

General Terms & Conditions

1. GENERAL

All offers, deliveries and Services of Turner Engine Control Solutions ("Turner"), and the acceptance of any order placed by the Purchaser with Turner for the Turner governors and controls (the "Products") shall be subject to these terms and conditions. No terms and conditions communicated by the Purchaser to Turner on the Purchaser's order form or otherwise shall apply unless expressly accepted by Turner in writing.

Any agent giving an order to Turner will be personally liable for all obligations under the order, unless he has disclosed the identity of the principal and Turner has accepted such principal.

The Purchaser shall not be entitled to withdraw his order after acceptance thereof by Turner except with prior written consent of Turner and then only upon such terms as Turner may deem necessary.

2. DESCRIPTION OF THE PRODUCTS

Any drawing, weights, dimensions and other descriptive matter contained in Turner's quotation or order acknowledgement form are as accurate as Turner is able to be. All descriptions, drawings, illustrations, or other information contained in Turner's catalogues, price lists and other publications are intended to present only a general description of the Products and shall not constitute a representation or basis for, or form part of, any agreement between Turner and the Purchaser.

3. DELIVERY

Unless otherwise provided for in Turner's order acknowledgement form, the delivery of the Products ordered by the Purchaser shall be effected ex works, place of manufacture. Although Turner shall make every effort to meet acknowledged delivery dates, these shall not entitle the Purchaser to indemnification for delays in delivery howsoever caused.

Unless otherwise provided for in Turner's order acknowledgement form Turner may, at its sole discretion, change sources of material or sub-contract the manufacturing of all or part of the products.

If delivery is delayed due to lack of instructions from the Purchaser or because of incomplete financial arrangements on the Purchaser's side, or if the delivery date is otherwise modified at the Purchaser's request, Turner shall be entitled to charge interest on the price of the Products (as acknowledged on Turner's acknowledgement form) of 2% above the legal interest rate for the duration of the delay.

The Purchaser shall be responsible for all costs and charges incurred in relation to the Products after delivery thereof including freight, insurance, customs, duties and taxes.

Turner accepts no responsibility regarding the transport or insurance arrangement even if Turner agreed to prepay the shipment of the Products on the Purchaser's behalf. The Products are at the Purchaser's risk from the time of delivery ex works. If delivery is delayed because of lack of instructions or because of incomplete financial arrangements from the Purchaser the Products will be stored at the Purchaser's risk and costs.

4. PRICES

The prices specifically quoted by Turner at the request of the Purchaser are indicative and not binding until confirmed by Turner's order acknowledgement form, for the period stated in the quotation for, subject always to any change in turnover tax (BTW) or other governmental levies. The prices shown on any published price list are subject to change without notice and are not binding on Turner.

The prices of the Products acknowledged on Turner's order acknowledgement form are firm to the specified delivery date unless otherwise expressly stated or the next paragraph applies. Where delivery is extended beyond the specified delivery date or the terms of the order are modified at Purchaser's request, Turner reserves the right to change the price of the Products. Field installation assistance is not included in the price unless specified. These services will be charged separately.

Turner may apply a surcharge to the quoted, or agreed prices in the order acknowledgement, with immediate effect by written notice to the Purchaser for any new or increased taxes, duties, tariffs or governmental levies imposed directly on Turner or indirectly, by its suppliers, foreign exchange fluctuations, or where there is an increase in the cost to Turner of supplying the goods or services due to a factor beyond the control of Turner. All prices are in any case exclusive of turnover tax (BTW), value added tax or other sales taxes, which will be charged in addition to the prices at the prevailing rate at the date of invoice.

5. TERMS OF PAYMENT

Unless otherwise provided for in Turner's quotation or order acknowledgement form, payment terms are strictly net 30 days from the date of the invoice.

All costs, judicial and extra-judicial, incurred by Turner with respect to the collection of bills and / or debts which are due by the Purchaser to Turner shall be for the account of the Purchaser; Turner has the right to fix these costs at an amount equal to 15% of the amount due.

If the Purchaser fails to pay within the agreed term of payment he shall be deemed ipso jure to be in default and Turner shall be entitled, without any notice of default being required, to charge interest at a percentage of 2% above the legal interest rate.

6. RETENTION OF TITLE

Notwithstanding delivery, title to the Products shall remain in Turner and shall not pass to the Purchaser until Turner has received payment in full with respect to all Products delivered or to be delivered, work done in relation to sales agreements, interest owed and / or accrued including any cost which may arise in respect of letters of credit, bills of exchange or checks along with any storage and other costs, resulting from a breach of a sales agreement by the Purchaser.

During such time as Turner has title to the Products, the Purchaser shall keep the Products in such a way as to clearly indicate at all times that the said property remains that of Turner. The Purchaser shall take any and all measures necessary to protect and secure Turner's property and assist and cooperate with Turner in protecting Turner's property.

