



## **DOMESTIC AND INTERNATIONAL TERMS AND CONDITIONS OF SALE**

### **I. ACCEPTANCE**

1.1 Unless otherwise specifically agreed in writing signed by an authorized employee of Superior Diesel, Inc. ("Company"), the following terms and conditions of sale ("Agreement") shall apply resulting from Company's acceptance of Buyer's order for the goods, articles, materials, supplies, components, drawings, date or other property described herein ("Products"). Offers to purchase can be accepted only by an authorized representative of Company at the office, 3250 S Fox Ranch Road, Rhinelander, Wisconsin 54501 and/or 220 W. Greenwich Road, Seville, OH 44273 and are not effective or binding until approved in writing by such authorized representative. Any different or additional terms and conditions proposed by Buyer in its purchase order or otherwise are hereby rejected by Company and shall not be conclusively presumed from Buyer's failure to object thereto in writing as well as from Buyer's acceptance of all or part of the Products ordered. These terms and conditions of sale represent the entire Agreement of the parties and proposals, negotiations, representations or agreements made or entered into prior to or contemporaneously with this Agreement, whether verbal or written are excluded.

1.2 Where this Agreement is found to be acknowledgement, if such acknowledgement constitutes an acceptance of an offer, such acceptance is expressly made conditional upon Buyer's assent solely to the terms of such acknowledgement, and acceptance of any part of Product delivered by Seller, shall be deemed to constitute such assent by Buyer. If this Agreement constitutes an offer, Buyer's acceptance of such offer is hereby limited to the terms hereof.

### **II. PRICES**

2.1 All prices represent those in effect at the time of quotation and are subject to change without notice. Unless prices are bid or quoted as "firm", Company reserves the right to invoice at prices in effect at date of shipment, regardless of prior bid and whether notice was received by Buyer. Prices are FOB Company's plant of manufacture, unless otherwise specified. Prices are stated in United States dollars, are exclusive of sales, use, excise or similar taxes and are subject to any price adjustment necessitated by Company's compliance with any act of government. Any tax or others governmental charge upon the production, sale, shipment, or use of the product which Company is required to pay or collect from Buyer, shall be paid by Buyer to Company Unless Buyer furnishes Company with a tax exemption certificate acceptable to the appropriate taxing authority. Any changes as may occur on or prior to dates of shipment in applicable tariffs, freight rates or transportation charges and any prepayment by Company of freight charges shall be for the account of Buyer and shall be paid by Buyer with and in addition to the purchase price.

2.2 Export packaging or any other special handling requested by Buyer will be at its expense.

### **III. PAYMENT**

3.1 Unless credit terms have been extended to Buyer in writing by Company's Director of Finance, payment terms are payment due 30 days from invoice date United States currency. Company reserves the right to modify or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved, or payment in advance of shipment of Products. If Buyer fails to fulfill the terms of payment, Company may defer further Shipment to Buyer, or, at its option, cancel the unshipped portion of Buyer's order. Until further payment of all obligations of the Buyer hereunder, Company reserves the title (but not the risk of loss) to all Products furnished hereunder. If the Buyer defaults in payment or performance or becomes subject to insolvency, receivership or bankruptcy proceedings or make an assignment for the benefit of creditors, or without the consent of Company voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the Products, Company may treat all amounts then or thereafter owing by Buyer to be immediately due and payable (subject only to credits required by law) and Company at its election may repossess said Products. In the event of repossession of Products under this section or under section entitled "Security Interest", Company may enter the premises where the Products may be located and may remove the same there from without notice, and without be liable to Buyer for such repossession regardless of the cause of action, including claims of conversion or trespass.

### **IV. TERMS OF SHIPMENT – ACCEPTANCE**

4.1 The shipment of Products shall be ex-works (factory or warehouse). Buyer will assume the risk of loss of Products upon Company's delivery of Products to the carrier at point of shipment. Company will ship in accordance with instructions supplied to Buyer, and as specified on the face hereof. If Buyer fails to furnish such instructions, Company will select what is, in its opinion, the most satisfactory routing for the shipment. If Buyer is to pick up Products and has not done so within seven days after notification that they are ready for shipment, Company may ship the Products by commercial carrier in any manner it deems to be commercially reasonable. The products shall be packed and packaged in accordance with reasonable commercial practices for one-way shipment by air and/or surface transportation.

4.2 Acceptance shall occur, if any before, when Buyer fails to reject within ten (10) days after delivery of the Products. Buyer may rightfully reject only where reasonable inspection shows that the Products fail to substantially conform to the specifications of the Agreement. Buyer waives its right to revoke acceptance; it being the intent of the parties that Buyer's remedies for any nonconformity detected after acceptance be limited to those expressly provided herein for breach of warranty.

