

I. General

1. The terms and conditions as set forth herein apply to all sales and services of DEUTZ AG - hereinafter referred as the "Supplier" - of or relating to new DEUTZ engines, Xchange engines, genuine DEUTZ spare parts and/or Xchange parts (hereinafter referred as "Goods").
2. Any terms or conditions used by the Purchaser which deviate from the terms and conditions as set out herein and which have not been expressly accepted by the Supplier in writing shall not be binding on the Supplier, even if the Supplier has failed to reject such terms or conditions when accepting a purchase order or an offer of the Purchaser.
3. Technical data provided by the Supplier in respect of the Goods, such as weight, dimensions, performance or fuel or lube oil consumption are only to be considered as an approximation, unless represented otherwise by the Supplier in writing. The Supplier does not warrant characteristics of the Goods, such as performance, consumption or lifetime unless explicitly and expressly guaranteed in the offer or order confirmation. In case of such explicit and express guarantee, the rights and claims of the Purchaser shall be limited to such rights and claims as set out in Sections IX. and XI. hereof.
4. The Purchaser shall use any information received from the Supplier in whatever form only for the agreed purpose of use of the Goods and shall not divulge such information to third parties for any other purpose, unless such information is in the public domain without breach by the Purchaser of the aforesaid undertaking or can be proven by the Purchaser to have been in the possession of the Purchaser before receipt thereof from the Supplier.

II. Scope of Supply

1. The Supplier's written order confirmation shall be conclusive in determining the provisions of the contract between the Supplier and the Purchaser including the agreed scope of supply and/or services, provided that if the Supplier submits an offer and such offer is accepted by the Purchaser during the period of such offer's validity or if a separate contract document is signed by all parties, such offer or signed contract document will be deemed conclusive in determining the provisions of the contract between the Supplier and the Purchaser as well as the agreed scope of supply and/or services. The scope of supply and/or services shall be limited to such scope as expressly set out in the specification of the Goods or services which is attached to the Supplier's order confirmation or the Supplier's offer or the separate contract document respectively.
2. The Supplier is permitted to introduce technical changes to the Goods unless such changes constitute a deviation from the agreed specification or affect form, fit or function of the Goods in manner which is relevant for the Purchaser.
3. Unless otherwise agreed in writing, services such as installation or commissioning shall not be part of the scope of supply or services of the Supplier.

III. Prices

Unless otherwise agreed in writing, all prices shall be understood FCA (free carrier) Supplier's works according to Incoterms 2010 edition, excluding packing and VAT.

IV. Terms of payment and Default

1. Unless otherwise agreed in writing, the Purchaser shall make full payment of the agreed price of the Goods, without any deduction and free of charge for the Supplier, to the account of the Supplier within ten (10) calendar days from the date of the acceptance of the offer or from the date of the order confirmation, in terms of Section II.1 hereof, respectively. The payment shall not be deemed made until the bank account of the Supplier is credited with the full amount to be paid to the Supplier.
2. The Purchaser shall not have the right to withhold payment on the basis of counterclaims raised made by the Purchaser unless such counterclaims are accepted by the Supplier in writing or awarded by a judgment which is not subject to any appeal.
3. In case the Purchaser is in delay of payment, the Supplier shall have the right to rescind the affected contract with the Purchaser and/or to claim damages. The rights of the Supplier under Section VII. remain unaffected. The Purchaser shall pay interest at the rate of 12% annually. The rights of the Supplier to claim further damages resulting from the delay remain unaffected.
4. If deferred payment is agreed upon and the Purchaser is in delay of payment of an installment of the price, all unpaid installments shall become due for immediate payment.

V. Delivery Time

1. Unless otherwise set out in a written offer of the Supplier or the Supplier's order confirmation or another contract document signed by the Supplier, delivery time will commence and be counted from the date of crediting of the full purchase price for the Goods to the account of the Supplier. If any approvals, such as export control approvals or licenses, permits of third parties or documents to be provided by the Purchaser are required for the delivery of the Goods, the Goods shall not be delivered before receipt by the Supplier of such approvals or licenses, permits or such other aforesaid documents.
2. Delivery is timely under FCA terms (Incoterms 2010) if readiness for shipment of the Goods is advised by the Supplier to the Purchaser before expiry of the agreed FCA delivery time. If FCA delivery of the Goods is delayed for reasons attributable to the Purchaser, the Purchaser shall, upon expiry of fifteen (15) calendar days from the date of notice of readiness for shipment, pay the cost caused by the delay, such as, but not limited to, reasonable cost of storage. If the delay of the Purchaser to collect the Goods according to FCA terms more than thirty (30) calendar days after notification of the readiness of shipment of

the Goods, the Supplier shall be entitled to rescind the delivery contract and/or claim damages.