The Purchaser shall insure the Products, title of which remains in Turner, against any and all risks commonly insured against such as theft, fire and / or water damages. At the first request of Turner, the Purchaser shall prove that it has fulfilled this obligation.

During such time as Turner retains title to the Products, the Purchaser in possession of the Products shall have the power to sell and actually deliver the Products in the normal course of his business. At the first request of Turner the Purchaser shall assign all rights which the Purchaser may have against third party purchasers to Turner. The Purchaser shall indemnify Turner in respect of any proceedings, action or claim of any nature whatsoever made or brought by the third party purchaser against Turner regarding such sale.

Turner shall be entitled to repossess all or any of the Products upon the occurrence of any of the events named in Article 10. For the purpose of repossessing any of the Products pursuant to this Article, Turner shall be entitled to enter upon any land and / or buildings in which the Products may be or are reasonably believed by Turner to be situated. The Purchaser shall pay all costs incurred by Turner in repossessing the Products.

Nothing in this article shall prejudice Turner's rights in relation to the Purchaser and / or third parties under the law.

7. PRODUCT AND SERVICE WARRANTY

I. TURNER PRODUCT WARRANTY

Turner gives no warranties other than those provided by the manufacturer's standard warranty terms of which may be obtained from the manufacturer on request and such warranties as are specifically provided by statute. When legally acceptable the manufacturer's warranty shall take precedence over the statutory warranty.

II TURNER SERVICE WARRANTY

Turner gives no warranties with regard to installations or servicing performed except agreed by specific order. All other warranties are excluded.

8. LIMITATIONS

The sole obligation of Turner hereunder is to repair or replace, at its option, and without charge, any Turner Product that is defective, or, in the case of defective Services, to re-perform such Services. Other than the foregoing repair, replacement or re-performance, the purchaser shall have no other remedy against Turner, and Turner shall not be liable for loss or damage arising from statute, law, strict liability in tort, or negligence resulting from any defect in a Turner Products or in Turner Services, even though the defect was caused by negligence, breach of warranty or strict liability in tort of Turner. In any event, Turner shall not be liable for incidental and / or consequential damages including loss of income or profits, lost sales, or economic loss.

9. CONDITIONS

Such repair, replacement, or re-performance will be effected at a location of Turner's choice (including Turner plants and service facilities, Turner subsidiary plants, or authorised service facilities. In replacing any Turner Products pursuant to this WARRANTY, Turner may replace such Turner Product with modified or improved product or component.

Purchasers claiming warranty service should contact the Service Department of the Turner location or Turner distributor where the item was purchased.

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OTHER EXCLUSIONS

- Prototypes and test units. These units or the transactional documentation will be marked as experimental, prototype, test, beta, or other similar marking. Turner grants no warranty to such products and / or software, either expressed or implied, as the purpose of these products is research and development testing.
- Turner Products which, in Turner's opinion, have been damaged by misuse, negligence, or accident.
- Turner Products on which disassembly and / or repairs have been attempted without prior authorization from Turner.
- Any Turner Product if any component part has been repaired or replaced by any part not manufactured or furnished by Turner.

Apart from the obligations set forth herein (unless otherwise agreed in writing) Turner makes no other warranty or condition, expressed or implied (by statute, common law, trade usage or otherwise), and specifically excludes the implied warranties of merchantability and fitness for a particular purpose, as well as all other warranties expressed or implied.

10. LIABILITY

Turner (or any affiliated company of Turner) shall not be liable for any loss or damage arising from statute, law, strict liability, in tort, or negligence. This limitation does not apply if loss or damage occurs as a result of gross negligence or wilful misconduct on the part of Turner.

Turner (or any affiliated company of Turner) shall not be liable for any consequential loss or damage in relation to the Products, whether based upon lost goodwill, loss of profit, work stoppage, impairment of other goods or otherwise and whether arising out of breach of warranty or condition, breach of Contract, negligence or otherwise.

All risks and costs during the assembly of the Products after delivery thereof are for responsibility of the Purchaser. Any injury to persons or damage to property during the assembly and testing of the Products after the delivery thereof are the risk of the Purchaser who expressly agrees to indemnify Turner for any liability incurred thereby.

If any Product is modified or if any component part has been Replaced by a part not furnished by Turner (except by or upon written authorization of Turner), all risk and liability with respect to subsequent use of the Product will be the responsibility of the Purchaser.

The Purchaser shall make no changes in software programming incorporated in or furnished with any Turner Product, unless first authorised or requested to do so by Turner. Any liability arising from any unauthorised changes shall be the Purchaser's responsibility.

In the event Turner gives written notice to the Purchaser (at the last known address) recalling a Product for safety modifications (at Turner's expense), or the replacement of certain parts or software (furnished by Turner), the Purchaser shall be obliged to promptly comply with the recall notice. If the Purchaser is not the user of the Product, the Purchaser shall be obliged to inform the user and urge him to comply with the recall notice. Failure to comply shall result in the Purchaser being exclusively liable for any malfunction, damage or injury, which may arise from the subsequent use of that Product.

