

XTREME PowerTech LLC

A Texas Company, DBA: *PowerTech*

Terms and Conditions of Sale

The term “Supplier” as used herein shall mean *PowerTech*. The term “Buyer” shall mean the party placing the purchase order. No contractual relationship between Supplier and Buyer shall arise until such time as Buyer has placed an order that has been accepted by Supplier at its corporate office at 123 Pleasant Avenue, Upper Saddle River, New Jersey 07458 and such acceptance has been indicated on a written acknowledgment. Orders shall be subject to all Supplier’s standard terms and conditions printed below, subject to correction for clerical errors.

Standard Terms and Conditions

1. **TERMS OF SALE:** These terms and conditions constitute the sole and entire agreement between Buyer and Supplier with respect to the subject matter herein (“Agreement”). Any term or condition in any document that is any way inconsistent with or in addition to these terms and conditions is hereby expressly rejected. Supplier’s acceptance of any offer or order of Buyer is hereby expressly conditional on Buyer’s assent to all terms and conditions hereof. Buyer’s failure to object to the terms of this Agreement in writing before Delivery (as defined by paragraph 7) shall be conclusively deemed acceptance of the terms and conditions of this Agreement. Supplier’s failure to object to any term or condition in any oral or written communication from Buyer, whether originated before or after the date hereof, shall not constitute an acceptance thereof or a waiver of any term or condition hereof. An authorized representative of Supplier must specifically agree to any change in the terms and conditions of sale contained herein in writing before becoming binding on the Supplier. All orders or contracts must be approved and accepted by the Supplier at its main office at 0-02 Fair Lawn Ave, Fair Lawn, New Jersey 07410.
2. **PRICES:** Irrespective of any prices quoted by Supplier or listed on Buyer’s order, an order is accepted only at the prices shown on Supplier’s acknowledgment. Separate line items on the Buyer’s purchase order are billable separately as they are completed. Prices listed on Supplier’s acknowledgment are firm and not subject to unit or price change, except at Supplier’s sole discretion, when interruptions, engineering changes or changes in quality are caused or requested by Buyer. All prices are subject to adjustment either directly or by the addition of a precious metals surcharge in order to cover the cost of precious metals utilized by Supplier in supplying goods.
3. **TERMS AND METHOD OF PAYMENT:** Where Supplier has extended credit to Buyer, terms of payment shall be net (30) days from date of invoice. At Suppliers option, Buyer will be charged the maximum interest rate then permitted by law on overdue receipts. If Buyer fails to make payment for goods delivered as herein provided, or if in Supplier’s opinion a change to Buyer’s financial condition or other circumstances no longer warrants shipment on the terms originally specified in any contract made hereunder, Supplier may at any time, in its sole discretion, limit or cancel the credit to Buyer and may, in its sole discretion, demand payment in cash, either in full or in part, before delivery of any part of the goods.
4. **WARRANTY:** Supplier warrants to Buyer that goods delivered hereunder will conform to Supplier’s specifications in effect at the time of shipment and be free of defects in material and workmanship for a period of one (1) year from date of shipment. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE ALL OF WHICH OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. Supplier may repair or replace in its sole discretion any goods delivered hereunder which become defective or fail to meet the applicable specifications during the warranty period, conditioned on: (a) Supplier is notified in writing by Buyer within thirty (30) days after discovery of defects or failure to meet specification; (b) Buyer obtains a Return Material Authorization (RMA) number from Supplier prior to returning any defective goods to Supplier; (c) the defective goods are returned to Supplier suitably packaged, transportation charges prepaid by Buyer; (d) the defective goods are received by Supplier for adjustment no later than four (4) weeks following the last day of the warranty period and (e) Supplier’s examination of such goods shall disclose to its satisfaction that such defects or failures have not been caused by misuse, abuse, neglect, improper installation or application, repair, alteration, accident or negligence in use, storage, transportation or handling. In the event that any one or more of the foregoing conditions (a) through (e) is not satisfied, Supplier shall have no liability under this warranty whatsoever. Any repair or alterations of the goods shipped hereunder without prior written

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authorization of Supplier renders any warranty under this Agreement void. THE FOREGOING STATES THE ENTIRE WARRANTY LIABILITY OF SUPPLIER.

