

Freedom Power Systems, Inc. Terms and Conditions of Sale

1. Terms of Sale

These standard terms and conditions ("Terms") govern all sales of products (collectively, the "Products") by Freedom Power Systems, Inc. or any of its subsidiaries, divisions, affiliates or related entities ("Freedom Power") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders, electronic orders, verbal or written quotations, or any other writings or communications from Freedom Power and/or Buyer relating to the Products (collectively, the "Purchase Orders"). Upon Freedom Power's express acceptance by its issuance of a written Sales Order Acknowledgement ("SOA") or upon commencement of performance by Freedom Power, these Terms and the Purchase Orders become a binding contract between Buyer and Freedom Power (the "Sales Agreement"). In case of any conflict between these Terms and the terms of a Purchase Order, these Terms prevail except where Freedom Power has expressly accepted the conflicting term from the Purchase Order in its SOA. Absent such express written acceptance, any such conflicting or additional terms proposed by Buyer are expressly rejected by Freedom Power. Except as otherwise set forth in these Terms, Freedom Power must specifically agree to any addition or change to the Sales Agreement in a non-electronic writing signed by a duly authorized representative of Freedom Power before becoming binding on Freedom Power.

2. Price

In addition to the price of the Products as set forth in the Sales Agreement, Buyer agrees to pay to Freedom Power sales, use, excise, or similar taxes applicable to the sale of the Products and such other costs and expenses described in these Terms.

3. Payment

Buyer must make payment to Freedom Power in the currency stated on the invoice within thirty (30) days of Buyer's receipt of the Products or the date of the invoice for the Products, whichever is sooner. Payments not received by Freedom Power when due may, at Freedom Power's sole discretion, bear interest at the lower of twelve percent (12%) per annum or the maximum rate allowed by applicable law. Freedom Power reserves the right to limit or cancel the credit of Buyer, and Freedom Power may require or demand advance payment and/or adequate assurances of performance from Buyer prior to taking any preparatory steps for performing under the Sales Agreement or beginning the manufacture of the Products. Freedom Power will not schedule Products for manufacture with payment terms of "Cash in Advance" until paid in full by Buyer. Freedom Power may impose order limits on Buyer if payment terms are "Cash on Delivery." If Buyer becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay Freedom Power's invoices as they become due, Freedom Power reserves the right to: (a) delay or cancel any Sales Agreement then outstanding and receive full reimbursement for its cancellation damages pursuant to Paragraph 12 below; (b) modify terms prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any shipment.

4. Standard Specifications

Freedom Power will manufacture all of the Products in accordance with its own Drawings and Documents and in compliance with the agreed upon product specification. The Customer will have the opportunity to review and approve the design at a Production Readiness Review. Failure to conduct such a review constitutes approval of the Design by the Customer.

5. Packaging

Freedom Power will endeavor to comply with Buyer's packaging specifications, if any, but Freedom Power reserves the right to substitute any other method of packaging that is reasonably comparable to the specifications furnished by Buyer.

6. Delivery

Freedom Power will deliver the Products EX Works Freedom Power's facility ("EXW"; as defined and governed by ICC Incoterms 2000), pursuant to applicable freight classifications. Buyer must pay all transportation costs of the Products. Freedom Power may make partial shipments at Freedom Power's sole discretion. If Buyer refuses to accept tender or delivery of any of the Products, such Products will be held by Freedom Power awaiting Buyer's instruction for twenty (20) days, after which Freedom Power may deem the Products abandoned and dispose of them as it sees fit, without crediting Buyer's account. A delivery date indicated in a SOA is not binding on Freedom Power. A delivery date indicated in a SOA by Freedom Power is estimated but is not guaranteed. Freedom Power will endeavor to meet the delivery date specified by Buyer. If Freedom Power is unable to meet that date, Buyer has no claim for damages resulting from any such delay in delivery. Buyer acknowledges that notwithstanding the foregoing, the following events may cause Freedom Power's failure to perform any of Freedom Power's obligations under the Sales Agreement (collectively, the events are "Delaying Events" and each event is a "Delaying Event"):

