



TERMS AND CONDITIONS OF SALE

These terms and conditions are applicable to customers purchasing Products/Services from Diesel Radiator Co.

These terms and conditions of sale ("Terms and Conditions of Sale") are between the buyer and Diesel Radiator Co. (hereinafter referred to as "Seller") selling the products or services ("Product" or "Service") to a buyer (hereinafter referred to as "Buyer"), collectively referred to as "the Parties". The Terms and Conditions of Sale as written shall supersede all previous communications, agreements or contracts; whether written or verbal, and no prior understanding, agreement, term, condition or trade custom at variance herewith shall be binding on Seller. No waiver or modification of these terms and conditions hereof shall be effective unless in writing and signed by both parties.

1. Quotation Validity

Unless otherwise indicated on the quote provided to Buyer, written quotations by Seller shall expire automatically thirty (30) days after the date appearing on the quotation. Prior to the expiration date, any quotation is subject to change by Seller at any time upon written notice to Buyer unless Seller receives and accepts Buyer's order within the aforementioned validity period.

2. Acceptance of Purchase Orders

2.1 Subject to 2.2 below, each purchase order shall be governed exclusively by these Terms and Conditions of Sale. DRC's sales order acknowledgement is expressly limited to these Terms and Conditions of Sale. The Seller's failure to object to inconsistent or supplementary provisions contained in the Buyer's purchase order or other communications shall not be deemed to be a waiver or modification of these Terms and Conditions of Sale, or an acceptance of such provisions.

2.2 Any exceptions to these Terms and Conditions of Sale shall and must be expressly and mutually agreed, in writing by the Parties and confirmed in the Buyer's purchase order and Seller's corresponding sales order acknowledgment.

2.3 Without prejudice to the foregoing, the delivery of Products or the acceptance of Products or any other act or conduct of the Buyer in confirmation of the supply of Products by the Seller shall constitute an unqualified acceptance by the Buyer of these Terms and Conditions of Sale.

3. Price Changes

In the event of any specific requirements (including without limitation any design, specification, ordered quantity, shipment dates/ changes) resulting in a price increase, or in the event of changes in market conditions which impact costs, Buyer will be notified and afforded an opportunity to confirm within (5) business days from Seller's notice.

In the event that Buyer does neither confirm nor object in writing within (5) business days from Seller's notice, the price increase is deemed accepted by Buyer.

4. Payment Terms

4.1 Unless otherwise indicated in Seller's order acknowledgement, payment shall be received by Seller within thirty (30) days from invoice date, which shall be deemed the dock date. Buyer shall be subject to interest of 1 ½% per month on the remaining balance due and outstanding after the thirty (30) days from invoice date.

Subject to Buyer's credit status prior to delivery, Seller reserves the right to define other payment terms or to stipulate a progress payment schedule in the Quotation and/or Sales Order Acknowledgement, including requiring any of the payment terms listed in section 4.2 below.

4.2 In the event Buyer fails to perform its payment obligations in accordance with this Clause, or in the event of any change in Buyer's creditworthiness, Seller, at its sole discretion, reserves the right, among other actions to:

- (a) Reject any new purchase orders received from Buyer;
- (b) Require Buyer to immediately pay all outstanding invoices which shall become immediately due;
- (c) Accept new purchase orders on the basis of revised payment terms, whereby Buyer will be obliged to pay for Products or Services in advance of delivery; or
- (d) Demand and obtain additional securities (such as payment guarantees) from Buyer, in advance of accepting any new purchase orders.

The foregoing is without prejudice to any other Seller's rights or remedies which Seller may have under the applicable law. All collection costs, including reasonable attorney's fees, arising out of or from Buyer's non-payment in accordance with the terms herein shall be payable by Buyer.

4.3 Any overdue invoice will trigger the payment of late payment penalties by Buyer, calculated as one and one-half percent (1 ½%) per month applicable on the date at which payment is due. Seller reserves the right to require Buyer to reimburse Seller for its costs of debt collection with respect to obtaining payment of overdue invoices.

5. Taxes, Charges and others

Price is exclusive of any custom duties, taxes, levies and similar charges and surcharges, including but not limited to credit card processing fees and bank fees, premium freight costs, customized packaging, disassembly, take-back, proper recycling and disposal of waste or other costs ("Charges"). Any such Charges liable for payment shall be charged by Seller at the prevailing rate at the time of invoicing.

Seller shall charge all applicable sales tax and Buyer shall be responsible for payment of any and all sales tax unless Buyer provides Seller with certificates of exemption from sales tax at least 5 business days prior to the anticipated delivery dates.

6. Production and Cancellation

Seller shall not move Buyer's product into production until such time as Buyer has provided engineering approval of all drawings and specification. Buyer agrees and understands that any delays due to Buyer's failure to provide engineering approval are the sole fault of Buyer and Seller shall have no responsibility for such delay.

Any cancellations must be made at least fifteen (15) business days prior to the due date. In some cases, Seller's products require longer production times and Buyer will be held responsible for payment of any work completed and all purchased materials on an order prior to cancellation, even if the order is cancelled within the time specified above.

7. Delivery

7.1 Delivery date(s) shall be in accordance with the Seller's quotation after such time as engineering approval has been provided to Seller, unless otherwise agreed in writing between the Parties.

7.2 EARLY DELIVERY - In the event that Seller is able to deliver Products or Services to Buyer prior to the original delivery date advised by Seller, Buyer accepts such revised delivery date, the payment term specified in Clause 4.1 shall be calculated from the revised date of delivery.

7.3 Buyer shall be responsible for pick up and/or freight of all goods, unless otherwise specifically noted on the confirmation by Seller on the purchase order. All products shall be FOB at the Dock of Seller, regardless of Buyer pick up or Buyer shipping. Buyer shall solely be responsible for any shipping and freight charges and costs and Buyer releases Seller of any and all liability for shipping and freight upon the product receipt at the Seller's dock.

8. Storage Fee

Buyer shall pick up all products within five (5) business days from the date of notice from Seller that the products are ready for delivery. Failure of Buyer to pick up all products within five (5) business days shall result in Seller charging a storage fee for such products, unless otherwise agreed. Seller shall charge a storage fee of the lesser of \$250.00 USD per day or one and one-half percent (1 ½%) of the entire purchase price until such time as the products are picked up by Buyer.

9. Packaging

9.1 The cost of packaging is included in Seller's price. All products of Seller require customized packaging which is directly provided by Seller. Any requests for further packaging customization (for example, RFID tagging, specialist materials) shall be subject to Clause 5 of the Terms and Conditions of Sale and Buyer shall hold Seller harmless for any packaging outside of that provided by Seller.

9.2 Seller shall advise Buyer of any returnable packaging, which will be clearly marked by Seller. Failure by Buyer to return such packaging within sixty (60) calendar days, at its own cost and risk, will result in Seller's right to invoice Buyer for the costs of replacement packaging.

10. Shipment Terms

Unless Seller agrees otherwise, all deliveries shall be FOB at Seller's designated facility (delivery point) (per ICC Incoterms 2010).

Should Buyer desire to have Seller arrange for freight, Buyer shall prepay all shipping charges directly to Shipper and provide Seller with an indemnity agreement as to the freight and shipping.

11. Retention of Title and Transfer of Risk

11.1 Transfer of Risk: Risk of loss or damage shall pass from Seller to Buyer and delivery shall be deemed to occur at the dock of Seller's designated facility per the applicable shipping term (per ICC Incoterms 2010) in Clause 10 of these Terms and Conditions of Sale.

11.2 Transfer of Title: Title shall pass from Seller to Buyer upon transfer of possession to Buyer or Buyer's representative at the delivery of the Seller's dock point per the applicable shipping term (per ICC Incoterms 2010) in Clause 10 of these Terms and Conditions of Sale.

12. Delays or Default in Delivery

Seller shall have no liability to Buyer for Seller's delay or default in delivery due to Force Majeure (Clause 25 of these Terms and Conditions of Sale). Under no circumstances shall Seller have any liability for penalties or other damages of any kind resulting in whole or in part from Seller's delay in delivering, or failure to deliver, any products to Buyer under these Terms and Conditions of Sale.

13. Limitation of Liability

13.1 Notwithstanding anything else in these Terms and Conditions of Sale to the contrary, all liabilities of Seller, its affiliates, officers, directors, employees, agents and suppliers collectively for claims (including without limitation, any claims made by the Buyer for penalties, fines and/or claim(s) for compensation) under these Terms and Conditions of Sale, or otherwise howsoever arising (including without limitation, in contract or torts (including negligence) and/or under any indemnity) is limited to the maximum cap of 100% percent of the Product or Service price (exclusive of Charges) paid by the Buyer to Seller for the purchase of Products or Services under Buyer's purchase order.

This limit of liability for Products or Services is a total aggregate cap and not per incident (i.e., the existence of two or more claims will not enlarge this limit).

13.2 In no event, whether under contract, statutory law or tort, shall Seller or its affiliates, officers, directors, employees, agents, be liable for indirect, incidental, punitive or consequential damages, including but not limited to, loss of profit, loss of use, loss of production, loss of reputation, loss of opportunity or penalty payments of the third parties. Seller's liability that cannot be excluded as per the mandatory applicable law shall not be excluded.

14. Intellectual Property

Unless otherwise specifically agreed to in writing by Seller, all drawings, techniques, processes, inventions, patents, patent applications and other intellectual property (i) now owned by Seller, (ii) created hereafter by Seller outside of the scope of the purchase order or (iii) created by Seller for Buyer, jointly between Seller and Buyer or by Buyer for Seller's production (collectively "Seller's Intellectual Property") shall be and remain the sole property of Seller. Seller grants no license or other right to Buyer in Seller's Intellectual Property, whether now owned or hereafter created unless specifically agreed to in writing. Any license that is granted of Seller's Intellectual Property is granted solely for the limited right to permit Buyer to use the products contracted for.

15. Indemnification

Buyer shall indemnify, defend and hold harmless Seller or its affiliates, officers, directors, employees and agents from and against any and all damages, losses, costs, expenses, claims, demands, suits and judgments arising from actual or alleged infringements of any third-party's intellectual property rights caused by:

- (a) Seller having followed or used the instructions, specifications, designs or products furnished by the Buyer to be used in the Services or in the manufacturing of the Products or otherwise in relation with the Services or Products;
- (b) Seller having used the products or services of the sub-supplier specified by the Buyer;
- (c) Buyer's use or combination of the Products or Services in conjunction with other products or services not delivered by Seller where such infringement would not have arisen from the Products or Services itself;
- (d) Modification of the Products or Services other than by Seller;
- (e) Buyer's use of the Products or Services after Seller has informed Buyer of modifications or changes required to avoid infringement if the alleged infringement would have been avoided by implementation of Seller's recommended modifications or changes;

16. Design and Technical Information

Unless otherwise agreed in writing between the Parties, Seller claims proprietary rights in the items and information associated with the purchase order to which these Terms and Conditions of Sale apply. Drawings and technical information are issued by Seller in confidence for engineering information and mutual assistance only and may not be publicly disseminated, reproduced or used by Buyer without Seller's prior written consent.

17. Confidentiality

17.1 Each Party agrees to keep confidential all information, including commercial and technical information and materials (“Confidential Information”) of the other Party, which comes to its knowledge in the course of the business relationship and is identified to be confidential. Each Party is allowed to share Confidential Information with its affiliates on a need to know basis. The terms of this provision shall survive the termination or expiration of these Terms and Conditions of Sale for a period of five (5) years.

17.2 Confidential Information shall not include information that:

- (a) Is publicly known at the time of the disclosing Party’s (“Discloser”) communication to the receiving Party (“Recipient”) or becomes publicly known through no fault of Recipient subsequent to the time of Discloser's communication thereof to Recipient;
- (b) Was in Recipient's possession free of any obligation of confidence at the time of Discloser's communication to Recipient;
- (c) Is developed independently by Recipient without reference to any of Discloser’s Confidential Information, as evidenced by contemporaneous written records; or
- (d) Is rightfully obtained by Recipient from a third party authorized to make disclosure without restriction.

18. Warranty

Seller warrants its radiator assemblies, replacement cores, tanks, side supports, gaskets, oil coolers, charge air coolers and heat exchanger assemblies, hereinafter referred to as “products,” against defects in workmanship or materials, under normal use and service for a period of one year from date of documented start-up or 2,000 hours (whichever occurs first), and not to exceed eighteen (18) months from date of shipment from Seller.

Any product allegedly defective under this warranty, which upon examination by a Seller representative is found to be defective in workmanship or material that was created or developed by Seller, will be repaired or replaced at our discretion without charge, transportation charges prepaid. All obligations and liabilities under this warranty are limited to repair or replacement, at Seller's sole and absolute option.

Seller assumes no liability for any contingent, incidental, or consequential damages resulting from alleged failure or failure of its products or components, nor labor charges of any kind, including those related to the removal and/or reinstallation of product.

Returned products, components or accessories will not be accepted unless prior written authorization from Seller has been obtained, in the form of a Returned Goods Authorization (“RGA”).

Seller warranties extend only to Buyer and are not assignable to, or assumable by, any subsequent purchaser, in whole or in part. Any such attempted transfer shall render all warranties provided hereunder null and void and of no further force or effect.

Seller understands that in some cases, the return of product to our Illinois facilities is impractical and Buyer is required to directly contact and work with Seller on a suitable solution. If customer requests field service by Seller, and the alleged failure is determined not to be with Seller 's product, component or accessory, the customer shall be responsible for payment of the labor and expenses related to the field service. Invoices for service, labor or other expenses incurred by the customer, their agents or other related parties, without prior approval or authorization by Seller, will not be accepted.

In cases where Seller 's product is in service and allegedly defective outside of the continental United States of America, Seller must authorize in writing any repairs or replacements before such action is taken, otherwise the warranty is automatically rendered null and void and of no further force or effect.

This warranty specifically excludes product failures resulting from improper installation, mounting design, specification errors by the customer, excessive vibration and corrosion. Additionally, Seller product that is subject to misuse, negligence or accident, is not covered under this warranty.

Seller's standard commercial packaging does not protect products for long periods of storage outdoors or in generally corrosive atmospheric conditions. Buyer assumes responsibility for properly protecting and addressing Seller product stored in such conditions, including but not limited to, checking and replacing gaskets and retorquing bolts.

Any alterations or repairs to Seller product that are attempted or made without prior written authorization from Seller, automatically render this warranty null and void and of no further force or effect.

Seller reserves the right to improve its products through changes in design or material, as it deems appropriate, without obligation to incorporate such changes in products of prior manufacture.

19. Procedure for Processing Warranty Claims

Step 1: To initiate a Warranty claim, customers can email, call and or fax Seller, providing an explanation of the problem. Information required includes the customer's P.O. #, quantity, part numbers, serial numbers and production dates for each item (found on the Seller label affixed to all radiators). If there is a warranty report form that your company requires, please also include it, as well as the names and numbers of any parties that need to receive updates of our findings.

Step 2: Seller will issue a Return Goods Authorization (RGA) and submit it to the initiator of the request. The customer will then properly package and ship the item(s) to DRC pre-paid along with a copy of the RGA. Please note: The customer is responsible for packaging returns carefully, as we will not be responsible for any damage caused in shipping.

Step 3: When the unit(s) arrives, Seller will inspect and determine whether the reported issue is Warrantable. Once a determination of what the problem may be is made, Seller will inform all parties of the findings and what actions will be taken to correct the problem, if applicable. If needed, we will also complete any customer paperwork requested and submit with our findings.

Step 4: If the Warranty applies, DRC will repair or replace the product and return it to the customer. Transportation charges for the return shipment from Seller to the customer will be covered in Warranty cases. If it is a Non-Warrantable issue, DRC will contact the RGA originator and provide an estimate of what the cost will be to repair/replace the item. We will then take action based on the customer's response.

Note: Seller will not honor unauthorized debit memos to our account.

20. Export, Re-export, Transfer and Use Controls

The Products (or Services) supplied by Seller under these Terms and Conditions of Sale may be subject to export controls under the laws and regulations of the United States (U.S.) and/or the European Union and/ or any of the European Union member states. Buyer shall comply with such laws and regulations governing export, re-export, transfer and use of Seller Products and will obtain all required U.S. or other territorial authorizations, permits, or licenses. Seller and Buyer each agree to provide the other Party with information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Buyer's obligations under this Clause shall survive the expiration or termination of these Terms and Conditions of Sale.

