

## 1. DEFINITIONS

- (a) "Agreement" means the Customer's agreement to purchase Products and/or Services from 3PPS;
- (b) "Customer" means any company, partnership, person or entity purchasing Products and/or Services from 3PPS;
- (c) "3PPS" means 3Phase 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 3PPS 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 3PPS.

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

2.3 Proposals made by 3PPS on behalf of manufacturers represented by 3PPS or partners of 3PPS 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 3PPS 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 3PPS's credit department, the Customer shall pay 3PPS the price of the Products and/or Services provided within thirty (30) days from the date of 3PPS's invoice.

3.2 In the event that 3PPS 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 3PPS 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 3PPS of the Customer's written acceptance of 3PPS's acknowledgment of order.

4.4 Delivery must be taken by the Customer or adequate shipping instructions furnished to 3PPS 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 3PPS 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 3PPS in the circumstances.

4.6 Transportation charges from 3PPS's facility to the Customer's facility shall be paid by the Customer to 3PPS, in addition to the purchase price of the Products, unless otherwise agreed to in writing by 3PPS. 3PPS 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 3PPS 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 3PPS 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 3PPS

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, 3PPS 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 3PPS or at the rates set out in 3PPS'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 3PPS 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, 3PPS may re-take possession of any Products already delivered without notice or legal proceedings.

8.3 If 3PPS re-takes possession of Products:

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

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

(c) 3PPS 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 Customer's debts and will be paid by the Customer; and

(e) 3PPS 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 3PPS 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 3PPS'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 3PPS 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 3PPS's acknowledgement of order are based upon information furnished by the Customer and 3PPS assumes no responsibility for the inaccuracy of such information.

## **12. LIMITED WARRANTY AND LIMITATION OF LIABILITY**

12.1 3PPS will transfer to the Customer any transferable warranties or indemnities that the manufacturer, distributor or supplier of the Products provides to 3PPS. 3PPS 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 3PPS shall be warranted only as provided in article 12.1 for the remainder period of any transferrable warranty.

12.3 3PPS 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 3PPS or its employees or agents.

12.4 If any Products supplied fail to conform to the manufacturer's specifications and if 3PPS agrees, acting reasonably, that such Products are defective, then 3PPS 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.
- (d) The obligation of 3PPS under this warranty is limited to replacing or repairing, EXW 3PPS's plant in Delta, Prince George, BC or Edmonton, AB. Any defective part or parts which fail during the lesser period of (a) eighteen (18) months after shipment by 3PPS or (b) twelve (12) months after start-up. As a condition of any warranty claim, Purchaser must give 3PPS written notice within thirty (30) days of the product or part failure. This warranty does not extend to any equipment, parts, or component parts supplied by Purchaser or others.

3PPS warrants that, for a period of ninety (90) days from the completion of Services, such Services shall conform to the specifications, if any, set forth in the order, and all such Services shall be performed in a good and workmanlike manner. 3PPS's obligation under this warranty shall not include any transportation charges, cost of installation, cost of obtaining access to the non-conforming Goods or Services, duty, taxes or charges whatsoever, all of which shall be for the account of Purchaser.

12.5 3PPS 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 3PPS is not obliged to accept the return of Products that are returned without 3PPS'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 3PPS IN CONNECTION WITH ANY PRODUCTS AND SERVICES, AND 3PPS 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 3PPS, 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 3PPS or its officers, directors, employees, agents or consultants relating to Products or Services supplied or provided by 3PPS.

### **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 3PPS's control which might prevent the manufacture, shipment or delivery of Goods covered hereby. Performance of 3PPS's obligations may be suspended pending force majeure, without 3PPS 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 3PPS 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, 3PPS shall have all rights and remedies provided by law and by these terms and conditions. No delay or omission by 3PPS 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, 3PPS 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 3PPS 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.