

1 INTERPRETATION

1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:

"Client" means the person, firm or company that has requested any Work identified in the Order;

"Conditions" means the General DES Terms and Conditions set out herein;

"Order" means any order between the Client and DES;

"Goods" means goods supplied by DES, per Client's order

"DES" means the company within Diesel Engine Service Ltd which supply the Goods and/or Services under the Order

"Services" means services supplied by DES (as defined in DES' tender or order acknowledgement);

"Site" shall mean the place where the Services are to be performed by DES together with so much of the area surrounding the said place as DES shall actually use in connection therewith "Work" means Goods and/or Services.

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

2 FORMATION

2.1 These General Terms and Conditions apply to the Order and the Goods and Services to be delivered under this Order to the exclusion of any other terms and conditions of the Client. Variations to the terms of any Order will only be effective if agreed in writing. If any such agreed variation increases the time or cost to DES of performing the Order then the Order price and/or program will be adjusted accordingly.

2.2 Orders from Client are only binding on DES after a written order acknowledgment has been issued and only on the conditions stated in the order acknowledgment.

2.3 All information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists

is to be considered approximate. Such information is only binding to the extent expressly stated in the order acknowledgment or in other documents forming part of the Order expressly referring to such information.

3 DELIVERY AND NON-DELIVERY AND DELAY

3.1 Unless otherwise expressly agreed in writing by DES

- delivery times accepted by DES are given in good faith but are an estimate only; and

- delivery of the Goods is made „Ex Works“ in accordance with Incoterms 2000, but the delivery price is exclusive of packing, which will be charged extra.

3.2 Performance of the Services shall be at the Site specified in DES' tender or order acknowledgement.

3.3 DES may deliver Goods in instalments and perform Services in sections in any sequence. Default by DES, howsoever caused, in respect of one or more instalments and/or sections shall not entitle the Client to terminate the relevant Order as a whole.

3.4 Where:

(a) the Client fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order; or

(b) DES agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Client; or

(c) the Client fails to provide any instructions consents or authorisations required to enable the Goods to be delivered on the due date; the risk in the Goods shall pass immediately to the Client, delivery of the Goods shall be deemed to have taken place and DES may store or arrange for storage of such Goods and charge the Client for all related costs and expenses (including storage and insurance) and may sell such Goods after expiry of 28 days following such failure or refusal and deduct any monies payable to DES by the Client from the sale proceeds and charge the Client for any shortfall below the Order price.

3.5 Upon delivery to the Client, all Goods should be examined. DES shall not be liable for any shortages in, damage to or non-delivery of Goods unless the same is notified by the Client to DES (together with all specific details) in writing within 10 days of the actual or anticipated date of delivery (as relevant). Subject to such notice being provided DES shall, if it is satisfied that any Goods have not been delivered and the cause thereof being beyond the reasonable control of DES, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Client for such Goods and this shall be the Client's only remedy and in lieu of all other rights and remedies which might otherwise be available to the Client. Shortages in, or non-delivery of some or part of the Goods shall not affect the Order in respect of the other or other parts of the Goods.

3.6 If the ordered delivery time for the Work or part of the Work is delayed and this delay was caused by negligence or intention of DES and if the Client has suffered a loss caused by such delay, the Client shall be entitled to liquidated damages for delay. Such liquidated damages for delay shall amount to 0.5% of the Order price of the delayed part of the Work concerned per each full week of delay considering a grace period of 2 (two) weeks. The liquidated damages for delay will be limited to a maximum of 5% (five per cent) of the Order price of the delayed part of the Work.

3.7 Liquidated damages shall be Client's sole and exclusive measure of damages and remedy against DES with respect to the failure to achieve the ordered delivery time for the Work.

4 TITLE

Unless DES has been paid in full in advance, the Work will be considered as having been made with DES retaining the ownership until full payment has been effected by the Client under all Orders between DES and the Client. If the Client does not pay when due, DES is entitled to take back the Goods without a court judgment in accordance with the applicable law.

5 PRICE AND BINDING PERIOD OF QUOTATIONS AND TENDERS

5.1 Unless otherwise agreed, quotations and tenders lapse after 30 days from their date.

5.2 Unless fixed prices have been agreed in writing by DES, all sales are made at the prices valid at the date of DES' tender or the date of DES' order acknowledgement (as the case may be).

