

Annex 5

Warranty



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TOGNUM AMERICA INC. LIMITED WARRANTY MARINE AND INDUSTRIAL POWERED GENERATOR SETS

Tognum America Inc. ("Tognum America") warrants new marine and industrial diesel powered generator sets sold by it to be free from defects in material and workmanship at the time of sale.

This warranty ("Warranty") is subject to the following:

1. Warranty Period

The Warranty Period is twelve (12) months from the date of invoice to the first retail customer ("Owner"), or thirty-six (36) months after Tognum America notifies the original purchaser the goods are available for pickup or delivery from the applicable Tognum America factory, whichever occurs first ("Commencement Date"), with no limit on hours of use. This Warranty will not apply to equipment put in service more than twenty-four (24) months from the date of shipment from factory, and will not apply in any country with which trade is restricted or banned by the U.S. Department of State, at or after the time of sale or claim.

2. Tognum America Inc. Responsibilities

The obligation of this Warranty shall be limited to repairing or replacing any part of the product which Tognum America agrees is defective in materials or workmanship under normal use and service during the Warranty Period. If a warrantable failure is found during the Warranty Period, and provided the Owner complies with its obligations under Section 4, Tognum America will, during normal working hours and through a Tognum America authorized distributor, dealer or workshop:

- Repair or replace, at Tognum America's election, the defective part with a new or remanufactured replacement part
- Replace lubricating oil, filters, antifreeze and other service items rendered unusable by the defect
- Provide reasonable or customary labor needed to correct the defect.

Tognum America's obligation to repair or replace defective parts does not include, and expressly excludes, responsibility for reimbursement of incidental or consequential costs including, but not limited to, costs associated with removal and reinstallation of the engine or generator set for its intended use, and/or transportation costs.

If a warrantable failure is found during the Warranty Period, Tognum America will only pay for the cost of the parts replaced or repaired. All other costs, including, but not limited to labor, transportation, shipping costs and lubricating oil, filters, antifreeze and other service items rendered unusable by the defect are the owner's responsibility.

If Tognum America repairs or replaces a component, engine or generator set under this limited warranty, the repaired or replaced component, engine or generator set assumes the unexpired warranty period of the original part or good. Repair or replacement will not, under any circumstances, extend the term of the original Warranty Period.

Upon request by the Owner and agreement by Tognum America, repair of product or replacement of parts under this Warranty may be completed at a place other than a Tognum America authorized warranty dealer. See "Owner's Responsibilities" below.

3. Owner Responsibilities

Within thirty (30) days of purchase, Owner or an authorized agent of Owner must complete, sign and deliver to Tognum America the warranty registration card in order to validate this Warranty. Owner must break in unit as described in the "Operating Procedures" section of the Operator's Manual.

At the time of presentation of product for service under this Warranty, the Owner or authorized agent must present evidence of the date of the original purchase of the product.

If pre-approved repair of product or replacement of parts under this Warranty is completed at a place other than at a Tognum America authorized warranty dealer, Owner shall pay Tognum America's or its authorized dealer's reasonable travel expenses, including travel time.

During the Warranty Period, Owner is responsible for and Tognum America will not reimburse:

- a) In the event of any product failure at sea which is covered by this Warranty, the cost of towing the vessel to a repair dock and for any associated docking and harbor charges;
- b) Premium or overtime labor costs;
- c) Labor and material costs for product removal and reinstallation;
- d) transportation costs or travel expenses related to delivery of the product to or from the place where the warranty work is performed;



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- e) the costs of lubricating oil, antifreeze, filter elements, hoses, belts and other maintenance items not affected by the failure subject to this Warranty, but replaced during warranty repair;
- f) communication expenses, meals, lodging and any other incidental or administrative expenses of whatever nature incurred by Owner or Owner's agents as the result of a failure subject to this Warranty;
- g) Non-engine repairs, "downtime" expenses, cargo damage, fines, all business costs and other losses resulting from a warrantable failure.
- h) Parts shipping charges in excess of those which are usual and customary.
- i) Local taxes, if applicable.

In addition, Owner must

- a) In the case of an engine or engine-powered product, before a claim for excessive oil consumption will be considered, submit adequate documentation to show that consumption exceeds Tognum America's standards.
- b) Promptly notify Tognum America or its authorized representative of a warrantable failure and make the generator set available for repair.
- c) Comply with Tognum America's or its authorized representative's reasonable directions regarding the timing, sequence and location of warranty repairs and make the generator set available for inspection.
- d) Perform all required maintenance, and maintain and provide proof that all required maintenance has been performed.
- e) Use specified consumables such as fuel, oil, lubricants and coolant.
- f) Allow Tognum America access to all electronic data stored in the Electronic Control Module, as applicable.
- g) Promptly return to Tognum America upon demand all parts replaced under warranty.
- h) Comply with Tognum America Long Term Storage Guidelines, if applicable, and maintain and provide proof of compliance.

4. Limitations

Tognum America is not responsible for:

- (a) defects which were obvious or capable of being identified by reasonable inspection and not reported to Tognum America within three (3) days of receipt of the engine; or
- (b) failures caused or potentially caused by any failure to follow Tognum America requirements for installation, commissioning, operation, maintenance, service, repair, inspection or use of Tognum America specified consumables; or
- (c) failures caused or potentially caused by service work performed by non- Tognum America authorized service providers and/or the use of non-genuine Tognum America parts; or
- (d) failure caused by any third party's transportation damage to Tognum America's product; or
- (e) failures resulting from natural wear and tear, accidents, incorrect use, handling, storage or corrosion-proofing, freezing damage, incorrect installation or modification of the goods supplied; or
- (f) damage if any warning alarm system is ignored; or
- (g) failures resulting from abuse, neglect, improper repair or any use or installation which Tognum America judges improper; or
- (h) failures resulting from owner's delay in making the engine available after being notified of a potential problem; or
- (i) damage to parts, fixtures, housings, attachments, and accessory items, which are not part of the engine, or generator set; or
- (j) repair of components sold by Tognum America that are warranted directly to the owner by their respective manufacturer; or
- (k) service parts worn out by usage and not due to defects in workmanship or material.

If the product is used primarily in a commercial endeavor, neither Tognum America nor any company affiliated with Tognum America will be liable for general damages, including bodily injuries, except as set forth above, or for incidental or consequential damages, including, but not limited to, loss of use, loss of profits, loss of production, expense of substitute equipment or other commercial loss for damage to property in which the equipment is installed. The same limitations shall apply to a product used for personal purposes with respect to all non-personal injuries, general, incidental and consequential damages.

This Warranty does not extend to failure resulting from an accident or disaster or from Owner or operator abuse or neglect (such as operation without adequate coolant, fuel or lubrication, over-fueling, over-speeding, lack of maintenance of lubricating, cooling, or air intake systems, improper filtration of fuel and oil, or improper storage, starting, warm-up, run-in or shutdown practices).

- 5. Tognum America's warranty obligations are expressly contingent upon the commissioning of the generator set being carried out by Tognum America, or its authorized representative, and a completed Tognum America Commissioning Log is delivered to Tognum America immediately after commissioning.



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6. Owner agrees to reimburse Tognum America for all costs incurred in providing warranty service where, following examination, the request or claim for warranty coverage proves to be unfounded or excluded.
7. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IF THE PRODUCT IS USED PRIMARILY IN PERSONAL, FAMILY OR HOUSEHOLD USE, ANY IMPLIED WARRANTY, INCLUDING THAT OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL BE LIMITED TO TWELVE (12) MONTHS. UNDER NO CIRCUMSTANCES WILL TOGNUM AMERICA BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF RELATED TO ANY ACTUAL OR CLAIMED DEFECT IN ANY GOOD OR PART SUPPLIED BY TOGNUM AMERICA.**

THE FOREGOING LIMITED WARRANTY DOES NOT APPLY TO ANY ITEM TOGNUM AMERICA SELLS WHICH IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER AND TOGNUM AMERICA MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY AS TO THESE ITEMS.

TOGNUM AMERICA EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES RELATED TO MANUFACTURE OR SALE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

THIS PRODUCT IS ALSO SUBJECT TO THE APPLICABLE U.S. E.P.A. MARINE ENGINE EMISSION WARRANTY FOR CATEGORY 1 TIER II & TIER III ENGINES.

8. In the event of conflict between the terms of this Warranty and any General Conditions of Sale, the terms in this Warranty will take precedence. The provisions of Clause IX. Paragraphs 5 to 8 of the MTU General Conditions of Sale shall remain applicable in all cases.
9. NOTE: Some states do not allow warranty duration limitations and/or certain exclusions or limitation of incidental or consequential damages when new marine propulsion engines are sold for and used in non-revenue producing pleasurecraft applications. Therefore, the previously expressed exclusion may not apply to you.

This warranty gives the Owner specific legal rights, and the Owner may also have other rights, which vary by jurisdiction.

No person is authorized to make any representations or promises on behalf of Tognum America or to modify the terms or limitations of this Warranty in any way except in writing and signed by an authorized employee of Tognum America.

Owner or Owner's Agent acknowledges that Owner has read and understands the limitations of warranty and remedies information for applicable goods and agrees to be bound by the same.

To find the location of the nearest Tognum America authorized distributor, dealer or repair facility, call _____. If you have questions concerning this warranty or its application, call or write: In USA and Canada:
