



## **BAY DIESEL CORPORATION TERMS AND CONDITIONS**

Our contracts for repairs, parts, new equipment sales and services ("Work") are entered into by us solely on the basis of the limited liabilities set forth herein. When accepted, our proposal for Work and these terms and conditions shall constitute the entire agreement between the parties. We expressly reject any terms and conditions proposed by the Customer unless accepted in writing and executed by an officer of Bay Diesel.

If this project is for the purchase of new equipment, Bay Diesel is quoting this project as a material supplier only and is, therefore, exempt from provisions in the contract documents, if any, pertaining to subcontractor bonds and retainages. The equipment and services listed in this quotation are being offered as our interpretation of the specification and application requirements. Bay Diesel makes no guaranty or warranty of the approximate available date of new equipment delivery. Any such date specified is merely an estimated date of shipment or delivery received from the manufacturer. Performance by Bay Diesel shall be subject to "Force Majeure" which term is hereby declared to include all circumstances beyond the direct and immediate control of Bay Diesel.

Bay Diesel warrants its workmanship and materials to be free from defects for sixty (60) days from completion or termination of the Work for any reason. For new equipment purchases, Bay Diesel will use its efforts to pass on to Customer all manufacturers' warranties applicable to the Work. In the event of defective workmanship or materials, Customer must notify Bay Diesel immediately and give Bay Diesel representatives the opportunity to inspect the defect before it is repaired. Our sole obligation and Customer's sole remedy will be the repair or replacement of the defect. For warranty repairs performed by Bay Diesel, Customer shall be responsible for travel time and expenses to and from the location where the work is to be performed. Bay Diesel shall not, in any event, be liable for consequential, incidental or contingent damages, including, but not limited to, lost revenues, lost profits, delay, demurrage, or lost opportunities. In no event shall our aggregate liability exceed \$100,000 or the Work price, whichever is less.

The foregoing is exclusive and in lieu of all other warranties and representations, whether statutory, expressed or implied, including, but not limited to, warranties of merchantability, fitness for any particular purpose and workmanlike service.

Should our account not be paid when due, a service and handling charge of 2% per month shall be added. Customer agrees to pay all costs of collection, including reasonable attorneys' fees. If there is a building or vessel involved, Bay Diesel is also relying on the credit of the building or vessel and does not waive its lien.

Different terms or more extensive liability will be accepted if an agreement in writing is executed by Bay Diesel and Customer prior to commencement of the Work, and the price for the Work is adjusted to reflect the additional risk and insurance exposure.

Any dispute related to our Work shall be litigated either in the U.S. District Court for the Eastern District of Virginia, Norfolk Division, or the Circuit Court for the City of Norfolk, Virginia. No litigation may be initiated by Customer more than one (1) year after completion or cessation of the Work.

(REV 3/16/07)

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