



TERMS AND CONDITIONS OF SALE (FOR NORTH AMERICAN CUSTOMERS)

Dated as of June 5, 2013

These Terms and Conditions of Sale (the “**Contract**”) is entered into as of _____, 20____ by and between **Electro-Motive Diesel, Inc. (“EMD”)**, having its principal executive offices at 9301 West 55th Street, LaGrange, Illinois 60525, USA, and _____ (“**Customer**”), having its principal executive offices at _____. EMD and Customer may hereinafter be referred to jointly as the “**Parties**.”

1. APPLICATION

This Contract applies to conditions of sale and prices quoted for the sale of services and new replacement spare parts manufactured and/or supplied directly by EMD in accordance with its Original Equipment Manufacturer (“**OEM**”) Engineering Specifications for use on EMD’s diesel locomotives operated within North America. Each purchase order or order (“**Order**”) placed by a Customer will operate as an acceptance of this Contract. Any terms and conditions that may be included with or attached to an Order (other than product description, quantity, and delivery information) will not be binding on EMD and are superseded by this Contract, nor will such terms and conditions be applicable to the sale or shipment of the parts or services referred to in the Order.

2. PRICES

EMD will invoice Orders based on the price identified in EMD’s Established List Price (“**ELP**”) that is in effect at the time of Order acceptance. EMD reserves the right to change its ELP at any time and without prior notice.

3. PAYMENT OF PURCHASE PRICE

(a) EMD will not deliver parts or provide services until Customer specifies in writing its method of payment, which method will be subject to EMD’s acceptance. Customer will make payment of the full purchase price for parts purchased within thirty (30) days (i) after shipment of the parts, or (ii) of the date of EMD’s invoice for services. Any invoice amount not paid when due shall be subject to a late payment charge equal to one and one-half percent (1.5%) of the delinquent amount per

month or the maximum amount permitted by law, whichever is less, prorated on a daily basis for each day that such amount remains unpaid. Payment of any late charge will not excuse Customer’s obligation to pay any principal amount. If Customer fails to pay EMD on a timely manner as described herein, Customer will also reimburse EMD, within ten (10) days of EMD’s demand, for any collection costs or expenses incurred by EMD.

(b) EMD may, at any time, suspend performance of any Order or require payment in cash, security, or other adequate assurance satisfactory to EMD, when in EMD’s reasonable opinion, the financial condition of Customer or other reasonable grounds warrant such action.

(c) In the event that Customer pays an invoice within fifteen (15) days of the invoice date, a discount of one-quarter of one percent (0.25%) will be applied to the total invoice price. Payment terms are governed by Section 3(a) above otherwise.

4. USE

All parts purchased under this Contract are intended for use on Customer’s owned, operated or serviced equipment. Customer agrees that parts or any other goods purchased under this Contract may not be resold without the prior written approval of EMD, which approval may be withheld at EMD’s sole and absolute discretion.

From time to time, parts purchased by Customer hereunder may contain software that requires a license for Customer’s use. In the event such a license is required, Customer will, in addition to the terms of this Contract, be

subject to the End User License Agreement (“EULA”) attached hereto as **Exhibit A**.

5. PACKAGED UNIT QUANTITIES AND MINIMUM ORDER QUANTITIES

All prices identified in the ELP are for Packaged Unit Quantities or Minimum Order Quantities.

(a) Packaged Unit Quantities. Orders must be for multiples of Packaged Unit Quantities. If an Order specifies a number of individual units that is a partial quantity of a Packaged Unit Quantity, the full Packaged Unit Quantity will be supplied and invoiced to Customer. For instance, if a Packaged Unit for a part includes 20 individual units, and an Order is received for 15 individual units of that part, EMD will supply and invoice for one (1) Packaged Unit of 20 individual units to Customer, and Customer will pay EMD the price for one Packaged Unit Quantity.

(b) Minimum Order Quantities. Some instances exist where EMD specifies a Minimum Order Quantity for certain parts described in the ELP. Parts currently subject to Minimum Order Quantities include, but are not limited to, wheels, axles, and other specially-made items. EMD will accept Orders for any quantity that is at or above the Minimum Order Quantity.

