

## ACTIVE POWER INC. - TERMS AND CONDITIONS OF PURCHASE

1. **PARTIES:** "Buyer" shall mean Active Power Inc., 2128 West Braker Lane, BK12 Austin, TX 78758. "Seller" shall mean the party to whom the Buyer's order is addressed.

2. **OFFER:** This order is for the purchase and sale of the goods and/or services (referred to herein on occasion as "the Articles") according to the description and other terms set forth in the order and herein, and is Buyer's offer to Seller. Commencement of work or delivery or furnishing of the Articles, whichever occurs earlier, shall constitute a firm contract on the terms and conditions set forth in the order and herein. Also such a firm contract shall be created in the event Seller acknowledges this order, provided that, notwithstanding the content of Seller's acknowledgment, the only effect thereof shall be to accept this order on the terms and conditions set forth in the order and herein. This order shall not be modified without the express written approval of Buyer.

3. **WARRANTY-PRODUCT:** In addition to all warranties prescribed by law, Seller expressly warrants that (i) the Articles ordered shall be merchantable and shall be fit for the purposes for which such Articles are intended and ordinarily employed; (ii) the Articles shall conform in strict accordance with the provisions of this order, the specifications, drawings or other descriptions furnished by Buyer, and standards and requirements of all laws and governmental orders, rules and regulations relating to the manufacture, sale, or use of the Articles; and (iii) the Articles shall be free from defects in materials and workmanship and, to the extent that the Articles are not manufactured pursuant to detailed designs furnished by Buyer, from defects in design. Such warranties, including warranties prescribed and implied by law, shall be provided to Buyer, its successors, assigns, and customers, and to users of the Articles. Buyer's approval of Seller's drawings or inspection of the Articles shall not relieve Seller of any of its obligations hereunder.

4. **WARRANTY-PRICE:** Seller warrants that the prices charged to Buyer, as specified in the order, are no higher than prices charged on orders placed by others for similar quantities on similar conditions subsequent to the last general announced price change. In the event Seller breaches this warranty, the prices of the Articles shall be reduced accordingly, retroactively to date of such breach. Seller agrees that any price reduction in the Articles subsequent to placement of this order, but prior to shipment, will be applicable to this order. Seller certifies that amounts invoiced under this order will not exceed the maximum levels established under any applicable governmental price control program. Any excess shall promptly be refunded.

5. **INDEMNITY:** (a) Seller agrees to defend, indemnify, and hold harmless Buyer, its employees, agents and customers against any and all claims, demands, actions or proceedings, liabilities, judgments, loss or expense whatsoever, including reasonable attorneys' fees, whether or not valid, arising from or relating to any actual or alleged (i) defect in the Articles; (ii) failure of the Articles to comply with specifications, drawings, this order, governmental standards, rules, or regulations, or with the express and implied warranties of Seller as set forth herein or allowed by law, or (iii) infringement of any patent, trademark, trade name or copyright.

(b) In the event that any claim, demand, action or proceeding is commenced against Buyer to which the foregoing indemnity applies; Buyer shall give Seller prompt notice thereof in writing. In the event any Article furnished hereunder is claimed to infringe any patent, trademark, trade name or copyright, Seller agrees, at Buyer's option: (i) to procure for Buyer the right to use the Article without cost to Buyer, or (ii) to modify or replace the Article so as to avoid infringement, or (iii) to accept redelivery of the Article and reimburse Buyer for the order price and the reasonable removal and transportation expenses and other loss and expense incurred by Buyer.

6. **PATENTS OR COPYRIGHTS:** Seller shall at its expense settle or defend, and pay costs and damages finally awarded in any suit against Buyer or its customers, any allegation or finding that the design or construction of Articles as furnished infringes a patent or copyright. Buyer shall promptly notify Seller of any charge of such infringement.

