

1/1/2020

TERMS and CONDITIONS

Northern Diesel Injection CC

220 Propshaft Road SamcorPark Silverton Pretoria

1. INTERPRETATION AND PRELIMINARY

- 1.1. The headings of the clauses in these Terms and Conditions are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify the provisions of these Terms and Conditions nor any clause hereof. In these Terms and Conditions, unless a contrary intention clearly appears:
- 1.2. Words Importing
- 1.1.1. any one gender include the other two genders;
 - 1.1.2. the singular include the plural and *vice versa*; and
 - 1.1.3. natural persons include created entities (incorporated or non-incorporated) and *vice versa*.
- 1.3. The following terms shall have the meanings assigned to them hereunder, unless the context indicates otherwise, and cognate expressions shall bear corresponding meanings, namely:
- 1.3.1. **“Agreement”** and **“Terms and Conditions”** shall mean the content of this document, together with any annexures, appendices, amendments and updates hereto;
 - 1.3.2. **“Customer(s)”** shall mean any person(s), company, close corporation, partnership, trust or any other natural or juristic entity which engages the Services of the Company or which purchases any Vehicle, Machine or Component from the Company;
 - 1.3.3. **“Client Information Form”** shall mean the form attached hereto as Annexure “A”;
 - 1.3.4. **“Company”** shall mean Northern Diesel Injection CC, a close corporation duly incorporated in terms of the laws of the Republic of South Africa, with registration number 1991/020786/23 and with its registered address at, 220 Propshaft Road Samcor Park Silverton Pretoria SA.
 - 1.3.5. **“Machine”** shall mean a mechanical, electronical or electric apparatus having one or more Parts using or applying any form of power to perform a specific task, including but not limited to generators, production-line equipment, and all diesel vehicles and machines;
 - 1.3.6. **“Part”** shall mean any component or part of a Vehicle or Machine, regardless of whether or not same is able to function independently from such Vehicle or Machine;
 - 1.3.7. **“Parties”** shall mean the Company and the Customer and **“Party”** shall mean either one of them as the context may indicate;

- 1.3.8. **“Person”** shall mean and include natural and juristic persons, partnerships, trustees of trust (jointly), associations, institutions, organisations, governmental entities, authorities and state institutions, departments and ministries;
- 1.3.9. **“Service(s)”** shall mean the services provided by the Company, including but not limited to diesel fuel injection repairs on behalf of the Customer;
- 1.3.10. **“Supplier”** shall mean contractor, subcontractor, service provider or other person with whom the Company make arrangements to provide goods or Services to Customers in connection with the Services of the Company, including such Supplier’s agents, representatives of any form, associates, affiliates, subsidiaries, Members, holding companies, shareholders, directors, and employees;
- 1.3.11. **“Vehicle”** shall mean any Vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor Vehicle;
- 1.3.12. **“Week”** shall mean 7 consecutive days from Monday to Sunday but excluding any official public holidays of the Republic of South Africa;
- 1.4. The termination of these Terms and Conditions shall not affect any provisions hereof which expressly or by necessary implication provide that they will operate subsequent to any such termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.5. If any provision in a definition is a substantive provision conferring rights, or imposing obligations on any Party, notwithstanding that it is only in the definitions clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 1.6. No Party shall be bound by any express or implied term, representation, warranty, undertaking or the like not specifically being recorded in this Agreement.
- 1.7. No latitude, extension of time or any other indulgence which may be given, or permitted, by either Party to the other Party in respect of the performance of any obligation in terms of this Agreement, or the enforcement of any right arising from this Agreement, and no single or Partial exercise of any right by any Party shall, under any circumstance whatsoever, be construed to be any implied consent to such Party, or operate as a waiver, or a novation of, or otherwise affect any of that Party's rights in terms of and arising from this Agreement, or stop such Party from the enforcement, at any time and without any notice, of strict and punctual compliance with each and every provision, term or condition of this Agreement

