

## SECTION 10 – TERMS AND CONDITIONS OF SALE



### DEUTZ CORPORATION

Terms and Conditions  
of Sale

#### I. Applicability; Data, Documents and Trade Terms.

- (1) The terms and conditions set forth below apply to all offers and sales of new genuine DEUTZ engines and DEUTZ Xchange engines (collectively "Engines") and new genuine DEUTZ spare or replacement parts and genuine DEUTZ Xchange parts (collectively "Parts") manufactured by DEUTZ AG or one of its subsidiaries (Engines and Parts shall be collectively referred to as "Goods") and all repair, installation, testing, start-up, commissioning, transportation or other services (collectively "Services") by DEUTZ Corporation ("DEUTZ") to any purchaser ("Purchaser"). Any additional, inconsistent or conflicting terms or conditions indicated by the Purchaser which have not been expressly accepted in writing by DEUTZ shall not be binding, even if DEUTZ has not expressly rejected such additional, inconsistent or conflicting terms or conditions. No agent, employee or representative of DEUTZ has any authority to bind DEUTZ to any affirmation, representation or warranty concerning the Goods or Services, and unless such affirmation, representation or warranty is specifically included with this contract, it shall not be enforceable by Purchaser.
- (2) Data, such as illustrations, drawings or specifications of weight, dimensions, efficiencies, performance or consumption, useful life of the Goods set out in product descriptions or specifications, marketing materials or provided in connection with any offer or sales confirmation are only approximations (subject to standard industry measurement tolerances), unless DEUTZ has specifically stated otherwise in writing. DEUTZ retains all intellectual property rights, ownership and copyright in all cost estimates, drawings and other documents furnished by it; such documents may not be disclosed by the Purchaser to any third party. DEUTZ undertakes not to disclose to third parties, except upon prior approval of the Purchaser, any plans delivered by the Purchaser to DEUTZ that have been plainly marked by the Purchaser as confidential.
- (3) If any offer or sales confirmation of DEUTZ or these terms and conditions refer to any sales terms used in international trade (e.g., fob, cif, etc.), such terms shall be construed in accordance with the Incoterms of the International Chamber of Commerce in effect at the time the term was used.

#### II. Scope of Contract.

- (1) The written sales confirmation of DEUTZ will be deemed conclusive in determining the provisions of the contract between DEUTZ and the Purchaser. If, however, DEUTZ submits an offer which is valid for a specified time, and the offer is accepted by the Purchaser within the time and in the manner specified by DEUTZ, the offer will be deemed conclusive in determining the provisions of the contract between DEUTZ and the Purchaser. No additional, inconsistent or conflicting provisions in Purchaser's acceptance, collateral agreements or amendments shall be valid unless accepted in writing by DEUTZ.
- (2) DEUTZ reserves the right to alter, modify, improve or make changes in the design, layout, materials and construction of the Goods to be supplied at any time without incurring any obligation to replace any previously sold or delivered Goods with such new Goods. The Purchaser shall accept the Goods with such changes, unless the changes are of such a nature as to alter the essential characteristics of the Goods.
- (3) Any technical advice furnished by DEUTZ to Purchaser either before or after delivery in regard to the use of the Goods or Services by Purchaser or its customers shall be considered furnished on the basis that it represents DEUTZ's judgment under the circumstances and is provided on an as-is basis, without any warranty whatsoever (either express, implied or statutory), and shall be used by Purchaser at its sole risk.

#### III. Price, Payment and Default.

- (1) Any indication in any offer or sales confirmation to the contrary notwithstanding, DEUTZ's prices in effect on the day of delivery of the Goods or provision of Services will be charged. Unless expressly otherwise agreed by DEUTZ in writing, all quoted prices for Goods are for delivery ex-works manufacturer's factory, including loading at the factory, but excluding taxes, packing, customs, duty and other associated fees. Under a long-term contract, such as for supply of Goods according to a schedule, DEUTZ is entitled to adjust prices and delivery times within reasonable commercial limits in case of variations of the cost basis (materials, wages, etc.) or production times. DEUTZ will charge the Purchaser for packing at cost; packing cannot be returned.

Any Services related to Goods, irrespective of the Goods' application or installation, is not included in any quoted price for Goods and shall be priced separately.

- (2) Unless DEUTZ has agreed in writing to special arrangements, payment of the full purchase price shall be made by the Purchaser (i) within thirty (30) days from the date of invoice for Engines and (ii) upon receipt of invoice for Parts and Services by wire transfer in immediately available funds, without any deductions or set off. A Force Majeure Event (as defined in Article IV(3)) shall not delay or excuse Purchaser's payment obligations.
- (3) The full purchase price shall be paid by the Purchaser regardless of any disputes or controversies relating to other Goods and Services. The Purchaser is not permitted to withhold payment or offset any payments against other claims of the Purchaser that are disputed by DEUTZ. No discount may be taken unless agreed to by DEUTZ in writing. Invoices may be submitted as partial deliveries are made. Any check or remittance received from or for the account of the Purchaser may be accepted and applied by DEUTZ against any indebtedness or obligation owed by the Purchaser, without prejudice to, discharge or accord and satisfaction of the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend, endorsement, notation, document or writing appearing on, referring to or accompanying such check or remittance.
- (4) All payments shall be in United States Dollars or Euros, as specified in DEUTZ's invoice.
- (5) Purchaser will provide property insurance coverage at full replacement value for all Goods delivered and accept all risks associated upon delivery ex-works manufacturer's factory. Purchaser will be responsible for any and all deductibles and coinsurance and self-retained amounts. Purchaser will provide DEUTZ an insurance endorsement indicating satisfactory insurance coverage and naming DEUTZ as loss payee.
- (6) Upon the failure of the Purchaser to make any payment due DEUTZ, or in the event of any other default, breach or repudiation by the Purchaser of the contract or any other contract with DEUTZ, or if the Purchaser should become insolvent, call a meeting of its creditors or make any assignment for the benefit of creditors, or if a bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or against the Purchaser, DEUTZ may, at its sole option, in addition to any other remedies provided at law or in equity, do any or all of the following: (a) cancel the contract or any part thereof, as well as any other contracts with the Purchaser (the Purchaser remaining liable for damages), (b) declare all outstanding amounts owed by the Purchaser under the contract, or any other contract with the Purchaser, immediately due and payable irrespective of the terms of sale, (c) defer delivery under the contract or such other contracts until all obligations of the Purchaser shall be paid in full or met, (d) sell all or any part of any undelivered Goods, with or without notice, at public or private sale, holding the Purchaser liable for the costs and expenses of such sale (including attorney's fees) and for any difference between the agreed purchase price of such Goods and the amount realized from the sale thereof (DEUTZ having the right to become the buyer of such Goods at any such sale).
- (7) If any payment is not made when due, a late charge will be paid by the Purchaser from the due date until the date of actual collection by DEUTZ, at the rate of 1.5% per month or the highest rate permitted by law, whichever may be less.

#### IV. Time of Delivery.

- (1) Delivery of Goods or provision of Services will not be made prior to issuance by DEUTZ of a sales confirmation and receipt by DEUTZ of the documents, site access, specified fuel stock, operations support, permits and data that are required of Purchaser to DEUTZ, nor before actual collection by DEUTZ of the agreed down payment.
- (2) Delivery dates are not guaranteed. Delivery will be regarded as timely if the Goods to be supplied are delivered ex-works manufacturer's factory, or notification that such Goods are ready for delivery is sent, prior to the time specified for delivery. Delivery of Services shall be regarded as timely if the Services are provided, or notification that the Services are ready for performance, prior to the time specified for performance.
- (3) The time for delivery of Goods or performance of Services shall be reasonably extended in case of any delay arising out of a force majeure event, change in law, terrorism, civil unrest, labor dispute, in particular a strike, slowdown or lockout, shortages or any event beyond the control of DEUTZ or the manufacturer, including any failure of any supplier of DEUTZ or the manufacturer to make timely delivery for any or no reason and any delays attributable to Purchaser ("Force Majeure Event"). DEUTZ will notify the Purchaser as soon as practicable about commencement and termination of such delays. If there is an increase in the cost to manufacture and supply the Goods or perform the Services due to

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a Force Majeure Event, Purchaser shall grant DEUTZ an increase in the purchase price of the Goods and Services to compensate DEUTZ for the increased costs related to a Force Majeure Event. Time for delivery shall be extended due to a Force Majeure Event even if DEUTZ is in delay at the time of the occurrence of the Force Majeure Event.

- (4) In the event that the Purchaser sustains damages because of a delay for which DEUTZ is solely responsible, such damages shall be limited to 0.1% for every full week of delay, but no more than an aggregate of 2%, of the purchase price of such delayed Goods or Services which, by reason of the delay, are not delivered or performed within the time required by the contract or in time to be utilized by the Purchaser, whichever is latest. The liquidated damages provided for in this Article IV(4) shall be Purchaser's sole and exclusive remedy for delayed delivery of the Goods or provision of Services by DEUTZ, and constitute DEUTZ's sole and exclusive liability in connection with delayed delivery of the Goods or performance of Services. In the event Purchaser claims that late delivery of the Goods or performance of Services caused Purchaser to sustain damages, Purchaser shall deliver to DEUTZ a hard copy and electronic copy of all monthly project schedules, using a CPM format showing all activities, logic ties and activity float, early/late finish dates, as well as a month-to-month summary showing all the changes to the schedules for each month, including changes to activity durations, logic and float and a monthly comparison of the as-planned versus as-built schedules. If Purchaser fails to (a) make a claim for delay liquidated damages under this Article IV(4) within thirty (30) days of the original delivery or service date, or (b) provide the schedule information within three (3) months of the original delivery or service date, then Purchaser waives all rights to delay liquidated damages under this Article IV(4) and DEUTZ shall be deemed to have delivered the Goods and Services on time.
- (5) In case delivery of Goods or provision of Services is postponed at the request of the Purchaser or due to Purchaser's fault, the actual expenses accruing as a result of storage and handling of the Goods (in no event less than 0.5% of the purchase price of the Goods involved if storage and handling is at DEUTZ's facilities or the manufacturer's factory) or stand-by time and travel costs related to delayed Services, shall be paid by the Purchaser upon notification by DEUTZ that the Goods are ready for delivery or Services are ready for performance. In such case, the risk of loss for the Goods passes to Purchaser at the time the Goods are ready for delivery.
- (6) DEUTZ's obligation to deliver the Goods on time is conditioned upon fulfillment by the Purchaser of all of the Purchaser's obligations.
- (7) If the Purchaser fails to accept the Goods more than six (6) weeks after notification that the Goods are ready for delivery, and after DEUTZ has granted the Purchaser an additional period of two (2) weeks for such acceptance, DEUTZ shall be entitled to treat such failure as a material breach of the contract and to exercise all rights at law or in equity arising out of such breach, including the right to cancel the contract and obtain damages for non-performance.
- (8) In the event of non-performance or breach by the Purchaser, DEUTZ, without any proof of actual damages, shall be entitled to liquidated damages equal to 15% of the purchase price of the Goods or value of the Services, or actual damages, whichever is greater.
- (9) No Goods may be returned without the prior written authorization from DEUTZ together with specific shipping instructions.