7. **TAXES:** Except as to sales taxes based upon the order price of the Articles, the Seller represents that the order price includes all applicable federal, state and local taxes. If any manufacturer's excise or other tax is included in or added to the prices paid to the Seller for the Articles purchased hereunder and if such tax, or any part thereof, is hereafter refunded to Seller, then Seller shall immediately pay Buyer the amount of such refund.

8. **INSPECTION:** During manufacture or after delivery at the Buyer's destination Buyer and/or his nominee may inspect any material, equipment or Articles which have been or will be worked upon, produced or sold for this order. Buyer reserves the right to reject and refuse acceptance of Articles which are not in accordance with Buyer's instructions, specifications, drawings, and data or Seller's warranties (expressed and implied). Articles which are nonconforming shall, at Buyer's option, be repaired, replaced, or reworked at Seller's sole expense, and any Articles furnished pursuant to this repair, replacement or rework shall be subject to the same warranties provided in the order. If Buyer rejects nonconforming goods, they may be returned at Seller's expense, without prior notice to Seller. Payment for any of the Articles hereunder shall not be deemed an acceptance thereof. Exercise and nonexercise of this right shall have no effect on Buyer's other rights and remedies hereunder.

9. **TERMINATION:** Buyer may terminate work on this order in whole or in part, at any time for any reason, without liability or further obligation, except as provided in this paragraph, by notice to Seller in writing, or by verbal notice promptly confirmed by written notice. On receipt by Seller of such notice, Seller shall, to the extent specified therein, stop the placement of subcontracts, terminate work under subcontracts outstanding hereunder, stop all work to be performed under this order, and take any action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest. If Seller is not in breach of this contract as of the time of termination, upon such termination Buyer shall reimburse Seller for costs actually and properly incurred by Seller for the purchase, assembly or manufacture of the goods, or for services executed, up to the date of notice of termination, with due allowance for their salvage value after Buyer has had full opportunity to recommend disposition, but in no event shall any settlement paid by the Buyer to Seller for such termination exceed the percentage of the order price reasonably equating to the percentage of completion of performance as at the date of notice of termination; provided, however, that Seller shall submit its claim for such costs to Buyer not more than thirty (30) days after the effective date of the termination (after said period, Buyer may settle claims it may have with third parties without regard to Seller's costs not claimed hereunder which shall be deemed waived). Buyer shall have the right to audit all elements of any termination claim by Seller and Seller shall make available to Buyer, on request, all books, records, and documents relating thereto. Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. Property paid for hereunder shall thereupon belong to Buyer.

10. **DELIVERY DATE:** Shipment must be made to meet the required date specified. Time is of the essence. On premature shipments, Buyer may return the goods at Seller's expense, and in any event payment may be withheld and any payment discount period will not begin until the specified delivery date. Buyer, without waiving any other legal rights, may cancel this order without charge or other liability hereunder or Buyer may postpone deliveries of any of the goods or services covered by this order, if the

goods are not delivered by the date specified in the order or are not shipped in the quantities specified, and/or the services are not undertaken in compliance with the dates specified in the order; any postponement shall be as Buyer directs and all payments shall be postponed until the actual delivery date unless otherwise agreed.

11. **PACKING:** No charges, other than any already included in the order price, for blocking, boxing, crating, dunnage, packing drayage, cartage or demurrage will be allowed without the specific written approval of the Buyer. All packing or protection must be sufficient to prevent damage to or deterioration of the Articles before they reach their destination as stated in this order. All shipments must be adequately boxed or crated, with any special handling clearly marked, and contents waterproofed and otherwise protected to prevent damage in transit, and must meet all shipping requirements.

12. **ROUTING:** Seller shall route shipments in accordance with the order requirements.

13. **DELIVERY, TITLE AND RISK:** Unless the order expressly provides otherwise, delivery shall be UCC-FOB Destination (Austin, Texas). Title to the goods prior to delivery shall pass from Seller to Buyer pro rata with payments effected. Full title to the goods shall pass to the Buyer in any event upon delivery. Risk of loss or damage to the goods shall remain with the Seller until delivery. Where goods are rejected by the Buyer after delivery then risk in the rejected goods shall revert to the Seller.

