



**CORE POWER, INC. d/b/a CORE POWER AND ENVIRONMENT GENERAL CONDITIONS OF PURCHASE (the "General Conditions")**

**1. DEFINITIONS; CONSTRUCTION OF CONTRACT**

a) In these General Conditions the following definitions shall have the following meanings: "Buyer" means Core Power, Inc. d/b/a Core Power and Environment; "Contract" means the contract entered into between the Buyer and the Vendor for the purchase and sale of the Goods and/or Services, and includes the supply, protection, painting, marking and delivery of the Goods and/or Services; "Goods" means any goods described in the Purchase Order, including any goods supplied in connection with the supply of Services to the Buyer; "Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and related rights, trade secret rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, licenses or rights to use intellectual property, legal and contractual rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered; "Purchase Order" means the Buyer's written order and related instruction to supply the Goods and/or Services, including any technical specifications or other delivery requirements incorporating the General Conditions; "Services" means any services described in the Purchase Order and all work carried out by the Vendor for the Buyer; and "Vendor" means the person, firm or company to whom the Purchase Order is addressed as vendor and who accepts such Purchase Order subject to these General Conditions.

b) In the event of any conflict between these General Conditions and the provisions in the Purchase Order, the latter shall prevail, subject, however, to Section 2(b) below.

c) Any phrase introduced by the General Conditions including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**2. ACCEPTANCE OF CONDITIONS**

a) This Contract sets forth the entire agreement between the Buyer and Vendor and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Any purported agreement hereafter made shall be ineffective to change, modify, discharge or waive any term, condition or obligation in the Contract, in whole or in part, unless it is in writing and signed by the party against whom enforcement is sought.

b) All Goods and/or Services purchased by the Buyer are subject to these General Conditions only. No conditions or terms contained in the quotations, offers, acknowledgements, or other communications of the Vendor shall annul, vary or supplement any of these General Conditions and the instructions contained in the Purchase Order unless expressly agreed by both parties in writing.

c) Each Purchase Order shall be deemed to be an offer by the Buyer to buy Goods and/or acquire the Services pursuant to the terms of these General Conditions. The offer shall be deemed accepted on the earlier of: i) the Vendor issuing a written acceptance of the Purchase Order; and ii) the Vendor performing any act consistent with fulfilling the Purchase Order, at which point the Contract shall come into existence.

**3. WARRANTIES**

a) The Vendor assumes all warranties implied by law and, in addition, expressly warrants that the Goods and/or Services shall conform to the description, quantity and specifications referred to in the Purchase Order. Vendor warrants that all Goods, when delivered, shall be of satisfactory quality and shall be free from contaminants that are not identified in the Vendor's specifications for such Goods.

b) The Vendor warrants that the design, manufacture, quality, packing and labelling of the Goods shall comply in all respects with all relevant requirements of any statute, regulation, statutory rule or order or other instrument having the force of law, which may be in force at the time when the Goods are supplied, including, without limitation, health, safety and environmental requirements.

c) The Vendor warrants that the Goods: i) shall be fit for their normal purpose and any specific purpose the Buyer has made known to the Vendor or for any other purpose of the Buyer which the Vendor ought reasonably to have been aware of; and ii) shall be free from defects in design, material and workmanship.

d) The Vendor warrants that the Goods shall not infringe any Intellectual Property Right of any third party and the manufacture, sale to and use by the Buyer of the Goods shall not result in the infringement of any Intellectual Property Right of any third party.

e) Any Services supplied by the Vendor shall be: i) performed efficiently, safely and competently and in conformity with any applicable industrial code of practice by suitably qualified and experienced personnel; and ii) of the quality which would reasonably be expected from a highly skilled and experienced operator providing substantially similar services.

f) It is the responsibility of the Vendor to provide relevant product and health, safety and environmental information for all Goods and/or Services. Vendor shall provide any and all information relating to the Goods that is required by the Buyer for regulatory compliance purposes.

g) The above warranties shall apply to the Goods as delivered and for the longer of: i) *twelve (12) months* following delivery, ii) i) the Vendor's applicable warranty period offered for the Goods, or iii) as otherwise provided in the Purchase Order.