3. The time for delivery shall be extended by the time period caused by an event of force majeure, such as war, civil uprising, fire, earthquakes, labour disputes (strike or lockout). The time for delivery shall be extended due to the above even if the Supplier is in delay of delivery at the time of occurrence of any of the above events. The Supplier will notify the Purchaser as soon as practicable about commencement and termination of such delays.
4. In the event that the Purchaser sustains damages because of a delay for which the Supplier is responsible by any degree of negligence, the Purchaser, to the exclusion of any other damage claim of the Purchaser, shall be entitled to liquidated damage payment limited to 0.5% of the FCA price of the delayed Good or part for every full week of delay, but no more than an aggregate of 5% of the FCA price of such Good which by reason of the delay cannot be used for the agreed purpose. The right of the Purchaser to terminate the contract pursuant to Section XI. remains unaffected.

VI. Risk of Loss and Partial Shipments

1. The risk of loss passes to the Purchaser in accordance to Incoterms conditions FCA Supplier's works (Incoterms 2010).
2. In the event of a that the FCA delivery of any Goods does not occur on the agreed delivery date for reasons not attributable to the Supplier, the risk of loss of the Goods shall pass to the Purchaser upon expiry of fifteen (15) calendar days from the date of notice of readiness for shipment by the Supplier.
3. Partial shipments shall be permitted.

VII. Title, Security Interest and Liens

1. Until all amounts owed by the Purchaser to the Supplier pursuant to the contract and any other contract between the Supplier and the Purchaser are collected in full by the Supplier, the Supplier retains property title to the Goods supplied. In case of delay of payment by the Purchaser, the Supplier, upon expiry of a reasonable notice period, shall have the right to retrieve the Goods and the Purchaser shall have the obligation to release the Goods to the Supplier. All cost of retrieving by and returning the Goods to the Supplier shall be borne by the Purchaser, in case that Goods are attached or otherwise seized by third parties, the Purchaser shall notify the Supplier without delay in writing and take all necessary measures with respect to safeguarding the Supplier's property. The Purchaser shall not pledge or encumber the Goods in any way.
2. The Purchaser shall be entitled to sell the Goods in the ordinary course of business. The Purchaser hereby assigns to the Supplier any and all accounts receivable claims which the Purchaser may have against its customers or third parties by reason of the sale. If the Goods are installed into equipment or vehicles sold by the Purchaser, the accounts receivable shall be assigned in the amount of the price of the Goods to be paid by the Purchaser to the Supplier. The Purchaser shall remain entitled to collect assigned accounts receivable claims until such time as the Supplier notifies the Purchaser that the Supplier has elected to collect itself such accounts receivable. The Supplier undertakes not to collect any such accounts as long as the Purchaser duly fulfils its payment obligations towards the Supplier. At the request of the Supplier, the Purchaser shall inform the Supplier about the value of the assigned accounts receivable and about the respective debtors. Further, at the request of the Supplier, the Purchaser shall inform the debtors of the assignment and provide evidence of having done so to the Supplier.
3. The Supplier shall release its title and rights according to this Section VII. to the extent that the value of the title and rights exceeds the amount of unpaid accounts receivable by more than 20%.

VIII. Installation and Operation of the Goods

1. The Purchaser shall abide by the installation guidelines, installation instructions and the operation manual provided by the Supplier in respect of the Goods.
2. If the Purchaser did not install the Goods in the Purchaser's equipment or vehicles in accordance with the Supplier's installation guidelines and installation instructions or allowed Purchaser's customers to do so, the Purchaser shall remedy such faulty installation without delay at the expense of the Purchaser.

