

**PW POWER SYSTEMS LLC**  
**STANDARD TERMS AND CONDITIONS OF PURCHASE**  
**MAY 2018**

1. Acceptance

Supplier's (i) full or partial performance under, or indication thereof, or (ii) acknowledgement of the Order, is acceptance of the Order and all terms and conditions set forth in the Order and these Terms and Conditions. Any terms and conditions set forth in Supplier's acceptance or in any acknowledgment, invoice, or other form of Supplier that add to, vary from, or conflict with the terms hereof are hereby rejected. If the Order is an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms set forth in the Order.

2. Certain Definitions

“Affiliate” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.

“Agreement” means the master terms agreement, long term agreement, subcontract, or other agreement that references these terms and conditions, and pursuant to which Orders are issued to Supplier.

“Buyer” means PW Power Systems LLC (“PWPS”) or the PWPS Affiliate that issues an Order referencing these Terms and Conditions, and any successor or assignee of Buyer.

“Buyer's Customer” means the ultimate owner, lessee, or operator of the Goods and includes the purchaser of an end product incorporating the Goods and/or Services provided by Supplier under the Order.

“Delivery Date” means the date of delivery for Goods and Services as specified in an Order and/or by the Delivery System.

“Delivery System” means Buyer's computer-based, web-enabled delivery scheduling system.

“Goods” means goods, parts, supplies, software, drawings, data, reports, manuals, other specified documentation, or items that are required to be delivered pursuant to, or in connection with, an Order, and, where the context requires, such services as are necessary and incidental to the delivery of Goods under any Order. For clarity, changes made by Buyer to the part numbers and/or other description of the Goods as a result of a change under the Changes clause of these Terms and Conditions will continue to be Goods.

“Intellectual Property” means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

“Lead Time” means the maximum time within which Supplier agrees to deliver Goods after receipt of a delivery requirement for such Goods. Lead Times are measured based on the date of receipt of the relevant Goods at Buyer's facility.

“Need Date” means the date Buyer needs delivery of Goods which date is before, or after, the Delivery Date.

“Party” or “Parties” means Buyer and/or Supplier, individually or collectively, as the context requires.

“Prime Contract” means the government or commercial sales contract between Buyer and Buyer's Customer.

“Order” means a paper or electronic document sent by Buyer to Supplier, or where provided for in an Agreement, an entry on a Buyer web site, to initiate the ordering of Goods or Services, such as a purchase order, a scheduling agreement, or other authorization, and including, without limitation, change notices, supplements or modifications thereto. The phrase “in connection with the Order” includes, without limitation, performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes the Agreement.

“Services” means any effort performed by Supplier necessary or incidental to the delivery of Goods, including, without limitation, design, engineering, installation, repair and maintenance. The term “Services” also includes any effort required by an Order.

“Specifications” means all requirements with which Goods and Services and performance hereunder must comply, including, without limitation, drawings, instructions and standards, on a Buyer web site or elsewhere, as such requirements are specified and/or referenced in Orders, as such requirements are modified from time to time by Buyer.

“Supplier” means the legal entity providing Goods and/or Services or otherwise performing work pursuant to an Order.

“Terms and Conditions” means this document, the PW Power Systems LLC Standard Terms and Conditions of Purchase, regardless of whether modified by the Parties.

### 3. Specifications

Supplier shall comply with all Specifications.

### 4. Delivery

- 4.1. Supplier shall use the Delivery System and electronic data exchange billing and invoicing systems (collectively, “Buyer Systems”) specified by Buyer.
- 4.2. The delivery information in the Buyer Systems shall establish the Delivery Dates for the Goods and/or Services. Supplier shall only ship in accordance with the rules established by the Buyer Systems, and shall use the bar codes and other documentation generated by the Delivery System.
- 4.3. Time is of the essence in Supplier’s performance of an Order, and Supplier shall deliver Goods and perform Services by the Delivery Date.
- 4.4. Seller shall ship Goods to the location designated from time to time by Buyer. Buyer shall provide to Supplier invoicing, delivery terms, shipping, packing and waste reduction instructions through an attachment to, or printing on the face of, the Order, or incorporated into the Order by reference to a web site. In the absence of such instructions, the delivery terms for Goods shall be FCA Supplier’s facility (Incoterms 2010). Title and risk of loss shall pass to Buyer upon receipt of Goods at Buyer’s facility or third party drop shipment point.
- 4.5. Delivery Dates that do not allow sufficient Lead Time will be considered Need Dates, and Supplier shall use all commercially reasonable efforts to meet Need Dates. If Supplier agrees to the Need Date, the Need Date will be considered the Delivery Date.
- 4.6. If Supplier is unable to deliver Goods by the Need Date, Buyer may, without liability: (i) reduce or cancel its requirements for any part of the quantity of the Goods that cannot be delivered by the Need Date, (ii) reallocate to another Order, or reschedule, any portion of such Goods that cannot be delivered by the Need Date, and/or (iii) waive its right to delivery by the Need Date and accept such Goods on the Delivery Date. In addition to any other rights and remedies that Buyer may have, in the event of Supplier’s nonconformance with any of the requirements under this Section 4 or any other delivery obligation, Supplier shall be responsible for all shipping costs and expenses incurred with respect to such nonconformance, including, without limitation, the costs of expediting shipment with respect to late deliveries.
- 4.7. Any forecasts of quantity and schedule that are set forth in the Delivery System are estimates and are for planning purposes only.

4.8. Without affecting any other rights of Buyer, Buyer may cancel Orders, in whole or in part, without liability to Supplier, at any time prior to commencement of Lead Time.

5. Inspection, Acceptance and Rejection of Goods

5.1. Supplier shall only tender Goods to Buyer that have passed inspection in accordance with the applicable inspection system and that otherwise conform to all requirements of an Order.