(a) any cause beyond Freedom Power's reasonable control, including, but not limited to, a labor dispute, industry disturbance, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, act of God; or (b) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under the Sales Agreement. Any date of delivery may be extended for a period equal to the time lost by reason of any Delaying Event. Freedom Power reserves the right to cancel without liability any Sales Agreement, the shipment of which is or may be delayed for more than thirty (30) days by reason of any Delaying Event. Freedom Power reserves the right to allocate in its sole discretion among customers or potential customers, or defer or delay the shipment of, any of the Products, which is in short supply consistent with the requirements of the Federal Defense Procurement Allocation System.

7. Title and Risk of Loss

Title to the Products and all risk of loss to the Products pass to Buyer upon the EXW delivery of the Products by Freedom Power. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Freedom Power. Any special tools, dies or fixtures which are used by Freedom Power to develop or manufacture any of the Products shall become and remain Freedom Power's property unless explicitly paid for by Customer.

8. Express Limited Warranty and Disclaimer

Freedom Power warrants that the Products are free from non-conformity to the agreed upon product specification (the "Express Limited Warranty"). This warranty is extended to the original Buyer for the period expiring one (1) years after the EXW delivery of the Products and is not transferable. UNLESS EXPRESSLY STATED IN THE SALES AGREEMENT, FREEDOM POWER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS PARAGRAPH SURVIVES THE TERMINATION OR CANCELLATION OF THE SALES AGREEMENT. Use of Buyer's part number in any documents evidencing the Sales Agreement or on the Products is for convenience only and does not constitute any representation by Freedom Power with respect to performance, specifications, or fitness of any part for any purpose.

9. Conditions of Applicability of Express Limited Warranty

The Express Limited Warranty is of no effect if: (a) the Products are not stored, handled or serviced appropriately; (b) the non-conformity of the Products resulted from damages occurring after the EXW delivery of the Products, whether by misuse, accident or improper application or maintenance; (c) the non-conformity of the Products has not been reported to Freedom Power in writing within one (1) year after the EXW delivery of the Products; or (d) the non-conformity should have been discovered by Buyer in Buyer's inspection and it is not reported in writing within thirty (30) days after the EXW delivery of the Products. If Buyer or any purchaser from Buyer shall alter or modify the Products without Freedom Power's prior written consent, and any claims are asserted against Freedom Power by reason of such alternation or modification, Buyer shall defend, indemnify, and hold Freedom Power harmless against any and all damages, liabilities, expenses and costs in connection therewith or resulting therefrom.

10. Non-Conforming Products

If the Products are in breach of the Express Limited Warranty, and the Express Limited Warranty is not rendered ineffective by Paragraph 9, Buyer must promptly notify Freedom Power in writing. If Freedom Power determines that the Products are in breach of the Express Limited Warranty, then Freedom Power will, at its sole discretion, either repair or replace the non-conforming Product at no cost to Buyer. Except as provided in this Paragraph 10, SUCH REPAIR OR REPLACEMENT IS THE ONLY REMEDY OF BUYER FOR ANY BREACH OF THE EXPRESS LIMITED WARRANTY. For service under the Express Limited Warranty, Buyer must contact Freedom Power to obtain a return material authorization ("RMA") number and shipping instructions. If Buyer returns Products to Freedom Power without an RMA number, such Products will be held by Freedom Power for twenty (20) days, after which Freedom Power may deem the Products abandoned and dispose of them as it sees fit, without crediting Buyer's account. For Products returned with a valid RMA number, Freedom Power will make every reasonable effort to repair or replace such Product within a thirty (30) day period following receipt at Freedom Power. Freedom Power reserves the right to verify any non-conformity of the Products at the module or sub-assembly level. If the non-conformance is not verified Freedom Power reserves the right to charge the Buyer the then current evaluation fee for non-warranty repairs for the product.