### **V. Risk of Loss and Acceptance.**

- (1) The risk of loss for Goods passes to the Purchaser, at the latest, upon delivery ex-works manufacturer's factory, irrespective of whether only a part of the Goods to be supplied are delivered or whether DEUTZ will provide Services under the contract.
- (2) DEUTZ, at the Purchaser's direction and expense, shall obtain such insurance as the Purchaser may request in writing, covering losses which are at the Purchaser's risk arising out of theft, breakage, transportation, fire and water damage, as well as out of such other insurable casualties as the Purchaser may specify, provided however, such insurance is available by a commercial lines insurance broker. Purchaser shall be responsible for any and all deductibles and self-retention or co-insurance as required by any policies.
- (3) The Purchaser is required to accept Goods with minor damage, subject to its rights pursuant to Article VIII.
- (4) Partial deliveries shall be permitted and shall be accepted by the Purchaser. The Goods, including partial deliveries, shall be deemed accepted unless Purchaser gives DEUTZ written notice of non-conforming Goods within fifteen (15) days of delivery.

### **VI. Title and Security Interests and Liens.**

- (1) Until all amounts owed by the Purchaser to DEUTZ pursuant to the contract and any other contract between DEUTZ and the Purchaser are collected in full by DEUTZ, DEUTZ retains title to the Goods supplied and the Purchaser grants to DEUTZ a purchase money security interest in and a lien upon the Goods and the proceeds thereof, as security for the payment of all such amounts and the performance by the Purchaser of all of its obligations to DEUTZ pursuant to the contract and such other contracts.
- (2) The Purchaser shall be entitled to resell the Goods in the ordinary course of business and shall only permit subordinate liens or encumbrances on the Goods. In furtherance of the rights of DEUTZ pursuant to Article VI(1), the Purchaser hereby assigns to DEUTZ any and all accounts and rights which the Purchaser may have with respect to its customers or third parties by reason of the resale of Goods, irrespective of whether the Goods have been resold before or after further manufacture, improvements or processing. Notwithstanding such assignment, the Purchaser shall be entitled to collect such accounts until such time as DEUTZ has notified the Purchaser that DEUTZ intends to collect such accounts itself. DEUTZ undertakes not to collect any such accounts as long as the Purchaser duly and timely fulfills its payment and other obligations to DEUTZ. At the request of DEUTZ, the Purchaser shall notify DEUTZ as to the amounts of the assigned accounts and the respective debtors, shall submit to DEUTZ information necessary for collection of such accounts, shall deliver to DEUTZ all relevant documents and Purchaser or DEUTZ shall inform the debtors of the assignment. In case the Goods supplied by DEUTZ are resold by the Purchaser together with other goods not supplied by DEUTZ, the account of the customer shall be considered assigned to the extent of the price required to be paid by the Purchaser to DEUTZ for the Goods.
- (3) If Goods sold by DEUTZ to the Purchaser are installed in a vessel, Purchaser grants or shall cause the owner of the vessel to grant DEUTZ a security interest in the vessel in an amount equal to 110% of purchase price of such Goods. If the vessel is registered under the laws of any nation, the Purchaser, upon the request of DEUTZ, shall, at the Purchaser's own expense, cause a preferred ship mortgage on the vessel in favor of DEUTZ, in an amount equal to 110% of purchase price of such Goods, to be recorded and perfected. Such security interest and mortgage shall secure payment of the unpaid balance of the purchase price and performance of all other obligations of the Purchaser to DEUTZ pursuant to the contract, as well as the payment of all other amounts and the performance of all other obligations owed by the Purchaser to DEUTZ pursuant to any business transactions between DEUTZ and the Purchaser. Such security interest and mortgage shall, to the extent legally possible, rank prior to all other mortgages and liens on the vessel.
- (4) Purchaser appoints DEUTZ, and its agents and employees, as its attorney-in-fact to take such steps, sign, execute and file such documents with such authorities as DEUTZ shall determine in order to record and perfect any retention of title, assignment, grant of security interest, grant of purchase money security interest, lien or preferred ship mortgage pursuant to this Article VI. The Purchaser hereby appoints DEUTZ, and its agents and employees, as the Purchaser's attorney-in-fact to affix the signature of the Purchaser and vessel's owner to all such documents and undertake all steps required to perfect the encumbrances granted by Purchaser or the vessel's owner under this Article VI. Such documents may also be filed without the signature of the Purchaser or vessel's owner to the extent permitted by law. The Purchaser, moreover, agrees, at its own expense, to file all such documents as DEUTZ may request.