5.2. Buyer may provide written notice of acceptance of the Goods to Supplier. However, in the absence of Buyer's written acceptance and notwithstanding: (i) prior inspection of, (ii) payment for, (iii) use of or (iv) delivery of the Goods, acceptance shall not be deemed to occur until twelve (12) months following Buyer's receipt of Goods ("Inspection Period"); provided that acceptance of tooling shall not be deemed to occur until acceptance hereunder of the applicable Goods for which the tooling is used. Transfer of title to Buyer shall not constitute acceptance.

5.3. During the Inspection Period, Buyer may, with respect to any Goods that do not conform in one or more respects to the Order: (i) reject all or a portion of such nonconforming Goods; or (ii) accept all or a portion of such nonconforming Goods with a price reduction for the cost of repair or the diminution of value.

5.4. If any nonconforming Goods are delivered, Buyer may deliver to Supplier a notice setting forth such nonconformance. Within thirty (30) days of Supplier's receipt of such a notice, Supplier shall investigate the nonconformity, deliver to Buyer a written report of its investigation and conclusions, and formulate a corrective action plan acceptable to Buyer.

5.5. With respect to any rejected nonconforming Goods, Buyer may at its election and at Supplier's risk and expense: (i) hold nonconforming Goods for Supplier, or (ii) return nonconforming Goods to Supplier for, at Buyer's option, either (a) full credit or refund or (b) replacement Goods to be received within 24 hours of nonconformity notification. Title to such rejected nonconforming Goods returned to Supplier transfers to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from Buyer. Goods returned to Buyer hereunder shall be shipped at Supplier's expense and risk of loss. Additionally, rejected nonconforming Goods shall not be tendered again to Buyer for acceptance unless permitted by Buyer and applicable law, and accompanied by a disclosure of Buyer's prior rejection(s).

5.6. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from nonconforming Goods, including, without limitation, labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

6. Warranties

6.1. Supplier warrants to Buyer that all Goods are and continue to be: (i) merchantable and fit for the purpose intended; (ii) new; (iii) free from defects in material and workmanship; (iv) free from defects in design if the design is not provided by Buyer; (v) manufactured in strict accordance with the Specifications; and (vi) free from liens or encumbrances on title (collectively, the "Warranty").

6.2. Buyer may require Supplier to promptly repair or replace, at Buyer's option, any Goods that breach the Warranty. Buyer may return ship the Goods on the fastest available commercial carrier at Supplier's expense and risk of loss. Goods returned to Buyer hereunder shall be shipped at

Supplier's expense and risk of loss and shall be accompanied by a notice stating whether they are new replacements or repaired originals, and shall continue to be covered under this Warranty. Supplier shall conduct intake, review, analysis and any other activity required to evaluate whether the returned Goods are covered by the Warranty at no expense to Buyer.

- 6.3. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from Goods not conforming to the Warranty, including, without limitation, labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.
- 6.4. Supplier warrants that the Services will be performed in accordance with current, sound and generally accepted industry practices and in a workmanlike manner by appropriately licensed personnel who are trained and experienced in the appropriate fields. The Services are to be performed by Supplier for Buyer in consideration of the payments specified herein. Supplier will exert its best efforts to achieve satisfactory results.
- 6.5. Supplier agrees that should any of the Services not prove satisfactory at any time, in Buyer's sole judgment acting reasonably, Supplier shall re-perform all Services originally undertaken by Supplier and/or necessary to correct such defective Services, at no additional cost to Buyer or Buyer's Customer. In the event reperformance does not remedy Supplier's unsatisfactory performance, Buyer reserves the right to procure substitute services from another source or sources and to charge Supplier (directly or via set-off) with the costs thereof. Buyer also reserves the right to charge Supplier for its direct costs occasioned by Contractor's breach of this warranty.

## 7. Indemnification

Supplier shall indemnify, defend, and save and hold harmless Buyer, Buyer's insurers and Buyer's Affiliates and their respective employees, agents, officers and directors for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including, without limitation, attorneys' fees) relating to, arising out of, or caused by the performance hereunder, any act or omission of Supplier or any Goods or Services. Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including, without limitation, occupational disease whenever occurring), or death of Supplier employees.

## 8. Taxes

- 8.1. All payments, prices, fixed or otherwise, sums, payments, fees and monetary amounts set forth in these Terms and Conditions are exclusive of any and all sales and use taxes, value added taxes, goods and services taxes, taxes levied upon importation (such as customs duties and excises), and any other taxes (collectively, "Taxes") levied in regard of any of the transactions covered by these Terms and Conditions.
- 8.2. When invoicing, Supplier shall: (i) include amounts of Taxes, or specific fees Supplier is required by applicable law to add-on to the sales price and collect from Buyer or otherwise is legally due from Buyer, and (ii) separately state each of the Taxes.
- 8.3. Supplier is solely responsible for the fulfillment of Supplier's obligations under applicable law with respect to collecting and remitting Taxes collected from Buyer under these Terms and Conditions to the proper tax authority. Supplier shall pay any penalties, fees or interest charges imposed by a tax authority or other authority resulting from the non-payment of Taxes collected by Supplier. Supplier shall also pay any Taxes arising out of its willful misconduct or negligence for which Buyer becomes liable.

