

STAUFFER DIESEL INC. / STADCO
TERMS AND CONDITIONS OF SALE AND SERVICE – D19.5

These TERMS & CONDITIONS OF SALE AND SERVICE, as amended and modified by SDI from time to time (the "Terms and Conditions"), are an integral part of each sale made and service rendered by STAUFFER DIESEL INC., including its STADCO DIVISION, and its STADCO PRODUCTS DIVISION (each of whom collectively, jointly and severally, are hereinafter referred to as "SDI"); supersede each and every verbal statement made by SDI and its employees; and are incorporated by reference into each Buyer Order (as defined in Section 1). By placing a Buyer Order with SDI, each Buyer agrees to and accepts the provisions of these Terms and Conditions. As used in these Terms and Conditions, the following words, phrases and terms, whether or not beginning with upper case letters, shall have the following meanings: "Buyer" means customers, buyers and third parties seeking consultation with SDI; "Parts" means individual parts and components; "Whole Goods" means engines, generators, equipment, power systems and component subassemblies.

1. Orders.

(a.) Buyer hereby agrees that any written (electronic or otherwise) purchase order or request for sales, servicing or advice from SDI, initiated by Buyer, or initiated by SDI quote and confirmed in a writing (electronically or otherwise) by Buyer; or a verbal request by Buyer confirmed in writing (electronically or otherwise) by SDI, and as to which SDI and Buyer have agreed to pricing and payment terms, shall constitute a "Buyer Order". For avoidance of doubt, no Buyer Order exists until SDI has confirmed in writing the price and payment terms of the proposed Buyer Order. Terms, conditions and provisions of any specific SDI sales proposal or contract may supersede the provisions contained in these Terms and Conditions, and in such event the conflicting provisions of the specific SDI sales proposal or contract shall supersede the provisions of these Terms and Conditions.

(b.) SDI reserves the right to reject any Buyer Order without obligation to Buyer. Whether or not a Buyer Order is accepted by SDI, no purchase order or other associated terms contained in any Buyer Order shall be binding upon SDI unless specifically acknowledged and confirmed in writing by SDI.

(c.) SDI further reserves the right to cancel any accepted Buyer Order within thirty (30) days of date of acceptance or confirmation without liability, penalty or obligation to Buyer.

(d.) Prices and terms expressed in SDI quotes are subject to adjustment prior to SDI final written confirmation and acceptance of Buyer Order. Further, SDI reserves the right to alter, amend, or cancel in whole or in part any price or terms of any Buyer Order or other SDI agreement for Parts, Whole Goods or service from time to time if in SDI's judgment: (i) the cost to provide, perform, or produce such agreement has materially changed for any reason from the time of SDI's initial quotation; or (ii) Buyer defaults in any Buyer obligation or fails to deal and perform under the Buyer Order in good faith. No change or variation from the terms of any Buyer Order or other contract shall be binding on SDI unless in writing and signed by an officer of SDI.

(e.) Unless otherwise agreed by SDI in writing, Buyer is responsible for all affiliated and associated contingent costs of sales and service, including by way of example and not of limitation, all federal, state, and local taxes and impositions, shipping costs, permits, tolls, surcharges, brokerage and customs fees.

(f.) Parts supersedeures from manufacturers are subject to changes of part number and price without notice.

(g.) Replacement Parts fit and function are not guaranteed unless unit serial number is furnished with or as part of the Buyer Order.

2. Payment and Delivery Terms.

(a.) All sales are payable in cash or other funds immediately available to SDI, unless prior credit or payment arrangements have been established. All invoices are rendered in net due amount and discounts not set forth by SDI in the applicable invoice may not be taken and are not allowed. All payments must be in US Dollars (USD).

(b.) Payment terms for credit sales are listed on each invoice and are binding on Buyer. Buyer's placement or acceptance of the Buyer Order constitutes Buyer's agreement with SDI invoice terms and conditions. A late fee of 1.5% (minimum of \$10.00) of the total remaining balance due on each monthly invoice will be added monthly to all overdue unpaid accounts ("Open Accounts").

