

GENERAL TERMS AND CONDITIONS OF SALE

Terms and Conditions of Sale

The Terms and Conditions of Sale set forth herein, and any supplements which may be attached hereto, constitute the full and final expression of the contract for the sale of products or services (hereinafter referred to as Product(s) or Services by Power Systems Solutions, Inc. (hereinafter referred to as Seller) to the Buyer, and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between the Seller and the Buyer. Notwithstanding any contrary language in the Buyer's purchase order, correspondence or other form of acknowledgment, Buyer shall be bound by these Terms and Conditions of Sale when it sends a purchase order or otherwise indicates acceptance of this contract, or when it accepts delivery from Seller of the Products or Services. THE CONTRACT FOR SALE OF THE PRODUCTS OR SERVICES IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF SALE STATED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER. No contract shall exist except as herein provided.

Complete Agreement

No amendment or modification hereto nor any statement, representation or warranty not contained herein shall be binding on the Seller unless made in writing by an authorized representative of the Seller. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

Quotations

Written quotations are valid for 30 days from its date unless otherwise stated in the quotation or terminated sooner by notice.

Verbal quotations, unless accepted, expire the same day they are made.

A complete signed order must be received by Seller within 20 calendar days of

notification of award; otherwise the price and shipment will be subject to re-negotiation.

Termination and Cancellation

Any order may be terminated by the Buyer only by written notice and upon payment of reasonable termination charges, including all costs plus profit.

Seller shall have the right to cancel any order at any time by written notice if Buyer breaches any of the terms hereof, becomes the subject of any proceeding under state or federal law for the relief of debtors, or otherwise becomes insolvent or bankrupt, generally does not pay its debts as they become due or makes an assignment for the benefit of creditors.

Prices

All prices are subject to change without notice. In the event of a price change, the effective date of the change will be the date of the new price or discount sheet, letter or telegram. All quotations made or orders accepted after the effective date will be on the new basis. For existing orders, the price of the unshipped portion of an order will be the price in effect at time of shipment.

Price Policy – Products and Services

When prices are quoted as firm for quoted shipment, they are firm provided the following conditions are met:

1. The order is released with complete engineering details.
2. Shipment of Products is made, and Services purchased are provided within the quoted lead time.
3. When drawings for approval are required for any Products, the drawings applicable to those Products must be returned within 60 calendar days from the date of the original mailing of the drawings by Seller. The return drawings must be released for manufacture and shipment and must be marked "APPROVED" or "APPROVED AS NOTED". Drawing re-submittals which are required for any other reason than to correct Seller errors will not extend the 60-day period.

If the Buyer initiates or in any way causes delays in shipment, provision of Services or return of approval drawings beyond the periods stated above, the price of the Products or Services will be increased 1% per month or fraction thereof up to a maximum of 18 months from the date of the Buyer's order. For delays resulting in shipment or provision of Services beyond 18 months from the date of the Buyer's order, the price must be renegotiated.

Taxes

The price does not include any taxes. Buyer shall be responsible for the payment of all taxes applicable to, or arising from the transaction, the Products, its sale, value, or use, or any Services performed in connection therewith regardless of the person or entity actually taxed.

TERMS OF PAYMENT

Terms of payment are net within 30 days from date of invoice.

Adequate Assurances

If, in the judgment of Seller, the financial condition of the Buyer, at any time during the period of the contract, does not justify the terms of payment specified, Seller may require full or partial payment in advance.

Delayed Payment

If payments are not made in accordance with these terms, a service charge will, without prejudice to the right of Seller to immediate payment, be added in an amount equal to the lower of 1.5% per month or fraction thereof or the highest legal rate on the unpaid balance.

FREIGHT

F.O.B. – Frt./Ppd. and Invoiced

Products are sold F.O.B. point of shipment freight prepaid and invoiced to the Buyer.

Shipment and Routing

Seller shall select the point of origin or shipment, the method of transportation and the routing of the shipment.

