



Hammond Power Solutions Inc. - Terms and Conditions of Sale

1. General

All POs (defined below) for products (the "Products") or services (the "Services") received by Hammond Power Solutions Inc. or its applicable affiliate providing the Products or the Services (the individual applicable entity, "HPS") are subject to these terms and conditions, the terms and conditions included in any HPS issued order confirmation (the "Order Confirmation"), and any special terms and conditions specified on HPS product price files (collectively, these "Terms"), in each case, unless the parties have entered into a separate written and mutually executed agreement regarding such PO, in which case the terms and conditions of the separate written and mutually executed agreement shall govern and prevail. In the absence of a separate written and mutually executed agreement between the parties regarding such PO or in the case of any conflict between these Terms and any other document between HPS and its customer ("Customer"), these Terms shall exclusively govern and prevail. These Terms, together with the email, price quotation, Order Confirmation, or other similar form issued by HPS and referencing or relating to these Terms (together, this "Agreement"), are intended by the parties to be the final expression of their agreement, and are intended also as a complete and exclusive statement of the terms and conditions thereof. For the avoidance of doubt, the provisions of any PO or other writing inconsistent with these Terms will not constitute a part of the contract of purchase and sale, and HPS's failure to object to provisions contained in any PO or communication from Customer shall not be construed as an acceptance of any such provision or as a waiver of any term of these Terms. WITHOUT LIMITING THE FOREGOING, HPS HEREBY EXPRESSLY OBJECTS TO ALL TERMS THAT ARE ADDITIONAL, INCONSISTENT OR CONTRADICTORY TO THESE TERMS, REGARDLESS OF WHETHER SUCH TERMS ARE SPECIFIED IN ANY OTHER EMAIL, ACKNOWLEDGEMENT, PO, CONFIRMATION, OR OTHER DOCUMENT SUPPLIED BY CUSTOMER, INCLUDING WITHOUT LIMITATION THOSE TERMS AND CONDITIONS REGARDING WARRANTY, LIABILITY AND INDEMNITY. NO ONLINE OR ELECTRONIC TERMS OR CONDITIONS WILL BE BINDING UPON HPS EVEN IF SUCH TERMS ARE "ACCEPTED" IN ORDER TO ACCESS OR USE A SYSTEM. THE PARTIES ACKNOWLEDGE THAT THE URL AT WHICH THESE TERMS ARE ACCESSIBLE MAY CHANGE FROM TIME TO TIME, AND THAT ANY SUCH CHANGE WILL NOT DIMINISH THE APPLICABILITY OF THESE TERMS WITH RESPECT TO FUTURE ORDER CONFIRMATIONS OR OTHER TRANSACTION DOCUMENTS, NOTWITHSTANDING ANY FAILURE OR DELAY IN UPDATING SUCH URL IN SUCH DOCUMENTS.

2. Order Acceptance

All Customer-issued purchase orders (each, a "PO") will not be binding upon HPS until accepted in writing by HPS. If HPS accepts the PO in writing, such written acceptance is made only pursuant to these Terms, and HPS's acceptance of any PO is limited to these Terms and conditional on Customer's agreement to these Terms, except to the extent that the parties have entered into a separate written and mutually executed agreement regarding the subject matter of the applicable PO. Prices, payment terms and delivery dates stated on any Order Confirmation or similar document issued by HPS shall prevail.

3. Price

Unless otherwise agreed in writing by HPS, Customer shall be responsible for and shall pay the cost of freight, shipping, delivery, insurance and packaging. Customer is also responsible for and shall pay all sales tax, use tax, excise or value added tax, duty, custom, fee, charge or any other tax of any nature whatsoever (collectively, "Additional Charges") imposed by any governmental authority in respect of the Products or the Services. If HPS pays any such Additional Charges, Customer shall immediately reimburse HPS for such Additional Charges. Quoted prices may not



include reasonable travel or other out-of-pocket expenses incurred by HPS in connection with the performance of any Services, and Customer shall reimburse HPS for all such expenses.

