



Standard Sales Terms & Conditions

1. MODIFICATIONS of SALES TERMS

Terms and Conditions contained in any purchase order or other form of communication from NorAm's customers, which are additional to or different from these Terms and Conditions, shall be deemed rejected by NorAm unless expressly accepted in writing.

2. AGREEMENT

North American Power Systems, Inc. doing business as NorAm ("Seller") offers to sell the products and materials (the "Goods") indicated on the face of this Sales Agreement, Sales Order or Sales Quotation (the "Order") to the purchaser or buyer ("Buyer") indicated on the Order in accordance with these Terms and Conditions. Submittal of a purchase order for the Goods by Buyer, execution of the Order by Buyer, or any other express acknowledgement of the Order by Buyer constitutes acceptance of this offer, which offer and acceptance constitute a legally enforceable agreement ("Agreement") between Seller and Buyer. Any additional or different term or condition on Buyer's purchase order or acknowledgement form, or otherwise communicated in writing or orally by Buyer in accepting this offer, is deemed to be a material alteration of this offer and is objected to and rejected by Seller.

3. QUOTATIONS

Acceptance of a quotation by NorAm to offer goods for sale subject to these Terms and Conditions is expressly limited to thirty (30) days from the date the quotation is issued by NorAm.

Purchase orders submitted by Buyer for the goods quoted by NorAm shall constitute acceptance of these Terms and Conditions. All purchase orders will be subject to approval by NorAm.

4. PRICES and PRICE CHANGES

All prices are net Ex Works shipping point and are subject to change without notice. In the event of a change in NorAm's prices, the price for product not shipped will be the price in effect on the date of shipment. If NorAm's quoted price was based upon delivery to and acceptance by Buyer of a specified quantity of product, such price shall be subject to adjustment if Buyer does not accept the quantity at the times specified in NorAm's quotation, and Buyer will be invoiced at NorAm's standard price without quantity discounts, if any, for the quantity of equipment actually accepted by Buyer. All prices and terms of sale are subject to correction for error.

5. TAXES

In addition to any prices, Buyer shall pay the amount of any present or future manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between NorAm and Buyer. In the event NorAm is required to pay any such tax, fee or charge, Buyer shall reimburse NorAm. Buyer shall provide NorAm at the time the order is submitted with an

exemption certificate or other document acceptable to the authority imposing such tax, fee or charge.

6. TERMS of PAYMENT

All orders are subject to the approval of NorAm. Except as otherwise provided, terms are payment net 30 days from the date of the invoice. If, during the period of performance of an order, the financial condition of Buyer is determined by NorAm not to justify the terms of payment specified, NorAm may demand full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this order. If Buyer defaults in any payment when due, or in the event any voluntary or involuntary bankruptcy or insolvency proceedings involving Buyer are initiated by or against Buyer, then the whole order price shall immediately become due and payable upon demand, or NorAm, at its option without prejudice to its other lawful remedies, may defer delivery or cancel this order.

Payment Terms - All published prices are cash prices, net 30 days with approved credit. Purchasing card and credit card payments are accepted and processed at time of shipment and are subject to credit pricing.

On orders of \$100,000 or more, the standard method of payment will be progressive deposits.

Nothing contained herein shall be construed as authorizing the Buyer to delay or withhold any payment or payments beyond the due date for any goods or machinery sold under the provisions of the Order. It is expressly understood that all claims on the part of the Buyer or of any other party are separate and shall have no bearing on the obligation of the Buyer to make payments for the goods sold under these Terms and Conditions. Any delinquent payment bears interest from the date it is due until paid at the highest interest rate permitted under applicable law. In addition to the accrual of such service charge, Buyer shall be liable for all other losses, damages or expenses directly incurred by NorAm as a result of Buyer's failure to make timely payment, including, but not limited to, reasonable attorney's fees incurred with the collection of said payments.

7. DELIVERY - RISK OF LOSS

Delivery of the Goods is Ex Works (EXW, Incoterms 2000) Seller's facility indicated on the face of the Order.

Shipping dates are estimates only which are not guaranteed and are based upon prompt receipt from Buyer of all necessary shipping and other information.