After three years from the date of delivery of the Products Turner will accept no claim regarding the Products, regardless of its grounds.

11. PERFORMANCE DATA

Any figures or other details given in relation to the performance of the Products are based upon Turner's experience gathered through tests and otherwise, but are not guaranteed.

12. DEFAULT

If any of the following events occur all monies accrued, and owing under the agreement shall become immediately due and payable and Turner shall be entitled at any time thereafter to terminate the agreement and any other agreement between Turner the Purchaser by written notice, and / or to suspend further deliveries of products, without prejudice to Turner's right to full indemnification:

- A if the Purchaser defaults, commits a breach of contract of any other obligations to Turner, and in Turner's reasonable judgement termination of the agreement or suspension Of further deliveries is justified;
- B if an attachment or execution is levied upon the Purchaser's property and / or assets;
- C if the Purchaser makes, offers or proposes a settlement, arrangement or composition with his creditors. If a resolution or petition to wind up the Purchaser's business is passed or presented, if a petition for an administrative order in respect of the Purchaser is presented, if a petition for a bankruptcy order is made against the Purchaser, or if a receiver, liquidator, curator or manager of the Purchaser's undertaking, property, assets or any part thereof is appointed;
- D if Turner considers that the Purchaser may be unable to provide payment in full and / or to perform any of his other obligations under the agreement, and the Purchaser is (in Turner's reasonable judgement) not able to provide security covering his obligations.

13. RIGHTS IN DATA, DESIGN AND MANUFACTURE

The Purchaser expressly agrees that Turner retains exclusively all rights in the design and manufacturing date of the Products and that Turner grants no rights to the Purchaser to use such date for procurement of products from any other source.

14. PATENTS

Turner will reimburse actual expenses reasonably incurred by, and damages and court costs awarded by judgement against the Purchaser in consequence of any assertion or lawsuit arising from alleged infringement of any adversely – owned patent because of the use or resale of a Product manufactured and sold by Turner providing:

A the facts are such that the patent owner could have legitimately brought action against Turner for direct or contributory infringement under the laws of the country which issued the patent, and

B the Purchaser promptly notifies Turner in writing of all particulars relating any such or lawsuit, empowers Turner in its sole discretion to defend, resolve or settle the controversy on behalf of the Purchaser, and co-operates in every reasonable way (at Turner's request and expense) in the defence, resolution or settlement of the controversy.

In the event that a final injunction issues from such an infringement lawsuit against the purchaser, Turner will at its expense and option either:

- A procure for the Purchaser the right to use and resell the Turner Products involved or
- B replace the infringing substitutes of equal performance. The indemnification provided for under this Article shall not apply if the infringement claim is the result of the Turner Product being used in combination with a non-Turner product. In no event shall Turner be liable for any liability for any infringement of intellectual or industrial property rights beyond the confines specified in this Article.

15. FORCE MAJEURE

Turner shall not be liable for any damage, loss or injury suffered by the Purchaser if it is prevented from, hindered or delayed in performing any of its obligations due to the occurrence of events which are beyond the reasonable control of Turner, or cannot be attributed otherwise to Turner, which would render the performance by Turner of its obligations to the Purchaser impossible or impracticable ('force majeure').

Force majeure shall consist of, but shall not be limited to, the following: strike, lock-out or trade dispute (in each case whether involving Turner's or a third party's employees); non-availability, interruption, failure of or delay in Turner's usual supply sources, manufacturing facilities, transportation routes or facilities; breakdown of machinery or power failure; default or delay by Turner's sub-contractors, acts of national, local government or other authorities; storm, tempest, fire, flood, explosion, accident, theft, civil disturbance, insurrection or war.

16. RESALE

If the Purchaser resells Turner Products to third parties or otherwise grants third parties any right to use the Products, he shall be obliged to include in agreements with those third parties a verbatim version of the export and liability restrictions (including the recall notice) set forth in these General Terms and Conditions of Sale as well as all other export and liability restrictions laid down by Turner in the agreement of sale. If the Purchaser fails to perform this obligation, he shall indemnify Turner against any ensuing loss and / or damage and costs, which may be incurred by Turner.

The Purchaser shall also be obliged to include this Article in all agreements with the third parties referred to above.

17. GOVERNING LAW AND JURISDICTION

These General Terms and Conditions and any agreement in conjunction therewith shall be governed by the laws of the Netherlands. The United Nations Convention on the International Sale of Goods is excluded.

In any proceedings in respect of any matter which may arise in connection with the agreement or these General Terms and Conditions, the courts of the Netherlands shall have exclusive jurisdiction. In any such proceedings brought by Turner, Turner shall be at liberty to bring the proceedings before the courts that would have jurisdiction in the absence of this clause.

18. Privacy Statement

We would like to draw your attention to the fact that we will collect and use the personal data provided to us according to the process described in our Privacy Policy.

For more specific information about processing of your personal data we refer to <http://www.turner-ecs.com/Privacy-Notice>.