EMD reserves the right to add, delete or modify the quantities for Packaged Units or Minimum Order Quantities without notice. Where multiple Packaged Unit or Minimum Order Quantities are being delivered, whether for the same part or different parts, the prices reflected on an invoice is the per unit price, and not the extended price of the total quantity ordered for that same part.

6. MATERIAL AVAILABILITY AND SERVICE

(a) EMD maintains inventory levels on stock items based on the fluctuating demand within the industry. EMD, therefore, cannot guarantee the availability of stock items at the time of Customer’s desired purchase date, even though such items were available in stock at the time of EMD’s submittal of a quote to Customer for such items. Availability of items ordered (by one or more customers) with quantities exceeding EMD’s inventory may subject any Order to delayed shipment.

(b) Major assemblies, rebuild components, repair and return, and unit exchange (“UTEX”) parts are individually quoted.

(c) EMD’s UTEX parts program allows Customer to purchase a variety of EMD-remanufactured components to maintain Customer’s locomotives. UTEX components are readily available and incorporate the latest OEM innovations, wherever possible.

If EMD does not appear to offer the UTEX component required, Customer should contact EMD’s Parts Sales Manager to inquire if that part may be remanufactured. EMD reserves the right to initiate and terminate any UTEX product offering in its sole discretion.

(d) The repair and return service (“**Repair and Return**”) is generally available for engines, cases and pans, and parts for which no UTEX service is offered. If a UTEX material is offered, Repair and Return will not be available. Notwithstanding the foregoing, EMD reserves the right to convert a UTEX part number to a Repair and Return. In such cases, EMD will notify Customer of the Repair and Return price prior to repairing the core. Assuming that Customer accepted the Repair and Return price quoted, EMD will proceed to repair the core. If, during EMD’s diagnosis of the core, EMD determines that a core cannot be remanufactured, EMD will notify Customer and a diagnostic fee shall be assessed. Customer shall issue an Order to EMD for such diagnostic fee, and Customer will pay such fee.

(e) For delivery and price, please contact EMD’s Customer Service Department in LaGrange, Illinois (1-800-255-5355), or your Parts Sales Representative.

7. UTEX PARTS PROGRAM

(a) Core Return Requirement

(i) The price for any UTEX part does not include any charges relating to the core (failed unit) for which Customer is purchasing a UTEX part, and the price of the UTEX part is conditioned on Customer returning an acceptable core to EMD, as described below. At Customer’s sole cost and expense, Customer must return the core to EMD to the location specified in the Material Return Instructions (as described in Section 7(c))

below) within 60 days of EMD's shipment of the UTEX part to Customer, provided, however, if the core is located in Alaska or Mexico, the period wherein the return of core is required will be 120 days.

(ii) If Customer fails to return an acceptable core within the applicable return period described above, EMD shall invoice Customer, and Customer agrees to pay, upon receipt, an invoice for a non-return penalty charge to replace the core. Customer agrees to provide either a new Order or amend an existing Order that authorizes payment for the non-returned core.

(b) Core Acceptability

(i) Acceptable Cores - Any cores returned must be acceptable to EMD, as solely determined by EMD. An acceptable core is a repairable, like assembly or one that can be converted to the type of part ordered without undue expense to EMD and passes visual inspection and that otherwise meets the conditions set forth in EMD's core return instructions as described in: <http://www.emdiesels.com> > Supply Chain Management > Routing and Shipping > Material Returns.

(ii) Unacceptable Cores - In the event that Customer returns an unacceptable core, EMD will notify Customer of such unacceptability and Customer has five (5) days to resolve the discrepancy. If Customer returns the acceptable core, then the discrepancy will be deemed resolved.

