



## General Terms and Conditions of Sale

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### 1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms that govern the sale of the goods (“**Goods**”) and services (“**Services**”) by Mid-South Power Distributors, Inc. d/b/a MSP Diesel Solutions (“**MSP**”) to the Customer named on the application for credit, purchase order, or invoice (“**Customer**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) Any quotation/confirmation of sale/invoice (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer’s general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

(c) Notwithstanding anything to the contrary contained in this Agreement, MSP may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

### 2. Delivery of Goods and Performance of Services.

(a) The Goods will be delivered within a reasonable time after the receipt of Customer’s purchase order, subject to availability of Goods. MSP shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, MSP shall deliver the Goods to MSP’s place of business (the “**Delivery Point**”) using MSP’s standard methods for packaging and shipping such Goods. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. If Goods are unavailable to MSP, MSP may arrange for its vendors to ship Goods directly to Customer (“**Direct Sales**”); whereupon, the Delivery Point for Direct Sales shall be MSP’s vendor’s place of business.

(c) MSP may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer’s purchase order.

(d) If for any reason Customer fails to accept delivery of any of the Goods on the date fixed pursuant to MSP’s notice that the Goods have been delivered at the Delivery Point, or if MSP is unable to deliver the Goods at the Delivery Point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Customer; and (ii) the Goods shall be deemed to have been delivered.

(e) MSP shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.

(f) With respect to the Services, Customer shall (i) cooperate with MSP in all matters relating to the Services; (ii) respond promptly to any MSP request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for MSP to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as MSP may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by MSP on dispatch from MSP's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary.

(b) MSP shall not be liable for any non-delivery of Goods (even if caused by MSP's negligence) unless Customer gives written notice to MSP of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of MSP for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Customer acknowledges and agrees that the remedies set forth in Section 3 are Customer's exclusive remedies for any non-delivery of Goods.

4. Shipping Terms. MSP shall make delivery in accordance with the terms on the face of the Sales Confirmation. Unless specified differently on the Sales Confirmation, delivery of the Goods shall be made FOB Delivery Point

5. Title and Risk of Loss. Title and risk of loss pass to Customer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to MSP a lien on and security interest in and to all of the right, title, and interest of Customer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Tennessee Uniform Commercial Code.

6. Customer's Acts or Omissions. If MSP's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, MSP shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. Inspection and Rejection of Nonconforming Goods.

(a) Customer shall inspect the Goods within five (5) days of receipt ("**Inspection Period**"). Customer will be deemed to have accepted the Goods unless it notifies MSP in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by MSP. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Customer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Customer timely notifies MSP of any Nonconforming Goods, MSP shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to MSP's facility located at 3250 Mill Branch Road, Memphis, TN 38116. If MSP exercises its option to replace Nonconforming Goods, MSP shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Customer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Customer acknowledges and agrees that the remedies set forth in Section 7(b) are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under this Agreement to MSP.

8. Price.

(a) Customer shall purchase the Goods from MSP at the prices (the "**Goods Prices**") set forth in MSP's published price list in force as of the date that MSP delivers Goods to the Delivery Point.

(b) Customer shall purchase the Services from MSP at the price (the "**Service Prices**") and together with the Goods Prices, the "**Prices**") set forth on MSP's Sales Confirmation. Customer agrees to reimburse MSP for all reasonable out-of-pocket expenses incurred by MSP in connection with the performance of the Services.

(c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs, and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, MSP's income, revenues, gross receipts, personal or real property, or other assets. If Customer is exempt from any taxation, it must provide advance evidence of tax exemption to MSP in order to avoid applicable taxes at the time of sale. Examples of evidence of tax exemption include Certificates of Resale and Industrial Machinery Certificates.

