

STANDARD TERMS AND CONDITIONS OF SALE

Except as otherwise expressly provided in the Purchase Order, the following Standard Terms and Conditions of Sale ("Terms") shall apply to the sale of all equipment and/or parts, ("Goods") by **Houston Performance Diesel** ("Seller") to the Purchaser identified in the Purchase Order ("Purchaser"), and these Terms are a part of such Purchase Order.

ACCEPTANCE: Purchaser's execution of Seller's Purchase Order ("Order") or direction to Seller to proceed with furnishing, manufacturing or delivery of the Goods described therein, shall constitute agreement to only these Terms. Acceptance of this Offer of sale by Purchaser must be expressly limited to these Terms. Any additional or contrary terms in Purchaser's written purchase order, acknowledgment or other written direction will constitute a material alteration which Seller objects to and rejects. Trade custom and/or usage are superseded by these Terms and shall not be applicable to broaden or narrow the express terms of this Offer of sale or otherwise used in its interpretation. For purposes of the Terms, "Offer of sale" means all written proposals or quotations of Seller, and all resulting Orders or contracts.

PRICES: Unless otherwise specified in the Order, prices are in United States Dollars and include the cost of packaging (other than export packing) and delivery as provided in the Order. Such prices do not include any other costs applicable to the Goods, including without limitation, inspection, testing, export packing, and storage. Purchaser's payment of Seller invoices containing clerical or pricing errors will not relieve Purchaser of its obligation to make full payment of the Price agreed to in the Order.

TAXES: Unless otherwise stated herein, prices do not include any federal, state, municipal, or local property, license, privilege, business, occupation, stamp, documentary, sales, use, excise, gross receipts, value added, duties, custom charges, or other similar taxes, fees or charges ("Taxes") which may now or hereafter be imposed by any governmental authority on the Goods, or services related to the transaction between Seller and Purchaser. If Purchaser holds a direct payment permit or claims an exemption from Taxes, Purchaser shall provide Seller with documentation acceptable to the taxing authorities involved. Otherwise, Purchaser agrees to pay or reimburse Seller for any Taxes which Seller or its subcontractors or suppliers are required to pay.

PAYMENT: Unless otherwise specified in the Order, all invoices shall be paid in full in United States dollars, within ten (10) days after the date of Seller's invoice for Goods delivered, and Seller shall invoice the Purchaser for the full purchase price or any remaining balance due of all Goods delivered upon delivery of the Goods. If in the judgment of Seller the financial condition of Purchaser or other circumstances at any time prior to delivery does not justify the Seller incurring costs, expenses and/or liabilities in connection with the Order, Seller may require payment in full or in part in advance of delivery, or payment security satisfactory to Seller, or may terminate the Order, and Purchaser shall be liable for cancellation charges in accordance with the termination provisions provided herein. Any down payment specified in the Order is non-refundable. If delivery is delayed by Purchaser, payment shall be due ten (10) days from the date Seller is prepared to make delivery. Purchaser agrees that any unpaid portion of the purchase Price shall bear interest at the rate of Ten Percent (10%) per annum from and after the date due and owing, provided, however, notwithstanding any other provision of an Order, Seller does not intend to and shall not charge, collect or contract for interest in excess of the maximum rate permitted by law. Any such excess interest shall be applied first to reduce any unpaid portion of the purchase Price and then to all other outstanding charges owed Seller, until such time as each is paid in full, at which time any remaining excess shall be refunded to Purchaser.

DELIVERY: Any delivery date(s) stated in the Order are approximate, and dependent upon (1) prompt receipt by Seller from the Purchaser of all information necessary to permit Seller to proceed with its obligations under the Order immediately and without interruption, (2) Purchaser's compliance with all terms and conditions of the Order, including payment terms, and (3) Purchaser's ability to provide Seller with adequate assurance of its ability to fully perform its obligations under the Order, including assurances of payment, should Seller reasonably request such assurances. Seller shall deliver the Goods to the Site provided in the Order, export packing not included. Partial deliveries shall be permitted. Unless otherwise specified herein, upon delivery as provided above, title and all risk of loss to such Goods shall pass to Purchaser. Purchaser shall have five (5) days from the date of delivery to inspect the Goods and notify Seller in writing of any defect, damage or non-conformity. In the event the Purchaser is unable to take possession of the Goods upon delivery and Seller, in its sole discretion, agrees to store the Goods, Seller may place such Goods in storage either at a Seller operated facility or at another location ("Off-site location"). In such event, (1) if storage is at an Off-site location, all costs incurred by Seller in connection with such storage, including, without limitation, costs of preparing such Goods for storage, transportation, placement into storage, handling, storage/demurrage, inspection, preservation and insurance (or if storage shall be at a Seller operated facility,

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reasonable storage costs not to exceed five percent (5%) of the total Price of the Goods being stored for each month of storage), shall be due and payable by Purchaser within ten (10) days after the date of Seller's invoice for storage charges, and (2) Seller's delivery obligations shall be deemed fulfilled and title and all risk of loss to the Goods shall pass to Purchaser, if it has not already passed, and (3) when conditions permit and upon payment of all amounts due hereunder, including but not limited to the purchase Price and/or any storage charges due, the parties shall arrange for shipment of the Goods.