### **VII. Delivery and Installation.**

- (1) If the contract provides for installation by DEUTZ, DEUTZ will not be required to commence such installation until after the foundations have been completely dried and set and all other necessary construction work has been entirely completed and Purchaser has certified this in writing to DEUTZ. DEUTZ will not be required to commence installation in a vessel until the foundations for engine, gear, etc. have been completed and Purchaser has certified this in writing to DEUTZ. In the event these prerequisite operations are not completed when required, the time for installation shall be reasonably extended and any stand-by time and travel costs related to the delayed Services shall be paid by Purchaser.
- (2) Unless otherwise agreed, transfer from the manufacturer's factory to the place of delivery or installation of the Goods to be supplied shall be carried out at the direction, expense and risk of the Purchaser.
- (3) If the contract requires DEUTZ to install the Goods and place them into operation, DEUTZ shall, at the expense of the Purchaser, make the required mechanics and mechanic's apparatus available in accordance with DEUTZ's standard terms and conditions for the furnishing of mechanics' services. The Purchaser, at its sole risk and expense, shall provide all necessary



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tools, lifting tackle, scaffolding, equipment, building materials, welding apparatus, bottled gas for pipe work, etc., as well as a suitable, lockable storage room for the apparatus of DEUTZ's mechanics. The Purchaser shall also be solely responsible for all workers furnished by the Purchaser and shall defend, indemnify and hold DEUTZ, the manufacturer, their subsidiaries and affiliated companies harmless of and from any claims by such workers or their families, successors, heirs and assigns and from all claims and costs arising out of or related to the activities or work undertaken by the workers.

- (4) In the event that transportation, installation or operation of the Goods is delayed or interrupted, or the mechanics' work is impeded, for reasons attributable to the Purchaser or a Force Majeure Event, the Purchaser shall pay all extra costs and damages caused by such delay or interruption. No delay or interruption shall affect or excuse the obligation of the Purchaser to meet the agreed terms of payment.
- (5) In the event that, at the oral or written request of the Purchaser, the mechanics supplied by DEUTZ perform work other than as required under the contract, the Purchaser will pay for such additional work against separate invoices at rates in effect at the time the work is performed.
- (6) Any trial operation or trial run that DEUTZ has agreed to conduct shall be performed during normal working hours under Purchaser's supervision. If any mechanic supplied by DEUTZ has to perform services at other times because of special circumstances, the Purchaser shall pay for such services as overtime or premium time work, against separate invoices.
- (7) The mechanics supplied by DEUTZ will not work overtime or premium time, except upon the Purchaser's express request and on the submission by the Purchaser to DEUTZ or the mechanics of a written confirmation of such request. Purchaser will pay for such overtime or premium time work against a separate invoice.
- (8) Purchaser shall give DEUTZ at least fifteen (15) days written notice of the commencement of commissioning and/or testing and DEUTZ shall be allowed to have its representatives present and monitor and collect any and all data during these activities.

### VIII. Obligations of DEUTZ for Defects or Deficiencies.

- (1) The obligations of DEUTZ with respect to defects or deficiencies in the Goods supplied or Services performed, including the failure to fulfil express contractual requirements, are limited to those in this Article VIII(1). Neither DEUTZ nor the manufacturer shall under any circumstances have any obligation or liability to any other person, including, without limitation, any subsequent purchaser or user of the Goods or Services or any person purchasing the Goods from DEUTZ for its own use and Purchaser shall defend, indemnify and hold harmless DEUTZ and the manufacturer and their related and affiliated companies from any claims or costs arising from or related to other persons or subsequent purchasers use of the Goods or Services.
  - (a) If within (i) twelve (12) months after the Engines supplied are put into operation, or within twenty-four (24) months after delivery of Engines ex-works manufacturer's factory, whichever occurs first, or (ii) twelve (12) months after the Parts are supplied, any Engine or Part supplied by DEUTZ, manufactured by its parent corporation or one of their subsidiaries is not usable, or the usefulness of any such Engine or Part is proved to the satisfaction of DEUTZ to be significantly impaired, by reason of a condition existing prior to such delivery, including, in particular, defective construction, unsatisfactory material or poor workmanship, DEUTZ, at its option, will either repair or replace such Engine or Part free of charge, provided that notice of any such defect or deficiency is given to DEUTZ promptly after discovery by Purchaser. All replaced Engines or Parts shall become the property of DEUTZ.

