

GENERAL PROVISIONS
COMMERCIAL SUBCONTRACTS/PURCHASE ORDERS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS
 - (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with Exhibits, Attachments, and any Task Order(s) issued hereunder, constitutes the entire agreement between the parties.
 - (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
 - (c) Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by BE POWER TECH and have no effect unless expressly accepted in writing by BE POWER TECH.

2. APPLICABLE LAWS
 - (a) This Contract shall be governed by and construed in accordance with the laws of the State from which this Contract is issued, excluding its choice of law rules. SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.
 - (b) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BE POWER TECH hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
 - (c) SELLER shall provide to BE POWER TECH with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

3. ASSIGNMENT

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by BE POWER TECH. SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if BE POWER TECH is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of BE POWER TECH against SELLER. BE POWER TECH shall have the right to make settlements and/or adjustments in price without notice to any assignee.

4. CHANGES
 - (a) The BE POWER TECH Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.
 - (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, BE POWER TECH shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
 - (c) SELLER must assert its right to an equitable adjustment under this paragraph within thirty (30) days from the date of receipt of the written change order. If the SELLER's proposal includes the cost of property made obsolete or excess by the change, BE POWER TECH shall have the right to prescribe the manner of disposition of the property.
 - (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

5. CONTRACT DIRECTION
 - (a) Only the BE POWER TECH Procurement Representative has authority to make changes in or amendments to this Contract. Changes and amendments must be in writing.
 - (b) BE POWER TECH engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

- (c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the BE POWER TECH Procurement Representative.

6. DEFAULT

- (a) BE POWER TECH, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress so as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or such longer period as BE POWER TECH may authorize in writing) to cure any such failure after receipt of notice from BE POWER TECH. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) SELLER shall be compensated only for Work actually delivered and accepted. BE POWER TECH may require SELLER to deliver to BE POWER TECH any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. BE POWER TECH and SELLER shall agree on the amount of payment for these other deliverables.
- (c) SELLER shall continue all Work not terminated.
- (d) If after termination under paragraph (a), it is determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

7. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order" or "Task Order", or other such type designation, including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (b) "BE POWER TECH" means BE POWER TECH INC, acting through its companies, or business units, as identified on the face of this Contract. If a subsidiary or affiliate of BE POWER TECH, INC. is identified on the face of this Contract, then "BE POWER TECH" means that subsidiary or affiliate.
- (c) "BE POWER TECH Procurement Representative" means a person authorized by BE POWER TECH's cognizant procurement organization to administer and/or execute this Contract.
- (d) "PO" or "Purchase Order" means this Contract.
- (e) "SELLER" means the party identified on the face of this Contract with whom BE POWER TECH is contracting.
- (f) "Task Order" means a separate order issued under this Contract.
- (g) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

8. DISPUTES

All disputes under this Contract, which are not disposed of by mutual agreement, may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by BE POWER TECH.

9. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any Acknowledgement thereof, on the basis that this Contract or Acknowledgement contains an electronic signature.

10. EXPORT CONTROL

- (a) SELLER agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- (b) SELLER agrees to notify BE POWER TECH if any deliverable under this Contract is restricted by export control laws or regulations.
- (c) SELLER shall immediately notify the BE POWER TECH Procurement Representative if SELLER is, or becomes, listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

- (d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (e) Where SELLER is a signatory under a BE POWER TECH export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the BE POWER TECH Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the SELLER's performance under this Contract.
- (f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

11. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

12. FURNISHED PROPERTY

- (a) BE POWER TECH may provide to SELLER property owned by either BE POWER TECH or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in BE POWER TECH or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify BE POWER TECH of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At BE POWER TECH's request, and/or upon completion of this Contract, the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by BE POWER TECH.

13. GRATUITIES/KICKBACKS

No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of BE POWER TECH for the purpose of obtaining or rewarding favorable treatment as a supplier.

14. INDEPENDENT CONTRACTOR RELATIONSHIP

- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to BE POWER TECH.
- (b) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

15. INFORMATION OF BE POWER TECH

Information provided by BE POWER TECH to SELLER remains the property of BE POWER TECH. SELLER agrees to comply with the terms of any Proprietary Information Agreement with BE POWER TECH and to comply with all proprietary information markings and restrictive legends applied by BE POWER TECH to anything provided hereunder to SELLER. SELLER agrees not to use any BE POWER TECH provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of BE POWER TECH.

16. INFORMATION OF SELLER

SELLER shall not provide any proprietary information to BE POWER TECH without prior execution of a proprietary information agreement by the parties.

17. INSPECTION AND ACCEPTANCE

- (a) BE POWER TECH and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SELLER of its obligations to furnish all Work in accordance with the requirements of this Contract. BE POWER TECH's final inspection and acceptance shall be at destination.

