

**FORTRESS POWER LLC**  
**505 Keystone Road**  
**Southampton, PA 18966**

**Terms and Conditions for Sale of Goods or Services to Fortress Power LLC**

- 1) **ORDER AND DELIVERY.** Seller agrees to sell to Fortress Power LLC. (the “Company”) quantities of goods or services (the “Products”) designated on a Fortress Power LLC Purchasing Order hereof at the prices specified herein and to deliver the same on the delivery dates specified hereon. Time shall be of the essence of this contract and Seller undertakes to strictly respect the delivery dates specified hereon. Shipment must equal the exact amount ordered unless otherwise agreed by Company. Any losses occurring from deviation from Company’s routing instructions will be charged to Seller’s account. Seller shall forward to Company, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made.
  
- 2) **ACCEPTANCE, MODIFICATION, ETC.** By shipping the Products or by acknowledging receipt of this order, Seller expresses his assent to and acceptance of the terms and conditions set forth herein. These terms and conditions constitute an offer by the Company and this offer may only be accepted on these exact terms and conditions. No additional or conflicting terms or modifications shall be accepted. These terms and conditions supersede the terms and conditions of any other agreement or understanding between Company and Seller, and any additional or conflicting terms or modifications set forth in Seller’s acknowledgment are hereby objected to.
  
- 3) **WARRANTIES AS TO PRODUCTS.** Seller warrants all Products delivered hereunder to be free from all defects of material or workmanship, hidden or apparent, and to conform strictly to the specifications, drawings or samples specified or furnished. This warranty shall survive, even for apparent defects, any inspection, delivery, acceptance or payment by Company of or for the Products. In the event of a defect, hidden or apparent, in the workmanship or materials in the Products, Seller shall be liable for any and all expenses incurred by Company in undertaking any activities to determine if such defect exists, including expenses for recall campaigns, inquiries to dealers, distributors and users, and testing and analysis. In the event of such a defect, hidden or apparent, in the workmanship or materials in the Products, Seller will, in addition to any other warranty applicable to the Product, have the responsibility to rework or replace, at Seller’s expense, all such defective Product at any time sold to the Company, and Seller shall be liable for any and all labor and transportation costs incurred in repairing or replacing such defective Product.
  
4. **INDEMNIFICATION OF COMPANY BY SELLER.** Seller agrees to indemnify,

defend and hold harmless Company, its insurers, agents, officers, directors, employees, successors, and assigns, against and from any and all losses, claims, damages, liabilities, costs and expenses (including the aggregate amount paid in reasonable settlement of any action, suit, proceeding or claim) which Company may incur or for which Company may become liable or on account of any claim, action or proceeding brought against Company claiming money damages or any other form of relief (a) under any law, or otherwise, including but not limited to claims, actions or proceedings purporting to be based upon negligence, breach of contract, breach of warranty or strict liability in tort, insofar as such claims, actions, or proceedings arise or are alleged to arise out of any defects or alleged defects in the Product, or the nature of the material contained in the Product, or any actual or alleged commission or omission by, Seller or any of its employees or agents in connections with the Product; (b) based upon or arising out of any actual or alleged invasion, or infringement by the Product or by the Seller, its agents or employees, of any patent, trademark, copyright, right of privacy, or any other tangible or intangible personal or property right; or (c) based upon or arising out of any actual or alleged violation by the Product or Seller, its agents or its employees of any statute, ordinance, administrative order, rule or regulation; and, in case any action, suit or proceeding, which shall at any time be brought against the Company by reason of any such claim, Seller, if Company so requests, shall resist and defend such action, suit or proceeding at the sole expense of Seller by reputable counsel.

5. **INSPECTION AND REJECTION.** Final inspection of the Product shall be on Company premises unless otherwise agreed in writing. Company is deemed to have accepted the Product only after the final inspection took place. Product rejected as not conforming to the purchase order shall be returned at Seller's expense, including transportation and handling costs. Any inspection, testing or other evaluation by the Company shall in no manner destroy, qualify or affect any of Seller's express or implied warranties hereunder or otherwise.
6. **RISK OF LOSS.** Seller assumes the following risks, in addition to other risks Seller assumes by law: (a) All risks of loss or damage to the Product until physically delivered to and properly handed over to the Company; (b) In the event the Product is rejected by Company after the final inspection, all risks of loss or damage shall be deemed to have rested with Seller from the beginning.
7. **TOOLING.** Unless otherwise agreed to in writing by the parties hereto, all tools, dies, molds and similar items (hereinafter referred to as "Tooling") required in the manufacture of the Product shall be furnished by and maintained by Seller at Seller's expense. In the event that any Tooling shall be furnished by, or at the expense of Company; such Tooling shall be and remain the property of Company and shall be returned to Company upon its request and at its expense; provided, however, that Seller shall be liable for any loss or damage to, or destruction, of, the Tooling, while in Seller's custody or possession, except where attributable to normal wear and tear; provided, further, that Seller shall at all times indemnify and hold harmless Company, its insurers, agents, officers, directors, employees,

successors, and assigns against and from any and all losses, claims, damages, liabilities, costs and expenses and the aggregate amount paid in reasonable settlement of any action, suit, proceeding or claim which Company may incur or for which Company may become liable or in an account of any claim, action or proceeding brought against Company claiming money damages or any other form of relief under any law or otherwise, including but not limited to claims, actions or proceeding purporting to be based upon negligence, breach of contract, breach of warranty or strict liability tort, insofar as such claims, actions or proceedings arise or are alleged to arise out of the actual or alleged use or handling of the Tooling while the Tooling is in Seller's custody or possession.