DEUTZ engine range	maximum running hours from the date of commissioning
2009, 2011, TCD 2.9, TCD 3.6 91x, 1013, 2012, TCD 2012/2013, TCD 4.1/6.1/7.8	2,000
413, 513, 1015, 2015, TCD 12.0 / 16.0	3,000
	5,000

- (b) Furthermore, the Supplier shall at its own expense and at the sole option of the Supplier, exchange, replace or repair, such part of the following major parts: crankcase castings, crankshaft forgings, camshaft forgings, connecting rod forgings and cylinder head castings of the small DEUTZ engine ranges as specified in this section VIII.(1)(b) which was demonstrated by the Purchaser in writing to have failed during a period of thirty-six (36) months after the date of commissioning of the respective engine or forty-two (42) months after the risk of loss of the respective engine has passed to the Purchaser, whichever period expires first, solely

as a result of a substantial deficiency which was inherent in the goods or the part thereof before transfer of the risk of loss of the goods and due to faulty design, faulty material or bad workmanship.

The warranty period for the aforementioned major parts shall end before expiry of the aforementioned thirty-six (36) months period respectively forty-two (42) months period upon reaching the following running hour limitations, calculated from the date of commissioning of the respective good, but not before expiry of twelve (12) months from the date of delivery.

DEUTZ engine range	major parts: maximum running hours from the date of commissioning
2009, 2011, TCD 2.9, TCD 3.6 91x, 1013, 2012, TCD 2012/2013, TCD 4.1/6.1/7.8	3,000
413, 513, 1015, 2015, TCD 12.0/16.0	4,500
	7,500

- (c) For all defective or deficient components of Goods supplied by DEUTZ not manufactured by its parent corporation or one of their subsidiaries, DEUTZ, upon the written request of Purchaser, shall assign to Purchaser such rights, if any, as DEUTZ may have against the supplier or manufacturer with respect to such defects or deficiencies and DEUTZ shall have no further responsibility or liability with respect to such component.
- (d) If within two (2) months after the Services are performed, Purchaser discovers a defect in the Services, DEUTZ shall reperform the defective Services at its cost.
- (2) Any claim or action against DEUTZ or the manufacturer based on any alleged defect or deficiency in the Goods supplied or Services performed shall be barred if not asserted or commenced within six (6) months from the date the defect is discovered or should have been discovered or upon the expiration of the period specified in Articles VIII(1)(a) and (c), whichever is later.
- (3) Neither DEUTZ nor the manufacturer shall have any liability for any defect, deficiency or damage caused by faulty or negligent handling; use of unsuitable utilities; excessive vibration or flexibility of a vessel, vehicle, installation or plant where the Goods are installed; unsuitable, excessive or improper use; faulty assembly or operation by Purchaser or third parties; improper or unsuitable fuel and or lube oils; normal wear and tear; faulty or negligent handling; use of improper replacement materials; poor building construction; unsuitable building soil; chemical, electro-chemical or electric influences; alterations or repairs performed by Purchaser or third parties without the prior written consent of DEUTZ. This warranty does not cover normal maintenance service or the replacement or repair of parts required to be replaced or repaired in the course of normal maintenance service.
- (4) Purchaser shall grant DEUTZ a reasonable time and opportunity for all repairs and replacements to be made or reperformance of Services pursuant to Articles VIII(1)(a) and (c). Purchaser shall not be entitled to reimbursement for correction of any defect or deficiency performed by itself or by any third party, unless Purchaser shall establish to the satisfaction of DEUTZ that such correction was immediately required for operational safety or to prevent excessive damage, or if DEUTZ unreasonably delays in correcting the defect or deficiency or reperforming the Services.
- (5) (a) For all repairs or replacements made by DEUTZ pursuant to Article VIII(1)(a) for an Engine, DEUTZ shall absorb the cost of the replacement part, the cost of transportation and the reasonable expenses of disassembly and installation directly required for the repair or replacement. DEUTZ shall be allowed to use any spare parts of Purchaser and DEUTZ shall replace such spare parts within a reasonable time at no cost to Purchaser. DEUTZ shall also absorb the expenses of DEUTZ's mechanics and their assistants, if required, for such repair or replacement. All other expenses of the repair or replacement shall be paid by Purchaser.
- (6) The obligation of DEUTZ with respect to any component repaired or replaced pursuant to Article VIII(1)(a) or Services reperfomed under Article VIII(c) shall be as specified in Article VIII(1), except that the period during which DEUTZ shall have such obligation shall be three (3) months after the repair or replacement for Engines or Parts and two (2) months after the reperformance for Services, or the remaining duration of the original warranty period, whichever expires last. The period specified in Article VIII(1) shall be extended by the duration of any shutdown caused by any repair or replacement work performed by DEUTZ pursuant to Article VIII(1)(a).
- (7) Purchaser shall also have a right of rescission with respect to any delivered Engines if DEUTZ fails to undertake to make a critical repair or replacement in a vital component pursuant to Article VIII(1)(a) within a reasonable grace period granted to DEUTZ by Purchaser. In the event of such rescission, Purchaser, upon return of the defective Engines to DEUTZ, shall be entitled to a

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refund of any portion of the purchase price Purchaser has paid for such defective Engines and Purchaser shall have no further rights against DEUTZ or the manufacturer with respect to such defective Goods or the contract for the sale thereof.