IX. Warranties and Liabilities

In case of deficiency of the Goods, including failure to achieve specific performance data or excess fuel or lube oil consumption of the Goods, the warranty and liability of the Supplier shall be as follows:

1. The Supplier shall at the expense of the Supplier replace or repair, at the sole option of the Supplier, such Good which, during a period of twenty-four (24) months (12 months for genuine spare parts and Xchange parts) after the date of commissioning of the Goods or thirty (30) months (18 months for genuine spare parts and Xchange parts) after the risk of loss of the Goods has passed to the Purchaser, whichever period expires first, is demonstrated by the Purchaser in accordance with the terms of Section IX. (6) to have a defect which was inherent in the Good before transfer of the risk of loss and which renders the Good substantially unfit for purpose.
2. The warranty period for new DEUTZ engines and Xchange engines shall end before expiry of the twenty-four (24) months period respectively thirty (30) months period as stated in Section IX. (1) upon reaching the following running hour limitations, however not before expiry of twelve (12) months before the transfer of the risk of loss.

Terms and Conditions for the Supply of New DEUTZ Engines, Xchange Engines, Genuine DEUTZ Spare Parts and Xchange Parts



DEUTZ engine range	maximum running hours
2009, 2011, TCD 2.9, TCD 3.6	2.000
91x, 1013, 2012, TCD 2012/2013, TCD 4.1/6.1/7.8	3.000
413, 513, 1015, 2015, TCD 12.0 / 16.0	5.000

3. The Supplier shall at no charge to the Purchaser replace or repair, at the sole option of the Supplier, such following major engine part - crankcase, crankshaft, camshaft, connecting rod and/or cylinder head - of the new DEUTZ engines as specified below in this Section IX. (3) which part, during a period of thirty-six (36) months after the date of commissioning of the respective engine or forty-two (42) months after the transfer of the risk of the respective engine has passed to the Purchaser, whichever period expires first, is demonstrated by the Purchaser in accordance with the terms of Section IX. (6) to have a defect which was inherent in such major engine part before transfer of the risk of loss and which renders the Good substantially unfit for purpose.

The warranty period for the aforementioned major engine parts shall end before expiry of the aforementioned 36 months period respectively 42 months period upon reaching the following running hour limitations, calculated from the date of commissioning of the respective engine, however not before expiry of twelve (12) months from the date of transfer of the risk.

DEUTZ engine range	maximum running hours
2009, 2011, TCD 2.9, TCD 3.6	3.000
91x, 1013, 2012, TCD 2012/2013, TCD 4.1/6.1/7.8	4.500
413, 513, 1015, 2015, TCD 12.0 / 16.0	7.500

4. In case that it is established that the rectification work is under warranty hereunder, the Supplier shall bear the following direct cost of the repair or replacement: the cost of the replacement part, the transport costs, and the reasonable costs of dismantling and re-installation, additionally, the reasonable cost of service personnel of the Purchaser in the specific warranty case. Otherwise, the Purchaser shall absorb the cost resulting from the warranty case.
5. The warranty period for the Goods or their parts shall not be extended due to repair or replacement of the Goods.
6. The warranty rights of the Purchaser according to this Section IX. are conditioned upon the Purchaser giving the Supplier written notice of the alleged defect both (a) within ten (10) working days after detection of a defect and (b) within the respective applicable warranty period as set out in this Section IX.
7. The Purchaser shall grant the Supplier reasonable time and opportunity for repairs and/or replacements in terms of this Section IX. The Supplier may elect to have warranty work performed by the Supplier's service network. The Purchaser shall refrain from attempting to repair or have repaired an allegedly defective Good without prior written consent of the Supplier other than, and only after having served the defect notice in accordance with the terms of Section IX. (6), (a) in order to prevent substantial damages, such as bodily harm, or (b) in the case that the Supplier is in delay of repair or replacement, in which cases the Purchaser shall be entitled to claim compensation of the direct cost of such repair which have reasonably incurred to the Purchaser.
8. Claims of the Purchaser against the Supplier due to a defect of a Good shall become time barred (a) upon expiry of the respective applicable warranty period set out in this Section IX., or (b) upon expiry of six (6) months from the date of receipt by the Supplier of the defect notice of the Purchaser which is in accordance with the terms of Section IX. (6), whichever ((a) or (b)) is later.
9. Any warranty or liability of the Supplier for the Goods is excluded in respect of a deterioration or damage which is not caused by the Supplier and which result from the following: improper or negligent use and/or operation of a Good, faulty or lacking maintenance of a Good, faulty installation or commissioning of a Good, use of unsuitable utilities, use of replacement parts other than Supplier's genuine spare parts or electro-chemical or electric influences. The Supplier shall further not be liable for a deterioration or damage out of normal wear and tear and/or resulting from work performed by the Purchaser or third parties.

