

Rantec Power Systems Inc. ("Seller")
Order Acknowledgement Terms and Conditions of Sale

1. Definitions. As used throughout these Order Acknowledgement Terms and Conditions of Sale ("Terms"), the following capitalized words shall have the following definitions unless otherwise specifically stated:

(a) **"Seller"** means Rantec Power Systems, Inc. which is providing the Goods subject to these Terms;

(b) **"Buyer"** means the legal person or entity contracting with the Seller in this Order;

(c) **"Order"** means the contractual instrument (e.g. Agreement, Purchase Order, Subcontract) for the purchase of Goods from Seller by Buyer into which these Terms are incorporated;

(d) **"Goods"** means any product, constituent materials, supplies, and/or services ordered by Buyer from Seller;

(e) **"Proprietary Information"** means materials, data or intellectual property in which Seller has a proprietary interest, including, without limitation, (i) inventions (whether or not patented or patentable), patents, trademarks, service marks, trade dress, logos, trade names, and corporate names (together with all goodwill associated therewith); (ii) copyright and copyrightable works (including, without limitation, all computer software associated with or embedded in Goods) (iii) trade secrets and know-how (including, without limitation, equipment and techniques used in the design, research, development, manufacture, servicing, testing, or delivery of Goods); and (iv) all other technical data and confidential business information of Seller (including without limitation, designs, drawings, specifications, customer and supplier lists, and financial or sales information).

(f) **"Confidential Information"** means information, whether of a technical, business or other nature, disclosed by or on behalf of Seller to Buyer which is (i) not generally known to the public; (ii) identified by Seller as proprietary or confidential or (iii) that, by the nature of the circumstances surrounding the disclosure ought to be treated as proprietary or confidential.

(g) **"Warranty"** means the Limited Warranty and Disclaimer of Warranties set forth on page 4 of these Terms.

2. Entire Contract. This Order (which incorporates these Terms) constitutes the entire contract between

Buyer and Seller for the Goods subject to the terms and conditions herein, and supersede all oral or written agreements and understandings, and, to the extent permissible by law, supersede all statutory provisions regarding scope and duration of Seller's warranties and the availability of remedies with regard to such subject matter. No additions to or modifications of Seller's Terms shall be binding upon Seller unless agreed to by Seller in a signed document executed by an authorized representative of Seller.

3. Buyer's Acceptance of Conditions. These Terms apply to all purchases of goods by Buyer from Seller. Seller's willingness to enter into this sale is expressly conditioned upon the Buyer's assent to these Terms. Buyer's receipt of these Terms without prompt written objection thereto or the acceptance of Goods by Buyer shall be deemed an acceptance of these Terms in their entirety. If an Order or other communication from Buyer includes any term or condition contrary to, or in addition to, these Terms, Buyer's acceptance of the Goods which are the subject hereof, after receipt of these Terms from Seller, shall constitute Buyer's complete and unconditional assent to these Terms notwithstanding anything to the contrary in any such earlier Order or communication, unless Buyer clearly instructs Seller in writing, prior to acceptance, to cancel the Order.

4. Objection to Inconsistent Terms. Buyer is hereby notified of Seller's objection to any terms inconsistent herewith or to any additional terms proposed by Buyer when ordering Goods. Buyer's communication of contrary or additional terms, however phrased, shall be construed as an offer to supplement and/or amend, and not as a rejection of, Seller's Terms. Such offer to supplement and amend shall be deemed rejected and such terms shall not become a part of this agreement unless accepted by Seller in a signed document executed by an authorized representative of Seller. Neither Seller's subsequent lack of objection to any terms nor the delivery of Goods shall constitute or be deemed an agreement by Seller to any such terms; furthermore, no such action by Seller shall be considered a course of performance, course of dealing, usage of trade or a waiver of any of these Terms.

5. Shipping and Delivery. Delivery of all Goods shall be FOB place of shipment unless otherwise agreed in writing by Seller. Orders shall reflect Seller's

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standard lead times unless otherwise specifically agreed in writing and signed by the parties. Shipping and delivery dates are approximate and not guaranteed, although Seller shall use reasonable commercial efforts to meet delivery dates designated by Buyer. Goods shall be packaged in accordance with Seller's commercial practice. Seller reserves the right to charge Buyer for any additional costs associated with special routing, packing, labeling, handling or insurance requested by Buyer and agreed to by Seller. Partial shipments of complete Orders may be made at Seller's discretion. Delay in delivery of any installment shipments shall not relieve Buyer of its obligation to pay for any installment shipments received; or its obligation to accept remaining deliveries. Orders which have been accepted in writing by Seller, which (a) call for deferred deliveries scheduled over a stated time interval; (b) are subject to subsequent delivery instructions; or (c) are for repair service, may not designate delivery dates beyond the date originally specified in Seller's quotation of prices (or beyond a reasonable time if no date has been so specified) except with Seller's written consent and upon terms which will indemnify Seller against all loss. Shipments may not be rescheduled or cancelled by Buyer within one hundred and twenty (120) days of Seller's scheduled shipping date, except with Seller's written consent and upon terms which will indemnify Seller against all loss. Buyer will not prevent such shipments through action or inaction.

6. Inspection and Returns. Buyer shall inspect all Goods promptly upon receipt thereof and may reject any Goods which fail in any significant respect to meet Buyer's written specifications. In its sole discretion, Seller shall replace or credit Buyer's account for the invoice price of such goods. Credits against the purchase price will only be accepted on Goods rejected on Buyer's initial inspection and provided Buyer delivers written notification to Seller within thirty (30) days of its receipt of the goods. Buyer shall obtain a Return Material Authorization ("RMA") number and a shipping address from Seller before returning any Goods. The Goods shall be shipped to Seller prepaid at Buyer's expense. Warranty replacement items will be returned to Buyer via UPS Ground service at Seller's expense. Buyer shall be charged a minimum evaluation charge of \$1,000 for any Goods returned that are determined to be non-defective (i.e. units that test "No Fault Found") plus all transportation charges. Under no circumstances shall Seller accept returns of non-defective custom designed products.

7. Payment. Any invoiced amount which is not paid when due will bear interest at the maximum rate permitted by law. Buyer shall pay all costs and expenses incurred by Seller in collection of any past due amounts, including collection agency and

attorneys' fees. Seller may suspend or terminate performance on any of Buyer's Orders in the event of Buyer's failure to pay any amount when due. Buyer shall not deduct or set-off invoiced amounts or any portion thereof against sums that are due or may be due from Buyer to Seller, its parent, affiliates, subsidiaries, or other divisions. Payment shall be remitted to the address or by wire transfer to the bank set forth on Page 5 of these Terms.

8. Taxes. Prices are exclusive of, and Buyer shall be responsible for, all federal, state, municipal and other taxes (such as sales, use, value added, or similar taxes) and similar charges.

9. Security Interest. Buyer grants Seller a continuing purchase money security interest in the Goods and any proceeds thereof until payment of the full purchase price is received by Seller. Buyer shall perform all acts which may be necessary to perfect and assure retention of such security interest by Seller. If Buyer fails to make any payment of or on account of the purchase price when due, Seller may, at its option, take exclusive possession of the Goods wherever found and remove the Goods without legal process, and Buyer shall reimburse Seller for all removal fees, expenses or costs of repossession and collection, including reasonable attorneys' fees.

10. Export Compliance: Unless otherwise agreed in writing, Buyer shall be responsible for compliance with the U.S. export control laws and regulations applicable to the Product or Service including, without limitation, those of the U.S. Government Office of Foreign Assets Control (OFAC), Export Administration Regulations (EAR) and the International Traffic In Arms Regulations (ITAR). Seller shall not be held liable to Buyer for any failure to deliver Goods as a result of (i) the U.S. Government's refusal to grant any export or re-export authorization; (ii) cancellation of any export or re-export authorization; or (iii) any change or subsequent interpretation of a law or regulation after the date of an Order that adversely impacts or affects Seller's costs or ability to perform its obligation.

11. OFAC/EAR/ITAR Compliance Certification: For all Goods and associated technical data to be received by Buyer from Seller, Buyer certifies that it will not export, re-export, or transport any such Goods or data, or otherwise perform any act contrary to OFAC, EAR, or ITAR prohibitions and restrictions. This includes, but is not limited to, observing all OFAC country and list-based sanctions and complying with all EAR Part 736, 744, and 746 restrictions. Buyer agrees that the export control requirements listed above shall survive the completion, early

termination, cancellation, or expiration of the applicable Order.

12. Limitations of Liability. SELLER SHALL HAVE NO LIABILITY FOR LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA OR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO BUYER FOR DAMAGES OF ANY KIND EXCEED THE PRICE OF THE GOODS THAT GIVE RISE TO THE CLAIM, WHETHER RESULTING FROM DELAYS IN DELIVERY OR PERFORMANCE, BREACH OF WARRANTY, CLAIMS OF NEGLIGENT MANUFACTURING, PATENT OR COPYRIGHT INFRINGEMENT, OR OTHERWISE.

13. Force Majeure. Seller shall not be liable for delays in delivery or performance, or for failure to deliver or perform, due to (i) causes beyond its reasonable control, or (ii) acts of God, acts of Buyer, acts of civil or military authority, governmental priorities, strikes or other labor, disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (iii) the inability on account of causes beyond the reasonable control of Seller's suppliers to obtain necessary materials, components, services or facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

14. Proprietary Information. Seller shall have exclusive right, title and interest in and to all Proprietary Information of Seller (whether or not paid for by Buyer in connection with the price of the Goods or otherwise). Buyer shall not (i) copy, reproduce, transfer, assign, sublicense, loan, rent, lease, sell, disclose, or otherwise make available any Proprietary Information of Seller to any person or other entity without the prior written consent of Seller; (ii) modify, translate, reverse engineer, decompile, disassemble, or otherwise create derivative works based on such Proprietary Information without the prior written consent of Seller; or (iii) remove, obscure, or alter any notices or labels identifying or indicating Seller's ownership in and to such Proprietary Information. Any and all Proprietary Information which Seller may provide to Buyer shall be in Buyer's possession pursuant only to a restrictive nontransferable, nonexclusive license under which Buyer may only use such Proprietary Information for the purpose of

installing, using, servicing and repairing the Goods purchased hereunder.

15. Confidentiality. Buyer shall hold all Confidential Information of Seller, whether disclosed by Seller to Buyer in connection with Seller's provision of Goods hereunder or otherwise, in confidence and shall not reproduce, use or disclose such Confidential Information in whole or in part to any third party without the prior written consent of the Seller and shall take reasonable precautions to safeguard the secrecy thereof. Upon request by Seller, Buyer agrees to sign a Nondisclosure Agreement, and other Non Disclosure Agreements as may be required by Seller's suppliers and customers.

16. Miscellaneous.

(a) **No Waiver.** Failure on any occasion by either party to enforce any terms of this agreement shall not prevent enforcement on any other occasion.

(b) **Severability.** If any provision of this agreement is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, for any reason, such provision shall be severed and the remainder of these Terms shall remain in full force and effect.

(c) **Governing Law.** This agreement and each order is deemed made in, and shall be construed and interpreted in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law. Any suit relating to this Agreement shall be instituted in a state or federal court in the County of San Luis Obispo, California, and the parties irrevocably consent and waive all objections to the jurisdiction of any such Court. In the event any proceeding is brought by a party hereto to enforce or for any breach of any of the provisions of this agreement, the prevailing party will be entitled in such proceeding to recover attorneys' fees together with the costs of such proceeding.

(d) **Compliance with Law.** For Orders placed in support of and charged to a U.S. Government Prime Contract or subcontract thereunder procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, Buyer is notified that Seller takes exception to DFAR Clause 252.225-7014 (Preference for Domestic Specialty Metals) and the goods manufactured hereunder may contain parts that have, or may have been, manufactured with noncompliant specialty metals.

(e) **Time Limit for Bringing Cause of Action.** No action, whatever its form, which arises out of this agreement may be brought by either party more than one (1) year after the cause of action has arisen, or in the case of an action for nonpayment, more than two (2) years from the date the last payment was due.

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LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

(a) Seller warrants to Buyer that for a period of one (1) year from the date of original shipment of Goods to Buyer pursuant to these Terms such Goods shall comply with Buyer's written specifications and shall be free of defects in material and workmanship. Notwithstanding the foregoing, this Warranty shall not apply to, and Buyer shall have the exclusive responsibility for, all materials furnished by Buyer. Furthermore, in instances where the Goods purchased by Buyer are custom made to Buyer's specifications, Seller shall warrant only the quality of the workmanship that is directly attributable to Seller. Any materials used in such goods which are not manufactured specifically by Seller shall carry no specific warranty from Seller; under such circumstances, Seller agrees to provide reasonable assistance to Buyer for the purpose of securing any warranty considered due the Buyer under the terms of any applicable manufacturer's warranty in effect for such material.

(b) Seller's sole obligation under all warranties is limited to replacing or repairing any product found by Seller to be defective in accordance with the above or refunding the original purchase price to Buyer at Seller's sole discretion and shall not include any removal or reinstallation costs, or the costs of any recall program incident to such correction or replacement.

(c) Warranty on replacement parts and materials for Goods returned for repair after the expiration of the original one (1) year warranty is limited to ninety (90) days.

(d) This Limited Warranty does not extend to any Goods that have been subject to misuse, accident, improper storage, improper installation or application, or to any labor charges or property damage for physical

removal or replacement of the defective goods or materials.

(e) THIS LIMITED WARRANTY IS IN LIEU OF ALL WARRANTIES, EITHER EXPRESS OR IMPLIED BY OPERATION OF LAW, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH SELLER EXPRESSLY DISCLAIMS. ALL WARRANTIES, CONDITIONS, AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THIS ORDER.

(f) This Warranty shall not be extended, altered, or varied except by a written instrument signed by Seller and Buyer.

(g) In the event that any provision of this Warranty should for any reason be held ineffective, such provision shall be severed and the remainder of this Warranty shall remain in full force and effect.