4.3. Buyer shall defend, indemnify, and save harmless Seller from any claims, demands or causes or action for damage, loss or destruction of Products once the risk of loss has passed to Buyer.

### **V. DATE OF SHIPMENT**

5.1 Shipping dates are approximate and are based upon conditions existing upon Company's receipt of Buyer's form order and full information. Company will, in good faith, endeavor to ship by the estimated shipping date, but shall not be responsible for any delay or any damage arising there from.

### **VI. CANCELLATION OF ORDER BY BUYER; RETURN OF PRODUCTS FOR CREDIT**

6.1 Orders shall not be subject to cancellation of modification either in whole or in part without Company's written consent and then only with terms that will reimburse Company for all applicable costs incurred by virtue of the sale including costs of purchased materials, engineering costs and a reasonable allowance for profit in accordance with Company's cancellation policy in effect on the date of cancellation. In any circumstances, Company's written consent must be given in advance of Buyer's return of Products for credit. If special Products are ordered from Company, the order is not subject to cancellation by Buyer under any circumstances.

### **VII. FORCE MAJEURE**

7.1 Force Majeure - Company shall not be responsible for any delay in the delivery of, or failure to deliver, Products due to causes beyond Company's reasonable control including, without limitation, acts of God, acts of war or terrorism, enemy actions, hostilities, strikes, labor

difficulties, embargoes, non-delivery or late delivery of materials, parts and equipment or transportation delays, delays caused by civil authorities, governmental regulations or orders, fire, lightening, natural disasters or any other cause beyond Company's reasonable control. In the event of any such delay, performance will be postponed by such length of time as may be reasonably necessary to compensate for the delay. Should Company be prevented from completing this Agreement or any part thereof because of any Force Majeure Event, then Buyer agrees promptly upon request and upon receipt of invoice therefore, to pay to Company for any Product or Products then completed or in process an amount to be determined by Company and representing its cost (including reasonable allowance for overhead) plus reasonable profit.

#### **VII. LIMITED PRODUCT WARRANTY**

8.1 THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUY NOT BY WAY OF LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Company warrants to each original Buyer ("Buyer") of Products manufactured by the Company that such Products are, at the time of delivery to the Buyer, free of material and workmanship defects, provided that no warranty is made with respect to:

- (a) any Product which has been repaired or altered in such a way, in Company's judgment as to affect the Product adversely;
- (b) any Product which has in Company's judgment, been subject to negligence, accident or improper storage;
- (c) any Product which has not been operated and maintained in accordance with normal practice and in conformity with recommendations and published specification of Company.

Any and all claims under the Limited Product Warranty must be submitted to Company within ninety (90) days after the date upon which the Product is claimed not to have been as warranted.

Company's obligation under this warranty is limited to use reasonable efforts to repair or, at its option, replace, during normal business hours at any authorized service facility of Company, any Products which in its judgment proved not to be as warranted within the applicable warranty period. All costs of transportation of Products claimed not to be as warranted and of repaired or replacement Products to or from such service facility shall be borne by Buyer. Company may require the return of any Product claimed not to be as warranted to one of its facilities as designed by Company, transportation prepaid by Buyer, to establish a claim under this warranty. The cost of labor for installing a repaired or replacement Product shall be borne by Buyer. Replacement parts provided under the terms of this warranty are warranted for the remainder of the warranty period of the Products upon which they are installed to the same extent as if such parts were original components thereof. Warranty services provided under the Agreement do not assure uninterrupted operations of Products; Company does not assume any liability for damages caused by any delays involving warranty service. The warranty period for the Products is as follows:

2000 hours or 12 months of service, whichever occurs first and which shall in no case extend beyond 18 months from the date of original shipment by Superior Diesel, Inc..

#### **IX. EXCLUSIVITY OF REMEDY: LIMITATION OF LIABILITY**

9.1 Company's entire liability and Buyer's exclusive remedy shall be as follows: In the event Buyer claims that Company has breached any of its obligations under this Agreement, whether of warranty or for any cause whatsoever, whether in contract or in tort including negligence, Company may request the return of the Products and tender to Buyer the purchase price theretofore paid by Buyer and, in such event, Company shall have no further obligation under the Agreement except to refund such purchase price upon redelivery of the Products. If Company so requests the return of the Products, the Products shall be redelivered to Company in accordance with Company's instructions at Company's expense. THE REMEDIES PROVIDED FOR IN THIS AND THE PRECEDING PARAGRAPH SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST COMPANY FOR BREACH OF ANY OF COMPANY'S OBLIGATIONS UNDER THE AGREEMENT WITH BUYER, WHETHER THE CLAIM IS MADE IN TORT OR IN CONTRACT, INCLUDING CLAIMS BASED ON WARRANTY, NEGLIGENCE, STRICT LIABILITY, DECEIT, FRAUD, MISREPRESENTATION, OR OTHERWISE.

