

# CONDITIONS OF TENDER AND SALE

## 1. DEFINITIONS

1.1 The following definitions shall apply to the terms when used in the Conditions unless inconsistent with the context:

"Contract"	Means a contract between LPL and You for the sale of Goods incorporating these Conditions.
"LPL"	Means Lister Petter Limited
"Goods"	Means goods supplied by LPL to You under contract subject to these Terms and Conditions and includes Services where relevant.
"Services"	Means services including without prejudice to the generality of the term, the modification of the Goods to meet a particular specification prior to and/or after delivery to You, the installation, inspection and maintenance of the Goods and the provisions of training or instruction in the use and operation of the Goods under a contract subject to these conditions.
"You"	Means the person(s) firm or company who purchases Goods or Services from LPL.
"Conditions"	Means these terms and conditions together with any other terms which LPL has notified to You whether on a quotation or otherwise.
"Force Majeure Events"	Circumstances beyond LPL's control including but not limited to fire, flood, storm, Act of God, war, riot, civil commotion, strike, lock out and other industrial action.
"United Kingdom"	Means England, Scotland, Wales, Northern Ireland, the Isle of Man, the Channel Islands and the Isles of Scilly.

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or recruitment and includes any subordinate legislation for the time being in force made under it.

1.4 The headings in these Conditions do not affect the interpretation of these Conditions.

## 2. APPLICABILITY OF THESE CONDITIONS

2.1 These Conditions comprise all the terms of the Contract between LPL and You and shall prevail over any terms put forward by You. No drawings, specifications, photographs and other illustrations, advertising

materials, details in instruction books, catalogues and other publications supplied by LPL or any verbal representation (other than if made fraudulently) by an employee or agent of LPL shall form part of any contract between LPL and You nor shall they be treated as constituting a representation that Goods of that type will be supplied.

2.2 These Conditions shall apply to any future oral or written Contract (including electronic forms of communication) except where and to the extent that such Conditions are expressly varied or excluded by LPL or where LPL had advised You in writing that it has adopted revised Conditions of Tender and Sale.

2.3 No order placed by You shall be deemed to be accepted by LPL until a written acknowledgement of order is issued by LPL or (if earlier) LPL delivers the Goods or Services to You.

### 3. PRICE

3.1 Unless otherwise stated, prices quoted to You are ex works and exclusive of Value Added Tax or any similar tax.

3.2 Unless otherwise specifically agreed in writing LPL's prices are subject to revision without notice and the price payable by You for the Goods and/or the Services will be in the case of Goods that ruling at the date of despatch of the Goods from LPL's premises and in the case of Services that ruling at the date of delivery of the Services.

### 4. PAYMENT

4.1 Unless otherwise agreed Goods shall be paid for in full without deduction no later than 21 days after despatch in the currency and method stated on the invoice or in the case of Services within 21 days of the provision of the Services.

4.2 Time for payment shall be of the essence.

4.3 LPL reserves the right to demand payment of a non-refundable deposit by You on account of the contract price at any time before delivery.

4.4 No payment shall be deemed to have been received until LPL has received cleared funds.

4.5 You shall make all payments due in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless You have a valid court order requiring an amount equal to such deduction to be paid by LPL to You.

4.6 If You fail to pay LPL any sum due pursuant to a contract shall be liable to pay interest to LPL at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1988.

### 5. DELIVERY

- 5.1 Unless otherwise agreed in writing by LPL delivery of the Goods shall take place at LPL's place of business.
  - 5.2 LPL shall endeavour to deliver the Goods by the date agreed. Such times are estimates only and time for delivery shall not be the essence of the contract.
  - 5.3 LPL reserves the right to alter any specification or details of the Goods without notice.
  - 5.4 LPL shall not be liable in any way for any direct, indirect or consequential loss, (all three of which terms include, without limitation, economic loss, loss of profits, loss of business, depletion of goodwill and similar loss) costs, damage, charges or expenses which may suffered by You in consequence of late despatch or delivery of the Goods for whatever reason (even if caused by LPL's negligence).
  - 5.5 If for any reason You fail to accept delivery of any of the Goods when they are ready for delivery, or LPL is unable to deliver the Goods on time because You have not provided appropriate instructions, documents licences or authorisations:
    - 5.5.1 risk in the Goods shall pass to You (including loss or damage caused by LPL's negligence);
    - 5.5.2 the Goods shall be deemed to have been delivered; and
    - 5.5.3 LPL may store the Goods until delivery, whereupon You shall be liable for all related costs and expenses (including without limitation, storage and insurance);
    - 5.5.4 LPL may sell the Goods at the best price readily obtainable (after deducting all reasonable storage and selling expenses) and charge you for any shortfall below the price under the contract.
  - 5.5 LPL shall not be liable for failure or delay in delivery of the goods if such failure or delay arises due to Force Majeure Events and such failure or delay shall not effect Your obligations to pay for Goods already delivered. In the event that such delay continues for an unbroken period of 60 days either party shall have the right by notice in writing to terminate the contract in question to the extent which it has not already been performed.
  - 5.6 Any liability of LPL for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.
6. CARRIAGE AND PACKING

Prices quoted shall not include the costs of packaging and carriage except where otherwise stated.

