

## POWER SYSTEMS SPECIALISTS STANDARD TERMS AND CONDITIONS OF SALE

All quotations (offers) and sales made by Power Systems Specialists, Inc. ("the Seller") are based upon and conditioned upon the following terms and conditions. No provision, printed or otherwise, contained in any order, acceptance, confirmation or acknowledgment which is inconsistent with, different from or in addition to these Standard Terms and Conditions of Sale is accepted by Seller, unless specifically agreed to in writing by Seller. No order for or changes to any terms or scope of an order for the Seller's goods ("Goods") shall be binding until accepted in writing by the Seller at its home office at Gretna, Louisiana.

1. **QUOTATIONS.** Seller's quotations are valid for thirty (30) days from the date of the quotation unless otherwise stated. The latest quotation supersedes all previous quotations or correspondence concerning the transaction. The Seller's quotations contain proprietary information of Seller and are provided to Buyer with the understanding that the information will be used by Buyer solely for purposes of its internal evaluation of the quotations. The Seller's quotations and the proprietary information contained therein may not be disclosed by the Buyer to any third party or used in the preparation of any request for quotation for Goods similar to, or as a substitution for, Goods quoted by Seller.

2. **PRICE.** Unless otherwise stated in writing by Seller, the price offered by Seller does not include any cost of transportation, handling, crating, packing, duties, tariffs or any taxes, other than Seller's contributions or taxes for unemployment insurance, old age retirement benefits, pensions and annuities, now or hereafter imposed by the United States or any state or political subdivision thereof, however measured. To the extent allowed by applicable law, the Buyer shall be responsible for all other taxes and filing and payment thereof, including, but not limited to, transfer, VAT, provincial, sales, use and excise taxes, and shall indemnify and hold harmless the Seller against any liability arising therefrom.

3. **PAYMENT.** Unless otherwise stated in writing by Seller, the following payment terms shall apply hereunder: (a) 10% of the order price upon issuance of the order; (b) 20% of the order price upon initial submittal of general arrangement drawings; (c) 35% of the order price six weeks after initial submittal of general arrangement drawings; and (d) 35% of the order price upon notice of availability for shipment. Payment of all invoices shall be net 30 days. If requested by Seller, payment shall be made by irrevocable letter of credit confirmed by a prime U.S. bank. To the extent permitted by applicable laws, Buyer shall pay on demand, as a late charge, an amount equal to 1.5% per month of each payment which remains overdue or the maximum rate allowed by applicable law. Buyer's failure to make payment when due shall be a material breach of the order and these terms and conditions. The Seller, at its sole option, and without incurring any liability, may suspend its performance until such time as the overdue payment is made or Seller is provided assurances, adequate in Seller's opinion, that the payment shall be promptly made. In the event of such suspension of performance by Seller, there shall be an equitable adjustment made to the delivery schedule and order price reflecting the duration and cost resulting from such suspension. Payments due hereunder shall in no event be subject to set-off with any other order or business arrangement. Waivers of lien by Seller shall be contingent upon Seller receiving in full all payments due hereunder.

4. **LIMITED WARRANTY.** If, within 18 months after the date of notice of availability for shipment, or one year after start up, whichever occurs first, any Goods furnished by Seller prove to be defective in material or workmanship, upon examination by Seller, Seller will, at Seller's discretion, either repair the Goods or supply identical or substantially similar replacement Goods, F.O.B. manufacturing facility. Any repaired or replacement Goods will be warranted against defects in material or workmanship for the unexpired portion of the warranty applicable to the particular Goods. Goods not manufactured by Seller are subject only to warranties of Seller's vendors and Seller hereby assigns to Buyer all rights in such vendors warranties, provided however, Seller shall furnish to the Buyer reasonable assistance in enforcing such rights. Seller will not be responsible for costs of making access for, or of export/import, shipment, removal or installation of any items needed to repair or replace any defective Goods. Inexpensive items requiring repairs or replacements and routine maintenance-related or consumable items shall be outside the scope of these limited warranties. With regard to warranty related remedial work, the Seller will not be responsible for materials or workmanship of others or shipment, labor and other related expenses for any work performed by others in the repair or replacement of defective Goods, without Seller's prior written consent. Seller's performance guarantees, if any, shall be deemed to be met by a satisfactory demonstration of the performance guarantees during a performance test, which shall be the responsibility of the Buyer, pursuant to mutually agreed upon test procedures. If the performance test is not completed within 45 days after notice of availability for shipment, the performance test shall be deemed to be satisfactorily performed for any and all purposes.

These limited warranties will be voided if: (a) the Goods were not stored, installed, maintained or operated in accordance with accepted U.S. industrial practice and any specific instructions provided by Seller; (b) the Goods were subjected to any accident, misapplication, environmental contaminant, corrosion, abrasion, abuse or misuse; (c) Buyer used, repaired, or modified the Goods after discovery of the defect without Seller's prior written consent to continue use; or (d) Buyer fails to permit Seller to examine the Goods and operating data or fails to furnish routine operating data sufficient to determine the nature of the defect claimed.

THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED EXCEPT, AS EXPRESSLY PROVIDED HEREIN; SELLER EXTENDS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. NO WARRANTY, EITHER EXPRESS OR IMPLIED, IS GIVEN AS TO THE CAPACITY, EFFICIENCY OR PERFORMANCE OF THE GOODS, EXCEPT AS MAY BE EXPRESSLY AGREED TO BY THE PARTIES IN WRITING.