If no acceptable core is returned, EMD may, at its option: (1) extend the said five (5) day period and ask Customer to return the acceptable core; or (2) modify and upgrade the unacceptable core to make it acceptable. If EMD elects to perform (2), EMD will invoice Customer a fee to upgrade the unacceptable core. Customer will pay such invoice upon receipt. In addition, an acceptable core remains due from Customer if available, and if not available, Customer will pay EMD an applicable penalty charge.

As to the unacceptable core received by EMD, EMD will advise Customer and provide Customer five (5) days to provide instructions to EMD to dispose of the core or return the core to Customer at Customer's sole cost and expense. If Customer fails to provide

instructions within such period, Customer will be deemed to have abandoned the core, and Customer shall be deemed to have transferred title and possession of such core to EMD for EMD's disposal or otherwise.

(iii) Incomplete Cores - If any cores require additional work and/or materials to become a "complete core" (i.e., acceptable, in-kind), EMD reserves the right to treat such core as a Repair and Return. EMD may determine the price for such work and invoice Customer accordingly. Customer shall issue a new Order or amend an existing Order to account for such additional price.

(iv) Cores Not Remanufacturable - If a core cannot be remanufactured, an inspection/diagnostic fee may be charged to Customer, and Customer agrees to pay such inspection/diagnostic fee. In addition, EMD will advise Customer and provide Customer five (5) days to provide instructions to EMD to dispose of the core or return the core to Customer at Customer's sole cost and expense. If Customer fails to provide instructions within such period, Customer will be deemed to have abandoned the core, and Customer shall be deemed to have transferred title and possession of such core to EMD for EMD's disposal or otherwise. A core remains due from Customer if available, and if not available, Customer will pay EMD an applicable penalty charge. Customer is responsible for shipment of any replacement cores and the return shipment of cores that are not remanufacturable.

(v) No Available Core to Return - If Customer does not have a core to return, Customer must contact EMD's Sales Manager and Customer Service Representative to initiate necessary steps pursuant to EMD's procedures. If an item appears on Customer's core return report but such item has already been returned, Customer must provide proof of delivery, including a bill of lading, packing slip and copy of EMD's return tag.

(c) Core Return Instructions

(i) When returning a core, Customer must refer to the instructions at: <http://www.emdiesels.com> > Supply Chain Management > Routing and Shipping > Material Returns.

(ii) Customer must use the packaging EMD provides when returning the core. Using other packaging not provided by EMD may result in physical injury to persons handling the product(s) as well as irreparable damage to the product. As EMD deems appropriate, EMD reserves the right to invoice Customer if Customer opts not to use EMD's approved, fully-recyclable packaging materials.

(iii) Cores must be returned to EMD in accordance with Section 7(c)(i). Customer is solely liable for any costs associated with Customer's shipment of the core to an incorrect address.

(d) UTEX Warranty

UTEX parts are covered under EMD's standard warranty policy (applicable to UTEX parts) that is in effect on the date of the Order.

8. SHIPPING, TITLE AND RISK OF LOSS

(a) Risk of loss or damage to parts purchased by Customer shall pass to Customer when the parts are delivered FCA (as described in Incoterms 2010) Hodgkins, Illinois, or FCA (as described in Incoterms 2010) EMD's factory, LaGrange, Illinois or other EMD or affiliate location. Notwithstanding the foregoing, title to any such parts will not pass from EMD to Customer until the purchase price is fully paid. Customer grants EMD a security interest in all such parts until EMD receives payment of the total fees for such parts. Customer shall, at the request of EMD, execute and deliver to EMD any instruments (including Uniform Commercial Code financing statements) that EMD may deem necessary to protect its security interest in such parts.

(b) Customer will assume and not be released from its obligation to pay the full purchase price in the event of any damage, loss, or destruction of the parts after delivery as described herein. Claims for shortages attributable to EMD must be in writing and received by EMD within thirty (30) days after delivery, and must be accompanied by EMD's packing slip and full, detailed description of any such claim.

9. TAXES

All parts and services sold under this Contract are exclusive of all applicable taxes. In addition to the

purchase price, Customer will assume and pay all applicable taxes, including sales and use taxes and/or receipts or gross income taxes in the nature of sales taxes (other than State or Federal income taxes) levied or imposed and arising out of the sale, use or delivery of the parts or services purchased by Customer hereunder.

