

1. DEFINITIONS

(a) "Agreement" means the Customer's agreement to purchase Products and/or Services from 3 PHASE ;

(b) "Customer" means any company, partnership, person or entity purchasing Products and/or Services from 3 PHASE ;

(c) "3 PHASE " means 3 Phase Power Systems Inc.;

(d) "Products" means any equipment, parts and/or materials being purchased by the Customer pursuant to an Agreement;

(e) "Services" means any engineering, technical, installation and/or manufacturing services of any description or kind to be provided by 3 PHASE in relation to Products;

2. PURPOSE

2.1 The sale of Products and/or supply of Services is subject to and governed solely by these terms and conditions which shall not be modified unless in writing and signed by an authorized signatory of 3 PHASE .

2.2 3 PHASE accepts the Customer's order on the express condition that the Customer agrees to these terms and conditions.

2.3 Proposals made by 3 PHASE on behalf of manufacturers represented by 3 PHASE or partners of 3 PHASE will be subject also to the terms and conditions of the respective manufacturer or partner that are in place at the time the order is accepted.

2.4 The Customer's agreement with these terms and conditions shall be evidenced by the Customer accepting delivery of Products or Services from 3 PHASE or by the Customer's payment of the invoice rendered for such Products and/or Services.

3. TERMS OF PAYMENT

3.1 Subject to approval of 3 PHASE 's credit department, the Customer shall pay 3 PHASE the price of the Products and/or Services provided within thirty (30) days from the date of 3 PHASE 's invoice.

3.2 In the event that 3 PHASE and the Customer have agreed to a milestone payment schedule, the payments specified in the milestone payment schedule shall be paid on the dates that each milestone is achieved.

3.3 All overdue payments bear interest commencing on the day on which the amount became payable, calculated at the rate of 2.0% per month (24% per annum) compounded monthly.

4. DELIVERY

4.1 Shipping dates are approximate and 3 PHASE assumes no responsibility for delays.

4.2 If the Customer requires emergency deliveries or deliveries outside of normal business hours, any extra costs shall be borne by the Customer.

4.3 The time period for delivery, unless otherwise agreed in writing, shall commence upon receipt by 3 PHASE of the Customer's written acceptance of 3 PHASE's acknowledgment of order.

4.4 Delivery must be taken by the Customer or adequate shipping instructions furnished to 3 PHASE within ten (10) days of notification that the Products are ready for delivery.

4.5 If the Customer fails to take delivery or provide adequate shipping instructions by the time period referred to in article 4.4, then the full purchase price shall forthwith become due and payable, and in addition 3 PHASE may:

- (a) store the Products and bill the Customer for storage charges;
- (b) dispose of the Products at a public or private sale, with proceeds (net of any costs or expenses relating to the storage and disposal of the Products) to be applied towards the Customer's account; or
- (c) exercise any other rights or remedies as may be available to 3 PHASE in the circumstances.

4.6 Transportation charges from 3 PHASE's facility to the Customer's facility shall be paid by the Customer to 3 PHASE, in addition to the purchase price of the Products, unless otherwise agreed to in writing by 3 PHASE. 3 PHASE will select the carrier in the absence of specific instructions by the Customer.

5. RETURN OF GOODS

5.1 Products may be returned only with the written consent of 3 PHASE and only within 10 business days of receipt by the Customer. The Customer agrees to pay any shipping, handling and freight charges for returned Products. Products returned will be subject to a restocking charge as per the manufacturer's restocking policy but in any event no less than 25% of the order value.

6. CANCELLATIONS

6.1 Orders may only be cancelled with the express written consent of 3 PHASE and only upon payment for all labour, materials, logistical cost, and restocking charges up to the point of cancellation.

6.2 Cancellation charges

6.2.1 5% charge for cancellation once purchase order has been received by 3 PHASE Controls

6.2.2 15% charge for cancellation once approvals have been issued by the client

6.2.3 75% charge for cancellation once parts have been ordered for the project

6.2.4 100% charge for cancellation once the project is released to the shop-floor to begin manufacturing

7. INSTALLATION

7.1 The Customer shall be responsible for transporting, receiving, storing, installing, starting up and maintaining all Products.

7.2 If requested, 3 PHASE may, at its option, provide Services to assist the Customer in the installation of Products at a price to be agreed between the Customer and 3 PHASE or at the rates set out in 3 PHASE 's published rate schedule in effect at the time the Services are rendered.

8. TITLE AND RISK OF LOSS

8.1 All right, title and interest in and to the Products shall remain with 3 PHASE until the Products have been paid for in full. However, the Products shall be entirely at Customer's risk from the time placed on a common carrier and the loss, damage, deterioration or destruction of the Products thereafter shall not release the Customer from its obligations hereunder.

8.2 In the event of any default to make payment by the Customer, 3 PHASE may re-take possession of any Products already delivered without notice or legal proceedings.

