Guarantees Act 1993 are excluded where the Customer does not acquire goods and services from the Supplier for domestic purposes.

10.2 Where the Act does apply, the liability of the Supplier is limited to the guarantees in the Act.

11 FRUSTRATION

11.1 Should the Supplier be delayed in supplying any ordered goods or services due to any cause not reasonably within its control, the Supplier has the right to cancel or suspend the contract without incurring any liability for any loss or damage to the Customer.

11.2 The customer agrees not to claim against the Supplier on account of this practice.

12 PRIVACY

12.1 The Supplier is authorised to obtain credit information about a Customer from credit referees and credit agencies and is authorised to disclose credit information to credit reference agencies or other persons seeking credit references.

12.2 The credit information is collected to assist the Supplier ascertain the Customer's credit status.

12.3 Failure to provide such information to the Supplier may result in credit being refused.

12.4 Under the Privacy Act 1993 Customers have the right to access and correct any personal information held about them.

13 WAIVER:

13.1 Any indulgence by the Supplier to the Customer is not a waiver of any of its rights in this agreement.

13.2 Any waiver of any right by the customer is only valid for the occasion for which it is given. It is not an ongoing waiver.

14 SEVERANCE:

14.1 If any provision of this contract shall be invalid, void or illegal or unenforceable then that provision shall be severable and will not affect the validity and enforceability of the remaining provisions.

15 LAW & JURISDICTION:

15.1 The Supplier and the Customer agree that the Law of New Zealand applies to this agreement and that the High Court and District Court at Auckland have jurisdiction in any legal proceedings arising out of it.