**4. INDEMNITY; INSURANCE**

a) Without prejudice to any other rights and remedies of the Buyer, the Vendor shall indemnify, defend and hold the Buyer and its officer, directors, shareholders, employees, agents, servants, insurers, successors, heirs, assigns and all other persons, firms or corporations who can or may be liable from and against any and all liability, loss (including, without limitation, loss of profits whether direct or indirect, loss of business, depletion of goodwill, or losses arising out of product recalls) damages, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and costs of legal proceedings) and any and all claims (including third party claims) which may result directly or indirectly from: i) any defect in the Goods or Services; ii) any breach of the Contract; iii) any act or omission of the Vendor or its employees, agents or sub-contractors in supplying, manufacturing, storing, transporting, or delivering the Goods and/or Services; iv) any breach of Section 3(d) above; and v) any damage to the Buyer's property. The Vendor's obligations under this Section 4 shall survive termination of the Contract indefinitely.

b) Vendor shall maintain, at Vendor's sole cost and expense, worker's compensation/employer's liability (if Vendor hires employees), comprehensive general liability, automobile insurance and umbrella/excess liability in amounts required by applicable law or reasonably required by the Buyer consistent with generally accepted industry practice, whichever is greater, but in no event shall the Vendor's (i) comprehensive general liability insurance and automobile insurance policy coverage limits be less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate for bodily injury or death and/or property damage or (ii) umbrella/excess liability policy coverage limits be less than \$5,000,000 per occurrence. Vendor shall provide the Buyer with proof of the foregoing insurance coverages upon demand, and at Buyer's request, cause the Buyer to be named as an additional insured on any such insurance policies. All such policies of Vendor shall be primary to any

other policies of Buyer and shall be written by insurance companies having an Alfred M. Best Company, Inc. rating of "A" or higher and a financial size category of not less than VIII.

## **5. DELIVERY AND TITLE**

- a) The Vendor must comply with the time and place of delivery set out in the Purchase Order and during our normal business hours. Time for delivery of the Goods and/or Services shall be of essence of the Contract.
- b) The Vendor shall ensure that any delivery vehicle, or other bulk container is clean and suitable prior to loading.
- c) The title in the Goods shall pass on payment of the price invoiced for the Goods, or on delivery, whichever first occurs.
- d) Notwithstanding paragraph (c) above, the Goods will remain at the Vendor's risk until delivery (including unloading and stacking) as provided in the Purchase Order.
- e) Where delivery takes place at the Buyer's premises or the premises of a third party, the Vendor shall comply with the security and safety regulations from time to time of the Buyer or any such third party, as applicable.
- f) Unless otherwise specifically agreed between the parties, all packages, containers, pallets, crates etc. will be supplied at no additional cost to the Buyer and will be non-returnable. Additionally, all Goods will be packaged as to protect them adequately before, during and after delivery from damage and deterioration.
- g) The signature of any of the Buyer's employees on any delivery note or similar shall be evidence only of the number of packages/pallets received, not that the Goods delivered are in accordance with the specification or that we accept any change to the terms of the Contract that may be included in such delivery note.
- h) The Buyer may adjust the rate of delivery of the Goods or the time at which the Services will be performed without incurring liability to the Vendor.
- i) The Buyer shall be entitled to a commercially reasonable period of time after delivery to test and reject any Goods delivered which are not in accordance with the Contract (including, without limitation, any concealed damage), and Goods shall not be deemed accepted until the Buyer or such other third party or parties designated by Buyer has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. The Buyer shall provide a notice of rejection, and thereafter, shall return the Goods to the Vendor at the Vendor's sole risk and expense and the Vendor shall refund the entire purchase price.

## **6. MARKING AND PACKING**

The Goods shall be packed and marked in a proper manner and in accordance with the Buyer's instructions and the requirements of the carriers. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and suitable warnings. Any loss or damage arising from failure to observe these conditions will be charged to the Vendor.

## **7. PRICE**

- a) The price stated on any Purchase Order is fixed, unless otherwise stated. No increase or extra charges submitted in respect of any Purchase Order shall be accepted without the specific written authority of the Buyer. Without limitation of the preceding sentence, Buyer shall not be liable or obligated to pay Vendor for any Goods and/or Services that are delivered or performed unless specifically stated on any Purchase Order.
- b) Unless otherwise stated in the Purchase Order, the price shall be inclusive of all other charges for packaging, packing, shipping, carriage, insurance, delivery and any and all sales, use, excise or other taxes, duties or levies.
- c) In the event that the Vendor recovers a refund of or credit for taxes paid by the Buyer to the Vendor in connection with any Purchase Order, the Vendor agrees to pay the Buyer the amount of such refund or credit.
- d) Unless the Purchase Order specifies otherwise, the Buyer shall pay the price net 45 days from delivery.
- e) The Buyer may set off against the price any sums due to the Buyer from the Vendor under the Purchase Order or any other contract between the Buyer and Vendor.

## **8. INTELLECTUAL PROPERTY**

The Vendor shall assign and transfer free of charge with full title guarantee, any Intellectual Property Rights, documents, specifications, plans, drawings, samples, information or Goods prepared by the Vendor specifically for the Buyer. Any Intellectual Property Rights, documents, specifications, plans, drawings, samples, information of Goods supplied by the Buyer shall remain the Buyer's property. At its own expense, the Vendor shall, and shall use all reasonable endeavors to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract or for the purpose of complying with any applicable laws or regulations.

