

TERMS AND CONDITIONS OF SALE

These terms and conditions apply to all sales made by Pacific PowerTech LLC (hereinafter called "PPT"). PPT's acceptance of Purchaser's order is conditioned upon Purchaser's assent that these terms and conditions shall be the sole and exclusive terms and conditions applicable to the purchase and sale relating to such order, and no other terms or conditions in addition to or different from these terms and conditions, whether contained in Purchaser's acceptance or acknowledgment, purchase, shipping or other documents or elsewhere, shall be binding on PPT (and are hereby expressly rejected by PPT), and none of such Purchaser terms and conditions shall be part of the agreement between Purchaser and PPT unless specifically agreed to in a writing signed by PPT. No order accepted by PPT may be altered or modified by Purchaser unless such alteration or modification is agreed to in a writing signed by PPT. DELIVERY OF PRODUCTS BY PPT TO PURCHASER SHALL CONSTITUTE ACCEPTANCE AND AGREEMENT BY PURCHASER OF ALL TERMS AND CONDITIONS SET FORTH HEREIN.

1. **LIMITED WARRANTY:** PPT warrants (a) that the goods provided hereunder shall be free of defects in material and workmanship under normal use and service, and (b) that the services provided hereunder shall have been performed in a good and workmanlike manner, for a period of twelve (12) months after date of shipment of goods or completion of services. PPT shall use commercially reasonable efforts to make available to Purchaser the manufacturer's warranty relating to component parts of goods provided here under if such warranty is longer in duration than PPT's warranty, and Purchaser shall have no recourse against PPT relating there to. No other express warranty is given and no other affirmation of PPT by works or action shall constitute a warranty. **The foregoing warranty is the sole warranty of PPT relating to the goods sold and services provided hereunder, and PPT expressly disclaims all other warranties, expressed or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose and non-infringement.** PPT's sole obligation, and Purchaser's exclusive remedy, for a breach of the foregoing warranty shall be the repair or replacement, at PPT's sole option, of the nonconforming goods or services, provided examination by PPT shall disclose such goods or services to be defective and provided Purchaser has provided PPT with a written notice of any warranty claim promptly after such claim arose. Purchaser shall be solely responsible, and PPT shall have no liability, for labor or other costs relating to removal of the affected goods and transporting them to PPT's designated facility for repair or replacement and all such costs and expenses shall be borne by Purchaser. PPT reserves the right to inspect the part(s) or evaluate the performance of the services in question and make the final decisions on warranty cases that may be questionable due to misuse, improper handling or installation, inadequate maintenance, or other causes beyond PPT's control.

2. **LIMITATION OF LIABILITY:** **In no event shall PPT be liable for damages to property, lost profits, injury to goodwill, or any other special, indirect, incidental, consequential, exemplary or punitive damages which may arise in connection with the goods sold or services rendered hereunder or any delay in delivering the goods or performing the service, regardless of whether PPT has knowledge of or has been advised of the possibility of such damages. PPT's total liability, whether arising from breach of contract, tort, including PPT's negligence, strict liability, indemnity or any other cause or basis whatsoever, is expressly limited to the purchase price of the goods or services involved even if such remedy fails of its essential purpose.**

3. **DELIVERY ESTIMATE:** Any delivery schedule is an estimate only and is not a binding commitment to delivery by the time stated, unless otherwise set forth in a writing signed by PPT. PPT shall not be liable for loss or damage of any kind resulting from delay or inability to deliver on account of any cause beyond PPT's control, including, but not restricted to: work stoppages, inability to obtain labor and materials, wrecks or delays in transportation, fire, Act of God, war, flood, shortage or interruption of utilities, energy sources or raw materials, governmental action, acts of Purchaser or acts or inactions of PPT's vendors. The delivery schedule will be adjusted by PPT in accordance with any modification of equipment design or specifications requested by Purchaser. If drawing approval is required, drawings must be returned on schedule to maintain delivery schedule, and PPT shall not be liable for delays resulting from the failure to promptly review and return drawings.

4. **PAYMENT TERMS:** Unless otherwise stated, Purchaser shall make payment net 30 days from the date of shipment. Overdue amounts shall accrue interest at the lesser of one and one-half percent (1-1/2%) per month or the maximum rate permitted by law. If Purchaser defaults on said payments and collection of account is placed in the hands of an attorney or other collection agency, Purchaser shall pay PPT's reasonable attorney's fees and collection costs. Purchaser hereby grants PPT a security interest in the goods herein ordered to secure payment therefore, and Purchaser hereby authorizes PPT to file one or more financing statements and any applicable continuation statements to perfect such security interest. Purchaser shall cooperate with PPT and shall provide such information requested by PPT to complete and file such financing statements. PPT also shall have the continuing right to approve Purchaser's credit.

PPT may at any time demand payment, satisfactory security or a guaranty of prompt payment. If Purchaser refuses to comply with PPT's demand for payment, security or guaranty, PPT shall have the right to refuse to deliver any undelivered goods or complete any services in process, to cancel any outstanding orders and/or refuse to accept any future orders without any liability to Purchaser.

5. **TITLE AND RISK OF LOSS; TRANSPORTATION:** Title to and risk of loss for all goods purchased hereunder passes to Purchaser F.O.B. PPT's plant unless otherwise agreed to in a writing signed by PPT. Method and route of shipment are at PPT's discretion, unless Purchaser supplies explicit instructions. Purchaser is responsible for all freight charges and for filing timely and proper claims against carriers in the event goods are lost or damaged in transit.

6. **TAXES:** The amount of any present or future sales, use, value added, excise, gross receipts or other similar tax imposed by any governmental authority on the sale, purchase, delivery, transportation, use or storage of, or otherwise in connection with the goods sold and/or services performed hereunder, shall be paid by Purchaser, or reimbursed to PPT. Upon demand by PPT, Purchaser shall supply to PPT copies of evidence of payment of or exemption from any taxes, duties or other assessments which Purchaser is obligated to pay.

7. **INSTALLATION:** Unless otherwise stated, no installation services are included in the price quoted. Purchaser is to provide all necessary building and erection licenses or permits, electric current, overload devices, and motor controls, as required.

8. **CANCELLED OR HELD ORDERS:** Orders cannot be changed or canceled, in whole or in part, without the prior written consent of PPT. In the event PPT consents to any cancellation of an order, Purchaser shall upon demand pay PPT for all costs identified to the order or contract, including all costs associated with special orders, which have been incurred by PPT, a cancellation fee in the amount of ten percent (10%) of the net selling price to compensate PPT for disruptions in scheduling and other indirect costs, and any other reasonable and customary termination charges assessed by PPT. Purchaser may have an order held, delayed, or rescheduled only upon written consent of PPT. Any order held, delayed, or rescheduled will be subject to the prices and conditions of sale in effect at the time of release of the hold or reschedule as well as payment by Purchaser of any and all additional costs incurred by PPT resulting from the hold, delay or reschedule. When products are ready for shipment and shipment cannot be made because of reasons beyond PPT's control, PPT shall submit an invoice for such products payable upon receipt thereof and shall, upon written notice to the Purchaser, store such products. Risk of loss of the product shall pass to the Purchaser upon moving such held product to storage. All expenses incurred by PPT in connection with storage of products shall be payable by Purchaser upon submission of invoice therefore by PPT.

9. **DRAWING AND SPECIFICATION APPROVAL:** Goods manufactured or assembled and/or services provided in accordance with drawings and specifications provided by PPT and approved by Purchaser or drawings and specifications provided by Purchaser and approved by PPT shall be deemed to be conforming to the requirements of the order. PPT shall have the right to revise the price and the delivery schedule in the event of any change in approved or submitted drawings or specifications.

10. **STENOGRAPHIC ERRORS:** PPT shall have the right to correct all stenographic and clerical errors contained in its proposal, herein, on any invoice issued to Purchaser or on its published price sheets, and such correction shall operate to amend these terms and conditions.

11. **ENTIRE AGREEMENT:** This writing is the complete and exclusive statement of the terms and conditions relating to the sale and purchase of the goods and services contemplated hereby, and all negotiations and representations, if any, made prior hereto are merged herein, except to the extent any such terms are contained in a proposal or order of PPT accompanying these terms and conditions. PPT shall not be bound by any agent's or employee's representation, promise or inducement not set forth in this writing unless hereinafter made in writing and signed by a PPT officer.

12. **GOVERNING LAW, VENUE:** These terms and conditions shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflicts of laws principles. The sole and exclusive venue of any action whatsoever to interpret these terms and conditions or to enforce the rights of the parties hereunder shall be the state or federal courts located in Portland, Oregon, and the parties hereby consent to the jurisdiction of such courts.

13. **MISCELLANEOUS:** Waiver by PPT of any provision or breach hereof shall not be construed as a waiver of any other provision or breach hereof. The invalidity of any provision herein shall not affect the validity of any of the remaining provisions of these terms and conditions. Captions of each paragraph hereof are intended only for reference and are of no legal force and effect. Purchaser shall keep secret and confidential and not disclose to any third party the provisions of these terms and conditions, including, but not limited to, the PPT pricing quoted to Purchaser. Purchaser shall not assign this agreement without the prior written consent of PPT, and any purported assignment in violation of this sentence shall, at the option of PPT, be null and void and of no force and effect. **Pacific PowerTech, LLC**