14. **CHANGES:** Buyer at any time may make changes in the quantities ordered or in the specifications or drawings relating to the Articles; or may change or amend any other term or condition of this order, in which event an equitable adjustment will be made to any price, time of performance, and/or other provisions of this order required to be changed thereby. Any claim for such adjustment must be made within fifteen (15) days from the date of receipt by Seller of such change.

15. **ASSIGNMENT & SUBCONTRACTING:** Seller shall not assign this order or any interest therein, including any performance or any amount which may be due or may become due hereunder, or subcontract the order in whole or in part, without Buyer's prior written consent.

16. **CONTROLLING LAW:** This contract shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Delaware. If any provision, clause or part, or the application thereof, is held invalid or inoperable, the remainder of this contract, and the application of such provision, clause or part as allowed by law, shall not be affected thereby. The parties shall replace the invalid or inoperable provision, clause or part with a new one having an effect as close as possible to the original provision, clause or part. Seller consents to jurisdiction of the Delaware courts with respect to any claims against it under or relating to this contract. Where any of the Buyer's Terms and Conditions of Purchase are inconsistent with the Uniform Commercial Code, then the Buyer's Terms and Conditions of Purchase shall prevail.

17. **NOTICE:** Any notices relating to this contract will be in writing and will be deemed given when delivered to the other party at the address given in the order either (i) personally, or (ii) by overnight delivery upon written verification of receipt, or (iii) by certified or registered mail, return receipt requested, upon verification of receipt. Notices may also be sent by facsimile transmission to the fax number given by the other party and will be deemed given upon electronic acknowledgment of receipt.

18. **CONDITIONS; WAIVERS:** All warranties shall be construed as conditions as well as warranties. No waiver of a breach or any provision of this order shall be valid or binding upon Buyer unless approved by Buyer in writing by an authorized agent. Any waiver or failure of Buyer to require strict compliance with the provisions of this order in any respect shall not be deemed a waiver of Buyer's right to insist upon strict compliance in other respect or thereafter in the same respect. Buyer retains generally all rights and remedies granted to it by operation of law in addition to those set forth herein.

19. **BUYER TO DELAY DELIVERY:** Buyer reserves the right to direct delay or postponement of delivery in the event it fails or is unable to accept delivery due to fire, explosion, flood, war, accident, civil strife or riot, acts of government authorities, interruption or delay in transportation, labor trouble or any other circumstances beyond Buyer's reasonable control or if occasioned by partial or complete suspension of operations at any of Buyer's plants, and such delay shall not subject Buyer to any liability to Seller by reason thereof. No payments shall be due until actual delivery or as otherwise agreed.

20. **CONFIDENTIALITY:** This transaction shall be kept confidential between Buyer and Seller. Seller agrees that no details of this transaction shall be made available to any third party without Buyer's written consent. If any Articles supplied under this order are made according to Buyer's manufacturing information (designs, specifications, drawings, and the like), or by means of any of Buyer's tools, dies, patterns or equipment, such tools, dies, patterns, equipment, and manufacturing information shall only be used to manufacture goods to Buyer's orders. Seller agrees to keep confidential all such manufacturing information and such tools, dies, patterns and equipment. Upon Buyer's request, Seller shall return to Buyer all such tools, dies, patterns, equipment and manufacturing information without keeping any copies thereof. This order may be accompanied by an Agreement of Confidentiality, in which event its execution and return by Seller to Buyer shall be a condition precedent to Buyer's obligations hereunder.

21. **COMPLIANCE WITH LAWS:** Seller shall comply with all federal, state and local laws, executive regulations and orders including terms and provisions of Executive Order 11246, as revised, the Equal Opportunity Clause set forth in Section 202 of which is hereby incorporated in its entirety as if fully set forth hereon and by this reference made a part hereof. Without limiting the scope of the foregoing requirement, Seller hereby certifies that the Articles were produced in compliance with all applicable requirements of the Fair Labor Standards Act and the regulations and order of the United States Department of Labor issued there under.