10. PARTS WARRANTY

(a) EMD warrants to the Customer that the new or UTEX parts will be free from defects in material and workmanship under normal use and service until the earliest to occur of:

- 1) one (1) year after being placed in service by the original purchaser of the Parts under this Contract;
- 2) for Rail application only - within 100,000 miles/160,000 KM of operation;
- 3) for Rail application only - within 4200 megawatt hours for 16 cylinder (262 Mwhr per cylinder); or
- 4) two (2) years after delivery for parts that are not placed into service.

If EMD's examination confirms that a part is defective, EMD will, at its option: (i) repair the part free of charge at EMD's place of business or designated repair center, provided that Customer, at its sole cost and expense, delivers such defective part to EMD's place of business or designated repair center; or (ii) provide a UTEX or new part replacement, either of which will be delivered FCA (as described in Incoterms 2010) EMD's factory. EMD's sole liability and responsibility, and Customer's sole and exclusive remedy, with respect to any and all warranties shall be limited to the respective remedies set forth herein. All such remedies will be subject to the limitations of Article 12 below.

(b) This warranty will not apply to any part that is: (i) used for purposes for which it is not designed or intended; (ii) repaired, altered or modified, unless repaired, altered, or modified by EMD or its authorized service representatives or repaired, altered, or modified with EMD's prior written consent; (iii) subjected to misuse, negligence, accident, improper installation, or improper operation; (iv) not maintained according to EMD's maintenance instructions applicable to such part or other maintenance advice provided to Customer; (v)

that fails or is damaged as a result of any other component with respect to which any of clauses (i) through (iv) of this paragraph applies; or (vi) that EMD's examination discloses to be not defective.

(c) During the warranty period, EMD will either: (i) repair a failed part and after such repair, return such part to Customer for its use; or (ii) provide pre-authorized replacement parts to Customer at no charge, upon receipt of a Service Notification from EMD's District Service Engineer, both as described in EMD's Warranty Procedure Handbook, and an Order from Customer for replacement parts pursuant to the Service Notification. If, upon analysis by EMD following return of the part according to the procedures outlined herein, Customer is found to be responsible for the failure or defect, or if the original part is found to be free of the reported defect, then EMD will invoice Customer for all charges incurred by EMD with respect to any replacement parts supplied to Customer.

(d) Customer will also be responsible for all charges incurred by EMD if Customer orders new parts under its warranty parts order and EMD determines, either before or after Customer places such order, to fulfill its warranty obligations by either performing a warranty repair or by providing UTEX parts.

(e) Administration of warranty claims and EMD's performance of its warranty obligations will be according to EMD's then current Warranty Procedure Handbook, a copy of which is available to Customer upon request.

(f) Emissions Warranty. EMD locomotive product sales comply with the EPA locomotive emissions rule, 40 CFR part 1033. Where applicable, the sales include an emissions warranty in compliance with section 1033.120.

(g) THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY NON-CONTRACTUAL LIABILITIES INCLUDING PRODUCT LIABILITIES BASED UPON NEGLIGENCE OR STRICT LIABILITY.

11. DEFECTIVE PARTS WARRANTY RETURN PROCEDURE

If Customer returns any parts reported to be defective under the provisions of the warranty, Customer will comply with the guidelines for the return of defective parts set forth in EMD's Warranty Procedure Handbook, and the procedures set forth below.

(a) Warranty Claims Deadline

All warranty claims will be covered by EMD provided that the applicable part is still under warranty. Warranty claims must be submitted to and received by EMD's District Engineer within 60 days after the failure.

(b) Parts Return Deadline

Customer will return to EMD any parts that it has reported to be defective and that EMD's District Engineer has designated for return in the Service Notification: (i) within 60 days from the date the replacement part was delivered, for parts located in the United States (excluding Alaska) or Canada; or (ii) within 120 days from the date the replacement part was delivered, for parts located in Alaska or Mexico. Warranty claims submitted after such periods will be denied.

