



Alpha Power Solutions Limited

Standard Terms and Conditions of Sale

Unless otherwise specifically agreed to in writing by Seller, these Standard Terms and Conditions of Sale shall apply to any and all orders placed by Buyer for products or services of Seller. In these terms and conditions, Alpha Power Solutions Limited (“APS”) designated in Seller’s order acknowledgement is referred to as “Seller” and the party to whom Seller’s order addressed is referred to as “Buyer.” These terms are also available at www.alpha-powers.com.

1. ACCEPTANCE OF ORDERS. Seller’s acceptance of all orders and all offers and sales by Seller are subject to and expressly conditioned upon Buyer’s assent to the terms and conditions of this Agreement. The Agreement consists of these sales terms and conditions, Seller’s quotation, if any, and Seller’s order acknowledgement. Buyer’s acceptance of any offer by Seller must be made on such terms and conditions exactly as offered by Seller. Any of Buyer’s terms and conditions which are different from or in addition to those contained in this Agreement are objected to by Seller and shall be of no effect unless specifically agreed to in writing by Seller. Commencement of performance or shipment shall not be construed as acceptance of any of Buyer’s terms and conditions which are different from or in addition to those contained in the Agreement. If a contract is not earlier formed by mutual agreement in writing, acceptance by Buyer of products or services furnished by Seller pursuant hereto shall be deemed Buyer’s assent to all of the terms and conditions of this Agreement. This Agreement shall be governed by the laws of Hong Kong China SAR.

2. PRICES. The prices stated in this Agreement do not include transportation, insurance or any sales, use, excise or other taxes, duties, fees or assessments imposed by any jurisdiction. All applicable taxes will be paid by Buyer, unless Buyer provides Seller with appropriate tax exemption certificates. Any amounts paid at any time by Seller that are the responsibility of Buyer shall be invoiced to Buyer and reimbursed to Seller. All prices and other terms are subject to correction for typographical or clerical errors.

3. TERMS OF PAYMENT. All payments shall be in U.S. dollars. Buyer shall pay for products in cash upon delivery, unless an earlier or later time for payment is specified herein or in the order acknowledgement or the invoice (in which case payment shall be due at the time so specified). Each shipment shall be considered a separate and independent transaction, and payment for each shipment shall be due accordingly.

Seller may, at its option, elect to extend credit to Buyer. If Seller extends credit to Buyer, unless otherwise agreed to in writing by Seller, invoices will be issued upon shipment and payment shall be done 100% TT in advance or such other date specified herein or in the order acknowledgement or the invoice. Seller reserves the right to change the amount of or withdraw any credit extended to Buyer.

Amounts not paid when due shall be subject to interest at the rate of five percent (5%) above the published Hong Kong Prime Rate in effect from the date on which payment becomes due until payment is made whether or not after judgment.

In the event of the bankruptcy or insolvency of Buyer, or the filing of any proceeding by or against Buyer under any bankruptcy, insolvency or receivership law, or in the event Buyer makes an assignment for the benefit of creditors, Seller may, at its election and without prejudice to any other right or remedy, exercise all rights and remedies granted Seller in Section 7 as in the case of a default by Buyer under this Agreement.

4. DELIVERY, TITLE AND RISK OF LOSS. Unless otherwise agreed to in writing or under any alternate local terms agreed to by Seller, the term and conditions in this section will apply.

Product(s) shall be delivered EXW (Seller’s Shipping Location), in accordance with INCOTERMS 2010 to any location designated by Buyer (subject to compliance with Section 15) and shall be deemed delivered to Buyer when delivered to the transportation company at the shipping point. All transportation charges and expenses shall be paid by Buyer, including the cost of any insurance against loss or damage in transit which Seller may obtain at Buyer’s written request. Seller reserves the right to ship products freight collect.

Title to and risk of loss of the Product(s) shall pass to Buyer upon delivery of such Product(s) to Buyer upon delivery of the products to the transportation company at the shipping point, and confiscation or destruction of or damage to products shall not release, reduce or in any way affect the liability of Buyer.



All products must be inspected upon receipt. Buyer shall file claims with the transportation company when there is evidence of shipping damage, either concealed or external.

In the event Buyer rejects or revokes acceptance of any products for any reason, all risk of loss and/or damage to such products shall nonetheless remain with Buyer unless and until the same are returned at Buyer's expense to such place as Seller may designate in writing. Prior to returning any product for any reason, Buyer will notify Seller and obtain a return materials authorization (RMA) number and will follow Seller's RMA instructions.

5. PERFORMANCE. Seller will make a reasonable effort to observe the dates specified herein or such later dates as may be agreed to by Buyer for delivery or other performance, but Seller shall not be liable for any delay in delivery or failure to perform due to acceptance of prior orders, strike, lockout, riot, war, fire, act of God, accident, delays caused by any subcontractor or supplier or by Buyer, technical difficulties, failure or breakdown of machinery or components necessary for order completion, inability to obtain or substantial rises in the price of labor or materials or manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, or compliance with any law, regulation, order or direction, whether valid or invalid, of any governmental authority or instrumentality thereof, or due to any circumstances or any causes beyond its reasonable control, whether similar or dissimilar to the foregoing and whether or not foreseen. As used herein, "performance" shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair and replacement, as applicable.

Buyer agrees that any delay in delivery or failure to deliver or perform any part of this Agreement shall not be grounds for Buyer to terminate or refuse to comply with any provisions hereof and no penalty of any kind shall be effective against Seller for such delay or failure; provided, however, that if the delay or failure extends beyond six (6) months from the originally scheduled date either party may, with written notice to the other, terminate this Agreement without further liability for the unperformed part of this Agreement.

6. ACCEPTANCE. All products delivered hereunder shall be deemed accepted by Buyer as conforming to this Agreement, and Buyer shall have no right to revoke any acceptance, unless written notice of the claimed nonconformity is received by Seller within twenty (20) days of delivery thereof.

7. DEFAULT AND TERMINATION. Buyer may terminate this Agreement if Seller materially defaults in the performance of its obligations hereunder and fails to cure such default within sixty (60) days after written notice thereof from Buyer. Such termination shall be Buyer's sole remedy in the event of a default by Seller.

Buyer shall be deemed in material default under this Agreement if Buyer fails to pay any amounts when due hereunder, cancels or attempts to cancel this Agreement prior to delivery or refuses delivery or otherwise fails to perform any of its obligations hereunder or fails to pay Seller any sums due under any other agreement or otherwise. In the event of a material default by Buyer, Seller may, upon written notice to Buyer, (1) suspend its performance and withhold shipments, in whole or in part, (2) terminate this Agreement, (3) declare all sums owing to Seller immediately due and payable, and/or (4) recall products in transit, retake same and repossess any products held by Seller for Buyer's account, without the necessity of any other proceedings, and Buyer agrees that all products so recalled, taken or repossessed shall be the property of Seller, provided that Buyer is given credit therefor. Exercise of any of the foregoing remedies by Seller shall not preclude exercise of any of the others, and neither the existence nor exercise of such remedies shall be construed as limiting, in any manner, any of the rights or remedies available to Seller under the Uniform Commercial Code or other laws.

8. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS.

The sale of products or provision of services hereunder does not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by Seller, whether relating to the products sold or any manufacturing process or other matter. All rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by Seller. Furthermore, Buyer agrees not to infringe, directly or indirectly, any patents of APS, or its subsidiaries with any combination or system incorporating a product sold hereunder.

Seller will defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that the design or manufacture of products furnished hereunder which were manufactured solely to Seller's designs and specifications infringe any patent issued as of the date of shipment, provided Seller is promptly notified in writing of such suit or proceeding and is given full authority, information and assistance by Buyer for such defense. Seller will



pay all damages and costs based on such claim of infringement which are finally awarded against Buyer in any such suit or proceeding or paid by way of settlement, but Seller shall have no liability whatsoever with respect to any settlement made by Buyer without Seller's prior written consent, which Seller may withhold in its sole discretion. If such products are held to infringe any patent and their use or sale is enjoined, or if in the opinion of Seller such products are likely to become the subject of such a claim of infringement, Seller may, in its sole discretion and at its own expense, either procure a license which will protect Buyer against such claim without cost to Buyer, replace such products with non-infringing products, or require return of such products and refund an equitable portion of the price paid by Buyer to Seller for such products.

The foregoing states Seller's sole liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights. Seller shall have no liability for any claim of infringement or damages based on a combination of products furnished under this Agreement with products, equipment or materials not furnished hereunder, or based upon any items made with the products furnished under this Agreement.

Buyer shall defend and hold Seller harmless against any expense, loss, costs or damages resulting from any claimed infringement of patents, trademarks or other intellectual property rights arising out of compliance by Seller with Buyer's designs, customized specifications, or instructions.

9. WARRANTY. Unless Seller expressly indicates in writing that the Products are sold “**AS IS,**” without warranty of any kind, or otherwise on warranty terms that are different from those set forth in this Section 9, Seller warrants that its products furnished under this Agreement will conform to and perform in accordance with Seller's published specifications for such products as in effect on the date of shipment (within the deviations specified therein) for a period of one year from such date. Seller's liability and Buyer's sole remedy under this warranty is limited to repair or replacement of items determined by Seller to be defective or, at Seller's sole option, refund of the purchase price paid Seller for such items. Seller shall have no liability under this warranty unless Seller is notified in writing promptly upon Buyer's discovery of the defect and the defective items are returned to Seller, freight prepaid, and received by Seller not later than ten (10) days after expiration of the warranty period.

This warranty shall not apply to any defect or failure to perform resulting from misapplication, improper installation, improper operation, incompatible drivers, or abuse or contamination, whether internal or external, and Seller shall have no liability of any kind for failure of any equipment or other items in which the products are incorporated or for failure of the products caused by goods and services not supplied by Seller. DEVELOPMENT PRODUCT(S), PROTOTYPE OR OTHER NON-PRODUCTION PRODUCT(S), SAMPLES OF PRODUCTION PRODUCT(S) AND SOFTWARE ARE NOT WARRANTED AND ARE PROVIDED ON AN “AS IS” BASIS ONLY.

THE FOREGOING WARRANTY PROVISIONS ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AGAINST INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Remedies of Buyer for any breach of warranty are limited to those provided herein to the exclusion of all other remedies, including, without limitation, incidental or consequential damages. No warranty or agreement varying or extending the foregoing warranty and limitation of remedy provisions may be relied upon by Buyer unless it is in writing and signed by the CEO or CMO of Seller. No representation or affirmation of Seller, whether by words or action, shall be construed as a warranty. If any model or sample was shown to Buyer, such model or sample was used merely to illustrate the general type and quality of the products and not to represent that the products would necessarily conform to the model or sample

10. LIMITATION OF LIABILITY. IN NO EVENT SHALL APS'S AGGREGATE LIABILITY FOR ANY BREACH, WARRANTY, INDEMNITY OR OTHER OBLIGATION OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCT(S) OR SERVICES HEREUNDER OR THE USE OF ANY APS PRODUCT PROVIDED HEREUNDER, EXCEED THE PURCHASE PRICE OF THE PARTICULAR PRODUCT(S) OR SERVICES WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED.

IN NO EVENT SHALL APS BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOSS OR DISGORGEMENT OF PROFITS, LOSS OF USE AND LOSS OF GOODWILL), REGARDLESS OF WHETHER APS HAS BEEN GIVEN NOTICE OF ANY



SUCH ALLEGED DAMAGES, AND REGARDLESS OF WHETHER SUCH ALLEGED DAMAGES ARE SOUGHT UNDER CONTRACT, TORT OR OTHER THEORIES OF LAW.

11. ENTIRE AGREEMENT. This document constitutes the entire and final agreement between Seller and Buyer with regard to the subject matter herein and supersedes all other communications.

12. ASSIGNMENT. Seller may assign or transfer any rights or claims under this Agreement. Buyer shall not assign or transfer any rights or claims under this Agreement without the prior written consent of Seller, and any purported assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties.

13. EXPORT CONTROL. Seller's export of the products, and any technical information related thereto, may be subject to Hong Kong or international (e.g., UN) laws and regulations controlling the export and re-export of technical data and products, or limiting the export of certain products to specified countries (e.g., embargo regulations). Seller shall not be obligated under these Terms and Conditions of Sale to export, transfer or deliver any products or related technical information to Buyer if prohibited by applicable law or until all necessary governmental authorizations have been obtained. Seller shall not be liable under these Sales Terms and Conditions for any expenses or damages resulting from failure to obtain or delays in obtaining any required government authorizations. Buyer shall comply fully with all export administration and control laws and regulations of the Hong Kong government and/or other national or international (e.g. UN) laws and regulations as may be applicable to the export, re-export, resale or other disposition of any products purchased from Seller.

14. PRODUCT SAFETY. Buyer shall comply fully with international and industry safety standards applicable to the manufacture, distribution, or sale of items incorporating the products supplied by Seller. Buyer shall obligate all persons and entities buying such products from Buyer (other than end users) to comply with such industry standards, laws, rules or regulations applicable to such person or entity. Buyer shall defend and hold Seller harmless against any expense, loss, costs or damages relating to any claimed failure by Buyer to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from products manufactured by Buyer which incorporate the products supplied by Seller to the extent not attributed to the fault of Seller.

15. DISCLAIMER FOR CRITICAL APPLICATIONS. Product(s) sold under these terms and conditions are not designed, intended or authorized for use as a critical component in life support systems, or any medical devices with a similar or equivalent classification in a foreign jurisdiction, or any devices intended for implantation in the human body. Sale for such use is subject to APS's advance written authorization for product use and a separate indemnification agreement signed by Buyer. Buyer agrees to indemnify, defend and hold harmless APS, its directors, officers, employees, representatives, agents, subsidiaries, affiliates, distributors, and assigns, against any and all liabilities, losses, costs, damages, judgments, and expenses, arising out of any claim, demand, investigation, lawsuit, regulatory action or cause of action arising out of or associated with any unauthorized use, even if such claim alleges that APS was negligent regarding the design or manufacture of the Product(s).

16. ARBITRATION. Any controversy or claim (including, without limitation, any claim based on negligence, misrepresentation, strict liability or other basis) arising out of or relating to this Agreement or its performance or breach, which involves an amount in excess of \$50,000 (exclusive of interest and costs), shall be settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, if arbitration is demanded by either party. The primary location of the arbitration shall be in Hong Kong. The decision in such arbitration shall be final and binding and any award rendered thereon may be entered in any court having jurisdiction.

17. GENERAL. If the products purchased from Seller are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding upon Seller unless specifically agreed to by Seller in writing. No modification, amendment, rescission, waiver or other change in this Agreement shall be binding on Seller unless agreed to in writing by Seller. The invalidity or unenforceability, in whole or in part, of any provision herein shall not affect the validity or enforceability of any other provision herein. Failure or delay on the part of either party to exercise any right, power, privilege or remedy herein shall not constitute a waiver thereof. The section headings contained herein are for convenience of reference only and are not to be used in the construction or interpretation of this Agreement.