

MARWAY POWER SOLUTIONS – TERMS & CONDITIONS

1. ACCEPTANCE ENTIRE AGREEMENT-MODIFICATION

Acceptance of this order shall be limited to the terms and conditions contained herein and incorporated herein by reference. This order shall be deemed accepted upon the return of the acknowledgement copy of this order or the commencement of performance by Seller. Buyer rejects any additional or inconsistent terms and conditions offered by Seller at any time and irrespective of Buyers acceptance of or payment of Sellers items or services. These terms and conditions constitute the entire agreement between the parties and no change to or modification of this order shall be binding upon Buyer unless signed by an authorized representative at Buyers procurement or purchasing office at Buyers place of business issuing this order.

2. PRICES, TAXES AND NEW MATERIAL

Seller warrants that each price for item sold to Buyer under this order is no less favorable than that extended during the term of this order to any other customer for the same or like items in equal or less quantities on similar terms and conditions. Unless otherwise provided on the face of this order, the prices appearing herein include all packaging, crating and federal, state and local taxes. Seller further warrants that none of the items furnished under this order are Government or commercial surplus, used remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof, unless otherwise specifically stated on the face of this order.

3. MATERIAL, EQUIPMENT, TOOLS AND FACILITIES

Unless otherwise stated in this order, Seller shall supply all material, equipment, tools, and facilities required to perform this order. Title to all property furnished to Seller by Buyer or specifically paid for by Buyer, or the cost of which is fully or substantially amortized in the price of the items purchased hereunder and any replacements thereof, or any materials affixed or attached thereto (all herein after collectively referred to as "articles") shall be and remain in Buyer, with the right of possession in Buyer, and Seller will use said articles only in the performance of work for Buyer. All articles while in Seller's custody or control and while in custody or control of Seller's suppliers will be held at Sellers risk, will be kept insured by Seller at Seller's expense against loss and damage in an amount equal to the cost of replacement and will be subject to removal at Buyers written request, in which event Seller at its expense, will prepare the articles for shipment and will deliver them to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller will promptly notify Buyer of the location of Articles located in any place other than Seller's plant. Seller will maintain accountability and property control records of articles in accordance with sound industrial practice. Seller, at its expense, will maintain all articles in good condition and repair or replace them to the extent necessary for performance of this order. Buyer does not warrant the accuracy of Articles that it furnishes and all items must be in strict accordance with the requirements of this order. Upon completion or termination of this order, Seller will retain all articles at its expense until disposition directions are received from Buyer. Seller will pay personal property taxes on articles in its possession.

4. DRAWINGS AND DATA

All drawings, data, designs, engineering instructions, models, specifications, or other technical information, written, oral or otherwise, supplied by or in behalf of Buyer or prepared by Seller specifically in connection with performance of this order (hereinafter designated "information") shall be and remain the property the Buyer. Seller shall not use or disclose such information except in the performance of orders for Buyer and upon Buyer's request; such information and all copies thereof shall be returned to Buyer. Where such information is furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of Buyer's orders, Seller shall insert the substances of this provision in its orders.

5. CHANGES

Buyer may at any time, by written order, without notice to its sureties if any, make changes in any one or more of the following: (i) drawings, designs or specification, where the items furnished are to be specially manufacture by the Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; and (iv) the amount of any Buyer's furnished property. If any such change causes an increase or decrease in the cost of or time required for performance of this order, an equitable adjustment shall be made in the price or delivery schedule or both. No claim by Seller for adjustment hereunder shall be allowed unless made in writing in and amount stated within twenty (20) days from the date of the notice of any such change is received by Seller. Where the cost of property rendered obsolete or excess, as the result of a change is included in Seller's claim for adjustment. Buyer will have the right to take title thereto and prescribe the manner of disposition thereof. Nothing in this clause shall excuse Seller from proceeding with performance of this order as charged.

6. DESIGN CHANGES

During performance of this order, Seller shall not make any changes in the design of items to be furnished by Seller under this order without advance notification to and approval of the Buyer.

7. STOP WORK ORDERS

Buyer may at any time by written order stop all or any part of the work under this order for a period of 90 (ninety) days. At any time during such period Buyer may, with respect to all or any part of the work covered by the stop work order, either cancel the stop work order or terminate the work in accordance with subparagraph A or B of the "Termination" clause of this order. To the extent the stop work order is cancelled or expires, Seller shall resume work. If a stop work order has a material effect on cost or delivery, an adjustment shall be made in the price (excluding profit) or the delivery schedule, or both; provided however, that no adjustment in price or delivery shall be made under the provision (i) if the work would have been otherwise interrupted or delayed or, (ii) for which an adjustment is available or excluded under any other provision of this work order. No claim for adjustment shall be allowed unless submitted to Buyer in writing in an amount stated within twenty (20) days after the work is terminated or the stop work order expires or is cancelled, whichever occurs first.