- 8.4. Supplier shall not collect Taxes on the supply of Goods and Services with respect to any transaction: (i) that is not subject to Taxes, (ii) for which the liability for payment of Taxes is shifted or reversed by applicable law or otherwise is the legal responsibility of Buyer or (iii) for which Buyer has been authorized to pay Taxes directly to the appropriate tax authority.
  - 8.5. All software (including, without limitation, manuals) delivered hereunder shall be delivered by Supplier to Buyer via the Internet. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees and Services on invoices, which shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the Internet." License locations should clearly be stipulated in the Agreement to allow for proper allocation of any Taxes owed.
  - 8.6. Supplier warrants that invoices issued in relation to Goods and Services are in compliance with any and all requirements as to content and format imposed by applicable tax law.
  - 8.7. Buyer shall withhold any portion of the monies from the amount payable under the invoices issued to it to account for any withholding for taxes that is required to be made by Buyer on behalf of Supplier pursuant to applicable tax law. Any such portion shall be deemed a payment on account of the relevant invoices issued to Buyer. Buyer shall provide Supplier with receipts supporting any taxes withheld.
  - 8.8. Buyer is not responsible for any tax based on Supplier's income, payroll or gross receipts.
  - 8.9. Buyer shall report and remit any Taxes relating to property for which Buyer retains title pursuant to the Agreement, accruing prior to and after the commencement of the Agreement. Where Supplier possesses Buyer-owned property, Supplier shall notify Buyer of any disposal or movement of such property. Supplier shall report and remit any property-related Taxes relating to property for which Supplier retains title pursuant to the Agreement, accruing prior to and after the commencement of the Agreement.
  - 8.10. Supplier shall, upon receipt from any Tax Authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing of the same.
  - 8.11. Supplier shall cooperate in the equitable resolution of disputes pertaining to any Taxes arising from these Terms and Conditions. Buyer may directly contest any Taxes in its own name to the extent permitted by law, and withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall in good faith, as requested by Buyer, contest such Taxes. Supplier shall supply Buyer with information and documents as Buyer may reasonably request for Buyer to control or participate in any proceeding to the extent permitted herein.
  - 8.12. If Supplier receives a refund of any Taxes attributable to Buyer, Supplier shall pay such amount to Buyer within thirty (30) days of receipt.
  - 8.13. Supplier shall indemnify, defend, and save and hold harmless Buyer for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including, without limitation, attorneys' fees) relating to, arising out of, or caused by Supplier's violation of its obligations under this Section 8.
9. Inspection and Audit Rights
- 9.1. Supplier (which, for the purposes of this Section 9, includes Supplier's suppliers) shall at any time, and after reasonable notice by Buyer, (i) grant to Buyer, Buyer's Customers and/or to any

competent regulatory authority, unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books and records (including, without limitation, agreements and technical inspection and quality records, but excluding financial books and records), wherever such books and records may be located (including, without limitation, third-party repositories), and (ii) provide Buyer, Buyer's Customers and/or any such authority the right to access, and to perform any type of inspection, test, audit or investigation at Supplier's premises, including, without limitation, manufacturing and test locations, in each case for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Order or for any other purpose indicated by Buyer's Customers and/or said authority in connection with the design, development, certification, manufacture, sale, use and/or support of the Goods. Supplier and its subcontractors shall furnish all reasonable facilities and assistance for the safe performance of the inspection, test, audit and/or investigation.

- 9.2. Supplier shall maintain complete inspection records for all Goods which shall be available to Buyer during performance of an Order and until the last to occur of: (i) four (4) years after final payment, (ii) final resolution of any dispute involving the Goods and/or Services, (iii) the latest time required by an Order, (iv) the latest time required by applicable laws and regulations, or (v) as otherwise directed by Buyer.
- 9.3. Any corrective action requested by Buyer, Buyer's Customers and/or any said authority following any such inspection, test, audit or investigation shall be implemented by Supplier at no cost.
- 9.4. In addition to any other inspection or audit rights granted to Buyer hereunder, Buyer may inspect and audit, on reasonable notice, Supplier's financial books and records if the Order: (i) is a time and material order, (ii) is a cost-based order, or (iii) provides for advance or progress payments based on costs incurred by Supplier.

#### 10. Product Support Obligation

Supplier shall maintain the ability to, and shall, provide product support for the Goods, which shall include, without limitation, assuring that subcomponents and materials are available, maintaining tooling and other production capability and re-engineering components or systems to address obsolescence until the later of twenty-five (25) years after the last Order is placed by Buyer for Goods or less than five (5) end products incorporating Goods are in operation anywhere in the world.

#### 11. Buyer-Furnished and Buyer-Funded Items

- 11.1. All material, including, without limitation, information, required to be furnished to Supplier under the Order ("Buyer Furnished Items") shall be delivered as specified in the Order, or, if not specified, in sufficient time to enable Supplier's timely performance. Buyer shall have no liability to Supplier for any delays or failures in the delivery of Buyer Furnished Items. If Buyer Furnished Items are not delivered to Supplier in sufficient time to enable Supplier to meet Delivery Dates, Supplier may notify Buyer of the delay and be entitled to an extension of such schedule equal to the period of the delay. Such adjustment shall be Supplier's sole remedy for such delay.
- 11.2. Title to all tooling (including drawings thereof), test equipment, and material identified as a separate line item under any Order or any agreement between Buyer and Supplier and which is fabricated or acquired by Supplier ("Buyer Funded Items") shall vest in Buyer.
- 11.3. Buyer Furnished Items and Buyer Funded Items (collectively, "Buyer Items") shall be used only for the purposes of the Order. Supplier shall not use Buyer Items on any other order without Buyer's written permission. Supplier shall, at its own expense: (i) establish and follow a

preventative maintenance calibration and repair program for, (ii) safely store (separated from other material where practicable), and (iii) maintain, all Buyer Items in good, workable condition.

- 11.4. Supplier shall account to Buyer for the proceeds from the sale of scrap generated during the performance of the Order by the processing of Buyer Items unless Supplier reimburses Buyer at Buyer's then-current prices for any Buyer Items used by Supplier.
- 11.5. Title to any Buyer Items shall remain with Buyer. Buyer, in order to protect its interests, may require Supplier to execute documents that are related to the Buyer Items, including, without limitation, Uniform Commercial Code financing statements. Supplier shall plainly mark and adequately identify Buyer Items as being Buyer's property. Supplier shall not substitute any property for or modify Buyer-Furnished Items.
- 11.6. Upon Buyer's request, Supplier shall provide a written inventory of Buyer's Items, including, without limitation, certification of compliance with this Section 11 and proof of adequate insurance covering full replacement cost of Buyer Items.
- 11.7. Supplier shall, upon discovery, provide notification to Buyer if any Buyer Items are lost, damaged or destroyed. Upon completion or termination of the Order, or at any time upon Buyer's request, Supplier shall, at its own expense, dispose of Buyer Items in accordance with Buyer's instructions.
- 11.8. If Buyer Items are furnished to Supplier in connection with the production of Goods to be imported by Buyer into the United States, Supplier shall comply with all instructions from Buyer to document the value of such Buyer Items as "assists" in compliance with U.S. Customs and Border Protection requirements.

