

LEES DELTA MARINE LTD TERMS AND CONDITIONS OF TRADE

1. GENERAL

- 1.1 These terms and conditions of trade ("**Terms**") apply to all:
- (a) goods supplied ("**Goods**"); and
 - (b) services supplied (including repair and servicing of Goods) ("**Services**")
- by Lees Delta Marine Ltd (trading as Lees Group) ("**Lees, we, us, our**") to the Customer ("**you**").

- 1.2 By placing an order with us for any Goods and / or Services you agree to be bound by these Terms, as varied from time to time.

- 1.3 These Terms supersede and prevail over any representations made by any of our agents or representatives.

2. PRICE AND PAYMENT

- 2.1 Prices for Goods will be as quoted in writing by us to you.
- 2.2 We (as accurately as possible) estimate the time and resources required to deliver Services to you. Notwithstanding any estimate given, unless we have agreed in writing to be bound by a set price for the Services, you shall pay to us our actual cost of completing the Services which will be calculated by totalling the following:
- (a) the number of hours of worked multiplied by the hourly rates for the workers involved on the date(s) which the Services are undertaken;
 - (b) any disbursement costs (including without limitation delivery costs) incurred by us on your behalf; and
 - (c) the cost of any Goods supplied by us as part of the Services.
- 2.3 All prices are stated exclusive of Goods and Services Tax and any other taxes and duties which are payable by you (if applicable).
- 2.4 All freight, couriers, travel costs, and any other charges in relation to the supply of Goods or Services are in addition to the quoted price and will be payable by you.
- 2.5 Unless otherwise expressly stipulated by us, payment for all Goods and Services must be made by you to our nominated Bank Account within 7 days of the production of our invoice. We may, at our option, issue a monthly interim invoice where the delivery of Services is over a period exceeding one month.
- 2.6 Payment of all money due shall be without set-off or deduction of any kind.
- 2.7 If payment is made by credit card, a surcharge of 3% will added to the price.
- 2.8 If you fail to make payment in full by the due date you are in default and must pay default interest on any outstanding amount, calculated at 4% above the Official Cash Rate of the Reserve Bank of New Zealand against the total balance outstanding.
- 2.9 Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in these Terms will be paid by you, including any reasonable solicitor's fees or debt collection agency fees.

3. DELIVERY, RISK AND TITLE

- 3.1 Goods purchased by you from us are deemed to have been delivered as set out below ("**Delivered**"), when, as relevant to your order:
- (a) you collect them from us; or
 - (b) we deliver them to the address specified in your order.
- 3.2 Risk in Goods passes to you on Delivery as defined above. Title in Goods passes to you upon receipt of payment by us.

4. RESPONSIBILITY FOR MAINTENANCE & PERFORMANCE

- 4.1 Goods purchased by you may be accompanied by the manufacturer's user manual and / or installation manual. For the avoidance of any doubt, it is your responsibility to read these manuals carefully and to strictly adhere to the maintenance and inspection schedules and instructions detailed in them.
- 4.2 We take no responsibility and accept no liability for any failure or malfunction of Goods resulting from your failure to strictly adhere to the schedules and instructions detailed in these manuals or otherwise.

5. PERFORMANCE OF SERVICES

- 5.1 We will:
- (a) perform the Service with reasonable skill, care and diligence in a professional manner;
 - (b) endeavour to ensure that the Services are performed in accordance with any time frames agreed in writing with you;
 - (c) liaise with you during the course of performing the Service in accordance with your reasonable requirements.
- 5.2 You will give reasonable assistance to enable us to perform the Service by:
- (a) giving clear instructions; and
 - (b) promptly providing any information or content required from you for us to complete the Services.
- 5.3 If we have given you a time frame for completion of the Services, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.

6. CANCELLATION

- 6.1 You not cancel any order without first obtaining our written consent. Such notice of cancellation must be in writing.