9. Payment Terms.

(a) Customer shall pay all invoiced amounts due to MSP within 30 days from the date of MSP's invoice. If Customer does not have approved credit with MSP, as solely determined by MSP, payments are due in advance or at the time of supply of the Goods or Services. Customer shall make all payments hereunder by wire transfer, check, or method of payment authorized by MSP and in US dollars.

(b) Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse MSP for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which MSP does not waive by the exercise of any rights hereunder), MSP shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Customer fails to pay any amounts when due hereunder.

(c) Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with MSP, whether relating to MSP's breach, bankruptcy, or otherwise.

10. Cores. MSP herein incorporates and adopts its Core Policy, which shall apply to any Goods containing a core that is eligible for a core charge reimbursement. A copy of the Core Policy is attached hereto as Exhibit A.

11. Limited Warranty.

(a) MSP warrants to Customer that for a period of one (1) year from the date of shipment of the Goods bearing the MSP Diesel Solutions mark ("**Warranty Period**"), that such Goods bearing the MSP Diesel Solutions mark will be free from material defects in material and workmanship.

(b) **EXCEPT FOR THE PRODUCT WARRANTIES SET FORTH IN Section 11(a), MSP MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(c) MSP warrants to Customer for a period of ninety (90) days after the completion of Services that its Services shall be free from defects in workmanship.

(d) **EXCEPT FOR THE SERVICES WARRANTIES SET FORTH IN Section 11(c), MSP MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.**

(e) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, **MSP MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(f) MSP shall not be liable for a breach of the warranties set forth in Section 11(a) or Section 11(c) unless: (i) Customer gives written notice of the defective or non-conforming Goods or Services, as the case may be, reasonably described, to MSP within thirty (30) days of the time when Customer discovers or

ought to have discovered the defect; (ii) if applicable, MSP is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 11(a) to examine such Goods and Customer (if requested to do so by MSP) returns such Goods to MSP's place of business at MSP's cost for the examination to take place there; and (iii) MSP reasonably verifies Customer's claim that the Goods or Services are defective or non-conforming.

(g) MSP shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Customer makes any further use of such Goods after giving such notice; (ii) the defect arises because Customer failed to follow MSP's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods; or (iii) Customer alters or repairs such Goods without the prior written consent of MSP.

(h) Subject to Section 11(f) and Section 11(g) above, with respect to any such Goods during the Warranty Period, MSP shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if MSP so requests, Customer shall, at MSP's expense, return such Goods to MSP.

(i) Subject to Section 11(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 11(c), MSP shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

**(j) THE REMEDIES SET FORTH IN Section 11(h) AND Section 11(i) ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND MSP'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN Section 11(a) AND Section 11(c), RESPECTIVELY.**

12. Limitation of Liability.

**(a) IN NO EVENT SHALL MSP BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MSP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(b) IN NO EVENT SHALL MSP'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO MSP FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

(c) The limitation of liability set forth in Section 12(b) shall not apply to (i) liability resulting from MSP's gross negligence or willful misconduct and (ii) death or bodily injury resulting from MSP's acts or omissions.

13. Compliance with Law. Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

14. Termination. In addition to any remedies that may be provided under these Terms, MSP may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

15. Waiver. No waiver by MSP of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by MSP. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16. Confidential Information. All non-public, confidential or proprietary information of MSP, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations,

customer lists, pricing, discounts, or rebates, disclosed by MSP to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by MSP in writing. Upon MSP’s request, Customer shall promptly return all documents and other materials received from MSP. MSP shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

17. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to MSP hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party’s (“**Impacted Party**”) reasonable control, including, without limitation, the following force majeure events (“**Force Majeure Event(s)**”): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give reasonable notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party’s failure or delay remains uncured for a period of ten (10) consecutive days following written notice given by it under this Section 16, either party may thereafter terminate this Agreement upon seven (7) days’ written notice.

18. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of MSP. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

19. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Tennessee.

22. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Tennessee in each case located in the City of Memphis and County of Shelby, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

23. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid).

Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

24. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

25. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

26. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.