## 12. Changes

- 12.1. Buyer's authorized procurement representative (which is not a member of Buyer's engineering or technical personnel) may unilaterally make changes within the general scope of the Order, including, without limitation, changes in whole or part, to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any designs, Specifications and drawings, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer Items, facilities, equipment, or materials, (vii) Prime Contract flowdown requirements and/or (viii) quality requirements ("Change(s)"); provided that any Order terms that incorporate flexibility for variations and/or modifications do not constitute a "Change". Supplier shall perform any Changes ordered by Buyer.
- 12.2. If a Change causes an increase or decrease in the cost of, or the time required for, performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and Buyer shall modify the Order accordingly; provided that Supplier delivers to Buyer an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than fifteen (15) days after Supplier's receipt of the Change.
- 12.3. If the cost of property or material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Order, as directed by Buyer.

- 12.4. If Supplier considers that Buyer's conduct constitutes a Change, Supplier shall notify Buyer's authorized procurement representative immediately in writing as to the nature of such conduct and its effect upon Supplier's performance. Supplier shall take no action to implement any such Change without written direction from Buyer's authorized procurement representative.

### 13. Stop Work Order

Buyer may, from time to time, require Supplier to stop all or any portion of the work called for by the Order for a period of up to 120 days ("Stop Work Period") at each such time. Upon receipt of written notice ("Stop Work Order") detailing the length and scope of the Stop Work Period, Supplier shall immediately comply with its terms at no charge. Within the Stop Work Period, Buyer shall either: (i) cancel the Stop Work Order and Supplier shall thereupon resume work; or (ii) terminate the work covered by the Stop Work Order, for default or convenience, as the context requires, in accordance with the provisions of the Order.

### 14. Termination for Default

- 14.1. Buyer may, by written notice, terminate the Order (which, for the avoidance of doubt, includes the Agreement) or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder, including, without limitation, a delivery obligation; (ii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance within ten (10) days following Buyer's demand therefor; or, (iii) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition.
- 14.2. Buyer shall have no liability in relation to those Goods terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including, without limitation, increased procurement costs, requalification costs, and other non-recurring costs, except in the circumstance of any failure or delay constituting an Excusable Delay.
- 14.3. If the Order is entirely or partially terminated under this Section 14 other than pursuant to clause (iii) of Section 14.1, Buyer, in addition to any other rights Buyer may have, may require Supplier, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including, without limitation, proprietary and manufacturing information, utilized by Supplier in performing the Order; (ii) deliver the tooling and test equipment necessary to make or have made the Goods and provide technical and transition assistance; and (iii) provide to Buyer a worldwide, non-exclusive, paid-up, irrevocable, license, with the right to grant sublicenses, to all information, data, know-how, and other Intellectual Property, including, without limitation, proprietary and manufacturing information, to the extent necessary to enable Buyer to make, have made, use, sell and license the Goods.
- 14.4. In addition to and not in lieu of other rights to Intellectual Property, Supplier hereby grants to Buyer a worldwide, non-exclusive, paid-up, irrevocable license ("Additional License"), with the right to grant sublicenses, to Supplier's information, data, know-how, tooling, test equipment and other Intellectual Property, including, without limitation, proprietary and manufacturing information to enable Buyer to make, have made, use, sell and license the Goods, subject to the restriction in the following sentence. Buyer agrees to not exercise such rights under the Additional License except in the event Supplier: (i) becomes insolvent, (ii) becomes unable to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) has a receiver appointed for the whole or any substantial part of its assets, or (v) becomes in any way the subject of a bankruptcy petition, in each case regardless of whether the Order is terminated. As part of



such Additional License, Supplier shall upon Buyer's written request and at no charge to Buyer, promptly: (a) deliver to Buyer all information, data, know-how, and other Intellectual Property, including, without limitation, proprietary and manufacturing information, utilized by Supplier in performing the Order, and (b) deliver the tooling and test equipment necessary to make or have made the Goods and provide technical and transition assistance in order to ensure Buyer's continuing requirements for Goods.

- 14.5. If, after notice of termination under Section 14.1, it is determined that Supplier was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Section 15.1. In such case, Supplier shall not be entitled to any remedy other than as provided for in Section 15.

#### 15. Termination for Convenience

- 15.1. Buyer may, at any time, terminate all or part of the Order (which, for the avoidance of doubt, includes the Agreement), for its convenience upon written notice to Supplier.
- 15.2. Upon such termination, in accordance with Buyer's written direction, Supplier shall immediately: (i) cease work and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and/or Services; (iii) deliver to Buyer any and all Goods completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- 15.3. In the event Buyer terminates in accordance with this Section 15 after performance has commenced, Buyer shall compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods required to be delivered within the Lead Time period, calculated from the Buyer's issuance of the notice of termination. If the Order does not specify Lead Time, Lead Time shall be the reasonable average lead time for the Goods in accordance with Buyer data. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section 15. In order to receive compensation, Supplier's termination claim must be submitted within ninety (90) days from the effective date of the termination.
- 15.4. Buyer shall not be liable to Supplier for costs or damages other than as described in Section 15.3, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any amount in excess of the price allocated to the portion of the Order terminated.

#### 16. Customs Trade Partnership Against Terrorism (C-TPAT) Program

**This Section 16 is applicable to Orders in which Goods will be shipped into the United States.**

- 16.1. Supplier agrees that, during the period in which it ships Goods to Buyer, it and its subcontractors who either ship directly or package Goods for shipment will either (i) be certified under the Customs Trade Partnership Against Terrorism ("C-TPAT") program by the U.S. Customs and Border Protection or (ii) demonstrate to Buyer's satisfaction that it meets the security requirements of C-TPAT. Accordingly, Supplier must either provide Buyer with documentation that it and its subcontractors are certified (e.g. C-TPAT certification or Status Verification Interface (SVI) number), or provide documentation and evidence satisfactory to Buyer to demonstrate compliance with C-TPAT security requirements, available at [www.cbp.gov](http://www.cbp.gov).

