

## PURCHASE ORDER TERMS AND CONDITIONS

**1. SCOPE; ACCEPTANCE.** These Purchase Order Terms and Conditions (these “**Terms**”) govern the purchase by TERREPOWER, a Delaware limited liability company (“**Buyer**”), from the seller identified in the written purchase order, proposal, contract or agreement which attaches, incorporates or references these Terms (the “**Order**”; said seller, “**Seller**”) of all goods (“**Goods**”) and services (“**Work**”) identified in the Order. The Order is an offer to purchase in accordance with these Terms, not an acceptance of any offer. ***The Order expressly limits Seller’s acceptance to the terms of the Order.*** The Order is not binding on Buyer until Seller accepts this Agreement in writing or by starting to perform in accordance with the Order. Upon Seller’s acceptance, the Order, together with all documents specifically referenced in these Terms or the Order (collectively, this “**Agreement**”), will constitute the entire agreement between Buyer and Seller, supersedes all prior or contemporaneous understanding, agreements, negotiations, discussions, communications and dealings, whether written or oral, with respect to the subject matter of the Order, and may not be modified or terminated except by a writing signed by Seller and Buyer. Seller’s acceptance of the Offer will be effective only if it contains no additional terms. ***Any terms contained in any quotation, acceptance, invoice or other form or document previously or hereafter supplied by Seller to Buyer (collectively, “Seller Documents”), which are in addition to or different from this Agreement are expressly objected to and hereby rejected, and shall not be binding on Buyer nor part of the contract between Buyer and Seller.*** Buyer’s receipt of or payment for the Goods or Work described in the Order will not be construed as an acceptance of any terms in any Seller Documents.

**2. PRICING.** The price of the Goods is the price stated in the Order or, if no price is included in the Order, the price set out in Seller’s published price list in effect as of the date of the Order (in either case, the “**Price**”). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location (as defined below), insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No other charges of any kind will be allowed unless approved by Buyer in writing.

**3. PAYMENT TERMS.**

3.1. Upon shipment of Goods or performance of Work, Seller will promptly submit correct and complete itemized invoices in accordance with these Terms and the Order (an “**Invoice**”) with appropriate supporting documentation and other information reasonably required by Buyer. Buyer may withhold payment until it receives and verifies the foregoing. Buyer may require Seller provide Advance Shipment Notification via an acceptable EDI process, in which case Seller shall provide such notification within 4 hours of shipment of Goods.

3.2. Except as otherwise stated in the Order, Buyer shall pay all properly invoiced amounts within 90 days after the later of (1) delivery and acceptance of the Goods by Buyer, (2) the date of successful completion of the Work and acceptance thereof by Buyer, and (3) the date of Buyer’s receipt of the Invoice therefor, except any amounts disputed by Buyer in good faith. All payments under the Order shall be in lawful currency of the United States of America made by check or wire transfer. Payment does not constitute acceptance of Goods or Work.

3.3. Cash discounts are computed from the later of Buyer's receipt of an Invoice and such information and receipt of the Goods or performance of the Work.

3.4. If the production or delivery of Goods or Work may give rise to mechanics' or other similar liens, payment will not be due, and the cash discount period will not commence, until Seller delivers to Buyer a complete release of all liens and security interests arising out of the production or delivery of such Goods or Work.

**4. BLANKET ORDER.** Quantities and delivery dates specified in a "blanket" Order are contingent upon Buyer's issuance of a release identifying the Goods to be purchased and providing delivery directions. Seller shall not ship any Goods under a "blanket" Order except as directed in a release by Buyer. Forecasts are not releases and may not be relied upon by Seller. By accepting a "blanket" Order, Seller agrees to accept all releases issued by Buyer thereunder.

**5. SHIPPING.**

5.1. **Freight and Other Charges.** Except as expressly set forth in the Order, Goods will be delivered pursuant to DDP (Delivery Location), the Incoterms 2010® Rules. "**Delivery Location**" means the delivery location specified in the Order. All shipping, demurrage, storage, insurance, packing and other charges of any nature will be paid by Seller. Seller shall ship late shipments by express or other priority methods of delivery at its expense. If the Order provides that Buyer is responsible for freight costs, Buyer will not be liable for any amount in excess of the actual costs of transportation, and Seller will send Buyer a copy of the actual freight bill promptly upon receipt. Excess freight costs arising from Seller's failure to make delivery to the specified destination or to follow shipping instructions furnished by Buyer will be borne by Seller.

5.2. **Packaging.** Seller shall package all Goods in accordance with Buyer's instructions or, if there are no such instructions, in a manner sufficient to protect the Goods from damage from weather, transportation and storage, and otherwise in accordance with carrier's requirements. Seller will mark the order number set forth on the Order on each container and will enclose a packing slip with the order number in an envelope on each container. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

5.3. **Passage of Title; Risk of Loss.** Title to the Goods will pass from Seller to Buyer when the Goods are delivered at the Delivery Location (as determined under the Incoterms 2010® Rules for the shipping term specified in the Order or, if no shipping term is specified, DDP). Risk of loss or damage to Goods remains with Seller until physical delivery thereof at the Delivery Location.