7. CLAIMS AND LIABILITY

Notwithstanding Any Other Provision Of These Terms:

- 7.1 Any claim by you of any "Defect" (as defined in clause 8.2) in any Goods or of a defect in any other Goods or Services provided, including non-conformity to an order, must be made in writing to us within:
- (a) 12 months of us issuing you an invoice for the Goods and/or Services; and
 - (b) 10 calendar days of such Defect or other defect being discovered.
- 7.2 We provide the Limited Warranty in respect of Goods in clause 8.1. The Consumer Guarantees Act 1993 ("**CGA**"), the Fair Trading Act 1986 ("**FTA**"), and other statutes may impose warranties, conditions or obligations upon us which, by law,

either cannot be excluded, or can only be excluded to a limited extent ("**Imposed Warranties**"). To the maximum extent permitted by law, you and we exclude:

- (a) Imposed Warranties; and
- (b) All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Terms.

7.3 Where you acquire Goods and/or Services from us, for the purposes of a business:

- (a) the parties acknowledge and agree that:
 - (i) you are acquiring the Goods and/or Services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the CGA;
 - (ii) the Goods and/or Services are both supplied and acquired in trade for the purposes of the FTA and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations) and 13 (False and misleading representations); and
- (b) you agree that all warranties, conditions and other terms implied by the CGA or sections 9, 12A and 13 of the FTA are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

7.4 Where the Imposed Warranties or the Limited Warranty set out in clause 8 apply, you agree to give us a reasonable opportunity to inspect, verify and accept or reject any claim of a defect or defective Goods and/or Services. Where your claim of a defect is accepted by us, we may (at our discretion) repair, replace or give credit for the Goods or Services supplied. To the maximum extent permitted by law, we will not be otherwise liable to you or any third party, whether in contract, tort or otherwise, for any loss or damage arising directly or indirectly from Goods or Services supplied by us to you. For the avoidance of any doubt we will not be liable to you for:

- (a) any indirect, special or consequential loss or damage; or
- (b) loss of equipment or property; or
- (c) economic loss or damage; or
- (d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
- (e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,

even if we are advised in advance of the possibility of any such losses or damages.

We will not be liable for any losses arising from your misuse of the Goods including (without limitation):

- (f) wilful damage;
- (g) your negligence or that of your agents or employees;
- (h) any alteration or repair you make to the Goods.

Except insofar as the law prevents us from excluding liability, the extent of our liability will not exceed the price that you have paid us for the Goods and/or services provided to you.

8. WARRANTY

8.1 We warrant only that any Goods purchased from us will comply with the warranties offered, and for the period specified, by the manufacturer of the Goods ("**Limited Warranty**"). If at the time the Goods are purchased from us the manufacturer's warranty shall expire in less than 12 months, we shall extend the Limited Warranty to 12 months from, or 1,000 running hours after, the date of purchase, whichever comes first.

8.2 Where the Goods do not meet the Limited Warranty ("**Defect**"), we will, at our sole discretion, either repair or replace the Goods, or provide a refund. Our warranty is conditional upon:

- (a) the defect not being caused or partly caused by, or arising through failure on the part of you to properly maintain the Goods;
- (b) you following any user and / or installation manual, instructions or guidelines provided by us or the manufacturer;
- (c) use of the Goods immediately ceasing once any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
- (d) the defect not being as a result of fair wear and tear or any accident or act of God; and
- (e) the Goods not having been repaired, altered or overhauled in any way.

8.3 In respect of all claims we shall not be liable to compensate you for any delay in either replacing or repairing the Goods or in properly assessing your claim. During such time we are not required to provide you with loan or replacement Goods.

8.4 Save as agreed, in the event of a warranty claim you shall be responsible for arranging return of the Goods to us and all costs associated with the return of the Goods. If this is not possible you shall be invoiced the actual costs incurred by us.

9. RETURNS POLICY

9.1 No Goods shall be returned to us unless you first obtain our consent in writing. You must apply for this consent in writing, within 20 calendar days of the Goods having been delivered to you. When applying for consent you must provide details of the delivery number and invoice number. The Goods must be unused and in the same condition as when they were sold, with all packaging in its original condition.