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8. DELIVERIES AND SHIPMENTS

Time is of the essence in making deliveries under this order, if delivery is to be in accordance with Buyer's written releases, Seller shall not procure, fabricate, assemble or ship any item except to the extent authorized by Buyer in such written releases. Seller will at its expense ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered. Unless otherwise specified on the face of this order no variation in the quantity of any items is authorized and the Buyer may reject a delivery that varies in the quantity authorized for shipment. The efficient use by Buyer of any item called for under this order requires that data, if any, be delivered no later than the time specified in this order. If such date is not so delivered, Buyer may at its election, so long as such data remains undelivered, withhold payment to the Seller for any item theretofore or thereafter delivered. The term "data" will include, without limitation, drawings, reproductions, specifications, photographs, reproducible copy, parts lists, plans, reports, computations and certifications. All items are to be suitably prepared for shipment and must be packed and shipped in accordance with the governing classifications and tariffs applicable thereto. Items shipped in advance of Buyer's delivery schedule may be returned at Seller's expense. Seller shall give notice of shipment to Buyer at the time of delivery of any shipment of items to a carrier for transportation to a destination other than Buyer's place of business issuing this order.

9. PACKING AND METHOD OF SHIPMENT

Packaging shall be in accordance with regulations of common carriers, and transportation shall be on the lowest cost basis unless Buyer authorizes other packaging or method of transportation in writing.

10. CANCELLATION

Buyer may cancel all or any part of the undelivered portions of this order if Seller does not make deliveries as specified in the schedules, or if Seller breaches any of the terms hereof.

11. INSPECTION AND QUALITY CONTROL

Notwithstanding (i) payment, (ii) passage of title, or (iii) prior inspection or test, all items are subject to final inspection and acceptance or rejection at the destination stated herein. Materials that are either defective or not in accordance with Buyer's specifications will be held to Seller's instruction and at Seller's risk; and if Seller so directs, shall be returned at Seller's expense. Payment for materials on this order prior to inspection shall not constitute an acceptance thereof. At all reasonable times during the period of Seller's performance hereunder, including the period of manufacture, Buyer and its customers may inspect and /or test the items to be furnished hereunder at the plants where the work is being performed, including those of the Seller's suppliers, and Seller shall provide without additional charge, reasonable facilities and assistance for safe and convenient inspection and test, All such inspections and test shall be conducted in such a manner as not to unduly delay the work. Seller shall provide and maintain quality control and inspections systems acceptable to Buyer, and will provide inspection data and reliability data with items at time of delivery. Supplier will allow Buyer periodic inspection/accounts at its production facilities upon Buyer's request.

12. WARRANTY

Seller warrants to Buyer, its successors and customers that all component parts and completed items furnished (including all replacement or corrected components which Seller furnishes pursuant to this warranty) will be free from defects in material and workmanship, will conform to applicable drawings, specifications, samples, and other descriptions furnished as specified by Buyer, and to the extent such items are not of a detailed design furnished by Buyer, will be merchantable, suitable for the intended purpose and free from all other defects including defects in design. This warranty shall extend for the change interval, for such completed items or components incorporated therein, recommended by Marway Power Solutions on which the completed product is or may be installed from the date said product is installed and put into actual use at customer location by the 1st end user. The Seller agrees to replace or correct any component part or completed items after a breach of the foregoing warranty. The running of the warranty period for any defective completed item or component part shall be suspended from the date Seller receives notice of a breach of warranty until the completed item, or component part is replaced or corrected, warranty period resets to zero and not continuation of prior item. Buyer's approval of Seller's samples or first articles shall not be construed as a waiver by the Buyer of any requirement of the drawings, specifications and/or other referenced descriptions applicable hereto or of any express or implied warranty.

13. DEFECTIVE OR NONCONFORMING ITEMS/BREACH OF WARRANTY

In the event of Seller's delivery of defective or nonconforming items, or Seller's breach of warranty, Buyer may, at its election and in addition to any other rights or remedies it may have at law or equity under this order, recover from Seller any costs of removing such items from property, equipment or products in which such items have been incorporated, and any additional costs of reinstallation, re-inspection and retesting and (a) return the items at Seller's risk and expense and recover from Seller the price paid therefore and, if elected by Buyer, purchase or manufacture similar items and recover from Seller the cost and expense and recover from Seller the price paid therefore and, if elected by Buyer, purchase or manufacture similar items and recover from Seller the cost and expenses thereof, (b) accept or retain the items and equitably reduce their price, or (c) require Seller, at Seller's expense, to promptly replace or correct the items and pending redeliver, to repay to Buyer any amount theretofore paid for such items. If Seller fails to promptly replace or correct such items as directed by Buyer, Buyer may repair them or have them repaired at Seller's expense or purchase or manufacture similar items and recover from Seller the costs and expenses thereof. Seller must provide the service and support of removing such items from property, equipment, or products in which such items have been incorporated.

