

Terms and Conditions for Kraft Power Corporation Purchase Orders

1. OFFER AND ACCEPTANCE

This Purchase Order is an offer to buy the goods or services herein described on the terms and conditions herein stated. Vendor's signature on or commencement of the performance of this Purchase Order shall constitute acceptance of the terms and conditions herein.

This Purchase Order and these terms and conditions cannot be modified or rescinded, and claims or rights under it cannot be waived, without the written authorization of Kraft Power Corporation ("KPC"). KPC hereby objects to any different or additional terms or conditions proposed by Vendor. Said different or additional terms will not be binding upon KPC unless accepted in writing by KPC.

2. SHIPPING

All goods shall be suitably packed, marked and shipped in accordance with the requirements of common carriers and in a manner to secure lowest transportation costs as directed by KPC. Unless otherwise specified herein, no additional charge shall be made or allowed for such packing, marking and shipping. KPC's name and Purchase Order number shall be shown on all packing slips, bills of lading and invoices. Packing slips must accompany each shipment.

3. INSPECTION AND REJECTION OF GOODS

KPC reserves the right to inspect and count all goods. KPC may reject defective or non-conforming goods and shall have no obligation for such goods, which will be held for Vendor's instructions at Vendor's cost and risk. Acknowledgement of delivery or payment for goods prior to inspection shall not be deemed to constitute an acceptance of the goods or a waiver of KPC's right to reject them.

4. PRICING AND PAYMENT

The prices specified herein are the contract prices and are firm and not subject to change except as expressly provided herein or by amendment executed by KPC.

Unless otherwise specified herein, KPC shall use reasonable efforts to pay Vendor's invoice within forty-five (45) days of receipt and said payment is due only on final completion, delivery and acceptance by KPC. If KPC requires, Vendor shall furnish waivers of liens from Vendor and from its suppliers and subcontractors as a condition of payment. KPC may withhold from payments to Vendor any amounts necessary to satisfy any claims against KPC or any liens or threatened liens arising from Vendor's performance hereunder.

5. CHANGES

KPC reserves the right to make changes in the specifications of any goods or services covered by this Purchase Order. If such changes cause an increase or decrease in the cost of or time required for performance, an equitable adjustment in the price and/or delivery schedule shall be made.

6. TITLE AND OWNERSHIP

Title to all goods shall transfer to KPC at the earlier of payment or partial payment or when the goods are delivered to KPC at KPC's location, but Vendor shall remain solely responsible for any loss or damage until the point of delivery to KPC.

7. WARRANTY

Vendor guarantees that all goods or services shall be of merchantable quality; be free from defects for a period of 12 months following delivery or such longer period if provided by the manufacturer thereof; be of acceptable standards common to the industry; and meet the requirements of governmental authorities which establish standards for such type of goods and all requirements of KPC as per any specifications included on the face of the Purchase Order.

Vendor acknowledges that it is aware of the purpose for which the goods or any materials, machinery, parts, supplies or equipment comprising part of the work are required and that KPC is relying on Vendor's judgment that such goods or any materials, machinery, parts, supplies or equipment are fit for such purpose. Nothing herein shall be construed to limit or exclude any warranties or guarantees implied by statute or by usage of the trade.

8. DESIGN RESPONSIBILITY

In the event the Purchase Order provides that Vendor has engineering, design or detailing responsibility such responsibility will be accomplished in accordance with the specification and all federal, state, local and nationally recognized codes applicable to the work. Where the Purchase Order requires that the Vendor obtain KPC's review or approval of drawings it is understood that such review or approval shall not relieve or discharge the Vendor, either expressly or by implication from any responsibility or obligation under this order.

9. CANCELLATION FOR NON-PERFORMANCE OR BREACH

Time is of the essence in all deliveries and other performance hereunder. In addition to other remedies it may have including the right to collect damages, KPC reserves the right to cancel all further performance of this Purchase Order if the Vendor does not make deliveries or other performance as specified in the Purchase Order or if the Vendor breaches any of the terms contained herein. KPC may also cancel the contract resulting from Vendor's acceptance of this Purchase Order in the event of the insolvency of Vendor, the filing of a voluntary petition to have Vendor declared bankrupt (provided it is not vacated within 30 days of its filing), or the execution by Vendor of an assignment for the benefit of creditors.

10. CANCELLATION FOR CONVENIENCE

KPC may terminate and cancel, in whole or in part, Vendor's further performance and KPC's obligations at any time by notice to Vendor confirmed in writing. In the event of termination, Vendor shall upon KPC's written request immediately transfer and deliver to KPC free of any liens and encumbrances any goods or portion thereof completed or in the process identified to the Purchase Order and consents to such action including specific performance as may be necessary to give effect to this provision.

The termination or cancellation will not affect the rights of the parties hereto, which have accrued prior to the date of termination or cancellation and shall not relieve either parties from its obligations, which may have arisen hereunder. In the case of KPC canceling prior to delivery of any goods or any part thereof, KPC shall pay Vendor for all reasonable costs incurred by Vendor in

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respect of such goods less any monies already paid to Vendor.

In respect of work and in the event that KPC exercises its rights under this clause, KPC shall decide, based on KPC's audit of Vendor's records, the percentage of work completed in accordance with the agreement and shall reimburse Vendor for the work completed.

Notwithstanding the above, KPC shall not be liable for any damages or loss of profits as a result of such cancellation or termination.

11. FORCE MAJEURE

The obligations of each party hereto in any capacity shall be suspended and it shall not be liable for damage during the time and to the extent that such party is prevented from complying with its obligations hereunder in part or in whole by strikes, lockouts, acts of God, wars, laws, orders or regulations of government bodies or agencies, unavoidable accidents, delays in transportation, inability to obtain necessary material in the open market or any other cause, except financial, whether similar or dissimilar to those specifically enumerated and set forth above, beyond the reasonable control of the party affected.

12. PATENTS

Vendor warrants that the use or sales of the goods delivered hereunder will not infringe the claims of any patent. Vendor agrees to defend at its sole expense all suits based upon any alleged patent infringement and to hold KPC harmless from any damages resulting therefrom.

Vendor acknowledges that it may create literary and/or artistic works in which copyright will exist during the course of the work and agrees that KPC is the first owner of copyright in such works. Vendor further acknowledges that it may create patentable inventions during the course of the work and agrees that KPC is the first owner of such inventions.

13. ASSIGNMENT

Vendor shall not assign this Purchase Order or its obligations or any monies due or to become due hereunder, without KPC's prior written consent, and any attempted assignment without such consent of KPC shall be void. KPC may assign this Purchase Order or any obligations hereunder to any of its affiliates, successors in interest or customers upon giving written notice to Vendor.

14. JURISDICTION AND COMPLIANCE WITH LAWS

This Purchase Order shall be governed by the laws of, and all legal actions related hereto shall be brought in, the Commonwealth of Massachusetts. Vendor warrants that it will comply with all of the provisions of all applicable federal, state and local laws and of all rules and regulations issued thereunder in the manufacture, production, sale and provision of the goods and services specified in this Purchase Order.

15. INDEMNIFICATION

To the fullest extent permitted by applicable law, Vendor agrees to defend KPC against all claims and suits, and to indemnify and save it harmless from any claims, expenses, loss, cost or damage (1) arising out of a breach by Vendor or any of the terms and conditions or warranties contained herein (2) arising out

of any act or omission of Vendor or its employees in any obligation of performance required hereunder, including entering onto the property of KPC or of another to install, service or modify materials supplied by Vendor hereunder, (3) resulting from actual or alleged infringement of a patent or trade secret, or (4) resulting from the Vendor's failure to pay any of its suppliers or subcontractors. Vendor shall appear after notice and defend at its own expense any suits or other proceedings against KPC, its successors or assigns.

16. CONFIDENTIALITY

The terms of this Purchase Order and any supporting documentation including, without limitation, specifications, engineering data, and drawings, given on behalf of KPC to Vendor to facilitate performance hereunder shall constitute "Confidential Information" and shall be deemed to be confidential to, and the exclusive property of, KPC. Vendor shall use such Confidential Information only as required to perform its obligations hereunder. Vendor shall safeguard and hold in the strictest confidence all Confidential Information and shall make no disclosure of any Confidential Information without the prior written consent of KPC.

17. OTHER DOCUMENTS INCORPORATED BY REFERENCE

All printed, stamped or written matter, documents, or drawings attached to or referred to in the Purchase Order shall be part thereof and incorporated therein.