

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

Buyer	the person(s) or company whose order for the Goods is accepted by the Company
Company	Mitchell Diesel Limited
Consumer	a person(s) who buys the Goods or Services for private use or consumption and neither makes the contract in the course of business nor holds himself out as doing so
Contract	any contract between the Company and the Buyer for the sale and purchase of the Goods or the performance of Services
Delivery Point	the place where delivery of the Goods is to take place under clause 4
Goods	any goods which the Company is to supply to the Buyer (including any of them or any part of them).
Services	any work or services to be provided by the Company to the Buyer (including any part thereof).

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

2. FORMATION AND INCORPORATION

- 2.1 Subject to any variation under clause 2.4, the Contract will be on these terms and conditions set out below to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).
- 2.2 Each order for Goods or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods or Services subject to these terms and conditions.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, specification or similar document will form part of the Contract simply as a result of a reference to such document being referred to in the Contract.
- 2.4 Any variation to these terms and conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a director or manager of the Company.
- 2.5 Acceptance of delivery of the Goods or performance of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these terms and conditions.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it.

3. DESCRIPTION

- 3.1 The description of the Goods shall be as set out in the Company's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company or the manufacturer of the Goods and any description or illustrations contained in the Company's or manufacturer's catalogues, or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.
- 3.3 The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory requirements.
- 3.4 No variation in the specification or design of any Goods which, in the Company's reasonable opinion, does not adversely affect the suitability of the Goods for the particular purpose for which they are supplied by the Company will constitute a breach of contract or impose any liability upon the Company.

4. DELIVERY

- 4.1 Delivery of the Goods shall be made ex-works (INCOTERMS 2000).
- 4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 If carriage is required in accordance with clause 4.1 the Goods shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Goods and the other circumstances of the case.
- 4.4 Delivery of the Goods or performance of Services shall be accepted at any time of day.
- 4.5 Any dates specified by the Company for delivery of the Goods or performance of Services are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery or performance will be within a reasonable time.
- 4.6 The Company will use reasonable endeavours to deliver the Goods or perform the Services in accordance with clause 4.5. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery of the Goods or perform the Services on the specified date, the Company will be deemed not to be in breach of the Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect, consequential loss, loss of profits (all of which terms includes, without limitation, pure economic loss, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this clause. Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 90 days' written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period.
- 4.7 If the Buyer fails to take delivery of any of the Goods in accordance with clause 4.2 or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Company's fault) the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Company may:
 - 4.7.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
 - 4.7.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.
- 4.8 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off-loading the Goods.
- 4.9 The Buyer will indemnify the Company against any liability and expense (whether arising under statute or common law) caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading (whether or not the off-loading is supervised by or on behalf of the Buyer) for:
 - 4.9.1 any personal injury to or death of any of the Company's employees, agents or sub-contractors or any third party; and
 - 4.9.2 any damage to or loss of any property of the Company, its employees, agents or sub-contractors or any third party.
- 4.10 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5. FORCE MAJEURE

- 5.1 The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract (subject to clause 11) because of any delay in performing or any failure to perform any of the Company's obligations under the Contract if the delay or failure was due to any cause beyond the Company's reasonable control.
- 5.2 Without prejudice to the generality of clause 5.1 the following shall be included as causes beyond the Company's reasonable control:
 - 5.2.1 governmental action war or threat of war, national emergency, riots, civil disturbance, sabotage or requisition;
 - 5.2.2 act of God, fire, explosion, flood, epidemic or accident;
 - 5.2.3 import or export regulations or embargoes;
 - 5.2.4 labour disputes not including disputes involving the Company's work-force; or

- 5.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour.

6. RISK/OWNERSHIP

- 6.1 Risk of damage to or loss of Goods shall pass to the Buyer upon delivery or deemed delivery under clause 4.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods and the Services; and
- 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- 6.3.5 hold the proceeds of the insurance referred to in clause 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Company accordingly; and
- 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 Where the Company is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7. ERECTION. INSTALLATION AND COMMISSIONING

- 7.1 The Company shall have no responsibility or liability for installing, erecting, commissioning or servicing the Goods unless otherwise stated in the quotation. In the event of installation, commissioning, erecting or any other Services being provided by the Company the Buyer shall ensure that a clear and suitable site is available ready for the installation, commissioning, erecting and/or servicing of the equipment and that the site is readily accessible to normal transport. The Buyer will also ensure that the premises and/or site complies in all respects with the statutory requirements for the installation and functioning of equipment. Except when otherwise specified the Company does not supply labour or materials for any builder's work, foundations, structural alterations, plumbing or electrical work.
- 7.2 Where the Goods are sold and/or installed or erected on the basis of Services being given during a stated period the Company will provide such Services during normal working hours as shall in the opinion of the Company be necessary and the stated period shall run from the date of delivery of any Goods being supplied or from the date of completion, installation or erection if such goods are being installed or erected by the Company.

8. PRICE

- 8.1 The price for the Goods and/or Services ("the Price") shall be the Price set out in the quotation provided by the Company and subsequent acceptance of contract.
- 8.2 The Price for the Goods is exclusive of any value-added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods and/or Services.

- 8.3 The Price is given on an ex-works basis and where the Delivery Point is other than at the Company's premises the Buyer shall pay the Company's charges for transport, packaging, loading, unloading and insurance in addition when it is due to pay for the Goods.