14. TERMINATION

A. Buyer may terminate this order in whole or in part at any time by writing or facsimile notice stating the extent and effective date of such termination. Upon receipt thereof, Seller will to the extent directed by Buyer (i) drop work under this order and place no further orders hereunder, (ii) terminate work under outstanding order which relate to work termination by such notice, and (iii) protect property in Seller's possession in which Buyer has or may acquire an interest. Seller will submit to Buyer in written claim, if any, as soon as possible, but in any event no later than thirty (30) days (unless Buyer agrees otherwise) from the effective date of termination. Seller hereby gives Buyer the right to audit and inspect its books, records, and other documents relating to its

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termination claim. If the parties cannot agree within a reasonable time upon amount of fair compensation for such termination, Buyer's liability to Seller will be limited to making prompt payment of the following amounts only, without duplication, (i) the contract price, not previously paid for items delivered or performed and accepted by Buyer, or completed in accordance with the provisions of this order prior to effective date of termination and accepted by Buyer, or completed in accordance with the provision of this order prior to the effective date of termination and (ii) the actual costs incurred by Seller and properly allocable or apportionable under recognized commercial practices to the terminated portion of this order. Seller may, with Buyer's consent, retain at an agreed price or sell at an approved price any completed item or items, work in process or other physical inventory, the cost of which is allocable to this order under the preceding sentence, and will credit or pay amounts so agreed or received as Buyer directs with appropriate adjustment for delivery cost savings. Seller will, if directed by Buyer, transfer title to and make delivery of such items, work in process or other physical inventory not so retained or sold.

- B. Buyer reserves the right to terminate this order in whole or in part for default (i) if Seller fails to perform in accordance with any of the requirements of this order or to make progress so as to endanger performance hereunder or (ii) if Seller becomes insolvent or suspends any of its operations, or if petition is filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization receivership or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for completed items delivered and accepted by Buyer, payment for which can be set off against any damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all properly produced or procured by Seller for performance of the work terminated and Seller shall be credit with the reasonable value thereof not to exceed Seller's cost. Seller will be liable for damages caused by or resulting from its default inducing but not limited to excess costs of re-procurement. If after a default termination, it is determined that Seller was not in default, the termination shall be considered to have been made after subparagraph A of this clause.
- C. To the extent this order is not terminated after subparagraphs A or B above Seller shall continue performance.

15. DELAYS

Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence: provided that any delay or failure to perform caused by the default of a supplier of the Seller at any lower tier is beyond the control of both Seller and such supplier and without the fault or negligence of either and the items to be furnished are not obtainable from other sources in sufficient time to permit Seller to meet delivery schedule, and provided further, that Seller furnished prompt written notice to Buyer of the occurrence of such cause which will or may delay Seller's performance. Late penalty equates to 1% per day of total purchase order with value not to exceed 10%.

16. NOTICE OF LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Seller agrees to insert the substance at this clause, including this sentence, in any purchase order or subcontract hereunder.

17. PATENTS, ROYALTIES AND ENCUMBRANCES

All goods and services supplied must be free from liability of royalties, patent rights, mechanics liens or other encumbrances and Seller hereby waives any right it may have now or in the future to any mechanics lien or other encumbrances with respect to the goods and services supplied hereunder. Seller warrants that the goods specified in the purchase order and that their sale and use alone or in combination according to Seller's specification or recommendations if any will not infringe any United States or foreign patent. The Seller shall defend any suit or proceedings brought against Buyer insofar as such suit or proceeding is based upon a claim that any apparatus, or part thereof, made to Seller's design and furnished hereunder, constitutes an infringement of any United States or foreign patent if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same Seller agrees to indemnify and hold harmless Purchaser and anyone selling or using Purchaser's products against all judgements, decrees, costs and expenses, including attorney's fees resulting from any alleged infringement as aforesaid. In case said apparatus or any part thereof is held to constitute infringement and the use of said apparatus or part enjoined, the Seller shall at its own expense, either procure from the purchaser the right to continue using said apparatus or modify if said becomes non-infringing or removes same apparatus and refund the purchase price thereof.

18. INDEMNIFICATION AND INSURANCE

Seller will indemnify and save harmless Buyer, its employees, agents and invitees from and against all liability, demands, claims, loss, cost, damage and expense by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, or in connection with the performance of this order which is occasioned by the actions or omissions of Seller or its suppliers, Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workman's compensation, general liability, public liability, property damage liability, completed operations liability and contractual liability in amounts set forth in the purchase order, with carriers approved by Buyer, and if no amounts are set forth, then amounts acceptable to and approved by Buyer, but in no event shall such amounts be less than minimum statutory requirements, if any. Seller will, if requested furnish certificates of insurance indicating the foregoing coverage.

19. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state and local laws, executive orders, rules and regulations during performance of this order, including but not limited to the: Occupational Safety and Health Act of 1970, as amended (OSHA); Toxic Substances Control Act as amended ("TSCA"); Fair Labor Standards Act of 1938, as amended ("FLSA") and the National Traffic and Motor Vehicle Safety Act of 1966 as amended ("NTMVSA"). The Seller warrants that (i) all items sold or furnished under this order will conform to and comply with OSHA standards and regulations and all applicable Federal Motor Vehicle Safety Standards issued under the NTMVSA and (ii) such items have been manufactured or furnished in accordance with the FLSA and regulations issued hereunder. Seller further warrants that

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all chemical substances delivered under this order will conform to and comply with the TSCA and regulations issued hereunder. Seller agrees to include on all invoices "We hereby certify that these goods were produced in compliance with all applicable requirements of order, the United States Department of Labor issued under Section 14 thereof (29 U.S.C. 206, 207, 212 and 214)". Seller agrees to indemnify and hold Buyer and its customers harmless of any, loss, damage, or expenses sustained because of Sellers non-compliance with any applicable law.

20. INTERSTATE COMMERCE

Seller acknowledges that Buyer's products are sold in Interstate Commerce and agrees that performance of this order shall be subject to all applicable Federal laws and regulations, and agrees to furnish Buyer with every invoice, and a certificate of compliance with such laws and regulations.

21. STATE APPROVAL OF EQUIPMENT

If the articles covered by this Purchase Order require approval of sale and use thereof by a State statute or regulation, Seller certifies he has or will obtain approval of its sale and/or the use from the appropriate agency of each of the States requiring same, and upon request, the Seller will submit to Buyer a Photostat of each such approval for the sale and/or use.

22. PAYMENT

- a. The Buyer of the goods called for under this Purchase Order makes all payments conditional upon acceptance.
- b. No invoice will be passed for payment unless it bears the Purchase Order number and contains the following certification: "The Seller hereby represents and certifies the goods and/or services covered hereby were produced in compliance with all applicable requirements of Fair Labor Standards Act of 1938, as amended.
- c. Invoices for tools, if tooling is expressly covered by this Purchase Order, will not be honored until the Buyer's Inspection Department approves production prices.
- d. Unless otherwise agreed to in writing, discounts allowed for cash payments may be taken by Buyer on or before the 20th day of the month succeeding the month in which invoice are rendered for good purchased under this order.

23. ASSIGNMENT

Any assignment of this order, performance of work hereunder in whole or in part, or monies due or to become due hereunder shall be void unless consented to by Buyer in writing and Buyer shall have no obligations to any assignee of Seller under any assignment not consented to in writing by Buyer.

24. RIGHTS AND REMEDIES OF BUYER

The rights and remedies of the Buyer set forth herein shall be in addition to any other rights and remedies proven in law or equity and the failure or delay by Buyer to exercise any rights or remedies under this order shall not operate as a general waiver thereof.

25. CHOICE OF LAW

The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the law of the State wherein Buyer's business issuing this order is located.

26. DISPUTES

Except as otherwise specifically provided in this order, any dispute concerning a question of fact and/or law arising under this order which is not disposed by agreement of the parties shall be decided by a court of competent jurisdiction. Pending settlement or final decision of any such dispute, Seller shall proceed diligently with the performance of this order in accordance with the directions of the Buyer.

27. SUBCONTRACTING

Seller agrees not to subcontract for any complete or substantially complete materials, supplies and /or service called for under this order without the prior written approval of Buyer.

28. EQUAL OPPORTUNITY AFFIRMATIVE ACTION

Unless otherwise exempt under rules and regulations of the Secretary of Labor, Seller agrees to comply, during performance of this order, with the following clauses as set forth in the indicated Code of Federal Regulations reference: Equal Opportunity/41 CFR Part 60-1.4; Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era/41 C part 60-250.4; and Affirmative Action for Handicapped Workers/41 CFR Part 60-741.4.

29. RELEASE OF INFORMATION TO PUBLIC

Seller shall not, without the prior consent of Buyer, make any release of information concerning this order (other than to Seller's Employees and subcontractors required for the performance of their duties) and not use the name of the Buyer in any advertising or publicity.

30. MARWAY POWER SOLUTIONS WORKMANSHIP STANDARDS

Seller shall comply with the Marway Power Solutions Quality Document, Workmanship Standards, and Methods.