If the Buyer specifies a special mode of transportation or routing, Buyer shall pay all freight.

When freight is included in the price, no allowance will be made in lieu of transportation if the Buyer accepts shipment at factory, warehouse, or freight station or otherwise supplies its own transportation.

Risk of Loss

Risk of loss or damage to the Products shall pass to Buyer at the F.O.B. point.

Concealed Damage

Except in the event of F.O.B. destination shipments, Seller will not participate in any settlement of claims for concealed damage.

When shipment has been made on an F.O.B. destination basis, the Buyer must unpack immediately and, if damage is discovered must:

1. Not move the Products from the point of examination.
2. Retain shipping container and packing material.
3. Notify the carrier in writing of any apparent damage.
4. Notify Seller representative within 72 hours of delivery.
5. Send Seller a copy of the carrier's inspection report.

Witnessed Tests/Customer Inspection

Standard factory tests may be witnessed by the Buyer. Buyer may final inspect Products at the factory.

Seller will notify Buyer fourteen (14) calendar days prior to schedule witness testing or inspection. In the event Buyer is unable to attend, the Parties shall mutually agree on a rescheduled date. However, Seller reserves the right to consider the witness tests waived with the right to ship and invoice the Products.

Held Orders

For any order held, delayed or rescheduled at the request of the Buyer, Seller may, at its sole option (1) require payment to be based on any reasonable basis, including but not limited to the contract price, and any additional expenses, or cost resulting from such a delay; (2) store Products at the sole cost and risk of loss of the Buyer; and/or (3) charge to the Buyer those prices under the applicable price policy. Any order so held delayed or rescheduled beyond twelve (12) months will be treated as a Buyer termination.

Drawing Approval

Seller will design the Products in line with, in Seller's judgment, good commercial practice. If at drawing approval Buyer makes changes outside of the design as covered in their specifications, Seller will then be paid reasonable charges and allowed a commensurate delay in shipping date based on the changes made.

Returning Products

Authorization and shipping instructions for the return of any Products must be obtained from Seller before returning the Products.

When return is occasioned due to Seller error, full credit including all transportation charges will be allowed.

Product Notices

Buyer shall provide the user (including its employees) of the Products with all Seller supplied Product notices, warnings, instructions, recommendations, and similar materials.

Force Majeure

Seller shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the Buyer, riot, embargo, fuel or energy shortage, car shortage, wrecks or delays in transportation, or due to any other cause beyond Seller's reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Liquidated Damages

Contracts which include liquidated damage clauses for failure to meet shipping or job completion promises are not acceptable or binding on Seller, unless such clauses are specifically accepted in writing by an authorized representative of the Seller at its headquarters office.

Patent Infringement

Seller will defend any suit or proceeding brought against Buyer, or Buyer's customers, so far as based upon a claim that any Products infringe any United States patent, if notified in reasonable time and given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all legal and court costs

and expenses and court assessed damages awarded therein against Buyer and resulting from or incident to such suit or proceeding. In addition to the foregoing, if at any time Seller determines there is a substantial question of infringement of any United States patent or in case any Products are judicially held to infringe United States patent and the use of such Products are enjoined, Seller may, at its option and expense, either procure for Buyer the right to continue using and selling the Products; or replace the Products with non-infringing apparatus; or modify it so it becomes non-infringing; or, as a last resort, remove the Products and refund the purchase price. In no case does Seller agree to pay any recovery based upon its Buyer's savings or profit through use of Seller's Products whether the use be special or ordinary. The foregoing states the entire liability of Seller for patent infringement.

Limitation of Liability

THE REMEDIES OF THE BUYER SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS HEREUNDER.

NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD HEREUNDER, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, COST OF CAPITAL, CLAIMS OF CUSTOMERS OF THE BUYER OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER.

THE TOTAL CUMULATIVE LIABILITY OF SELLER ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED.