

Terms and Conditions for Installation, Repair, Maintenance and Other Services

1. General Provisions

1.1 In these Terms and Conditions the following words shall, unless the context otherwise requires, have the following meanings:

“**Contract**” means the Agreement between DA.MET and the Customer, which Contract includes these Terms & Conditions and the Order;

“**Customer**” means the Customer named in the document to which these Terms and Conditions are annexed.

“**DA.MET**” means DA.MET MARINE PTY LTD or DA.MET AUTOMOTIVE and INDUSTRIAL PTY LTD or DA.MET SALES PTY LTD or VOLMARINE PTY LTD

“**Equipment**” means the engines and component parts for such engines or other plant or machinery in respect of which the Services are to be provided by DA.MET;

“**Force Majeure**” means any act, omission or circumstance over which DA.MET could not have reasonably exercised control including, without limitation, Act of God, strikes, lockout, war, government control and unforeseen delays and shortages of services, materials, labour or fuel;

“**Order**” means the order from the Customer for the supply of Services by DA.MET.

“**Services**” means the Services to be provided by DA.MET to the Customer in connection with the Equipment including, without limitation, assembly, installation, repair, modification, overhaul, servicing and maintenance of Equipment as described in the Order to which these Terms and Conditions are annexed;

“**Site**” means the site at which the Services are to be carried out or provided;

1.2 The Customer shall bear the risk of faulty transmission of Orders or instructions given by telegram, telex or telephone.

1.3 All Services to be provided inside and outside the DA.MET factory shall be subject to these Terms and Conditions. The Terms and Conditions shall operate to the complete exclusion of any terms, conditions or other provisions submitted by the Customer at any time and shall supersede all previous negotiations, representations, warranties, offers and agreements, whether written or oral, between DA.MET and the Customer in connection with the Equipment and/or the Services, unless specifically agreed otherwise by DA.MET in writing.

2. Cost Estimate And Conclusion Of Agreement

2.1 The Contract shall be deemed to be formed by and upon confirmation of the Order by DA.MET (“the Confirmation”).

2.2 Any estimates and quotations by DA.MET in connection with the Services or the Equipment are indicative only and are only binding if given in writing and are expressly stated to be binding.

2.3 If, for any reason, DA.MET inadvertently fails to issue the Confirmation, the Customer will be deemed to have agreed to these Terms and Conditions if it accepts Services from DA.MET or by third parties acting on DA.MET instructions.

2.4 The Customer shall not assign or purport to assign any of the Customer's rights and obligations under the Contract unless the Customer has previously obtained the written consent of DA.MET.

2.5 DA.MET is entitled to perform test and trial runs upon the Equipment.

2.6 At any time, DA.MET can require the Customer to pay an advance payment on account of reasonable costs that will be incurred in performing work for the Customer. DA.MET is not required to render a tax invoice for this payment but

can request such payment verbally from the Customer. Until such time as the payment is made by the Customer, DA.MET is not required to perform any works on behalf of the Customer.

3. Prices and Terms of Payment

3.1 Tax invoices will be rendered on the basis of the ascertained costs of the Services (and replacement parts if relevant) at the prices valid at the time of delivery or performance. Payment shall be made by the Customer forthwith and in any event not more than thirty (30) days after the date of the tax invoice is rendered by DA.MET to the Customer without discount, retention or any other deduction.

3.2 All costs of packing, insurance, freight, and customs duty shall be borne by the Customer.

3.3 Debts shall only be liquidated if payment is made to DA.MET or to persons having written authorisation from DA.MET for collection. Banker's charges and expenses for letters of credit shall be borne by the Customer. Payment by way of bill of exchange will be accepted only subject to the prior approval of DA.MET and cheques and bills of exchange will be accepted only subject to clearance.

3.4 Tax invoices rendered by DA.MET shall bear interest on daily rests at the rate of nine per cent per annum (9%) from due date until payment is received. No interest shall be payable upon a tax invoice if full payment of such tax invoice is received by DA.MET within 14 days after the date of the tax invoice. DA.MET may waive this interest provision in its discretion after submissions from the Customer.

3.5 Tax invoices will be regarded as accepted unless they are disputed by the customer in writing within seven (7) days of the tax invoice.

