

## **GENERAL TERMS AND CONDITIONS OF SALE FOR PRODUCTS**

The Terms and Conditions of Sale set forth herein, including any supplements which may be attached hereto, constitute the full and final expressions of contract for equipment, products (hereinafter, collectively, "Equipment"), as described in any quotations between Northeast Power Systems, Inc. ("Seller") and the Buyer. [Purchases involving technical and engineering services are governed by "NEPSI's General Terms and Conditions of Sale for Engineering and Technical services".] These Terms and Conditions of Sale supersede all prior quotations, purchase orders, correspondence or communications, whether written or oral, between Seller and Buyer. Buyer shall be bound by these Terms and Conditions of Sale when it (a) delivers its purchase order for Equipment to Seller, (b) accepts delivery of Equipment, or (c) otherwise indicates acceptance of this contract. Such acceptance shall bind Buyer to these Terms and Conditions, notwithstanding any contrary language in Buyer's purchase order or other expression of acceptance.

*SELLER'S QUOTATION OR OFFER IS EXPRESSLY LIMITED TO, AND CONDITIONED UPON, BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE. DIFFERENT AND ADDITIONAL TERMS AND CONDITIONS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER.*

No contract between Seller and Buyer shall exist except as provided herein. No statement, representation or warranty not contained herein shall be binding upon Seller unless made in writing by an officer or other authorized representative of Seller. Prior dealings, usage of the trade and a prior course of performance shall not be relevant to determine the meaning of these Terms and Conditions of Sale. Whenever a term defined by the Uniform Commercial Code is used herein, the definition contained in the Code shall apply.

**1. Orders:** All orders of Equipment or expressions of acceptance of Seller's quotation or offer are subject to final approval and acceptance by an authorized representative of Seller at its Corporate Headquarters. Such final approval and acceptance by Seller need not be conveyed or otherwise delivered to Buyer to take effect.

**2. Warranty:** Seller warrants that the Equipment delivered by it will be of the kind and quality described in the order or contract and will be free of defects in workmanship and material. Should any failure to conform to this warranty appear within one (1) year after the date of shipment, Seller shall, upon prompt notification thereof and substantiation that the Equipment has been stored, installed, operated, electrically protected, and maintained in accordance with Seller's recommendations and industry standards and practice, correct such non-conformities, at its option, either by repairing any defective part(s) or by supplying a repaired or replacement part(s). Buyer shall be responsible for, and bear the costs of, delivering non-conforming equipment or parts to Seller. After Seller has corrected any non-conformities, buyer shall bear the costs of delivering the corrected Equipment or parts to Buyer. If Seller has installed the Equipment, and provided such installation was not delayed by Buyer, the one (1) year term of this warranty shall run from the completion of the installation, provided, however, that the total warranty period shall not exceed eighteen (18) months from the date of shipment in any case.

In no event shall Seller be responsible for, or bear the costs of; providing working access to any defect in the Equipment, including the removal, disassembly, replacement or reinstallation of any equipment, materials or structures to the extent necessary to permit Seller to perform its warranty obligations. The conditions of any test for a defect in the Equipment shall be agreed upon by the parties hereto and Seller shall be notified of, and be accorded a reasonable opportunity to be present at, any such test that is conducted.

*THE WARRANTY IN THESE TERMS AND CONDITIONS OF SALE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESSED OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), EXCEPT OF TITLE AND AGAINST PATENT INFRINGEMENT.*

The remedies provided herein are Buyer's sole remedies for any failure of Seller to comply with its obligations. Correction of any nonconformity in the manner and for the period of time provided herein shall constitute complete fulfillment of all the obligations and liabilities of Seller, regardless of whether the claims of Buyer are based in contract, warranty, tort (including negligence) or otherwise with respect to, or arising out of, Equipment furnished hereunder.

**3. Limitations of Liability and Indemnities:** In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall Seller or its employees, agents, representatives or suppliers be liable for any special, consequential, incidental, penal or punitive damages including, but not limited to, loss of profit or revenues, loss of use of the Equipment or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, or claims of any third parties for such damages. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall Seller's liability to Buyer for any loss or damage

arising out of, or resulting from, any contract between Seller and Buyer, or from such contract's performance or breach, or from the Equipment furnished hereunder, exceed the price of the specific Equipment which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the warranty period specified herein.