Please refer to EMD's Warranty Procedure Handbook for the return locations for all parts reported to be defective.

Any warranty claims that are not made in accordance with the foregoing provisions will be denied.

12. LIMITATION OF LIABILITY

(a) NOTWITHSTANDING ANY OTHER PROVISIONS CONTAINED IN THIS CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY OR THEIR RESPECTIVE PARENTS, AFFILIATES, SUBCONTRACTORS, AGENTS AND/OR EMPLOYEES SHALL BE LIABLE FOR ANY LOSS OF USE, LOSS OF PROFIT, LOSSES RESULTING FROM OR RELATED TO DOWNTIME OF THE GOODS, NOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY NATURE, HOWSOEVER CAUSED, AND WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OF LAW, REGARDLESS OF

WHETHER A PARTY HAD ADVANCE NOTICE OF THE POTENTIAL OF ANY SUCH DAMAGES.

(b) The total liability of EMD, its affiliates, subcontractors, agents and employees arising out of the performance or nonperformance of any services or any of its obligations in providing parts (including, without limitation, obligations under the EULA, or in connection with the design, manufacture, sale, delivery, storage, or use of the parts), whether based on warranty, contract, tort (including negligence), strict liability or any other theory of the law, shall not exceed in the aggregate a sum equal to either, as applicable, one times: (i) the price of the discrete part involved in the applicable claim, or (ii) the price of the services performed. Customer shall not institute any suit or action against EMD or any of EMD's subsidiaries, agents or employees regarding any part or service sold by EMD hereunder, unless filed within one (1) year of the event giving rise to the claim.

(c) The limitations of liability set forth in this Section 12 shall prevail over any conflicting or inconsistent provisions contained in any documents relating to Customer's purchase of parts or services under this Contract.

13. THIRD PARTY INTELLECTUAL PROPERTY

EMD will defend any lawsuit or proceeding brought against Customer so far as based on a claim that the parts manufactured by EMD and furnished under this Contract constitute an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD will pay all damages and costs awarded therein against Customer.

If any such part is held to constitute infringement and the use of such part is enjoined, EMD will at its option and at its own expense, either procure for Customer the right to continue using such part, or replace such part with a non-infringing part, or modify such part so it becomes non-infringing, or remove the entire part and refund the purchase price and the transportation and installation costs for such part.

EMD will not assume liability for patent infringement by reason of purchase, manufacture,

sale, or use of parts not included in and covered by its specification.

The foregoing states the entire liability of EMD for patent infringement by any such part.

The foregoing indemnity will not apply to any infringement or alleged infringement that is due to: (i) the use of the parts in a manner or for a purpose for which such parts are not intended; (ii) Customer's combination of the parts with its own materials or materials of third parties when it is such combination, as opposed to the parts alone, that gives rise to such infringement or alleged infringement; or (iii) EMD's production of parts built to specifications dictated by Customer.

Customer will be responsible for any infringement or alleged infringement of any patent, registered design or otherwise protected right and the consequences thereof, arising out of the circumstances described in clauses (i) through (iii) of the previous paragraph of this Section, and will indemnify EMD against all actions, claims, costs, damages, and expenses brought against or suffered by EMD in regard to any of the aforesaid matters.

14. FORCE MAJEURE

EMD shall not be liable for any delay in performance, any nonperformance, or any other deviation in the performance of EMD's obligations, nor for any loss or damage to the parts supplied hereunder, when occasioned directly or indirectly by any event or occurrence beyond the reasonable control of EMD or its suppliers or subcontractors of any tier, such as, by way of example and not by way of limitation, acts of God; actions by any governmental authority (whether valid or invalid); fires; floods; windstorms; explosions; riots; natural disasters; wars; sabotage; labor problems (including lockouts, strikes, and slowdowns) at EMD's facility or its plants (or the facilities or plants of its suppliers or subcontractors); inability to obtain power, material, equipment, or transportation; or court injunction or order. EMD shall have a reasonable extension of the time for performance when delayed by any such cause.