- 16.2. Upon five (5) days prior written notice, Buyer, or its designee, may audit all pertinent books and records of Supplier and its subcontractors, and make reasonable inspection of Supplier's and its subcontractors' premises, in order to verify compliance with the requirements of this Section 16.
- 16.3. Any delay in delivery due to Supplier's failure to comply with this Section 16 shall not relieve Supplier of its obligations and shall not give rise to an Excusable Delay.

## 17. Intellectual Property Rights

- 17.1. "Background Intellectual Property" means all Intellectual Property other than Foreground Intellectual Property. "Foreground Intellectual Property" means all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.
- 17.2. Each Party retains its existing rights in Background Intellectual Property.
- 17.3. Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- 17.4. Supplier represents and warrants that Supplier has sufficient rights in all Goods, Services, and Intellectual Property and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.
- 17.5. Supplier hereby grants to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- 17.6. Supplier hereby irrevocably waives all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with the Order.
- 17.7. Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, (including, without limitation, free software, open source software, freeware,

general public license-governed software, or the like), in any form that is subject to any obligations or conditions that could reasonably or arguably could provide a legal right to any third party to access such software and/or source code, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution or conveyance of such software.

- 17.8. Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

#### 18. Intellectual Property Indemnification

- 18.1. Supplier shall indemnify, defend, and save and hold harmless Buyer, its Affiliates, subsidiaries, agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the manufacture, use or sale of any Goods or Services delivered or performed in connection with the Order ("Claim").
- 18.2. Supplier shall not be liable for any Claim based on Supplier's compliance with any Specification created by Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the Specification was derived from, or provided by, Supplier; or (iii) Supplier knew or should have known of a Claim or potential Claim and did not promptly notify Buyer in writing.
- 18.3. Supplier shall, upon written notice from Buyer of a Claim, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.
- 18.4. Buyer may supersede Supplier in the defense of any Claim, and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.
- 18.5. If the manufacture, use or sale of the Goods is enjoined by a court, if delivery is precluded by a government entity, or if Supplier refuses to supply Goods to avoid a potential third party claim, Supplier shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to use or sell such Goods; (ii) modify or replace such Goods with equivalent non-infringing Goods; or (iii) provide such other solution acceptable to Buyer. Supplier shall reimburse Buyer for Buyer's costs incurred in obtaining all internal, external and Buyer's Customer approvals, qualifications, certifications, and the like, necessary for making, using and selling alternate non-infringing Goods. Supplier shall refund to Buyer the purchase price of any such Goods that Buyer is prohibited from using or selling.

#### 19. Proprietary Information

- 19.1. “Proprietary Information” means all information, knowledge or data (including, without limitation, financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual or other form, (i) disclosed by, or obtained from, Buyer or (ii) conceived, created, acquired, or first reduced to practice in connection with the Order. If Buyer furnishes sample products, equipment, or other objects or material to Supplier, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with the Order.
- 19.2. Unless Supplier has received the Buyer’s express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of the Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.
- 19.3. Supplier may disclose the Proprietary Information to only officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors of Supplier who have a need to know such Proprietary Information for the purposes of the Order and who have executed a written agreement with Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section 19.
- 19.4. The Order shall not restrict Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of Supplier or a third party; (ii) is received by the Supplier without restriction as to disclosure by Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer’s Proprietary Information.
- 19.5. If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of the Order provided that the obligations of this Section 19 are satisfied by Supplier.
- 19.6. Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of the Supplier’s premises for the purposes of verifying compliance with this Section 19.
- 19.7. Obligations in this Section 19 continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of Supplier or any third party.
- 19.8. Unless required otherwise by law or the Order, Supplier shall promptly return, or otherwise dispose of Proprietary Information as Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information one (1) year after termination or completion of the Order and provide written certification to Buyer of such destruction.

- 19.9. Supplier agrees to cause all information regardless of form (including, for example, electronic, magnetic and optical media, software, and compilations), containing or derived in whole or in part from Proprietary Information to bear the following legend:

**This document contains the property of PW Power Systems LLC and/or a PW Power Systems LLC affiliate. You may not possess, use, copy or disclose this document or any information in it for any purpose, including, without limitation, to design, manufacture, or repair parts, without express written permission of PW Power Systems LLC and/or the PW Power Systems LLC affiliate issuing the applicable Order. Neither receipt, from any source, nor possession of this document, constitutes such permission. Possession, use, copying or disclosure by anyone without express written permission of PW Power Systems LLC and/or the PW Power Systems LLC affiliate issuing the applicable Order is not authorized and may result in criminal and/or civil liability.**

- 19.10. Notwithstanding any proprietary or confidential labels or markings, all information of Supplier disclosed to Buyer relating to the Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any PW Power Systems LLC Affiliates, or to Buyer's Customer and Buyer's subcontractors and potential subcontractors provided that such Affiliates, Buyer's Customer, subcontractors and potential subcontractors have a need to access or know such information. Moreover, Buyer may disclose all Supplier information, in accordance with applicable governmental regulations, to any department or agency of the U.S. Government, including, without limitation, for the purpose of obtaining necessary government approvals.
- 19.11. Supplier agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Supplier may receive solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer that expressly reference a purchase order issued by Buyer and contain obligations no less stringent than those set forth in this Section 19. Supplier shall promptly notify Buyer if Proprietary Information is offered to Supplier by a third party or of the suspected possession of Proprietary Information by a third party.
- 19.12. Supplier agrees to notify Buyer in writing and to obtain Buyer's written consent, not to be unreasonably withheld, prior to manufacturing any parts for another entity that have the same form, fit and function as any parts Supplier manufactures for Buyer using Proprietary Information. Supplier's notification shall describe the parts to be manufactured for the other entity, identify the corresponding parts Supplier manufactures for Buyer and provide Buyer with sufficient information to demonstrate that Supplier will manufacture such parts without reference to or use of Proprietary Information. If Supplier manufactures or sells any such parts without obtaining Buyer's written consent, Buyer shall be entitled to injunctive relief and such other remedies as a court may order.
- 19.13. Supplier shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Proprietary Information. Supplier shall dispose of any Goods not provided to Buyer in a manner that prevents disclosure of Proprietary Information (including, without limitation, by reverse engineering).
- 19.14. For Proprietary Information exchanged in connection with the Order, the terms of this Section 19 shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