9. TAXES

Any contract unless otherwise stated excludes custom and import duties and other taxes. The Buyer shall be responsible for all Buyers and import duties and other taxes imposed up to and including the actual date of delivery of performance. Unless otherwise stated all quotations exclude Value Added Tax which shall be paid by the Buyer at settlement at the rate current at the tax point, if applicable.

10. PAYMENT

- 10.1 The Company may invoice the Buyer for the Goods and/or Services at any time after delivery of Goods or performance of Services.
- 10.2 Time for payment shall be of the essence.
- 10.3 Payment of the Price is due on delivery of the Goods or completion of the performance of the Services (as applicable) and shall be paid as provided in the quotation or on such other date as stipulated in writing by the Company.
- 10.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.5 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 10.6 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 10.7 The Company may appropriate any payment made by the Buyer to the Company to such of the Goods and/or Services as the Company thinks fit despite any purported appropriation by the Buyer.
- 10.8 If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 2½ % above Barclays Bank Plc's base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).

11. QUALITY

- 11.1 Where the Company is not the manufacturer of the Goods will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

11.2 WARRANTY

Where the Company is the manufacturer of the Goods the Company will, free of charge, within a period of 12 months from the date of delivery (or deemed delivery under clause 4) of Goods which are proved to the reasonable satisfaction of the Company to be damaged or defective due to defects in material or workmanship or design (other than a design made, furnished or specified by the Buyer), repair, or at its option replace, such Goods, This obligation will not apply where;

- 11.2.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- 11.2.2 the Goods have been improperly installed or connected;
- 11.2.3 any maintenance requirements relating to the Goods have not been complied with;
- 11.2.4 any instructions as to storage of the Goods have not been complied with in all respects; or
- 11.2.5 the Buyer has failed to notify the Company of any defect or suspected defect within 7 days of the delivery where the defect should be apparent on reasonable inspection, or within 7 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 12 months from the date of delivery.

- 11.3 Any Goods which have been replaced will belong to the Company. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in clause 11.2 for the unexpired portion of the 12 month period from the original date of delivery of the replaced Goods.
- 11.4 The Company warrants that the Services will be provided with reasonable skill and care. In the event that the Services provided do not conform to this warranty, the Company at its own option: -
- 11.4.1 take such steps as it deems necessary to remedy the shortcomings;
- 11.4.2 refund such part of the Price as is appropriate. This obligation will not apply where the Buyer has failed to notify the Company of any non-conformity within 7 days of performance of the relevant Services, or within 7 days of the non-conformity becoming apparent where it wasn't apparent upon reasonable inspection, and in any event no later than 12 months from completion of performance of the Services.

11.5 EXCLUSION OF LIABILITY

In the event of any breach of the Company's express obligations under clause 4.6, 11.2, 11.3 and 11.4 above the remedies of the Buyer will be limited to damages.

- 11.6 The Company does not exclude its liability (if any) to the Buyer:
- 11.6.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
- 11.6.2 for personal injury or death resulting from the Company's negligence;
- 11.6.3 under section 2(3) Consumer Protection Act 1987;
- 11.6.4 for any matter which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
- 11.6.5 for fraud.
- 11.7 Except as provided in clauses 11.2 to 11.6, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 11.7.1 any of the Goods, performance of the Services, or the manufacture or sale or supply, or failure or delay in supply of performance, of the Goods and/or Services by the Company or on the part of the Company's employees, agents or sub-contractors;
- 11.7.2 any breach by the Company of any of the express or implied terms of the Contract;
- 11.7.3 any use made or resale by the Buyer of any of the Goods, or of any goods incorporating any of the Goods; or
- 11.7.4 any statement made or not made, or advice given or not given, by or on behalf of the Company. Or otherwise under the Contract.
- 11.8 Except as set out in clauses 11.2 to 11.4 and 15, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 11.9 Subject to clause 11.6 the Company's aggregate liability under the Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) and howsoever arising to the Buyer will be limited to the Price.
- 11.10 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in clauses 4.6, 5.1 and 11.5 to 11.8 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those clauses.
- 11.11 The Buyer acknowledges that the above provisions in these terms and conditions are reasonable and reflected in the price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.

12. TERMINATION

- 12.1 The Contract will terminate immediately upon the happening of any one or more of the following events; the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.
- 12.2 The Contract will terminate immediately upon service of written notice of termination by the Company on the Buyer on the happening of any one or more of the following; the Buyer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.
- 12.3 The Company's rights contained in clause 6 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and the Company's primary obligations under the Contract consequent upon its termination.
- 12.4 Any contract relating solely to the provision of Services may be terminated on either party giving to the other 3 month's notice in writing.
- 12.5 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Company accrued prior to termination.

13. GENERAL

- 13.1 Time for performance of all obligations of the Buyer is of the essence.
- 13.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under Contract or not.
- 13.3 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 13.4 Failure by the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.5 The Company may assign, license or sub-contract all or any part of its rights or obligations under the Contract without the Buyer's consent.
- 13.6 The Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 13.7 Except as set out in clause 9.8 the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 13.8 The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

14 . COMMUNICATION

- 14.1 All communications between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:-
 - 14.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
 - 14.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer
- 14.2 Communications shall be deemed to have been received:-

- 14.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 14.2.2 if delivered by hand, on the day of delivery;
- 14.2.3 if sent by facsimile transmission on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Company shall be marked for the attention of the person agreeing the contract on behalf of the Company.

15. CONSUMER

- 15.1 The provisions of clause 11.7 and 11.8 shall not be applicable where the Company supplies the Goods or Services to a Consumer.

ISSUED 31 JAN 2002.