

GenPro Power Systems, Inc. Agreement for Sale of Equipment

Terms & Conditions

1. Applicable Law - Definitions. The definition of terms used, interpretation of this Order and rights of parties hereto shall be construed under and governed by the Uniform Commercial Code as enacted in Buyer's state of South Dakota. All references contained herein to Federal, state or local statutes, regulations, rules and orders shall be deemed to include any and all subsequent amendments thereto and revisions thereof. "Buyer" when used herein, means the division of Holt Power Systems as shown on the face thereof. "Supplier", means the person, firm or corporation to which this Purchase Order is addressed. "Order", means this Purchase Order and "goods" means those articles, materials, supplies, drawings, data, or other property or services, described on the front side of this Order.

2. Acceptance. If this order constitutes an offer, Supplier's acceptance of this Order is hereby expressly limited to the terms of this Order and shipment of any part of the goods covered hereunder shall be deemed to constitute such acceptance. If this Order constitutes an acceptance of an offer, such acceptance is expressly made conditional on Supplier's assent to the terms of this Order, and shipment of any part of the goods covered hereunder shall be deemed to constitute such assent.

3. Warranties. Supplier warrants all goods or services when delivered pursuant hereto to be merchantable, free from defects in workmanship or material, to conform strictly to the specifications, drawings, samples or other description specified herein or furnished herewith, and to be fit for the uses and purposes intended. All warranties shall survive any intermediate or final inspections, delivery acceptance or payment by Buyer and shall continue in effect through a period of one year from the date of first use, not to exceed 18 months from date of delivery provided, however, if the goods furnished pursuant to this Order are to be incorporated into equipment of Buyer's manufacture, the period of warranty shall be one year from the date of first start-up of said equipment, not to exceed 24 months from date of delivery. Supplier further warrants that it will have title to all of the goods furnished hereunder and the right to sell such goods at the time of delivery to Buyer.

4. Delays. Time is of the essence hereof. If any goods are not delivered within the time specified in this Order, Buyer in addition to other remedies provided by law, may either (a) refuse to accept such goods and cancel this Order, or (b) cause Supplier to ship the goods by the most expeditious means of transportation with any additional transportation charges for Supplier's account. However, Supplier shall not be liable for delays in delivery or failure to manufacture or deliver due to acts of God, acts of civil or military authorities, Governmental priorities, fires, strikes, floods, epidemics, war or riot, which Supplier could not have reasonably foreseen and provided against and provided that the cause for such delay is reported in writing to Buyer within seven (7) days from the commencement of such delay.

5. Inspection. All goods ordered hereby shall be subject to final inspection and acceptance at final destination.

6. Patents. Supplier shall protect and indemnify Buyer from and against claims, damages, judgments, expenses and loss arising from infringement or alleged infringement of any patent of the United States or foreign letters patent by any of the goods delivered hereunder and Supplier shall defend or settle at its own expense any suit or proceeding brought against Buyer for such infringement. Furthermore, in the event that Buyer should be enjoined in such suit or proceeding from using any of the goods delivered hereunder, Supplier, at its option, shall promptly either (a) secure termination of the injunction and procure for Buyer the right to use such goods without any obligation or liability, (b) replace said goods with non-infringing goods or modify same to become non-infringing, all at Supplier's expense and to Buyer's satisfaction, or (c) remove said goods at Supplier's expense and refund to buyer the amount paid to Supplier therefore.

7. Indemnity. Supplier shall indemnify and save harmless Buyer from and against any loss, cost, damage or expense arising from (a) any and all claims which may be made against Buyer by reason of injury or death to person or damage to property, suffered or claimed to have been suffered by any person, firm, corporation or other entity caused by or alleged to have been caused by defective goods furnished hereunder or by any act or omission, negligent or otherwise, of Supplier or any subcontractor of Supplier or any of their employees, workmen, servants, or agents, (b) any and all damage to Buyer's property, including property occupied or used by, or in the care, custody or control of, Supplier, caused or alleged to have been caused by defective goods furnished hereunder or by any act or omission, negligent or otherwise, of Supplier or any

subcontractor of Supplier or of any of their employees, workmen, servants, or agents, (c) any and all claims which may be made against Buyer by reason or injury or death to person or damage to property however caused or alleged to have been caused and suffered or claimed to have been suffered by Supplier or any subcontractor of Supplier or by any of their employees, workmen, servants, or agents. In no event shall Supplier be required to indemnify Buyer for any injury, death, damage or loss caused solely by the negligence of Buyer. Supplier agrees to hold Buyer harmless from any and all liabilities, claims, fines, civil and criminal penalties, including reasonable costs and settlements, which may arise directly or indirectly out of the failure of Supplier to comply with the provisions of Sections 8, 10, 11, 12 and / or 13 of this Order.

