

MONTIPOWER AMERICAS, INC.
GENERAL TERMS AND CONDITIONS

1. Controlling Provisions

These General Terms and Conditions ("Terms" or "Terms and Conditions") are the commercial terms of purchase of products ("Products") and shall apply to all offers, advices, orders, agreements and deliveries of Products between MONTIPOWER AMERICAS, INC ("MONTIPOWER") and its subsidiaries and affiliates and any commercial Customer (collectively for the purposes of the agreement the "Customers" and each, individually, a "Customer") as far as the Customer is a business, a legal entity under public law or a special fund under public law. In the absence of written acceptance of these terms and conditions by the Customer, any acceptance of any delivery or service covered by an order will constitute an acceptance of these terms and conditions. Any different or additional terms from the Customer are hereby rejected, and no waiver, alteration or modification of these provisions or any terms of the order will be valid unless made in writing and signed by an officer or other authorized representative of MONTIPOWER. In the event of any discrepancy between any purchase order accepted by MONTIPOWER and these provisions, these provisions shall govern. In case MONTIPOWER does not enforce, at any time, any one of these Terms and Conditions, such event shall not be interpreted as a change of said Terms and Conditions, nor as MONTIPOWER'S waiver to exercise any of said Terms and Conditions. These Terms shall also govern all future transactions between the parties and shall also apply if MONTIPOWER performs delivery despite knowledge of differing or contrary terms.

2. General Conditions

MONTIPOWER reserves the right to discontinue Products and to revoke or change pricing or terms of service, except when otherwise indicated in these Terms and Conditions. If, at any time, it becomes necessary to discontinue service to Customer, to revoke or modify any provisions in these Terms, or to allocate distribution of any Products, MONTIPOWER will take whatever action it considers in its sole and absolute discretion is fair and appropriate.

3. Acceptance

3.1. All orders for Products are subject to acceptance in writing by MONTIPOWER and shall not be binding until the earlier of such acceptance or shipment of the Products and, in the case of acceptance by shipment, only as to the portion of the order actually shipped. MONTIPOWER shall use reasonable commercial efforts to fill orders promptly. Notwithstanding any prior acceptance by MONTIPOWER of a purchase order for a Product, MONTIPOWER shall not be obligated to ship any Product if Customer is in breach of any of these provisions or other contractual obligations towards MONTIPOWER at the time of the scheduled shipment. The ultimate shipment of orders to Customer shall be subject to the right and ability of MONTIPOWER to make such sales, and obtain required licenses and permits, under all decrees, statutes, rules and regulations of the United States of America and agencies or instrumentalities thereof presently in effect or which may be in effect hereafter.

3.2. Customer hereby agrees: (i) to assist MONTIPOWER in obtaining any such required licenses or permits by supplying such documentation or information as may be requested by MONTIPOWER; (ii) to comply with such decrees, statutes, rules and regulations of the United States of America and agencies or instrumentalities thereof; (iii) to maintain the necessary records to comply with such decrees, statutes, rules and regulations; and (iv) to indemnify and hold harmless MONTIPOWER from any and all fines, damages, losses, costs and expenses in accordance with Section 13 hereof.

4. Payment Terms, Interest

4.1. Invoices are due and payable within thirty (30) days from the date of the invoice if credit established, except as otherwise provided in the order confirmation or any other agreement with the Customer. In the event credit has not been established, MONTIPOWER reserves the right to require payment, or the issuance of an irrevocable letter of credit, in advance of production or shipment. MONTIPOWER shall not be obligated to extend credit.

4.2. Payments due to MONTIPOWER under these provisions shall, if not paid when due under these Terms or any such agreement, bear interest during the time of default without prior notice. The default rate of interest per year shall be 1.5 percent per month or the legal limit, whatever is higher, calculated on the basis of a 360-day year for the number of days actually elapsed, beginning on the day following the due date and ending on the day prior to the day on which payment is made in full. Interest accruing under this subsection 4.2 shall be due to MONTIPOWER on demand. The accrual or receipt by MONTIPOWER of interest under this subsection shall not constitute a waiver by MONTIPOWER of any right it may otherwise have to declare a default under such agreement or to terminate such agreement.

4.3. If the Customer fails to pay any amount due, MONTIPOWER may, without notice to the Customer, suspend all service provided under these Terms or in any agreement and Customer shall deliver to MONTIPOWER all Products in its possession up to the value of the amount due. Customer agrees to pay MONTIPOWER'S attorney's fees and expenses and other collection costs in the event collection or other enforcement efforts become necessary or appropriate in MONTIPOWER'S discretion.

