

CONDITIONS FOR SALE

Offer to purchase

- The Purchaser hereby offers to purchase from the Company the goods identified on the Invoice for the Price on the Invoice.
- The Company may in its absolute discretion accept the Purchaser's offer to purchase.

Price

- All Prices are "ex warehouse".
- The Purchaser must pay the price noted on the Invoice to the Company within 14 days of the date of the Invoice.
- All representations made in the Invoice are made on the basis that errors and omissions are excepted.

Delivery

- The Purchaser is liable for all transport charges and/or transport insurance of purchased goods unless the Company agrees in writing otherwise. If such charges are paid by the Company, those charges are not refundable if included in the purchase price in the event the goods are later returned.
- If the Company accepts liability for transport charges and/or transport insurance, the Purchaser shall indemnify the Company from all loss which occurs to the goods during transport and / or delivery including all consequential loss .

Retention of title

- Title to and in all Goods, sold, supplied or delivered by the Company to the Purchaser shall not pass to the Purchaser, but shall remain with the Company, until such time as full payment is made by the Purchaser for all Goods, sold, supplied or delivered to it by the Company and all other amounts owing to the Company by the Purchaser have been paid in full, whether such amounts are payable under this or any other contract or agreement between the Company and the Purchaser.
- Until title to such Goods passes to the Purchaser, the Purchaser acknowledges and agrees to hold any goods delivered to it by the Company as bailee.
- Notwithstanding any other provision of these Terms and Conditions, the Purchaser may sell any goods to a third party in the ordinary course of the Purchaser's ordinary business and deliver them to that third party, provided that:
 - where the Purchaser is paid by that third party, the Purchaser shall hold and shall be deemed to hold the whole of the proceeds of sale on trust for the Company; and
 - where the Purchaser is not paid by that third party, the Purchaser agrees to assign, at the option of the Company, its claim against that third party to the Company upon receiving notice from the Company that it requires such an assignment.
- Until title in such goods passes to the Purchaser or the goods are sold by the Purchaser to a third party:
 - the Purchaser agrees to hold and shall hold such goods as a fiduciary for the Company;
 - the Purchaser agrees to store those goods and shall store those goods in a manner which clearly indicates that the goods are the property of, and that title to them, remains with the Company;
 - notwithstanding that the title to such goods remains with the Company, the Purchaser agrees to hold and shall hold the goods at its risk and expense and be liable to compensate the Company for all loss and damage sustained to the goods whilst they are in the Purchaser's possession or control;
 - until such time as the Purchaser has paid all sums owing to the Company whether under this or any other contract or agreement, the Company has the right to call for and/or recover the Goods, and the Purchaser agrees that the Company may in its absolute discretion enter upon the Purchaser's premises and retake possession of the goods and the Purchaser hereby irrevocably authorises and directs the Company's representatives or agents to enter onto the Purchaser's premises during operating hours in order to repossess all Goods in the event that the Purchaser fails to make any payment when it is due, or commences to be wound up, or is placed under official management, or a receiver or manager is appointed to the Purchaser, or any amount in respect of Goods supplied by the Company is in the Company's opinion in jeopardy.
 - For the purposes of facilitation of Clause 8(d), the Purchaser shall raise no objection to the Company's or its representatives' entry onto the Purchaser's premises or to the repossession of those goods whether in the law of theft or trespass and agrees that the Company has claim of right over those goods. Where the Purchaser locks or otherwise would prevent the Company from retaking possession of its goods, the Purchaser acknowledges Clauses 8(d) and 8(e) applies.

- The provisions of this Retention of Title clause apply notwithstanding that the Company may have allowed credit to the Purchaser.
- The Purchaser further acknowledges and agrees that all goods may be repossessed in lieu of payment of any moneys due from the Purchaser to the Company and that the Company shall not be liable for any costs, losses, damages or other expenses suffered by the Purchaser or any third party in respect of the Company taking any action to recover such moneys.

Returns Policy

- The Company may accept in its absolute discretion the return of new parts which are deemed by the Company to be of acceptable condition within 30 days of the invoice date.
- The Company in considering whether a returned good is of acceptable condition will consider (amongst other things) whether the returned good is in the original packaging, accompanied by original invoice and in a condition suitable for the Company to re-stock and re-sell the returned good.
- If the Company accepts the return of goods pursuant to Clause (1), the Company in its absolute discretion may allow for an exchange for goods of equivalent price or to provide a credit to the value of the good.
- In consideration of accepting the returned good and for assessing whether the good is of acceptable condition, the Purchaser must pay to the Company ten per centum (10%) of the total value of the good prior to the Company accepting the returned goods.
 - Without limiting the Company's Warranty terms and conditions, its statutory obligations and its absolute discretion to reject returned goods, the Company shall not exchange goods or provide credit for the following: electrical items; second hand parts; engines; gearboxes; cabins; differentials whether they be new; reconditioned or second hand; incomplete part kit sets such as gasket kits, ring sets and packs; bearing sets/packs; piston; liner kits; separate goods which form part of an Engine Kit which was sold as a complete Engine Kit; new parts returned in packaging which is damaged, greasy/dirty, hand marked or shopsoiled.
- Transport charges for returned goods must be prepaid by the Purchaser. The Company will not accept "Freight forward".
- The Purchaser is liable for all transport charges and/or transport insurance of returned goods unless the Company agrees in writing otherwise. If such charges are paid by the Company, those charges are not refundable if included in the purchase price in the event the goods are later returned.
- If the Company accepts liability for transport charges and/or transport insurance, the Purchaser shall indemnify the Company from all loss which occurs to the returned good during transport and / or delivery including all consequential loss.
- Acknowledgement of receipt of returned goods by the Company does not amount to acceptance of those returned goods nor of any liability to provide to the Purchaser an exchange or credit.

