

# 49<sup>th</sup> STATE POWER, LLC GENERAL TERMS AND CONDITIONS OF SALE

January 1, 2024

## 1. Integration

The General Terms and Conditions of Sale contained herein shall be deemed a material part of any sale or proposed sale of 49<sup>th</sup> State Power, LLC (49<sup>th</sup> State) (“Seller”) to \_\_\_\_\_ (“Purchaser”) and, unless and only to the extent specifically excluded therein, shall be a material part of any subsequent letter of authorization, contract, purchase order, acceptance agreement, sale or other agreement (“Contract”) between Seller and Purchaser, with respect to all products, equipment, services and/or parts relating thereto (hereinafter referred to as the “Product”).

## 2. Compliance

To Seller’s knowledge, Seller has complied with all applicable laws and regulations including, but not limited to, the Fair Labor Standards Act, the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, as respectively amended, Executive Orders 11246, 11375 and 11141 (Title 41, Chapter 60, Code of Federal Regulations), the Vietnam Era Veterans Readjustment Act of 1974, and all amendments thereto and regulations, rules and orders there under, as amended or superseded and all of the foregoing are made a part hereof by reference and incorporated herein as though fully set forth herein. Purchaser understands and agrees that the foregoing sentence is for Purchaser’s information stating that which Seller strives to achieve and is not made as a covenant, warranty or representation and is not meant to create or permit, nor shall it be construed as creating or permitting any enforceable rights hereunder for Purchaser or any other person or entity. All standards promulgated with respect to noise or air control are specifically excluded hereunder.

## 3. Title, Risk of Loss, Security Interest

Title and risk of loss or damage to the Product shall pass to Purchaser under tender of delivery Ex-Works Anchorage unless expressly stipulated otherwise, regardless of when partial or final payment is to be made by Purchaser. Notwithstanding the foregoing, a purchase money security interest in the Product or any replacement thereof shall remain in Seller, regardless of mode of attachment to realty or other property, until full payment has been made therefore and collected by Seller.

## 4. Inspection, Rejection, Remedy

Purchaser shall have the right to reasonable inspection of the Product after delivery to destination, which inspection shall be completed within ten (10) days of the date of delivery to such destination. Any rejection by Purchaser as to part or all of the Product shall be in writing, specifically stating the non-conformities thereof. In such event, Seller shall have a reasonable period of time to determine the validity of and, if necessary, to correct the non-conformities forming the basis of the Purchaser’s rejection or, at Seller’s option and if appropriate, to replace part or all of the Product. Purchaser’s failure to make rejection as herein stated, or to allow Seller to cure Purchaser’s objections, shall be deemed to conclusively establish acceptance by Purchaser of the Product.

## 5. Time, Forced Majeure

Seller may, from time to time, quote delivery dates to Purchaser. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of “time is of the essence.” Seller shall not be liable for loss, damage, detention, or delay due to war, riots, civil insurrection or acts of the common enemy, fire, flood, severe weather conditions at Seller’s premises or outside fabrication sites, strikes or other labor difficulties, acts of civil or military authority including governmental law, orders, priorities or regulations, acts of Purchaser, embargo, car shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities from usual sources, faulty forgings or castings, or other causes beyond the reasonable control of Seller. In the event of delay in performance due to any such cause, the date of delivery or time for completion shall be adjusted to reflect the actual length of time necessary to properly reflect the delay without change to the purchase price. In the event of such delay or default in delivery, Seller shall complete work in progress and/or make delivery as soon as reasonably practicable. Upon completion and delivery of the Product to Purchaser, after such delay in delivery, the obligation of Purchaser for payment shall be completely reinstated.

## 6. Taxes

Prices quoted by Seller do not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon this transaction, the Product, its sale, its value, its use or any services performed in connection therewith. Such taxes shall be paid by Purchaser or, if paid by Seller, shall be itemized separately to Purchaser, who shall make prompt payment therefore to Seller.

## 7. Limited Warranty

Subject to the exclusions contained herein, Seller warrants that the Product shall be free of defects in material and workmanship for a period of twelve (12) months from the date the Product is placed in operation or eighteen (18) months from the date the Product is complete and ready for shipment, whichever shall first occur, and provided Purchaser shall, within such period, notify Seller in writing of such defect(s) and fully cooperate with Seller in pursuing the remedying thereof. Should any failure to conform to this warranty be reported to Seller within said period, Seller shall, upon Purchaser promptly notifying Seller in writing thereof, correct such nonconformity by suitable repair to the Product or, at Seller’s option, furnish replacement parts C.I.P. Seller’s point of shipment, provided Purchaser has restored the Product to the “as shipped” condition prior to installation and has installed, maintained and operated the Product in accordance with standard industry practices and has complied with the specific recommendations of Seller respecting the Product. Accessories or other parts of the Product furnished by Seller, but manufactured by others, shall carry whatever warranty, if any, the manufacturers thereof have given to Seller and which can be passed on to Purchaser. Purchaser agrees to look solely to Seller and other such manufacturers or suppliers of such accessories or parts for any warranty, repair or product liability claims arising out of the performance, condition or use of such accessories or parts. Seller agrees to cooperate in furnishing assignments of its rights thereto to

