

Propulsion Controls Engineering Terms And Conditions

THIS AGREEMENT is entered into between the Customer identified on the reverse side of these Terms and Conditions (such reverse side and these Terms and Conditions, together, the "Agreement") and Propulsion Controls Engineering ("Contractor").

1. **ORDER:** Contractor agrees to provide all materials, goods, and supplies (the "Goods") and the services (the "Work") described within the Agreement (as applicable, the "Agreed Items"). The Customer has specifically ordered the Agreed Items, has inspected the Goods and the Work, and confirms that the Goods are in good condition and the Work is satisfactory, as applicable.

2. **LIMITED WARRANTY:** Any manufacturer's warranties shall be applicable to all Goods sold with such warranties. Contractor does not assume any responsibility for said warranties, and does not make any warranty of its own with respect to any of the Goods.

3. **WARRANTY EXCLUSIONS THE MANUFACTURER'S WARRANTIES, IF ANY, ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY. CONTRACTOR DISCLAIMS ANY WARRANTY, EXPRESSED OR IMPLIED, THAT THE MATERIALS ARE MERCHANTABILITY OR FIT FOR ANY PARTICULAR USE OR FIT FOR ANY PARTICULAR USE OR PURPOSE.**

4. **AGREED PRICE:** Customer shall pay Contractor the total amount for the Agreed Items (the "Price"). The Price shall be paid to the Contractor without deduction or offset prior to delivery of any Goods or the release of any of Customer's property upon completion of the Agreed Items. The Price has been determined in part because of the limitations and exclusions of Customer's rights and remedies as set forth herein. If Customer wishes to have broader or different rights and remedies, Customer shall advise Contractor in writing and the parties shall attempt to negotiate a mutually acceptable price. Customer agrees to pay a \$150.00 service minimum for initial troubleshooting and diagnostic evaluation. This will be applied to the repair after the customer agrees to the change in scope of work.

5. **CUSTOMER'S EXCLUSIVE REMEDY:** The sole and exclusive remedy of Customer against Contractor arising out of or relating to this Agreement for injuries or damages as a result of any alleged breach of this Agreement or any alleged negligent or defective repairs, or any related claim of an nature, shall be strictly limited to repair or replacement of the alleged negligently repaired or defective material or equipment, or correction of the alleged defective or negligent installation, as the case may be.

6. **TIME LIMIT ON ALL CLAIMS:** It is agreed that no claim arising out of or relating to this Agreement, including but not limited to contractual claims for breach of contract or warranty and tort claims based upon any alleged negligence or on theories of strict liability or otherwise, shall be valid against Contractor unless any such claim is presented in writing to the Contractor within 60 days of delivery and/or completion of the Agreed Items and suit thereon commencing within 6 months of such date.

7. **CUSTOMER'S ASSUMPTION OF RISK:** a. Except as provided in paragraphs 2 and 5 above, Customer accepts the risk of all losses hereafter occasioned by the acts or omissions of the Contractor arising out of or relating to the Agreement, whether in the nature of negligence, strict liability, or otherwise, and agrees to purchase and maintain such insurance against such risks as Customer deems prudent and shall look only to said insurance for compensation or damages related to any such loss regardless of the legal or physical responsibility thereof; subrogation against Contractor is hereby waived.

b. Customer accepts the risk of, and contractor shall have no legal liability whatsoever, under any circumstance for, the tortious or criminal acts of any third party, including but not limited to theft, conversion, and malicious mischief.

c. Customer accepts the risk of and Contractor shall not be liable under any circumstance for, any incidental, special, or consequential damages of any nature whatsoever, including but not limited to any claims related to delay or loss of use of vehicle, vessel, equipment, lost

revenues, lost profits, wages, etc. whether such damages be predicated upon an alleged breach of this Agreement, negligence by the Contractor, strict liability in tort, or upon any other basis whatsoever.

8. **FINANCIAL LIMITATIONS:** Contractor's aggregate liability to all parties in interest arising out of or relating to this Agreement or the Agreed Items for all damages, including, but not limited to, any tort damages, shall not exceed \$2,500.00 or the sum received by Contractor under this Agreement, whichever is less.

9. **INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION:** a. Customer shall indemnify and hold Contractor harmless of any claim, loss, cost, liability or expense, including reasonable attorney's fees incurred in defense thereof, arising from any loss, damage, injury, or death of Customer, its agents, employees, or independent contractors, or the intentional or negligent acts or omissions of Customer or its agents, employees or independent contractors, or the failure of Customer of its agents, employees or independent contractors to comply with the provisions of this Agreement.

b. During the period in which any vehicle, vessel, equipment, etc. is on the Contractor's premises, Customer shall purchase and maintain such types and amounts of insurance as Customer deems reasonable and prudent to protect against risks assumed by Customer under this Agreement. As to all such policies or insurance and all claims made thereon, for itself and its insurers, Customer specifically waives all right of subrogation against Contractor, its subsidiaries, affiliates, agents, officers, directors and employees.

10. **CONTRACTOR'S REMEDIES:** a. Customer shall pay interest on any balance more than days overdue at the lesser of 1% per month or the maximum permitted by law until paid.

b. Customer expressly agrees that Contractor shall have the right to seize, hold, or otherwise detain property of the Customer in Contractor's possession after 90 calendar days with or without judicial process until such time as all sums due under this Agreement have been paid; and Contractor shall not be liable for any damages suffered or claimed to have been suffered as a result of any such seizure, holding or detention.

c. Returns must be made within 30 days of delivery of the Goods, in saleable condition as new, and will be subject to a 25% restocking fee.

d. Customer will pay Contractor's reasonable costs of enforcement of this Agreement.

11. **WAIVER OF CONSENT:** One or more waiver of any term or condition of this Agreement by either party hereto shall not be construed as a waiver of a subsequent breach of the same term or condition. The consent by either party hereto to any act by the other party requiring consent shall not be deemed a waive or render unnecessary consent to any subsequent act requiring consent by such party.

12. **INVALIDITY:** If any provision of this Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **CAPTIONS:** The various headings and numbers herein, and the grouping of provisions of this Agreement into separate paragraphs and subparagraphs, are for the purpose of convenience only and shall not be considered a part thereof.

14. **ENTIRE AGREEMENT:** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, and understanding between the parties. Any amendment shall be in writing and signed by the parties. This Agreement is intended solely for the benefit of the parties hereto and is not intended to benefit any third person or party.

15. **NO WORK BY CUSTOMER:** Neither Customer, nor any contractor or subcontractor engaged by Customer shall perform any work on any vehicle, vessel, equipment, etc. while at the facilities of Contractor.