5. **OBLIGATIONS OF BUYER.** Buyer is solely responsible for identifying and defining all processes and mechanical considerations which may affect the performance, reliability or operation of the Goods furnished by Seller. Seller's quotation and any sale is based upon the covenant by Buyer that all the information and data provided to Seller by Buyer is full, complete, accurate and does not contain information which is misleading.

6. **LIMITATION OF LIABILITY.** SELLER'S LIABILITY IS LIMITED TO THE PRICE ALLOCABLE TO THE GOODS DETERMINED DEFECTIVE, AND IN NO EVENT WILL SELLER'S CUMULATIVE LIABILITY BE IN EXCESS OF THE TOTAL PRICE, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER.

SELLER WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFIT WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

BUYER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE GOODS AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE FULL SALES ORDER PRICE TO IT BY SELLER SHALL PREVENT THE REMEDIES FROM FAILING THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.

7. **TECHNICAL ASSISTANCE.** It is expressly understood that any services or technical assistance furnished by Seller will be addressed in a separate written agreement between the parties. In no event will any such services or technical assistance provided by Seller constitute a waiver by Seller of any of these terms and conditions or order or affect or expand Seller's obligations under these terms and conditions, this order or any other contractual arrangement.

8. **PATENTS.** Seller will, at its expense, defend and indemnify Buyer from any suit or proceeding brought against Buyer based on a claim that Goods manufactured and furnished by Seller constitute an infringement of any United States patent, if Seller is notified promptly in writing and given authority, information and assistance for the defense of the suit or proceeding. Defense and settlement of any claim shall be within Seller's sole discretion. Should it be held that the Goods constitute infringement and the use of the Goods is enjoined, Seller will, at its own expense and discretion, either procure for Buyer the right to continue using the Goods, replace the Goods with noninfringing goods, modify the Goods to become noninfringing, or remove the infringing Goods and refund the price paid for the respective Goods. Seller does not accept any liability for infringement of any chemical, process or flow patents, or for Goods designed for or used in connection with such chemical, process or flow patents. Buyer will indemnify Seller from any suit or proceeding brought against Seller by any third party based on claims that the Goods infringe any such patent, or with respect to any Goods designed and manufactured in accordance with designs furnished by Buyer.

9. **CANCELLATION FEE.** Unless otherwise agreed in writing by the parties, the Buyer may not cancel the order, except upon written notice and payment to Seller of an amount consisting of all costs incurred by Seller up to the time of cancellation along with those costs which arose out of or resulted from the cancellation, plus a cancellation fee of 25% of the order price. The minimum cancellation fee shall in no event be less than \$250.00. Materials received, work in progress, Goods manufactured, and results and products of the work performed, in part or whole, prior to the time of cancellation, shall be retained by and shall be the property of the Seller. When calculating the cancellation related payments, payments made by Buyer to Seller prior to cancellation shall be taken into account.

10. **FORCE MAJEURE.** Except for the obligations of making of payment when due, Seller and Buyer will be excused from their respective obligations in the event, and to the extent of, their respective performance being delayed or prevented: (a) by any circumstance (except financial) reasonably beyond their control, or (b) by act of God, fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labor disputes, riots or other civil disturbances, or voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority. In addition, Seller will be excused in the event of its inability to obtain materials necessary for manufacture of the Goods, or total or partial failure of any of its usual means of transportation of the Goods.

11. **ASSIGNABILITY AND RESHIPMENT.** No claim against Seller arising directly or indirectly out of or in connection with the Goods furnished by Seller to Buyer may be assigned by Buyer or by operation of law without the prior written approval of Seller. Goods sold hereunder shall not be reshipped or rerouted to end-users or end-use in violation of U.S. laws.

12. **SHIPMENT.** The shipping terms shall be F.O.B. manufacturing facility. If the Buyer has not issued inspection or shipping instructions by the time the Goods are ready for shipment, Seller may select any reasonable method of shipment, without liability by reason of its selection. Shipments made on Buyer's behalf shall be insured at Buyer's expense. If the Seller is required to arrange for shipment of the Goods or any parts thereof, Buyer shall reimburse Seller for all freight, insurance and other shipping related costs and handling fee for such shipment. Shipment of Goods held by reason of Buyer's request or inability to receive the Goods will be at the risk and expense of Buyer. Timely delivery of the Goods shall be contingent upon, among other things, Seller's receipt, within two (2) weeks of the respective initial submittal, of all of the final customer approvals of drawings and other documents which require customer approvals and Seller's receipt of the order containing all of the mutually agreed upon terms and documents by a date no later than set forth in the Seller's proposal.

13. **SEVERABILITY.** Invalidity of any of these terms and conditions will not affect the validity of any other provision and the remaining provisions will remain in full force and effect.

14. **WAIVER.** Failure to enforce any of these terms and conditions in a particular instance will not constitute a waiver of, or preclude subsequent enforcement of, any of these provisions.

15. **APPLICABLE LAW.** These terms and conditions, this order and the legal relations of the parties shall be determined in accordance with the laws of the State of Louisiana. The parties disclaim any applicability of the U.N. Convention of the International Sale of Goods to the order. The parties consent and will submit to the jurisdiction of the courts of, and of the federal courts seated in, the State of Louisiana with respect to disputes relating to the order.