



## General Terms & Conditions of Sale and Delivery for Engines, Axles, Components and Parts

**1. THE CONTRACT:** These General Terms & Conditions of Supply (the "Conditions") of engines, axles, components and parts (the "Product(s)"), together with (i) those set forth in the Confirmation of Order (the "Confirmation") issued by MAN Engines & Components, Inc. ("MEC") to purchaser (the "Purchaser"), (ii) the quotation issued by MEC (the "Quotation"), (iii) such specifications or other documents as are incorporated by reference in the Confirmation and (iv) such additional terms as are approved in writing by MEC, shall constitute the contract between MEC and Purchaser (collectively, the "Contract"). Any statement made on any form issued by Purchaser shall not operate to defeat the intent of these Conditions, and acceptance or payment by Purchaser for all or any of the Product(s) covered by the Confirmation shall constitute acceptance by Purchaser of these Conditions. Any quotations submitted by MEC are subject to confirmation upon placement of an order by Purchaser.

**2. PRICE:** Prices are on an *ex works* basis. Except as may be specifically provided in the Quotation or the Confirmation, or as may be otherwise agreed upon in writing by MEC and Purchaser, the price stated in the Confirmation is net, without any deductions whatsoever. All additional costs, including (but not limited to) charges of freight, packing, carriage, insurance, customs duties, fees for export, transit, import and such other permits and certificates as may be necessary, shall be borne by Purchaser. If charges for packing, freight, carriage, insurance, customs duties or other additional costs are separately stated in the Quotation or the Confirmation, and included in the price stated thereon, MEC reserves the right to adjust its price should the costs on which such additional charges are based be modified. In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reasons stated in these Conditions.

**3. TAXES:** Unless otherwise agreed in writing, MEC's prices are exclusive of any federal, state or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the Product(s), its sale, its value or its use, or any services performed in connection therewith, and Purchaser agrees to pay or reimburse any such taxes which MEC or MEC's subcontractors or suppliers are required to pay.

**4. TERMS of PAYMENT:** Except as otherwise provided in the Quotation or the Confirmation, payment in full, without setoff or deduction, shall be due to MEC prior to shipment. If terms are provided and Purchaser does not observe the agreed dates of payment, Purchaser shall without any requirement of formal notice from MEC, pay interest to MEC on overdue amounts from the date(s) due, at a rate of nine percent (9%) per annum or five percent (5%) above the rate borne from time to time by new issues of six-month United States Treasury bills, whichever is greater (but, in no event, greater than the maximum rate allowable by law). Payment of such interest does not release Purchaser from its obligation to make payments when due. If, in the judgment of MEC, the financial condition of the Purchaser, at any time during the manufacturing period or at the time the Product(s) is ready for shipment, does not justify the continuance of the work to be performed by MEC hereunder or the terms of payment specified, MEC may require full or partial payment in advance. In the event of Purchaser's bankruptcy or insolvency or in the event any proceeding is brought against Purchaser, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, MEC shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursements for its proper cancellation charges and expenses. MEC's rights under this Section are in addition to all rights available to it at law or in equity.

Terms of payment shall remain as specified if the delivery, installation or taking possession of the Product(s) or services is/are delayed or prevented due to reasons beyond MEC's control. In the event that any payment or payments are not made by Purchaser in accordance with the terms of the Quotation or Confirmation or as may be otherwise agreed upon, MEC, at its option, may terminate the Contract, and be entitled to claim all damages incurred by MEC.

**5. SCOPE CHANGES:** All changes requested by Purchaser are binding only if accepted in writing by MEC, and may result in price, delivery, and/or conditions changes. Letter(s) of credit, if applicable, shall be amended to reflect changes in price and payment arrangements.