5.3 DES shall neither be entitled nor obliged to implement changes in the scope of supply, before the Parties have reached an agreement regarding the corresponding adjustment of the Order price and the delivery time.

5.4 Unless otherwise agreed in writing by DES prices set out in any of DES' price lists, tenders or order acknowledgement are Ex Works (Incoterms 2000) and exclusive of any taxes, duties, fees, charges or similar and any costs of carriage, package and insurance which shall be payable in addition to the price.

5.5 Unless otherwise agreed by DES in writing, sums payable by the Client to DES shall fall due and be effected by the Client net cash not later than 14 days after the date of the invoice. If any sum payable under the Order is not paid when due then without prejudice to DES' other rights under these Conditions, such sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 20% per annum over the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

5.6 All hotel, flight and transport arrangements made by DES, will be charged to the Client with 7% administrative fee.

6 PROVISION OF SERVICES

6.1 Unless otherwise expressly agreed in writing Services rendered by DES shall be charged on time basis in accordance with DES' general rates for personnel valid at the date of the provision of the Services. Such rates are exclusive of board, lodging and transportation and such other facilities as are to be provided by the Client free of charge. All travelling expenses and costs of carriage of luggage, instruments and tools incurred by DES'

personnel shall be finally borne by the Client. Unless otherwise agreed DES' execution of Services is subject to manual assistance being rendered by the Client either through engine room staff or other persons made available by the Client.

6.2 The taking-over of the Works by the Client shall be deemed to have taken place at the latest, when the Client has received DES' notice that the Work has been completed, provided that the Work is as required for taking-over according to the Order. Minor deficiencies which do not affect the efficiency of the Work shall not prevent taking-over. The period, referred to in Condition

7.1 shall start to run at the latest when the Work is ready for taking-over in accordance with this Condition 6.2.

6.3 All technicians provided by DES are insured with insurance cover of medical treatment and assistance amounting to 200 000 PLN and insurance cover against the effect of accidents amounting to 100 000 PLN.

7 WARRANTY

7.1 DES warrants for a period of 6 months (i) from the date the Goods were delivered, that such Goods are free from substantial defects in materials or manufacture; and/or (ii) from the date the Services were rendered, that such Services were carried out with reasonable skill and care.

7.2 All conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with Condition 7.1, are hereby expressly excluded to the fullest extent permitted by law.

7.3 The warranty given in Condition 7.1 will not apply:

(a) where the defect complained of arises from any drawing, design, specification or intellectual property right supplied by the Client or arises from normal wear and tear, wilful damage, the Client's negligence, abnormal working conditions, or misuse or alteration or

repair of the Goods without DES' approval or arises from any failure to follow DES' advice (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods);

(b) if DES or its agent is not given a reasonable opportunity to safely inspect the Work;

(c) if the total price for the Goods or Services has not been paid by the due date for payment;

(d) if the Service is performed on parts supplied by Client, that are non-genuine and/or non-OEM.

7.4 The obligations of DES under the Order are limited such that in the event of a breach by DES of the warranty in Condition 7.1 or any defect in any Goods or Services DES shall only be obliged (and shall have no further liability in Order, negligence or otherwise for any defect in quality of the Goods and/or Services) at its option either to:

(a) credit the price (if already paid) attributable to the faulty Goods or Services; or

(b) repair, rectify or replace the faulty Goods or Services

provided that such Goods are returned to DES in their delivered state at the Client's expense if so requested by DES within 12 months from the date of their delivery. DES shall especially not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect. Condition 7.4 shall be the

Client's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Client.

Any replacement Goods will be warranted on the terms set out in this Condition 7 but in no case longer than the original warranty period.

8 FORCE MAJEURE

8.1 In case of Act of God, labour disputes, civil commotion, governmental or official actions or any other event which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved

from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable to DES if a sub-supplier of DES is affected by such event and/or in case the Party concerned is already in default.

8.2 The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

9 LIMITATION OF LIABILITY

9.1 DES shall not be liable to the Client in Order, tort, law or otherwise howsoever and whatever the cause thereof, (i) for any loss of profit, hire, business Orders, revenues or anticipated savings, or (ii) for damage to the Client's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.

