KRAFT POWER CORPORATION

GENERAL TERMS AND CONDITIONS

1.0 Summary. These General Terms and Conditions are between Kraft Power Corporation (“Kraft”) and the individual, company, corporation, trust, partnership or corporation on or company incorporated or organized in the State of Texas (the “Customer” or “You” or “Your”). The purpose of these General Terms and Conditions is to set forth the general terms and conditions that shall apply to all Services performed by Kraft Power for the Customer and all goods sold by Kraft Power to the Customer. Specific terms and conditions on which such services and products will be provided may be set forth in written agreements between Kraft Power and the Customer (“Related Agreement”). The provisions of these General Terms and Conditions shall be incorporated into each of these Related Agreements and shall govern all understandings between the parties unless otherwise expressly set forth in a Related Agreement. In the event of a specific conflict, the provisions of these General Terms and Conditions shall control the provisions of the Related Agreement; the provisions of the Related Agreement shall control, except for Section 3.5, “Limited Warranty Statement”, which shall be controlled by these General Terms and Conditions, unless amended in writing and signed by authorized personnel of Kraft Power.

2.0 Payment Terms. All charges are due and payable in accordance with the credit terms set forth on the invoice. The failure of the Customer to pay its account on or before the due date upon invoice, payment terms shall take effect on the date Kraft Power is prepared to make shipment. The failure of Customer to make any payment as required within the payment terms of this Agreement shall be deemed a default, and without limiting Kraft’s remedies at law or under this Agreement, shall entitle Kraft Power to suspend or to terminate the services or products provided to Customer under Related Agreement.

2.1 Recoverable Costs & Expenses. All actual or estimated costs and expenses that are directly related to the services performed will be discussed in advance and reimbursed to Kraft Power. These may include, but not be limited to, inspection, testing, and analysis, shipping, equipment, and inspection fees, travel, per diem, mailing, insurance, labor, and all other costs and expenses incurred in collecting payments.

2.2 Finance Charges. Collection Costs and Expenses. All bills not paid within thirty days (30) of invoice due date will be assessed a late charge of 1.5% per month (18% per annum) on the unpaid balance until paid in full. In the event that Kraft Power brings any proceeding to collect amounts owed, Kraft Power shall be entitled to recover the costs and expenses (including but not limited to its filing fees, witness fees and reasonable legal fees) incurred in collecting payments.

3.0 Storage. If, for any reason beyond Kraft Power’s control, including Customer’s failure to give shipping instructions, the goods are not shipped after notification has been made to the Customer or its agent that they are ready for shipment, Kraft Power will not be liable for any damages, losses, or delays. If Kraft Power’s risk and/or expenses. If, at the customer’s request, Kraft Power stores the goods, the customer shall pay all handling, transportation, storage and insurance cost at the prevailing commercial rates.

4.0 Credit Approval. Shipments, deliveries and performance of work shall at all times be subject to the approval of Kraft Power. Kraft Power may at any time decline to make any shipment or delivery or perform any work except upon receipt of satisfactory credit approval. Credit approval is not transferable.

5.0 Cancellation. Orders are subject to cancellation or change in specifications, shipment schedules or other conditions originally agreed upon without Kraft Power’s written consent, which shall be in Kraft Power’s sole discretion and then only upon agreement to compensate Kraft Power for all losses caused by such cancellation or changes.

6.0 Return Merchandise: 

a. Emission Components are not returnable.
   - Kraft Power reserves the right to charge a restocking charge for returned merchandise that it determines in its sole discretion is reasonable.
   - Prior written authorization is required before returning merchandise. All merchandise must be returned prepaid to Krafft Power’s designated outlet, unless otherwise instructed when the authorization is granted.
   - Kraft Power reserves the right to deny authorization for return for any items in its sole discretion.
   - Kraft Power reserves the right to charge for any merchandise returned which are damaged or otherwise not saleable.
   - All claims on returned goods must be made within thirty (30) days from shipment and accompanied by receipt on which original delivery was made.

b. Where Kraft Power supplies equipment or “exchange” basis, a “core charge” is payable by the Customer if an acceptable “core” is not returned to Kraft Power, freight prepaid by the Customer, within ninety (90) days after shipment of the exchange product. Kraft Power reserves the right to determine if the “core” is “acceptable” (i.e., reasonably and economically suitable for repair and reuse).

7.0 Force Majeure. Kraft Power shall not be liable in any way for any default or delay due to contingencies beyond its control, or the control of its suppliers or subcontractors, which prevents or interferes with Kraft Power making delivery or performing services on the date specified, including but not limited to, war, or restraints affecting shipping, delivery or performance of services, strikes, labor disputes, weather conditions, martial law, acts of God, accidents, loss or damage to equipment, materials or property, acts of Governmental Authority, weapon or materials production materials as a result of war or war restrictions, rationing of fuel, strikes, lockouts, fires, floods, acts of terrorism, accidents, floods, droughts and any other contingency affecting Kraft Power, its suppliers, or subcontractors. Kraft Power shall not be liable for any failure to perform any contract or cancel a contract or extend the shipping date in the event that one or more of such contingencies prevent or delay deliveries. In the event of any such event, Kraft Power shall have the right to extend the delivery dates or to cancel the related Agreement.

8.0 Third Party Vendors. Kraft Power may from time to time refer the Customer to third party vendors for services or products which, in the opinion of Kraft Power, are necessary for Kraft Power to fulfill its obligations to the Customer. Kraft Power shall not be responsible to select and negotiate the terms and conditions of the Customer’s business with them. Kraft Power will not be liable for any costs or expenses incurred by the Customer or the third party vendor.

9.0 Taxes. In addition to all other amounts payable under this Agreement or under a Related Agreement, the Customer shall pay all United States and foreign sales, use, value added, and other taxes and duties, of whatever nature, levied, levied by, state, provincial or municipal, local, businesses, which are imposed or increased by reason of this Agreement or any of the Services or products purchased from Kraft Power. The Customer shall promptly pay to Kraft Power for any such Taxes paid by Kraft Power on behalf of the Customer or which are required to be collected and paid by Kraft Power. Kraft Power may bill the Customer separately for such Taxes.

10.0 General: 

a. Claims for shortages or deductions for erroneous charges must be made in writing within thirty days after receipt of goods or service shall be deemed waived.
   - All manufacturer’s names, numbers, symbols and descriptions are used for reference purposes only, and it is not implied that any part listed is the product of these manufacturers.
   - All clerical errors on the part of Kraft Power are subject to correction.
   - Prices are subject to change without notice.

b. All other otherwise stated by Kraft Power, any BPO point of sale.

d. Delivery dates may be quoted by Kraft Power. Such dates are estimates only and in no event shall such dates be construed as falling within the meaning of “time is of the essence”. As an example of this, if the customer orders a very complex or large piece of equipment or it is too large, it may not be possible to ship the equipment on the date promised.

11.0 No In-House Claims. During the term of any Related Agreement under which Kraft Power is providing products or services, and for a period of one (1) year thereafter, the Customer and its affiliates will not (a) employ or hire, or engage as an agent, any employee or agent of the Customer who is a former employee of Kraft Power or any of its affiliates, (b) solicit or hire, or engage as an agent, any employee or agent of the Customer who is a former employee of Kraft Power or any of its affiliates, (c) solicit or hire, or engage as an agent, any employee or agent of the Customer who is a former employee of Kraft Power or any of its affiliates, (d) hire, solicited or hire, or engage as an agent, any employee or agent of the Customer who is a former employee of Kraft Power or any of its affiliates, (e) employ, solicited or hire, or engage as an agent, any employee or agent of the Customer who is a former employee of Kraft Power or any of its affiliates. It is agreed that the amount of damages, which would be suffered because of a breach of the foregoing provisions, would be difficult to measure and that such payment amount constitutes reasonable liquidated damages for such a breach.

12.0 Governing Law and Jurisdiction. These General Terms and Conditions and each Related Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict of law provisions. The United Nations Convention on the International Sale of Goods shall not apply to these Terms and Conditions or any Related Agreement.

Pursuant to the Federal Trade Commission’s Trade Regulation Rules, Kraft Power makes no claims that its products will result in any specific savings in money or time, or will result in any specific benefits or improvements in your economy or in the productivity of your personnel. This statement is made with the understanding that it is not in any manner a representation or warranty that Kraft Power’s products will be adequate for any particular purpose or will produce the desired results. Kraft Power does not warrant that its products will result in savings in money or time, or will produce the desired results.

In addition, Kraft Power makes no claims that its products will result in any specific savings in money or time, or will result in any specific benefits or improvements in your economy or in the productivity of your personnel. This statement is made with the understanding that it is not in any manner a representation or warranty that Kraft Power’s products will be adequate for any particular purpose or will produce the desired results. Kraft Power does not warrant that its products will result in savings in money or time, or will produce the desired results.

12.0 Assignment and Transfer. Except as otherwise provided in any Related Agreement, these General Terms and Conditions and any Related Agreement may be assigned or transferred by either party and shall be binding upon and inure to the benefit of the assignee or transferee and the Customer, as well as the Customer’s and Kraft Power’s respective legal representatives, successors and assigns.

13.0 Invalid Provisions. These General Terms and Conditions and any Related Agreement shall be valid, and any invalid or unenforceable provision of this Agreement or any Related Agreement, or the application thereof to any person or circumstance, shall be held invalid to the extent necessary to bring it within the legal requirements of the remainder of these General Terms and Conditions and any Related Agreement, or the application thereof to any person or circumstance, shall be held invalid to the extent necessary to bring it within the legal requirements of the remainder of these General Terms and Conditions and any Related Agreement, or the application thereof to any person or circumstance, shall be held invalid to the extent necessary to bring it within the legal requirements of the remainder of these General Terms and Conditions and any Related Agreement, or the application thereof to any person or circumstance, shall be held invalid to the extent necessary to bring it within the legal requirements of the remainder of these General Terms and Conditions and any Related Agreement.