Delivery of product to a commercial carrier at NorAm's plant or other loading point shall constitute delivery to Buyer, and any risk of loss and further cost and responsibility thereafter for claims, delivery, loss or damage, including, if applicable, placement and storage, shall be borne by Buyer. Claims for shortages or other errors in delivery must be made in writing to NorAm within ten (10) days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

NorAm will use its best efforts to maintain shipping schedules, however, **UNDER NO CIRCUMSTANCES SHALL NORAM BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANTICIPATED PROFITS** resulting from any delay in shipment or delivery nor shall the failure to deliver goods within the time

specified constitute a default. The responsibility of NorAm for proper delivery ceases upon delivery of the goods to the carrier. Any storage costs incurred by NorAm for the storage of goods delayed in shipment at the request of the Buyer shall be paid promptly by the Buyer when invoiced by NorAm. In all cases, Buyer shall bear the risk of loss or damage from the FOB point, and the Buyer shall be responsible for the filing of all claims with the carrier.

8. DELAYS - CAUSES BEYOND NORAM'S CONTROL

NorAm shall not be liable for any ordinary, incidental, or consequential loss or damage as a result of delay in or failure of delivery or installation due to (i) any cause beyond NorAm's reasonable control, (ii) an act of God, act of the Buyer, embargo or other government act, authority, regulation or request, fire, theft, accident, strike, slowdown or other labor disturbance, war, riot, delay in transportation, or (iii) inability to obtain necessary labor, materials, components, or facilities. Should any of the aforementioned events of force majeure occur, NorAm, at its option, may cancel Buyer's order with respect to any undelivered product or extend the delivery date for a period equal to the time lost because of delay. Notice of such election shall be given promptly to Buyer. In the event NorAm elects to so cancel the order, NorAm shall be released of and from all liability for failure to deliver the product, including, but not limited to, any and all claims on behalf of Buyer for lost profits, or any other claim of any nature which Buyer might have. If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer shall pay for all additional charges resulting therefore.

9. SHIPPING/HANDLING CHARGES

Shipments are F.O.B. point of shipment. Shipping/handling will be collect or prepaid and billed as a separate item on the equipment invoice on the basis of Seller's current shipping/handling policies.

10. ELECTRONIC DATA INTERCHANGE/FACSIMILE (FAX)

Orders placed hereunder by Buyer may be transmitted electronically. Orders and other communications may be transmitted and confirmed by fax.

11. DEFAULT

Upon default and placing of this instrument with an attorney for collection or repossession of equipment, Buyer agrees to reimburse attorney fees and court costs incurred by the Seller in connection therewith.

12. PRODUCT CHANGES

NorAm may, at any time and without notice, make changes (whether in design, material, improvements or otherwise) in any catalog goods, and may discontinue the manufacture of any catalog goods, without incurring any obligations of any kind as a result thereof.

13. CHANGES

Buyer may, with the express written consent of the Seller make changes in the specifications for equipment or work covered by the contract. In such event the contract price and delivery dates may be adjusted. The Seller shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

14. CANCELLATION

No order submitted to NorAm may be cancelled by Buyer without the prior written consent of NorAm, which consent will at all times be conditioned on Buyer's agreement to pay

NorAm's cancellation charge. For finished product, which in NorAm's judgment is readily resalable to others, the cancellation charge shall be 15% of the invoice price of the equipment. For all other cancellations, the cancellation charge shall amount to all costs and expenses incurred by NorAm and arising out of or in connection with Buyer's order, net of recoverability, but in no event less than 30% of the invoice price of the product or more than the invoice price.

15. INTERNATIONAL SALES

Seller acknowledges that the parties hereby expressly exclude the application of the Convention on Contracts for the International Sale of Goods to this Agreement or any Purchase Order issued in connection with this Agreement.

16. DRAWINGS - OTHER DESIGN DATA

All specifications, drawings, designs, data, information, ideas, methods, tools, gages, dies, fixtures, patterns and/or inventions made, conceived, developed or acquired by NorAm in connection with procuring and/or executing Buyer's order will vest in and inure to NorAm's sole benefit notwithstanding any charges therefore which may have been or may be imposed by NorAm. Buyer shall not give, loan, exhibit, sell or transfer to any person not then employed by Buyer and authorized to receive such information, or to any organization or entity, any drawing, photograph or specification furnished by NorAm or reproduction thereof which may enable such person, organization or entity to furnish similar goods or parts therefore.

17. RETURN of PRODUCTS

No product or part shall be returned to NorAm without written authorization and shipping instructions first having been obtained from NorAm.

18. ASSIGNMENT and SUBCONTRACTING

None of the Buyer's rights under any order shall be assigned by the Buyer to any other person, whether by operation of law or otherwise, without NorAm's prior written approval. NorAm may, without the necessity of obtaining Buyer's prior written consent, subcontract the production of all or any portion of the product.

19. WARRANTIES

All NorAm products are warranted against defects in NorAm's workmanship and materials.

20. Warranty Period - NorAm standard products are warranted for 12 months from the date of manufacture. Some NorAm products are warranted for a longer period of time as set forth in the separate Limited Warranty and Service Policy.

21. Warranty Remedies - If a NorAm product is defective due to NorAm's workmanship or materials and the defect occurs during the warranty period, NorAm will either repair the product or replace it with a new one, whichever NorAm believes to be appropriate under the circumstances. NorAm is not responsible for removal or shipping of the NorAm product to the service center, the reinstallation of the NorAm product upon its return to the customer, or any incidental or consequential damages resulting from the defect, removal, reinstallation, shipment or otherwise. Warranty service is available for all NorAm products from NorAm's Customer Service Center in Midland, Texas, and from NorAm Authorized Service Centers.

Exclusions - This warranty does not:

(i) apply and shall be void with respect to product operated in excess of rated capacity or otherwise not in accordance with installation, maintenance, or operating instructions or requirements, to product repaired or altered by others than NorAm or NorAm's authorized service agencies, or to product which was subjected to abuse, negligence, misuse, misapplication, accident, damages by circumstances beyond NorAm's control, to improper installation (if by others than NorAm), operation, maintenance or storage, or to other than normal use or service, and

(ii) apply to product or components not manufactured by or for NorAm. With respect to product or components not manufactured by NorAm, NorAm's warranty obligations shall in all respects conform and be limited to the warranty actually extended to NorAm by its suppliers, but in no event shall NorAm's obligations be greater than those provided under NorAm's Warranty set forth in this section.

Seller warrants title to the Goods. **SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE GOODS AND ALL OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE OR SIMILAR LAW AS ADOPTED IN THE STATE OF TEXAS, ARE DISCLAIMED.** NorAm has not authorized anyone to make any representations or warranties other than the warranty contained herein.

22. INDEMNIFICATION BY BUYER

Buyer shall indemnify, hold harmless, and defend NorAm and NorAm's employees and agents from and against any and all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees, court costs, and out-of-pocket expenses) arising out of or resulting in any way from claims by customers of Buyer or third parties against NorAm alleging a breach of contract or warranty by NorAm.

23. GENERAL (subitem)

Patent Rights - NorAm warrants that the use of the goods delivered hereunder will infringe no claim of any U.S. patent covering the goods themselves; but does not warrant against infringements by reason of the use thereof in combination with other material or in the operation of any process. If NorAm is subject to any claims or charges of patent infringement within the meaning of this paragraph, Buyer or any party in privity with Buyer agrees to hold harmless and indemnify NorAm, its successors and assigns, against any and all such claims, demands, and suits, including all damages, expenses and attorney's fees, resulting from such claims, demands, and suits.

24. REGULATORY LAWS AND/OR STANDARDS

The Seller takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations as may affect its products; however, the Seller recognizes that its products are utilized in many regulated applications and that from time to time standards and regulations are in conflict with each other.

The Seller makes no promise or representation that its product will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer

and the Seller. The Seller prices do not include the cost of any related inspections or permits or inspection fees.

25. EXPORT CONTROL

Products and associated materials supplied or licensed under this agreement may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all such laws and regulations.

26. NUCLEAR LIMITATION OF USE

The equipment is not for use in or with any nuclear facility unless specifically so stated in the Seller's Quotation. If Seller's Quotation does expressly acknowledge that the Seller's equipment is to be used in or with a nuclear facility, Seller's Special Nuclear Conditions will be attached hereto and shall control.

Buyer accepts the responsibility for insuring that the equipment is not used in violation of this limitation and Buyer shall indemnify and hold Seller harmless from any and all liability (including such liability resulting from Seller's negligence) arising out of said improper use.

27. LIMITATIONS of LIABILITY - CONSEQUENTIAL DAMAGES

Disclaimer of Damages - UNDER NO CIRCUMSTANCES SHALL NORAM BE LIABLE OR RESPONSIBLE IN ANY MANNER WHATSOEVER FOR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANTICIPATED PROFITS RESULTING FROM THE DEFECT, REMOVAL, REINSTALLATION, SHIPMENT OR OTHERWISE UNDER ANY THEORY OF RECOVERY, INCLUDING BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

Damages not recoverable shall include, but not be limited to, loss of profits or revenues, loss of use of the product or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages.

28. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER SELLER (NOR SELLER'S DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES) IS LIABLE UNDER THIS AGREEMENT TO BUYER IN ANY ACTION OR CLAIM FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, WHETHER THE ACTION IN WHICH RECOVERY OF THE DAMAGES IS SOUGHT IS BASED ON CONTRACT, TORT (INCLUDING SOLE, CONCURRENT OR COMPARATIVE NEGLIGENCE), GROSS NEGLIGENCE, INTENTIONAL OR WRONGFUL ACTS OR STRICT LIABILITY. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES INCONSISTENT WITH THESE TERMS ARE WAIVED BY BUYER.

29. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR ASSISTANCE

If Seller provides Buyer with assistance or advice which concerns any parts/products/service supplied hereunder or any system or equipment in which any such part/product/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Seller to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

30. GENERAL (subitem)

Governing Law - THIS AGREEMENT IS GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN THAT STATE. THIS AGREEMENT IS PERFORMABLE IN MIDLAND COUNTY, TEXAS, AND BUYER WAIVES THE RIGHT TO BE SUED ELSEWHERE. WITHOUT

EXCLUDING ANY OTHER JURISDICTION, BUYER AGREES THAT THE STATE AND FEDERAL COURTS OF TEXAS LOCATED IN MIDLAND, TEXAS HAVE JURISDICTION OVER ANY PROCEEDINGS IN CONNECTION WITH THIS AGREEMENT AND SUBMITS WITH RESPECT TO ITSELF AND ITS PROPERTY TO THE JURISDICTION OF ANY LIKE COURT FOR THE PURPOSE OF ANY SUIT, ACTION, PROCEEDING OR JUDGMENT RELATING TO OR ARISING OUT OF THIS AGREEMENT.

31. GENERAL (subitem)

Applicability - The Terms and Conditions as stated herein are applicable as of the date of this printing and until such time as changed by NorAm.

32. GENERAL (subitem)

Proprietary Materials - NorAm reserves to itself copyrights and other intellectual property rights on all quotations, drawings, manuals, instructions or any other information or data provided to Buyer. Such materials shall remain the property of NorAm and shall not be disclosed to any other third party without NorAm's prior written permission. If requested, Buyer shall return all items to NorAm and certify, in writing, that all copies thereof have been destroyed.

33. GENERAL (subitem)

Severability - The provisions of these Terms and Conditions are severable and, once accepted, if any provision herein shall be held unenforceable or invalid, such invalidity shall not affect any other provision contained herein.

34. GENERAL (subitem)

Waiver - NorAm's failure to insist on performance of any of these Terms and Conditions herein or to exercise any right or privilege or the waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

35. GENERAL (subitem)

Entire Agreement - The Terms and Conditions shall become effective upon acceptance. It is expressly understood and agreed by the Buyer and NorAm that this document (together with Buyer's purchase order, if any, or any separate document to which these Terms and Conditions may be attached) constitute the full understanding of the parties, a complete allocation of the risks between them, and the final and entire agreement between them. Any other Terms and Conditions, whether contained in any purchase order, invoice, acknowledgement or any other document, which may vary from any term of condition contained herein shall not be made except with the written consent of both NorAm and Buyer.