

ON-POWER, INC.  
TERMS AND CONDITIONS OF PURCHASE

1. Acknowledgment and Acceptance. The terms of this purchase order and any related specifications constitute the entire agreement of the parties and supersede any and all prior understandings and agreements. Seller's additional or different terms whether deemed an acceptance or an offer, are objected to and shall be deemed material alterations of this purchase order. No acknowledgement, delivery notice, receipt or other document forwarded by Seller to On-Power, Inc. ('Buyer') after date of this purchase order which contains terms or conditions other than those specified herein shall be binding on Buyer unless any such instrument has been signed by the person who signed this purchase order on behalf of Buyer or his or her successor and such instrument shall have been delivered to Seller.

2. Shipping Papers. All products shall be properly packed and shipped in accordance with the requirements of common carriers and prudent business practice. No additional charge shall be made for packaging, marking, freight or storage unless specified; Loss or damage to any goods not packed in such a manner as to insure proper protection to same shall be borne by Seller. Unless otherwise set forth on the face of this order, all materials and products will be shipped F.O.B. Buyer's facility. Seller must prepay freight and insurance and furnish Buyer evidence of payment upon request. If Seller fails to furnish such evidence of payment, Buyer may withhold payment of Seller's invoice until that evidence has been furnished.

3. Non-Compliance. Time is of the essence. Buyer reserves the right to cancel all or any part of the undelivered portion of this order. Delay in delivery for any reason except as instituted by Buyer or accepted by Buyer in writing may result, at Buyer's option, in cancellation of this order at no expense to Buyer. Buyer and Seller may agree to liquidated damages for late or nonconforming delivery. Any such agreement will be stated on the face of this order. In the case of non-compliance with the conditions of this order, Buyer will have all rights and remedies of a Buyer under the Uniform Commercial Code.

4. Warranty. Seller has good title to the goods to be conveyed hereunder and such goods will be delivered to Buyer free and clear of all liens and encumbrances whatsoever. Seller warrants and guarantees that all goods furnished hereunder will be new, merchantable, fit for their intended purpose, free from defects in materials and workmanship and conform strictly to Buyer's specifications and/or descriptions on this order. Seller's warranties and its obligations under those warranties shall be in effect for a period twelve (12) months after first beneficial use of the equipment by Buyer or its customer, as the case may be, or eighteen (18) months from the date of delivery or notification of readiness to deliver by Seller, whichever period expires soonest; provided, however, that in the event the products purchased under this order are incorporated by Buyer as components in products or systems for resale by Buyer, the Seller's warranty shall be of the same duration as the Buyer's warranty to its customer. Nothing in these terms and conditions and no pre-shipment payment or inspection shall be deemed a waiver or limitation of any rights or remedies Buyer may have under the Uniform Commercial Code as adopted in the state in which this purchase order is issued. No inspection or testing by Buyer shall be deemed to limit Seller's warranties in any way.

5. Damages. Seller acknowledges and understands (i) that the goods purchased hereunder may be incorporated into products manufactured or assembled by Buyer and (ii) that any defect or nonconformity in the goods purchased hereunder may damage Buyer by causing warranty claims or other claims to be brought by those parties purchasing or using goods acquired from Buyer. Seller expressly agrees to indemnify and protect Buyer from and against all damages, losses and liabilities resulting from defects of any kind or other nonconformities in the materials or goods purchased under this order, whether such damages, losses and liabilities are incurred directly or indirectly by Buyer.

6. Payment Terms. Payment terms shall be as set forth on the face of this order. Unless specifically otherwise stated on the face of this order, the price shall include all sales, use and other applicable taxes. Buyer will pay all invoices in a timely manner but will have no obligation to pay finance charges, late fees or any other add-ons for past due amounts. Cash discounts will be calculated from the time the invoice or product is received by Buyer, whichever is later. If other conditions to payment have not been met by Seller, the discount period shall not commence until all conditions have been met.

7. Patents. By accepting this order, Seller guarantees that the material or goods hereby ordered and the sale or use of them will not infringe any United States or foreign letters patent or any other proprietary right of any third party.

8. Compliance with Laws. Seller warrants and guarantees that it has complied with all applicable foreign and domestic federal, state and local laws, ordinances and regulations in the manufacture, processing, procurement and sale of the materials, goods and products covered by this order, including but not limited to the U.S. Export Administration Act and regulations issued thereunder, the U.S. Arms Export Control Act, the International Traffic in Arms Regulations, (22 CFR 120-130) the U.S. Foreign Corrupt Practices Act, the Fair Labor Standards Act and of the Regulations and Orders of the United States Department of Labor issued under Section 14 thereof and under the Occupational Safety and Health Act, all as amended from time to time. In the event Seller is supplying defense articles, it will maintain a valid and current registration with the Directorate of Defense Trade Controls ("DDTC"). Seller will provide a copy of its DDTC registration upon request by Buyer. Seller will advise Purchaser of any U.S. export classification of the goods or services provided to Buyer by Seller. The foregoing compliance obligations shall survive the completion of the work performed by Seller.

9. Permits and Approvals. Seller shall be responsible for obtaining all permits, approvals and registrations necessary for the performance of its obligations under this Agreement. While providing goods or services to Buyer, Seller will not, directly or indirectly, offer, pay, give, promise or encourage the payment of any money or delivery of any item of value to any government official or any official, employee, agent or representative of any commercial enterprise for the purpose of influencing any act or decision of any such person in his or her official capacity or inducing any such person or entity to use his or her influence to influence or direct an act or decision of such organization or government entity.

10. Indemnification. Seller agrees to protect, defend and save Buyer harmless from and against any and all judgments, orders, decrees, awards, costs and expenses including without limitation, attorneys fees, on account of breach of any of its obligations and representations or warranties under these terms and on account of injury to any property or person arising out of or relating to work done, materials furnished or goods sold by Seller whether such loss, damage or liability is contributed to by the Buyer or its customer or their respective employees except that Seller shall have no liability for damages or costs caused by the sole negligence of the Buyer or any of its customers. In no event will Buyer be liable to Seller for incidental or consequential damages of any kind.

11. Waiver, Governing Law, Assignment. The failure of Seller to comply with any provision hereof shall entitle Buyer to cancel this order or any part thereof. The failure of Buyer to exercise any right in the event of breach by Seller shall not be construed as a waiver of the same or of any other terms and conditions. This transaction shall be governed by the laws of the State of Ohio. The U.N. Convention on the international Sale of Goods shall have no application to this Agreement. Seller agrees not assign its rights or delegate its duties under this purchase order without prior written consent from Buyer.

12. Termination. If Seller files a petition in bankruptcy or is adjudicated a bankrupt, or if a petition in bankruptcy is filed against Seller, or if Seller becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law, or if Seller discontinues its business or if a receiver is appointed for it or its business, Buyer may immediately terminate and cancel all or any portion of this order.

13. Confidential Information. All information, drawings and other data furnished by Buyer in connection with this order shall be deemed confidential and proprietary to Buyer. Seller will not disclose same to any third party or use for its own benefit. Any materials furnished by Buyer to Seller in connection with this order, other than through sale, lease or other conveyance of title, shall be deemed as held by Seller upon consignment and Seller agrees to pay for such materials in the event they are damaged while consigned to Seller or otherwise in Seller's possession or if not otherwise satisfactorily accounted for. The Seller, at its own expense, shall keep such material insured for the benefit of the Buyer at all times while in Seller's possession. If this agreement involves research or development by Seller, all drawings, data and specifications shall be deemed owned by Buyer and shall be deemed "works made for hire" under U.S. Copyright law.

14. Severability. Each of the foregoing provisions shall stand independently and severably and the invalidity of any one provision shall not affect the validity of any other provision.

15. Seller and Buyer are independent contractors. Nothing in these terms shall make either party the agent of the other for any purpose.

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