**6. DELIVERY:** The dates specified for delivery on the Quotation or Confirmation are approximate and shall be reasonably extended if (i) changes are agreed upon by MEC and Purchaser, (ii) information or material required from Purchaser is not received in a timely manner (iii) agreement on technical questions, clarification of which had been postponed by the parties at the time the Contract was entered into, is not reached in a timely manner, (iv) MEC is unable to make timely delivery due to an event of Force Majeure (as hereinafter defined), or (v) if

Purchaser is late in fulfilling its contractual obligations (including, but not limited to, the failure of Purchaser to observe the terms of payment). Any delivery date that is accepted by MEC shall be deemed to have been achieved if the Product(s) is ready for dispatch on or before such date. Purchaser shall be entitled to claim liquidated damages for delay in delivery, but only in such case as it can prove that said delay has been caused by direct fault of MEC and that Purchaser has suffered a loss as a result of such delay. Notwithstanding anything to the contrary, damages for delayed delivery shall in no event exceed one-half (1/2) of one percent (1%) of the sales price (ex works, excluding packing) of that portion of the Product(s) that has been delayed for every full week of delay, and shall in no event whatsoever exceed in the aggregate five percent (5%) of the sales price (ex works, excluding packing) of that portion of the Product(s) that has been delayed. In no event shall damages be due to Purchaser for the first two weeks of delay. The payment of liquidated damages shall be the sole and exclusive remedy of Purchaser and the sole and exclusive liability of MEC for any delays in performance, including delays in delivery. Delivery in part shipments shall be acceptable. Commencing on the date on which delivery has been duly performed, MEC shall be liable in accordance with the warranty provisions addressed herein.

Purchaser shall promptly inspect all shipments, and shall notify MEC in writing of any defect, discrepancy or deficiency which are identified within 10 days of delivery; otherwise, any claim relating to such defect, discrepancy or deficiency shall be deemed to be waived. Parts proved not as ordered by Purchaser's inspection may be returned only upon MEC's written authorization. Product(s) may be returned within (30) days from delivery, only upon the condition that the Product(s) is in original sealed packaging from the factory, in original new condition and with an approved returned authorization.

**7.** In the event of delays in delivery caused by Purchaser, then (a) MEC shall be paid the purchase price as if no such delay had occurred, (b) risk of loss for the Products shall transfer from MEC to Purchaser on the date MEC notifies Purchaser that the Products are ready for shipment, and (c) MEC may, in its sole discretion, store the Products, or any part thereof, and insure the Products, and all costs and expenses incurred by MEC relating to such storage and insurance shall be reimbursed by Purchaser to MEC upon the request of MEC. In the event Purchaser fails to accept delivery of the Products, (a) MEC shall be paid the purchase price for specially ordered Products, or (b) MEC shall be paid a restocking charge of fifteen percent (15%) of the Purchase Price for Products which are standard and can be restocked and resold. **RISK OF LOSS:** Risk of loss or damage to the Product(s) shall pass from MEC to Purchaser upon delivery, regardless of whether transport is arranged or supervised by MEC, or installation or start-up is carried out under the direction or supervision of MEC, or otherwise. If delivery of the Product(s) is delayed at the request of or due to the fault of Purchaser or due to other reasons beyond MEC's control, the risk of loss on said Product(s) shall pass to the Purchaser at the time of the original anticipated date of delivery of the Product(s) at the delivery point designated on the face of MEC's Quotation or Confirmation. From this time forward, the Product(s) shall be stored and insured for the account of and at the risk of the Purchaser, and Purchaser shall be responsible for all additional costs incurred as a result of such delay, and Purchaser shall be liable for the payment of the purchase price as if no delay had occurred.

**8. SECURITY INTEREST:** As security for its obligation to pay MEC for the Product(s) in accordance with the Confirmation, and for any other amounts which may be or become due MEC from Purchaser, Purchaser hereby grants to MEC a security interest in the Product(s), all substitutions therefore, additions thereto and proceeds thereof (collectively, the "Collateral"). Purchaser agrees to take all actions and sign and file all documents, including UCC-1 financing statements, which MEC may request in order to perfect its security interest in the Collateral. Purchaser hereby grants an irrevocable power of attorney to MEC to execute and file on Purchaser's behalf all appropriate financing and continuation statements and other relevant documents in order to maintain the liens granted hereby.

