

## 1. Terms and Conditions of Sale

1. **General.** The following terms and conditions constitute the entire and final agreement between Bias Power (hereinafter "Seller") and Buyer. Any objection to any term herein must be in writing and, to be deemed timely, received by Seller at the time of order. If Buyer makes timely objection to any term herein, Seller shall have the right to withdraw its acceptance of an order. Buyer's failure to object as specified will be deemed conclusive acceptance of all the terms and conditions herein. No performance by the Seller under any order shall be deemed to be agreement to any provisions of Buyer's order, if any.
2. **Modification.** No change in or waiver or modification of any of the provisions in this Acknowledgment will be acceptable to or binding upon Seller unless in writing and signed by a duly authorized representative at the headquarters of Seller.
3. **Merger Clause.** This Acknowledgment is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of the terms of this agreement. Acceptance of, or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. **NO AGENT, EMPLOYEE OR REPRESENTATIVE OF THE SELLER MAY, OR HAS ANY AUTHORITY TO, BIND THE SELLER BY ANY WARRANTY, REPRESENTATION OR AFFIRMATION CONCERNING THESE PRODUCTS. THE BUYER ACKNOWLEDGES THAT SUCH AFFIRMATION, WARRANTY OR REPRESENTATION HAS BEEN MADE, NONE HAS BEEN RELIED UPON AND NONE FORMS THE BASIS OF THIS BARGAIN.**
4. **Time for Bringing Action.** Any action for a breach of this agreement must be commenced within one year after the cause of action has accrued.

## 2. Payment Terms

Unless otherwise provided, payment shall be due net thirty (30) days from the date of invoice. All amounts past due shall bear a late charge equal to the lesser of 1 - 1/2% per month for a total of 18% per annum. Seller's obligation to manufacture or deliver hereunder is conditioned upon good credit of Buyer and upon Buyer's payment when due of any sum owing by Buyer to Seller under any agreement between the parties. The Seller reserves the right (in addition to all other remedies afforded by law) to restrict the terms of payment, to require payment prior to time of shipment or to cancel the order if in Seller's opinion the Buyer's financial conditions or other circumstances do not warrant shipment. Upon cancellation, Seller shall be entitled to receive reasonable cancellation charges as provided in Paragraph 6. Delay in delivery or nonconformities in any installments shall not relieve Buyer of its obligation to accept or pay for any remaining installments. In case of default in payment of any invoice when due, the whole sum owing on all outstanding invoices shall become due and payable by the Buyer at once.

## 3. Shipping Terms.

1. **Generally.** Unless otherwise stated; All orders are accepted as F.O.B. Seller's point of shipment. Buyer agrees to pay all transportation costs and will be responsible for giving Seller any special shipping instructions. Shipment dates are estimated based upon Seller's best judgment, are subject to factory schedules and production limitations, and thus are not guaranteed.
2. **Delivery in Installments.** Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.
3. **Delays.** Seller shall not be liable for delays in performance caused by act of God, fire or other casualty, accident, strike, shortage of labor or materials, governmental action or other cause beyond Seller's reasonable control; and the time for Seller's performance shall be extended by the period of any delay. In these circumstances causing delay, Seller reserves the right to apportion its production among its customers as it may determine.

## 4. Quotations/Prices.

The prices quoted in any written quotation are in U.S. dollars, F.O.B. Seller's shipping point and are based upon Buyer's order as furnished Seller and any change in such order may necessitate a price revision. Applicable federal, state, and local taxes are extra, and payable by Buyer. Quotations, to be binding must specifically identify each product and list the actual quantities involved. Any stenographic and clerical errors are subject to correction. Prices quoted are F.O.B. point of origin and are firm for sixty (60) days from the date quoted provided Buyer's order is received within such period and are subject to change without notice on any order received thereafter. Any order resulting from a quotation shall be subject to the terms herein and subject to changes in price attributable to any revisions in the products or in any related specifications requested by the Buyer and agreed to in writing by the Seller after acceptance of such order. Accepted order prices are firm except when shipment is delayed beyond contractual delivery date due to the request of Buyer. In such event, prices will be those in effect at the time of shipment. Prices quoted do not include any manufacturer's sales, use or other excise taxes or duties; and the amount of any thereof which Seller is required to pay or collect will be invoiced to Buyer.

## 5. Limited Warranty, Limitation Of Liability And Remedy.

1. **Limited Warranty and Remedy.** EXCEPT AS PROVIDED HEREIN, SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND THE WARRANTY WHICH FOLLOWS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. Seller warrants that it will repair or replace or, at Seller's option, refund the purchase price for any defective product because of defects in material, workmanship or design, which defect is discovered within one (1) year of delivery to Buyer. This limited warranty does not extend to conditions causing the defect which are within the control of Buyer such as misuse; neglect; improper installation; improper operation; inadequate maintenance, repair or alteration of the product; or unusual deterioration or damage to the product due to environment where used. Nor does said warranty cover accidental damage to the product. To have this warranty apply (1) the products shall, between the date of shipment and date for first use, be stored and maintained in "as shipped" condition, (2) the products shall be installed, used and maintained according to Seller's instructions and guidelines, if any, and (3) no modification to the products shall be made after shipment without written authorization from Seller.

2. Limitations of Use. BIAS POWER, LLC PRODUCTS ARE NOT AUTHORIZED FOR USE AS MISSION-CRITICAL COMPONENTS IN LIFE-SUPPORT, HAZARDOUS ENVIRONMENTS, NUCLEAR, AIRCRAFT, OR SIMILAR APPLICATIONS WITHOUT THE SPECIFIC PRIOR WRITTEN APPROVAL OF THE PRESIDENT OF BIAS POWER, LLC.
3. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH THIS CONTRACT OR WITH THE USE OF OR INABILITY TO USE SELLER'S PRODUCTS FURNISHED UNDER THIS CONTRACT. SELLER'S MAXIMUM LIABILITY SHALL NOT EXCEED AND BUYER'S REMEDY IS LIMITED TO EITHER (i) REPAIR OR REPLACEMENT OF THE DEFECTIVE PART OF PRODUCT, OR (ii) AT SELLER'S OPTION, RETURN OF THE PRODUCT AND REFUND OF THE PURCHASE PRICE; AND SUCH REMEDY SHALL BE BUYER'S ENTIRE AND EXCLUSIVE REMEDY.
4. Return of Product to Seller. Seller must be contacted and issue a return material authorization (RMA) Number prior to any product return, to assure receipt and proper credit. Any order returned to the Seller without an approved RMA Number will not be accepted.

#### 6. Cancellation.

The following provisions shall apply to cancellation of any order prior to the scheduled delivery date.

1. Non-Customized Products. All orders for standard or non-customized products scheduled for delivery are subject to change, reschedule of cancellation only if the Seller received written notification of such changes or cancellation not less than sixty (60) days prior to the scheduled delivery date.
2. Customized Products; Other Cancellations. Custom product orders are accepted on a non-cancellation basis, and may not be rescheduled, unless otherwise stated and agreed to, by Seller at time of order.

#### 7. Risk Of Loss.

Identification of the products sold herein occurs at such time as Seller places such products in the hands of a carrier for delivery. Upon identification, risk of loss passes to the Buyer but title shall remain with the Seller until Seller receives payment in full for said products.

#### 8. Miscellaneous Provisions.

1. Governing Law. This Acknowledgment shall be governed by the laws of the Uniform Commercial Code as they are in effect on the date of this agreement in the State of Illinois, USA.
2. Non-Waiver. Waiver by the Seller of the breach of any of the terms and conditions of this agreement shall not be construed as a waiver of any other breach.
3. Partial Invalidity. If a provision in this agreement, or portion thereof, shall for any reason be deemed invalid or unenforceable, such determination shall not affect any other provision or portion thereof.
4. Attorneys' Fees. If any litigation is brought to enforce any rights created hereby, the prevailing party shall be entitled to attorneys' fees and costs.

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