5.4. **Delivery.** Seller shall deliver the Goods in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). TIME IS OF THE ESSENCE IN THE DELIVERY OF THE GOODS AND THE WORK COVERED BY THIS AGREEMENT. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages,

and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Seller will immediately notify Buyer if it appears the actual date of delivery will be after the Delivery Date, including the reasons therefor, steps being taken to remedy the same, and the projected delivery date. Buyer may return any goods delivered prior to the Delivery Date at Seller's expense, and Seller shall redeliver such goods on the Delivery Date. Nothing herein will be interpreted as waiving Buyer's remedies for default (including right of termination).

**6. FORCE MAJEURE.** If a Force Majeure Event prevents a party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations below. "**Force Majeure Event**" means, with respect to a party, any event or circumstance, whether or not foreseeable, that was not caused by that party (other than a change in general economic conditions or an event or circumstance that results in that party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance. If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. Thereafter the noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Agreement. If a Force Majeure Event prohibits a party from performing hereunder for more than 15 days, the other party may terminate this Agreement by written notice to the noncomplying party.

**7. WARRANTIES.**

7.1. Seller warrants to Buyer that (i) for a period of 24 months from the date of delivery of Goods (the "**Warranty Period**"), such Goods will (A) be free from defects in materials, workmanship and design, (B) conform to the mutually-agreed upon specifications, drawings, or samples relating thereto, or, if none, Seller's specifications, drawing or samples for such Goods previously provided by Seller to Buyer; (C) be merchantable, (D) be fit for the purpose for which they are to be used, and (E) be manufactured, performed and/or delivered in compliance with all applicable federal, state, and local laws, government orders and regulations (collectively, "**Laws**"), (ii) Seller has good and marketable title to the Goods, free of all liens, security interests, and encumbrances, and (iii) Seller (and each of its employees, agents, and independent contractors assigned to perform the Work) is properly licensed, certified and trained (in compliance with the applicable standards set forth by relevant governmental or industry association authorities) to perform the Work, and that such Work will be provided with a degree of care and competence that, at a minimum, accords with customary industry standards and practice. The foregoing warranties survive any delivery, inspection, testing, acceptance or inspection of the Goods or Work, payment therefor, and the expiration or termination of all or any portion of this Agreement. The foregoing warranties run to Buyer, its successors and assigns and their respective customers.

7.2. If Buyer gives Seller notice of noncompliance with this Section 7, Seller shall, at Buyer's Option and Seller's expense, (i) promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, without limitation, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer, (ii) re-perform the nonconforming Work, (iii) refund to Buyer the amounts paid by Buyer for the defective or nonconforming Goods or Work, or (iv) authorize Buyer to repair the defective or nonconforming Goods and reimburse Buyer for any reasonable expenses incurred in connection therewith.

7.3. Seller shall promptly notify Buyer in writing if: (1) a governmental authority advises Seller that a product recall is necessary or appropriate; or (2) Seller determines that it is necessary or desirable to stop or limit the sale or distribution of Goods. If there is a catastrophic manufacturing defect problem or a product recall, Seller will accept the return of all defective or recalled products from Buyer and pay Buyer for the returned Goods from Buyer and pay Buyer for the returned products plus all costs incurred in the return thereof, including transportation and handling costs. Seller shall cooperate with Buyer in the investigation and resolution of any consumer complaint received by Buyer regarding any Goods and/or Work provided by Seller.

**8. INSPECTION AND REJECTION.** Buyer may inspect the Goods on or after delivery. Buyer may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, without limitation, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may substitute them with goods from a third party and charge Seller the difference between the cost of the substituted goods and the Price for the relevant Goods and terminate the Order for cause pursuant to Section 14.1. Returned Goods that are remedied will have the same warranty as stated in Section 7 from the date of re-delivery. Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. No inspection, approval, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance, will relieve Seller of any obligations under this Agreement or impair or waive any right or remedy of Buyer. Buyer may enter Seller's facilities, at reasonable times, to inspect the production and packaging of materials to be delivered to Buyer.

**9. NOTIFICATIONS.** Seller will immediately notify Buyer of any actual or possible safety problems with the Goods delivered hereunder. Seller will give Buyer reasonable advance notice of potential material shortages, insolvency or other matters that might delay or interfere with its performance of this Agreement.

**10. COMPLIANCE WITH LAWS.** Seller, the Work and the Goods will comply with all applicable Laws, including but not limited to all federal and state occupational safety and health standards. Seller will be

liable to Buyer for all loss, cost and expense incurred by Buyer and any of its affiliates or customers attributable to any act or omission by the Seller resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures. Unless this Agreement is exempted by law, Seller will perform this Agreement in compliance with all applicable equal employment opportunity requirements imposed by applicable Laws, including, but not limited to, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended.

**11. INSURANCE.** During the term of the Order and for a period of 12 months thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect of a kind and in an amount generally carried by businesses engaged in the same or similar businesses similarly situated, which must include, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate, with financially sound and reputable insurers. Variance from said minimum limits require approval of a vice-president-level purchasing executive of Buyer. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. Seller shall provide Buyer with thirty days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Buyer Indemnitees.

**12. CONFIDENTIALITY.** Seller shall protect and not disclose any Confidential Information (as defined below) which it may obtain or have access to from time to time. Notwithstanding the foregoing, if Seller (or any person or entity to whom Seller discloses Confidential Information) becomes legally compelled to disclose Confidential Information, Seller shall promptly notify Buyer thereof in writing so Buyer may seek a protective order or other remedy. If Buyer fails to do so or waives compliance with this Section, Seller shall furnish (or cause to be furnished) only that portion of the Confidential Information which Seller (or such other affected person or entity) is legally required to furnish, and shall exercise commercially reasonable efforts to obtain reliable assurances that confidential treatment is accorded the Confidential Information so furnished. Seller shall immediately return Confidential Information to Buyer upon demand. Seller will promptly notify Buyer of any actual or suspected breach of this Section. If any affiliate, employee, agent, or representative of Seller discloses or uses Confidential Information other than as authorized in this Agreement, Seller will be liable to Buyer for that unauthorized disclosure or use to the same extent that it would have been had Seller disclosed or used that Confidential Information. **"Confidential Information"** means non-public information from or about Buyer and/or its customers, whether or not marked confidential, including, but not limited to, writings, drawings, technical information, intellectual property, trade secrets, proprietary information, contracts, current and active prospective customer and marketing relationships, financial and business plans, policies and procedures, methods of operation, "know-how" techniques, proposed business deals, reports, projects, products, processes, services, research, development projects, designs, computer hardware and software programs, together with analysis, compilations, forecasts, studies and other documents prepared on the basis of such information by or on behalf of the parties. The term "Confidential Information" excludes information which: (1) is or becomes generally available to the public other than

as a result of a disclosure by Seller (or any of its employees, agents, representatives or subcontractors) in violation of its or their obligations of confidentiality hereunder; (2) is previously known by Seller at the time of initial disclosure to Seller, as established by documentary evidence; or (3) becomes available to Seller on a non-confidential basis from a source which is not prohibited from disclosing such information to Seller by a legal, contractual or fiduciary obligation to Buyer.

### **13. INDEMNIFICATION.**

13.1. Seller shall indemnify, defend and hold harmless Buyer, its affiliates and subsidiaries, and their respective directors, officers, managers, employees, shareholders, agents, successors and assigns (collectively, the “**Buyer Indemnitees**”) from any and all liabilities, expenses, suits, actions, proceedings, fines, claims, demands, judgments, settlements, costs, losses, damages and all other obligations of whatever nature (including attorneys’ fees and court costs) (collectively, “**Losses**”), arising out of or in any way connected with (i) Seller’s performance or nonperformance of any Work, (ii) Seller’s default under this Agreement, including breach of any representation, warranty or covenant in this Agreement, (iii) Seller’s negligence or willful misconduct, (iv) Seller’s violation of any Law, or (v) any actual or alleged infringement of any intellectual property right of any third party relating to the Goods or Work or arising from Buyer’s purchase, use, distribution or sale thereof.

13.2. In the event of an allegation of intellectual property infringement or if the use or sale of the Goods or Work is enjoined, Seller will, at its own expense, either: (i) procure the right to continue using the Goods or Work, as applicable; (ii) if Buyer consents, make such alterations, modifications or adjustments to the Goods or Work, as applicable, so that they become non-infringing without incurring a material diminution in performance or function; (iii) if Buyer consents, replace same with a non-infringing equivalent; or (iv) refund the purchase price therefor.

13.3. If any settlement requires any affirmative obligations (other than ceasing use of the Goods or Work) or, results in any ongoing liability to or prejudice or detrimentally impacts Buyer in any way and such obligation, liability, prejudice or impact is material, then such settlement shall require Buyer’s written consent and Buyer may have its own counsel in attendance at all proceedings and substantive negotiations relating thereto.

13.4. All obligations of Seller under this Section are in addition to Seller’s warranty obligations and all other rights or remedies of Buyer and will survive acceptance and use of, and payment for, the Goods and the Work, and termination or expiration of the Order.