8. Insurance. If this Order requires the performance of work, or services on Buyer's property, or on the property of a third party, Supplier shall provide at its sole expense, public liability and property damage insurance in amounts of not less than \$100,000 for liabilities arising out of bodily injury to or death of one person and a total \$300,000 for all liability arising out of bodily injury to or death of two or more persons in any one occurrence, and not less than \$300,000 for liabilities arising out of injuries to or destruction of property in one occurrence and a total of \$300,000 for all liabilities arising out of injuries to or destruction of property. Such insurance shall specifically cover the liabilities assumed by Supplier hereunder. Supplier also agrees to carry, at its sole expense, automobile liability insurance on all automobiles owned and hired, as well as automobile non-ownership liability insurance in the amounts of not less than \$100,000 for all liability arising out of injury to or death of one person and \$300,000 for all liability arising out of injuries to or death of two or more persons in any one occurrence, and not less than \$100,000 for all liability arising out of injury to or destruction of property in any one occurrence. Supplier agrees to furnish Buyer certificates of such insurance which shall be in companies and form satisfactory to Buyer prior to commencing work hereunder and such certificates shall provide that ten days' written notice shall be given to Buyer prior to cancellation of or material change in the coverages. Supplier and its subcontractors shall comply with all requirements of the laws of the State in which Supplier is performing the work hereunder relating to workmen's compensation and employers' liability and shall furnish evidence of such compliance as required by Buyer.

9. Non-waiver. The failure of Buyer to insist upon strict performance of any terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify Supplier in the event of breach, or the acceptance of or payment for any goods hereunder, or approval of design, shall not release Supplier of any of the warranties or obligations of this Order and shall not be deemed a waiver of any right of Buyer to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless when shipped, received or accepted, or as to any prior to subsequent default hereunder, nor shall any purposed oral modification or rescission of this Order by Buyer operate as a waiver of any of the terms hereof.

10. Equal Employment Opportunity. Supplier shall comply with Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375, dated October 13, 1967, and all administrative regulations issued pursuant thereto; said Executive Order is hereby incorporated by reference and Supplier agrees to be bound by paragraphs (1) through (7) of Section 202 thereof. Supplier certifies that it does not maintain any segregated facilities for its employees and that it will not permit its employees to perform services at any location where segregated facilities are maintained. If applicable, and not otherwise exempt, Supplier agrees to be bound by Executive Order no. 11701 and rules and regulations promulgated thereunder relating to the listing of job openings with the State Employment Service System where the opening occurs and dealing with the employment of qualified disabled veterans of the Vietnam era; the provisions of the standard affirmative action clause prescribed thereunder (41 CFR 60-250.4) are specifically incorporated herein by reference as though fully set out herein. If applicable, and not otherwise exempt, Supplier also agrees to be bound by Executive Order No. 11758 and the rules and regulations promulgated thereunder pertaining to the employment of qualified handicapped persons; the provisions of the standard affirmative action clause prescribed thereunder (41 CFR 60-741.4) are specifically incorporated by reference as though fully set out herein. Suppliers / subcontractors shall develop a written Affirmative Action Compliance Program for each establishment, as appropriate, as required by 41-CFR 60-1.40(a).

11. Occupational Safety and Health. Supplier warrants that the goods sold and / or services performed pursuant to this Order comply in all respects with the Occupational Safety and Health Act of 1970, any amendments thereto, and all applicable regulations, rulings, orders and standards promulgated thereunder.