- (c) If SELLER delivers non-conforming Work, BE POWER TECH may; (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- (d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

18. INSURANCE/ENTRY ON BE POWER TECH PROPERTY

- (a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of BE POWER TECH or its customers for any reason in connection with this Contract then SELLER and its subcontractors shall procure and maintain for the performance of this Contract worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as BE POWER TECH may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall provide BE POWER TECH thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER's of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name BE POWER TECH as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of BE POWER TECH and is not contributory with any insurance, which BE POWER TECH may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other language in this Contract.
- (b) SELLER shall indemnify and hold harmless BE POWER TECH, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors.

19. INTELLECTUAL PROPERTY

Subparagraph (a) is NOT applicable for commercial off-the-shelf Work unless such Work is modified or redesigned pursuant to this Contract.

- (a) SELLER agrees that BE POWER TECH shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to BE POWER TECH, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at BE POWER TECH's request and expense, all documentation necessary to perfect title therein in BE POWER TECH. SELLER agrees that it will maintain and disclose to BE POWER TECH written records of, and otherwise provide BE POWER TECH with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of BE POWER TECH and subject to the protection provisions of the clause entitled "Information of Be Power Tech". SELLER agrees to assist BE POWER TECH, at BE POWER TECH's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.
- (b) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify, and hold harmless BE POWER TECH and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

20. NEW MATERIALS

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

21. OFFSET CREDIT/COOPERATION

This Contract has been entered into in direct support of BE POWER TECH's international offset programs. All offset benefit credits resulting from this Contract are the sole property of BE POWER TECH to be applied to the offset program of its choice. SELLER agrees to assist BE POWER TECH in securing appropriate offset credits from the respective country government authorities.

22. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BE POWER TECH Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) Unless otherwise specified, delivery shall be FOB Place of Shipment.

23. PAYMENTS, TAXES, AND DUTIES

- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) BE POWER TECH's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. BE POWER TECH shall have a right of setoff against payments due or at issue under this Contract or any other contract between the parties.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by BE POWER TECH or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify BE POWER TECH of any such overpayments found by SELLER.
- (c) Payment shall be deemed to have been made as of the date of mailing BE POWER TECH's payment or electronic funds transfer.
- (d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

24. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Face of the Purchase Order and/or Task Order, release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (ii) This CORPDOC; and (iii) Statement of Work.

25. PROHIBITED SOFTWARE

- (a) This clause only applies to Work that includes the delivery of software.
- (b) As used herein, "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL-Compatible, Free Software License."
- (c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates BE POWER TECH to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- (e) SELLER agrees to defend, indemnify, and hold harmless BE POWER TECH, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, relating to use in connection with this Contract or the delivery of Prohibited Software.

26. QUALITY CONTROL SYSTEM

- (a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and available to BE POWER TECH and its customers.

27. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of BE POWER TECH.

28. SEVERABILITY

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining paragraphs and provisions of this Contract will remain in full force and effect.

29. STOP WORK

- (a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from BE POWER TECH, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, BE POWER TECH shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

30. SURVIVABILITY

If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

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| Applicable Laws | Insurance/Entry on Be Power Tech Property |
| Electronic Contracting | Intellectual Property |
| Export Control | Prohibited Software |
| Independent Contractor Relationship | Release of Information |
| Information of Be Power Tech | Warranty |

31. TERMINATION FOR CONVENIENCE

- (a) For specially performed Work:
 - (i) BE POWER TECH may terminate part or all of this Contract for its convenience by giving written notice to SELLER.
 - (ii) Upon termination, in accordance with BE POWER TECH written direction, SELLER will immediately: (i) Cease work; (ii) Prepare and submit to BE POWER TECH an itemization of all completed and partially completed deliverables and services; (iii) Deliver to BE POWER TECH deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the relevant Statement of Work; and (iv) Deliver upon request any Work in process. In the event BE POWER TECH terminates for its convenience after performance has commenced, BE POWER TECH will compensate SELLER for the actual, allowable, and reasonable expenses incurred by SELLER for Work in process up to and including the date of termination provided SELLER uses reasonable efforts to mitigate BE POWER TECH's liability under this clause.
 - (iii) In no event shall BE POWER TECH be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (b) For other than specially performed Work: BE POWER TECH may terminate part or all of this Contract for its convenience by giving written notice to SELLER and BE POWER TECH's only obligation to SELLER shall be payment of a mutually agreed-upon restocking or service charge.
- (c) In either case, SELLER shall continue all Work not terminated.

32. TIMELY PERFORMANCE

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by BE POWER TECH, BE POWER TECH may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify BE POWER TECH, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by BE POWER TECH.

33. WAIVERS, APPROVALS, AND REMEDIES

- (a) Failure by BE POWER TECH to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of BE POWER TECH thereafter to enforce each provision.
- (b) BE POWER TECH's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.
- (c) The rights and remedies of BE POWER TECH in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

34. WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conforming Work is identified within the warranty period, SELLER, at BE POWER TECH's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of non-conforming Work, and reperformance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, BE POWER TECH may elect to return, reperform, repair, replace, or reprocur the non-conforming Work at SELLER's expense. All warranties shall run to BE POWER TECH and its customers.