9.2 IN NO EVENT SHALL COMPANY BE LIABLE TO BUYER OR ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR DOWN TIME) ARISING FROM OR IN MANNER CONNECTED WITH THE GOODS, ANY BREACH BY COMPANY OR ITS AGENTS OF THIS AGREEMENT, OR ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY. BUYER'S REMEDY WITH RESPECT TO ANY CLAIM ARISING UNDER THIS AGREEMENT IS STRICTLY LIMITED TO NO MORE THAN THE AMOUNT PAID BY THE BUYER FOR THE PRODUCTS.

#### **X. PATENT INDEMNITY**

10.1 In the event any product manufactured by Company and furnished under this Agreement is to be made in accordance with drawings, samples or manufacturing specifications, designed by Buyer, Buyer agrees to indemnify and hold Company harmless from any and all damages, costs and expenses (including attorney's fees) relating to any claim arising from the design, distribution, manufacture or use of the Product or arising from a claim that such Product furnished to Buyer by Company, or the use thereof, infringes any letters patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Company brought upon such claim or claims.

10.2 In the event any Product to be furnished under this Agreement is not to be made accordance with drawings, samples, or manufacturing specifications designated by Buyer, but rather is the design of Company and the Product has not been modified by Buyer or its customers. Company agrees to hold Buyer and its customers harmless against any damage awarded by a court of final jurisdiction in any suit or suits for the infringement of any United States letters patent by reason of the sale or use of such product furnished by Company under this Agreement provided that Company is notified promptly in writing of any claim or suit and is permitted to assume the full direction and control of the defense against such a claim and of any suit brought thereon and is given authority, information and assistance by Buyer (at Company's expense) for such defense and authority to settle. In case any judgment rendered in such suit shall become final (beyond right of appeal), and where Buyer has complied with the foregoing provisions of this paragraph to Company's satisfaction, Company agrees to pay all damages and cost thereby awarded against Buyer. If, subject to the above limitations, said Products, or any part thereof, should be finally held in such suit to constitute an infringement, Company shall have the right at its own expense either (a) to procure for the Buyer the right to patent, or (b) modify or replace said product with a non-infringing Product accomplishing the same purposes as the replaced Product, or (c) to withdraw such Product and refund to the Buyer the purchase price thereof. Company shall have the right to settle any claim at its own expense (a) by procuring for Buyer the right to continue using said Product without liability for infringement of such patent, or (b) by modifying or replacing said Product with non-infringing Product accomplishing the same purposes as the replaced Product, or (c) by removing said and refunding to Buyer the purchase price thereof. Buyer's remedies for damages resulting from the infringement or claimed infringement or any patent by the Product are exclusively limited to the provisions of this paragraph.

#### **XI. CHANGES IN PRODUCT DESIGN**

11.1 Company reserves the right to change, discontinue or modify the design and construction of any of its products and to substitute material equal to or superior to that originally specified.

#### **XII. GOVERNING LAW-VENUE-LIMITATION OF ACTIONS**

12.1 This Agreement shall be performable in Oneida County, Wisconsin and shall be governed by the laws of the State of Wisconsin. Wherever a term defined by the state's Uniform Commercial Code is used herein, the definition contained in the Uniform Commercial Code is to control. No action for breach of this Agreement or any covenant or warranty arising there from, shall be brought more than one year after the cause of action has accrued. No action based on a non-contract theory of recovery arising from this Agreement may be brought more than two years after the cause of action has accrued. In no event shall any action, regardless of form, be filed more than two years after delivery of

Products. The agreement shall be reformed to comply with applicable law in the event any provision of this paragraph is held to be invalid, illegal or unenforceable.

### **XIII. SECURITY INTEREST**

13.1 Buyer hereby grants to Company and Company hereby retains a purchase money security interest in all Goods sold hereunder and all accessories and additions thereto, whether presently upon Buyer's premises or hereafter acquired, all spare parts and components therefor, and all proceeds of the sale or other disposition including, without limitation, cash, accounts, contract rights, instruments and chattel paper. Buyer hereby authorizes Company and its agents to file any financing statements and other documents necessary to perfect, maintain or otherwise continue the security interest granted hereunder. In the event Buyer is in default of terms of this Agreement, Company shall have the remedies of a secured party under the Uniform Commercial Code.

### **XIV. CONFIDENTIAL INFORMATION**

14.1 Buyer agrees that Buyer will not disclose to Company any confidential information, which Buyer possesses unless Company has prior to such disclosure agreed in writing to accept such information as confidential under clearly defined obligations of confidence. Buyer hereby represents and agrees that all information disclosed to Company by Buyer hereunder (except such information as is specifically subject to a written confidentially agreement which as been executed by Company prior to such disclosure) is non-confidential information, and that Company is free to use and disclose any or all of such information without accounting to Buyer therefore, notices on Buyer's drawings, proposals, graphs, tables, specification, and other documents to the contrary notwithstanding.

14.2 Company shall not be obligated to treat as confidential any information already known by it, or information that is or becomes public knowledge without the fault of Company, or information that is properly acquired by Company from a third party.

### **XV. INSTALLATION**

15.1 The Products shall be installed by and at Buyer's expense. Upon request, Company may furnish field service representative (in accordance with Company's Field Service Terms and Conditions) to provide assistance to Buyer during the installation, erection, and starting of Products, and to provide instruction of Buyer's personnel. For these services, Buyer shall pay the then current published rates per day for field services plus actual living and traveling expenses for field services representative.

Buyer shall furnish all necessary labor, supplies and facilities.

15.2 If Buyer utilized Company in any manner as a lead hand, foreman, or supervisor, such Company, representative shall become for those purposes Buyer's employee for whom Buyer shall be liable and for whom Buyer shall maintain adequate insurance coverage. Buyer shall defend, save harmless, and indemnify Company from and against any and all claims arising out of the representative's acts of omissions while acting in such capacity.

### **XVI. INDEMNITY INSURANCE**

16.1 Buyer agrees to defend, indemnify and hold Company, its subsidiary and affiliate companies, their agents, employees, directors, officers, servants and insurers, harmless from and against any and all losses, claims, demands, liabilities causes of action of every kind and character, whether in contract or in tort, including claims of negligence, or strict liability (including any action brought by an employee, agent or subcontractor of Buyer for Buyer's failure to comply with Company's published instructions and specifications concerning the operation, user and maintenance of Product(s) in favor of any person or party, for injury to or illness or death of any person or party, or for any property damage (including loss of income, profits, sales or "down time" arising out of or incident to the Products, except any loss, claim, demand or liability proven to be the result of the negligence of Company and not contributed to by the negligence of Buyer, its agents, employees, officers or directors or other third parties.

### **XVII. GOVERNMENT ACTION-COMPLIANCE WITH LAWS**

17.1 Performance by Company of the agreement is conditioned upon the party's compliance with all federal, state, and local laws, ordinances, rules and regulations.

17.2 Buyer agrees promptly upon request and upon receipt of invoice therefore, to pay to Company for any Product or Products completed or in process an amount to be determined by Company and representing its cost (including a reasonable allowance for overhead) plus reasonable profit in the event of the following: Company is prevented from completing this Agreement, or any part thereof, because of any rules, regulation or order of the federal government or any state government or of any federal or state commission, body or authority having jurisdiction, regardless of whether Company knew or should have known of such rule, regulation or order.

### **XIX. INTERNATIONAL SALES** For International Sales, the following Terms and Conditions apply:

19.1 Payment – Unless otherwise agreed by Company, payment should be made through Letter of Credit, established by Buyer at its expense, including any bank confirmation charges. Letters of Credit shall be in favor of any acceptable to Company, shall be in sufficient amounts for the period necessary to meet all payment obligations, shall be payable upon presentment of invoice and bill of lading, shall be unconditional, irrevocable and issued or confirmed, by a bank in New York, New York, USA or another location designated or agreed upon in writing by the Company.

19.2 Government Action – Compliance with Laws - Performance by Company of this Agreement is conditioned upon parties compliance with all applicable federal, state, and local laws, ordinances, rules and regulations, including, but not limited to, The Export Administration Act of 1979, the Foreign Corrupt Practices Act, and the regulations and amendments enacted pursuant thereto. If an export license is required, Company shall undertake all responsibility and expenses connected with obtaining an export license from relevant authorities for export of the Products to Buyer's destination. Buyer shall undertake all responsibility and expenses in obtaining import licenses from necessary authorities for the importation of Products into Buyer's destination.

19.3 Buyer agrees promptly upon request of invoice therefore, to pay, to Company for any Product or Products completed or in process an amount to be determined by Company and representing its proportionate price of the Products (cost plus reasonable profit, including reasonable allowance for overhead) in the event of the following: Company is prevented from completing this Agreement, or any part therefore, because of any rule, regulation or order of the federal or state commissioning body or authority having jurisdiction in the premises (regardless of whether Company know or should have known of such rule, regulation or order or revocation.)

19.4 Jurisdiction – Any suit, action or proceeding against Company concerning this Agreement shall be brought in the United States District Court of the State of Wisconsin, or in the courts of Wisconsin, USA, and the Buyer may elect in his sole discretion, and the Buyer hereby irrevocable submits to the exclusive jurisdiction of such courts.

19.5 The Buyer irrevocably consents to service of all writs, process, and summons in any suit, action or proceeding filed or initiated by Company to be made upon Buyer by any of the following methods at Seller's sole election: a. Service upon Buyer at his address by registered or certified mail, postage prepaid; b. Service in any other manner permitted by applicable law.