

## POWER SOLUTIONS PRO, LLC

### Terms and Conditions

The following terms and conditions (“Terms and Conditions”) apply to and control the sale of any goods (“Products”) from Power Solutions Pro, LLC hereunder (“Seller”) to the entity or person purchasing Products from Seller (“Customer”). By ordering any Products from Seller via e-mail, phone, fax, or any other method, Customer agrees on its behalf personally and on behalf of any entity for which it is an agent to be bound by these Terms and Conditions.

**CUSTOMER SHOULD READ THESE TERMS AND CONDITIONS CAREFULLY TO ENSURE THAT CUSTOMER UNDERSTANDS EACH PROVISION. SELLER RESERVES THE RIGHT TO CHANGE OR MODIFY THESE TERMS AND CONDITIONS AT ANY TIME IN ITS SOLE DISCRETION. NOTICE OF ANY SUCH CHANGES TO THESE TERMS AND CONDITIONS WILL BE PROVIDED BY UPDATING THE DATE REFERENCED AT THE BOTTOM OF THE REVISED TERMS AND CONDITIONS OR AS OTHERWISE DEEMED APPROPRIATE BY SELLER. SELLER’S RIGHT TO REQUIRE STRICT OBSERVANCE AND PERFORMANCE OF THESE TERMS AND CONDITIONS SHALL NOT BE REDUCED, VITIATED, OR OTHERWISE AFFECTED BY ANY CURRENT OR PAST WAIVER OF ANY OF THESE TERMS AND CONDITIONS (OR BY ANY PREVIOUS COURSE OF DEALING).**

1. **Standard Terms and Conditions of Sale.** All quotes and sales of Products are made pursuant to these Terms and Conditions, including any order that may be placed by Customer on a form referencing terms that conflict with, supplement or deviate from these Terms and Conditions, in which case Seller expressly objects to and rejects all such conflicting, supplemental or deviating terms and these Terms and Conditions shall nevertheless govern any such order accepted by Seller. Customer’s receipt of any Product from Seller shall be deemed to constitute Customer’s acceptance of these Terms and Conditions.

2. **Prices.** The prices of Seller’s Products are the prices specified on Seller’s invoice. All Product prices are in U.S. dollars. Price quotations from Seller shall automatically expire in thirty (30) days from the date issued, or as otherwise stated in the quotation. Prices are subject to change at any time without notice. In the event Seller discovers a material error in the pricing of a particular Product that affects Customer’s outstanding order prior to its shipment, Seller will notify Customer of the correct pricing and Customer may choose to accept the corrected price or cancel the order. If in such event Customer chooses to cancel the order and Customer’s credit card has already been charged for a purchase, Seller will issue a credit to Customer’s credit card in the amount of the charge. Prices are for Products only and do not includes taxes, shipping, or any other similar charges, payment of which shall be the sole responsibility of Customer.

3. **Product Information.** Any and all Product information (such as Product description, use or warnings) relayed by Seller to Customer, through Seller’s representatives or its website, is provided by the Product’s original manufacturer (or its authorized reseller) on an “as is” and “as available” basis. Seller’s website may also include links to third-party sites, which are not owned, operated, controlled or endorsed by Seller. Use of these third-party sites is at Customer’s own risk and may require Customer to agree to terms of use governing such third-party’s site. Seller does not warrant or guaranty the accuracy or completeness of any such Product information or assume any responsibility or liability whatsoever for any inaccuracies or limitations in any such Product information, and Seller shall not be liable for any damages or losses caused or alleged to be caused by Customer’s use of or reliance on any such Product information, whether available through Seller’s representatives, its website or any third-party site. Any information

relating to the Products is subject to change without notice. In the event Seller discovers a material error in the description or availability of a particular Product that affects Customer's outstanding order prior to its shipment, Seller will notify Customer of the updated information and Customer may choose to accept the Product as described or cancel the order. If in the event Customer chooses to cancel the order and Customer's credit card has already been charged for a purchase, Seller will issue a credit to Customer's credit card in the amount of the charge.

#### 4. **Payment Terms.**

A. *Payment Methods.* All orders must be paid in full prior to shipment unless Seller has extended credit terms to Customer. Seller accepts all major credit cards, checks or wire transfers (with any costs associated therewith being the sole responsibility of Customer). When using a credit card to make a payment, Customer authorizes Seller to charge all amounts owed by Customer against the credit card information Customer has provided to Seller and to demand immediate payment from Customer's credit card issuer, and Customer agrees to not dispute any such credit card payments. If Seller has extended credit to Customer, terms of payment shall be net thirty (30) days from date of invoice (unless different terms are agreed upon with Customer in writing in advance). If Customer makes payment by check, Customer authorizes Seller's to collect Seller's check electronically.

B. *Late Payments; Collection Costs.* If Customer fails to make each payment on time within the 30-day credit terms extended by Seller, Seller reserves the right to suspend or cancel performance under any or all orders or agreements in which Seller has given credit terms to Customer (including, without limitation, any partially filled orders). On any past due invoice, Seller may impose interest at the rate of one and one-half percent (1.5%) per month. In the event of a payment default by Customer, in addition to the past due amount, Seller shall be entitled to recover any costs, fees, and expenses, including but not limited to attorneys' fees and collections costs, incurred by Seller with respect thereto. Seller does not waive its rights to collect the full balance of any amounts owed to Seller by accepting partial payments. Seller will apply the partial payment to the outstanding charges in the amounts and proportions that Seller determines. Seller shall have the right to offset any amounts owed to by Customer to Seller against any amounts owed by Seller to Customer.

C. *Security Interest.* Seller retains a purchase money security interest in any Product supplied to Customer, and in the proceeds of any resale thereof, until the purchase price (including any other charges due to Seller with respect thereto) has been paid in full. Upon breach of Customer's payment obligations with respect to any such Product, Customer acknowledges and agrees that Seller shall have the rights and remedies of a secured party under applicable law.

5. **Taxes.** All Product prices (unless otherwise noted in writing) do not include any federal, state and local sales, use, excise, value-added or other similar taxes. Orders are accepted with the understanding that such taxes and charges shall be added, as required by applicable law. Where applicable, such taxes shall be invoiced as a separate line item and paid by Customer. Customer will be charged sales tax unless Customer has provided Seller with a valid sales tax exemption certificate. If at any time Customer's tax-exempt certificate is not accepted by any governmental or regulatory authority, and Seller is required to pay tax on Customer's purchase, Customer agrees to reimburse and indemnify Seller for the amount of such tax and any related penalties or other charges, including without limitation any expenses incurred by Seller in connection with the payment and collection of such tax.

6. **Order Validation and Acceptance.** Customer agrees that any order Customer submits to Seller is an offer to buy the Products listed in Customer's order under these Term and Conditions. Seller has the right to verify Customer's method of payment, shipping address and/or tax-exempt identification number, if any, before processing Customer's order. Seller may, in its sole discretion and for any reason, limit or cancel quantities of Products available for purchase in any order, or reject any order (or any part thereof), or accept any order by sending Customer an email confirming the same, processing Customer's payment and shipping Customer the Product. If Customer's order (or any portion thereof) is declined for any reason, Seller will notify Customer using the email address or other contact information Customer has provided with its order. Delivery and/or shipment dates provided in connection with any order are estimates only and do not represent fixed or guaranteed delivery dates.

7. **Order Inspection; Returns.** Upon Customer's receipt of any Product ordered from Seller, Customer shall have seven (7) days to inspect and evaluate such delivered Product for (a) obvious damage or defect, (b) shortage in shipment quantity of Product ordered or (c) non-conforming product (i.e., the incorrect Product was sent to Customer) (in each case, a "Non-conforming Order") and to promptly report any Non-conforming Order to Seller in writing (e.g., by email) within such time inspection period, at which time Seller will provide Customer with further instructions as determined on a case-by-case basis. If Customer fails to report any Non-conforming Order to Seller within the seven (7) day inspection period, Customer irrevocably waives any rights against Seller with respect thereto and is deemed to have accepted such Product (provided, however, this shall not affect any warranty rights, if any, that Customer may have with respect to the Product). Any and all return shipping charges incurred in connection with shipping the Product to Seller shall be paid by Customer. Customer may not return any Product to Seller for any reason whatsoever without a return material authorization ("RMA") number issued by Seller. If Customer desires to return any Product for any reason *other than* because it is part of a Non-conforming Order, any such return (i) requires Seller's prior written approval (which may be granted or withheld in Seller's sole discretion) and (ii) if approved by Seller (A) any such return is subject to a restocking charge equivalent to twenty percent (20%) of the purchase price of such Product as specified in Seller's invoice to Customer (which shall be paid prior to the return) and (B) the Product must be returned in new, unused and undamaged condition, and in its original and/or unopened packaging. Without in any way limiting the foregoing, Customer may not return any Non-Cancelable/Non-Returnable ("NCNR") Product included in any order unless Seller expressly approves such return in writing (which approval may be granted or withheld in Seller's sole discretion). Returns related to a manufacturer's warranty (if the Product has such a warranty) are subject to the warranty process noted in Section 10 below and subject to the terms and conditions of the applicable manufacturer's warranty and return policies for the Product in question.

8. **Transportation; Risk of Loss.** All Products will be shipped to the ship to address listed in Customer's purchase order. All Products are shipped either (i) via Customer's freight account number with UPS or FedEx Collect (and at the delivery speed requested by Customer) provided when Customer places its order, or (ii) if no Customer freight account is provided, via UPS (postage pre-paid) with any freight and handling expenses incurred by Seller included in Customer's invoice. All deliveries shall be made "F.O.B." place of shipment. Title and risk of loss or damage to the ordered Product shall pass to Customer at the time the Product is delivered to the carrier. If any shipped Product is damaged or lost by the carrier when utilizing Customer's freight account number, then and in such event Customer, as the freight account holder, shall have the sole responsibility for reporting and pursuing any claims to the carrier (including but not limited to filing any necessary paperwork) with respect to such damaged or lost shipment and Seller shall have no obligations whatsoever with respect to such claims process. Quoted shipping times are good faith estimates only, and actual delivery dates may vary. Seller will use commercially reasonable efforts to fill Customer's orders within the quoted timeframe but in no event

shall Seller be liable for any damages associated with Seller's inability to meet any such timeframes. A delayed delivery of any part of an order does not entitle Customer to cancel other deliveries.

9. **Ability to Cancel or Reschedule Orders.** Orders accepted by Seller may not be cancelled or rescheduled by Customer without Seller's express written consent, which Seller may withhold in its sole discretion. Customer must contact Seller in writing to discuss cancelling or rescheduling an order. Customer assumes liability with respect to any such cancellation or rescheduling, and agrees to make payments to Seller for any non-cancelable expenses Seller incurs with respect thereto.

10. **Warranty.**

A. *Limited Warranty.* Some of the Products sold by Seller have a manufacturer's warranty and some do not. Seller, who is the distributor and not the manufacturer of any Product, will transfer to Customer at the time of sale (to the extent transferable) any Product warranty Seller has received from the manufacturer of such Product. For those Products that do not have a manufacturer's warranty, unless Seller otherwise expressly agrees in writing, all such Products are sold on an "as is," "where is," and "as available" basis. No warranty will apply to any Product that has been subject to abuse, misuse, damage, accident, modification or improper storage, is otherwise incapable of being tested by the manufacturer, has been installed in an unsuitable or improper environment, has been used for purposes other than for which the Product has been designed, or is categorized as a consumable product.

B. *Process.* If the Product has a warranty and if the claim by Customer is within the warranty period, Customer must contact Seller to make a claim under the Product's applicable warranty. After the initial contact with Seller, Customer will provide Seller with a reasonable detailed written description of the claimed Product defect(s) and also include the sales invoice number, date of purchase, and serial number (if any). Seller will then provide Customer with an RMA number for the Product's return, and upon Seller's receipt of the Product from Customer, Seller will send the Product to the manufacturer for review and evaluation to be completed within a 30-day period. After the manufacturer has concluded its evaluation, Seller will contact Customer with the manufacturer's resolution of the claim. If the manufacturer has determined that the Product is defective and covered by the warranty, the manufacturer will (at the manufacturer's option) repair or replace the Product. If Customer is in need of a replacement Product during the 30-day period that the manufacturer is reviewing the claim, Seller may choose (at its discretion) to provide Customer with a replacement Product (and if Seller so elects to provide such a replacement Product, Seller will invoice Customer for it, with net 30-day payment terms). If Seller has so provided a replacement Product to Customer pursuant to the foregoing, upon resolution of the claim: (i) if the original Product is determined by the manufacturer *to be defective*, then Seller will provide a credit to Customer against the second invoice for the replacement Product so no amount is due (and the manufacturer will send the new Product to Seller, to be owned/retained by Seller); and (ii) conversely, if the original Product is determined by the manufacturer *to not be defective*, then the second invoice for the replacement Product will remain outstanding pursuant to its terms (and the Product so evaluated by the manufacturer will be returned to Customer).

C. *Disclaimer of all other Warranties.* EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10 AND EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY LAW, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY PRODUCT OR ANY PRODUCT INFORMATION ON SELLER'S WEBSITE, AND SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT WITH

REGARD TO THE PRODUCTS. THE PRODUCTS MAY BE SUBJECT TO PATENT, TRADEMARK, COPYRIGHT, DESIGN AND OTHER RIGHTS OF THIRD PARTIES, AND SELLER SHALL IN NO EVENT WHATSOEVER BE RESPONSIBLE OR LIABLE IN THE EVENT OF ANY CLAIM OF INFRINGEMENT OF ANY SUCH RIGHTS. USE OF ANY OF THE PRODUCTS IS AT CUSTOMER'S OWN RISK.

**11. Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (REGARDLESS OF THE LEGAL THEORY ASSERTED FOR SUCH LIABILITY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUES, LOST SALES, LOSS OF BUSINESS OPPORTUNITY, DIMINUTION IN VALUE, PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THESE TERMS AND CONDITIONS. SELLER'S LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY, AND THE SOLE REMEDY AGAINST SELLER, SHALL BE LIMITED TO THE REPLACEMENT OF THE NON-CONFORMING PRODUCT, WHICH IN NO EVENT SHALL EXCEED THE ORIGINAL PURCHASE PRICE COST FOR SUCH PRODUCT. Customer acknowledges and agrees that the limitations of liability set forth above are fundamental elements of the contract between Seller and Customer. Some jurisdictions may not allow the exclusion or limitation of liability, so the foregoing exclusions and limitations may not apply to Customer, but in any event shall apply to the maximum extent allowed by law.

**12. Indemnification.** Customer understands and agrees that Customer is personally responsible for its use, misuse, or inability to use the Products. Customer agrees to indemnify, defend, and hold harmless Seller and Seller's employees, officers, directors, owners, affiliates, and agents (collectively, "Representatives") from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, special, consequential, punitive, exemplary, and indirect damages), as incurred, and reasonable attorneys' fees and expenses, as incurred, resulting from or arising out of Customer's use, misuse, or inability to use the Products, or any violation by Customer of these Terms and Conditions. Without limiting the foregoing, in the event that Seller or any of its Representatives are sued or made a party to any action or claim, directly or indirectly, arising out of or in any way connected with Customer's use or purchase of any Product sold by Seller, any such claim or action is subject to the foregoing indemnity.

**13. Force Majeure.** Seller is not liable for failure to fulfill its obligations for any accepted order or for delays in delivery due to causes beyond Seller's (or that of the supplying manufacturer's) reasonable control, including, but not limited to, the following: strikes, accidents, delays or difficulties in transportation, product allocations, material shortages, acts of God, floods, fires, epidemics, pandemics, quarantine restrictions, acts or omissions of other parties, terrorism, riots or war. Seller's time for delivery or performance of any order affected by a force majeure will be extended by the period of such delay, or Seller, at its option, may cancel any order or its remaining obligations thereunder, without any liability or penalty, by giving notice of such cancellation to Customer.

**14. Miscellaneous.**

*A. Applicable Law; Dispute Resolution.* The laws of the State of California shall apply to these Terms and Conditions, without regard to any conflict of law provisions. Any controversy or claim arising out of or relating to these Terms and Conditions or Customer's purchase or use of Products (a "Dispute") shall be finally, and exclusively settled by arbitration under the rules provided by the American Arbitration Association ("AAA"), from which arbitration there shall be no appeal, and Customer hereby waives any

right Customer may otherwise have to a jury trial. A single arbitrator shall preside over any arbitration, and such arbitrator shall, in his or her sole discretion, determine the arbitrability of any alleged Dispute. Any arbitration shall be conducted in Los Angeles, California. Each party shall bear its own costs and attorneys' fees. Any judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall not have the power to award damages in connection with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. To the fullest extent permitted by applicable law, no arbitration under these Terms and Conditions will be joined to an arbitration involving any other party subject to these Terms and Conditions, whether through class arbitration proceedings or otherwise. Customer hereby irrevocably consents to exclusive jurisdiction and venue of the state and federal courts in the County of Los Angeles, State of California with respect to any such injunctive or other relief.

B. *Assignment; No Third-Party Beneficiaries.* No rights, duties, agreements or obligations hereunder, may be assigned or transferred by Customer by operation of law, merger or otherwise, without the prior written consent of Seller. Seller shall have the right to assign these Terms and Conditions or to subcontract any of its obligations under these Terms and Conditions without notice to Customer. The obligations, rights, terms and conditions hereof will be binding upon and inure solely to the benefit of the parties hereto and their permitted respective successors and assigns, and do not and are not intended to confer any rights or remedies upon third-parties.

C. *No Waiver of Breach.* No waiver by Seller of any breach or default of these Terms and Conditions shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer's rights and Seller's rights hereunder shall be cumulative, and any rights hereunder may be exercised concurrently or consecutively and shall include all remedies available even though not expressly referred to herein.

D. *Severability.* Should any provision of these Terms and Conditions (or any portion thereof), or its application to any circumstances, be held illegal, invalid or unenforceable to any extent, the validity and enforceability of the remainder of the provision and these Terms and Conditions, or of such provisions as applied to any other circumstances, shall not be affected thereby, and shall remain in full force and effect as valid, binding and continuing.

E. *Integrated Agreement; Amendments.* These Terms and Conditions contain the entire agreement between Customer and Seller concerning the transactions described in these Terms and Conditions and supersede all prior or current negotiations, commitments, contracts, express or implied, warranties, express or implied, statements and representations, written or oral, pertaining to such matters, all of which are merged into these Terms and Conditions. These Terms and Conditions cannot be altered, other than in writing signed by an officer of Seller. In the event of any inconsistency or conflict between these Terms and Conditions and any provision in any Customer submitted order or writing, in any other document writing, or any oral arrangement in connection with an order, these Terms and Conditions shall govern and control (and any inconsistent provisions shall be void). These Terms and Conditions and the subject matter that they cover, including without limitation the purchase of Products, do not create any joint venture, partnership, employment, or agency relationship between Customer and Seller or its suppliers.