15. CLAIM MATERIAL

EMD must receive notice of claim for overages, shortages, or damaged or incorrect parts within thirty (30) days from date of shipment from EMD's facility. Notice of claim for warranty material must be made in accordance with the conditions set forth in Section 10 above.

(a) Customer Error

If Customer desires to return material ordered in error, Customer must make such request in writing to EMD and forward to EMD's Customer Service Department in LaGrange, Illinois, within thirty (30) days from date of shipment from EMD's facility. Such request must include the part number, description, quantity of items for which return is requested, applicable EMD invoice number and reason for return.

If practical to accept return, EMD will advise Customer in writing of the conditions of return, including, but not limited to, a restocking charge of twenty percent (20%) of the invoiced sale price, material labeling instructions and material shipping instructions. All parts returned for credit must be new, properly identified, in original EMD packaging, in resalable as new condition, and subject to EMD's count and inspection before approval for credit is given.

(b) EMD Error

If Customer receives any parts not ordered, in excess of Order, or short of Order, or that are damaged, or otherwise inconsistent with an applicable Order, arising through no fault, act or omission of Customer, and the Customer files a claim in writing with EMD's Customer Service Department in LaGrange, Illinois within thirty (30) days from the date of shipment from EMD's facility, then based on the error, EMD will:

(i) If EMD's investigation confirms the shortage, EMD will ship the shorted material free of charge.

(ii) If EMD's investigation confirms the material is in excess, damaged, or otherwise inconsistent with an Order, EMD will notify the Customer in writing, either to scrap the material or return the material that is in excess, damaged, or otherwise inconsistent with an Order. If the material is to be scrapped, then the Customer must certify in writing that the material has been scrapped. If the material is to be returned, then EMD will issue a Return Material Authorization ("**RMA**").

This RMA must be attached to the material being returned to EMD. The RMA will give instructions as to how the material is to be returned on a freight collect basis.

(iii) If EMD's investigation confirms there is an overage and the material is to be returned to EMD, then an invoice for the overage material will be issued. Once the material is returned, a credit will be issued to cancel the invoice.

All return claims must include the part number, description, quantity of items for which return is requested, applicable EMD invoice number and reason for return.

EMD will advise Customer in writing of the conditions of return, including, but not limited to, material labeling instructions and material shipping instructions. All material returned for credit must be new, properly identified, in original EMD packaging, in sellable condition, and subject to EMD's count and inspection before approval for credit is given.

16. AMENDMENTS

This Contract is the entire agreement and supersedes all previous agreements, oral or written, between Customer and EMD with respect to the subject matter hereof. Customer understands and agrees that EMD may modify this Contract from time to time, and Customer agrees that the version of this Contract in effect as of the date of Order receipt by EMD will be the terms and conditions of sale that apply to such purchase by Customer.

17. SEVERABILITY

If any provision of this Contract will be held to be invalid, illegal, or unenforceable under any statute, regulation, ordinance, executive order, or other rule of law, that provision will be deemed severed to the extent necessary to comply with such statute, regulation, ordinance, order or rule, or the Parties will replace the invalid provision with valid provisions which best meet the Parties' original intent. The remaining provisions hereof will remain unaffected and in full force and effect.

18. TERMINATION

In the event the Contract is terminated for any reason other than default by EMD, Customer must provide at least thirty (30) days' written notice prior to delivery date to EMD specifying such termination, and Customer will pay to EMD the following:

(a) The price in effect at time of shipment for any such parts that EMD has shipped or the price in effect at time of termination for such parts ready for shipment pursuant to a firm Order.

(b) The actual costs of work-in-process and raw materials incurred by EMD, its subcontractors or suppliers, plus 20% of the sum of such actual costs.

(c) The costs associated with development and engineering of the new replacement spare part, including, but not limited to, tooling, foreign exchange, and interest, to the extent such costs are properly allocable or apportionable under generally accepted accounting principles.