- (8)(a) Subject to Article VIII(8)(b), this contract and the technical specifications may include many different performance parameters or specifications related to the Goods or Services. However, DEUTZ and Purchaser agree that the only critical performance parameters, if any, are outlined in the Specifications section of the Quote as Critical Values ("Critical Values"). In the event that the Goods or Services do not comply with the Critical Values due solely to DEUTZ's fault and Purchaser has given DEUTZ a reasonable time (not less than 3 months) to repair or replace the Goods or reperform the Services, then Purchaser to the exclusion of any other remedy, claim or right at law or in equity, shall be entitled to claim liquidated damages, if any, as outlined in the Specification section of the Quote. The amount of liquidated damages shall be calculated for each Good that fails to meet the Critical Values separately ("Deficient Good") and shall be based on the sale price ex-works manufacturer's factory of such Deficient Good ("Base Price").

Except for a failure to meet a Critical Value, DEUTZ shall have no liability whatsoever for the failure of the Goods or Services to meet any other performance data in the contract or elsewhere. Upon payment of the liquidated damages pursuant to this Article VIII(8)(a), if any, all claims of the Purchaser related to or resulting from non-compliance of performance data or Critical Values of the Deficient Good shall be deemed fulfilled. The liability of DEUTZ for meeting the Critical Values of the Goods is limited to three (3) months from the day of start of commissioning of the respective Goods ("Performance Period"). Claims against DEUTZ for non-compliance of Critical Values after expiration of the Performance Period are expressly excluded and waived by Purchaser. The liquidated damages provided for in this Article VIII(8)(a) are Purchaser's sole and exclusive remedy for Deficient Good(s), and constitute DEUTZ's only liability for Deficient Goods.

- (8)(b) DEUTZ's obligation to meet the Critical Values under Article VIII(8)(a) is conditioned upon the following: (i) Purchaser shall commission and run the performance tests on the Goods no later than six (6) months after delivery of the Goods under Article IV(2); and (ii) Purchaser shall provide sufficient quantity and quality of feedstock, consumables, expendables, qualified and licensed operating personnel and all other things necessary to commission and run the performance tests. In the event that Purchaser fails to comply with either Article VIII(8)(b)(i) or (ii), DEUTZ shall be deemed to have met all performance obligations, including the Critical Values, of the Goods under the contract.
- (9) DEUTZ AND THE MANUFACTURER SHALL HAVE NO LIABILITY, RESPONSIBILITY OR OBLIGATION TO ANY PERSON WITH RESPECT TO DEFECTIVE SERVICES OR DEFECTIVE OR DEFICIENT GOODS EXCEPT FOR THE OBLIGATION OF DEUTZ TO A DIRECT PURCHASER FOR RESALE OF THE GOODS FROM DEUTZ AS SET FORTH IN THIS ARTICLE VIII. NOTWITHSTANDING ANYTHING ELSE IN THE CONTRACT TO THE CONTRARY, NEITHER DEUTZ NOR THE MANUFACTURER AND THEIR SUBSIDIARIES OR AFFILIATED COMPANIES SHALL IN ANY EVENT BE LIABLE TO PURCHASER OR TO ANY OTHER PERSON FOR DAMAGES ARISING OUT OF SHUTDOWNS, LOSS OF REVENUE, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, COST OF SUBSTITUTE FACILITIES, GOODS AND SERVICES, COST OF CAPITAL, COST OF REPLACEMENT POWER, GOVERNMENTAL AND REGULATORY SANCTIONS, INOPERABILITY OF THE GOODS OR SERVICES SUPPLIED, LOSS OF PROFITS OR DAMAGE TO ANY PROPERTY OTHER THAN THE GOODS SUPPLIED, AND CLAIMS OF PURCHASER'S CUSTOMERS FOR SUCH DAMAGES OR FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE OBLIGATIONS OF DEUTZ AS SET FORTH IN THIS ARTICLE VIII TO A PERSON PURCHASING THE GOODS OR SERVICES DIRECTLY FROM DEUTZ ARE IN LIEU OF ALL STATUTORY, EXPRESS OR IMPLIED OBLIGATIONS, LIABILITIES, REPRESENTATIONS AND WARRANTIES OF DEUTZ AND THE MANUFACTURER TO SUCH PURCHASER OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. MOREOVER, THE RIGHTS OF SUCH PURCHASER PURSUANT TO THIS ARTICLE VIII MAY NOT BE (AND SHALL NOT, UNDER ANY CIRCUMSTANCES, WHETHER BY VIRTUE OF ANY ACT OR CONDUCT OF DEUTZ, THE MANUFACTURER OR SUCH PURCHASER, OR FOR ANY OTHER REASON, BE DEEMED OR CONSTRUED TO BE OR HAVE BEEN) TRANSFERRED, ASSIGNED OR CONVEYED TO ANY OTHER PERSON, WHETHER BY OPERATION OF LAW OR OTHERWISE. FURTHERMORE, NEITHER PURCHASER NOR ANY OTHER PERSON SHALL, UNDER ANY CIRCUMSTANCES, ENTER INTO ANY AGREEMENT, UNDERTAKE ANY OBLIGATION OR LIABILITY OR MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, FOR OR ON BEHALF OF DEUTZ OR THE MANUFACTURER

OR HAVE, OR BE DEEMED OR CONSTRUED TO HAVE, ANY AUTHORITY TO DO SO. ANY AGREEMENT, OBLIGATION, LIABILITY, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, ENTERED INTO, MADE OR UNDERTAKEN BY PURCHASER OR ANY OTHER PERSON SHALL UNDER NO CIRCUMSTANCES BE, OR BE DEEMED OR CONSTRUED TO BE, A TRANSFER, ASSIGNMENT OR CONVEYANCE OF ANY RIGHTS PURSUANT TO THIS ARTICLE VIII OR AN AGREEMENT, OBLIGATION, LIABILITY, REPRESENTATION OR WARRANTY OF, OR ON BEHALF OF, DEUTZ OR THE MANUFACTURER.

- (10) Purchaser warrants and represents that it is fully aware and understands the terms and conditions of this contract, including DEUTZ's warranty obligations and limitations under Articles VIII(1)-(9) and Article XVI. Purchaser may publish its own warranty conditions for the products of Purchaser that include Goods (either through assembly, remanufacture, reconditioning or rebuilding) and under no circumstances shall DEUTZ be responsible for Purchaser's warranties provided to its customers. Purchaser agrees to defend, indemnify and hold harmless DEUTZ and the manufacturer, their subsidiaries and affiliated companies from any claims and costs that are inconsistent with or would impose a higher standard of performance on DEUTZ than the performance required under Articles VIII(1)-(9) and Article XVI.

### IX. Responsibility of DEUTZ for Additional Obligations.

The remedies provided by Article VIII (to a person purchasing the Goods directly from DEUTZ for resale), Article IV(4) and Article X are the exclusive remedies available to Purchaser in the event DEUTZ fails to perform any obligation under the contract or the Goods supplied or Services performed cannot be used by the Purchaser in a manner agreed to by DEUTZ under the contract, whether because the Goods have failed to conform to the contract, the Services are defective, DEUTZ has failed to give any required instructions or because DEUTZ has given any incorrect instructions, recommendations or advice, with respect to the operation or servicing of the Goods, or otherwise.

### X. Purchaser's Right of Cancellation.

- (1) In the event that prior to delivery ex-works manufacturer's factory for Goods or the performance of Services DEUTZ acknowledges in writing that it will not be possible for DEUTZ to perform its contractual obligations in a material respect, the Purchaser may cancel the contract. The Purchaser, moreover, may cancel the entire contract if a portion of the Goods to be supplied cannot be delivered by DEUTZ and a partial delivery by DEUTZ would be valueless to the Purchaser; otherwise the failure to deliver a portion of the Goods shall only entitle the Purchaser to a proportionate reduction of the purchase price equal to the purchase price value of the non-delivered Goods. Following a proper cancellation by the Purchaser pursuant to this Article X(1), DEUTZ shall refund to the Purchaser any portion of the purchase price the Purchaser has paid for the Goods and the Purchaser shall have no further rights against DEUTZ with respect to the Goods to be supplied or the contract.
- (2) In the event of a delay in delivery for reasons other than those specified in Article IV(3), the Purchaser shall only be entitled to exercise its right of cancellation pursuant to Article X(1) if it has granted DEUTZ a reasonable grace period for delivery of Goods or performance of Services by a written notice containing the express statement that it will refuse acceptance of the Goods or provision of the Services after termination of that grace period, and such grace period has expired.
- (3) There shall be no right of cancellation pursuant to Article X(1) if the inability of DEUTZ to perform its contractual obligations is caused wholly or partially by the Purchaser. In such event the Purchaser shall remain liable to pay the full purchase price.
- (4) The right of cancellation provided in Article X(1) and delay liquidated damages in Article IV(4) are in lieu of all other rights and remedies at law or in equity of the Purchaser for any failure of DEUTZ to make delivery of the Goods to be supplied or a delay of DEUTZ in making delivery, including, without limitation, the right to damages or a reduction of the purchase price. The Purchaser shall have no right of cancellation or rescission except as set forth in this Article X.

### XI. DEUTZ's Right of Cancellation.

- (1) In case an event specified in Article IV(3) causes a significant change in the economic consequences to DEUTZ of performing the contract, or seriously affects the business activities of DEUTZ, the parties shall, by mutual agreement, modify the contract to the extent required to place DEUTZ in the economic position it would have been but for such event. If such modification cannot be achieved, DEUTZ, at its option, may cancel the contract. Following such cancellation, DEUTZ shall refund to the Purchaser any portion of the purchase price the Purchaser had paid for undelivered Goods and the Purchaser shall have no further rights against DEUTZ with respect to such cancellation. In particular, the

## SECTION 10 – TERMS AND CONDITIONS OF SALE

Purchaser shall not be entitled to damages as a result of such cancellation.

- (2) If DEUTZ contemplates an exercise of such right of cancellation, DEUTZ shall notify the Purchaser immediately after assessing the effects of the event, even if DEUTZ has previously agreed with the Purchaser upon an extension of the period of delivery.