Disclaimer

The Purchaser acknowledges that any representations made whether orally or in writing by the Company in relation to goods, services or otherwise are general in nature and is intended only as a guide to the Purchaser.

The Purchaser acknowledges and accepts that it is responsible for ensuring the goods purchased are fit for the purpose for which they are intended.

Consequences of Default

- Where credit has been extended by SMS Diesel Spares Pty Ltd, if the purchaser does not pay for the goods on the due date then SMS Diesel Spares Pty Ltd is hereby irrevocably authorised by the purchaser in which the goods are stored at such premises) and use reasonable force to take possession of the goods without liability of the tort of trespass, negligence or payment of any compensation to the purchaser whatsoever.
- The Company may recover as a debt all monies due and payable under these Terms and Conditions after it becomes due and payable, together with any interest payable and the expenses of the Company incurred in recovering those amounts, including but not limited to costs assessed on an indemnity basis, commission charges and disbursements charged by any mercantile agent or solicitor engaged for the purpose of the collection or recovery of moneys due and payable to the Company.

Outline of Warranty Policy

- The Company may in its absolute discretion warrant the goods in accordance with its standard Warranty Documents.

- Without limiting the full effect of the Company's the Warranty Documents, the Company provides as a point of reference only a summary of the Warranty Periods.

Description	Warranty Period and Basic terms
New Spare Parts: Automotive Applications	12 months/20,000kms* Limited to replacement only – No Labour charges – refer to terms on invoice.
New Spare Parts: Agricultural/Off-Road/Marine	6 months/600 hours* Limited to replacement only – No Labour charges – refer to terms on invoice.
New Electrical Items and Goods	NO WARRANTY, refund or credits allowed.
New Engines	Refer to specific warranty period and terms on sales invoice and also supplied with engine.
Reconditioned Diesel Engines: Automotive	6 months/50,000kms* unless otherwise stated on invoice (refer to terms on invoice and supplied with engine).
Reconditioned Diesel Engines: Industrial /Marine	3 month/400 hours* Must be Dyno tested prior to installation (else no warranty) – refer to terms on invoice and supplied with engine.
Reconditioned Fuel Injector Pumps	6 months/50,000kms* Limited to repair or resupply only – No labour charges – refer to terms on invoice.
Reconditioned Fuel Injectors	Limited to Start up only. Limited to repairs or resupply only – No labour charges - refer to terms on invoice.
Reconditioned Gearboxes	6 months/10,000kms* Limited to repair or resupply only – No labour charges – refer to terms supplied on invoice.
Reconditioned Hard Parts (Cylinder Heads, Crankshafts, Blocks, Cams Conrods etc)	3 months* Limited to repair or resupply only – No labour charges – refer to terms on invoice.
Second Hand Diesel Engines	3 months/5,000kms* Parts Warranty Only unless otherwise stated on invoice – No labour charges – refer to terms supplied with engine.
Second Hand Gearboxes and Differentials	30 days unless otherwise stated on invoice. Limited to repair or resupply only – No labour charges – refer to terms on invoice.
Second Hand Parts	7 days from invoice date limited to resupply only (where available) – No labour charges.

General

- Names, descriptions, symbols and numbers being quoted or appearing on invoices are used for internal reference purposes of SMS Diesel Spares Pty Ltd ("the Company") only, and it is not implied that the parts supplied are the actual manufacturer's whose part numbers may be quoted.
- Where these Terms and Conditions are executed simultaneously to or in contemplation of a Deed of Guarantee and Indemnity, then they shall be read together and in contemplation of each other. To the extent of any inconsistency between this document and the Deed of Guarantee and Indemnity, this document shall prevail. This document together with any Deed of Guarantee and Indemnity (if any) constitutes the entire agreement of the parties and supersedes any other prior writing or agreement or representation.
- These terms and conditions are governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.
- If any part of these terms and conditions is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.
- The legal doctrine that a construction less favourable to the person putting forward this instrument should be accepted against it shall not apply to this Agreement.
- The Purchaser agrees as an essential term of this agreement to act in good faith and honestly and in furtherance of the commercial efficacy intended by these Terms and Conditions.