- 8. PRICE AND TAXES.** The prices stated hereon shall constitute the entire consideration to Seller for the Product, its boxing, crating and other packaging, and for all warranties and otherwise, unless otherwise specified hereon, and no other charges shall be made therefore. The prices stated hereon shall be deemed to include all federal, state, and local taxes in effect on the date of this order from which Seller cannot obtain exemption, and the amount of any such taxes shall be shown separately on Seller's invoice. In the case of new taxes or increased rates or the repeal of taxes or the reduction of rates, the contract price shall be adjusted accordingly. Seller's price shall not be higher than last quoted or charged to Company unless otherwise agreed in writing. Seller warrants that the prices stated hereon do not exceed Seller's lowest lawful price to any other customer of the same class in effect on the delivery date for like items and quantities.
- 9. ADDITIONAL QUANTITIES.** All the terms and conditions hereon shall apply in all respects to additional quantities or services ordered by Company except to the extent covered by a new contract.
- 10. CHANGES.** Company shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, designations, specifications, designs and delivery schedules. Seller shall immediately notify Company of any increase or decreases in costs caused by such changes and equitable adjustment in prices or other terms shall be agreed upon in writing by Company and Seller.
- 11. COMPLIANCE WITH LAW.** Seller represents, warrants and agrees that all work performed and Products delivered pursuant to this instrument will be performed, manufactured, produced, sold, invoiced, packaged, labeled, shipped and, if required, registered, in accordance with, and in all respects will conform to, all applicable federal (including the Fair Labor Standards Act of 1938 as amended), state and local laws. With respect to each shipment or other delivery of the Product hereafter made by Seller to Company, Seller agrees, as of the date of such shipment or delivery, that such Product is, on such date, not a misbranded hazardous substance or banned hazardous substance within the meaning of the Federal Hazardous Substance Act as amended.

- 12. BANKRUPTCY.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, the Company shall be entitled to cancel any unfilled part of this purchase order without any liability whatsoever.
- 13. TITLE TO DRAWINGS AND SPECIFICATIONS.** Company shall at all times have title to all drawings and specifications furnished by Company to Seller and intended for use in connection with this purchase order. Such drawings are confidential and contain proprietary information. Seller shall use such drawings and specifications only in connection with this purchase order, and shall not disclose such drawings and specifications to any person, firm or corporation other than Company's or Seller's employees, subcontractors or government inspectors. Seller shall, upon Company's request, promptly return all drawings and specifications to Company. (see non-disclosure agreement)
- 14. QUALITY CONTROL.** Seller shall maintain an adequate and consistent quality control program so as to assure that the Supplier shall meet specifications as to appearance, performance and reliability. Seller shall furnish to the Company written results of quality control testing on every Product purchased and shipped.
- 15. MANUFACTURING, LABELING OF PRODUCTS.** Seller shall label all Products and packaging as Fortress Power or agreed between Company and Seller. Seller must ensure that labeling of Products is legible during transportation and storage. The systematics for traceability have to be presented to and agreed by Company during contract review.
- 16. SET OFF.** Company may set off an amount payable at any time with respect to the Product against all present and future indebtedness of Seller to Company arising from this or any other transaction (whether or not related hereto).
- 17. CANCELLATION WITH CAUSE.** Company reserves the right to cancel, without any Liability, any or all contracts or orders covering the Products if Seller fails to ship the Products in the manner or within the time specified herein or therein, or if it shall be alleged by third parties that the Products manufactured, produced, sold, invoiced, packaged, labeled or shipped was in violation of any statute, ordinance, administrative order, rule or regulation, or violates any of Seller's warranties, whether express or implied, or if Seller is in violation of any material provision of this instrument. Any such cancellation shall be without prejudice to any other right or remedy which Company may have by reason of such default.
- 18. CANCELLATION FOR ANY REASON.** In the event of cancellation by the Company of the contract or orders covering the Products for any reasons other than as specified in Paragraphs 12 and 17 hereof. Company's liability, if any, shall be limited to, to the extent unpaid,

(a) the price specified herein for the Products which has been accepted upon the date of cancellation by Company and conforms to this instrument, and  
(b) actual costs (exclusive of profit) reasonably incurred by Seller in producing Products not covered by sub-paragraph (a) above, but in no event shall Company's liability under this paragraph 17 exceed the aggregate price specified in this instrument for the Product.

**19. General Liability** Seller agrees to maintain in effect insurance coverage with reputable insurance companies covering worker's compensation and employer liability (or other reasonable equivalent, such as excess employer's indemnity insurance or excess worker's compensation) excess insurance, auto liability, commercial general liability, including product liability/completed operations, all with such limits as are sufficient to protect Seller and Customer from the liabilities insured against by such coverage. Seller shall assure and provide in writing that Customer is an additional insured under Seller's insurance for incidents occurring during or arising in any way from Seller's performance of this Order. Seller's insurance described herein shall be primary and not contributory with Buyer's insurance with respect to obligations resulting from the negligence of Seller. Seller's policy shall be required to contain a standard waiver of subrogation clause. Seller shall be required to maintain, at its cost and expense, insurance with the following minimum requirements and shall provide Customer with a Certificate of Insurance evidencing such coverage:

Each Occurrence \$1,000,000  
General Aggregate \$2,000,000  
Products/Completed Operations \$1,000,000  
And/or Professional Liability \$1,000,000 (if applicable)  
Automobile Liability  
Combined Single Limit \$1,000,000  
Workers Compensation Statutory  
Employers' Liability  
Each Accident \$100,000  
Policy Limit \$500,000  
Each Employee \$100,000

Company is to be listed as an Additional Insured on General Liability and Auto policies.

Each such Certificate shall provide a 30-day notice of cancellation to Company. Company reserves the right to modify these requirements as deemed necessary for the risk presented to Company.

The certificate holder address should read as follows:

Fortress Power LLC  
505 Keystone Road  
Southampton, PA 18966



- 20. COMPLETE AGREEMENT.** This instrument upon acceptance supersedes all previous agreements, if any, between the parties, and constitutes the sole and entire contract between them with respect to the Products, and no change, amendment or modification of the terms and conditions set forth herein shall be effective unless made in writing and signed by both parties.
- 21. SEVERABILITY.** If any provision of this instrument and any agreement resulting here from is unenforceable or invalid, the instrument or agreement shall be ineffective only to the extent of such provision and the unenforceability or invalidity of the remaining provisions shall not be affected thereby.
- 22. ASSIGNMENT.** This instrument and any agreement resulting here from may not be assigned by Seller, in whole or in part, except, by operations of law or otherwise, with the written consent of the Company.
- 23. GENERAL.** Paragraph headings are for convenience only and shall not be considered in construing or interpreting this instrument. Seller shall not delegate any duties nor assign any rights or claims under this purchase order, or breach thereof, without written prior consent of the Company, and any such attempted delegation or assignment shall be void.
- 24. APPLICABLE LAW.** This order and any agreement resulting here from shall be interpreted, and the rights and liabilities of the parties here determined in accordance with the laws of the State of Pennsylvania. As part of the consideration for the execution hereof by Seller, it is hereby agreed that all actions and proceedings arising directly or indirectly here from shall be litigated only in the courts of the State of Pennsylvania or United States courts located therein, and all parties hereto consent to the jurisdiction of any local, state or federal court located within the State of Pennsylvania, and waive the personal service of any and all processes upon any party herein, and consent that all such services of process may be made by certified or registered mail, return receipt requested directed to the party at the address herein stated; and service so made shall be three (3) days after the same shall have been posted as aforesaid.
- 25. ACKNOWLEDGMENT.** Where this document acknowledges an order from Company for the Products specified on the Fortress Power LLC Purchasing Order, this acknowledgment contains the final, complete and exclusive agreement between Company and Seller. Company's acceptance of the Seller's offer is expressly conditional on assent to all of the terms and conditions set forth herein by Seller's authorized representative in writing.
- 26. GOVERNMENT CONTRACTS.** Contracts or orders for Products which is to be, incorporated in supplies or services furnished to or property used by the Government of the United States of America shall incorporate by this reference the following provisions:

- a. The Equal Opportunity clause contained in Executive Order 11246 dated September 24, 1965, any Executive Order amending such Order, and any other Executive Order superseding such Order.
- b. The Affirmative Action for Handicapped Workers clause contained in § 60-741.4 of Title 41 of the Code of Federal Regulations.
- c. The Affirmative Action for Disabled Veterans of the Vietnam Era clause contained in § 60-250.4 of Title 41 of the Code of Federal Regulations.
- d. The Utilization of Minority Business Enterprises clause contained in § 1-1.1310-2(a) of Title 41 of the Code of Federal Regulations.
- e. The Utilization of Small Business Concerns clause contained in § 52.219-8 of Title 41 of the Code of Federal Regulations.

**27. WELDING.** Any required welding shall conform to the American National Standard Structural Code – Steel ANSI/AWS-DI. 1-1980.

**28. MATERIAL SAFETY DATA SHEETS.** Must be furnished by the Seller where appropriate and as required by law.

**29. SAMENESS REQUIREMENT.** Parts, components and materials supplied to Company shall be uniform. That is, there shall be no change in design which would affect the form, fit, finish, functionality or serviceable parts of the item being supplied. A design change is any change in materials or material characteristics to original approved initial samples, as well as any dimensional changes. The Seller shall notify Company in writing of all such changes at least 30 working days prior to implementation, unless otherwise specified by the company.