Unless HPS specifically agrees to hold prices open for a length of time on HPS's price quotation, all prices are subject to change, and Customer will pay HPS's prices in effect at the time of delivery or performance. Without limiting the foregoing, HPS reserves the right to modify prices for accepted POs upon an increase in any of HPS's costs, including without limitation materials, labor, tariffs, and regulatory fees. Prices are subject to adjustment without notice. In the event of a price change, the effective date will be the date of the announced price change.

HPS reserves the right to correct any errors, inaccuracies, or omissions at any time, and to cancel any POs arising from any inadvertent typographical errors, inaccuracies, or omissions, related to pricing and availability of the Products and/or the Services.

Customer agrees to provide all necessary approvals or releases for shipment when due. For POs that have exceeded HPS's sixty (60) day approval window or are not released by Customer for immediate shipment, HPS may require an updated PO from Customer with the price of any unshipped portion of a PO updated to the price in effect at the time of shipment. The minimum billing for any Products or Services sold by HPS shall be \$75.00 net.

4. Payment

Customer payment terms are cash in advance unless the HPS Credit Department approves credit terms in writing.

If HPS approves credit terms in writing, payment shall be due in thirty (30) days from the date of invoice unless otherwise specified in the HPS Order Confirmation. HPS, in its sole discretion, may require a payment schedule prior to shipment of the Products or provision of the Services. HPS reserves the right to require full cash payment in advance or at the time of delivery whenever HPS, in its sole discretion, develops doubt as to Customer's financial responsibility; HPS will not in such event be liable for non-performance. A FINANCE CHARGE EQUAL TO THE LESSER OF 1.5% PER MONTH OR THE HIGHEST RATE PERMISSIBLE UNDER APPLICABLE LAW WILL BE ADDED TO THE UNPAID BALANCE ON ALL ACCOUNTS NOT PAID IN FULL ON OR BEFORE THE DUE DATE.

Without waiving any of HPS's other rights or remedies, HPS may refuse additional POs and suspend the delivery of the Products or provision of the Services until Customer pays all overdue amounts.

If Customer requests any additional processing regarding invoices beyond HPS's normal procedures (such as third-party sites, web-based portals, customer-specific processes or other special requests), such requests must be approved in writing by HPS and shall be subject to an additional surcharge as determined by HPS.

HPS may set off any amount due from Customer, whether or not under this Agreement, against any amount due HPS hereunder.

5. Delivery

All delivery dates for Products and performance dates for Services specified on the Order Confirmation are approximate only. Any reasonable variation of such dates shall constitute adequate performance on the part of HPS. HPS shall not be held responsible for failure to meet such approximate dates, and HPS shall not be liable for any resulting charges, costs or damage incurred by the Customer on account of delays or failure to deliver Products or perform Services.



The delivery of all Products is EXW (Incoterms 2020) from HPS's facilities unless otherwise stated in the Order Confirmation or mutually agreed upon in writing. Risk of loss passes from HPS to Customer at the HPS shipping point. Title to Products will remain with HPS until HPS receives full payment therefore.

All shipments are sent freight collect unless otherwise mutually agreed upon in writing. For all shipments HPS shall select the point of origin facility, the method of transportation, the authorized carriers, and the routing of the shipment, in HPS's sole discretion. Customer will be charged for all extra costs for shipping of the Products, including special handling costs.

Prepaid freight is subject to approval by HPS in its sole discretion, and is only available within the contiguous country of the Customer. HPS may determine, at its sole discretion, if excessive freight costs are required due to the destination's location, which costs will be charged to the Customer. The Customer may request a non-preferred carrier at the Customer's expense. If HPS has agreed in writing for any shipment under this Agreement to be sent freight allowed, HPS will not provide the Customer credit for freight when a non-preferred carrier is used.

Any changes to the shipping destination for any Products from the location specified in a PO accepted by HPS is subject to HPS's written acceptance in its sole discretion.

Shipments requiring additional documentation are subject to additional charges at HPS's discretion.

Any requests for specific delivery appointment windows, special packaging or equipment are subject to HPS's written acceptance in its sole discretion and will be at the Customer's expense.

The Customer may defer deliveries only upon written request received by HPS at least three weeks prior to the originally scheduled shipping date, and all such deferrals are subject to HPS's written agreement. For shipping delays as the result of the Customer's conduct or request, Customer agrees to make payment in full for the price of the Products on or before the currently scheduled shipping date in addition to any storage fees as requested by HPS.