(d) The restocking fee for parts not previously shipped, 20% of the sale price of such part.

(e) The price for all services that have completed in accordance with an applicable Order and not previously paid for.

(f) The applicable sales/use tax.

For custom parts (i.e., EMD manufactures, prepares or develops specifically for an Order and not off-the-shelf), Customer may not cancel any such Orders. Examples of custom parts include, but are not limited to, engines, turbochargers, generators, alternators, traction motors, and any made-to-order material.

19. LANGUAGE

This Contract is prepared in the English language. Any translation of this Contract into another language will be strictly for convenience, and the English language will govern any question with respect to interpretation.

20. DISTRIBUTION

Parts Center Location – 6600 River Road, Hodgkins, Illinois 60525

North America Customer Service – 9301 West 55th Street, LaGrange, Illinois 60525; Phone: 1-708-387-3000, or 1-800-255-5355 for calls outside of Illinois

21. APPLICABLE LAW

This Contract will be governed by and construed according to the law of the State of Illinois, United States of America, without regard to its conflict of law principles, and expressly excluding application of the United Nations Convention on Contracts for the International Sale of Goods.

EXHIBIT A

END USER SOFTWARE LICENSE AGREEMENT ("EULA")

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE INSTALLING ANY SOFTWARE. USE OF SUCH SOFTWARE AND THE RELATED MATERIAL PROVIDED HERewith (COLLECTIVELY, THE "SOFTWARE") INDICATES CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED IN THIS EULA. IF CUSTOMER DOES NOT WISH TO AGREE TO THESE TERMS AND CONDITIONS, DO NOT INSTALL ANY SOFTWARE FROM LICENSOR. CUSTOMER ASSUMES RESPONSIBILITY FOR THE SELECTION OF THIS PROGRAM TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE.

TITLE:

The Software is either owned by Electro-Motive Diesel, Inc. ("Licensor") or Licensor has obtained the necessary right to distribute the Software. The Software is protected by copyright law. By accepting this EULA, Customer does not become the owner of the Software. Customer does, however, acquire the right to use the Software in accordance with the terms and conditions herein.

LICENSE:

Licensor hereby grants to Customer a nonexclusive, nontransferable, limited scope, license to:

- (a) Use the Software on an unlimited number of computers; and
- (b) Make copies of the Software for backup purposes. Each copy must include a reproduction of the copyright notice and other notices or legends as contained on the original Software.

Customer may not:

- (a) Provide the Software or any copy thereof to unlicensed third parties;
- (b) Grant sublicenses, leases, or other rights in the Software to third parties;
- (c) Decompile, disassemble, reverse engineer or otherwise attempt to gain access to the Software source code or permit others to do the same; or
- (d) Export or re-export the Software without the appropriate United States and/or foreign government license(s).

DISCLAIMER OF WARRANTIES AND REMEDIES:

- (a) THE SOFTWARE IS PROVIDED TO CUSTOMER "AS IS" AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, OPERABILITY, TITLE AND NON-INFRINGEMENT, ARE HEREBY DISCLAIMED.
- (b) Licensor does not warrant that the function contained in the Software will meet Customer's requirements or that the Software will operate in the combinations which may be selected for packaging by Customer, or that the operation of the Software will be uninterrupted or error-free or that all defects of the Software will be corrected.
- (c) The terms of Section 12 ("Limitation of Liability") of the Contract shall apply to this EULA.

TERM:

The EULA is effective until terminated. The license granted herein will automatically terminate without further action of Licensor if Customer fails to comply with the restrictions as recited herein. Customer may terminate this EULA at any time by deleting the Software from Customer's computer(s) together with all copies thereof.

GENERAL:

Unless otherwise stated herein, all other terms of the Contract shall apply to this EULA.

The EULA will be governed by the laws of the State of Illinois, United States of America, without regard to its conflict of law principles. The EULA may be modified only in a writing signed by the duly authorized representatives of each of the Parties.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS EULA, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. CUSTOMER FURTHER AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES THAT SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS EULA.