- 1.8. The Parties shall not cede, assign, transfer, pledge or make over in any way whatsoever their right, title and interest in and to these Terms and Conditions or any Part thereof without the prior written consent of the other Party.
- 1.9. These Terms and Conditions constitute the entire agreement between the Company and the Customer in respect of the subject matter hereof, and supersedes and replaces in their entirety all previous agreements, representation or warranties between the Parties in this regard. Unless otherwise stipulated elsewhere in this Agreement, no variation, cancellation, novation or deletion of any provision hereof shall be binding unless reduced to writing and signed by an authorised representative of the Company.
- 1.10. Where a conflict exists with regard to the provisions of this Agreement and any other agreement or document, other than an Amendment hereto, the provisions of this Agreement shall prevail.
- 1.11. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of any Party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 1.12. All provisions and the various clauses of these Terms and Conditions are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of these Terms and Conditions which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of these Terms and Conditions shall remain of full force and effect. The Parties declare that it is their intention that these Terms and Conditions would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 1.13. Unless the contrary is indicated, when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on the Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa.
- 1.14. References to notices, statements and other communications by or from the Company include notices by or from the Company's agent(s).
- 1.15. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

- 1.16. Expressions defined in these Terms and Conditions shall bear the same meanings in schedules, annexures, addendums and amendments to these Terms and Conditions which do not themselves contain their own definitions.
- 1.17. This document shall not be interpreted against the Party responsible for preparing and drafting it, in other words the *contra proferentem* rule shall not apply to the interpretation of this document.
- 1.18. The use of the word “including” shall not be construed as limiting the meaning of the words preceding it to the one or more examples following it, and the meaning of the general words will not be restricted by the use of more specific words (i.e. the *eiusdem generis* rule shall not be applied in the interpretation of these Terms and Conditions).

2. AGREEMENT

These Terms and Conditions governs the relationship between the Company and the Customer, Supplier and/or any third party in all aspects of any such parties' dealings with each other. This includes, but is not limited to consultations, quotes and invoices rendered, Services rendered and good delivered by the Company.

3. WORK SPECIFIC AND GENERAL

- 3.1 The following provisions apply to work done by the Company which is of a specific nature:
- 3.1.1 Fuel pump calibrations: Notwithstanding anything to the contrary contained in these Terms and Conditions, if a pump has been calibrated only, then the Company does not offer any guarantee, warranty or back-up service whatsoever pertaining to such Service rendered.
- 3.1.2 Injector checking: Notwithstanding anything to the contrary contained in these Terms and Conditions, if an injector(s) has been tested only, then the Company does not offer any guarantee, warranty or back-up service whatsoever pertaining to such Service rendered.
- 3.1.3 Specific repairs: Notwithstanding anything to the contrary contained in these Terms and Conditions, if the Customer specifies a work or job repair instruction to be carried out by the Company, then only such specific instruction will be carried out. Similarly, the Company does not guarantee the Customer's desired outcome in any way.
- 3.1.4 Partial or patch up repairs: Notwithstanding anything to the contrary contained in these Terms and Conditions, no guarantee or warranty shall be offered by the Company on Customer specified partial or patch up repairs. Such work shall be undertaken by the Company at the Customer sole risk. The Customer shall similarly be liable for quote

costs and the Company shall not be held responsible or accountable in any way should the desired results not be achieved.

3.1.5 Strip and quote: Notwithstanding anything to the contrary contained in these Terms and Conditions, should the Customer give an instruction to strip and quote and such Customer then denies or rejects the quote rendered by the Company, then no guarantee will be given by the Company that the Company will be able to return the Vehicle, Machine or any Component to a running or properly functioning condition. The Company reserves its rights to agree to reassemble such Vehicle, Machine or Component, which assembly will be done at the Customer's cost at the Company's standard labour rates. Dyno assessments including but not limited to Vehicle checking or setting, is done at the Customer's own risk. All work carried out as above will be charged for.