4. Customer's Assistance

4.1 The Customer shall provide to DA.MET at its own risk and expense such assistance (including, without limitation, the provision of personnel, fuel, equipment, building materials, preparation of the Site, and provision of storage and accommodation facilities) as DA.MET considers necessary to ensure satisfactory compliance with its obligations pursuant to the Order. The Services to be provided outside the DA.MET factory will only begin when all such assistance on the Customer's part has been completed.

4.2 If the Customer cannot provide the necessary tools, implements and assistance either itself or through third parties, DA.MET may at its absolute discretion, provide such tools, implements or assistance for a fee as reasonably determined by DA.MET. Delivery, use and return thereof shall be made at the Customer's risk and expense.

4.3 The Customer shall take all measures necessary (including, if appropriate, medical services) for the protection of persons and objects on the Site and for the prevention of accidents and shall inform DA.MET in advance of any safety regulations in force and to be observed on the Site.

4.4 The Customer shall at its own expense dispose of fluids and lubricants such as coolant, engine oil and similar materials.

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5. Work Stoppage

- 5.1 DA.MET shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure.
- 5.2 DA.MET shall notify the Customer as soon as practicable of any anticipated delay due to Force Majeure, and the performance of DA.MET's obligations shall be suspended during the period of the delay due to such Force Majeure.

6. Working Conditions

- 6.1 The Services shall not be carried out on ground which is unhealthy or dangerous or under conditions which are, in the opinion of DA.MET, inadequate. The Customer shall call DA.MET's attention to special dangers that could arise during provision of the Services.

7. Performance

- 7.1 The contract shall be deemed completed upon the performance of the Services or that part of the Services considered necessary in the opinion of DA.MET.
- 7.2 DA.MET will use all reasonable endeavours to comply with time limitations and schedules agreed between the Customer and DA.MET. However, DA.MET shall not be liable for any loss or damage resulting from any delay in performing the Services or for Services being only part performed by stipulated dates including (without limitation) any indirect, consequential, special or economic loss or damage, or loss of profits.
- 7.3 Where the Services are to be supplied at the DA.MET factory, the Equipment shall be forwarded by the Customer at its risk and expense in accordance with schedules agreed to between the Customer and DA.MET prior to sending.
- 7.4 Equipment replaced during the Services or (if the Services are not carried out, or are discontinued) the dismantled Equipment, will be returned to the Customer at its expense if so requested by the Customer in writing, after payment to DA.MET of its account for the Services provided.
- 7.5 If the Services cannot commence within three (3) months from the arrival of the Equipment at DA.MET for any reason originating with the Customer, DA.MET may consider the Order as cancelled and may charge the Customer for expenses already incurred.

8. Permits

The Customer shall obtain all statutory or other permits, consents or approvals (if any) as are required by law for, or in connection with, the Services and shall pay all fees therefor and shall indemnify DA.MET against

- any breach of the requirements of any regulatory authority having jurisdiction over the Site or the Equipment, and
- any infringement of the legitimate interests of third parties having any interest in the Site or the Equipment.

9. Inspection by the Customer or his Representative

The Customer shall have the right to inspect the condition of the Equipment at DA.MET's factory by appointment at any time.

10. Dispatch

- 10.1 The Customer shall bear the risk of deterioration and loss of Equipment from the date the Equipment is ready for dispatch from DA.MET's factory. Risk shall pass to the Customer forthwith upon receipt of the notification of readiness for dispatch of the Equipment from DA.MET.
- 10.2 Prior to dispatch, DA.MET shall notify the Customer of the mode of preservation, packing and delivery of the Equipment. Preservation, packing, handling, freight and insurance charges are for Customer's account.

