

TERMS AND CONDITIONS

I. ACCEPTANCE OF CONTRACT: Powerex-Iwata Air Technology, Inc (“Buyer”) is not bound by this order until Seller executes and returns to Buyer the acknowledgment copy of this order. This order expressly limits acceptance to the terms and conditions stated herein and any additional or different terms proposed by Seller, whether prior to or subsequent to this order, are rejected unless expressly agreed to in writing signed by Buyer’s authorized representatives. No agreement shall exist except as provided in this order. These terms and conditions prevail over any of Seller’s general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms.

II. AMENDMENTS: The parties agree that these terms and conditions, including any terms and conditions stated in Buyer’s Purchase Order together with any documents attached or incorporated by reference, contains the complete and final agreement between Buyer and Seller and, that no agreement or understanding to modify this contract is binding upon Buyer unless in writing signed by Buyer’s authorized representatives. All specifications, drawings, and data submitted to Seller with this order or referred to by this order are incorporated and made a part of this contract.

III. TAXES: Except as otherwise provided in Buyer’s Purchase Order or if Buyer provides a tax-exempt status, the price on Buyer’s Purchase Order includes all applicable federal, state, and local taxes in effect on the date of this order. In case of new taxes or increased rates or the repeal of taxes or the reduction of rates, Buyer shall adjust the contract order price in writing before the Seller proceeds with such change. Price increases are not binding on Buyer unless evidenced by a member of Powerex management accepting the price increase and a proper purchase order change notice of revision signed by Buyer.

IV. DELIVERY: Time is of the essence and if Seller does not deliver the goods in the quantities and/or at the time specified, or complete the services at the times specified, Buyer may, at its sole discretion, without liability and in addition to any other rights and remedies it may have, take all or any of the following actions: (a) direct expedited routing, at Seller’s expense; (b) terminate this contract; and/or (c) purchase substitute goods or services elsewhere and charge Seller with any loss incurred.

Seller is liable for excess transportation charges, delays or claims resulting from Seller’s deviation from Buyer’s routing instructions. Neither party is liable for excess costs of deliveries or defaults due to causes beyond its control and without its fault of negligence, provided, however, that when the Seller has reason to believe that it will not make deliveries as scheduled, it must immediately give Buyer written notice of the cause of the anticipated delay. If Seller’s delay or default is caused by the delay or default of a subcontractor, such delay or default is excusable only if it arose out of causes beyond the control of both Seller and subcontractor and without the fault of negligence of either of them and the goods or services were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery or performance schedule.

Buyer is not liable to pay for excess goods delivered to Buyer, or which are delivered in advance of Buyer’s delivery schedule, or for all transportation charge there for. Buyer is not liable for any material or production costs incurred in excess of the amount or in advance of the time necessary to meet Buyer’s delivery schedules.

V. INSPECTION AND ACCEPTANCE: All goods purchased hereunder are subject to Buyer’s inspection, and Buyer reserves the right to reject and refuse acceptance of goods, or to return goods already accepted, which do not conform to this contract or with Seller’s warranties (express or implied). Buyer shall return such goods and Seller shall immediately, at Buyer’s option, issue full credit or replacement at Seller’s risk and expense, including transportation charges both ways. Seller shall not replace rejected goods unless specifically authorized by Buyer in writing.

Acceptance of any part of the goods shall not bind Buyer to accept, nor constitute a waiver of Buyer's right to cancel or return, future shipments, nor deprive it of the right to make any claim for damages, including incidental or consequential loss or damage incurred by Buyer; such rights are in addition to any other remedies provided by law.

VI. FREIGHT CHARGES, PACKING, DRAYAGE, AND CONTAINERS: Unless otherwise expressly stated on Buyer's Purchase Order, Seller shall deliver all goods F.O.B. Buyer's carrier, Seller's plant, freight collect.

Seller shall not charge for packing, drayage, or containers unless specified on the face of this order. Seller is liable for damage caused by improper boxing, crating, or packing.

VII. TITLE AND RISK OF LOSS: Except as stated in Buyer's Purchase order, Title and Risk of Loss shall not pass to Buyer until delivery of the goods at Buyer's facility. .

VIII. SELLER'S WARRANTIES: Seller hereby warrants that all of the goods furnished hereunder shall be free of defects in material and workmanship, of merchantable quality, fit for Buyer's purposes, and shall conform with all Buyer's instructions, specifications, drawings and data. Seller hereby further warrants that all of the goods furnished hereunder shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of this contract. Buyer's inspection, test, acceptance or use of the goods furnished hereunder shall not affect Seller's obligation under these warranties and such warranties shall survive inspection, test, acceptance and use. These warranties shall run to Buyer, its successors, assigns and customers and the users of its products. Said warranties are in addition to any warranties of additional scope given by Seller to Buyer. **BUYER DOES NOT WAIVE, DISCLAIM OR EXCLUDE ANY SAID WARRANTIES OR ANY OTHER IMPLIED OR EXPRESS WARRANTIES UNLESS EVIDENCED BY A PURCHASE ORDER CHANGE NOTICE OR A REVISION ISSUED AND SIGNED BY BUYER.** Seller agrees to immediately replace or correct, at Buyer's option, defects in any goods or services not conforming to the foregoing warranties, without expense to Buyer, when notified of such non-conformity by Buyer. If Seller fails to timely correct defects in or replace non-conforming goods or services promptly, Buyer may make such corrections or replace such goods and services and charge Seller for the costs incurred by Buyer thereby.

IX. PROPERTY OF BUYER: Unless otherwise provided in this order or agreed to in writing, property of every description including but not limited to all tooling, tools, equipment and material furnished or made available to Seller, title to which is in Buyer, and any replacement thereof, is and shall remain Buyer's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. While in Seller's possession or control, Seller shall keep such property in good condition, hold it at Seller's risk, and keep it insured, at its sole expense, in an amount equal to the replacement cost with loss payable to Buyer. As and when directed by Buyer, Seller shall immediately disclose the location of such property and/or prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear accepted.

X. SPECIAL TOOLING: Seller agrees that it shall not use or rework any special tooling except for performance of work hereunder or as authorized in writing by Buyer. While in Seller's possession or control, Seller warrants that it will keep the special tooling in good condition, fully covered by insurance, and will immediately replace it at Seller's sole expense when lost, destroyed, or necessary for performance of work hereunder, (Buyer shall have the right to take immediate possession of, including the right of entry for such purpose, any such property, title to which Buyer acquires hereunder, without any additional liability whatsoever to Seller).

XI. PROPRIETARY RIGHTS: Seller shall keep any "trade secrets" or proprietary information of Buyer confidential, and neither Seller nor any employee, agent or other person under Seller's direction shall disclose any such information, directly or indirectly, to any other person whatsoever. For purposes of this Agreement, "trade secrets" shall have the same meaning as defined in the Uniform Trade Secrets Act. Seller agrees to immediately assign to the Buyer and not otherwise to make use of any invention, improvement or discovery (whether or not patentable), conceived or reduced to practice in the performance of this contract by any employee or agent of Seller, or other person working

under Seller's direction. Upon completion of this contract, Seller shall immediately deliver to Buyer any and all information relating to any such invention, improvement or discovery, and shall cause employees, agents or others under Seller's direction to execute all documents necessary or desirable to enable Buyer to obtain title and to fill applications for patent there for throughout the world.

XII. INDEMNIFICATION: Seller agrees to indemnify, defend and hold Buyer harmless from and against all damages, liabilities, claims, losses and expenses, including reasonable attorney fees, arising out of Seller's acts or omissions, negligence or willful misconduct, in failing to perform pursuant to the terms and conditions contained in this contract or due to any damage, liability, claim, loss or expense, including consequential damages, arising out of any defect or alleged defect in the merchandise, or based on any allegation that the merchandise is not fit or safe for consumer use, or based on the nature of the material contained in the merchandise, or due to the actual or alleged negligence or dishonesty of, or any actual or alleged act or commission or omission by the Seller or any of its employees or agents.

Seller agrees that this indemnification shall survive acceptance of the goods or services and payment there for by Buyer, and is binding upon the Seller, its successors and assigns, and shall inure to the benefit of Buyer, its successors and assigns and to the benefit of Buyer's officers, directors, agents and employees and their heirs, executors, administrators and assigns.

XIII. INSURANCE: If this contract covers the performance of labor for Buyer, Seller agrees to furnish evidence satisfactory to Buyer that all liens have been released by all persons who have performed services or furnished materials under this contract. Seller further agrees, at its sole cost and expense, to maintain for the mutual benefit of Buyer and Seller such public liability insurance (including product liability, complete operations, contractor's liability and protective liability), automobile liability insurance (including non-owned automobile liability) and workers' compensation and employer's liability insurance as will protect Buyer, in its reasonable opinion, against the damages, liabilities, claims, losses and expense (including attorney's fees) referred to in Section XII.

All policies of insurance shall provide that the proceeds are payable to Buyer and Seller as their respective interests may appear. All policies of insurance shall further provide that they are not cancelable on less than thirty (30) days notice to all insurers. Seller shall furnish Buyer with certificates, satisfactory to Buyer, evidencing such insurance policies and naming Buyer as an additional insured. If Seller is a self-insurer, Seller must furnish the certificate of the applicable state department of labor and industry directly to Buyer. Compliance by Seller with these insurance requirements does not in any way affect Seller's indemnification of Buyer under Section XII.

XIV. PATENTS: Seller agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the goods or services covered by this order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify, defend and hold Buyer harmless from any damages, liabilities, claims, losses and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by Seller with specifications furnished by Buyer.

XV. CANCELLATION: Buyer may cancel, without liability, all or any part of the undelivered portion of this contract if Seller does not make deliveries as specified in the delivery schedule, or if Seller breaches any of the terms hereof. If Buyer determines that Seller's failure to perform this contract is due to unforeseeable causes beyond the control and without the fault of negligence of Seller, such cancellation is deemed made pursuant to Article 16 hereof entitled "Termination," provided that such causes shall include delays and defaults of subcontractors only to the extent such causes are beyond the control of both Seller and subcontractor and without the fault or negligence of either of them, and the goods to be furnished were not obtainable from other sources in sufficient time to permit Seller to meet

the required delivery schedule. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

XVI. TERMINATION: Buyer may at any time terminate this order in whole or in part for its convenience upon written notice to Seller, in which event Seller is entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work reasonably performed prior to termination plus actual direct reasonable costs resulting from termination.

XVII. COMPLIANCE WITH LAWS: Seller warrants that all goods or services furnished hereunder will comply with all applicable federal and state laws (and with the regulations, orders and standards there under) including where applicable, but not limited to, the Fair Labor Standards Act of 1938, the Walsh-Healey Act, the Work Hours Act, the Civil Rights Act of 1964, Section 202 of Executive Order 11246 as to non-discrimination in employment, and the Occupational Safety and Health Act of 1970, and any amendments thereto.

In addition, without limiting the generality of the foregoing, Seller agrees that it will include on all invoices, and that all invoices in order to be approved for payment must include the following statement:

“Seller represents that, with respect to the production of the goods covered by this invoice, it has fully complied with all provisions of the Fair Labor Standards Act of 1938, as amended.”

XVIII. WAIVER: The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this contract or to exercise any right hereunder, shall not be construed as a waiver of relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

XIX. ASSIGNMENT: Seller shall neither assign any of the sums due or to become due nor assign any of the work to be performed under this contract, nor subcontract for completed or substantially completed material called for by this contract without Buyer’s prior written consent.

xx. **CONTROLLING LAW:** The provisions of the purchase order and any contract between the parties shall be interpreted and construed in accordance with the laws of the State of Ohio. The terms and conditions of this purchase order shall apply and be controlling regardless of any different or conflicting provision in any document, communication or agreement between Buyer and Seller.

xxi. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

xxii. **Equal Opportunity / Affirmative Action.** Provider agrees, to the extent applicable, to comply with Executive Order 11246 and the implementing regulations found at 41 CFR Part 60. Provider incorporates into this Order, as applicable, the Equal Opportunity clauses found at 41 CFR § 60-1.4(a) and will likewise incorporate the clauses into all applicable subcontracts as required by 41 CFR § 60-1.4(d).

xxiii. **Notice of Employee Rights Under Federal Labor Laws.** Provider incorporates into this Agreement, as applicable, the obligations regarding the notice of employee rights under federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and will likewise incorporate those obligations into all applicable subcontracts as required by 29 CFR Part 471.

xxiv. **Vietnam Era Veterans’ and Rehabilitation Act of 1973.** Provider incorporates into this Agreement, to the extent applicable, to comply with the Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. §

4211 and 4212), the Veterans Employment Opportunities Act of 1998 (Public Law 105-339), the Jobs for Veterans Act (Public Law 107-288), Executive Order 11701 (January 24, 1973) and their implementing regulations and Section 503 of the Rehabilitation Act of 1973 (29 U.S.C § 793), Executive Order 11758 (January 15, 1974) and their implementing regulations.