5. Shipping Charges, Taxes

5.1. Shipping and handling shall be Ex Works MONTIPOWER Manassas, VA., or such other location where the Product is produced or stored on behalf of MONTIPOWER. In case MONTIPOWER shall organize the shipment on behalf of the Customer all shipping and handling charges shall be charged separately and shall be itemized on MONTIPOWER'S invoice(s). Any discount shall be agreed upon in writing.

5.2. MONTIPOWER will add to all prices and other charges any taxes, however designated or levied or based on the prices or other charges made for the Products or any services rendered or parts supplied pursuant to such agreement. This section will not apply to organizations that are tax-exempt and provide MONTIPOWER with supporting documentation in form and substance satisfactory to MONTIPOWER.

6. No Right of Setoff

The Customer may not deduct from, set off, holdback or otherwise reduce in any manner whatsoever any invoice amount against any amount MONTIPOWER may owe Customer or any of its affiliates.

7. Delivery

7.1. All shipping dates are estimates only and are not guaranteed. MONTIPOWER agrees to make a good faith effort to deliver the Product by the date set forth in the order confirmation, provided, however, that MONTIPOWER shall have no responsibility or liability whatsoever for loss or damage by causes beyond its control including but not limited to, delays by fire, flood, war embargoes, labor disputes, acts of sabotage, riots, accidents, pandemics, delay of carriers, voluntary or mandatory compliance with any governmental act, regulations or request, shortage of labor, materials or manufacturing facilities, or any other causes beyond MONTIPOWER'S control. Any delivery of software shall also be subject to license agreements of MONTIPOWER. There are no implied licenses under these provisions, and any rights not expressly granted to Customer hereunder are reserved by MONTIPOWER.

7.2. If Customer fails to accept the order, Customer shall nonetheless make payment to MONTIPOWER. Where Customer wrongfully rejects or revokes acceptance of the Products or fails to make payments as set forth herein or repudiates with respect to all or part of the contract for the Products shipped, MONTIPOWER may withhold delivery, or stop delivery of the Products or cancel the contract and/or sue for damages at MONTIPOWER'S exclusive option. MONTIPOWER is entitled to claim liquidated damages of 20 % of the purchase price.

7.3. The proof of a higher damage and our legal claims (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; however, the liquidated damages shall be set off against further monetary claims. The Customer shall be entitled to prove that MONTIPOWER has incurred no damage at all or substantially less damage than the stated sum.

7.4. If Customer causes a delay in the delivery of the Products, or any part thereof, MONTIPOWER, at its sole discretion, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes MONTIPOWER substantial inconvenience, MONTIPOWER has the right to cancel with respect to the Products whose delivery is delayed. Any expenses or damages resulting from such delays shall be the exclusive responsibility of Customer. Unless otherwise agreed in writing, MONTIPOWER reserves the right to make partial shipments and to submit invoices for partial shipments.

7.5. MONTIPOWER'S responsibility ceases upon delivery to common carrier at the stated shipping point, and risk of loss, damage, injury or destruction to any of the Products shall pass to Customer upon such delivery to the carrier ("Delivery"). In no event shall any loss, damage, injury or destruction operate in any manner to release Customer from the obligation to make payments as set forth herein.

7.6. Upon demand of the Customer and at its costs MONTIPOWER will insure the Product for damages during shipment. Customer shall notify MONTIPOWER and the shipping agent of any damages during shipment within three (3) business days of delivery or such shorter time period as may be required by carrier.

