



Terms and Conditions of Sale

Power Conversion Technologies, Inc. (PCTI) hereby gives notice of its objection to any terms and conditions different from or additional to those stated herein or, if applicable, those contained in or referred to as a PCTI proposal. Such terms and conditions supersede any prior or contemporaneous agreements or correspondence between the parties. This sale is expressly conditional on purchasers' assent to any and all such terms and conditions. Purchasers' receipt of product is conclusive as to such assent.

Quotations

Written quotations are valid for 30 days from its date unless otherwise stated in quotation or unless terminated sooner by notice. Verbal quotations, unless accepted, expire the same day they are made.

Order Entry

A complete signed order or contract must be received by PCTI within 20 days of notification of award, otherwise the price and shipment will be subject to renegotiation.

Termination

Any order may be terminated by the purchaser only by written notice and upon payment of reasonable and proper termination charges, including but not limited to all costs identified to the order which have been incurred up to the date of notice of termination and costs terminating orders to suppliers plus a profit.

Held Orders

For any order held, delayed or rescheduled at the request of purchaser, PCTI may, at its sole option (1) require payment to be based on any reasonable basis, including but not limited to the contract price, to services rendered, percent of completion, and any additional expenses, overhead or other costs resulting from such delay; (2) store completed or partially assembled purchases at the sole cost (including all transportation and handling costs to and from such storage) and risk of loss of the purchaser; and/or (3) charge to the purchaser those prices then in effect at the time the hold is released, plus any additional costs due to the hold. Any order so held, delayed or rescheduled beyond a reasonable time will be treated as a purchaser termination.

Cancellation by Purchaser

Any order may be terminated by the purchaser only by written notice and upon

payment of reasonable and proper termination charges, including but not limited to all costs identified to the order which have been incurred up to the date of notice of termination and costs terminating orders on suppliers, plus a profit.

Cancellation by PCTI

PCTI shall have the right to cancel at any time by written notice for any material breach of the contract by the purchaser.

Prices

All prices are subject to change without notice. In the event of a price change, the effective date of the change will be the date on the informing correspondence. All quotations made or orders accepted after the effective date must be on the new basis.

Price Policy- TOS

Prices in effect at time of shipment.

Price Policy - Firm

Prices are firm provided the following conditions are met:

(A) The order is released with complete engineering details.

(B) Shipment of equipment is made and services purchased are provided within 6 months from the date of the customer's order.

(C) When drawings for approval are required for any product, the drawings applicable to that product must be returned within 30 calendar days from the date of original mailing of the drawings by PCTI. The returned drawings must be released for manufacture and shipment and must be marked "APPROVED AS NOTED". Drawing resubmittals which are required for any other reason than to correct PCTI errors will not extend the 30 day period.

If in the event the customer initiates or in any way causes delays in shipment, provision of services or return of approval drawings beyond the periods stated above, the price of the equipment or services will be increased 1% per month or fraction thereof of delay up to a maximum of 18 months from the date of the customer's order. For delays resulting in shipment or provision of services beyond 18 months from the date of the customer's order the price must be renegotiated.

Price Policy - BLS

Prices are subject to adjustment upward or downward based on changes in Bureau of Labor Statistics Labor and Material indices.

Drawing Approval

Whereas purchaser's specifications are not definitive, PCTI reserves the right to design the product in line with, in PCTI's judgement, good commercial practice. If at drawing approval, the purchaser makes changes outside of the design as covered in their specifications, PCTI will then be reimbursed reasonable charges and

allowed a commensurate delay in shipping date based on the changes involved.

Changes After Release for Manufacture

If changes are made by the purchaser outside of the design as covered in their specifications after the contract has been released for manufacture, PCTI will then be reimbursed reasonable charges at the determination of PCTI and allowed a commensurate delay in shipping schedule based on the changes involved.

Taxes

The price does not include any federal, state, or local property, license, privilege, sales, use, excise, gross receipts, value added, or other like taxes which may now or hereafter be applicable to, or arising from the transaction, the property, its sale, value, or use, or any services performed in connection therewith. Purchaser shall at all times be responsible for the payment of such taxes regardless of the person or entity actually taxed.

Terms of Payment - Net 30

Terms of payment are net within 30 days from date of invoice.

Terms of Payment - % Discount

The discount noted will be allowed on invoices paid within the time period indicated from the date of invoice, net due within 30 days of the date of invoice. For example, **1% net 15**: 1% discount will be allowed on invoices paid within 15 days of the date of invoice, net due within 30 days of the date of invoice.

Special Terms

Terms of payment are as noted specifically in the quotation. In the case of highly customized equipment, PCTI may require full or partial payment in advance.

Delayed Payments

If payments are not made in accordance with these terms, a service charge will, without prejudice to the right of PCTI to immediate payment, be added to the account of the purchase in an amount equal to the lower of 1.5% per month or fraction thereof or the highest legal on the unpaid balance.

Payments

If, in the judgement of PCTI, the financial condition of the purchaser, at any time during the period of the agreement, does not justify the terms of payment specified, PCTI may require full or partial payment in advance.

Should the purchaser become insolvent, make a general assignment for the benefit of creditors, or if a receiver of any property of the purchaser be appointed in any action, suit or proceeding by or against the purchaser, such appointment shall not be vacated or annulled within sixty (60) days, PCTI shall, if permitted by applicable state and/or federal law, have the right at its election to cancel this order and to recover its proper

cancellation charges from the purchaser or the purchaser's estate.

If manufacture is delayed by purchaser, advance partial payment shall be due on the date purchaser requests the hold based upon costs incurred by PCTI to such date plus 10 percent; balance of payment shall be due upon final shipment subject to adjustment under the **Price Policy** article.

Title - Risk of Loss

The product shall remain the property of PCTI and shall remain personal property until fully paid for in cash, and the purchaser agrees to perform all acts which may be necessary to perfect and assure retention of title to such product by PCTI. Risk of loss of the product, or any part of same, shall pass to the purchaser upon delivery of such product or part at the designated delivery (F.O.B.) point.

Freight

F.O.B. -P/S - Frt/Ppd and Invoiced

All products sold F.O.B. point of shipment freight prepaid to accessible common carrier point nearest to the first destination and invoiced to the purchaser.

Freight prepaid is defined as:

Freight will be to the common carrier free delivery point nearest the destination in shipments within the United States excluding Alaska and Hawaii.

For shipment to any other destination, including Alaska and Hawaii, consult PCTI for current shipping terms that apply.

F.O.B. Destination - Frt/Ppd and Allocated

PCTI will, subject to prior agreement in writing, deliver this product F.O.B. accessible common carrier point nearest first destination freight prepaid and 2% will be added to the net price.

Cartage (Store Door Delivery)

Transportation charges incurred from the nearest accessible common carrier point to final destination or to shipside (in case of shipment to U.S. Possessions) are the responsibility of the purchaser unless the common carrier furnished store delivery at no extra charge.

Origin, Method of Shipment, and Routing

PCTI will determine the point of origin of shipment, the method of transportation, and the routing of shipment. Purchasers requiring shipment by a method or routing other than that of PCTI selection will be billed any excess or premium in transportation charges. For example, in the event the purchaser requests air shipment, PCTI will absorb only an amount equal to the charges of the normally selected common carrier with the purchaser remitting the balance prior to shipment. If PCTI elects to ship by other than common carrier, the full transportation charges will be prepaid.

Purchase Pick-Up

No allowance will be made in lieu of transportation if the purchaser accepts shipment at the factory or the warehouse or freight station. Transportation charges will not be deducted from a selling price.

Concealed Damage

Except in the event of F.O.B. destination shipments, PCTI will not participate in any settlement of claims for concealed damage.

Exception: When shipment has been made on an F.O.B. destination basis, the purchaser must unpack immediately and, if damage is discovered must:

1. Not move the product from the point of examination.
2. Retain shipping container and packing material.
3. Notify the carrier of any apparent damage in writing in carrier's delivery.
4. Notify PCTI location from which shipment originated within 72 hours of delivery.
5. Send PCTI a copy of the carrier's inspection report.

Overseas and Export Packing

Refer to PCTI.

Special Testing

If witness or other special tests are required, refer to PCTI for scheduling and additional cost involved.

Limitation of Liability

PCTI, its contractors and suppliers of any tier, shall not be liable in contract, in tort (including negligence or strict liability) or otherwise for damage to property or equipment, loss of profits or revenue, loss of use of equipment, loss of profits or revenue, cost of capital, additional expenses incurred in using existing facilities, claims of customers of the purchaser, or for any special, indirect, incidental or consequential damage whatsoever.

The remedies of the purchaser set forth herein are exclusive where so stated and the total cumulative liability of PCTI with respect to this contract, or anything done in connection therewith such as the performance or breach thereof, or from the manufacture, sale, delivery, resale or use of any product covered by or furnished under the contract, whether in contract, in tort, (including negligence or strict liability) or otherwise, shall not exceed the price of the product or part on which such liability is based.

Patents Infringement

PCTI shall at its own expense, defend or at its option settle any claim, suit or proceeding brought against the purchaser, or its vendors, so far as based on an allegation that any product or any part thereof furnished hereunder constitutes a direct or a contributory infringement of any claim of any patent of the United States. This obligation shall be effective

only if purchaser shall have made all payments due hereunder and if PCTI is notified promptly in writing and given authority, information and assistance for the defense of said claim, suit or proceeding. PCTI shall, subject to the limitations of liability, pay damages and costs awarded in such suit or proceedings so defended. In the event of such a claim, suit or proceeding, PCTI may, at its option and its own expense, either

- (a) procure for the purchaser the right to continue using said product or part thereof; or
- (b) replace it with a non-infringing product; or
- (c) modify it so it becomes non-infringing; or
- (d) as a last resort, remove it and refund the purchase price and the transportation and installation costs thereof.

The foregoing indemnity does not apply to the following:

1. Patented processes performed by the product or another product produced thereby.
2. Products supplied according to a design other than that of PCTI and which is required by the purchaser.
3. Combination of the product with another product not furnished hereunder unless PCTI is a contributory infringer.
4. Any settlements of a suit or proceeding made without PCTI's written consent.

The foregoing states the entire liability of PCTI with respect of patent infringement by said product of part thereof.

If a suit or proceeding is brought against PCTI solely on account of activities enumerated in paragraphs 1, 2 or 3 above, the purchaser agrees to indemnify PCTI in the manner and to the extent PCTI indemnified purchaser for products furnished hereunder.

Warranties Remedy

Note that **Warranty Disclaimer and Limitation of Remedies** applies to all of the following warranties.

Warranty Disclaimer and Limitation of Remedies

THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), EXCEPT OF TITLE AND AGAINST PATENT INFRINGEMENT.

The remedies provided below are the purchaser's sole remedies for any failure of PCTI to comply with its obligations. Correction of any nonconformity in the manner and for the period of time

provided below shall constitute complete fulfillment of all the liabilities of PCTI whether the claims of the purchaser are based in contract, in tort (including negligence or strict liability), or otherwise with respect to or arising out of the product or service furnished hereunder.

Standard Warranty

PCTI warrants that the products manufactured by it will be of the kind and quality described in its specification and will be free of defects in workmanship and material. Parts repaired or replaced during the warranty period will carry the unexpired portion of the original warranty.

Remedy: In the event any product supplied hereunder fails to comply with this warranty and PCTI is so notified promptly, in writing, within thirty (30) days after the defect is discovered and within one year from date of shipment, PCTI will correct such nonconformity by repair or, at its option, by replacement of the defective part or parts F.O.B. its factory or repair facility, provided the product has been stored, installed, operated and maintained in accordance with PCTI recommendations and industry standard practices. In no event shall PCTI be responsible for gaining access to the product, disassembly, reassembly and transportation of the product or parts from and to the place of installation.

If any malfunction occurs or defect is discovered, notify PCTI with full details of the difficulty and include part number, model number and serial number. If after examination of the defect or malfunction PCTI determines it is not covered by this warranty, all costs to correct the malfunction will bear the responsibility of the Ultimate Purchaser, including but not limited to labor, per diem, travel cost, parts and any other cost to correct the malfunction.

Products supplied by PCTI but manufactured by others are warranted only to the extent of the manufacturer's warranty.

Optional Warranties**Extended Warranty**

If requested by the purchaser and specifically accepted in writing by PCTI the **Standard Warranty** will be extended from date of shipment for the period and price indicated below.

18 months - 1% of Contract Price
24 months - 2% of Contract Price
30 months - 3% of Contract Price
36 months - 4% of Contract Price

Special Warranty (In and Out)

If requested by the purchaser and specifically accepted in writing by PCTI prior to product delivery, during the standard warranty period, PCTI will be liable for the direct cost of:

A. Removing the equipment from the installed location.

B. Transportation to the factory or repair facility and return to the site.
C. Reinstallation on site.

Expense for removing adjacent apparatus, walls, piping, structures, temporary service, etc. is not included.

The total liability of PCTI for A, B, and C, above is limited to 50% of the selling price of the particular equipment being repaired.

Force Majeure

PCTI shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the purchaser, riot, embargo, fuel or energy shortage, car shortage, wrecks or delay in transportation or due to any cause beyond its reasonable control.

In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Transfer

In the event of a transfer to a third party of any product or interest therein, purchaser shall, at its option either (i) obtain for PCTI written assurance from the transferee that PCTI's and its subcontractor's and supplier's protection against liability following the transfer is the equal of that provided by this contract, or (ii) indemnify them against any liability they may incur in excess of that which they would have incurred had purchaser obtained the above assurance from the transferee.

Returning Products

Authorization and shipping instructions for the return of any product must be obtained by the purchaser from PCTI before returning the products.

The product must be returned with complete identification in accordance with PCTI instructions or it will not be accepted. Where a purchaser requests authorization to return a product for reasons of his own, he will be charged for placing the returned goods in salable condition (restocking charge) and for any outgoing and incoming transportation paid by PCTI. In no event will PCTI be responsible for product returned without proper authorization of identified.

Product Notices

Purchaser shall provide the user (including its employees) of the product with all PCTI supplied product notices, warning, instructions, recommendations and similar materials.