9.2 You shall be responsible for all costs associated with the return of the Goods to us. If we are required to arrange return of the Goods to us, you shall be invoiced the actual costs incurred by us.

9.3 A handling fee of 15% of the invoice price of the Goods returned will be charged to cover our administration costs.

9.4 Specifically procured items are not returnable.

10. PERSONAL PROPERTY SECURITIES ACT 1999 ("**PPSA**")

10.1 All terms in this clause 10 have the meaning given in the PPSA and section references shall be to sections of the PPSA.

10.2 Clause 3.2 creates a security interest in Goods we supply to you.

10.3 You shall not grant any other security interest or any lien over Goods that we have a security interest in.

10.4 At our request you shall promptly sign any documents and do anything else required by us to ensure that our security interest constitutes a first ranking perfected security interest in the Goods.

10.5 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.

10.6 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included.

- You shall not grant any other security interest or any lien in either the Goods or in the whole.
- 10.7 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 10.8 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 10.9 You will give us prior written notice of a proposed change of your name or address.
11. **DEFAULT**
- 11.1 The security interests created by these Terms become enforceable if any of the following events occur:
- (a) you fail to pay any money owing when due;
 - (b) you sell, part with possession or dispose of any Goods or do anything inconsistent with our ownership of the Goods prior to making payment in full to us;
 - (c) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
 - (d) the Goods are at risk, as that term is defined in the PPSA;
 - (e) you neglect or fail to carry on your business to our reasonable satisfaction, or if there is a significant deterioration in your trading or asset position;
 - (f) you are otherwise in breach of your obligations under these Terms.
- 11.2 If any of the events described in above occur, in addition to any remedies we may have at law, we may do one or more of the following:
- (a) charge default interest in accordance with these Terms;
 - (b) enter on to your premises and repossess any Goods which have not been paid for in full;
 - (c) immediately terminate these Terms by notice to you.
- 11.3 All disclaimers and limitations of liability contained in these Terms will survive termination.
12. **FORCE MAJEURE**
- 12.1 Should we be delayed in supplying or fail to supply Goods and/or Services due to any event whatsoever not reasonably within our control (including, but not limited to, any delay in supplying or failure to supply Goods to us by the engine manufacturer or our suppliers), we may either:
- (a) cancel your order of Goods and/or Services; or
 - (b) suspend our obligations to you under these Terms during the period when such event is causing delay,
- in either case without incurring liability to you for any loss or damage whatsoever suffered by you or any other person.
13. **PRIVACY**
- 13.1 By placing an order with us, you authorise us to collect, retain and use information about you for the following purposes:
- (a) to manage your account with us, including sending you statements and invoices, organising payment, assessing your credit worthiness, supplying Goods and/or Services to you; and
 - (b) to provide you with information about our products and services and any special offers we believe may be of interest to you.
- 13.2 Under the Privacy Act 1993 you have the right to access and correct any personal information we hold about you. Please direct any such request to info@leesgroup.com.
14. **OTHER**
- 14.1 You may not assign or transfer all or any of your rights or obligations under these Terms without our prior written consent.
- 14.2 We are not bound by any error or omission in any invoice, order, form or other document.
- 14.3 You must keep all information you have provided to us up-to-date, including advising us in writing of any change of name, address or other details that would be relevant to your account with us.
- 14.4 If any provision of these Terms is or becomes invalid or unenforceable, that provision will be deemed deleted from these terms to the extent of such invalidity or unenforceability and such invalidity or unenforceability will not affect the other provisions of these Terms, all of which will remain in full force and effect.
- 14.5 We shall be entitled at any time by notice in writing to you to vary these Terms and you shall be bound by such variation.
- 14.6 Any notice may be given to you, in person, posted, or sent by fax or email to you or your last known postal or email address (or where you are a company, to any of your directors). Notices to us must be sent by email to info@leesgroup.com or post to PO Box 72-047, Papakura.
- 14.7 These Terms are governed by and construed in accordance with the current laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms.