



GENERAL TERMS AND CONDITIONS FOR MATERIALS AND/OR FIELD SERVICE
DOMESTIC AND FOREIGN

Effective Date: December 5, 2023

DEFINITIONS:

As used herein, the term "Company" shall mean **Engine Systems, Inc. ("ESI")**, 175 Freight Road, Rocky Mount, North Carolina, 27804 USA, "Purchaser" shall mean the person or organization acquiring materials and/or field services from Company, and the term "Unit" includes but is not limited to engines and/or generator sets.

GENERAL:

A 10 hour minimum per day will be charged to Domestic Purchasers and 12 hour minimum per day will be charged to Foreign Purchasers. A 1.5% per month late charge is placed on invoices not paid within thirty (30) days.

A. FIELD SERVICE REPRESENTATIVE

If the services of two or more Field Service Representatives are to be furnished, the term "Representative" or any corresponding pronoun used herein shall be deemed to refer to each such Field Service Representative.

B. SCOPE OF REPRESENTATIVES' SERVICES

- 1) The Representative shall act in an advisory capacity or perform the work. He will interpret the Company's drawings, advise the Purchaser regarding the sequence of steps in installation, inspection, start-up, dismantling, or repairs, as the case may be, explain features and components of the Company's products and their functions, and constructively criticize work conditions, methods and procedures at the job site.
- 2) The Representative shall not be required to superintend or supervise personnel supplied by the Purchaser or train them in their respective crafts in connection with the performance of their work.
- 3) Neither the Company nor the Representative shall be responsible for any acts, omissions or workmanship of employee's, contractors, subcontractors, or agents of the Purchaser or for their failure to follow the advice or instructions of the Representative, or for performing any work or giving any advice in respect to equipment manufactured or services sold to the Purchaser by others.
- 4) The Company's Field Service Representatives shall comply with the Purchaser's rules for visitors pertaining to safety, plant protection, and the operation and parking of vehicles.
- 5) The Company's Field Service Representatives shall be available to inspect and assess the proper application, installation, start-up and, as applicable, dock trials, sea trials or load tests, provided Purchaser coordinates with Company to be present during the aforementioned activities.

C. PURCHASER'S RESPONSIBILITIES

- 1) Labor, Material, Tools and Equipment
The Purchaser shall furnish, at his own expense and responsibility, all cranes, rigging, tools, facilities and equipment, material, and repair or replacement parts, together with sufficient skilled and common labor and foreman, supervisors and interpreters for the efficient performance of the work, and all fuel, lubricating oil, water, electric power and other supplies and utilities that may be required in connection with the work.
- 2) Purchaser's Representative
The Purchaser's Representative shall be responsible for coordinating the work and shall be in charge of the labor, material, supplies, tools and facilities to be furnished by the Purchaser. The Purchaser's Representative shall inspect and accept all details of the work as they are completed. Except in instances where the Company has such right under the terms of the warranty covering the product involved, the decisions with respect to repair or replacement of the Purchaser's equipment or parts thereof, shall remain solely with the Purchaser.
- 3) Safety
The Purchaser shall furnish Company's Representative a safe and healthful place to work, including first aid, wash-up, and toilet facilities at the site. If, in the opinion of the Company, the Purchaser fails to comply with the foregoing, or if in the Company's opinion, the Representative's health or safety is or would be jeopardized during the period of the assignment, the Company may order its Representative to return to their headquarters under the same provisions as set forth in Paragraph D4b(iv). Prior to the start of work Company may request Purchaser to provide written evidence of the safety of the location work is to be performed with regard to hazardous materials.

D. CHARGES

Purchaser shall pay the Company for the time and expense of each Field Service Representative and for tool rental and purchased material and services, based on the conditions set forth below.

- 1) General
 - a) If the price for performing field service is fixed, such price shall apply only to the work called for at the inception of this contract and shall be performed on a straight time basis only unless otherwise agreed to in writing. Changes in the scope of the work or in the schedule of hours in excess of that specified, requested by the Purchaser, shall be paid as additional charges by the Purchaser pursuant to Paragraphs D1b through D6.



- b) If the contract is not on a fixed price basis, the Purchaser shall pay the Company for the straight time, overtime, Sunday time, standby time, Holiday time and travel time as defined herein. Rates shall be the applicable rates in effect at the time the work is performed.
- 2) Time
- a) **Straight Time** shall mean all hours worked between 7:00 AM and 3:30 PM, Monday through Friday, excluding Holidays. Purchaser shall pay Company for each hour of straight time worked at the applicable straight time rate.
- b) **Overtime** shall mean the time worked before 7:00 AM and after 3:30 PM, Monday through Friday, and all hours worked on Saturday excluding Holidays. Purchaser shall pay Company for each hour of overtime worked at the applicable overtime rate.
- c) **Sunday/Holiday Time** shall mean Sunday and any day observed by the Purchaser as a holiday in the place where the work is being performed. Purchaser shall pay Company for each hour of Sunday/holiday time worked at the applicable Sunday/holiday rate.
- d) **Standby Time (for Domestic Purchasers)** shall mean the time, up to 10 hours per day, Monday through Sunday, during which the Representative, during the course of his assignment, is available for work but is not working because of circumstances beyond the Company's control. Purchaser shall pay Company for each hour of standby time at the applicable rate.
- e) **Standby Time (for Foreign Purchasers)** shall mean the time, up to 12 hours per day, Monday through Sunday, during which the Representative, during the course of his assignment, is available for work but is not working because of circumstances beyond the Company's control.
- f) **Travel time** shall mean the actual amount of time spent by the Representative in traveling from his headquarters to the job site and in returning, including travel occurring on Saturdays, Sundays, and Holidays, a reasonable period of rest (up to 24 hours) upon completion of the Representative's travel to job site if such travel is 12 hours or more in duration, and the time necessary for the Representative to travel between the job site and the Representative's local residence.. Delays encountered by the Representative in obtaining return travel shall be treated as standby time. Purchaser shall pay Company for each hour of travel time at the applicable rate.
- g) **Day Rate** shall mean up to 12 hours per calendar day for work performed outside the continental United States. This is a minimum daily charge for work performed outside the continental United States. Hours in excess of 12 hours in a calendar day shall be charged at the Foreign overtime rate.
- h) Time worked, time traveled and standby time occurring on the same day will be charged at the rates and within the limitations aforesaid.
- 3) Minimum Charge
The minimum charge for each service call shall be 4 hours unless actual time worked and traveled exceeds 4 but is less than 10 hours Domestic and 12 hours Foreign, in which case the minimum charge shall be 10 hours Domestic or 12 hours Foreign at the current rates plus, in all events, travel and living expenses.
- 4) Expenses
All travel, living, incidental and other expenses incurred by the Company in the complete performance of the assignment, including Company handling charges, shall be charged to the Purchaser.
- a) Travel Expenses
Expenses for air or rail transportation and local bus, taxi and automobile rental. (Air or rail transportation will ordinarily be in coach, tourist, or economy class accommodations. First Class accommodations will be used only under special circumstances such as the unavailability or unsuitability of lesser accommodations.)
If the Representative uses a Company vehicle for transportation to the job site and return, or for daily work transportation, travel expense shall be calculated at the current rate.
- b) Living Expenses
The Purchaser shall reimburse the Company for the Representative's lodging, meals and other expenses incidental to United States standards.
- (i) Where adequate and acceptable commercial living and eating accommodations are available to the Representative, the Purchaser shall reimburse the Company for the cost of such expenses plus the applicable markup defined on Company's current RATES FOR FIELD SERVICE DOMESTIC and FOREIGN.
- (ii) Where such commercial accommodations are not available, or when it is agreed in advance, the Purchaser shall provide the Representative with acceptable living quarters, food, local transportation, domestic help, etc. Such accommodations shall be comfortable in every respect including air conditioning, appliances, and household equipment.
- (iii) If, in the opinion of the Company, the Purchaser fails to furnish acceptable accommodations and they are not available commercially, the Company may order the Representative to return to his headquarters at the Purchaser's expense and the Company shall not be obligated to have him or his replacement return to the work site until given satisfactory assurance of compliance by the Purchaser of its obligations. All costs and expenses for the return to the job for the Representative or his replacement shall be for the account of the Purchaser.
- (iv) If the services of the Representative are required for a period longer than six months, additional items of expense will be for the Purchaser's account such as travel expense of the Representative's immediate family, family living accommodations, vacation and rotation of personnel.
- 5) Tools, Instruments and Equipment
- a) Transportation and Related Charges
The Purchaser shall pay for round-trip transportation or excess baggage charges for tools and equipment



furnished by the Company or the Representative. If applicable, the Purchaser shall assist the Company in arranging entry and exit permits for such tools and equipment.

- b) Tool Rental (Special)
If at the request of the Purchaser, the Company furnishes tools or equipment, a charge will be made at the Company's current regular rates therefor plus round-trip transportation.
- c) Company and Personal Tools
Tools and equipment furnished by the Company or the Representative shall remain the property of the Company or the Representative at all times. All such tools and equipment shall be for the exclusive use of the Representative. If such tools and equipment are not returned to the Company, the Purchaser shall reimburse the Company for their full replacement value.
- d) Purchased Tools and Equipment
If under the terms of the Contract the Company is to provide tools, test instruments, vehicles or household equipment, they will be procured and shipped by the Company. Unless otherwise agreed and specified, the purchase price, packing and shipping expense, insurance, taxes and other expenses involved and pertaining to this equipment plus the current handling charge shall be paid by the Purchaser. Title, liability and maintenance responsibility passes to the Purchaser upon delivery but right of exclusive use by the Representative is reserved by the Company until the work is completed.
- e) Storage Facilities
The Purchaser shall provide suitable locked storage facilities for the exclusive use of the Representative for the storage of personal or Company property such as drawings, tools, instruments and other special equipment.

E. INVOICING AND PAYMENT

- 1) Invoicing
Subject to Credit approval, the Company will submit periodic invoices on a net 30 basis covering the time and expenses of the Representative, and a final invoice upon completion of the work. Separate or combination invoices for purchased material, labor, engineering, services, tool rental, or other items furnished by the Company will be issued on the same basis.
- 2) Payment
With approved credit all payments shall be made by the Purchaser in US Dollars within 30 days of invoice date. INVOICES NOT PAID WITHIN 30 DAYS FROM INVOICE DATE SHALL BE SUBJECT TO A SERVICE CHARGE OF 1½% OF THE UNPAID BALANCE FOR EACH MONTH THEY REMAIN UNPAID BUT NOT TO EXCEED THE MAXIMUM AMOUNT PERMITTED BY LAW.
Purchasers who do not have approved credit, and Purchasers outside the United States, will be required to provide advance payment in the form of wire transfer or Company Check (check clearance required prior to dispatch of service personnel). If the Purchaser prefers, an irrevocable confirmed letter of credit with an acceptable US bank may be provided. In all cases, all banking charges and fees will be charged to Purchaser.
- 3) Verification of Time and Expenses
The Representative will present to Purchaser a copy of his regular Daily Field Service Report (DFSR). The DFSR shall include a description of the work completed and the hours spent on the job. The Purchaser shall indicate approval of such reports by signing the same.

F. DELAYS, SUSPENSION, DEFERMENT

- 1) If the work is suspended or delayed due to no fault of the Company, such as, but not limited to, acts of God, war, act of government, act of Purchaser, priorities, or allocations, fire, flood, strike or sabotage, the time of performance, if any such is specified, shall be extended for a period of time equal to the period of the delay and its consequences. If the work is suspended because of such a delay, the Company may temporarily withdraw the Representative and/or its contractor's personnel and return to the job when needed and available. Rates current at the time the work is resumed and any additional costs (including travel time and expense) incurred by the Company because of the foregoing will be charged to the Purchaser.
- 2) If for any reason the Purchaser defers start of the work, the Purchaser will give the Company written notice immediately. It is understood that the Company may not be able to furnish the Representative or its contractor at the precise date the work is rescheduled to start, but it will make every reasonable effort to do so. The Company, at its option, shall be relieved of its obligation to provide service hereunder without further obligation if the Purchaser defers start of the work beyond six months of the starting date originally specified, or if the work is suspended for more than six months, or if in the Company's opinion, conditions in the job site area constitute a hazard to the Representative's health or safety.