3.1.6 Non-running Vehicles: If a Vehicle is provided to the Company in a non-running condition, then all quotes issued by the Company in respect of Services to be rendered on such Vehicle shall be deemed to be an estimate only. Notwithstanding anything to the contrary contained in these Terms and Conditions, no guarantee or warranty is offered by the Company on the outcome of work done on a Vehicle or Machine once the Vehicle or Machine is restored to a running condition. Any subsequent problems encountered by any person once the Vehicle is restored to a running condition, including but not limited to power issues and hard starting, shall be attended to by the Company subject to the payment of an extra cost to the Customer, which extra cost shall be determinable by the Company. All work carried out will be charged for.

3.1.7 Running Vehicles: If a Vehicle or Machine is provided to the Company in a running condition, then all quotes issued by the Company in respect of work to be done on such Vehicle or Machine shall be deemed to be an estimate only. During the course of the Company conducting work on such Vehicle, further faults, problems or defects may manifest, which faults, problems or defects were not detectable until work on the Vehicle or Machine had already commenced or subsequent to certain faults, problems or defects already being remedied. The remedying of any such further faults, problems or defects encountered after the work initially undertaken and conducted by the Company had been completed, shall be attended to by the Company subject to the payment of an extra cost by the Customer, which extra cost shall be determinable by the Company.

3.2 The following provisions apply to all work done by the Company in general:

3.2.1 The Company shall not provide Customers or any third Party with any loan Vehicles under any circumstances.

- 3.2.2 Any pump or injector not collected within three (3) months of completion will be sold to cover the costs incurred by the Company for the storage of such pump or injector. The proceeds of such pump or injector, regardless of the value thereof, shall be deemed to be the value of the storage costs incurred by the Company, unless the Company determines that such value is less than the storage cost.
- 3.2.3 A storage fee of R 250.00 per day will be charged for Vehicles or Machine not collected within one (1) week of the completion of the Services rendered by the Company, and subsequent notification of such completion to the Customer. Notification of completion to the Customer shall be made either via telephone, email, fax, SMS or voice message.
- 3.2.4 Interest shall be charged on the quoted or invoiced amount in respect of Services rendered and/or goods provided should any goods, Vehicle, Machine or Component not be collected within one (1) week of the Services being rendered or the goods being provided and notification thereof had been dispatched to the Customer. Interest shall be charged at the prevailing repo rate.
- 3.2.5 Should the Company not be able to render Services or provide Parts at a date agreed upon between the Parties, then the Company shall render such Services or provide such Parts thereafter within a reasonable time.

4. LIABILITY

- 4.1 The Customer must notify the Company immediately of any problems which are encountered or which manifests subsequent to the Company carrying out Services on any Vehicle, Machine or Component.
- 4.2 Although the Company shall make every effort to ensure that the Customer's goods, Vehicle, Machine or Component is protected from any danger or damage through reasonable means, the Company shall not be held responsible for any loss sustained to a Customer or a third Party as a result of fire, theft, acts of God or public enemy, terrorism, civil war, insurrection or riot, civil unrest, labour disputes, strikes, fire, flood, explosion, earthquake, accident, epidemic, quarantine restriction, or as a result of the application of any law(s), or the acts or omissions of any state, government or regulatory authority, or as a result of any other cause beyond the reasonable control of the impacted Party, accidents, criminal behaviour or negligence by outside Parties or by employees of the Company.
- 4.3 It is the Customer's responsibility to ensure that any Vehicle, Machine or Component is adequately insured and that the Customer's insurers are aware of the location of such Vehicle, Machine or Component, the work being undertaken and that any Vehicle may be test driven or any Machine may otherwise be tested by employees, representatives or agents of the Company.

- 4.4 It is the Customer's responsibility to ensure that all valuables are removed from any Vehicle, Machine or Component before leaving the Vehicle, Machine or Component at the premises of the Company.
- 4.5 Vehicles are test driven at the Customers own risk. Any test drive may result in overheating, engine failure and any other consequence and damage to such Vehicle. The Customer warrants that these risks are understood and that the Company shall not be held liable in the event of such damage being sustained.
- 4.6 The Company shall not be held liable for product defects. No guarantee is accordingly given by the Company for products which were faulty when same was manufactured, regardless of such fault being latent or not.
- 4.7 Notwithstanding anything else contained in this Agreement, the Company shall not be liable or responsible to a Customer or any third Party for any direct or indirect damages or losses of any nature whatsoever, including those arising from any personal injury or death or loss of or damage to any property unless caused by the Company's gross negligence or willful misconduct (irrespective of the cause of such injury, death, loss or damage).
- 4.8 The Company will not be liable for any consequential damages or economic loss suffered by the Customer as a result of any Services rendered whatsoever.
- 4.9 The Customer indemnifies, holds harmless and expressly exempts and releases the Company from any and all liabilities and claims arising from any cause whatsoever
- 4.10 The Company shall under no circumstances be responsible or liable for the acts or omissions of its associated products, Suppliers and/or other third Parties.
- 4.11 The Customer binds his/her/its directors, shareholders, members, dependents, heirs, trustees, executors, administrators, third Parties, assigns or any other similar successive or executive entities related to the Customer to the terms and conditions of this document.
- 4.12 Whenever it is necessary or preferable that a third Party provides the services and/or Parts or any Part thereof, the Company will be entitled to arrange the involvement of such third Party on behalf of the Customer. If the Company arranges the Participation of such third Party with the knowledge and consent of the Customer, the Company shall not be liable for the services or Parts of such third Party or any damages that arise therefrom.
- 4.13 Should the Customer allege that any of the Services rendered or the Parts provided by the Company are defective, the Company shall be entitled to a reasonable opportunity to carry out an inspection in order to determine or verify the cause of the alleged defect.

- 4.14 The Company's liability arising under any warranty or guarantee shall be limited to the reasonable costs of remedying or replacing defective Services or Parts only.
- 4.15 The Company will not be liable for any damage caused by any pre-existing defect (latent or otherwise) in any Vehicle, Machine or Component owed by the Customer.
- 4.16 Should the Customer purchase any Part for fitment from any third Party, the Company does not guarantee that such Part is suitable for the purposes for which it was purchased,
- 4.17 Each of the indemnities, disclaimers, waivers, releases and other provisions of this Agreement are separate and severable provisions which are individually and jointly enforceable. In the event that any one or more of the provisions of this Agreement are found to be invalid, unlawful and/or unenforceable such provisions will be severable from the remaining provisions and the remaining provisions shall continue to be valid, in full force and effect.

5 QUOTATIONS, INVOICES AND BILLING

- 5.1 All work carried out by the Company (including fault finding and troubleshooting), regardless of the outcome, shall be charged for by the Company in the manner indicated on notice boards displayed at the reception area on the Company's premises and is subject to change without any notice.
- 5.2 All quotes are calculated and charged for at an hourly rate. The Company may render and dispatch quotes to the Customer in any number of ways, including but not limited to fax, email or other electronic means or SMS or other instant message service such as WhatsApp.
- 5.3 Only quotes received in writing will be deemed to be binding.
- 5.4 Timing and fitment faults and issues which are a result of the Customer's negligence or ignorance shall be charged for at a standard hourly rate, which rate does not include call-outs, travel or towing to repair the fault or timing, which will be charged for separately.
- 5.5 The amounts reflected on the Company's quotations are subject to change at any time before acceptance and payment for any reasons, including but not limited to actual costs of Parts provided and/or Services rendered, exchange rate fluctuations, fuel costs, taxes, government regulations, and increased or additional costs which may be imposed upon the Company by any suppliers and/or other persons or entities beyond the Company's control.
- 5.6 No cheques whatsoever will be accepted as payments for any Services rendered by the Company. Payments may only be made by means of Electronic Funds Transfer, card or cash payments.
- 5.7 All charges by the Company are VAT exclusive unless otherwise indicated on invoices rendered to the Customer.

- 5.8 The Customer has the right to cancel the rendering of Services at any time, it being understood that the Customer will be liable to the Company for all costs incurred up to the time of cancellation.

6 CUSTOMER INFORMATION FORM

- 6.1 All Customers must complete and sign a Customer Information Form and return same to the Company. By completing and signing the Customer Information Form the Customer confirms that he/she has read, understood and accepted the Terms and Conditions of the Company (as set out herein) and also those of its suppliers. The agent, representative or other third Party completing the Customer Information Form warrants and represents, by the act of filling in the Customer Information Form on behalf of a Customer that such Customer has read, understood and undertook to be bound by these Terms and Conditions, and those of the suppliers.
- 6.2 It is imperative that the Customer Information Form reflects the correct information, and the Customer should immediately inform the Company in writing of any changes thereto.

7 BANKING DETAILS

- 7.1 Notwithstanding anything else stipulated on invoices and/or statements, the Company's banking details are attached.
- 7.2 Please pay careful attention to the banking information and requirements as any payment will remain the responsibility of the Customer and will be deemed to remain unpaid unless and until payment it is received in cleared funds into the appropriate bank account of the Company.
- 7.3 The Customer should ensure that all bank charges incurred are included in his/her/its payment to the Company. Any shortfall in the amount received will be considered as being outstanding. Copies of all bank transfers, which should include the Company's invoice number as a reference, are required upon payment and must be emailed to the Company.

8 GUARANTEES AND WARRANTIES

- 8.1 All work carried out by the Company carries a basic six (6) month guarantee on new Parts fitted and workmanship unless specifically excluded on the Customer's invoice, or as a result of any term of this Agreement. New parts fitted are covered by manufacturers warranty and any failure and subsequent replacement of said part will be at the sole discretion of the manufacturer.
- 8.2 The Company does not provide any guarantee or warranty in respect of the outcome of excessive fuel consumption problems.

- 8.3 All guarantees or warranties on the Part of the Company shall be deemed to be null, void and *pro non scripto* should any protective seal or any other anti-tamper devices, stickers or equipment be removed or tampered with.
- 8.4 The Company does not provide any guarantee or warranty whatsoever on calibrations, partial repairs, Customer specified work or patch ups.
- 8.5 All guarantees or warranties on the part of the Company shall be deemed to be null, void and *pro non scripto* should any type of performance chip, any other aftermarket chip, hardware, software or any other device be fitted or any other alterations be made to any Vehicle, Machine or Component after the Company has worked on such Vehicle, Machine or Component.
- 8.6 Any guarantee or warranty by the Company does not cover damage caused by factors out of the Company's control, including but not limited to, contaminated diesel or fuel, missed service intervals, damage caused by overheating of the engine, normal wear and tear, incorrect fitment by Customers, voltage spikes, fitment of third party components (including items described in the paragraph *supra*), consequential damage caused by vibration/resonance of the engine or drive train.
- 8.7 The Customer shall be entitled to return Parts purchased within 5 (five) working days, subject thereto that such Parts being unused, undamaged, in the original packaging and in a resalable condition. This applied only to newly packaged spares, and not to complete/Partial jobs including labour.

9 OWNERSHIPS AND RESPONSIBILITY

- 9.1 All Parts installed in, fitted to or in any other way applied or adjacent to any Vehicle, Machine or Component by the Company remain the property of the Company until all outstanding amounts owing to the Company has been settled in full.
- 9.2 Should the Customer supply his own Parts for the Company to utilise, same is done at the sole risk of the Customer. In such instance, the Company will supply the labour and the Machinery to fit and test the Parts at a set fee. The Company does not provide any guarantee or warranty pertaining to such labour, machinery or Parts. Should the Parts supplied by the Customer accordingly be faulty, then such Parts may be replaced by the Company at an additional cost.
- 9.3 Third Party including but not limited to drivers or other agents who provides the Company with any Vehicle, Machine or Component do so on behalf of the Customer and owner of the Vehicle, Machine or Component and warrants that they are duly authorised to do so.
- 9.5 All spares will only be returned at the Customer's specific instance and request at the commencement of any job.