11. Warranties

- 11.1 DA.MET warrants to the Customer that the Services will be carried out in a competent and workmanlike manner, and that any replacement parts supplied by DA.MET for the Equipment will be free from defects in accordance with manufacturers warranty standards.
- 11.2 This warranty shall not apply:
- (a) If alterations of the Equipment have been made by third parties or result from the installation or the addition of new parts not made by DA.MET, subject to the Customer proving that the defects were not caused by any such alteration.
 - (b) If any deficiency or damage has the following cause: natural wear and tear, improper handling, storage or erection, insufficient corrosion protection, use of force, improper installation, chemical or other harmful substances.
 - (c) If the customer does not comply with DA.MET's instructions for operation, maintenance and service of Equipment.
 - (d) If the Equipment has been used for purposes other than those agreed between DA.MET and the Customer.
 - (e) If overhauling and repair have been carried out by a workshop other than that of DA.MET. In case testing at the DA.MET test bench facilities is required, the DA.MET warranty is limited to the professional performance of the test program only. The Customer shall ensure that the entire item of Equipment to be tested confirms in capacity and technical standard with the requirement of the test program and indemnifies DA.MET from all possible liabilities arising from the malfunction, faults and inability to achieve the testing values as well as any consequences with regard to duration, interruption, cancellation of the test program or any other conditions related to the contract of the Customer with a third party. The customer will arrange all necessary or essential insurances to protect himself against damages and shall produce evidence of such insurance upon request
 - (f) If the Equipment has been operated under unusual or exceptional conditions not disclosed to DA.MET in writing when the Order was placed.

11.3 If DA.MET acknowledges that a defect in an item of Equipment originally provided by DA.MET is covered by warranty, any

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defective part(s) which, though properly handled, has been damaged as a result of such defect, will at the option of DA.MET, be repaired or replaced at the expense of DA.MET, either in an DA.MET factory or in a workshop nominated by DA.MET or at site. DA.MET may at its option provide a new or reconditioned part to replace such defective part. DA.MET shall not under any circumstances bear the cost of removal and installation of the equipment to allow warranty works to be carried out. Such costs if required shall be borne by the customer. Parts replaced will become the property of DA.MET. DA.MET may at its option carry out such repair or replacement, or employ such third party or sub-contractor to carry out such repair or replacement, or in certain circumstances as hereinafter defined permit the customer to carry out such repair or replacement. In such circumstances DA.MET shall be responsible for the cost of labour provided to effect such repair or replacement. In case of emergency when the operation and safety of equipment is jeopardised the customer may, provided it advises DA.MET as soon as reasonably possible and obtains written authority from DA.MET, repair the defect or have it repaired by a third party in a proper manner. Thereupon, DA.MET shall reimburse to the customer the cost of such repairs, to the extent that such cost would have been incurred if the repair had been carried out by DA.MET.

12. Place of Jurisdiction

These Terms and Conditions, the Contract (and all present and future claims arising under it) and the business relationship between the parties generally shall be governed by the Laws of the State of Queensland, Australia, and the parties hereby submit to the non-exclusive jurisdiction of the courts of that place.

13. Liability

Where any Act of Parliament implies in the Contract any term, condition or warranty, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in the Contract. However, the liability of DA.MET for any breach of such term, condition or warranty shall be limited, at the opinion of DA.MET, to any one or more of the following:

- (a) if the breach relates to Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- (b) if the breach relates to Equipment replaced under any clause of these Terms and Conditions:
 - (i) the replacement of that Equipment or the supply of equivalent Equipment;
 - (ii) the repair of that Equipment;
 - (iii) payment of the cost of replacing that Equipment or of acquiring equivalent Equipment; or
 - (iv) the payment of the cost of having that Equipment repaired.

Except as provided to the contrary in the Contract, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, and whether collateral or antecedent hereto or otherwise, relating in any way to the Services are excluded. Without limiting the generality of the preceding sentence, DA.MET shall not be under any liability to the Customer in respect of any death, injury, loss or damage (including indirect, consequential, special, or economic loss or damage, or loss of profits, however caused), which may be suffered or incurred by the Customer or any third party or which may arise directly or indirectly in respect of the Services or the failure or

omission on the part of DA.MET to comply with its obligations under the Contract or for any alleged breach of warranty.

The customer warrants that it has not relied on any representation made by DA.MET (including without limitation, representations or predictions as to future durability, economy, performance or quality) which has not been stated expressly in the Contract or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by DA.MET.

14. Lien and Set-Off

DA.MET has a right of retention and a lien on any Equipment received in connection with an Order and the lien can also be asserted for debts resulting from previous Services or deliveries of Equipment and for other debts arising from or in connection with any ongoing business between the Customer and DA.MET.

15. PASSING OF PROPERTY & TITLE:

Property and title in Goods shall not pass until full payment has been effected to the Company. If the Customer resells the Goods prior to making full payment to the Company, the Customer shall hold the proceeds of such sale on trust for the Company. Cheques tendered shall not constitute payment until cleared.