10. THE SUPPLIER SHALL HAVE NO LIABILITY, RESPONSIBILITY OR OBLIGATION EXCEPT FOR THE LIABILITIES, RESPONSIBILITIES AND OBLIGATIONS SET FORTH IN THESE TERMS AND CONDITIONS AND THE SUPPLIER'S LIABILITY, WHETHER IN CONTRACT, IN TORT, IN NEGLIGENCE OR OTHERWISE, SHALL BE STRICTLY LIMITED TO SUCH OBLIGATIONS OF THE SUPPLIER AS EXPRESSLY STIPULATED IN THESE TERMS AND CONDITIONS. IT IS EXPRESSLY AGREED THAT THE SUPPLIER SHALL NOT BE HELD LIABLE, UNDER ANY CIRCUMSTANCES, FOR DAMAGES OF ANY KIND, WHETHER DIRECT, INDIRECT, COMPENSATORY, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE, ARISING FROM ANY CAUSE, INCLUDING, WITHOUT LIMITATION, SHUTDOWNS, LOSS OF PROFITS, OR DAMAGE TO ANY PROPERTY OTHER THAN THE GOODS SUPPLIED. THE PRICES FOR THE GOODS CHARGED BY THE SUPPLIER ARE BASED UPON AND IN CONSIDERATION OF THE LIMITATION OF THE SUPPLIER'S LIABILITY HEREUNDER.

X. Miscellaneous

- If the Supplier, by any degree of negligence, commits a breach of an accessory contractual obligation, such as in the case of faulty operation manuals or installation instructions, and due to such breach the Goods are prevented from being properly used or are otherwise affected, the Purchaser shall, to the exclusion of any other claims, have the rights in terms of Section IX. and XI. hereof.
- In case of infringement of industrial property rights of third parties by the proper use of a Good or service, the liability of the Supplier shall be limited to the following, provided that the liability of the Supplier shall be restricted to

third parties' industrial property rights granted in Germany: The Supplier shall pay to the Purchaser the amounts or attorney's fees and damages awarded to the third party by a judgment which is not subject to appeal, provided such amounts were paid by the Purchaser to the third party. If the Purchaser or a customer of the Purchaser is prevented from duly using the Goods as a consequence of the infringement and provided that no modification of the Goods in order to avoid the infringement is feasible or such modification was refused by the Supplier, the Purchaser shall have the right to terminate the affected contract. The obligations of the Supplier shall be excluded if the Purchaser (a) fails to promptly inform the Supplier in writing of any and all claims of infringement of German industrial property rights or (b) accepts such claims or (c) makes an offer for settlement without the Supplier's prior written approval.

XI. Purchaser's Right of Cancellation

- The Purchaser shall have the right to terminate the affected contract in case of delay of delivery of Goods in terms of Section V. (4) or in case of delay of remedial actions in terms of Section IX., however provided that the Purchaser (a) has allowed the Supplier a reasonable final grace period and (b) advised the Purchaser in writing that the contract will be terminated upon expiry of the grace period.
- The Purchaser shall be entitled to a refund of such portion of the purchase price which the Purchaser has paid to the Supplier for the Goods at the time of termination in terms of Section X. (2) or Section XI. (1). The Purchaser shall not have a claim in excess of the refunded purchase price in the case of termination of a contract by the Purchaser.
- There shall be no right of cancellation nor other claims against the Supplier if the failure or delay of the Supplier to properly deliver or perform is caused wholly or partly by the Purchaser. Further, the provisions of Section V. (3) in respect of force majeure shall apply.

XII. Miscellaneous

In the event that any provision of the contract between the Supplier and the Purchaser which includes these terms is or becomes invalid, the remainder of the contract shall not be affected. Modifications or amendments must be in writing and signed by both the Purchaser and the Seller in order to be effective.

XIII. Law and Jurisdiction

All disputes and differences which may arise between the Purchaser and the Supplier shall be finally settled, excluding any other jurisdiction but for enforcement of the arbitral award, by arbitration under the Rules of Conciliation and Arbitration the International Chamber of Commerce (I.C.C., Paris), by an arbitration committee of three (3) arbitrators to be appointed according to the aforesaid Rules. The place of Arbitration proceedings will be Geneva, Switzerland. The language of Arbitration shall be the English language. Swiss material law shall apply, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).