12. Environmental Compliance. In the event this Order is for an amount in excess of \$100,000 and Supplier is not otherwise exempt, then Supplier stipulates the following: (a) that none of Supplier's facilities are listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20; (b) that Supplier agrees to comply

with all the requirements of Section 114 of the Clean Air Act, as amended, and Section 308 of the Federal Water Pollution Control Act, as amended, including all regulations and guidelines issued there under; (c) that Supplier agrees this Order is expressly conditional upon Supplier promptly notifying Buyer in the event Supplier receives any communication from the Director, Office of Federal Activities, U.S. EPA, indicating that a facility to be utilized in the performance of this Order is being considered for listing on the EPA List of Violating Facilities; and (d) Supplier agrees to include the requirements of (a) through (d) in every subcontract exceeding \$100,000 which is not otherwise exempt.

13. Compliance with Laws. In the performance of work hereunder, Supplier shall comply with all applicable and valid Federal, state and local laws, and rules and regulations of any governmental authority which have the effect of law. Any provision required to be included in this Order by any such applicable and valid law, rule or regulation shall be deemed incorporated herein. Without limiting the generality of the foregoing, Supplier certifies to Buyer that the goods purchased by Buyer hereunder were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended.

14. Expediting. The goods furnished under this Order shall be subject to expediting by Buyer or its representatives. Buyer's personnel shall be allowed reasonable access to Seller's plants, and those of his sub-suppliers, for expediting purposes. As required by Buyer, Supplier shall supply schedules and progress reports for Buyer's use in expediting.

15. Delivery. Each package shall be numbered and labeled with Buyer's order number, shall contain an itemized packing slip, and shall be properly packed for shipment. Supplier shall ship goods least expensive way unless otherwise authorized. No charges shall be allowed for packing, crating, freight, express or cartage, unless otherwise authorized.

16. Withholding of Payments. Buyer shall have the right (but no duty) to withhold any moneys payable by it hereunder and apply same to the payment of any obligations of Supplier to Buyer or any other parties arising in any manner out of this Order or its performance.

17. Termination at Buyer's Option. Should Buyer's need for the goods or services to be supplied hereunder be reduced or eliminated, Buyer shall have the right to terminate the order in whole or part, and shall pay to Supplier the reasonable value of the work performed by Supplier in respect of such goods or services up to the time of written notification of termination by Buyer, in the event Supplier is unable to make other favorable disposition of the goods. In no event shall Buyer's liability under this clause exceed the aggregate price specified in this order, less payment previously made hereunder. This clause shall not apply to any cancellation by Buyer for default by Supplier or for any other cause allowed by law.

18. Taxes. With respect to goods ordered for all Buyer's facilities, the Department of Taxation of South Dakota authorizes Buyer to purchase tangible property without payment of tax at the time of purchase. Buyer agrees to maintain adequate records of all purchases and pay tax on taxable items directly to the Treasurer of the State of South Dakota.

19. Designs, Tools, Dies, etc. (a) In the event this Order includes design changes, said designs are to be considered confidential and for the specific and sole use of the Buyer and cannot be disclosed or offered for sale to others without the consent of the Buyer. (b) If the materials hereunder are to be produced by Supplier in accordance with designs, drawings or blueprints furnished by Buyer, Supplier shall return such documents to Buyer at latter's request upon completion or cancellation of this Order, and such documents shall not be used by Supplier in the production of materials for any third party without Buyer's written consent. (c) If Buyer furnishes Supplier with any tools, dies, jigs, molds, fixtures, gauges or patterns in connection with the performance of the Order, Supplier shall be responsible for the preservation and custody of same, shall not use same in the production of materials for any third party without Buyer's written consent, and shall return same to Buyer at latter's request upon completion or cancellation of this Order.

20. Price. This Order shall not be filled at higher prices than specified herein. If price is omitted, the materials shall be billed at price last quoted or paid, or at the prevailing market price, whichever is lower.

21. Assignment. Neither this Order nor any interest or claim hereunder shall be assigned or transferred by Supplier, except as expressly agreed in writing by a duly authorized officer of Buyer. Any attempted

assignment by Supplier, without such written consent, shall be void. Such consent shall not release Supplier from its obligations and liabilities hereunder.

22. Modifications. This Order constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supercede all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. No waiver, alteration, modification of or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized officer of Buyer.

23. Any stenographic or clerical errors contained on the face hereof are subject to correction by Buyer.