## 7. PROPERTY AND RISK

- 7.1 The Goods are at Your entire risk from the time of delivery.
- 7.2 Property and ownership in the Goods shall, notwithstanding delivery of the Goods, not pass from LPL until You have paid LPL in full (in cash or cleared funds) all sums due to LPL in respect of:
  - 7.2.1 the Goods;
  - 7.2.2 the Services;
  - 7.2.3 all other sums which are due or which become due to LPL on any account.
- 7.3 Until payment pursuant to Condition 4 is made You shall:
  - 7.3.1 hold the Goods on a fiduciary basis and as bailee for LPL;
  - 7.3.2 store the Goods in such a way that they are clearly identifiable as the goods of LPL;
  - 7.3.3 insure the Goods to the reasonable satisfaction of LPL and whenever reasonably required to do so, produce to LPL a copy of the policy of insurance and evidence of the current premium; and
  - 7.3.4 not destroy, deface or dissolve any identifying mark or packaging on or relating to the Goods.
- 7.5 In the event that You commit any act or default which entitles LPL to exercise any of its rights under Condition 11:
  - 7.5.1 LPL shall (without prejudice to any of its other rights and remedies) have the right to repossess and use the Goods and
  - 7.5.2 Any right You have to sell, dispose of, deal or in any way use the Goods shall cease forthwith.
- 7.6 Notwithstanding Condition 7.5 above, You shall be entitled to sell the Goods in the ordinary course of Your business at full market value for the account of LPL, provided that such sale shall constitute and be a sale by you as principal of LPL's property.
- 7.7 LPL, its agents and employees are hereby granted by You an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or where Condition 7.5.1 applies or where the contract is terminated, to recover them.

## 8. DAMAGE, **SHORTAGE** OR LOSS IN TRANSIT

- 8.1 LPL does not accept any responsibility whatsoever for damages, shortages for loss in transit of Goods which are carried by LPL or by an independent carrier engaged by LPL unless:
  - 8.1.1 Damage or shortage is notified in writing both to LPL within 7 days and to the independent carrier (if any) within 3 days of

receipt of Goods and the Goods are held by You for examination by the carrier: or

8.1.2 Non delivery (in the case of total loss) is notified in writing both to LPL and to the independent carrier (if any) within 10 days of the date of despatch. If such advice is duly given LPL will use reasonable endeavours to assist You in respect of proof of delivery of the Goods to the carrier but undertakes no greater liability than this.

## 9. WARRANTY

9.1 In the event that Goods supplied are defective in that they have an inherent defect that existed at the time of delivery LPL shall (at its option) meet the cost of replacing or repairing such defective Goods or part thereof subject to the following:-

9.1.1 Where LPL authorizes repairs to be done labour costs will be paid in accordance with LPL's standard repair times and standard rates.

9.1.2 LPL has the sole discretion to determine whether the Goods shall be returned to LPL's premises or repaired at any other location which LPL may nominate.

9.1.3 LPL will pay for lubricating oil, coolant concentrate, filter elements, belts, hoses, gaskets and other maintenance items that are not reusable due to the defect.

9.1.4 Only distributors, dealers or workshops authorised by LPL may carry out warranty repairs and such repairs will only be done during normal working hours.

9.1.5 No incidental, consequential or related costs such as costs for travelling, transport, extra costs due to the installation in making the products accessible, docking or cranes, loss of use, loss of income, loss of time, loss of profits or damages of any other parts or goods shall be by LPL.

9.2 The warranty in Condition 9.1 above does not cover Goods which in LPL's reasonable opinion have been damaged during transportation, installation or repair or through abnormal use, overload, carelessness, insufficient lubrication, normal wear, use of spare parts other than genuine parts approved by LPL or through any type of incorrect installation, abuse, misuse, accident or through neglect or failure to follow instructions in the applicable owners manual, maintenance instructions or installation instructions.

9.3 The warranty in Condition 9.1 above will be void if You or Your servants, agents, employees or contractors have taken abnormal risks or if modifications have been performed, which in the judgement of LPL have caused or enhanced the damage or if the security seals have been broken or settings altered or if the Goods or any part thereof have been used in violation of the law or for an unintended purpose.