## **9. CONFIDENTIAL INFORMATION**

- a) "Confidential Information" means any and all information relating to the Buyer, the current business operations of Buyer and the future business and strategic plans of the Buyer which the Buyer, or its officers, directors, shareholders, employees, representatives or agents may provide, to Vendor its officers, directors, members, shareholders, employees, representatives, consultants, advisors and agents (individually and collectively as to Vendor and as to Buyer, referred to as "Representative(s)"), including but not limited to trade secrets, customer or vendor information and lists, marketing or advertising plans and information, software, printouts, documents, drawings, business records, financial data, formulas, technical data, business forms, pricing data, financial projections, regardless of the form or format in which such information is stored, displayed or provided, including but not limited to written, electronic, verbal or in any other medium, and including reports, analysis or notes based on or containing such information regardless of whether it is designated as confidential or proprietary, together with any other information which has previously been provided to Vendor or its Representatives, is agreed to be confidential and proprietary. The term "Confidential Information" does not include information which i) at the time of disclosure to Vendor or any Representative is generally available to or known by the public other than as a result of disclosure by Vendor or its Representatives in violation of the Contract; ii) can be demonstrably established by Vendor to have previously been known to Vendor; or iii) became available to Vendor or its Representatives on a non-confidential basis from a source other than the Buyer, provided that such source acquired such information without violation of any of the Buyer's rights and was not bound by a duty of confidentiality to the Buyer.
- b) Subject to Section 9(c) below, Vendor agrees for itself and on behalf of its Representatives that it will not i) disclose, in whole or in part, any Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever unless authorized in writing to do so by the Buyer, or ii) use any Confidential Information for Vendor's own purpose or for the benefit of any person, firm, corporation, association or other entity other than the Buyer except in the proper performance of Vendor's duties under the Contract. Upon demand by Buyer, Vendor will (and shall cause its Representatives to) promptly return to the Buyer all Confidential Information and copies thereof, and, except to the extent advised by outside counsel that such destruction is unlawful, will destroy all analyses, compilations, studies or

other documents prepared by Vendor or its Representatives which reflect or incorporate Confidential Information. Any Confidential Information until returned or destroyed shall remain subject to this Agreement.

c) In the event that Vendor or any Representative receives any request, notice, demand, or order in any lawsuit or proceeding (whether administrative, regulatory or otherwise) to disclose any Confidential Information, they shall immediately notify Buyer of such request, notice, demand or order to permit Buyer sufficient time to obtain a protective order or agreement to protect and/or limit the disclosure of the Confidential Information in such lawsuit or proceeding. If, failing the entry of a protective order or other confidential treatment or appropriate remedy or the receipt of a waiver by Buyer, Vendor or its Representatives reasonably believe themselves to be legally compelled to disclose Confidential Information, they may do so only to the extent required by law and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Confidential Information that is being disclosed. In any event, Vendor and its Representatives will not oppose action by Buyer to secure an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information, and Vendor and its Representatives will reasonably cooperate with any such action.

d) The parties agree that any breach of this Section 9, including without limitation disclosure or use other than as authorized under this Agreement of any of the Confidential Information, will cause immediate, substantial and irreparable harm and injury to Buyer and that the only effective and adequate remedy available to Buyer for such breach is by injunctive relief both preliminary and final and/or temporary or permanent restraining order and/or specific performance and both parties agree to the jurisdiction of the equitable powers of the appropriate court to obtain such relief. Vendor further consents to the issuance against it of any restraining order, preliminary restraining order or injunction which is based on or which directly or indirectly relates to any use, disclosure or conduct by Vendor, its Representatives or any third party which obtained knowledge of the Confidential Information from Vendor or its Representatives, in violation of any of the provisions of this Agreement in addition to any other rights the Buyer may have. In addition, Vendor shall be responsible for any breach of this Agreement or the obligations contained herein by its Representatives.

## **10. FORCE MAJEURE**

The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on its business (or any part thereof) due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other disputes (whether or not relating to either parties workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable material, or any factory shutdown.