- 9.6 Should the Customer supply his own Parts or specifically request the fitment of second hand Parts, and authorise any repair of fitment, the Company cannot be held liable for the performance of the Parts whatsoever. The Company will only warrantee its workmanship and that such Parts have been fitted correctly.

10 AMENDMENT TO TERMS AND CONDITIONS

- 8.1 The Company reserves the right to, at its sole discretion, amend, modify, add to or remove any provisions (in whole or in Part) of these Terms and Conditions from time to time.
- 8.2 Any changes to these Terms and Conditions shall immediately become effective subsequent to same being amended.
- 8.3 The onus rests on the Customer to periodically check the Terms and Conditions on the Company's website and on the premises of the Company where these Terms and Conditions may be displayed for any changes or updates therein contained.
- 8.4 The Customers continued use of the Company's Services following the posting of any amendments to the Terms and Conditions by the Company shall be considered notice of the Customers acceptance to abide by, and be bound by same.

11 BREACH

- 11.1 The Parties acknowledge that any breach of the terms of this Agreement shall constitute a material breach, and a breach of the relationship of trust between the Parties.
- 11.2 In the event that the Customer breaches this Agreement in any respect whatsoever, the Company will be entitled (without limiting any other rights or actions which the Company might have in terms of this Agreement or any law) to:
- 11.2.1 cancel this Agreement; and/or
 - 11.2.2 cancel any other agreement between the Parties; and/or
 - 11.2.3 claim damages from the Customer; and/or
 - 11.2.4 institute urgent or other proceedings against the Customer to enforce any obligation of the Customer; and/or
 - 11.2.5 take any other necessary steps available in law which the Company deems necessary to protect the rights and interests of the Company.

12 JURISDICTION

These Terms and Conditions and all legal relationships between Customer and the Company shall be governed by and interpreted in accordance with the Laws of the Republic of South Africa.

13 CONTACT DETAILS

In the event that you need to contact the Company for purposes related to these Terms and Conditions, please use the following contact details:

13.1 Telephone: 0861114390

13.2 Email: info@northerndiesel.co.za

13.3 Physical address: 220 Propshaft Road Samcor Park Silverton Pretoria SA

13.4 Postal Address: PO Box 159 Silverton 0127

These Terms and Conditions were most recently updated on 22 January 2020.

**Absa Retail & Business Banking**

Pretoria campus Building A
337 Petroleum Street, Watloo Pretoria

Tel 086 004 0302
Fax 086 011 0025
Swift Address: ABSA ZA JJ
<http://www.absa.co.za>

Absa Kleinhandel & Besigheids Bank

Pretoria Kampus gebou A
337 Petroleum Straat, Watloo Pretoria

Tel 086 004 0302
Faks 086 011 0025
Swift Address: ABSA ZA JJ
<http://www.absa.co.za>

Date 16 April 2020

Confidential

Confirmation of Banking Details

We have pleasure in confirming that NORTHERN DIESEL INJECTION CC has an account with Absa since 1991/10/25

Account Name	NORTHERN DIESEL INJECTION CC
Absa Account Number	10-0902-2291
Registration Number	1991/020786/23
Account Type	GROWING BUSINESS ACC
Branch Name	ABS BB HILLCREST
Branch Code	632005
SWIFT Code	ABSAZAJJ

- This report does not confirm funds or the conduct of the account in any way.
- This information is to be treated in the strictest of confidence and may only be used in the context in which it is given.
- This report is a confirmation of the correctness of information supplied by the client dependent on the information contained by the bank's system at the time that the request is submitted to the bank.
- This report is given in confidence and on request of our client.

Absa Bank and/or its employees will not be held responsible for any loss, damage or liability which may arise directly or indirectly from the provision of this letter of confirmation.

Yours sincerely

.....
Marcia Teffo
Virtual Consultant
Absa Business Bank