20. Offset

- 20.1. Buyer may use all or any part of the value of the Order, including, without limitation, the value of any subcontracts placed by Supplier for the Order, for satisfying international offset obligations of Buyer, Buyer's Affiliates, or any entity that Buyer transfers such value to. Supplier may use the offset credit generated by the Order or the subcontracting of the Order only upon Buyer's written approval.
- 20.2. Supplier shall support Buyer in meeting Buyer's offset requirements in proportion to the value of the Goods supplied by Supplier to the value of the end item sold by Buyer into the particular country.
- 20.3. Upon Buyer's request Supplier shall (i) report all subcontract sources outside the United States utilized in the fulfillment of the Order, including, without limitation, the name and location of each such source, amounts paid and committed thereto and identification of the Goods or Services procured, and (ii) require its subcontractors, including, without limitation, those at all lower tiers, to maintain records of the above information.

## 21. Insurance

- 21.1. Without limiting any of Supplier's obligations hereunder, Supplier agrees to secure and carry as a minimum the following insurance with respect to all work to be performed under the Order for the duration of the Order: (i) Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; (ii) Commercial General Liability Insurance including, without limitation, Premises Liability and contractual Liability, in which the limit of liability for property damage and bodily injuries, including, without limitation, accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence; (iii) if Supplier vehicles are used on Buyer's premises and/or used to accomplish work under the Order or otherwise on behalf of Buyer, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including, without limitation, accidental death, shall be a combined single limit of \$1,000,000 for any one occurrence; (iv) if Supplier or its subcontractors have Buyer's materials or equipment in its care, custody or control, Supplier shall have and maintain All-Risk Property Insurance in an amount sufficient to meet or exceed the value of such material; and (v) if Supplier is performing professional services on behalf of Buyer, Supplier shall maintain Professional Liability Insurance with a limit of no less than \$5,000,000.
- 21.2. All such insurance shall be issued by companies authorized to do business under the laws of each state or jurisdiction in which all or part of the Services are to be performed, and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.
- 21.3. The insurance policies required under this Section 21 shall be in form satisfactory to Buyer, and shall contain a provision prohibiting cancellation or material change except upon at least ten (10) days' (seven (7) days in the case of War Risks Insurance) prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of the Supplier's performance of work and provide that where there is more than one insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carrier by Buyer. Certificates evidencing such insurance and endorsements naming PWPS and, if Buyer is not PWPS, Buyer as an additional insured or, in the case of All Risk Property Insurance, naming PWPS and, if Buyer is not PWPS, Buyer as a loss payee, shall be filed with Buyer upon execution of the Order and

before commencement of any work hereunder, and within thirty (30) days after any renewals or changes to such policies are issued. To the extent permitted by law, Supplier and its insurer(s) agree that subrogation rights against PWPS and, if Buyer is not PWPS, Buyer are hereby waived; such waiver shall be reflected on the insurance certificate. Supplier shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention.

- 21.4. Any certificate of insurance delivered in accordance with this Section 21, shall identify the contract number or work to be performed and acknowledge that such coverage applies to liabilities incurred by Supplier, its employees, invitees or agents under the Order and that such insurance shall not be invalidated by any act or neglect of Supplier whether or not such act or neglect is a breach or violation of any warranty, declarations or conditions of the policies.
- 21.5. Supplier shall require its subcontractors to maintain insurance in the amounts and types required by this Section 21.

## 22. Disaster Recovery

If Supplier is a sole source of supply and/or providing products whose Lead Time exceeds one hundred twenty (120) days, or as otherwise directed by Buyer, Supplier shall develop and maintain a disaster recovery plan acceptable to Buyer for the recovery and continuation of business related to the design, development, certification, manufacture, sale, use and/or support of the Goods furnished hereunder, in the event of a disaster or emergency. The disaster recovery plan shall, among other things, prevent or limit the interruption of the supply of Goods in conformity with the requirements set forth herein. Supplier shall furnish a copy of disaster recovery plan to Buyer upon request.

## 23. Standards of Business Conduct

- 23.1. Supplier shall adopt and comply with a policy statement or code of conduct regarding business ethics (“Code”). The Code will be suitable for Supplier’s business and as a minimum will require compliance with all applicable laws and regulations. The Code shall assure a safe and healthy work environment, prohibit the use of child or forced labor, provide for the protection of the environment and minimization of waste, emissions, energy consumption and the use of materials of concern and prohibit engagement in corrupt practices (e.g. facilitating, offering or paying any bribe). This Section 23.1 creates no additional duties for Buyer with respect to Supplier and confers no rights on third parties.
- 23.2. At Buyer’s request, Supplier shall develop, adopt and comply with a technology control plan (“TCP”) satisfactory to Buyer and which sets forth undertakings of Supplier and its subcontractors for assuring compliance with provisions of these Terms and Conditions relating to technology. Supplier’s compliance with the TCP may be reviewed from time to time by Buyer at Buyer’s request.

## 24. Compliance with Laws

- 24.1. Supplier shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of the Order, except to the extent inconsistent with U.S. antiboycott laws, including, without limitation, (i) the manufacture or provisioning of Goods and/or Services, (ii) the shipping of Goods and (iii) the configuration or content of Goods for the use intended by Buyer.