If Seller furnishes Buyer with advice or other assistance which concerns Equipment furnished hereunder, or any system or equipment in which any such Equipment may be installed and/or which is not required pursuant to these Terms and Conditions of Sale, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

The invalidity, in whole or part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this article. These limitations shall remain in effect if Buyer transfers title to or leases Equipment sold hereunder to any third party and shall be binding upon such third party. If such a transfer or lease of the Equipment occurs, Buyer shall obtain from said third party a written statement acknowledging the effectiveness of these Terms and Conditions of Sale and Buyer shall defend and indemnify Seller against any actions commenced by the third party in contravention of these Terms and Conditions of Sale.

**4. Penalty or Liquidated Damages:** Contracts which include penalty or liquidated damage clauses for failure to meet shipping promises are not acceptable to, or binding upon, Seller, unless such clauses are specifically accepted in writing by an officer of Seller at its corporate headquarters.

**5. Disclosure of Information:** Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not be regarded as secret, proprietary or submitted in confidence, except as may otherwise be acknowledged in writing by a duly authorized representative of Seller.

**6. Taxes:** In addition to the price agreed to by Buyer, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other tax applicable to the price, sale or delivery of any Equipment furnished hereunder or to its use, or Buyer shall furnish Seller with evidence of exemption from such tax(es) acceptable to the taxing authorities.

**7. Modification, Cancellation or Deferment by Purchaser:** Orders or purchase contracts may be modified or canceled, and scheduled shipments may be deferred, only upon Buyer's prior written notice to Seller and upon confirmation by Seller's revised acknowledgment and upon terms, satisfactory to Seller, which compensate Seller for all damages suffered by reason of such modification, cancellation or deferment. Any modification, cancellation or deferment hereunder shall become effective no earlier than fifteen (15) days after receipt of such notice.

**8. Drawing Approval:** Drawing approval assures Buyer that Seller has designed Equipment as described and detailed in Buyer's specification. If at drawing approval Seller has failed to design Equipment in conformance with Buyer's written specification, Seller shall make the appropriate changes at no charge to Buyer. Where Buyer's specifications are not definitive, Seller reserves the right to design the Equipment in line with, in Seller's judgment, good commercial practice. If at drawing approval Buyer makes changes outside of the design as covered in its specifications, Buyer shall reimburse Seller for reasonable charges based on the changes involved and Seller also shall be granted a commensurate delay in the shipping date.

**9. Delivery, Title and Risk of Loss:** Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller in writing, delivery will be made and title will pass F.O.B. point of shipment to Buyer. Risk of loss and damage pass to Buyer at the point of shipment. Such risks include, but are not limited to, risk of damage to Equipment during shipping.

**10. Excusable Delays:** Seller shall not be liable for delays in delivery or performance, or failure to manufacture, deliver or perform, due to: (a) causes beyond its reasonable control; (b) an act of God, act of Buyer, act of civil or military authority, Governmental priority, strike, or other labor disturbance, flood, epidemic, war, riot, delay in transportation or car shortage; or (c) inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials, components, services or facilities. Seller shall notify Buyer of any material delay excused by this article and shall specify the revised delivery dates as soon as reasonably practicable. In the event of any such delay, there will be no termination and the date of delivery or of performance shall be extended for period equal to the time lost by reason of the delay.

**11. Payments and Financial Condition:** Except as otherwise specified by Seller in its quotation, pro rata payments shall become due without setoff as shipments are made. If Seller consents to delay shipments after completion of any Equipment, payment shall become due on the date when Seller is prepared to make shipment. In the event of any such delay, title shall pass and products shall be held at Buyer's risk and expense. Any order for Equipment by Buyer shall constitute a representation that Buyer is solvent. At Seller's request, Buyer shall furnish a written representation concerning its solvency at any time prior to shipment. If, in Seller's opinion, Buyer's financial condition at any time does not justify continuance of work to be performed hereunder, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency, or in the

event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its proper cancellation charges. Seller's rights under this article are in addition to all rights available to it at law or in equity.

**12. Terms of Payment:** Standard payment terms are net within 30 days from date of invoice, unless otherwise stated in Seller's written quotation or agreed to by Seller in writing.