22. **BUYER'S IDENTIFICATION:** Seller agrees that Buyer's identification, such as trademarks, trade names, distinctive marking, or decorative styling, shall be used only on Articles supplied to Buyer and strictly in accordance with the Buyer's specific written instructions.

23. **BUYER'S AND ITS CUSTOMER'S PREMISES:** If any work under this order is to be performed on the premises of the Buyer and/or the premises of the Buyer's customer, Seller shall comply with and shall perform such work in accordance with the safety rules of Buyer or the Buyer's customer, as applicable, and all applicable federal, state and local laws and regulations. Neither Seller nor any of its employees shall be deemed employees of Buyer for any purpose. To the fullest extent permitted under the applicable law, Seller shall indemnify and save harmless Buyer, its employees, agents, licensees and invitees and the Buyer's customer, its employees, agents, licensees and invitees from any and all actions, liabilities, judgments, losses, costs, damages, claims and expenses (including reasonable attorneys' fees) of any nature whatever relating to property damage, bodily injury and/or death, personal injury or otherwise to Seller, Seller's employees, agents or subcontractors, Buyer, Buyer's employees, agents, licensees or invitees, Buyer's customer, Buyer's customer's employees, agents, licensees or invitees or to any or any other third parties occasioned by or relating to such work performed on Buyer's or the Buyer's customer's premises.

24. **QUALITY ASSURANCE:** Seller will maintain a quality assurance system which is adequate to detect and prevent shipment of nonconforming goods and provision of nonconforming services. Buyer reserves the right to evaluate adequacy of Seller's quality assurance system.

25. **TOOLS AND MATERIALS:** All drawings, tools, gauges, dies, fixtures, and patterns furnished by Buyer, or which Buyer specifically authorizes Seller to acquire or are required or made for work on this order, shall be the property of Buyer. They shall be listed and maintained in suitable condition to do the work, by and at the expense of Seller, and returned to Buyer at any time upon request, UCC-FOB Destination (Austin, Texas). Any material furnished to Seller on a free issue basis shall remain the property of Buyer, and be fully accounted for, including scrap. All such tools, gauges, dies, fixtures, patterns and free issue material provided to the Seller by the Buyer shall be insured by the Seller against any loss or damage on a like replacement basis. Any such material scrapped because of defective workmanship of Seller shall be replaced or paid for by Seller.

26. **LABELLING:** Buyer's order number shall appear conspicuously on each package, box, keg, bale, bundle, or other type of container.

27. **DOCUMENTS:** Seller shall send shipping documents (packing list and either bill of lading or tracking number) to Buyer via e-mail or fax on the day a shipment is made for each shipment on this order. Where goods are shipped by a third party, packing list must contain Seller's name and Buyer's order number, and, Seller's invoices shall also bear the name of the shipper and the point from which shipment originated. All shipments must contain a packing list giving description of material, quantity and the Buyer's order number. If shipment is not made UCC-FOB Destination (Austin, Texas), the original freight bill must be furnished with invoices. Buyer's count shall be accepted as final on all shipments.

28. **PAYMENT:** Except where alternative payment terms are specified by the Buyer in the order, Buyer's account with Seller will be paid within thirty (30) days after receipt of invoice or delivery of the Articles, whichever is received later.