6. Shipment Discrepancy

If HPS delivers up to ten percent (10%) more or less than the quantity of the Products ordered by Customer, Customer shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall, and shall pay for such Products the price set forth in this Agreement, adjusted pro rata. Customer must state any shortage or damage in writing on the carrier's freight receipt. Customer claims for shipping errors must include photographic evidence thereof taken at the time of receipt of the Products and must be received by HPS in writing within five (5) days of the date of Customer receiving the shipment. FAILURE TO GIVE SUCH NOTICE WILL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THE PRODUCTS AND A WAIVER OF SUCH CLAIMS BY CUSTOMER. Claims for loss of or damage to the Products in transit must be made to the carrier, and not to HPS. Notices to HPS in respect of any delivery errors should indicate what Products were missing and include a copy of the packing slip.

7. Design/Product Approval

HPS reserves the right to require Customer to approve drawings for ordered Products. Customer must mark production drawings as "APPROVED" or "APPROVED AS NOTED" and such approved drawings must be signed and dated by Customer. Approved drawings must be returned on or before the date specified by HPS.

If the drawing approvals are delayed at the fault of Customer for a period of over sixty (60) days, HPS may, upon written notice, terminate the PO.

Special testing requirements, test reports and other services may be made available upon request and will be subject to additional fees, which will be detailed in the Order Confirmation. Failure by Customer to attend witness testing will not extend HPS's shipment date unless mutually agreed upon in writing by Customer and HPS. If Customer initiates, or in any way causes, delays in shipment, hold-for-release or return of approval drawings beyond the period stated in a PO accepted by HPS, HPS may increase the order price commensurate with the current market pricing and issue a revised Order Confirmation reflecting such increase.

HPS reserves the right to increase prices and extend the shipping date if a Customer requests changes to a PO after an Order Confirmation has been issued.

8. Order Cancellation

All POs are non-cancellable and non-refundable by Customer unless otherwise agreed upon in writing by HPS.

HPS shall be reimbursed for all costs and expenses incurred as the result of any cancellation, including without limitation overhead and profit. Cancellation costs may be up to 100% of the order value if work has commenced with respect to the Services or the Products, including without limitation the procurement of underlying materials for Products. Upon confirmation of termination of a PO by HPS, HPS shall notify Customer of cancellation charges, if any.

HPS, at its sole discretion, may cancel any PO or delay shipment of the Products purchased pursuant to a PO, including without limitation should Customer fail to meet any obligations set out in this Agreement, the payment schedules of any PO, or the credit and financial requirements of HPS.

9. Return Products

For all Product returns, Customer shall refer to HPS's [Return Material Authorization](#) ("RMA") procedures, which includes clear instructions and policies for returns and is incorporated by reference herein. Failure to adhere to the return procedures set forth in the RMA may result, in HPS's sole discretion, in the rejection or delay of HPS processing a Customer return or HPS's refusal of returned Product, which shall be returned to Customer at the sole cost of Customer.

10. Product and Services Warranty

(a) HPS warrants that all Products manufactured by HPS will, at the time of shipment, materially conform to the written specifications provided by HPS and will be free of material defects in material and workmanship ("Defects"). HPS further warrants that, at the time of performance, the Services will be performed in a professional and workmanlike manner, in all material respects. HPS's standard warranty period for the specific Products purchased shall apply. In no event shall HPS be liable for any Defects that are found or reported by Customer outside of the applicable warranty period. . The warranties expressly provided herein may only be asserted by Customer and may not be asserted by Customer's customers or other users or beneficiaries of the Products or the Services. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND HPS'S ONLY LIABILITY FOR (I) HPS'S BREACH OF THIS SECTION 10, (II) ANY DEFECTS OR (III) ANY SERVICES NOT PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER, SHALL BE FOR HPS TO, IN ITS SOLE DISCRETION, REPAIR, REPLACE, REPERFORM OR REFUND THE PURCHASE PRICE FOR THE DEFECTIVE PRODUCT OR SERVICES.