- 9.4 The warranty does not cover expendable parts, such as all kinds of filters, belts, gaskets, rubber hoses, fuses, brushes, etc and lubricants.
- 9.5 The operation, maintenance and care of the Goods in accordance with the instructions and requirements listed in the operators handbook provided by LPL is Your responsibility. Records must be kept of all maintenance services performed, including engine oil and filter changes. This record of proper maintenance is required for the purpose of determining warranty coverage on repairs and should be transferred to each subsequent owner of the Goods.
- 9.6 All claims under Condition 9.1 above must be submitted to LPL within 30 days from receipt of the Goods.
- 9.7 Any warranty claims with anticipated costs equal to or greater than the value of the Goods must be notified to LPL prior to the commencement of any repair work.
- 9.8 The period of cover relating to the warranty in Condition 9.1 above is as follows:-
- 9.8.1 Industrial Engine Applications
- 9.8.1.1 12 months from the date of sale by LPL to You to first use; or
- 9.8.1.2 18 months from the date of despatch from LPL's factory; 5,000 running hours; or
- 9.8.1.4 For engines running at speeds over 3,000 r/min, 1,000 running hours. Additionally LPL must pre-approve the installation.
- Whichever is the sooner.
- 9.8.3 Reconditioned engines 6 months from the date of despatch from LPL's factory.
- 9.9 Save where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by law or custom are excluded to the fullest extent permitted by law.
- 9.10 Nothing in these Conditions excludes or limits LPL's liability:
- 9.10.1 for death or personal injury caused by LPL's negligence;
- 9.10.2 under section 2(3) of the Consumer Protection Act 1987;
- 9.10.3 for any matter which it would be illegal for LPL to exclude or attempt to exclude its liability; or
- 9.10.4 for fraud or fraudulent misrepresentation.
- 9.11 Subject to Conditions 9.10 and 9.12 or unless Goods or Services are sold to a person dealing as a consumer:

9.11.1 LPL's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restriction or otherwise arising in connection with the performance or contemplated performance of any contract between LPL and You shall be limited to the price of the Goods or where Services are provided in addition to the Goods, the price of the Goods and Services; and

9.11.2 LPL shall not be liable to You for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

9.12 If LPL complies with Condition 9.1 it shall have no further liability for breach of the warranty in Condition 9.1 in respect of such Goods.

## 10. EFFECT OF YOUR DEFAULT

10.1 If You fail to make payment for the Goods in accordance with Condition 4, fail to pay any other debt due and payable to LPL, fail to take delivery of any of the Goods (except in accordance with Your contractual rights) or otherwise commit a breach of these Conditions, then all sums outstanding in respect of the Goods shall become payable immediately and LPL may in its absolute discretion and without prejudice to any other rights which may have:

10.1.1 Suspend all future deliveries of Goods to You under any contract and/or terminate any such contracts without liability on its part and/or

10.1.2 Require payment of interest on all amounts due and unpaid in accordance with the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998; and/or

10.1.3 Exercise any of its rights pursuant to Condition 7.

10.2 LPL shall have the same rights referred to in Condition 11.1 above if any distress or execution is levied upon any of Your Goods or if You offer to make any arrangement with Your creditors or if any petition in bankruptcy is presented against You or if, being a limited company, any resolution or petition to wind up (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver or manager is appointed over the whole or part of Your business. In such event all sums due in respect of Goods shall become payable immediately.

10.3 In addition to any right of lien which LPL may have, LPL shall if any of the events described in Condition 11.2 above occur or if You breach any of the terms of these Conditions, have a general lien over all of Your Goods in the possession of LPL, for the unpaid price of the Goods and any other Goods sold and delivered by LPL to You under these Conditions or any other contract.

10.4 You shall not be entitled to cancel any Contract except with LPL's written consent and on terms that You will indemnify LPL in full against all loss (including loss of profits), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by LPL as a result of cancellation against all loss.

## 11. DRAWINGS AND INFORMATION

11.1 You acknowledge that drawings and other documents and information furnished to You by LPL are confidential and will not, without the prior written consent of LPL, furnish copies or details of such confidential information to any third party.

11.2 The copyright in drawings and information furnished to You by LPL is and shall remain the property of LPL or its supplier. You shall not without the prior written consent of LPL and the copyright owner alter such drawings or information, make copies of such drawings and information or use such drawings and information for any purpose other than that for which they are provided by LPL.

11.3 The title in drawings and documents furnished by or on behalf of LPL to You shall remain with LPL or its supplier as the case may be and such drawings and documents shall be returned to LPL forthwith upon request.