(c.) Buyer deposits will be held by SDI without interest, and may be applied at SDI discretion to the final invoice due from Buyer. Upon any Buyer default of any type continuing for more than thirty (30) days, and upon termination of any Buyer Order by Buyer for any reason, any Buyer deposit shall be forfeited, and may be applied at SDI discretion to any costs incurred by SDI relating to the Buyer Order or Buyer's default (including payment of SDI legal or other professional fees and costs), contingent costs, the contract price, or as SDI otherwise determines.

(d.) Past Due Open Accounts will be placed on credit hold, thereby preventing the extension of any further credit to Buyer. All accounts not paid within invoice or contract terms are subject to legal enforcement and collection at Buyer's expense.

All costs of collection (including fees and expenses of legal counsel and others in the collection process) shall be due and payable by Buyer as an additional cost to Buyer

(e.) All delivery dates for SDI performance of any Buyer Order or portions thereof constitute SDI's reasonable commercial estimates only, and are not binding upon SDI and shall not in any case constitute grounds for default by SDI under any Buyer Order. SDI will use its reasonable commercial efforts to advise Buyer if SDI anticipates any inspection or delivery delays from time to time.

(f.) All orders for USA delivery are FCA (Free Carrier) from an SDI facility; orders for delivery outside USA are EXW (ExWorks) SDI, Ephrata, PA. USA, and are governed by INCOTERMS Rules 2010 as applicable. For clarity, it is agreed in all cases risk of loss or damage passes to Buyer upon delivery to the carrier. SDI will cooperate with Buyer in determining method and route of shipment, but it is Buyer's duty to provide shipping instructions. If required by SDI, shipments will be insured by Buyer.

(g.) Title to products sold or repaired by SDI (whether or not in the possession of Buyer) shall remain with SDI or subject to SDI's repairman's lien, as applicable, until the total purchase price is paid in full. SDI shall have the right to maintain possession of any Whole Goods or other machinery or equipment upon which repairs, or alterations are made pending payment in full of SDI's invoice for repairs, including fees for labor, material and storage charges. In the event Buyer fails to pay the aforementioned debt within ninety (90) days of invoice, SDI shall have the right to sell any Whole Goods, machinery or equipment in SDI's possession to satisfy its repairman's lien as permitted by applicable law, if necessary.

(h.) In the event of delay in shipment of any Buyer Order caused by Buyer, SDI reserves the following rights, each of which may be exercised individually or concurrently from time to time:

i) To charge monthly "holding", "storage", or similar fees deemed commercially reasonable by SDI and commensurate with costs and risks of contract delivery delay;

ii) To require payment in full prior to shipment to Buyer;

iii) If shipment(s) is delayed by the Buyer for more than sixty (60) days from the specified shipment date (or more than sixty (60) days after Buyer is notified by SDI that the subject of the Buyer Order is ready for shipment; declare Buyer is in default and process the Buyer Order in accordance with the provisions herein for "Cancellation of Buyer Order" (see Section 3).

(i.) SDI shall have no responsibility to store Buyer property which is in a state of inactivity or postponement caused by Buyer, nor any liability to Buyer for (i.) damages by others occurring to Buyer property while in a state of inactive storage, or (ii.) removal and disposal of any Buyer property left on SDI property for more than thirty (30) days from the earlier to occur of invoice date or notice from SDI to pick up such Buyer property. Any Buyer property which remains on SDI property more than sixty (60) days from the earlier to occur of invoice date or notice from SDI to pick up; such Buyer property shall be deemed abandoned by Buyer, subject to removal and disposal by SDI at Buyer expense, and subject to storage charges as set forth above.

3. Claims, Cancellations, and Returns.

(a.) All sales are final and may not be cancelled by Buyer. Notwithstanding the forgoing, SDI may in its sole discretion authorize refunds or credits in whole or part for returned Parts via SDI Form #D24, if request is made within thirty (30) days of date of purchase. However, SDI and Buyer hereby agree that certain electronic and digital control parts and devices are not returnable to SDI or manufacturer for credit.