21. Termination

21.1 If a party breaches any of the provisions of these Terms and Conditions of Sale, the non-breaching party may terminate these Terms and Conditions of Sale as follows: (a) immediately upon providing written notice to the breaching Party, and (b) thirty (30) calendar days after providing written notice to the breaching Party the breach remains uncured.

21.2 The termination of these Terms and Conditions of Sale in any way whatsoever will be without prejudice to the rights, obligations and liabilities of either Party accrued prior to termination.

22. Bankruptcy

If bankruptcy proceedings are instituted against any contracting Party or an application for bankruptcy proceedings against that Party is not granted for insufficiency of assets, the other Party may terminate these Terms and Conditions of Sale without prior written notice subject to any applicable mandatory law. Notwithstanding the foregoing, Seller's title to the delivered Products shall not be affected by the bankruptcy and/or insolvency proceedings. At its discretion and at any time, Seller shall be entitled to enter Buyer's premises and re-take possession of any Products that have been delivered but remained unpaid by Buyer.

23. Assignment

Neither Party shall be entitled to delegate, transfer or assign its rights and obligations arising from these Terms and Conditions of Sale, in whole or in part.

24. Governing Law

These Terms and Conditions of Sale shall be exclusively governed by and construed in accordance with the substantive laws of the State of Illinois, United States, excluding its conflict of laws principles and excluding the UN Convention on Contracts for the International Sale of Goods. Any dispute, controversy or claim arising out of or in connection with these Terms and Conditions of Sale, including validity and governing law that cannot be settled amicably within sixty (60) days shall fall within the exclusive jurisdiction of the competent court in Cook County, State of Illinois, United States. Trial of any dispute will be before a judge, and the parties expressly waive any right to a trial by a jury. For the avoidance of doubt, each Party shall bear its own costs and fees in respect of the resolution of such dispute, controversy or claim.

25. Force Majeure

25.1 Neither Party will be held responsible for its failure to fulfill any of its obligations (except for Buyer's payment obligations hereunder) if and to the extent that such failure is due to acts of God (such as floods, storms, fires and earthquakes), acts of war, strike, failure of public utilities, terrorism or general civil insurrection, government and competent authorities orders, failure of supplies, embargoes and trade limitations, changes in law or regulation, epidemics, pandemics or outbreak of communicable disease, quarantines, national or regional emergencies or any other matters beyond the reasonable control of, and not due to, any fault or negligence of such affected Party. Performance shall be deemed to be suspended during the force majeure period. Upon cessation of the force majeure event, Seller shall be granted an extension in its period of time to perform, commensurate with the duration of the force majeure event. In the event the force majeure continues for more than ninety (90) days, either Party may terminate the Agreement upon providing written notice to the other Party.

25.2 In the event of either Party electing to terminate the Agreement pursuant to Clause 25.1, Buyer shall be obligated to purchase from Seller:

- (a) Products and/or Services which may have been completed prior and up to such date of termination, at the agreed prices; and
- (b) In respect of partially completed Products and/ or Services, or Seller's work in progress, Seller's justified expenses and/or unavoidable costs.

26. Acceptance of Products/Services

Except as otherwise stated herein, the Products shall be deemed to have been accepted by Buyer upon delivery of Product or repaired item, unless Buyer notifies Seller in writing reasons of non-acceptance. Notwithstanding the foregoing, use of the Products by Buyer, its agents, employees or customers shall constitute acceptance of the Products by Buyer. Seller does not provide an inspection period, unless otherwise agreed in writing by all Parties.

27. Quality

Products and/or Services shall be delivered in accordance with Seller's then-applicable quality management system. Buyer's specific quality terms and requirements shall only be complied with where such terms have been expressly agreed in writing by Buyer and Seller as being applicable to a particular order.

28. Severability

28.1 If any condition (or part thereof) of these Terms and Conditions of Sale shall be found to be invalid, ineffective or unenforceable the invalidity, ineffectiveness or unenforceability of such condition (or part thereof) shall not so far as possible affect any other condition (or part thereof) and accordingly all such conditions (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.

29. No Waiver

No failure on the part of either Party to exercise any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right hereunder preclude any other or further exercise thereof or the exercise of any other right, unless expressly waived by the relevant Party in writing.