NO RELOCATION: Purchaser shall not remove or relocate the Goods from the Site designated in the Order until Seller's invoice is paid in full.

MODIFICATIONS: Seller shall have the right to modify the design and/or method of manufacture of the Goods without advance notice to Purchaser if, in the judgment of Seller, such modification does not materially and adversely affect the performance of the Goods. Purchaser may request reasonable changes in any one or more of the following: (1) quantities; (2) delivery schedule; or (3) place, or manner of delivery. If any such requested change would increase or decrease the cost of the Goods to be provided and/or delays Seller's performance under the Order then Seller shall be entitled to an equitable adjustment of the purchase Price and/or time of delivery. Any such requested change shall not become effective unless and until Purchaser and Seller have executed a written Change Order specifying the change and the agreed equitable adjustment of the purchase Price and/or time of delivery.

FORCE MAJEURE: In no event shall Seller be liable for non-delivery or any delay in delivery of the Goods or for failure or delay in the performance of any other obligations under the Order arising directly or indirectly from acts of God, unforeseeable circumstances, acts (including delays or failure to act) of any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, priorities, fires, floods, weather, strikes, labor disputes, sabotage, epidemics, factory shutdowns or alterations, embargoes, delays or shortages in transportation, delay or inability to obtain or procure labor, manufacturing facilities or materials, failure to obtain timely instructions or information from the Purchaser, or causes of any other kind beyond Seller's reasonable control. The foregoing provision shall apply even though such causes may occur after Seller's performance of its obligations has been delayed for other causes.

REPAIR & MAINTENANCE: All repair and maintenance services related to the Goods performed by the Seller shall be pursuant to a separate work order or repair and maintenance agreement between Purchaser and Seller.

WARRANTY: Seller warrants the Goods against defects in workmanship, and shall repair or rework any such defects at no cost to Purchaser provided Seller receives written notice of any such defect within twelve (12) months of the date of installation of the Goods. Seller hereby assigns to Purchaser, on a non-exclusive and non-recourse basis, any and all transferable warranties applicable to the Goods provided by the manufacturer and/or any supplier to Seller, and Seller shall assist Purchaser in pursuing any such warranty claims against the manufacturer and/or any supplier to Seller. Purchaser shall promptly notify Seller and the manufacturer and/or supplier to Seller of any such warranty claim. Under no circumstances shall Seller be responsible for any defect in or damage to the Goods arising out of or related to (1) normal wear and tear; (2) Goods that have not been properly stored, operated, or used within the limits of rated capacity and normal usage; (3) Goods not used in accordance with current operating and maintenance instructions furnished by Seller, or (4) Goods that have been repaired or maintained by any party other than Seller, or Goods that have been altered or modified in any manner without the written consent of Seller. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL EXPRESS, STATUTORY AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** It shall be the responsibility of the Purchaser to verify that the Goods are suitable and fit for their intended use. Any design information, technical data, descriptions, dimensions, specifications, material selections or similar information included in the offer of sale or Order or contract resulting therefrom are for fabrication purposes only, and do not constitute any warranty.

TERMINATION: Absent a default by Seller, the Purchaser may terminate the Order only upon written notice to Seller and upon payment to Seller of all cancellation charges in connection with the Order, including but not limited to, all costs incurred by Seller in connection with the Order prior to Seller's receipt of the notice of termination, and all costs and expenses incurred by Seller attributable to the termination, including but not limited to any restocking fees or costs of cancellation of purchase orders to Seller's suppliers, plus an administrative charge of ten (10) percent of the Order price to compensate for disruption in scheduling, planned production and other indirect costs. In the event of a default by Seller in its material obligations under the Order, no termination by Purchaser for default shall be effective unless Purchaser delivers to Seller written notice of default, and Seller fails to commence and diligently

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pursue correction of such default within ten (10) days after its receipt of such written notice of default.