### XII. Liability for Personal Injuries and Property Damage.

- (1) DEUTZ shall indemnify the Purchaser against direct injury to persons or damage to third party property caused by the negligence of DEUTZ prior to acceptance by the Purchaser of the Goods to be supplied. The limits of liability of DEUTZ shall be: 2,000,000 United States Dollars for injury to third party property; and 2,000,000 United States Dollars per person for third party personal injury; but no more than an aggregate of 2,000,000 United States Dollars.

(2) Purchaser shall defend and indemnify DEUTZ against all direct or indirect injury to persons or damages to property caused by the negligence of Purchaser or subsequent purchasers or their agents. The limits of liability of Purchaser shall be: 2,000,000 United States Dollars for injury to property; and 2,000,000 United States Dollars per person for personal injury; but no more than an aggregate of 2,000,000 United States Dollars.

### XIII. Patents.

DEUTZ's obligation to the Purchaser with respect to patent infringements is limited to the following:

- (1) If any of the Goods supplied by DEUTZ are claimed to infringe any patent granted in the United States, or if any of the Goods supplied by DEUTZ's parent corporation or one of their subsidiaries are claimed to infringe any patent granted in the Federal Republic of Germany, DEUTZ will (a) assist the Purchaser in extrajudicial and judicial settlement of the dispute with the claimant, (b) at DEUTZ's option, reimburse the Purchaser for the cost of defending a patent suit against the Purchaser, or, defend such suit on the Purchaser's behalf, and (c) hold the Purchaser harmless of any judgment in favor of the claimant, provided the Purchaser advises DEUTZ promptly in writing of any and all patent claims which may be made with respect to the Goods supplied and cooperates fully with DEUTZ in the defense or settlement of such claims.
- (2) With respect to components of the Goods supplied by DEUTZ that have not been manufactured by its parent corporation or one of their subsidiaries, DEUTZ shall, upon the written request of the Purchaser, assign to the Purchaser such rights, if any, as DEUTZ may have against the supplier or manufacturer relating to patent infringements and DEUTZ shall have no further responsibility or liability with respect to such components.

### XIV. Partial Invalidation, Merger.

In the event that any provision of the contract is or becomes invalid, the remainder of the contract shall not be affected. This contract constitutes the entire agreement between the parties hereto, any prior course of dealing, custom or usage of trade or course of performance notwithstanding.

### XV. Venue.

For all controversies, disputes or suits arising under the contract, the Purchaser consents to the jurisdiction of the courts in the State of Georgia, United States of America. The Purchaser agrees that any and all process directed to it in any such litigation may be served upon it outside the State of Georgia, United States of America with the same force and effect as if made within the State of Georgia, United States of America. The laws of the State of Georgia, United States of America, shall govern the validity, interpretation and enforcement of this contract and all controversies, disputes or suits arising thereunder. Such consent to jurisdiction shall not limit the right of DEUTZ to bring an action in any other court where jurisdiction over the Purchaser may be obtained.

### XVI. Limitations Valid and Property Insurance.

Notwithstanding any other provision of this contract to the contrary, and to the fullest extent permitted by law:

- (1) Indemnities against, releases from, and limitations on liability, and limitations on remedies expressed in this contract, as well as waivers of rights, including, but not limited to, subrogation rights, shall apply even in the event of the fault, breach of contract (including warranty), tort (including negligence), strict liability or other basis of legal liability of the party indemnified or released or whose liability is limited or allocated to the indemnitor, or against whom remedies have been limited, and shall extend to the

officers, directors, partners, employees, licensors, agents, subcontractors, vendors and related and affiliated entities of such party.

- (2) The total cumulative liability of DEUTZ and manufacturer and any of their subsidiaries and affiliated companies to Purchaser and subsequent purchasers and their subsidiaries or affiliated companies for all claims, losses, damages, and expenses resulting in any way from the performance or non-performance of this contract or defective or deficient Goods or Services ("Claims") shall not be greater than the payment actually received by DEUTZ from Purchaser for the Goods or Services giving rise to the Claims and Purchaser agrees to defend, indemnify and hold harmless DEUTZ and manufacturer and their subsidiaries and affiliated companies from any Claims in excess thereof.
- (3) DEUTZ makes no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth herein.
- (4) The parties' rights, liabilities, responsibilities and remedies with respect to the Goods and Services shall be exclusively those expressly set forth in this contract and are in lieu of any others available at law, equity or otherwise.
- (5) As between Purchaser and DEUTZ, Purchaser assumes responsibility for all loss of or damage to property owned by or in the custody of Purchaser and any items at the job site or in transit thereto (including, but not limited to, construction work in progress) however such loss or damage shall occur, including the fault or negligence of DEUTZ. Purchaser agrees to maintain appropriate property insurance and does hereby waive all rights (and, to the extent required, shall require its insurers to waive all rights) of subrogation against DEUTZ and manufacturer and their subsidiaries and affiliated companies for claims and costs covered under any property insurance that Purchaser may carry. If Purchaser purchases, or causes a construction contractor to purchase, a builders-all risk or other property insurance policy for a project upon which Goods are installed or Services performed, Purchaser shall require that DEUTZ and manufacturer and their subsidiaries and affiliated companies be included as named insureds on such policy without liability for the payment of premiums, co-payments or deductibles.

Revised August 2012