(b.) All permitted Parts returns must be shipped with all packing and transportation prepaid. Any permitted Parts return is subject to a reasonable handling charge as determined by SDI (but not less than 20% of the invoiced price).

(c.) Return of Whole Goods for credit is not permitted, except under such terms and conditions as SDI in its sole discretion, but without obligation to do so, may from time to time elect as a special, one-time offer. Further, SDI may in its discretion from time to time accept cancellation of a Buyer Order for Whole Goods which is made not more than thirty (30) days from SDI acceptance/confirmation of the Buyer Order, with or without a cancellation fee at SDI discretion. Any Buyer cancellation of a Buyer Order for Whole Goods or specialty goods or services made more than thirty (30) days after SDI acceptance is subject to payment by Buyer of a cancellation fee equal to 100% of accrued SDI charges for work-in-progress (including overhead charges), plus 100% of costs of goods/parts ordered for contract fulfillment. Special order items and custom-built items are not returnable unless the manufacturer permits such returns with full compensation to SDI and on such terms and conditions as the manufacturer may require.

(d.) Should any delivery to Buyer be damaged, Buyer is responsible for filing a claim immediately with the common carrier. SDI is not responsible for damage to any product occurring after delivery to the common carrier.

(e.) ANY CLAIMS FOR SHORTAGES MUST BE MADE IN WRITING WITHIN SEVEN (7) CALENDAR DAYS OF RECEIPT BY BUYER OR ARE WAIVED.

(f.) BUYER AGREES THAT ALL CLAIMS AGAINST SDI AND ALL REQUESTS FOR COMPENSATION FOR OR CORRECTION OF DEFECTS, WHETHER FOR WORKMANSHIP, REPAIRS OR PRODUCT DEFECTS, SHALL BE DEEMED WAIVED AND RELEASED BY BUYER UNLESS MADE IN WRITING TO SDI WITHIN THIRTY (30) DAYS OF THE DATE OF DELIVERY TO BUYER OF THE APPLICABLE PRODUCT.

4. Governing Law and Jurisdiction

(a.) Unless specifically agreed to the contrary in writing by SDI, provisions of Pennsylvania law, including the provisions of the Pennsylvania Uniform Commercial Code, shall control and govern all contractual matters relating to sales, servicing, shipping and delivery of products and services to Buyer.

(b.) EXCLUSIVE VENUE AND JURISDICTION FOR RESOLUTION OF ANY DISPUTE ARISING OUT OF OR RELATED TO THE SALE AND PURCHASE OF WHOLE GOODS, PARTS, OTHER SDI PRODUCTS OR SDI SERVICES, ANY BUYER ORDER, OR THESE TERMS AND CONDITIONS OF SALE AND SERVICE SHALL, BE IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY PENNSYLVANIA OR, AT THE OPTION OF SDI, THE US DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. Notwithstanding the foregoing, SDI may, at its sole discretion, submit to final and binding arbitration any disputes arising out of or related to the sale and purchase of Whole Goods, Parts, other SDI products or SDI services, and Buyer Order, or these Terms and Conditions of Sale and Service, pursuant to such rules as SDI may agree. IF SDI ELECTS TO SUBMIT ANY MATTER TO BINDING ARBITRATION, BUYER CONSENTS THERETO AND AGREES TO BE BOUND BY ANY DECISION RENDERED, AND AGREES THAT JUDGEMENT MAY BE ENTERED THEREON.

5. DISCLAIMER OF ALL WARRANTIES; LIMITATION OF LIABILITY.

(a.) EXCEPT AS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS OF SALE AND SERVICE, SDI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY WHOLE GOODS, PARTS, EQUIPMENT OR PRODUCT SOLD OR SERVICE PERFORMED.