### **14. TERMINATION.**

14.1. **For Cause.** TIME IS OF THE ESSENCE IN THIS AGREEMENT. If (i) Seller breaches any representation, warranty or covenant in this Agreement, or (ii) Seller becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, a trustee or receiver of Seller’s business or assets is appointed by any court, or makes an assignment for the benefit of creditors, then Buyer may, at any time thereafter, terminate all or any part of the Order in whole or in part by written notice to Seller, and

Buyer will have no liability or obligations whatsoever to Seller by reason of or resulting from such termination except as expressly set forth in Section 14.3.

14.2. **For Convenience.** Buyer may at any time immediately terminate all or any part of the Order for convenience (i.e., without cause) by giving written notice to Seller and in such event Buyer will have no liability or obligations whatsoever to Seller by reason of or resulting from such termination except as expressly set forth in Section 14.3.

14.3. **Effect of Termination.** Termination of all or any part of the Order will not relieve the parties of any obligation accruing prior to such termination becoming effective. Buyer will not be liable to Seller for compensation, reimbursement or damages on account of any loss of prospective profits or anticipated sales or on account of expenditures, investments, leases, or commitments made in connection herewith or the anticipation of extended performance hereunder. If the Order or any portion thereof is terminated pursuant to Section 14.2, Buyer shall pay to Seller its actual, reasonable out-of-pocket costs of materials and labor directly incurred on Goods or Work terminated or cancelled by Buyer prior to Seller's knowledge of such termination, as certified by Seller and approved by Buyer, in which event the Goods and uncompleted portions thereof will be the property of Buyer, and Seller will safely hold the same for a reasonable time subject to receipt of Buyer's written instructions. Seller further agrees to take all steps reasonably possible to mitigate such charges. In no event will the total amount to be paid to Seller upon such termination exceed the amount to be paid under the terminated Order for the percentage of Work performed to the date the termination notice is received. Seller's sole remedy as a consequence of any termination under this Section 14 will be as set forth in this Section 14.3.

15. **Limitation of Liability.** Nothing in the Order shall exclude or limit (a) Seller's liability under Sections 7, 12 or 13, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or intentional misconduct. In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or connected with or resulting from the Order or from the performance or breach thereof shall, in no case, exceed the price allocable to the Goods or Work or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the Goods delivered or Work performed hereunder must be commenced within one year after the cause of action has accrued.

## 16. MISCELLANEOUS.

16.1. **Waiver.** The failure of either party to act upon or exercise its rights under this Agreement on a breach of any of the terms, conditions or provisions hereof will not be construed as a waiver of such breach or prevent such party from enforcing strict compliance with any and all terms hereof, or any further or other breach of the terms hereof. The waiver by either party of any term, condition or provision herein stated will not be construed to be a waiver of any other term, condition or provision hereof, nor will such waiver be deemed a waiver of a subsequent breach of the same term,

condition or provision, nor will it be deemed a waiver of any terms, conditions or provisions in any subsequent order.

16.2. **Independent Contractor; Safety.** Seller is and will remain an independent contractor of the Buyer. If Seller, either as principal or by agent or employee, enters upon the property of Buyer, Seller agrees to comply with Buyer's rules and regulations, including its environmental, health, safety and security rules and regulations.

16.3. **Governing Law and Jurisdiction.** This Agreement and all disputes arising hereunder or relating hereto are to be governed by the Laws of the State of Missouri, without regard to conflicts of law principles; provided, however, that the United Nations Convention on Contracts for the International Sale of Products shall in no way apply to this Agreement. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in St. Louis County, Missouri, and the parties agree and submit to the personal and exclusive jurisdiction and venue of such courts. THE PARTIES HERETO IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE CONDITIONS, THE ORDER, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

16.4. **Attorneys' Fees.** In the event any party to this Agreement brings suit or other enforcement action to construe or enforce its terms, or raises this Agreement as a defense in a suit or other enforcement action brought by the other party, the prevailing party will be entitled to recover its attorneys' fees and expenses from the other party.

16.5. **Set-off.** Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

16.6. **Assignment; Successors and Assigns.** Neither this Agreement nor any interest hereunder will be assignable by Seller, voluntarily or involuntarily, nor will a subcontract be made with or other delegation of duties made to any other party for the furnishing of any of the completed or substantially completed articles, spare parts or work covered by this Agreement without Buyer's prior written consent. Any such consent given will not be deemed to waive or to prejudice Buyer's right to recoupment or set-off or both, of claims arising out of this or any other transactions with Seller, its divisions, affiliates, or subsidiaries or to settle or to adjust matters with Seller without notice to assignees. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the heirs, successors, and assigns of the parties hereto.

16.7. **Severability.** If any part of the Order will be held to be illegal, void or unenforceable, the remaining portions will remain in full force and effect.

16.8. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Order or to such other address that may be designated by the receiving party



in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

16.9. **US Dollars.** All references to "\$" or "dollars" mean the lawful currency of the United States of America.