(b) HPS does not warrant and shall have no obligation with respect to any Products that: (i) have been repaired or altered by someone other than HPS; (ii) have been subject to misuse, abuse, neglect, intentional misconduct, accident, Customer or third party negligence, unauthorized



modification or alteration, use beyond rated capacity, a force majeure event, or improper, insufficient or a lack of maintenance; (iii) are comprised of materials provided by, or designed pursuant to instructions from, Customer; (iv) have failed due to ordinary wear and tear; (v) have been exposed to adverse operating or environmental conditions; or (vi) have not been used, installed, maintained or stored in accordance with HPS's instructions relating to such Products.

(c) Products supplied by HPS but manufactured or created by third parties, including digital information and software, are warranted only to the extent of the original manufacturer's warranty and to the extent such manufacturer permits HPS to pass any third-party warranty through to Customer. Such products are not covered by the limited warranty set forth in this Section 10.

(d) Notwithstanding anything to the contrary herein, HPS will have no liability for (a) any costs necessary to extract or uninstall the Products that fail to conform to the warranties set forth herein, and/or (b) any costs to reinstall any repaired non-conforming Products or new Products replacing any such non-conforming Products.

(e) Customer is solely responsible for determining the fitness and suitability of products for the use contemplated by Customer. Customer shall ensure that (i) the Products are used only for the purposes and in the manner for which they were designed, (ii) all persons likely to use or come into contact with the Products receive appropriate training, (iii) all persons likely to use or come into contact with the Products receive copies of applicable instructions and documentation supplied by HPS, (iv) all third parties who use or may be affected by or rely upon the Products are given full and clear warning of any hazards associated with them or limitations of their effectiveness and that safe working practices are adopted and complied with, (v) any warning notices displayed on the Products are not removed or obscured, (vi) any third party to whom the Products are supplied agrees not to remove or obscure such warning notices. Customer assumes all responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Products, either alone or in combination with other products or components.

(f) THE WARRANTIES SET FORTH IN THIS SECTION 10 ARE HPS's SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCTS AND SERVICES, AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES OF ANY KIND (AND HPS HEREBY EXPRESSLY DISCLAIMS ALL SUCH OTHER WARRANTIES), WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT AND/OR TITLE, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, USAGE OF TRADE, AND FITNESS FOR A PARTICULAR PURPOSE. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES ON BEHALF OF HPS OTHER THAN THOSE EXPRESSLY STATED HEREIN. THE REMEDIES PROVIDED IN THIS SECTION 10 ARE CUSTOMER'S SOLE REMEDIES FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO PRODUCTS OR SERVICES. All warranty claims must be received by HPS at or before the end of the applicable warranty period set forth in HPS's Products and Services Warranty available at <https://americas.hammondpowersolutions.com/resources/warranty-and-terms>.

11. Limitation of Liability

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL HPS BE LIABLE FOR INDIRECT, SPECIAL, DELAY/LIQUIDATED, INCIDENTAL, EXEMPLARY, PUNITIVE, ENHANCED OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, THE LOSS OF PROFITS OR REVENUE, DIMINUTION IN VALUE, LOSS OF USE OF ANY EQUIPMENT, DOWN TIME COSTS, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, COST OF PURCHASED OR REPLACEMENT POWER, LABOR COSTS OR CLAIMS OF CUSTOMERS OF CUSTOMER OR END USERS OF THE PRODUCTS OR THE SERVICES FOR SUCH DAMAGES IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, THE PRODUCTS, OR THE SERVICES.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL HPS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PRODUCTS, OR THE SERVICES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED ONE HUNDRED PERCENT (100%) OF THE TOTAL OF THE AMOUNT PAID TO HPS FOR THE APPLICABLE PORTION OF THE PO SUBJECT TO THE CLAIM.

(c) THE FOREGOING LIMITATIONS IN SECTIONS 11(A) AND (B) SHALL BE VALID AND ENFORCEABLE REGARDLESS OF: (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER HPS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY HPS CONCERNING THE SALE, USE, OR INSTALLATION OF THE PRODUCTS OR SERVICES, (iv) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (v) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. Exclusion of Tort Remedies

All sales of Products hereunder are commercial sales transactions, and the parties intend for them to be governed by Article 2 of the Uniform Commercial Code (as adopted by the state set forth in Section 25 below) and related commercial legal principles. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.

