



TERMS AND CONDITIONS

GLOBAL POWER TECHNOLOGIES PURCHASE ORDER

**Note: This document contains five (5) pages and twenty-six (26) elements)*

Vendor is called "Seller" and Global Power Technologies., is called "Buyer" herein.

1. **DELIVERY AND ACCEPTANCE** – Time of delivery is of the essence of this purchase order. Acceptance of this purchase order shall be unqualified, unconditional, and subject to the terms and conditions herein. No additional or different terms and conditions, including those which appear in any quotation, acceptance or acknowledgement of Seller, shall be of any force or effect unless Buyer expressly agrees in writing to such additional or different terms and conditions. Seller agrees that it will not assert, as a defense to the enforcement of the conditions of this purchase order, any limitation set out in its acceptance or acknowledgement of this order. Acceptance and payment for goods shipped and/or services rendered shall constitute Buyer's acceptance of such goods and/or services subject to the provisions herein only. Upon acceptance, this purchase order shall constitute the entire agreement between Buyer and Seller unless otherwise agreed to in writing by both Buyer and Seller.
2. **CHANGES** – Buyer may at any time make changes in the drawings, designs or specifications, method of shipping or packing, and the place of delivery of any goods and/or work covered herein. If such changes affect the delivery schedule or the price, Seller shall notify Buyer immediately. No price increase shall be allowed unless approved by Buyer in writing, but production shall not be delayed pending determination of the price increase. Major scope changes will be facilitated through Global Power Technologies' change management process, which requires all changes to be authorized prior to execution. Some latitude for change will be agreed to within the contract itself to avoid burdening the project with process. When a change order is submitted, within 5 business days of information being received by the seller, the seller must notify the buyer if that change order is within the original scope of work, determination of it being out of the contracted scope. If determined to be out of the contracted scope of work the seller has 5 business days to notify the buyer of such.
3. **DRAWING APPROVAL CHANGES** - Seller is responsible for meeting and maintaining all specifications, as outlined in the scope of supply and other supplied documentation, regardless of approved drawings and documentation unless this documentation is in the form of a deviation request. If deviation from a specification is required, the seller must submit a deviation request to the buyer for approval immediately.
4. **DRAWING/PLANS AND SPARES FOR ENGINEERED SUPPLIED PRODUCTS** – The Seller shall provide the following to the buyer;
 - A full Bill of Materials for each final assembly being manufactured for the buyer, this is to include each component's original manufacturer's name, part number and description where applicable.
 - Redlined or as built drawings.
 - One copy of the manuals shipped with each end assembly.
 - Completed Test reports for components and/or assemblies identified by the buyer.
 - Material Test Reports if required (Seller as part of its obligation shall provide original material certifications and test certificates for all goods and/ or services rendered as soon as possible but prior to delivery of the goods.).
 - Certificates of approval on any components and/or assemblies.
 - Recommended spare parts for Commissioning to come with quoted pricing and delivery.
 - Recommended spare parts for 2 year spares to come with quoted pricing and delivery.

- 5. WARRANTY AND INDEMNITY** – Seller warrants that all goods and services covered by this purchase order shall conform to the specifications, drawings, samples or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. This warranty shall run to Buyer, its customers and users of its products. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity by Buyer. In the event Seller fails to promptly correct defects in or replace nonconforming goods, Buyer after reasonable notice to Seller, may make such corrections or replace such good and services and charge Seller for costs of materials, labor, transportation or other costs incurred by Buyer. In addition to any other remedies it may have, Buyer may reject nonconforming goods and return them to Seller at Seller's expense; nonconforming goods may not be replaced without Buyer's written authorization. Seller agrees to indemnify and save harmless Buyer, its agents and customers and the users of any goods and services covered by this order from any and all liability, loss or damage which may be incurred by them or any of them arising out of or in connection with or related to any claim of defect in the design, materials, manufacture or sale of such goods or services.
- 6. RECALL OR REPAIR CAMPAIGN** – In the event it is determined that a product of Seller purchased hereunder creates or contributes to a repair campaign or safety recall due to a defect, or non-compliance with any federal or provincial legislation, Seller shall pay the cost of repair or recall and correction, including labor, based upon Seller's proportionate responsibility for the defect or non-compliance. This section shall not limit Seller's liability under other provisions hereof.
- 7. INVOICES** – Delay in receiving invoices, also errors and omissions on invoices, will be considered just cause for withholding payment without losing cash discount privileges.
Foreign Seller Invoices – Upon completion of the shipment hereunder, you shall mail to us one original invoice and one Canada Customs and Revenue Agency ("Canada Customs") invoice certified in accordance with the requirement of Canada Customs. Three copies of such invoices must also accompany the shipment. Bills of lading and other shipping documents must correspond in all details with certified invoices.
Domestic Seller Invoices – Upon completion of the shipment hereunder, you shall mail to us one invoice plus one copy of the bill of lading. Goods and Services Tax ("GST") must be shown as a separate line item on each invoice and must not be included in the piece price. Your GST registration number must appear on each invoice.
- 8. TAXES** – Buyer will not pay Seller any state, provincial, or local sales, use, or similar tax unless Seller is required by law to collect such taxes from Buyer and such tax is separately stated or itemized hereon. Federal excise taxes charged to Buyer shall be separately stated or it shall be indicated as being included in the unit price. Seller agrees that no tax for which an exemption is indicated hereon or otherwise by Buyer is or will be included in the prices stated hereon, nor will they be subsequently charged. Seller agrees to pay any and all personal property and/or ad valorem taxes assessed or otherwise levied against any property placed in the hands of Seller by Buyer, for the purpose of fulfilling this purchase order.
- 9. PACKING, MARKING AND SHIPPING** – Shipments shall be routed in accordance with Buyer's instructions, and Seller agrees to reimburse Buyer for all expense incurred by Buyer as a result of improper packing, marking or routing. Buyer's purchase order number, part number, line number, and Seller's invoice number and packing slip number will appear on each package and bill of lading. Shipments in excess of those authorized may be returned to Seller, and Seller shall pay the transportation charges both ways for such shipments. Buyer may from time to time change shipping schedules previously furnished Seller, or direct temporary suspension of scheduled shipments. Buyer's count will be accepted as final on all shipments. Unless otherwise expressly agreed to in writing by Buyer, Seller shall make no charge for containers, crating, boxing, bundling, dunnage, drayage, or storage.

10. **PATTERNS, TOOLS FREE ISSUE EQUIPMENT AND DIES** – All patterns, tools, dies, free issue equipment or other material furnished by Buyer to Seller, or which are specifically paid for by Buyer, and any replacement thereof, or anything affixed or attached thereto, shall be and remain Buyer's personal property. Such property, if it can reasonably be done, shall be plainly marked or otherwise adequately identified by Seller as "Property of Global Power Technologies." and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for such and shall not use such property except for filling Buyer's order. While in Seller's custody or control, such property shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with the loss payable to Buyer, and shall be subject to removal at Buyer's request.
11. **WORK ON BUYER'S OR ITS CUSTOMERS' PREMISES** – If Seller's work under this purchase order involves operations by Seller on the premises of Buyer, or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work. Seller agrees to indemnify and protect Buyer against all liabilities, claims or demands for injuries or damage to any person or property growing out of the performance of this order, and to pay Buyer's costs and expenses in connection with any thereof. Seller shall maintain such public liability, property damage, and employer's liability and worker's compensation insurance as will protect Buyer from said risks and from any claims under any applicable worker's compensation, occupational disease or similar act. Seller shall furnish certificates of insurance to Buyer at Buyer's request.
12. **INFRINGEMENT** – Seller warrants that the goods sold hereunder will not infringe any U.S., Canadian or foreign patent and Seller shall defend, indemnify and save Buyer harmless from and against any and all loss, damage, expense or liability that may result by reason of any patent infringement or alleged infringement.
13. **USE AND PROTECTION OF INFORMATION** – Unless covered by a non-disclosure/non-compete agreement the seller shall secure written approval from Buyer before any specifications, records, drawings, data, computer programs, program documentation, or any other technical information relating to this purchase order (other than relating to Seller's own standard commercial items) are released to anyone other than those requiring the information for the performance of work under this purchase order. Any information of the type described hereinabove, which is furnished by Buyer, shall remain buyer's property, shall be kept confidential by Seller, and shall be returned to Buyer at its request.
14. **RELATIONSHIP** – Neither Seller nor its subcontractors, or the employees or agents of any of them, shall be deemed to be Buyer's employees, or agents, it being understood that Seller and its subcontractors are independent contractors for all purposes and at all time, and Seller shall be wholly responsible for withholding or payment of all federal, provincial/state and local income and other payroll taxes with respect to its employees, including contributions from them and as required by law.
15. **FORCE MAJEUR**
- 15.1 Seller shall not be liable for delays or defaults in furnishing goods, or services hereunder, if such delays or failure are due to causes beyond the control and without the fault or negligence of the Seller.
- 15.2 The Buyer shall not be liable for failure to accept goods or services hereunder if such delays or failure are due to causes beyond the control and without the fault or negligence of Buyer.
- 15.3 Causes deemed beyond the control of either party shall include, but not be restricted to:
- a) Acts of God
 - b) Acts of a public enemy

- c) Acts of the Government of Canada/United States or any state, province or political Sub-division thereof.
- d) Fires, floods, explosions, or other catastrophes
- e) Labor disturbances, freight or trade embargoes

16. LIQUIDATED DAMAGES

16.1 If the Seller fails to deliver any or all of the Goods or perform the services within the time period(s) specified in the Purchase Order, the Buyer shall, without prejudice to its other remedies under the Purchase Order, deduct an amount equal to one percent (1 %) of the total value of the Purchase Order for each week of delay, or period exceeding 3 (three) days as liquidated damages, until actual delivery or performance, up to a maximum of ten percent (10 %) of the total value of the Purchase Order. Once the maximum is reached, the Buyer may terminate the Purchase Order.

16.2 The Buyer has the right to deduct any amount of liquidated damages and/or any other reasonable charge to be imposed on the Seller, from any amount due to the Seller, or from the respective warranties, without prejudice to or waiving of responsibilities conferred to the parties by law and in the Purchase Order.

16.3 The application of liquidated damages does not relieve the Seller from complying with the principal obligation or any other Buyer remedy.

- 17. TERMINATION AT OPTION OF BUYER** – At its option, Buyer may terminate all or part of the work under this purchase order. In such case, Buyer shall have no liability with respect to goods or components procured, or work done, or supplies partially fabricated, in excess of authority contained in this order or in any shipment release and issued to Seller pursuant hereto. In no event shall Buyer be liable for prospective or anticipated profits by reason of such termination.

18. TERMINATION BY DEFAULT

18.1 The Buyer may, without prejudice to any other remedy for breach of Purchase Order, by written notice of default sent to the Seller, terminate the Purchase Order in whole or in part:

- a) If the Seller fails to deliver any or all the Goods within the time period(s) specified in the Purchase Order, or any extension thereof granted by the Buyer pursuant to clause 1 or:
- b) If the Seller fails to perform any other obligation(s) under the Purchase Order.
- c) If the Buyer detects any delay or default by the Seller impeding the fulfillment of the terms and/or any other such obligation under the Purchase Order.

18.2 In the event the Buyer terminates the Purchase Order in whole or in part, pursuant to para.18.1, the Buyer may procure, upon such terms and in such manner as it deems appropriate, Goods similar to those undelivered, and the Seller shall be liable to the Buyer for any excess cost for such similar Goods. However, the Seller shall continue performance of the Purchase Order to the extent not terminated.

- 19. ENFORCEMENT AND SEVERABILITY** – Buyer's failure at any time to enforce any of the provisions of this purchase order or any right with respect thereto, or to exercise any option herein provided, will in no way be construed to be a waiver of such provisions, rights, or options or in any way to affect the validity of this contract.
- 20. RISK OF LOSS** – The goods shall be and remain at the risk of the Seller until delivery to the Buyer or, if the Buyer agrees, to a carrier for transportation to the Buyer.
- 21. ASSIGNMENT** – Neither this purchase order nor any portion hereof shall be assigned or delegated by Seller without Buyer's prior written consent. Without such consent, any such assignment shall be void.

22. **BINDING CONTRACT** – When accepted as set forth in paragraph 1, this purchase order will constitute a binding agreement on the Buyer and on the Seller. The Seller waives notice of acceptance by the Buyer.
23. **Pricing, Quotes and Payment** – Quotes submitted to Purchaser shall be valid for a period of sixty days (60) from the date of submittal to purchaser. Reimbursement shall be 100% net, payable forty five days (45) from receipt of an undisputed invoice.
24. **Disputes** - Any claim, dispute or controversy arising out of, or in connection with, or relating to this purchase order that cannot be resolved within 30 days shall be submitted to arbitration pursuant to the *Arbitration Act* (Alberta) R.S.A. 2000, c. A-43 (the "**Act**"). If there is a conflict between the Act and the terms of this Agreement, the terms of this Agreement shall prevail. Any arbitration under this section shall be conducted in accordance with the following rules:
- a. Any arbitration under this section shall take place in Calgary, Alberta and shall be conducted in the English language.
 - b. An arbitration shall be commenced by delivery of a written Notice to Arbitrate to the opposite Party. The Notice to Arbitrate shall set out a concise description of the claim(s), dispute(s), or controversy (ies) to be arbitrated.
 - c. The arbitral tribunal shall be composed of a single arbitrator (the "Arbitrator"). The Party that delivers a Notice to arbitrate (the "Applicant") shall, in the Notice to Arbitrate, nominate an individual to act as the Arbitrator. Within 15 days of the date of receipt of the Notice to Arbitrate, the other Party (the "Respondent") shall, in writing, either signify its acceptance of the nominee or, in the alternative, propose another individual to act as the Arbitrator. If within 30 days of delivery of the Notice to Arbitrate the Parties have not agreed upon an arbitrator, either Party may apply to the Court of Queen's Bench of Alberta (the "**Court**") to have an arbitrator appointed pursuant to the provisions of the Act. Each Party shall bear its own costs in relation to any application to the Court to appoint an arbitrator.
 - d. The award of the Arbitrator shall be final and binding. There shall be no right of appeal on questions of law, questions of fact, or questions of mixed fact and law.
 - e. The award of the Arbitrator shall have the same force and effect as a judgment of the Court and may be entered as a judgment at the Court or any other court of competent jurisdiction.
25. **COMPLIANCE WITH LAWS** – Seller agrees to comply with all applicable federal, provincial/state and local laws, and to indemnify Buyer against all liability for Seller's failure to so comply.
26. **GOVERNING LAW** – As permitted by Article 6 of the Convention on Contracts for the International Sale of Goods, Buyer and Seller agree that this Purchase Order is not governed by the Convention on Contracts for the International Sale of Goods. This purchase order and the agreement constituted by the acceptance of this purchase order by Seller shall be governed by and construed in accordance with the laws of Alberta. The Courts of Alberta shall have exclusive jurisdiction to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise howsoever both at law and in equity, arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this agreement and shall have jurisdiction to bear and determine all questions as to the validity, existence or enforceability thereof.