29. **INSURANCE:** Seller shall provide and maintain in effect the following minimum insurance coverage: (i) **Commercial General Liability** including products/completed operations, contractual liability, and personal injury coverage – bodily injury and property damage liability \$1,000,000 each occurrence and \$2,000,000 in the aggregate, (ii) **Umbrella Liability** – bodily injury and property damage liability \$10,000,000 each occurrence and (iii) **All Risks Property Coverage** for the full replacement cost of the Articles. Where work under this order is to be performed on the premises of the Buyer and/or the premises of the Buyer's customer the following insurance is also required of the Seller: (iii) **Workers' Compensation** – Coverage A in the statutory amount and Coverage B (Employer's Liability) \$100,000 each occurrence, \$100,000 disease, and \$500,000 aggregate disease, and (iv) **Automobile Liability** – bodily injury and property damage liability \$1,000,000 each occurrence. Buyer shall be named as additional insured on the Commercial General Liability, Umbrella and Automobile Policies. Coverage is to be primary and non-contributory for additional insured. A waiver of subrogation shall be included on the Workers' Compensation Policy where allowed by law. Where the Buyer agrees to pay the Seller progress and/or milestone payments under the order, then the Buyer shall be named as an additional insured on the All Risks Property Policy.

30. **INSOLVENCY:** In the event Seller becomes insolvent, makes an assignment for the benefit of creditors, is taken over by a receiver, or files or has filed against it a petition under the Bankruptcy Act, Buyer shall have the right (i) to terminate this contract without notice and without liability or further obligation hereunder; (ii) to possession, upon demand at any time, of the goods and any or all materials purchased by the Seller pursuant to this order in the possession of Seller or the Trustee or receiver at the time of demand, and Buyer shall pay the reasonable cost therefore less prior payments, but in no event more than the percentage of the order price reasonably equating to the percentage of completion of performance less any claims Buyer may have for breach; and, (iii) of ownership and title of the goods and materials to the extent of payments previously made by Buyer. Exercise of any right hereunder shall be in addition to any and all other remedies Buyer may have hereunder or by law for breach, these rights being in addition to such other remedies.

31. **ARBITRATION:** Except as specifically provided herein, any dispute, controversy or claim arising out of, or in relation to, or in connection with this transaction, or in the operations carried out under this transaction, including without limitation any dispute as to the applicability, construction, validity, interpretation, enforceability or breach of this transaction, shall be exclusively and finally settled by arbitration, and either party may submit such a dispute, controversy or claim to arbitration. Unless otherwise expressly provided by this transaction or agreed in writing by the parties to the arbitration proceeding, the arbitration proceedings shall be held in Delaware in accordance with the Arbitration Rules of the American Arbitration Association ("ARAAA"), as amended from time to time. However, any Arbitration Award (as defined by "ARAAA") may be entered in any court having jurisdiction over the party against which enforcement is sought. Each party shall pay its own attorneys' fees and costs. Other costs of arbitration, such as arbitrator(s) fee, shall be borne equally by the parties. The arbitration proceedings shall be conducted in the English language and the arbitrator(s) shall be fluent in the English language.

Notwithstanding the foregoing, either party shall be entitled to seek injunctive or other interim relief to preserve the status quo from a court of competent jurisdiction pending the results of arbitration. For such purpose, each party submits to the exclusive jurisdiction of the Supreme Court of the State of Delaware. A party's submission to such jurisdiction shall not limit the right of such party to institute any legal action or proceeding for the enforcement of any order or judgment of such courts in any other court having jurisdiction.

32. **LIMITATION OF LIABILITY:** In so far and to the fullest extent that it is possible to limit liability under the applicable law, the total cumulative liability of Buyer to Seller pursuant to the contract between Buyer and Seller for any act or omission of the Buyer whether in contract, in tort (including negligence, economic tort or otherwise) or howsoever arising shall in all cases be limited to, and in no case exceed, the order price. Buyer shall not, in so far and to the fullest extent that it is permitted to exclude its liability under the applicable law, be responsible whether in contract or in tort (including negligence, economic tort or otherwise) or howsoever arising for incidental, special, economic, indirect or consequential damages (whether or not claimed or suffered by Seller and/or any person, business or entity not a party to the contract between Buyer and Seller) including but not limited to loss of turnover and profits (including overheads and fixed costs) arising out of or in connection with the performance of Buyer's obligations under the contract between Buyer and Seller including any such damages as may be reasonably foreseeable at the date of the contract.