- 24.2. Supplier shall, at the earliest practicable time, notify in writing Buyer if Supplier is (i) suspended, debarred, or proposed for suspension or debarment from doing business with the U.S. Government, or (ii) listed or is proposed to be listed by the U.S. Government in any “denial orders,” as a “blocked person,” as a “specially designated national,” or as a “specially designated terrorist” for U.S. export administration purposes (collectively, “Debarment”). Any such Debarment shall act as a cause for Buyer to terminate the Order under the Section 14.
- 24.3. Supplier recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the “Conflict Minerals”) from the Democratic Republic of the Congo and adjoining countries (“DRC countries”). Accordingly, Supplier commits to comply with Section 1502 of Dodd-Frank and its implementing regulations. In particular, Supplier commits to have in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into products it provides Buyer; (ii) due diligence of its supply chain, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Supplier shall take all other measures as are necessary to comply with the Act and its implementing regulations, as they may be amended over time.

## 25. Applicable Law and Forum

- 25.1. The Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of Connecticut, U.S.A. without regard to conflicts of law principles. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of the Order in the appropriate court, or arbitration forum, if arbitration is required by law or the Order, in the jurisdiction described above, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process.
- 25.2. Any action or claim by Supplier with respect hereto shall also be brought in the appropriate court in the jurisdiction described above, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including, without limitation, the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in Connecticut. Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods, the Parties exclude the application of the provisions of said Convention to all transactions relating to the Order.

## 26. Export Control

- 26.1. Supplier shall comply with the most current export control and sanctions laws, regulations, and orders applicable at the time of the export, re-export, transfer, disclosure or provision of Goods, software, technology or Services including, without limitation, the (i) Export Administration Regulations (“EAR”) administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 C.F.R. parts 730-774; (ii) International Traffic in Arms Regulations (“ITAR”) administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. parts 120-130; (iii) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control, U.S. Department of the Treasury, 31 C.F.R.



parts 500-598; and (iv) laws and regulations of other countries (collectively, “Export Control Laws”).

- 26.2. Unless the Order is for Goods to be supplied on a “build to print” basis by Supplier, Supplier shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number, (ii) the Export Control Classification Number (“ECCN”) of such Goods, software or technology that are controlled by the EAR, to include the ECCN of parts and components if such classification differs from the ECCN of the Goods or software and (iii) any analogous classification under any other applicable law.
- 26.3. Supplier shall not export, re-export, transfer, disclose or otherwise provide Buyer’s technical data controlled by Export Control Laws (“Technical Data”) to any foreign persons or foreign commercial entities, or modify or divert such Technical Data to any military application, unless Supplier receives advance, written authorization from Buyer. Any subcontracts between foreign persons in the approved country for manufacture of Goods or provision of Services shall contain all the limitations of this Section 26 and shall comply with all applicable export licenses or authorizations. Upon Buyer’s request, Supplier shall demonstrate to Buyer, to Buyer’s reasonable satisfaction, Supplier’s subcontractors’ compliance with this Section 26 and all Export Control Laws. Upon completion of its performance under the Order, Supplier and its subcontractors shall destroy or return to Buyer all Technical Data.

#### 27. Toxic, Hazardous or Carcinogenic Substances

- 27.1. Supplier represents and warrants that the Goods and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with, any laws or regulations of any country or jurisdiction in the world, including, without limitation, the United States, the European Union (“EU”), and nations adopting legislation similar to that of the EU, and that nothing prevents the sale or transport of the Goods or substances in Goods in any country or jurisdiction in the world and that all such Goods and substances are appropriately labeled, if labeling is required, and have been pre-registered and/or registered and/or authorized under the EU Registration, Evaluation, Authorization and Restriction of Chemicals regulation (“REACH”), if pre-registration, registration and/or authorization is required.
- 27.2. In addition to complying with REACH, the EU’s regulation of chemical substances (as is required under Section 24), Supplier shall timely provide Buyer with all relevant information on the Goods so that the intent of REACH is met for communicating with downstream users as defined in Article 3(13) of REACH (any person established in the EU who uses a chemical substance in the course of his industrial or professional activities; the definition does not include the manufacturer, importer, distributor, or consumer), and in any case, Supplier shall provide all information necessary for Buyer and/or any downstream user to timely and accurately fulfill their obligations under REACH.
- 27.3. Supplier shall bear all costs, charges and expenses related to pre-registration, registration, evaluation and authorization under the REACH regulation of the chemical substances that are the subject of the Order.

#### 28. Design and Process Specification Efforts

**This Section 28 is applicable when (i) Supplier is designing new parts for Buyer, (ii) Supplier is developing new Specifications for Buyer, or (iii) Supplier is creating new work instructions, assembly instructions, repair instructions or required processes for Buyer.**

Supplier shall submit to Buyer's procurement representative a written report of materials of concern ("MOC Report") (as defined by Buyer's design requirements, Specifications, or similar requirements supplied by Buyer) that are used in the production of, or are in, products that are the subject of the design, development or processing efforts. The MOC Report shall be submitted in the format specified by Buyer prior to Buyer's preliminary design review and again prior to Buyer's critical design review (or, if there are no such reviews, concurrent with Supplier's submission of the applicable drawings, specifications and/or instructions). The MOC Report shall give full details regarding the intended use of any materials of concern. Supplier shall cooperate with Buyer to consider other alternative materials as discussed at design reviews.

29. News Releases/Publicity

Supplier shall not make or authorize any news release, advertisement, or other disclosure that (i) relates to the Order or the relationship between Buyer and Supplier, (ii) denies or confirms the existence of the Order or (iii) makes use of Buyer's name or logo, in each case without the prior written consent of Buyer.

30. Assignment

Any assignment by Supplier of the Order and/or the Agreement, in whole or in part, without Buyer's prior written consent shall be null and void, and shall constitute a material breach of the Order.

31. Setoff

Buyer and its Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under the Order or any other transaction with Buyer and its Affiliates.

32. Kickbacks and Political Contributions

Supplier has not and shall not offer or give anything of value (in the form of entertainment, gifts, or otherwise) to Buyer's employees or representatives for the purpose of obtaining the Order or favorable treatment under the Order. Supplier represents and warrants that it has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with the Agreement or Order.