11.4 If at any time You request LPL to prepare plans or specification drawings You may be charged by LPL in its discretion for such preparatory work and You agree to pay such charges whether or not an order is agreed. You agree that any rights of copyright in such plans and drawings shall belong to LPL and that in the case of any design rights which may arise as a result of such plans or drawings You hereby agree to assign the same to LPL and you agree that such plans or drawings may not be used by You or a third party on Your behalf without LPL's prior written consent.

11.5 If You receive any claim or notice of an intended claim by a third party that Goods supplied by LPL infringe any intellectual property rights, You shall forthwith advise LPL of such and shall (at LPL's discretion) permit LPL at its own expense to handle negotiations for the settlement of such claim or to defend in Your name any litigation or proceedings relating to thereto.

11.6 If a claim is made against You that the Goods infringe or that their sale or re-use infringes any third party's intellectual property rights LPL shall indemnify You and hold You harmless from all costs, claims, proceedings and demands arising out of or relating to any such infringement or alleged infringement of any third party's intellectual property rights PROVIDED THAT in the event that such infringement results from LPL having manufactured the Goods to a particular specification provided by You or Your advisers or consultants LPL's indemnity shall not apply and You shall forthwith fully and effectually indemnify LPL against and hold it harmless from all costs, claims, proceedings and demands by third parties arising out of or relating to such infringement or alleged infringement.

11.7 No right or license is granted to You under this contract except the right to use or to resell the Goods.

## 12 INSTRUCTIONS FOR USE

You shall comply with such instructions as may be issued by LPL from time to time concerning safety precautions for the use of the Goods. In the event that such Goods are sold by You, You will bring to the notice of Your customer any such instructions.

## 13 HEALTH AND SAFETY AT WORK

You shall ensure that LPL's personnel are fully aware of all applicable safety requirements and that LPL's personnel are covered by Your insurance in respect of Your liability for any loss, personal injury or death which may occur to such personnel as the result of events occurring or omissions arising during the time when such personnel are on property or sites owned or operated wholly or partially by You.

## 14. EXPORTS

14.1 Where the Goods are supplied for export from the United Kingdom the provisions of this Condition 14 shall (subject to any special terms agreed in writing between LPL and You) apply in addition to but notwithstanding any other provision of these Conditions and shall (in the event of inconsistency) prevail over any other inconsistent term within the Conditions.

14.2 You shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

14.3 All Goods shall, unless otherwise agreed in writing, be supplied FOB to a United Kingdom port nominated by LPL and LPL shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979..

14.4 No claim for Goods found to be damaged on receipt by You, for shortages or non delivery will be considered by LPL unless written notice of such a claim is received by LPL within 28 days of receipt of the Goods by You (in the case of non delivery) 28 days of the date upon which LPL would have expected the Goods to be received by You.

14.5 Unless otherwise agreed in writing payment shall be made by irrevocable letter of credit in a form acceptable to LPL to be agreed by You in favour of LPL and confirmed by a bank in the United Kingdom acceptable to LPL.

14.6 All terms of delivery are defined in accordance with the International Chamber of Commerce Standards "INCOTERMS 2000".

## 15. GENERAL AND GOVERNING LAW

15.1 Any notice required to be served pursuant to these Conditions shall be

served in writing by hand or sent by first class post or by airmail as follows:

15.1.1 To the Secretary, Lister Petter Limited, Long Street Dursley, Glos, GL11 4HS or such other address as LPL may from time to time notify You.

15.1.2 To such address as You may notify to LPL or in default or notification, to the address from which the Goods were ordered or, at the option of LPL, to Your registered office.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by first-class post, 48 hours after posting;

15.2.2 if sent by airmail, 72 hours after posting;

15.2.3 if delivered by hand, on the day of delivery;

15.2.4 if sent by facsimile transmission upon production by the transmitting machine of an error free transmission report provided a copy of the facsimile is posted by first class post to the addressee within 24 hours of transmission by facsimile.

15.3 In proving service:

15.3.1 by delivery by hand, it shall be necessary only to produce a sworn affidavit from the person delivering the communication by hand that the communication was delivered to the correct address;

15.3.2 by post, it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with clause 15.1;

15.3.3 by facsimile transmission it shall be necessary only to produce the error free transmission report and evidence that a copy of the communication was sent in the post following the facsimile transmission.

15.4 If any clause or part of this Agreement is found by any court, tribunal, administrative body or an authority of competent jurisdiction to be legal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect

15.5 No waiver or forbearance by LPL in enforcing any of its rights hereunder shall prejudice any of its rights hereunder shall prejudice its rights to do so in the future.

15.6 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of

the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 15.7 You shall not be entitled to assign the Contract or any part of it without the prior written consent of LPL.
- 15.8 These Conditions and any Contract shall be governed by the laws of England and any dispute shall be subject to the non-exclusive jurisdiction of the English Courts.