8. Security Interest in Customer's Contracts

As security for the payment of any and all obligations and liabilities of Customer to MONTIPOWER hereunder including, without limitation, the payment of the purchase price or lease, license or maintenance fees, Customer hereby gives, grants and assigns to MONTIPOWER a continuing security interest in and against all of Customer's right, title and interest (whether now existing or hereafter arising in, to and under all of the contracts (the "Customer Contracts") with its customers, distributors and sub distributors, together with all right to receive payment and/or performance thereunder and all other rights and interests now existing or hereafter arising in connection with the Customer Contracts, and all proceeds of any thereof. Notwithstanding the grant of security interest hereunder, Distributor shall at all times remain liable under the Customer Contracts to perform all of its duties and obligations thereunder to the same extent as if this security interest had not been granted. MONTIPOWER shall not have any obligation or liability under the Customer Contracts by reason of, or arising out of the agreement between the parties or be obligated to perform any of the obligations or duties of Customer thereunder or to make any payment or to make any inquiry of the sufficiency of any payment received by MONTIPOWER or to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder. Until such time as MONTIPOWER shall notify Customer of the revocation of such power and authority, Distributor will, at its own expense, endeavor to collect, as and when due, all amounts due under the Customer Contracts, and otherwise enforce its rights and remedies under the Customer Contracts, including the taking of such action with respect to such collection or enforcement as MONTIPOWER may reasonably request or, in the absence of such request, as Customer may deem advisable. However, upon a failure by Customer to fulfill all of its obligations under the agreement between the parties including, without limitation, a failure pay purchase price, license or maintenance fees to MONTIPOWER, MONTIPOWER may, in addition to its other rights contained in the agreement between the parties or as a secured party under the Uniform Commercial Code or under any other applicable law, (i) notify the customers, distributors or sub distributors, as applicable, to make direct payment to MONTIPOWER of any amounts due, or to become due to Customer under the Customer Contracts, (ii) enforce

collection of any of such amounts and otherwise enforce Customer's rights under the Customer Contracts by suit or otherwise, and/or (iii) sell the Customer Contracts at public or private sale, in whole or in part, and have the right to bid and purchase at said sale, applying proceeds therefrom to the Customer's obligations hereunder.

9. Cancellation

9.1. Orders placed with and accepted by MONTIPOWER may not be cancelled by the Customer except upon MONTIPOWER'S written consent prior to shipment and Customer's acceptance of MONTIPOWER'S cancellation and restocking charges, which shall protect MONTIPOWER against all costs and losses.

9.2. Orders requiring special packaging, including packaging for export, and orders that are customized or otherwise "made to order" may not be cancelled or postponed.

9.3. If MONTIPOWER nevertheless agrees to delay or otherwise cancel the shipment of Products and, in its sole discretion, restocks or converts such Products, then Customer agrees to pay MONTIPOWER a restocking charge of twenty percent (20%) of the original purchase price.

10. Inspection and Notification

10.1. Customer shall inspect the Products within three (3) business days of receipt to verify compliance with the specifications as set forth in MONTIPOWER'S order confirmation.

10.2. In the event of any non-conformity or defect, Customer shall notify MONTIPOWER within three (3) business days thereafter in writing. Customer shall identify and document such non-conformity or defect in a detailed manner.

10.3. In the event that Customer does not inspect or notify MONTIPOWER of any non-conformity or defect in the manner described above, the Product shall be deemed accepted.

11. Warranty

11.1. MONTIPOWER warrants to the Customer for a period of twelve (12) months from the date of Delivery, as defined in 7.5 hereof, the Products that the Products will be free from material defects in materials and workmanship under normal use, and will conform to MONTIPOWER'S published specifications of the Products. The foregoing warranty is subject to proper installation, operation and maintenance of the Products in accordance with installation and/or use instructions and the User Manual. All warranty claims must be made by Customer to MONTIPOWER in writing within three (3) business days of occurrence of a defect and prior to the end of the Warranty Period. In case of non-conformity of the goods the purchaser is entitled to alternative performance in the form of subsequent improvement or delivery of conforming goods. If such alternative performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract.

11.2. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE THE MONTIPOWER OR ANY OF ITS SUBCONTRACTORS, SALES REPRESENTATIVES OR OTHER AGENTS MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, OR ANY RELATED SERVICES PERFORMED BY THE MONTIPOWER OR ANY OF ITS AGENTS OR SUBCONTRACTORS IN CONNECTION WITH ANY ORDER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WHICH OTHER WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

12. LIMITATION OF LIABILITY

THE MONTIPOWER SHALL NOT BE LIABLE FOR PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM THE IMPROPER HANDLING, MODIFICATION, MISUSE OF THE PRODUCTS BY THE CUSTOMER OR ANY OTHER PERSON FOLLOWING DELIVERY BY THE MONTIPOWER.

12.1. IN NO EVENT SHALL MONTIPOWER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, OR DAMAGE TO ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICE OR REPLACEMENTS, DOWNTIME COSTS, OR CLAIMS OF CUSTOMER'S CUSTOMERS, VISITORS, PERSONNEL OR OTHERS, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MONTIPOWER'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR, IF APPLICABLE, THE AGGREGATE FEES PAID TO THE MONTIPOWER UNDER ANY SERVICE CONTRACT. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THESE TERMS ALLOCATE THE RISKS BETWEEN MONTIPOWER AND CUSTOMER, THAT MONTIPOWER'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, MONTIPOWER WOULD NOT HAVE ENTERED INTO THESE TERMS.