33. Duty to Proceed

Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to the Order shall excuse Supplier from proceeding.

34. Change in Control

In the event there is a change in control with respect to Supplier, if a Buyer competitor or other Buyer supplier of similar Goods, gains control of Supplier or, in Buyer's sole judgment, Buyer is insecure about future performance or Buyer's commercial position as a result of a change in control, Buyer shall have the right to terminate the Order in whole or in part upon thirty (30) days written notice with Buyer's only obligation to pay for those conforming Goods and Services actually received prior to the expiry of such thirty (30) day period. A change in control of Supplier is deemed to have occurred if there is a change in the beneficial ownership, directly or indirectly, of twenty-five percent (25%) or more of the ownership interests in Supplier.

35. Partial Invalidity/Unenforceability

If in any instance any provision of the Order shall be determined to be invalid or unenforceable under any applicable law by any competent court or arbitration tribunal, such provision shall be ineffective only to the

extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable.

#### 36. Survival

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the Order, including, without limitation, the warranties, indemnifications, Intellectual Property (including, without limitation, rights to and protection of Intellectual Property and proprietary information), and product support obligations, shall survive the expiration or termination of the Order.

#### 37. No Waiver

No failure of any Party to exercise any right under, or to require compliance with, the Order, or knowledge of past performance at variance with the Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude or waiver with respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

#### 38. Remedies

The rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

#### 39. Order of Precedence

The order of precedence provision in an Agreement, if any, shall prevail over this Section 39. If there are any inconsistencies or conflicts in the provisions applicable to the Order, precedence shall be given in the following descending order of documents, which documents collectively constitute the entire agreement between Buyer and Seller and supersede all previous communications, representations, and agreements, either oral or written, between Buyer and Seller with respect to the subject matter hereof: (i) the face sheets of the Order including, without limitation, the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to the Agreement and/or these Terms and Conditions that specifically reference the section being modified; (ii) regarding product support obligations, the terms of any product support agreement entered into by the Parties; (iii) terms of the Agreement under which the Order is issued; and (iv) these Terms and Conditions.

#### 40. Delays

Whenever there is an actual delay or threat to delay the timely performance of the Order, Supplier shall immediately notify Buyer in writing of the probable length of any anticipated delay and take, and pay for, all activity to mitigate the potential impact of any such delay.

#### 41. Force Majeure

- 41.1. Supplier shall be liable for any failure or delay in performance in connection with the Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Supplier gives Buyer, within three (3) days of Supplier's learning of such cause, written notice to the effect that a failure or delay by Supplier will occur or has occurred (an "Excusable Delay"). If

a failure or delay in performance is caused by an event affecting any of Supplier's suppliers, such failure or delay shall not be excusable unless such event is an Excusable Delay as defined above and the good or service to be provided by such supplier is not obtainable by Supplier from other sources in time for timely delivery of the Goods to Buyer. Buyer may cancel without liability to Supplier its purchase of any Goods affected by Supplier's failure or delay in performance and, if the delay is expected to last for a period that could impact deliveries to Buyer's Customers, Buyer may cancel, without liability, any portion of or the entire Order.

- 41.2. Buyer shall be excused for any failure or delay in performance due to any cause beyond its reasonable control, including, without limitation, any cause attributable to Buyer's Customers.

#### 42. Subcontracting

Any subcontracting by Supplier of all or substantially all of its responsibilities or obligations hereunder, without Buyer's prior written consent, shall be wholly void, invalid and totally ineffective for all purposes. In the case of any subcontracting or approved delegation of any of its responsibilities or obligations hereunder, Supplier shall perform all supply management activities that are necessary for the on-time delivery of Goods conforming to the requirements set forth herein. Supplier shall be solely and fully responsible for monitoring said suppliers under all provisions of the applicable subcontracts, and for ensuring that each of its suppliers comply with the requirements set forth herein. Supplier shall remain fully liable to Buyer for, and shall be Buyer's sole point of contact for, all aspects of proper performance of the Order, regardless of (i) any subcontracting, (ii) Buyer approval of the subcontractors, or (iii) Supplier's failure to provide for provisions in the relevant subcontracts that comply in substance with the requirements set forth herein.

#### 43. Dispute Resolution

- 43.1. Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under an Order, that Party must provide the other with a written request for dispute resolution. Each Party shall, within five (5) calendar days after such written request is received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within thirty (30) calendar days of receipt of the request, senior-level manager of each Party shall attempt to resolve the issue within sixty (60) calendar days of receipt of such written request.
- 43.2. Either Party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.
- 43.3. Each Party shall continue performing its obligations under the Order pending resolution of the dispute. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth in these Terms and Conditions.

#### 44. Relationship of the Parties

The relationship between Supplier and Buyer will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has authority to contract in any way to enter into commitments on behalf of the other. Supplier accepts, with respect to its performance of the Services, exclusive liability for the payment of any employee wages, benefits, other labor costs, fees, and taxes or contributions, however measured. Supplier assumes all liability for overtime premiums, shift differentials, Social Security, unemployment insurance, old age payments, workers' compensation premiums, annuities or

retirement benefits which are measured by wages, salaries or other remunerations paid by Supplier to any and all persons employed by it in connection with the performance of the Services.

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Description of Changes to initial (June 2013) version

<u>Version</u>	<u>Section</u>	<u>Description</u>
May 2018	Throughout	Change of name of PW Power Systems, Inc. to PW Power Systems LLC.
	5.2 (Inspection, Acceptance and Rejection of Goods)	Insertion of “provided that acceptance of tooling shall not be deemed to occur until acceptance hereunder of the applicable Goods for which the tooling is used”.
	6.4 (Warranties)	Insertion of “and in a workmanlike manner”.
	11.2 & 11.6 (Buyer-Furnished and Buyer-Funded Items)	Insertion of “(including drawings thereof)”. Deletion of “annual”.