**13. Accelerated and Delayed Payments:** There will be no reduction in price for payments more favorable to Seller than the aforementioned standard payment terms unless otherwise expressly agreed to by Seller in writing. If payments are not made in conformance with the standard terms, the quoted price shall, without prejudice to Seller's right for immediate payment, be increased by an amount equal to the lesser of 1.5% per month on the unpaid balance or the highest legal interest rate.

**14. Prices:** All published prices and discounts are subject to change without notice. Written quotations expire thirty (30) calendar days from the date of quotation, unless withdrawn sooner. Verbal quotations expire twenty-four (24) hours after they are made. Seller assumes no liability for import duties or other taxes imposed by any foreign country.

**15. Shipment and Risk of Loss:** All shipments are F.O.B. point of shipment, unless otherwise agreed to in writing by Seller. Risk of loss and damage to Equipment shall pass to Buyer at the point of shipment, unless otherwise agreed to in writing by Seller.

**16. Returns:** Authorization for the return of any Equipment, including warranty items, must be obtained from Seller in the form of written return authorization papers. Returned Equipment not so identified shall be returned to Buyer at Buyer's expense. Full credit will be issued for all returned Equipment, authorized in advance, which has been accepted under warranty or returned as a result of Seller shipping incorrect Equipment or quantities of Equipment. In the case of Seller's error, return must be requested within thirty (30) days of the date of the invoice covering the original shipment. Credit will be issued on return of Equipment with transportation charges paid by Buyer. Return of Equipment for repair must be authorized by Seller. Arrangements for such return must be made prior to the actual return to determine reparability, procedures and pricing.

**17. Weights and Dimensions:** Published and quoted weights are actual weights or careful estimates, but are not guaranteed. The dimensions in quotations are estimates and are subject to change on final approval of drawings and designs. If approval drawings are waived by the customer, NEPSI shall not be held liable weight or dimensional changes.

**18. Waiver:** The failure of Seller to insist, in any one or more instances, upon the performance of any of the terms and conditions set forth herein and/or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition or right and shall not effect Seller's right to insist upon strict performance and compliance with regard to any un-excused portions of the contract or future performance of these Terms and Conditions of Sale.

**19. Choice of Law, Venue and Limitations on Actions:** These Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the State of New York, excluding any laws thereof which would direct application of the laws of another jurisdiction. The exclusive venue for any action commenced by Buyer against Seller shall be in the state or federal courts in the State of New York and the county or district in which Seller's corporate headquarters is located. If Seller commences an action against Buyer, the venue for such action shall be, at Seller's choice, (a) the state or federal courts in the State of New York and the county or district in which Seller's corporate headquarters is located, or (b) the state or federal courts in the state in which the Equipment was delivered.

*ANY CAUSE OF ACTION AGAINST SELLER ARISING OUT OF OR RELATING TO THE EQUIPMENT OR THESE TERMS AND CONDITIONS OF SALE SHALL EXPIRE UNLESS BROUGHT WITHIN ONE (1) YEAR OF THE TIME OF ACCRUAL THEREOF, ANY CONTRARY STATUTE OR LAW TO THE CONTRARY NOTWITHSTANDING. FURTHERMORE, NOTICE OF CLAIMS AGAINST SELLER FOR ANY REASON, INCLUDING BREACH OF WARRANTY, MUST BE MADE TO SELLER IN WRITING WITHIN FORTY-EIGHT (48) HOURS OF DISCOVERY TO AFFORD SELLER AN OPPORTUNITY TO CONDUCT A PROMPT INVESTIGATION OF THE SURROUNDING FACTS AND MITIGATE ANY DAMAGE THAT MIGHT ENSUE, SHOULD IT BE DETERMINED TO BE SELLER'S RESPONSIBILITY. FAILURE TO GIVE SUCH NOTICE TO SELLER SHALL CONSTITUTE A WAIVER BY BUYER OF ANY RIGHT LATER TO ASSERT SUCH A CLAIM.*

**20. Severability:** If any portion of these Terms and Conditions of Sale shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such portion so adjudged will be deemed separate, distinct and independent, and the remainder of these Terms and Conditions of Sale will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.