## **11. TERMINATION/CANCELLATION**

a) The Buyer shall be entitled to cancel any Purchase Order for any reason, including convenience, without liability to the Vendor in respect of all or part of the Goods and/or Services by giving notice to the Vendor at any time prior to delivery of the Goods or commencement of the Services. Further, after commencement, but prior to the completion of any Services under a Purchase Order, the Buyer may cancel any Purchase Order, for any reason, including convenience, without liability to the Vendor in respect of all or a part of the Services by giving notice to the Vendor at any time prior to completion of the Services, whereupon, the price stated in the Purchase Order shall be equitably adjusted or prorated (i) based on the Services actually provided as of the notice of cancellation, or (ii) in the event that the Services are to be provided for a fixed time period, based on the balance of said time period as compared to said time period as a whole, and the parties shall account to each other for an underpayments or overpayments within thirty (30) days after the Buyer's notice of cancellation.

b) Without prejudice to any other rights and remedies of the Buyer under the Contract, the Buyer may terminate the Contract with immediate effect by giving written notice to the Vendor if: i) the Vendor commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) days of that party being notified in writing to do so; ii) the Vendor takes action in connection with its entering administration, provisional liquidation, or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or iii) the Vendor takes action in connection with the Vendor being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business; or iv) the Vendor's financial position deteriorates to such an extent that in the Buyer's opinion the Vendor's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or v) there is a change of control of the Vendor.

## **12. GENERAL**

a) The Vendor shall not assign or delegate its rights and/or duties under the Contract or any Purchase Order without the Buyer's prior written consent, which Buyer shall have no obligation to give. The Buyer may freely assign or delegate its rights and/or duties under the Contractor or any Purchase Order, including, without limitation, any of Buyer's rights under Section 3 of these General Conditions.

b) In performing its obligations under the Contract, the Vendor shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

c) No waiver by either party of any breach of any of the terms of the Contract to be performed by the other party shall be construed as a waiver of any subsequent breach whether of the same or of any other term or condition hereof.

d) If any paragraph, section, term or provision of the Contract, or the application thereof, is determined by a competent court, tribunal to be invalid or unenforceable, then the other parts of such paragraph, section, term or provision shall not be affected thereby and shall be given full force and effect without regard to the invalid or unenforceable portions, and the paragraph, section, term or provision of the Contract will be deemed modified to the extent necessary to render it valid and enforceable. Without limitation of the preceding sentence, if any court determines that Section 8 of these General Conditions, or any part thereof, is unenforceable because of the duration, scope or subject matter, it is the parties' intention that such court shall have the power to reduce the duration, scope or subject matter of such provision, as the case may be, and, in its reduced form, such provision shall then be enforceable to the maximum extent permitted by applicable law.

e) The descriptive headings of the General Conditions have been inserted for convenience only and do not constitute a substantive part of the Contract. Where required by the context of the Contract, the use of the singular shall be construed to include the plural and vice versa, and the use of any gender shall include all genders.

f) Vendor is an independent contractor of the Buyer. Nothing in the Contract is intended to, or shall be deemed to, establish any employment, partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

g) The Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (without regard to its conflicts of laws principles). The parties irrevocably consent to the exclusive jurisdiction and venue of the courts of the Commonwealth of Pennsylvania located in Montgomery County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania in all matters arising out of or relating to the Contract.

h) **JURY TRIAL WAIVER.** VENDOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR IN ANY MATTER CONNECTED WITH THE CONTRACT, TO THE FULLEST EXTENT PERMITTED BY LAW.

i) IN NO EVENT SHALL BUYER OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, FOR ANY THIRD

PARTY CLAIMS AGAINST VENDOR OR FOR LOSS OF ANY PROFITS OR REVENUES, REGARDLESS AS TO WHETHER THE BUYER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND IN NO EVENT SHALL THE BUYER'S TOTAL CUMULATIVE LIABILITY, INCLUDING ATTORNEY'S FEES, EXPERT WITNESS FEES AND OTHER COSTS (IF RECOVERABLE UNDER APPLICABLE LAW), UNDER THE CONTRACT EXCEED THE PRICE STATED ON ANY PURCHASE ORDER.

### **13. REMEDIES**

Without prejudice to any other right or remedy which the Buyer may have, if any Goods or Services are not supplied or performed in accordance with, or the Vendor fails to comply with, the Contract, the Buyer shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services have been accepted by the Buyer; a) to rescind the Purchase Order; b) to reject the Goods (in whole or in part) and return them to the Vendor at the risk and cost of the Vendor on the basis that a full refund for the Goods so returned shall be paid immediately by the Vendor; c) at Buyer's option, and within five (5) days of the Buyer's request, to give the Vendor the opportunity at the Vendor's sole cost and expense, either to remedy any defect in the Goods and/or Services or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Purchase Order are fulfilled; d) to refuse to accept any further deliveries of the Goods or performance of the Services, but without any liability to Vendor; e) to carry out at the Vendor's expense any work necessary to make the Goods and/or Services comply with the Contract; and f) to claim such damages as may be sustained in consequence of the Vendor's breach or breaches of the Contract.