

**POWER PARTNERS, INC.**  
**GENERAL TERMS AND CONDITIONS OF SALE**

**1. General.** The terms and conditions contained herein, together with any additional or different terms contained in POWER PARTNERS, INC.'S ("PPI") Proposal, if any, submitted to Purchaser (which Proposal shall control over any conflicting terms), constitute the entire agreement (the "Agreement") between the parties with respect to the order and supersede all prior communications and agreements regarding the order. Acceptance by PPI of the order, or Purchaser's acceptance of PPI's Proposal, is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions, payment for or acceptance of any performance by PPI being deemed consideration and acceptance by Purchaser thereof. These terms and conditions may not be changed or superseded by any different or additional terms and conditions proposed by Purchaser to which terms PPI hereby objects and rejects with the intention that the terms contained herein shall be controlling on both parties. Unless the context otherwise requires, the term "Equipment" as used herein means all of the equipment, parts, accessories sold, and all software and software documentation, if any, licensed to Purchaser by PPI ("Software") under the order. Unless the context otherwise requires, the term "Services" as used herein means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by PPI under the order. As used herein, the term "Purchaser" shall include the initial end user of the Equipment and/or services; provided, however, that Paragraph 13(a) shall apply exclusively to the initial end user.

**2. Component Parts.** All terms and conditions expressed herein shall be applicable to the purchase of component parts and/or accessories (collectively "Component Parts") except to the extent varied by this paragraph, and any additional or different terms contained in PPI's Proposal, if any, submitted to Purchaser (which Proposal shall control over any conflicting terms).

- (a) In ordering parts, give style number and description of part, or shop order number, complete nameplate reading, and serial number of product for which the part is required.
- (b) Prices and discounts on Component Parts are subject to change without notice.
- (c) The minimum bill charge shall be \$200 net per order on domestic shipments. The minimum billing charge shall be \$500 net per order on international shipments. Additional costs may be applicable, at the sole discretion of PPI, for Export Packing.
- (d) Delivery is F.O.B. – Point of Shipment prepaid and invoiced to the purchaser. Minimum transportation charge will be \$5.00.
- (e) Returned Products must be pre-authorized and shipping instructions for the return of any product obtained by the purchaser before returning the product. All returned product(s) must be returned with complete identification in accordance with PPI instructions or it will not be accepted. Where a purchaser requests authorization to return product for reasons of its own, the purchaser will be charged for placing the returned goods in salable condition (restocking charge) and for any outgoing and incoming transportation paid by PPI. In no event will PPI be responsible for product returned without proper authorization and identification and pre-payment of related costs associated therewith.
- (f) Substitutions. PPI reserves the right to ship the latest superseding part, where interchangeable, in place of the order. Billing price will be that of the part shipped.

**3. Prices.**

- (a) Unless otherwise specified in writing by PPI, all Proposals expire thirty (30) days from the date thereof.
- (b) Unless otherwise stated herein, Services prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Rates are subject to change without notice.
- (c) The price does not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes that may now or hereafter be applicable. Purchaser agrees to pay or reimburse any such taxes which PPI or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide PPI a copy, acceptable to the relevant governmental authorities, of any such certificate or permit.
- (d) The price includes customs duties and other importation or exportation fees, if any, at the rates in effect on the date of PPI's Proposal. Any change after that date in such duties, fees, or rates, shall increase the price by PPI's additional cost and Purchaser shall pay all such additional costs promptly.

**4. Payment.**

- (a) Unless specified to the contrary in writing by PPI, payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice by wire transfer to the account designated by PPI in the Proposal.
- (b) If in the judgment of PPI the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, PPI may require payment in advance, payment security satisfactory to PPI, or may terminate the order, whereupon PPI shall be entitled to receive reasonable cancellation charges. If Purchaser delays delivery, payment shall be due on the date PPI is/was prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
- (c) Purchaser shall pay, in addition to any overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus PPI's attorneys' fees and court costs incurred in connection with collection.

**5. Changes.**

- (a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by PPI and the resulting adjustments to all affected provisions, including price, schedule, and guarantees must be mutually agreed to in writing prior to implementation of the change.
- (b) PPI may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications. If Purchaser objects to any such changes, PPI shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

**6. Delivery.**

- (a) All Equipment manufactured, assembled or warehoused in the continental United States is delivered F.O.B. point of shipment. Purchaser shall be responsible for any and all demurrage or detention charges.
- (b) If the scheduled delivery of Equipment is delayed by Purchaser or by Force Majeure, PPI may move the Equipment to storage for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered.
- (c) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for PPI's performance hereunder.
- (d) Claims for shortages or other errors in delivery must be made in writing to PPI within ten days of delivery. Equipment may not be returned except with the prior written consent of and subject to terms specified by PPI. Claims for damage after delivery shall be made directly by Purchaser with the common carrier.

**7. Delayed Orders.** If an order is delayed at Purchaser's request beyond the original shipping date, PPI will, at PPI's option for the first three months of delay:

- A. Store the transformers at a PPI location and charge the customer 1.0% per month or part thereof of the price of the transformers up to a maximum of 3 months, OR
- B. Store the transformers at the customer's location and charge the customer .75% per month or part thereof of the price of the transformers up to a maximum of 3 months.

For delays beyond 3 months, the charge per month will double for up to a maximum of 6 months. At the end of the 6 month period, units will be released for shipment, shipped and/or invoiced per the order. These charges would apply to transformers already built or in the production cycle (8 weeks prior to original ship date) at the time of the requested delay.

For units delayed that are not yet in the production cycle a 2% charge per line item will apply plus escalation in accordance with the contract. If the contract does not contain an applicable escalation clause, an additional 2% per quarter escalation will apply to the end of the contract period. If the delay extends beyond the contract period, an additional 2% per quarter escalation will apply. In no case should delays extend beyond 3 months of the contract period without PPI's prior approval.

Purchaser will not be invoiced until the units are released for shipment. Invoices will show the above charges as separate items.

**8. Title & Risk of Loss.** Except with respect to Software (for which title shall not pass, use being licensed) title to Equipment shall remain in PPI until fully paid for. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery.

**9. Inspection, Testing and Acceptance.**

- (a) Any inspection by Purchaser of Equipment on PPI's premises shall be scheduled in advance to be performed during normal working hours.
- (b) If the order provides for factory acceptance testing, PPI shall notify Purchaser when PPI will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment.
- (c) If the order provides for site acceptance testing, testing will be performed by PPI personnel to verify that the Equipment has arrived at site complete, without physical damage, and in good operating condition. Completion of site acceptance testing constitutes full and final acceptance of the Equipment. If, through no fault of PPI, acceptance testing is not completed within thirty (30) days after arrival of the Equipment at the site, the site acceptance test shall be deemed completed and the Equipment shall be deemed accepted.

**10. Warranties and Remedies.**

- (a) **Equipment and Services Warranty.** PPI warrants that Equipment (excluding Software, which is warranted as specified in paragraph (d) below) will be of the kind and quality described in the proposal or contract and shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The Warranty Remedy Period for Equipment (excluding Software, Spare Parts and Refurbished or Repaired Parts) shall be for a period of eighteen (18) months from date of manufacture or twelve (12) months from date of shipment,

whichever comes first. The Warranty Remedy Period for new spare parts shall end twelve (12) months after date of shipment. (The serial number on the transformer nameplate designates the date of manufacture. Purchaser's copy of invoice or shipment receipt will establish the shipment date.)

(b) **Equipment and Services Remedy.** If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to PPI promptly after such discovery and within the applicable Warranty Remedy Period, PPI shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to PPI promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, PPI will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

(c) **Conditions of Warranty.** The warranties and remedies set forth herein are conditioned upon the transformers being received, handled, stored, installed, operated and maintained in a normal and proper manner in accordance with any PPI recommendations and standard industry practices and not having been subjected to accident, alteration, abuse or misuse. Shipment of the defective transformer must be made to PPI or some pre-designated location as authorized by PPI, freight prepaid. Also, the defective transformer must be properly strapped to a shipping pallet or enclosed in a crate. All parts of the transformer must be at least two (2) inches inside the edge of the pallet or crate. Should a transformer fail within the warranty period, the purchaser must insure that the transformer is protected from further damage or deterioration while being stored or otherwise awaiting shipment back to PPI. Should there be any defects in workmanship and/or materials within the warranty period and provided PPI has received a written notification of such failure within one (1) month of its occurrence, PPI shall correct such non-conformity at its F.O.B. factory of the defective part or parts. (Contact your PPI representative for the applicable handling procedures.)

(d) **Exceptions.** PPI shall not be responsible for providing working access to the nonconforming Equipment, including disassembly and re-assembly of non-PPI supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at Purchaser's risk and expense. PPI shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to PPI's instructions; (iv) is comprised of materials provided by or a design specified by Purchaser; or (v) has failed as a result of ordinary wear and tear. Equipment supplied by PPI but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

(e) **Software Warranty and Remedies.** PPI warrants that, except as specified below, the Software will, when properly installed, execute in accordance with PPI's published specification. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment and written notice of such nonconformity is provided to PPI promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, PPI shall correct the nonconformity by, at its option, either (i) modifying or making available to the Purchaser instructions for modifying the Software; or (ii) making available at PPI's facility necessary corrected or replacement programs. PPI shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) Purchaser-supplied software or interfacing. PPI does not warrant that the functions contained in the software will operate in combinations that may be selected for use by the Purchaser, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs".

**(f) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND PPI'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.**

**11. Loss Performance.** In the event that PPI ships individual transformers where the tested losses exceed the quoted losses. PPI will consider claims only where the average losses exceed the quoted losses over the contract period. The loss variance between the quoted and the average shipped losses is valued at the specified customer evaluation formula. In determining the amount of claim, PPI will net loss performance on all items over the contract period. Liabilities for missed loss performance shall be limited to the shorter of the applicable warranty period or one year from the termination of the contract.

#### **12. Patent Indemnity.**

(a) PPI shall defend at its own expense any action brought against Purchaser alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by PPI (a "Process") directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in any such action, provided that Purchaser has given PPI prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action in behalf of Purchaser.

(b) PPI shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by PPI; (ii) any Equipment or Process supplied according to a design, other than an PPI design, required by Purchaser; (iii) any products manufactured by the Equipment or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of PPI.

(c) If, in any such action, the Equipment is held to constitute an infringement, or the practice of any Process using the Equipment is finally enjoined, PPI shall, at its option and its own expense, procure for Purchaser the right to continue using said Equipment; or modify or replace it with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Equipment. **THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF PPI AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.**

(d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that PPI is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by PPI or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against PPI, Purchaser shall defend and indemnify PPI in the same manner and to the same extent that PPI would be obligated to indemnify Purchaser under this "Patent Indemnity" provision.

#### **13. Limitation of Liability.**

(a) In no event shall PPI, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser or other third parties for any damages. PPI's liability for any claim whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this Agreement, or from any services rendered in connection therewith, shall in no case (except as provided in the section entitled "Patent Indemnity") exceed one-half (1/2) of the purchase price allocable to the Equipment or part thereof or Services which gives rise to the claim.

(b) All causes of action against PPI arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one year of the time of accrual thereof.

(c) In no event, regardless of cause, shall PPI be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/Services.

**14. Laws and Regulations.** PPI does not assume any responsibility for compliance with federal, state or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Equipment or Software is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Proposal date. In the event of any subsequent revisions or changes thereto, PPI assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Article 4. Nothing contained herein shall be construed as imposing responsibility or liability upon PPI for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment. This Agreement shall be governed by the laws of the State of Georgia, including Georgia law with respect to conflicts of law. Purchaser agrees that all causes of action against PPI under this Agreement shall be brought in the State Courts of the State of Georgia, or the U.S. District Court for the Middle District of Georgia. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

**15. OSHA.** PPI warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of the Proposal. Upon prompt written notice from the Purchaser of a breach of this warranty, PPI will replace the affected part or modify it so that it conforms to such standard or regulation. PPI's obligation shall be limited to such replacement or modification. In no event shall PPI be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Purchaser's design, location, operation, or maintenance of the Equipment, its use in association with other equipment of Purchaser, or the alteration of the Equipment by any party other than PPI.

#### **16. Software License.**

(a) PPI owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Purchaser under this Agreement. As part of the sale made hereunder Purchaser hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with equipment specified by PPI; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse engineered, or modified; (iv) The Purchaser's right to use the Software shall terminate immediately when the specified equipment is no longer used by the Purchaser or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with PPI's prior written consent.

(b) Nothing in this Agreement shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to PPI the Software and all copies thereof and shall remove all machine readable Software from all of Purchaser's storage media.

**17. Inventions and Information.** Unless otherwise agreed in writing by PPI and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with PPI. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of PPI. Purchaser shall not, without PPI's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

**18. Force Majeure.** PPI shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the price will be adjusted to compensate PPI for such delay.

**19. Cancellation.** Purchaser may cancel any order only upon prior written notice and payment of termination charges, including but not limited to the following

- A. Units in the manufacturing process, less than four weeks prior to scheduled manufacturing completion, 100% of price per unit.
- B. Units in the production cycle not yet in manufacturing, more than four weeks but less than eight weeks from scheduled manufacturing completion, 2% per unit or \$150 per line item whichever is greater.
- C. Units in PPI schedule beyond the 8 week period prior to scheduled manufacturing completion, 1% per unit or \$75 per line item whichever is greater.
- D. If any units in B. and C. above have never been produced before or manufactured previously by PPI and the units required engineering design, an additional charge of \$750 per style will apply.

**20. Termination.** No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by PPI of Purchaser's written notice specifying such default, PPI shall have failed to initiate and pursue with due diligence correction of such specified default.

**21. Export Control.**

(a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by PPI or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

(b) If applicable, PPI shall file for a U.S. export license, but only after Purchaser has provided appropriate documentation for the license. Purchaser shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of this Agreement by PPI. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by PPI without liability for damages of any kind resulting from such cancellation. At PPI's request, Purchaser shall provide to PPI a Letter of Assurance and End-User Statement in a form reasonably satisfactory to PPI.

**22. Assignment.** Any assignment of this Agreement or of any rights or obligations under the Agreement without prior written consent of PPI shall be void.

**23. Nuclear Insurance – Indemnity.** For applications in nuclear projects, the Purchaser and/or its end user customer shall have complete insurance protection against liability and property damage resulting from a nuclear incident to and shall indemnify PPI, its subcontractors, suppliers and vendors against all claims resulting from a nuclear incident.

**24. Resale.** If Purchaser resells any of the Equipment, the sale terms shall limit PPI's liability to the buyer to the same extent that PPI's liability to Purchaser is limited hereunder.

**25. Entire Agreement.** This Agreement constitutes the entire agreement between PPI and Purchaser. There are no agreements, understandings, restrictions, warranties, or representations between PPI and Purchaser other than those set forth herein or herein provided.