8.3 If 3 PHASE re-takes possession of Products:

(a) any payments already made shall be credited to the Customer's account;

(b) 3 PHASE may store the Products for a reasonable period of time and bill the Customer for storage charges;

(c) 3 PHASE may dispose of the Products when reasonably practical at a public or private sale, with net proceeds to be applied towards the Customer's account;

(d) any reasonable expenses associated with the repossession and sale of the Products including without limitation any legal expenses, shipping, packing,

transportation, or storage charges, are the Customers debts and will be paid by the Customer; and

(e) 3 PHASE shall not be responsible for any costs or losses, including without limitation economic losses, suffered by the Customer as a result of the removal and repossession of Products and the Customer hereby agrees to indemnify, and save harmless 3 PHASE from any and all loss, costs or damages, including legal costs on a solicitor and own client basis, arising out of any claims, suits or demands of the Customer relating in any way to 3 PHASE 's repossession of Products.

9. CLAIMS

9.1 Any claims for missing items or inaccuracies must be made within two (2) business days of the date of receipt of Products.

10. TAXES

10.1 Any tax of any nature including, without limitation, any excise, sales, use, GST or other taxes which 3 PHASE may be required to pay, to collect or to reimburse to others, by reason of the manufacture, ownership, use, or sale of any Products or by reason of any Services provided shall be the sole responsibility of the Customer and shall added to the amounts to be paid hereunder.

11. TECHNICAL DATA

11.1 All drawings, descriptive matter, weights, dimensions and performance data submitted with or made a part of 3 PHASE 's acknowledgement of order are based upon information furnished by the Customer and 3 PHASE assumes no responsibility for the inaccuracy of such information.

12. LIMITED WARRANTY AND LIMITATION OF LIABILITY

12.1 3 PHASE will transfer to the Customer any transferable warranties or indemnities that the manufacturer, distributor or supplier of the Products provides to 3 PHASE . 3 PHASE will provide copies of any transferrable warranties or indemnities if requested by the Customer. Upon acceptance of any Products, the Customer shall be deemed to have accepted the terms and limitations of any such transferable warranties or indemnities, whether or not copies have been provided to the Customer.

12.2 Any Products that are repaired or serviced by 3 PHASE shall be warranted only as provided in article 12.1 for the remainder period of any transferrable warranty.

12.3 3 PHASE assumes no liability for:

(a) any warranties or indemnities other than those indicated in Article 12.1;

(b) any warranty whatsoever relating to any Product that has been subject to misuse, improper testing, assembly, mishandling, or which has been operated contrary to instructions relating to installation, maintenance or operation, or contrary to industry standards relating to acceptable input power; or

(c) the quality of any work performed or services provided by anyone other than 3 PHASE or its employees or agents.

12.4 If any Products supplied fail to conform to the manufacturers specifications and if 3 PHASE agrees, acting reasonably, that such Products are defective, then 3 PHASE may, at its option:

(a) repair the Products;

(b) replace the Products; or

(c) provided that the Products are returned within the permitted time period set out in article 5.1, reimburse the Customer for the purchase price of the Products.

12.5 3 PHASE shall not be liable for any loss, damage or expense directly or indirectly arising because Products fail to conform to specifications or prove to be defective. The Customer assumes the full risk of all such loss, damage or expense.

12.6 3 PHASE is not obliged to accept the return of Products that are returned without 3 PHASE's consent or that are returned beyond the permitted time period set out in article 5.1.

12.7 THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY 3 PHASE IN CONNECTION WITH ANY PRODUCTS AND SERVICES, AND 3 PHASE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.

13. INDEMNITY

13.1 The Customer agrees to protect, defend and indemnify 3 PHASE, its respective officers, directors, employees, agents or consultants from and against any and all claims, demands, losses, causes of action, liability and costs (including all legal costs) of every kind and nature arising out of or connected in any way with damage to property, personal injury or death of anyone, if such claims, demands, losses, causes of action, liability or costs relate to any act or omission, or alleged act or omission, of 3 PHASE or its officers, directors, employees, agents or consultants relating to Products or Services supplied or provided by 3 PHASE.

14. FORCE MAJEURE

14.1 For all purposes hereof, force majeure includes any act of God, war, mobilization, governmental regulation, strike, lockout, drought, flood, total or partial fire, obstruction of navigation, loss, damage or detention in transit, defective materials or delays by shippers, or other contingences or causes beyond 3 PHASE 's control which might prevent the manufacture, shipment or delivery of Goods covered hereby. Performance of 3 PHASE 's obligations may be suspended pending force majeure, without 3 PHASE being responsible to Customer for any damages or losses resulting from such suspension.

15. ASSIGNMENT

15.1 The Customer shall not assign or transfer this agreement or any interest in, or monies under, it without the written consent of 3 PHASE and any assignment made without such consent shall be void.

16. REMEDIES

16.1 Upon default by a Customer under the terms hereof, and at any time after the default, 3 PHASE shall have all rights and remedies provided by law and by these terms and conditions. No delay or omission by 3 PHASE in exercising any right or remedy shall operate as a waiver of them, or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Furthermore, 3 PHASE may remedy any default by a Customer in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by a Customer. All rights and remedies of 3 PHASE granted or recognized in these terms and conditions are cumulative and may be exercised at any time and from time to time independently or in combination.