12.2. SOME JURISDICTIONS LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS OR TO THE EXTENT SET FORTH ABOVE, OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED. IN SUCH JURISDICTIONS, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER IN ALL RESPECTS, BUT THEY ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY OR OTHER JURISDICTION.

13. Safety Standards

The Customer shall comply with all laws, rules, regulations and industry standards existing with respect to the Products and the performance by the Customer of its obligations hereunder in the jurisdictions where the Customer carries on activities under these Terms and where Products are resold or distributed from time to time. Customers shall adhere to any safety instructions issued by MONTIPOWER and inform its customers and employees accordingly. The Customers shall not export the Products unless such export complies with any applicable export laws and regulations; resellers shall be obligated to obtain export authorization from the MONTIPOWER in writing prior to export.

14. Indemnification

Customer hereby agrees to indemnify, defend, and hold MONTIPOWER harmless from any and all claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim that, taking the claimant's allegations to be true, would result in a breach by the Customer of these terms or any other warranties and covenants in connection herewith, including but not limited to any safety violations or export regulations.

15. Proprietary Rights and Trademarks.

Customer hereby recognizes MONTIPOWER'S absolute right, title and interest in all patents, trademarks, trade names, logos, copyrights and all other proprietary interest incorporated as any part of either the Products or other material received from MONTIPOWER. Customer shall have no right to register any of MONTIPOWER'S trade names or trademarks in its own name or right, whether as owner, user or otherwise. Customer shall release any rights it may have acquired in the trade names and trademarks of MONTIPOWER and shall execute any and all instruments MONTIPOWER may deem necessary or advisable from time to time to accomplish such release. Upon termination or expiration of this Agreement, Customer shall immediately cease using all trade names and trademarks of MONTIPOWER and shall not thereafter use any marks or names similar thereto either in connection with the Products or otherwise. Any and all goodwill associated with such Intellectual Property Rights shall at all times remain the sole property of MONTIPOWER, and upon the expiration or termination of this Agreement for any reason, Customer shall not be entitled to any compensation for such goodwill or otherwise. Customer shall promptly advise MONTIPOWER of any known or threatened infringement of any MONTIPOWER patents, trademarks, copyrights or Confidential Information with respect to the Products. At MONTIPOWER'S request and expense, Customer shall assist MONTIPOWER in any enforcement action MONTIPOWER in its discretion determines to take in respect of any such infringement. During the term of the Agreement, MONTIPOWER shall have the right to use the trade names, logos and trademarks of Customer in advertising and promotional literature and MONTIPOWER'S Web site upon Customer's prior consent.

16. Miscellaneous.

16.1. Export Regulations. Customer acknowledges that the licensed Products and any direct products thereof may be subject to United States export laws, statutes and regulations, and that Customer will at all times comply with the provisions of such laws, statutes and regulations including obtaining any necessary or required licenses. Customer shall not export or re-export or otherwise transmit, directly or indirectly, the licensed Products or any direct products thereof into, or use the licensed products or any direct products thereof in, any country prohibited or restricted under United States export laws, statutes or regulations or any other applicable laws.

16.2. Governing Law. The agreements between the parties shall be governed and construed in accordance with the laws of the state of New York. Furthermore, the parties agree that the terms of The Convention of Contracts for the International Sale of Goods do not apply to this Agreement.

16.3. Jurisdiction. Any dispute arising from or in connection with these Terms shall be brought exclusively before the courts in the State of New York, County of New York, provided MONTIPOWER may always bring claims against Customer before the competent courts of Customer's place of business.

16.4. Notice. All written notices given by either party under the agreements between the parties shall be given to the other party at the address shown on the face hereof by mail, overnight mail delivery, or telefax.

16.5. Severability and Waiver. The invalidity or unenforceability of any term or provision of the agreements between the parties or these provisions shall not affect the validity or enforceability of the remaining terms or provisions of the agreement between the parties or these provisions which shall remain in full force and effect and any such invalid or unenforceable term or provision shall be given full effect to the maximum extent permissible so as to affect the intent of the parties. Failure by either party to enforce any provision of the agreement between the parties or these provisions will not be deemed a waiver of future enforcement of that or any other provision.