G. ENGINEERING INFORMATION

While the Company will provide advisory assistance to its Field Service Representative relating to routine engineering problems encountered in connection with the performance of this field service assignment, the Company reserves the right to charge the Purchaser at its regular rates for engineering services such as layout, design, drawings, engineering analysis, engineering reports and visits to the job site or elsewhere by Company engineering personnel. However, no such engineering services will be undertaken without the authorization of the Purchaser.



H. MATERIAL

Material furnished by the Company at the Purchaser's request will be invoiced to the Purchaser at the Company's current regular price and under the Company's current Terms and Conditions.

I. LABOR PERMITS AND TAXES

- 1) The Purchaser, at his own expense, shall secure any work permit, labor permit, tax exemption certificate, or any other authorization which may be required to permit the Representative to perform the requested services. Any loss of the Representative's services pending the procurement of any such permit or authorization shall be for the Purchaser's account, and shall be paid for by the Purchaser as standby time as defined and specified herein.
- 2) The price quoted for services do not include any sales, privilege, use, turnover, excise or other similar tax. The amount of any such tax which the Company shall be required to pay because of the furnishing of services shall be reimbursed to the Company by the Purchaser upon presentation of invoice therefor.

J. WARRANTY

Company warrants that the materials and services furnished to Purchaser shall, at the time of delivery, be free from defects in materials and workmanship. Company agrees (a) at its option, to repair or replace any material which proves to be defective within the period contained in any applicable manufacturer's warranty, and, if there be no such applicable warranty, then within six (6) months from the date the material is placed in service, but in no event to exceed twelve (12) months from the date of shipment to Purchaser, and (b) to correct any defects arising out of any services furnished to Purchaser within thirty (30) days from the date such services are rendered.

Purchaser shall promptly notify Company in writing of any defect in material or workmanship found during the warranty period and Company shall have the right to make an investigation of the reported defect before corrective action is undertaken. Company shall have the option to repair, replace or correct any defect in the field or at its plant. Purchaser shall bear all costs incurred to enable it to gain physical access to a defect in material or workmanship in order to repair, replace or correct same.

Manufacturer's and/or Company's warranty, as applicable, may become null and void if Company is not present during initial start-up of the Unit.

This warranty does not cover and Company shall have no responsibility for:

- Conditions which, in the reasonable judgment of the Company, arise from misuse, overloading, negligence, alteration, accident or lack of performance of necessary maintenance services.
- Claims for consequential damages, including, but not limited to, loss of use, loss of revenue or profit and loss of or damage to Purchaser's property.
- Claims which, in the reasonable judgment of the Company, arise from materials not provided by Company.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WORKMANLIKE SERVICE, AND OF ANY NON-CONTRACTUAL LIABILITIES INCLUDING PRODUCT AND/OR COMPLETED OPERATIONS LIABILITIES BASED UPON NEGLIGENCE OR STRICT LIABILITY.

NOTWITHSTANDING THE FOREGOING, COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO BLOCK AND GEARCASE WELDING, GEARING, OR GEARING COMPONENTS, WHETHER ORIGINAL, SUPPLIED, OR REUSED, AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WORKMANLIKE SERVICE, AND OF ANY NON-CONTRACTUAL LIABILITIES INCLUDING PRODUCT AND/OR COMPLETED OPERATIONS. LIABILITIES BASED UPON NEGLIGENCE OR STRICT LIABILITY, ARE HEREBY EXCLUDED AND DISCLAIMED BY COMPANY WITH RESPECT TO THESE PARTS AND/OR SERVICE. FURTHER, PURCHASER ACKNOWLEDGES THAT WITH REGARD TO GEARING, OR GEARING COMPONENTS, LATENT DEFECTS MAY EXIST.

K. INSURANCE LIABILITY/LIMITATION OF LIABILITY/CONSEQUENTIAL DAMAGES

- 1) The Company will carry Workmen's Compensation insurance to cover its Representative and will require similar coverage from its subcontractors while on the assignment for the Purchaser and will maintain public liability and property damage insurance in reasonable amounts to cover the liability arising from their activities. The Company shall be liable for loss or damage to equipment or property of the Purchaser only if caused by the Company's negligence and only if and to the extent such damage or loss is not covered by the Purchaser's insurance.
- 2) The liability of the Company whether in contract, in tort, or otherwise, shall expire one year after the completion of the work, and shall not, in any event, exceed the total contract price hereunder and Purchaser shall hold harmless and indemnify Company from and against all liability in excess of such limitation.
- 3) NEITHER COMPANY NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS BY PURCHASER FOR DAMAGES OF PURCHASER'S CUSTOMER.



- 4) Likewise, Company shall not, under any circumstances, be liable for the fault, negligence or wrongful acts of Purchaser or Purchaser's employees or Purchaser's other Contractors or Suppliers. Further, Company shall not, under any circumstances, be liable for any defects, nonconformities or damages that arise during dock trials, startup, sea trials or load test where Company has not attended or participated in the dock trial, startup, sea trial or load test.

L. SUBSTITUTION OF PERSONNEL

The Company's obligation is to furnish services and not specific personnel. The Company reserves the right at any time, and from time to time, to recall and substitute any of its personnel.

M. MODIFICATIONS

It is recognized that the nature of field service is such that changes in the scope of it as originally contemplated often occur. The Company will undertake additional services within the normal scope of field service but reserves the right to require the Purchaser to confirm in writing any extension of the services originally ordered. The Company shall be entitled, however, to rely upon oral orders, including instructions of the Purchaser's Representative at the site. Any additional services performed by the Company pursuant to such written or oral orders or instructions shall be paid for on the basis set forth herein or as otherwise agreed to in writing between the parties.

N. GOVERNING LAW

The interpretation of this contract shall be governed by the laws of the State of Texas, USA.

O. MATERIALS RETURN

- 1) General. In the event that the Purchaser wishes to return materials furnished to the Purchaser by the Company, the Purchaser shall request in writing that the Company issue a Return Materials Authorization (RMA). Purchaser must obtain an RMA from the Company prior to returning the materials, and a copy of the RMA must accompany the return shipment. No materials will be accepted for return or for credit to the Purchaser's account without an RMA. Purchaser shall ensure that the materials to be returned are adequately packaged for the return shipment, considering the nature and value of the materials. Non-stock materials, including but not limited to Order As Needed (OAN) materials, custom designed and/or custom fabricated materials, electrical and electronic materials, special order materials and lighting materials, may not be returned for any reason except in connection with a warranty claim, nor may the order for such non-stock materials be cancelled after the Company has placed the corresponding order with its supplier.
- 2) Routine Returns. Company shall assess the Purchaser a restocking charge, at the rate periodically established by the Company, for each item of material returned, except materials returned in connection with a warranty claim. Company shall inspect each item of returned material upon receipt to determine, in its sole discretion, whether the item is suitable for resale. Purchaser shall be responsible for the cost of each item of material which the Company determines is not suitable for resale, based on the price charged to the Purchaser at the time the material was furnished to the Purchaser by the Company. The costs of packaging and return freight shall be the responsibility of the Purchaser.
- 3) Company Shipping Error. With respect to the return of materials which are not of the type and/or quantity ordered by the Purchaser, the Company shall not assess the Purchaser a restocking charge, and the costs of packaging and return freight shall be the responsibility of the Company.
- 4) Defective Materials. With respect to the return of materials in connection with a warranty claim, the Purchaser shall request an RMA for the return of such materials at the time of its written notice of defect, provided in accordance with Section J hereof. Company shall inspect such materials upon receipt to determine, in its sole discretion, whether any defect is within the warranty set forth in Section J. In the event the Company determines that a defect in such materials is within the warranty set forth in Section J, the costs of packaging and return freight shall be the responsibility of the Company. In the event the Company determines that there is no defect in such materials that is within the warranty set forth in Section J, the costs of packaging and return freight shall be the responsibility of the Purchaser.

P. CORE RETURN

- 1) When remanufactured, rebuilt and UTEX material is sold on an Exchange or Flat Rate Exchange basis, the Purchaser shall deliver, or cause to be delivered, to Company an "acceptable core" in exchange for the material purchased. Company will provide a Return Material Authorization (RMA) to the Purchaser at the time the remanufactured, rebuilt or UTEX material is shipped. Purchaser shall return the core, at Purchaser's sole expense, with the RMA attached, to the Company location from which the remanufactured, rebuilt or UTEX material was shipped. With respect to North American Purchasers (USA & Canada), the core must be returned within thirty (30) days from the date of shipment of the remanufactured, rebuilt or UTEX material by the Company, and, with respect to all other Purchasers, within one hundred fifty (150) days from the date of shipment by the Company.
- 2) Unless otherwise agreed in writing by Company and Purchaser, the core returned by Purchaser shall be deemed an "acceptable core" if it is from the same manufacturer and of the same model as the purchased material and can be repaired or rebuilt in accordance with the manufacturer's specifications. Purchaser acknowledges and agrees that, with respect to certain material cores, the Company cannot fully determine whether the core meets the manufacturer's specifications qualifying it to be repaired or rebuilt until the repair or rebuilding process has been completed and the finished part has been tested.
- 3) In the event that the Purchaser fails to return a core within the applicable time frame set forth herein, or, in the event that a core returned by Purchaser fails to meet the manufacturer's specifications qualifying it to be



repaired or rebuilt if the rebuilt core fails during final testing, Purchaser shall pay Company for Company's standard price, determined in the sole discretion of Company, for the specific material core in accordance with the payment terms thereof following receipt of Company's invoice. Unless the Purchaser shall request in writing, within fifteen (15) days of receipt of Company's invoice, that an unacceptable core be returned to Purchaser, freight prepaid, Company shall dispose of the unacceptable core as Company shall, in its sole discretion, deem appropriate.

Q. INTELLECTUAL PROPERTY

The parties acknowledge that Company has developed certain specialized technology, including, without limitation, designs, discoveries, inventions, software, products, procedures, drawings, notes, documents, information and materials ("Company Technology") that it is willing to use in connection with the design or manufacture of the Products or incorporate into the Products provided to Purchaser hereunder. Company owns all patents, copyrights, trademarks, trade secrets, know-how, inventions, and works of authorship constituting the Company Technology which may be embodied in the Products and software and their methods of use, function and manufacture (collectively, "Company Background Intellectual Property"). Further, the parties acknowledge that Company may develop in connection with the performance of its responsibilities hereunder, or independent hereof, improvements related to the Products which may be the subject of patents, copyrights, trademarks, trade secrets, know-how, and works of authorship ("Company Foreground Intellectual Property", collectively "Company Intellectual Property"). Company shall have the right to apply for, obtain, enforce and hold in its own name all patents, trademark, copyright, and trade dress registrations, or any other similar legal protection for such Company Background and Foreground Intellectual Property.

R. DELIVERY TERMS

Delivery terms shall be Ex Works, shipping point.

S. INSTALLATION

Purchaser, unless otherwise specified herein, will at its own cost and expense install and place the equipment in service in accordance with Company's instructions. The Company may furnish a supervising erecting engineer to supervise such installation when requested by the Purchaser. Purchaser shall be charged in accordance with Company's current RATES FOR FIELD SERVICE DOMESTIC AND FOREIGN.

T. TITLE AND SECURITY INTEREST

The Company and the Purchaser agree that the right to possession and title to the equipment herein described shall remain vested in the Company until all payments (including deferred payment and notes or renewals thereof, if any) shall have been fully made in cash (US currency or other agreed to consideration), and the Purchaser further grants to the Company a security interest in such equipment, thereby vesting in the Company all rights and remedies incident thereto, as provided in the Uniform Commercial Code of the state where the Purchaser intends using the equipment. Purchaser agrees to execute whatever documents are required in order to protect Company's security interest rights. It is further agreed that the equipment shall remain the personal property of the Company, whatever may be the mode of its attachment to realty or otherwise, until fully paid for in cash. Upon failure to make payment as herein provided, the Company may retain any and all partial payments which have been made as liquidated damages (it being agreed that the computation of actual damages would be impractical), and shall be entitled to take immediate possession of the equipment and be free to enter the premises where the equipment is located, and to remove (at Purchaser's expense) the same as its property without prejudice to any cause. All notes and securities given to the Company by the Purchaser shall be taken by the Company, not in payment, but as evidence only of the Purchaser's indebtedness. It is further agreed that the Purchaser will pay all costs of collecting, or securing, or attempting to collect or secure any unpaid balance which becomes due hereunder to Company, including a reasonable attorney's fee, whether the same be collected or secured by suit or otherwise. All unpaid balances shall bear interest at the highest legal rate from the time they become due.

U. FORCE MAJEURE

Company shall not, unless otherwise expressly provided herein, be responsible or liable for any delay or failure in performing hereunder due to force majeure if Company promptly provides to Purchaser written notice thereof and provided that Company shall use its best efforts to remedy such force majeure insofar as possible with all reasonable dispatch. The term "force majeure" as used herein shall include, but not be limited to, acts of God, acts of public enemy, insurrections, epidemics, riots, strikes, lockouts, labor disputes, fires, explosions, floods, breakdowns or damage to plants, equipment or facilities, embargoes, orders, or acts of civil or military authority, or other causes of a similar nature which are beyond the reasonable control of Company.

V. TERMINATION

1) Termination for Convenience.

Purchaser shall pay to the Company a net amount equal to (1) actual costs incurred by the Company including, but not limited to, the purchase of materials, equipment, and services to be used in the performance of the work; plus (2) labor costs incurred by the Company in performance of the work, to be determined using the Company's standard, fully burdened rates (which shall include general and administrative costs, but which shall not include any profit); plus (3) reasonable costs incurred by the Company to cancel any orders for materials and equipment to be used in the performance of the work; plus (4) fifteen percent (15%) of the total of items (1) through (3) above to account for the Company's profit; minus (5) the net salvage value of any materials and equipment purchased by



the Company to be used in the performance of the work after subtracting the Company's reasonable costs to salvage such materials and equipment.

2) Charge for Cancellation of EMD New Units.

Orders for EMD engines accepted by the Company may only be cancelled with the prior written agreement of the Company. If the Company accepts said cancellation, such cancellation will be subject to a charge ("Cancellation Charge") based upon the stage of production of said EMD engines as set forth in the table below, plus expenses incurred in arranging such cancellation, not to exceed the total price of the EMD engine, including optional and extra equipment. In the event that Purchaser has made any progress payments prior to such cancellation, the Company may retain such portion of that prior payment as compensation for the amounts described herein, and if there is any excess remaining after such retention, the Company shall refund such excess to the Purchaser.

Period of Order Cancellation (days)	% of Order Value
Order Date – 15 days after receipt of order (ARO)	5
16 days ARO – 30 days ARO	5-10
31 days ARO – 60 days ARO	10-20
61 days ARO – 91 days before ready to ship (RTS)	20-65
90 days before RTS – on or after RTS	100 (Not subject to cancellation)

W. EXPORT COMPLIANCE

1) General. The parties understand and acknowledge that each is committed to compliance with all laws and regulations of any country in which it is located, which are applicable to its business and operations, and to conducting its business affairs according to the highest standards of integrity. Each party certifies that it has performed and will perform all of its duties under these General Terms and Conditions in accordance with such applicable laws and regulations, and that it will do nothing to cause the other to be in violation thereof. Each party will furnish the other party in a timely manner, all information reasonably requested in order to comply with such applicable laws and regulations. In addition, each party agrees to comply with the laws and regulations of any country where the other party is located to the extent applicable to the performance of its duties under these General Terms and Conditions. Notwithstanding the foregoing, Company can only comply with such laws to the extent they are not inconsistent with U.S. law.