9.2 Nothing in these Conditions shall exclude or limit the liability of DES for death or personal injury caused by the DES' negligence, intent or fraudulent misrepresentation. In addition Condition 9.1 above shall not apply in case DES has caused the damage to Client's property with intention or gross negligence or by fraudulent misrepresentation.

9.3 Without prejudice to Conditions 9.1 and 9.2 DES' total liability for each Order in Order, tort, law or otherwise arising by reason of or in connection with the Order shall be limited to the value of that Order.

10 TERMINATION

10.1 If the Client fails to make any payment when due or to perform any of its other obligations on time, DES shall be entitled to suspend its performance of the Order until the failure is remedied; and regardless of whether DES elects to suspend performance:

(a) the time for performance of the Order by DES shall be automatically extended accordingly; and

(b) any cost (including financial costs and storage, demurrage or other charges) thereby incurred by DES shall be paid by the Client.

10.2 Without prejudice to any of its other rights DES may immediately terminate the Order if any of the following occurs or is likely to occur:

(a) suspension under Condition 10.1 continues for more than 60 days;

(b) the Client is in breach of any of its obligations under the Order which, if capable of remedy, the Client has not remedied within 14 days of receiving written notice from DES; or

(c) the Client is wound up or becomes insolvent or has a receiver or administrative receiver appointed or any equivalent or analogous event occurs in any other jurisdiction or the Client ceases or threatens to cease to carry on business or otherwise is unable to pay its debts when they fall due.

10.3 Upon termination, howsoever arising, DES shall be entitled forthwith to suspend any further work under the Order without any liability to the Client. Without prejudice to DES' other remedies under the Order, within 14 days of such a notice of termination, howsoever arising, the Client shall pay to DES:

(a) the outstanding balance of the Order price of the Work which has been delivered or performed, and

(b) the costs incurred or committed by DES up to the date of notice of termination in performing such work which is not yet completed plus a reasonable margin to be agreed between the Parties which shall not be less than 15% of the Order price, and

(c) the costs reasonably incurred by DES as a result of the termination.

10.4 Termination, expiry or completion of the Order or any part of it, shall not affect or prejudice the provisions of Conditions 9, 10, 11 and 12.

11 CLIENT'S OBLIGATIONS

11.1 The Client shall provide DES' personnel with assistance in obtaining official entry, exit or working permits required in the country where the Services are to be carried out and ensure that they have free access to the Site.

11.2 The Client shall provide DES' personnel with unobstructed and safe access to the Site to enable them to perform the Work in accordance with the Order.

11.3 The Client shall be responsible for ensuring the health and safety of DES' personnel whilst on the Site. The Client shall take appropriate measures to protect DES' personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When DES is to carry out the Work on the Site, the Client shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies.

11.4 DES may, at its sole discretion, refuse to perform the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its personnel and/ or where the Client is in breach of this Conditions 11 and DES shall not be liable under the Order for any delay in or failure of delivery in such event.

11.5 The Client shall assume all responsibility for all acts or omissions of the Client's personnel and DES shall have no liability with respect thereto.

11.6 The Client shall provide all tools, test equipment and test facilities unless specifically stated otherwise in the Order. Where DES does supply tools then the Client shall give all necessary assistance with the customs formalities required for the import and re-export of DES' tools and equipment free of all Taxes.

11.7 The Client shall to the best of its ability assist DES in obtaining all necessary information concerning such local laws and regulations as are applicable to DES' performance of the Services.

The Client shall specify a firm delivery address for the ordered Goods at least within 3 weeks after receipt of DES' written confirmation of the date of readiness for dispatch.

In case Client fails to do so, DES is entitled to sell the Goods selected for delivery to the Client to a third party and to set forth a new delivery time to be forwarded to the Client for information. In such case the Client is not entitled to claim liquidated damages according to Condition 3.6.

12 GENERAL

12.1 DES and the Client shall only be entitled to assign or sub-Order any of its rights or the obligations under the Order with the prior written consent of the other.

12.2 If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Order which shall remain in full force and effect. The Parties are committed to replace the invalid provision by another - with respect to the commercial effect - equivalent provision, in so far as this is possible.

12.3 The Order and these Conditions shall be construed in accordance with and governed in all aspects by the laws of Poland.

12.4 If a difference of opinion cannot be settled by the Parties themselves, the dispute shall be finally decided by under Polish law in Polish language.