13. Product Recalls

HPS expressly retains the right, in its sole discretion, to order and control any recall, repair, replacement or refund program relating to the Products and/or the Services, including if mandated by an order of a governmental agency to correct a manufacturing defect affecting the safety of Products sold. In the event a recall, repair, replacement or refund program is required, (a) Customer shall fully cooperate with HPS, at HPS's request, in the implementation and administration of any program of recall, repair, replacement or refund, and (b) Customer shall furnish to HPS such records regarding any program of recall, repair, replacement or refund as HPS shall reasonably request.

Customer shall notify HPS in a timely manner of any condition known to it that may affect the safety of the Products, and Customer shall consult with HPS about any such condition prior to notifying any governmental agency. In no event shall reimbursement under this Section of reasonable and documented out-of-pocket costs include any amounts for lost profits or business goodwill or any other special, consequential, punitive or indirect damages. Nothing in this Agreement shall constitute a waiver or limitation by HPS of any constitutional, statutory, or other right to administrative or judicial review of any request, demand, or order of any governmental agency or body.

14. Indemnification

Customer shall indemnify, defend, and hold HPS, its direct and indirect parent and subsidiary entities and other affiliates, and its and their respective directors, officers, employees, representatives, agents, direct and indirect customers and product users, and each of the foregoing's respective successors and assigns, harmless from and against any and all claims, demands, actions, proceedings, damages, losses, liabilities, costs, and expenses, of any kind whatsoever, including all attorneys' fees, arising from or relating to any actual or alleged claim whatsoever, including without limitation any claim of infringement of intellectual property rights or other proprietary right, and claims of product liability, personal injury, property damage, and

product defect, which arises out of or is related to Customer's (or its direct or indirect customers') use of the Products and/or Services, negligence, willful misconduct, violation or breach of any provision of this Agreement, fraud, or violation of law, or from Customer's specifications for the Products and/or Services, except, in each case, to the extent arising from the gross negligence or willful misconduct of HPS.

15. Product Notices

Customer must provide the user of the Products with all HPS supplied product notices, changes, warnings, instructions, recommendations, and related materials (collectively, the "Product Notices") and Customer shall be liable for any claims arising from or relating to the failure to provide the Product Notices to users of the Products.

16. Force Majeure

Notwithstanding anything to the contrary contained herein, HPS shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any whole or partial failure or delay in fulfilling or performing any term of this Agreement, and HPS may implement price increases due to increased costs, when and to the extent such failure, delay or cost increase is caused by or results from, in whole or in part, acts, events or circumstances beyond HPS's reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic, quarantine, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances (whether or not such events are within the reasonable control of HPS); (h) shortage of adequate power or transportation facilities or raw materials from usual sources (whether or not such events are within the reasonable control of HPS); (i) equipment malfunction or downtime (whether or not within the reasonable control of HPS); (j) unforeseen capacity constraints and/or demand increases; (k) data breaches or cyber-attacks; (l) acts or omissions of Customer; and (m) other events beyond the reasonable control of HPS. If any such event renders HPS's timely delivery or performance of any Product or Service impracticable, at HPS's option, (x) the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay, or (y) HPS will be excused from performance and Customer shall promptly, upon HPS's request, pay HPS for any Products or Services then completed (whether fully or partly completed).

17. Ownership

- (a) Any designs, manufacturing drawings, intellectual property rights or other proprietary or confidential information submitted by HPS to Customer, and all other rights in and to all of the Products, Services, documents, work product, drawings, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of HPS in the course of performance under this Agreement, remain the sole and exclusive property of HPS and no right or license, either express or implied, is granted hereunder by HPS to Customer. Customer shall not, without HPS's prior written consent, copy such information or disclose such information to a third party. In the event Customer provides any feedback, suggestions, improvements or ideas pertaining to any Products, Services or any other HPS goods or services (collectively, "Feedback"), Customer hereby irrevocably and unconditionally assigns to HPS all of Customer's right, title and interest in and to such Feedback, and any intellectual property rights relating thereto. Customer shall not contest, or assist others in contesting, the validity or ownership of HPS's intellectual property. Customer warrants that any trademarks Customer asks HPS to affix to any Products are owned or authorized for use by Customer, and Customer grants HPS a fully-paid, royalty-free and worldwide license to use any such trademarks Customer asks HPS to affix to any Products for purposes of performance under this Agreement.

- (b) For the purposes of this Agreement, “intellectual property rights” shall mean all US and foreign (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights, all improvements thereto and all similar or equivalent rights or forms of protection in any part of the world.
- (c) Customer shall not violate, tamper with, or interfere with HPS’s and HPS’s affiliates and subsidiaries rights in and to intellectual property rights. Customer shall be held liable for the breach of the obligations contained hereunder.

18. Data Collection and Treatment

All data collection and its treatment under this Agreement will be exclusively used for the commercial means contained in this Agreement in accordance with laws applicable to HPS. Customer hereby agrees, accepts, and acknowledges that HPS will keep, store, and utilize Customer’s personal information in accordance with HPS’ Information Security Policy available at <https://americas.hammondpowersolutions.com/privacypage>, which is incorporated by reference herein, and which may be amended at any time by HPS in its sole discretion.

In the event that Customer or any of its personnel become aware of or suspect a data security breach, an unauthorized access, use, loss, theft, damage or acquisition of HPS’s data, or any other event that compromises the security, confidentiality or integrity of HPS’s data (“Incident”), Customer shall (a) promptly communicate the nature of the Incident to HPS; (b) assist HPS with mitigating the damages resulting from the Incident; and (c) allow HPS to have sole control over the timing, content, and method of providing notification to the impacted individuals and governmental authorities, if applicable. In addition to any other remedies available to HPS under this Agreement, in law or in equity, for any Incident resulting, in whole or in part, from the acts or omissions of Customer or its personnel, Customer shall: (i) take any corrective actions necessary to remedy the Incident; and (ii) reimburse HPS for its costs and expenses relating to the Incident such as (1) HPS’s costs incurred in notifying impacted individuals, governmental authorities, and credit bureaus, (2) HPS’s attorneys’ fees and public relations’ fees incurred in response to the Incident; (3) HPS’s costs of obtaining credit monitoring services and identity theft insurance for the benefit of the impacted individuals; (4) call center support to notify impacted individuals; (5) all fines, penalties or charges assessed by any governmental entity; and (6) forensic IT services and e-discovery services used by HPS relating to the Incident, where (1)-(6) are deemed direct damage and are not subject to any caps on liability or exclusion of damages set forth elsewhere in this Agreement or in any other document or agreement (if any).

19. Confidential Information

- (a) If Customer and HPS have entered into a non-disclosure and/or confidentiality agreement (the “NDA”), the terms of the NDA are incorporated herein by this reference and will control the disclosure of any confidential or proprietary information. If there is any conflict between the terms of the NDA and this Agreement, the terms of the NDA will prevail to the extent of the inconsistency. If the NDA expires prior to the termination of this Agreement, the NDA is hereby deemed renewed and extended until the termination of this Agreement. Customer shall not disclose any Confidential Information (as such term is defined herein below) to any party without the express written consent of HPS.

- (b) For the purposes of this Agreement, “Confidential Information” shall mean any and all information of HPS and its affiliates and subsidiaries that is not generally available to the public or is considered by HPS to be confidential or proprietary information, including but not limited to intellectual property rights and trade secrets as defined by applicable law, as well as lists of and any information pertaining to the clients, customers, vendors, and any party with whom HPS performs business with, which includes, but is not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts, or rebates. Confidential Information also includes any information received by HPS and its affiliates and subsidiaries from any person with any understanding, express or implied, that such information will not be disclosed. Confidential Information does not include (a) information that is in or enters the public domain, other than through Customer’s breach of its obligations under this Agreement or any other agreement between Customer and HPS and/or its affiliates and subsidiaries; or (b) Customer’s own information.
- (c) Customer shall return to HPS, or destroy, with such destruction certified in writing to HPS (email being sufficient), within five (5) days of the earlier of a request from HPS or the termination of this Agreement, all Confidential Information, and all written materials, and copies thereof, including materials stored in electronic media, containing, incorporating, or otherwise based upon, in whole or in part, the Confidential Information. This provision shall survive any termination of this Agreement for any reason, and in the event of any breach or threatened breach of this provision, HPS shall be entitled, in addition to any other remedies and damages, to injunctive relief without the necessity of paying bond and without being required to prove the existence, amount or insufficiency of damages.

20. Termination

In addition to any remedies that may be provided to HPS under this Agreement or applicable law, HPS may terminate this Agreement or any PO accepted by HPS, in whole or in part, without liability and with immediate effect upon notice to Customer for any reason or no reason at all; provided, however, that any termination without cause shall require at least twenty-four (24) hours’ notice to Customer (email or verbal notice being sufficient). Without limiting the foregoing, HPS may terminate this Agreement or any PO accepted by HPS, in whole or in part, without liability and with immediate effect upon notice to Customer if Customer (a) fails to pay any amount when due to HPS, whether or not under this Agreement, (b) has not performed or complied with any provision of this Agreement, in whole or in part, or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

21. Survival; Statute of Limitations

The parties’ rights and obligations that by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, compliance with laws, warranties, limitations on liability, and confidentiality will survive any termination or expiration of this Agreement. Notwithstanding any right under any applicable statute of limitations, to the maximum extent permitted by law, no action, proceeding, litigation, or claim of any type or nature, civil, criminal, administrative, regulatory, or otherwise, and whether at law, in equity or otherwise (collectively, “Claims”), based upon or arising in any way out of this Agreement, the Products or the Services, may be brought by Customer more than twelve (12) months after the date of delivery or performance of the applicable Products or Services or, if such Claim does not relate to specific Products or Services, more than twelve (12) months after the cause of action has accrued, and Customer waives the right to file or otherwise bring any such Claim after the expiration of such period.

22. Certain Customer Obligations

Customer shall (a) cooperate with HPS in all matters relating to the Products and Services and provide access to Customer's premises, and to such office accommodations and other facilities as HPS requests for the purpose of performing or delivering any of the Products or Services; (b) respond promptly to any HPS request to provide direction, information, approvals, authorizations, or decisions that HPS deems necessary in order to complete and provide the Products and/or Services in accordance with this Agreement; and (c) provide in a timely manner such customer materials or information that HPS requests in order to complete and provide the Products and/or Services, and Customer shall ensure that such customer materials and information are complete and accurate in all respects.

23. Compliance with Laws; Regulatory Compliance

Customer shall comply with all applicable foreign, federal, state and local laws, regulations, orders, and ordinances. HPS may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products. Customer represents and warrants that Customer is and shall at all times remain in compliance with all applicable laws administered by any governmental authority imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries, entities, and persons ("Embargoed Targets"). Customer is not an Embargoed Target or subject to any Economic Sanctions Law, and Customer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver Products or any portion of Products to an Embargoed Target, or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law. Customer shall be responsible at its own cost for compliance with all relevant laws and regulations and for obtaining and maintaining any necessary import or export licenses, customs clearance, exchange control consent or other authorizations and permits in relation to the purchase of the Products and/or Services. Customer shall not export or re-export, directly or indirectly, the Products without obtaining any license or approval required by any governmental authority.

24. Government Requirements

Products are commercial items as defined in FAR 2.101. If HPS sells Products to any government, or to a government prime contractor or subcontractor, Customer is solely and exclusively liable for compliance with all government acquisition statutes and regulations. HPS makes no representations, certifications, or warranties whatsoever about compliance with government acquisition statutes and regulations, including, without limitation, those that may relate to pricing, quality, origin, or content, and specifically rejects the flow down of all FAR clauses not agreed to in writing by HPS.

25. Choice of Law

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule. The United Nations Convention on Contracts for the International Sales of Goods (CISG) does not apply to this Agreement. Any controversy or claim arising out of or in connection with this Agreement will be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration will occur in Sauk County, Wisconsin, and will be conducted in the English language. Notwithstanding the foregoing, any claim by HPS for collection of unpaid amounts may be pursued through any available method and in any available venue, including without limitation through litigation, without first proceeding to arbitration pursuant to this Section, and Customer hereby irrevocably submits to the personal jurisdiction of such courts. Service of process on Customer may be made through any form permissible for delivering a notice pursuant to Section



27. Customer shall pay HPS any collection fees and all attorneys' fees incurred by HPS in enforcing this Agreement or defending against any claim for breach of this Agreement.