2) Compliance with Export Controls. The parties acknowledge that any goods, technology, software, information or data subject to these General Terms and Conditions may be subject to U.S. export controls including but not limited to the Export Administration Regulations ("EAR") 15 CFR Part 730-774, U.S. International Traffic in Arms Regulations, as codified at 22 C.F.R., Parts 120 through 130 ("ITAR"), U.S. Nuclear Regulatory Commission Regulations (NRC) on the Import and Export of Nuclear Equipment and Material, as codified at 10 C.F.R. Part 110, and/or U.S. Department of Energy (DOE) Regulations on Assistance to Foreign Atomic Energy Activities, as codified at 10 C.F.R. Part 810, and may be subject to other regulations as deemed applicable (the "Export Control Regulations"). The parties further acknowledge that export authorizations may be required from the Bureau of Industry and Security (BIS), Defense Directorate of Trade Controls ("DDTC"), NRC, DOE or other applicable U.S. government agencies (such U.S. government agencies collectively, "Export Control Agencies") prior to exporting any Products, non-public domain technical data or Services subject to the Export Control Regulations. The parties agree to comply with all applicable Export Control Regulations and any specific limitations and provisos imposed by Export Control Agencies on licenses, agreements or other authorizations particular to any transaction between the parties. The parties acknowledge that any goods, technology, software, information or data exported under these General Terms and Conditions remain subject to the U.S. Export Regulations after such export. The Purchaser agrees that it will not authorize further disclosure, export, re-export or retransfer any such product, software, non-public domain technical data or service to a third country, to any national (regardless of whether such national is an employee, consultant or independent contractor of either of the parties) of a third country or to any entity not specifically authorized by applicable U.S. Export Control Agencies pursuant to an export license, agreement or other export control document.

X. NUCLEAR FACILITIES – DOMESTIC (IF APPLICABLE)

Before Purchaser enters into an agreement ("Resale Agreement") with a third party ("End User") to provide or install a Part that ESI has supplied or will supply to Purchaser, or to provide Services that ESI will perform for the End User, at a Nuclear Installation in the United States pursuant to this Agreement, Purchaser agrees that it will (1) insert the name of the End User in the applicable line of ESI "Special Conditions Applicable to Nuclear Installations" to be appended as Attachment A to these General Terms; (2) obtain the End User's original signature on ESI "Special Conditions Applicable to Nuclear Installations"; and (3) convey to ESI the executed original ESI "Special Conditions Applicable to Nuclear Installations". Purchaser agrees that it will not enter into a Resale Agreement until the End User has executed ESI "Special Conditions Applicable to Nuclear Installations"



and ESI has received the executed original ESI "Special Conditions Applicable to Nuclear Installations". For the purpose of this Section:

"Nuclear Installation" means a nuclear power station in the United States of which End User is the person or entity licensed by the NRC as the operator,

"Part" means the whole, or a component part, of control systems, diesel engine driven related equipment, governors and governor controls, instrumentation, specialized diesel engine driven generators, and voltage regulation equipment, insofar as the Part is intended for use, or possible future use, in a Nuclear Installation, "Services" means labor, direction of labor, or technical consulting, advice, and assistance furnished by ESI and Suppliers to Purchaser, or to a broker, distributor, or other intermediary, in connection with Purchaser's Nuclear Installation. Services may be performed on or off of the Nuclear Installation site and include, without limitation, such activities as the installation and testing of equipment; research; commercial-grade dedication of safety-related equipment; and environmental, seismic, electromagnetic interference, and radio frequency interference qualification services, and

"Supplier" means a vendor, contractor or other entity, and their employees, regardless of tier, who supplies equipment, materials, information, financing, or Services in connection with any Part or Services Supplied to Purchaser that is used by Purchaser in a Nuclear Installation or maintained by Purchaser for possible use in a Nuclear Installation.

Y. NUCLEAR FACILITIES – FOREIGN (IF APPLICABLE)

Before Purchaser enters into a Resale Agreement with an End User to provide or install a Part that ESI has supplied or will supply to Purchaser, or to provide Services that ESI will perform for the End User, at a Nuclear Installation outside the United States pursuant to this Agreement, Purchaser agrees that it will (1) obtain from ESI the applicable Nuclear Liability Protection Agreement for the country in which the Nuclear Installation is located; (2) insert the name of the End User into such Nuclear Liability Protection Agreement; (3) obtain the End User's signature of duplicate originals of the Nuclear Liability Protection Agreement; and (4) convey to ESI the executed duplicate originals of the Nuclear Liability Protection Agreement. Purchaser agrees that it will not enter into a Resale Agreement until the End User and ESI have fully executed the Nuclear Liability Protection Agreement and Purchaser has received a copy of that fully executed Agreement. For the purpose of this Section, "Part", "Services", and "Supplier" shall have the meaning set forth in Section X herein and: "Nuclear Installation" means a nuclear power station outside the United States of which End User is the entity designated or recognized by the competent public authority as the operator.

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