(b.) IN FURTHERANCE OF THE FORGOING, ALL WHOLE GOODS, EQUIPMENT AND PARTS ARE SOLD ONLY WITH THE LIMITED WARRANTY OF THE ORIGINAL MANUFACTURER (OEM) IF ANY, OF THE WHOLE GOODS, EQUIPMENT OR PARTS IN QUESTION, WHICH TO THE EXTENT IN EXISTENCE ARE INCORPORATED HEREWITH BY REFERENCE. TO THE EXTENT IN EXISTENCE, THE MANUFACTURER'S WRITTEN WARRANTY COVERING ENGINES, POWER EQUIPMENT, GENERATOR UNITS OR OTHER EQUIPMENT IS AVAILABLE WITH EACH UNIT. THE MANUFACTURER'S WARRANTIES, IF ANY, ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, LIMITED OR FULL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE MANUFACTURER'S LIMITED WARRANTY, IF ANY, IS THE SOLE WARRANTY WITH RESPECT TO THE WHOLE GOODS, PARTS OR OTHER PRODUCTS.

(c.) ANY MANUFACTURER'S WARRANTIES ARE LIMITED SOLELY AND EXCLUSIVELY TO REPAIR OR REPLACEMENT OF ENGINE OR PARTS, INCLUDING REMOVAL AND REINSTALLATION ACCORDING TO THE TERMS OF THE ORIGINAL MANUFACTURER'S WARRANTY AND DO NOT INCLUDE ANY LIABILITY FOR ANY INCIDENTAL CONSEQUENTIAL OR OTHER DAMAGE OF ANY KIND WHATSOEVER. THE WARRANTIES DO NOT COVER WHOLE GOODS, EQUIPMENT, PARTS OR ACCESSORIES THAT FAIL DUE TO ABUSE, MISUSE, NEGLIGENCE, ALTERATIONS OR ACCIDENT OR WHICH HAVE BEEN IMPROPERLY MAINTAINED OR REPAIRED, MISAPPLIED OR USED IN APPLICATIONS FOR WHICH THEY WERE EITHER NOT DESIGNED OR NOT APPROVED BY THE OEM MANUFACTURER.

(d.) UNDER NO CIRCUMSTANCES WILL THE BUYER BE ENTITLED TO RESCISSION OR TO A REDUCTION IN THE PURCHASE PRICE OR TO ANY DIRECT, INDIRECT INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF TIME, INCONVENIENCE, LOSS OF USE OF EQUIPMENT, COST OF RENTAL OR REPLACEMENT OR ANY OTHER COMMERCIAL LOSS. NO PERSON OR AGENT IS AUTHORIZED TO CREATE OR OTHERWISE MODIFY ANY WARRANTY ON BEHALF OF SDI OR ANY MANUFACTURER, OR TO CREATE ANY OTHER LIABILITY IN CONNECTION WITH ANY GOODS SOLD BY SDI, UNLESS AS TO SDI, MADE IN WRITING BY AN OFFICER OF SDI.

(e.) EXCEPT AS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS OF SALE AND SERVICE, SDI SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, CONSEQUENTIAL, CONTRACT, SPECIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, AND SHALL HAVE NO LIABILITY FOR ANY DAMAGES DUE TO THE ACTUAL OR IMPLIED NEGLIGENCE OF ANY EMPLOYEE OR AGENT OF SDI AND SHALL HAVE NO RESPONSIBILITY FOR THE DISCRETIONARY REPAIR OR REPLACEMENT OF ANY ITEM. FURTHER TO THE PROVISIONS OF THESE TERMS AND CONDITIONS OF SALE AND SERVICE; ALL SDI WARRANTY COVERAGE FOR PERFORMANCE OF SERVICES AND WARRANTY WORK IS STRICTLY LIMITED TO THE PROVISIONS OF THESE TERMS AND CONDITIONS OF SALE AND SERVICE AND SDI SERVICE & WORKMANSHIP WARRANTY STATEMENT #D48 WHICH IS INCORPORATED HEREWITH BY REFERENCE.