**9. WARRANTY:** MEC warrants that the Product(s) will be the kind and quality described in the Quotation or the Confirmation and will be free of defects in workmanship or material. Should any failure to conform with this warranty appear within twelve (12) months from the date the Product(s) is put into use, MEC shall, in complete fulfillment of its liabilities under this warranty, if given prompt written notice by Purchaser, correct by repair or replacement, any nonconformity which shall appear (including costs for the replacement parts and reasonable costs for removal and installation thereof). Notwithstanding anything to the contrary, the warranty period shall expire not later than eighteen (18) months after delivery or notification that the Product(s) is ready for dispatch, whichever occurs earlier. All parts which are replaced under the terms of this warranty, shall only be entitled to warranty protection for the remainder of the original warranty period.

Purchaser shall make the Product(s) available for correction. If MEC can not eliminate the nonconformity within a reasonable time, Purchaser may, with the consent of MEC, eliminate said nonconformity; in such cases, MEC shall reimburse the reasonable and verifiable costs for the work and any required part, which amount shall not exceed the amount that MEC would have incurred had MEC itself eliminated the nonconformity. The warranty contained in this Section will terminate immediately if Purchaser



or a third party undertakes inappropriate or improper modification or repairs or if Purchaser, in case of a defect, does not immediately take all appropriate steps to mitigate damages and notify MEC in writing of its obligations to remedy such defect. This warranty shall not apply to or include any nonconformity or defect due to (i) the failure of Purchaser to report a defect to MEC in writing immediately on discovery; (ii) natural wear and tear or misuse or to any parts of the Product(s) which are normally consumed in operation or which have a normal life inherently shorter than the warranty period, (iii) incorrect servicing or improper maintenance, including, without limitation, non-observance of scheduled maintenance intervals, (iv) work done or parts furnished by Purchaser and/or others not authorized by MEC to perform such work, (v) faulty or incorrect storage, (vi) the failure of Purchaser to comply with MEC's operating, handling, maintenance and servicing instructions; or (vii) any cause arising beyond the control of MEC. Correction of non-conformities in the manner and for the period of time provided above shall constitute fulfillment of all liabilities of MEC to the Purchaser, whether based on contract, negligence or otherwise, with respect to such Product(s).

**THIS SECTION SETS FORTH THE EXCLUSIVE RIGHTS AND REMEDIES AGAINST MEC FOR CLAIMS BASED UPON DEFECTS IN OR NON-CONFORMITY OF THE PRODUCT(S), OR ANY PARTS THEREOF, WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE FOREGOING WARRANTIES OF PURCHASER ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY, OR OTHERWISE WHICH EXTEND BEYOND WHAT IS EXPRESSLY STATED HEREIN, AND MEC HEREBY EXPRESSLY DISCLAIMS THE SAME.**

**10. FORCE MAJEURE:** MEC shall not be considered in default in performance of obligations hereunder to the extent MEC's performance is affected by Force Majeure. Force Majeure shall include, but not be limited to, hostilities, mobilization of armed services, war, restraint of rules or peoples' revolution, civil commotion, labor conflicts, boycotts, picketing, epidemic, accident, fire, natural catastrophes, explosion, blockade or embargo, lack of or failure of transportation facilities, or any law, proclamation, demand or requirement in any form of any Government or Governmental agency having or claiming to have jurisdiction over the work or materials purchased for the work, or over the parties hereto, or any Act of God, or acts of Purchaser or any third party, or any cause whether of the same or different nature, existing or future, which is beyond the control and without the fault or negligence of MEC. Force Majeure expressly includes any delays of any of MEC's subcontractors and/or suppliers.

**11. PURCHASER'S DEFAULT:** In the event Purchaser does not comply with any part of the payment terms of this Contract, MEC shall have the right to elect to accelerate and declare immediately due and payable all debts and obligations of Purchaser of any nature due to MEC, whether under this Contract or otherwise, and, in addition, MEC may refrain from making any further shipments, whether under the Contract or another contract, until such default or noncompliance is remedied. If at any time there is a substantial change in the financial condition of Purchaser arising from a change in business or market conditions or otherwise, or in the event of Purchaser's merger, reorganization, change in corporate or legal status, or other change in Purchaser's business form, or if Purchaser is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, or if a petition is filed under any applicable chapter of the relevant bankruptcy law respecting Purchaser, or if any lien, arising from judicial process or otherwise, is placed on any material asset of Purchaser, or if any tax lien is filed against Purchaser, MEC, at its option, shall have the right to declare all amounts accrued under this Contract or any other contract immediately due and to change the payment terms hereunder, or any other contract between Purchaser and MEC, for any future deliveries, including, but not limited to, requiring cash in advance of delivery or delivery of an acceptable Letter of Credit. Any failure of performance of this Contract by Purchaser shall, at the option of MEC, be grounds for MEC, in addition to any remedies of MEC provided by law, to cancel or terminate this Contract and all other contracts of sale between Purchaser and MEC, and to recover all damages provided by law, including reasonable attorneys' fees and disbursements and court costs.

**12. INTELLECTUAL PROPERTY:** MEC warrants that the Product(s), and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, MEC shall defend or may settle, at its expense, any suit or proceeding against Purchaser, and any subsidiary or affiliated company, so far as based on a claimed infringement which would result in a breach of this warranty, and MEC shall pay all damages and costs awarded therein against the Purchaser due to such breach. The foregoing states MEC's entire liability for intellectual property infringement. To the extent that software is included in the Product(s), Purchaser is granted a non-exclusive right to use said software, including its documentation, for use solely with the Product(s). The use of said software on more than one system is prohibited. Purchaser may duplicate, modify or translate the software or convert it from the object code to the source code only to the

extent legally authorized. Purchaser undertakes to neither remove any manufacturer data – particularly notes concerning the copyright – nor change such data without the prior express consent of MEC. All other rights to the software and its documentation, including all copies thereof, shall remain the sole and exclusive property of MEC or of the software supplier. Purchaser shall not have the right to grant sub-licenses.

**13. LIMITATION of LIABILITY:** In no event shall MEC be liable for loss of profits or revenue, business interruption or loss of production, additional production costs, costs of capital, downtime costs, or other losses resulting from the failure of materials or services or any other special, incidental, indirect, consequential, exemplary or punitive damages, however caused. Notwithstanding anything contained in this Contract or otherwise, MEC's total liability, whether arising from or based upon breach of warranty, breach of contract, tort, including MEC's negligence, strict liability, indemnity, or any other cause or basis whatsoever, is expressly limited to the price of the Product(s).

**14. GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the choice of law principles thereof. Any dispute arising out of or in connection with this Contract shall be resolved in the appropriate federal or state courts located in the State of Florida. The parties hereto shall each irrevocably submit to the jurisdiction of said courts and agree that service of process in any such dispute may be accomplished by registered or certified mail, return receipt requested, sent to the respective party hereto at the address set forth in the purchase order or invoice issued hereunder, or such other address as may hereafter be specified in like manner, with the same effect as if served personally upon the respective party within such state.

**15. MISCELLANEOUS:** These Conditions shall form an inseparable part of this Contract between MEC and Purchaser. This Contract is not assignable by Purchaser without MEC's prior written consent. The failure of MEC to enforce at any time any of the provisions of this Contract or to require at any time performance by the other of any of the provisions hereof, shall in no way be construed to be a present or future waiver of such provisions, nor in any way to affect the validity of the Contract or any part hereof, or the right thereafter to enforce each and every such provision. The express waiver (whether one or more times) by MEC of any provision, condition or requirement of this Contract shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. Whenever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Contract shall be prohibited by or invalid under applicable law such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the agreement. This Contract represents the entire agreement of the parties with respect to the subject matter hereof and no terms or conditions, other than those contained in this Contract, and no agreement or understanding in any way modifying such terms and conditions, shall be binding upon Purchaser or MEC unless made in a writing which both (i) states that it amends this Contract and (ii) is signed by an authorized representative of Purchaser and of MEC.

**16. NO REPRESENTATIONS:** PURCHASER AND MEC AGREE THAT NO REPRESENTATIONS HAVE BEEN MADE OR RELIED UPON CONCERNING THE SUBJECT MATTER OF THIS CONTRACT, EXCEPT AS SPECIFICALLY STATED HEREIN.