Purchaser from such manufacturers and suppliers. Seller shall not be liable for any repairs, replacements or adjustments to the Product or any costs of labor performed by Purchaser without Seller's prior written approval. Seller's warranty shall expire in the event the Product is misused, neglected or operated other than for its intended purpose. Except as stated herein, Seller makes no performance warranty of any kind respecting the Product. The effects of corrosion, erosion and normal wear and tear are specifically excluded from Seller's warranty. In the event performance warranties are expressly included, in writing, Seller's obligation shall be to correct non-conformities in the manner and for the period of time provided herein above. Correction by Seller of non-conformities, whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Seller for such non-conformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out the Product. Seller shall in no event be liable for consequential damages.

**8. Warranty Disclaimer**

SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF GOOD TITLE TO THE PRODUCT, AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

**9. Remedies Exclusive**

The remedies of Purchaser set forth herein are exclusive. The total liability of Seller with respect to the performance and other matters related to the manufacture, sale, delivery, installation, repair or technical direction thereof, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall in no event exceed the purchase price of the particular component of the Unit of Product upon which such liability is based, and not the aggregate of all Products covered by any agreement or document between Seller and Purchaser. Seller shall, in no event, be liable to Purchaser, any successors in interest or any beneficiary or assignee of Purchaser, for any consequential, incidental, indirect, special or punitive damages or any defect in, or failure or malfunction of, the Product or particular component of the Unit of Product, whether based upon lost goodwill, lost profits or revenue, interest, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation of Product, loss of use of power system, costs of purchase of replacement power or claims of Purchaser or customers of Purchaser for service interruption, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise. Purchaser warrants that the Product is purchased for, and will be used for, business purposes only by qualified and properly trained personnel.

**10. Set-off**

Purchaser shall not have the right to retain, back charge, or set off against any amounts which may be or become payable by it to Seller or otherwise, for amounts which Seller may allegedly or in fact owe Purchaser whether arising hereunder or otherwise.

**11. Governing Law – Venue**

The rights and obligations of Purchaser and Seller shall be construed in accordance with and governed by the laws of the State of Alaska, notwithstanding any conflict of law provisions which would have the effect of making the law of another state applicable. Seller and Purchaser agree that venue respecting any and all disputes between Purchaser and Seller with regard to the Product shall be Anchorage, Alaska.

**12. No Waiver**

No waiver by Seller of any breach of any obligation of Purchaser set forth in the General Terms and Conditions herein shall be construed as a waiver of any succeeding breach of the same or of any covenant or condition, and in no event shall this provision itself be waived.

**13. Payment**

Payment terms shall be as stated in the Contract between Seller and Purchaser. Terms of payment are net ten (10) days from date of invoice, unless otherwise agreed in writing. A monthly late fee of 1.5% of the total amount due will be charged on overdue payments.

**14. Cancellation of Contract before Shipment from Factory**

In the event the Purchaser cancels the Contract after the date of such Contract, Purchaser agrees to pay the following charge as liquidated damages in lieu of actual damages, it being understood and agreed between the parties that actual damages to Seller would be impractical or extremely difficult, time consuming and expensive to ascertain:

<u>Weeks of Quoted Manufacturing Period</u>	<u>% of Sale Price Elapsed from Date of Contract to Time of Cancellation</u>
Submittal Release for Production – 4 Weeks	15% unless otherwise noted
4 Weeks to Date of Shipment	90% unless otherwise noted
After Shipment	100% + Shipping Costs and / or Restock Fees

**15. Conflicting Provisions, Modifications**

In case of any conflict, the General Terms and Conditions contained herein shall supersede any and all specifications and/or other terms and conditions previously supplied by Purchaser in connection with or upon a letter of authorization, purchase order or any other agreement, as well as any custom, prior conduct or course of dealing. No agreement, oral representation or other understanding any way modifying or amending the General Terms and Conditions, or having the effect of enlarging the obligations of Seller hereunder, shall be binding upon the Seller unless such modification is clear, certain and in writing in the form of an amended letter.