

GENERAL TERMS AND CONDITIONS OF SALE

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Conger Industries, Inc. ("**Seller**") to the buyer named on the reverse side of these Terms or upon any bid, proposal, quote, confirmation of sale, or invoice ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying proposal, quote, confirmation of sale, or 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 Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery of Goods.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order and in accordance with the specifications related to delivery on the Sales Confirmation. Any delivery dates provided by Seller are estimates only. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the location designated by Buyer (the "**Delivery Point**") in accordance with the terms of the Sales Confirmation. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point, and will unload and release all transportation equipment promptly so Seller incurs no demurrage or other expense.

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

(d) If for any reason Buyer fails to accept delivery of any of the Goods, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up,

whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-Delivery.

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

(b) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within two (2) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller 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) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

4. Shipping Terms. Seller shall make delivery in accordance with the terms on the face of the Sales Confirmation. Seller may, at Seller's discretion, delay delivery and exercise any other remedies under this Agreement if Buyer fails to pay any balance when due or Buyer has an existing outstanding account balance with Seller.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer as soon as the Goods are properly tendered to Buyer at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer 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 Wisconsin Uniform Commercial Code.

6. Buyer's Acts or Omissions. If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller 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 Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within thirty-six (36) hours of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is materially

different than identified in Buyer's purchase order; or (ii) product shipped is damaged in shipping.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, (ii) repair such Nonconforming Goods to make said Goods conforming Goods, or (iii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Upon the direction of the Seller, Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at 2290 S. Ashland Avenue, Green Bay, WI 54304. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods and as soon as reasonably possible, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

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

8. Transaction Disclosure.

(a) The U.S. Environmental Protection Agency (EPA) is reviewing prior emissions certification/s related to the engine powering the Toyota 8-Series LSI engine models produced from 2007 through 2020, including the testing, reporting, and recordkeeping practices of Toyota Material Handling, Inc. (TMH) and its parent company. This review may result in the EPA voiding the certification that originally authorized TMH to sell this engine in the U.S. As a result, you should not rely on the emissions label affixed to the engine or the existence of a previously issued emissions certificate for the engine. Buyer has been informed by Seller that the EPA may void the emissions certificate previously issued to TMH for the engine models mentioned previously. Buyer's participation in this transaction is not based on any type of representation made by TMH or Seller that the engine powering this equipment is certified by the EPA or meets applicable U.S. emissions requirements, and buyer is not relying on such representations in making the purchase or lease decision.

9. Lithium Ion Battery Disclosure.

(a) The use of any lithium-ion battery not in the truck's UL files is not considered safe for this truck by the manufacturer or the dealer. The use of any lithium-ion battery that is not in the truck's UL file could result in product failure, property damage, injury, and death. The use of any lithium-ion battery not in the truck's UL file may violate UL/ANSI/OSHA standards. The use of any lithium-ion battery not in the truck's UL file will void the truck's manufacturer warranty. Buyer's decision to use or install a lithium-ion battery not in the truck's UL file, is contrary to the recommendation of Seller. By signing this contract, Buyer, having been made aware of the risks associated with the installation of the lithium-ion battery not in the truck's UL file,

accepts all liability related to the installation of the battery that is not in the truck's UL file. Furthermore, Buyer agrees to indemnify and hold harmless, Seller, its officers, directors, employees and agents, from and against any claims, actions, demands, judgements, liabilities, fines, penalties, and expenses, including attorneys' fees and expenses resulting from, or alleged to result from Seller's breach of warranty, breach of contract, misrepresentation, false certification, negligence, or failure to exercise due care in the sale of a truck to Buyer with a lithium-ion battery not in the truck's UL file.

10. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Sales Confirmation. Prices listed within the Sales Confirmation are valid for thirty (30) days from the date contained therein and are subject to change upon expiration of said 30-day period. Prices are quoted expressly in consideration of the acceptance of the terms and conditions set forth herein. Any delay in shipment caused by Buyer's actions will subject Prices to increase. In no event will Prices be decreased.

(b) 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 Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

11. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller within ten (10) days from the date of Seller's invoice, unless otherwise agreed to in writing between the parties or otherwise stated on the Sales Confirmation. Buyer shall make all payments hereunder in US dollars unless a financing arrangement has been made with Seller.

(b) Buyer 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. Seller reserves the right at any time to refuse or stop delivery of any order whenever, in Seller's discretion, there is doubt as to Buyer's financial ability to complete payment. Seller may decline to deliver any accepted order, except for orders pre-paid in cash. Buyer shall reimburse Seller 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 Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

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

12. Limited Warranty.

(a) Seller makes no warranties with respect to the Goods to Buyer, other than to the extent an original warranty is provided by the manufacturer of the Goods. In such case, Seller shall reasonably assist Buyer to make a claim under such warranties. Seller shall not be liable for a breach of any warranties provided in this section if (i) the products are not stored or handled appropriately according to either Seller's or the Goods' manufacturer's written or oral instructions; (ii) the claimed defect resulted from the damages occurring after delivery; (iii) the claimed defect was not reported to Seller within thirty (30) days after delivery; (iv) the claimed defect was observable at the time of delivery and was not reported upon delivery; (v) Buyer makes any further use of such Goods after giving such notice.

(b) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 10(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) 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.

13. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER 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 SELLER 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 SELLER'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 SELLER FOR THE GOODS SOLD HEREUNDER, WHICHEVER IS LESS.

(c) The limitation of liability set forth in Section 11(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

14. Indemnification. To the fullest extent permitted by law, Buyer indemnifies, releases, holds Seller, its agents, entities and affiliates harmless, and, at Seller's request, defends Seller, Seller's agents, entities, and affiliates (with counsel approved by Seller), from and against

all liabilities, claims, losses, damages, and expenses (including attorney's and/or legal fees and expenses) however arising or incurred, related to any incident, damage to property, injury or death of any person, or violation of law or regulation caused by or connected with the Goods. Buyer's indemnity obligations shall survive the expiration or termination of this Agreement.

15. Insurance. During the term of this Agreement and for a period of one (1) year thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000.00 with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

16. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

17. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for seven (7) days after Buyer's receipt of written notice of nonpayment; (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.

18. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. 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.

19. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, 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 Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received

from Seller. Seller 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 Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

20. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

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

22. 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.

23. 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.

24. 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 Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Wisconsin.

25. 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 Wisconsin in each case located in the City of Green Bay and County of Brown, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

26. Litigation Costs and Expenses. If any party institutes any legal suit, action, or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud, and statutory claims, the prevailing party in a final, non-

appealable judgment regarding the suit, action, or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting or defending the suit, action, or proceeding, including reasonable attorneys' fees, expenses, and court costs.

27. 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), facsimile (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.

28. 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.

29. 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: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

30. 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.

31. Entirety of Agreement. This document, together with any other documents furnished by the Seller, shall set forth the entire agreement between the parties and may not be changed in any way except by written instrument signed by both parties.