5. **PATENTS:** Buyer shall indemnify, defend and hold Supplier harmless from and against any and all liability, damages, expenses, costs or losses resulting from any suit or proceeding brought for infringement of any patent(s), copyright(s), or trademark(s) or for misappropriation or use of any trade secret(s) or for unfair competition arising from Supplier’s compliance with Buyer’s designs, specifications or instructions. With respect to goods manufactured solely to Supplier’s designs and specifications, Supplier shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any such goods furnished hereunder infringe any patent of the United States. If Supplier is notified promptly in writing of such suit or proceedings, and is given full and complete authority, information and assistance by Buyer for such defense, Supplier shall pay all damages and costs finally awarded against Buyer in any such suit or proceeding up to and limited to the amount Buyer paid Seller for the infringing goods, but Supplier shall not be responsible for any settlement thereof made by Buyer without the written consent of Supplier. In the event that such goods are held in such suit or proceeding, or in the opinion of Supplier such goods are likely to become the subject of a claim of infringement of a patent, Seller in its sole discretion and at its own expense may either, (a) procure for Buyer the right to continue using such goods, or (b) modify such goods so that they become non-infringing, or (c) replace such goods with non-infringing goods, or (d) accept the return of such goods, granting Buyer a refund. If infringement is alleged prior to the completion of delivery of the goods, Supplier may decline to make further shipments without being in breach of any agreement. Supplier shall have no liability to Buyer under any provision hereof for any patent infringement or claim thereof that is based upon (a) a modification of the goods not introduced by or approved by Supplier, or (b) the interconnection or use of the goods in combination with goods or other devices not made by Supplier, or (c) the use of the goods in other than application recommended by Supplier. The sale of goods confers no license of any kind upon Buyer, by implication or otherwise. THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER FOR INFRINGEMENT OF PATENTS BY THE GOODS OR ANY PART(S) THEREOF.
6. **TAXES:** Any tax or government charge by the Federal, state, or municipal government applicable to the goods sold hereunder now imposed or hereafter becoming effective during the term of any contract made hereunder shall be added by Supplier to the sales price where Supplier has the legal obligation to collect or pay same, and shall be paid by Buyer unless Buyer provides Supplier with a proper tax-exemption certificate. Buyer shall state on its purchase order if purchased items are for resale.
7. **TITLE AND DELIVERY:** The goods shall be delivered to Buyer at Supplier’s plant (“Delivery”), and title thereto and the risk of loss or damage in transit or thereafter shall pass to Buyer upon Supplier’s delivery of the goods to a common carrier for shipment to Buyer. Transportation from the factory to destination is the responsibility of the Buyer. Unless the Buyer gives specific instructions, Supplier will: (1) select the most economical method and route of shipment, and (2) forward shipment collect or will ship prepaid and invoice the Buyer for transportation charges depending upon the best method for each shipment.
8. **DELIVERY SCHEDULE:** Notwithstanding any of the foregoing, Buyer understands that any delivery schedule set forth hereto is estimated only and is presented in good faith by Supplier. Supplier can give no firm assurance that such estimated schedule will be met. Therefore, Supplier reserves the right, if it is unable to meet such schedule in the exercise of its best efforts, to delay, postpone, or terminate deliveries so scheduled in its discretion. Supplier shall not be liable to Buyer or any other person or organization for any failure to deliver all or any portion of the products scheduled and shall not be liable for any direct, indirect, incidental or consequential damages resulting from any failure to meet such schedule. Supplier may deliver any goods in installments. If any shipment is delayed at Buyer’s request, Supplier may invoice Buyer for such goods and risk of loss of such goods shall pass to Buyer on the date Supplier is prepared to make shipment.
9. **CANCELLATIONS:** The Buyer may terminate this contract in whole or in part upon thirty (30) days advance written notice to Supplier. In such event Buyer shall be liable for termination charges which shall include a price adjustment based on the quantity of goods actually delivered, and all costs, direct and indirect, incurred and committed for

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this contract together with a reasonable allowance for prorated expenses and, for orders of customized products, anticipated profits. Such termination charge shall in no event be less than fifteen (15%) of the dollar amount of the sales terminated.

10. **ACCEPTANCE:** Buyer shall inspect all products promptly upon receipt thereof at the shipping destination and shall contact customer service for a Return Material Authorization (RMA) number with respect to any products that fail in any significant respect to meet Supplier’s warranty. Buyer’s warranty return shall be not effective unless the subject products are returned freight prepaid to Supplier’s designated site, suitably packed within ten (10) days of receipt of said RMA number. As promptly as possible; Supplier shall at its option and expense, either repair or replace products properly returned under Supplier’s warranty.
11. **NON-WAIVER OF DEFAULT:** Each shipment made under any order shall be treated as a separate sale and transaction, but in the event of any default by Buyer, Supplier may decline to make further shipments without in any way affecting its rights under such order. If, despite any default by Buyer, Supplier elects to continue to make shipments, its actions shall not constitute a waiver of any default or Buyer or in any way affect Supplier’s legal remedies for any such default.
12. **CONTINGENCIES:** Supplier shall not be responsible for any failure to perform due to causes beyond its reasonable control. These causes shall include but not be restricted to fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, act of terrorism, war, rebellion, insurrection, sabotage, epidemic, quarantine, restrictions, labor disputes, labor shortages, transportation embargoes, or failures or delays in transportation, inability to secure material, or machinery for the manufacture of its devices, acts of God, acts of the Federal Government or any agency thereof, acts of any state or local government or agency thereof, and judicial action.
13. **ARBITRATION:** In the event any dispute arises between Supplier and Buyer, such dispute, if not settled by negotiations between the parties, within a reasonable time, shall be settled by arbitration in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereon. Unless the parties otherwise agree in writing, such arbitration shall be conducted in Austin, Texas. Supplier and Buyer hereby consent to personal jurisdiction and venue in Austin, Texas.
14. **ASSIGNS:** Either party may assign its rights and obligations under any order governed by these terms and conditions to a successor of the entire business and operations of such party relating to such order. Subject to the preceding sentence, no order governed by these terms and conditions shall be assignable in whole or in part by either party without the prior written consent of the other party.
15. **LAW:** The validity, performance and construction of these terms and conditions of any sale made hereunder shall be governed by the laws of the State of Texas, without regard to conflict of laws principles.
16. **GENERAL:** Supplier represents that with respect to the production of the articles and/or the performance of the services covered by the order, it will fully comply with all requirements of the Fair Labor Standards Act of 1938, as amended.
17. **LIMITATION OF LIABILITY:** IN NO EVENT SHALL SUPPLIER BE LIABLE TO BUYER FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND IN NO EVENT SHALL THE LIABILITY OF SUPPLIER ARISING IN CONNECTION WITH ANY PRODUCTS SOLD HEREUNDER; WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED ON CONTRACT, WARRANTY, TORT, PATENT INFRINGEMENT, OR OTHERWISE, EXCEED THE ACTUAL AMOUNT PAID BY BUYER TO SUPPLIER FOR PRODUCTS DELIVERED HEREUNDER.