LIABILITY: If any Goods delivered fail to conform to the Order, Seller may repair or replace the non-conforming Goods, or Seller may accept Purchaser's return of the Goods and repay the purchase Price, at Seller's option, and such shall be Purchaser's sole and exclusive remedy for non-conforming Goods. The total liability of Seller for any loss, damage, or claim, whether in contract, warranty, tort (including negligence and strict liability), or otherwise, arising out of or relating to this offer of sale, the Order or the Goods shall not in any event exceed the purchase Price of the Goods. Notwithstanding the foregoing or anything in the Order or these Terms to the contrary, in no event shall Seller be liable under any theory of recovery, including without limitation, contract, warranty, or tort (including negligence and strict liability) for any indirect, incidental, special or consequential damages, including, without limitation: loss of profits, business, product or information; loss of use of the Goods or any associated equipment; costs of capital, substitute equipment, parts, software, facilities or services; costs of down time or labor; or claims of Purchaser's customers for any such damages, even if Seller was advised of the possibility of such damages.

INDEMNITY: PURCHASER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY AND ALL CLAIMS, DEMANDS, SUITS, DAMAGES, LIABILITIES, FINES, PENALTIES, LOSS, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY AND PRODUCTS LIABILITY) (COLLECTIVELY "CLAIMS"), ARISING OUT OF OR RELATED TO, DIRECTLY OR INDIRECTLY, PURCHASER'S USE OR OPERATION OF THE GOODS, OR PURCHASER'S VIOLATION OF ANY APPLICABLE HEALTH, SAFETY OR ENVIRONMENTAL LAW, CODE, ORDINANCE OR REGULATION, EVEN IF SUCH CLAIMS ARE CAUSED IN PART BY THE JOINT OR CONCURRENT NEGLIGENCE, THE STRICT LIABILITY OR PRODUCTS LIABILITY, THE BREACH OF CONTRACT OR BREACH OF WARRANTY, OR OTHER FAULT OF SELLER. THIS PROVISION IS INTENDED TO AND SHALL INDEMNIFY THE SELLER FROM THE CONSEQUENCES OF SELLER'S OWN NEGLIGENCE AS PROVIDED ABOVE, BUT NOT SELLER'S SOLE NEGLIGENCE.

EXPORT CONTROL: Purchaser acknowledges that the Order may concern products and/or technical data that may be controlled or restricted under the U.S. Export Administration Regulations or the Office of Foreign Assets Control, or other applicable laws and regulations relating to the export or import of products and/or technical data and may be subject to the approval of the U.S. Department of Commerce or Treasury, respectively, prior to export. Any export or re-export of Goods by the Purchaser, directly or indirectly, in contravention of the export control laws, economic sanctions laws or other applicable laws or regulations is prohibited, and the Purchaser shall comply with all such laws and regulations. This provision constitutes an independent covenant and continuing obligation of Purchaser which will survive the termination of any Order.

GOVERNING LAW: This offer of sale may only be accepted in Harris County, Texas and any Order or contract resulting from it shall be performable, in whole or in part, in Harris County, Texas and shall in all respects be governed, construed, and enforced according to the laws of the State of Texas, U.S.A. Venue for all proceedings arising out of this offer of sale or any Order or contract resulting from it shall be in a District Court of Harris County, Texas (or in the Southern District of Texas if the State court lacks jurisdiction and such proceeding is in a United States District Court). Any dispute or claim arising out of or relating to this offer of sale or any Order or contract resulting from it shall be decided without a jury trial, and **THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO A TRIAL BY JURY.** The prevailing party in any litigation proceeding shall be entitled to recover its reasonable attorneys' fees and costs of court from the other party. The United Nations Convention for the International Sale of Goods shall not apply to any Order or contract arising from this offer of sale.

MISCELLANEOUS: These Terms may not be waived or modified unless done in writing and signed by an authorized representative of Seller. Any waiver by Seller of a breach of any of these Terms shall not constitute a waiver or prejudice Seller's right to subsequently demand strict compliance with that or any other term or condition. The election of Seller to pursue any remedy shall not exclude pursuit of any other remedy otherwise available to Seller or limit its right to declare Purchaser in default. Any offer of sale is subject to change by Seller prior to actual receipt by Seller of written acceptance of such offer, and shall expire thirty (30) days from the date of offer. All Orders are subject to Seller's Standard Terms and Conditions of Sale in effect at the time of the Order. Purchaser acknowledges that neither Seller nor any of its employees are licensed or registered professional engineers, Purchaser has not retained Seller to provide any professional engineering services, and Seller shall not be held to a professional standard of care.

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NO ASSIGNMENT: No offer of sale or Order or contract resulting therefrom may be assigned by Purchaser without the prior written consent of Seller.

ENTIRE AGREEMENT: These Terms and the terms of the Order shall be the only terms and conditions applicable to the sale of the Goods described in the Order, and shall supersede all prior or contemporaneous oral or written communications regarding the subject matter of the Order and these Terms. If any term or provision herein or in the Order is determined to be invalid or unenforceable under applicable law, such term or provision shall be deemed severed therefrom, and the remaining terms and provisions shall continue in full force and effect.