(f.) NOTWITHSTANDING THE FORGOING, THE LIABILITY OF SDI IN ALL CASES IS LIMITED TO REFUND OF THE PRICE OF THE BUYER ORDER OR THE PRICE OF THE SPECIFIC PARTS, WHOLE GOODS OR SERVICE IN QUESTION, WHICHEVER IS LESS.

6. COMMUNICATION DISCLAIMER.

(a.) For purposes of this Terms and Conditions and all provisions expressed herein, and the Buyer Order, the term "communication" (whether or not beginning with initial upper case letter) shall include: (i.) Any statements, conversation, or any other expression of ideas in any form and howsoever delivered in any medium that pertains to, describes, or otherwise touches upon installation, maintenance, repair or any other type of work or labor that might be performed to any piece of Buyer's equipment or related accessories, regardless of where such equipment has been purchased or serviced; and (ii.) Any language pertaining to approval, opinion, or endorsement, either expressed or implied, and howsoever delivered, orally or in writing, of any intended usage of Buyer's equipment or accessory.

(b.) EXCEPT FOR COMMUNICATIONS RELATING TO SERVICES FOR WHICH SDI IS BEING PAID FOR ADVICE PURSUANT TO A BUYER ORDER, OR EXCEPT FOR COMMUNICATIONS INCIDENTAL TO PROCESSING AND DELIVERY OF AN ACTIVE BUYER ORDER OR PERFORMANCE BY SDI OF AN ACTIVE REVENUE PRODUCING CONTRACT, BUYER AGREES AND ACKNOWLEDGES THAT ALL COMMUNICATIONS FROM SDI OR BETWEEN SDI AND BUYER ARE AGREED TO BE STRICTLY ANECDOTAL DIALOGUE, ARE NOT CONSIDERED CLIENT DIRECTED OR EXPERT ADVICE UNDER ANY CIRCUMSTANCES, AND BUYER IS NOT ENTITLED TO ANY RIGHTS THEREFROM AND SHALL NOT RELY THEREON; AND BUYER ASSUMES ALL RESPONSIBILITY FOR, RISKS AND CONSEQUENCES OF ANY SUBSEQUENT ACTIONS OF BUYER ASSOCIATED WITH SAID COMMUNICATIONS, AND SDI SHALL HAVE NO LIABILITY OR RESPONSIBILITY, DIRECTLY OR INDIRECTLY, FOR THE CONSEQUENCES OF ANY ACTION BY BUYER TAKEN IN RELIANCE ON SUCH COMMUNICATION(S).

(c.) SDI continually strives and endeavors to advise all Buyers concerning the best and latest practices to promote the safe operation, proper maintenance, and maximum service life of all Whole Goods and other equipment. HOWEVER, SDI DISCLAIMS ANY AND ALL LIABILITY AND RESPONSIBILITY FOR DIRECT, INDIRECT, CONSEQUENTIAL, CONTRACT, SPECIAL, OR INCIDENTAL DAMAGES, HOWSOEVER CAUSED, AND SHALL HAVE NO LIABILITY FOR ANY DAMAGES, FOR FAILURE TO INSTRUCT, COUNSEL, ADVISE, OR PROVIDE BUYER ANY AND ALL INFORMATION REGARDING EQUIPMENT SIZING, APPLICATION, INSTALLATION, OPERATION, PRODUCT SAFETY, PRODUCT IMPROVEMENT, MAINTENANCE, REPAIR PROCEDURE, EPA OR OTHER LOCAL EMISSIONS INFORMATION OR ANY OTHER RELATED ACTION OR ADVICE THAT MAY HAVE BEEN IN THE BEST INTEREST OF THE BUYER OR ANY EQUIPMENT OR PROPERTY OWNED OR OPERATED BY BUYER.

7. Counterparts; Copies as Originals. Any Buyer Order or other agreement between Buyer and SDI may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one and the same agreement. Counterpart signature pages may be delivered by facsimile or email transmission, and in such case will constitute an original. Email with positive confirmation of delivery to the intended recipient shall constitute a "writing" for purposes of these Terms and Conditions.

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