26. Insurance

During the term this Agreement remains in effect and for two (2) years thereafter, Customer shall, at its own expense, maintain and carry insurance in full force and effect in amounts and types customary in Customer's industry and satisfactory to HPS. All insurance policies must be underwritten by a company with a minimum A.M. Best Rating of A- VII. Certificates evidencing the required coverages must be furnished to HPS prior to the commencement of any work and on an annual basis thereafter, and at any additional times upon HPS's request. Customer shall provide HPS with thirty (30) days' advance written notice in the event of a cancellation or material change in any of Customer's insurance policies. If Customer fails to maintain the insurance required herein, HPS may, in its sole discretion, purchase such insurance on Customer's behalf and charge back the cost thereof to Customer, with a reasonable markup.

27. Notices

Any notice relating to this Agreement must be in writing and will be considered given within three (3) days after it is deposited, postage prepaid, with a registered mail service and addressed to the other party at the address given in this Agreement; or, if delivered by hand, when so delivered. Notices to Customer may be delivered by email to any email address used by an employee of Customer in communicating with HPS, and will be deemed given when sent to such email address. Notices to HPS shall be delivered to the following address: Hammond Power Solutions Inc., 595 Southgate Drive, Guelph, Ontario, Canada N1G 3W6, Attention: CFO.

28. Entire Agreement

This Agreement constitutes the entire agreement between HPS and Customer and supersedes all other communications between HPS and Customer relating to the subject matter of this Agreement. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement this Agreement shall be binding unless made in writing and signed by both parties, expressly and specifically referencing this Agreement, and no modification or objection shall be caused by HPS's receipt, acknowledgment, or acceptance of POs, shipping instruction forms, or other documentation containing different or additional terms to those set forth herein.

If any provision of this Agreement is invalid, illegal, void, or unenforceable, that provision will be deemed severed from this Agreement and will not affect the validity or enforceability of the remaining provisions of this Agreement.

Customer will not assign any of its rights or delegate any of its obligations under this Agreement without HPS's prior written consent. Any purported assignment or delegation in violation of this Section 28 is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

29. Security Interest

Customer hereby grants to HPS and HPS hereby retains a lien on and a security interest in and to all of the right, title, and interest of Customer in, to, and under the Products sold by HPS to Customer and all accessories and additions thereto, wherever located, whether now existing or hereafter acquired, as well as all spare parts and components therefor, and all proceeds of the sale or other disposition thereof, including, without limitation, cash, accounts, contract rights, instruments, and chattel paper ("Subject Assets"). If requested by HPS, Customer shall execute one or more financing statements pursuant to the Uniform Commercial Code in a form



satisfactory to HPS. In the event Customer is in default under this Agreement, HPS will have the remedies of a secured party under applicable law, including without limitation the Uniform Commercial Code, and HPS may thereupon enter the premises of Customer and remove and repossess all Subject Assets. The security interest granted under this Section constitutes a purchase money security interest under applicable law.

30. Amendments; No Waivers

No amendment or modification of any term or condition will be valid or binding upon HPS unless approved by HPS in a writing hand-signed by HPS. Unless HPS expressly indicates otherwise in such hand-signed writing, such modification is effective only in that instance and only for the purpose for which it is made and is not to be construed as a modification on any future occasion or of any future PO or agreement. Clerical and stenographic errors are subject to correction by HPS. The failure or delay by HPS to exercise or enforce any right or provision of this Agreement will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of HPS.

31. No Third-Party Beneficiaries

This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than Customer.

32. Independent Contractors

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement may be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.

33. Interpretation

Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of this Agreement, or any document drafted or delivered in connection with the transactions contemplated by this Agreement. The English language used in this Agreement shall be deemed to be the language chosen by the parties to govern this Agreement and shall control in all respects, and any matters involving the interpretation of this Agreement shall be completed using the English language.