11. Liability Limitation

IN NO EVENT IS FREEDOM POWER RESPONSIBLE TO BUYER FOR ANY INCIDENTAL, SPECIAL,

EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT AND INDIRECT LOSSES (INCLUDING LOST PROFITS AND ANY OTHER FORM OF ECONOMIC LOSS) REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE. THE LIABILITY OF FREEDOM POWER ARISING OUT OF OR RELATING TO THE PRODUCTS SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY BUYER TO FREEDOM POWER FOR THE PRODUCTS GIVING RISE TO SUCH DAMAGES. Freedom Power will not be liable for any inaccuracies of information published by Freedom Power relating to the Products.

12. Termination / Cancellation

In the event of a breach by Buyer, Freedom Power may terminate the Sales Agreement upon giving ten (10) day's written notice of termination. If the Sales Agreement is terminated by Freedom Power because of Buyer's breach, Freedom Power is entitled to reasonable reimbursement for any labor, material or other expenses incurred in connection with the Sales Agreement, plus a reasonable amount for overhead. All cancellations and reschedules by Buyer require a minimum of: ninety (90) days prior written notice, unless otherwise agreed to in writing by Freedom Power. Freedom Power will ship all completed Products scheduled for delivery during such periods unless an exception is negotiated and agreed to in writing by both parties. In the event of any cancellation of a Sales Agreement, Buyer shall pay Freedom Power: (a) the price for any Products manufactured to firm orders; (b) the cost of any work in process; (c) the cost of materials and components ordered with authorization to meet forecast; and (d) a reasonable mark-up on the cost of work in process and the ordered materials and components. If Buyer requires Freedom Power to cancel any authorized orders for materials or components, Buyer shall be responsible for any cancellation costs or restocking charges incurred as a result. Buyer shall be liable for a bill back charge equal to the difference between the amount paid for previously delivered product and the applicable price for that quantity of the product.

13. Indemnification

To the maximum extent allowed by law, Buyer must defend and indemnify Freedom Power and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Freedom Power may incur or be obligated to pay as a result of: (a) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (b) any infringements or alleged infringement of the industrial and intellectual property rights of others arising from Non-Standard Specifications (including Buyer's trademarks and brand names) or production of configurable Products and/or custom Products ordered by Buyer; (c) Buyer's violation or alleged violation of any Federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; or (d) Buyer's breach of the Sales Agreement.

14. Use

Unless specifically otherwise agreed in writing by Freedom Power, Buyer acknowledges that Products sold by Freedom Power are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure or malfunction of the component could lead to loss of life or catastrophic property damage (each, a "High Risk Activity"). Buyer will indemnify and hold Freedom Power harmless from any loss, cost or damage resulting from Buyer's use of the Products to perform any High Risk Activity.

15. ITAR / Government Use

Certain of the Products may be categorized as Defense Articles by the U.S. Department of State and are subject to the International Traffic in Arms Regulations. If Buyer's Purchase Order is placed under a contract with the United States Government (the "Government"), Freedom Power agrees to comply with those contract provisions and regulations with which, pursuant to law, it must comply and of which Buyer has, at the time of order placement, placed Freedom Power on notice. In no event will United States Government Cost Accounting Standards apply. All rights in technical data owned or licensed by Freedom Power are hereby reserved and deemed restricted or limited. No provision of Buyer's contract with the Government will be binding on Freedom Power except as expressly set forth in this paragraph.

16. Entire Agreement

The Sales Agreement comprises the complete and final agreement between Freedom Power and Buyer, except as specifically set forth in Paragraph 1, and supersedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Freedom Power and Buyer, either written or oral. Any other representations or warranties made by any person, including employees or other agents of Freedom Power, that are inconsistent with the Sales Agreement must be disregarded by Buyer and are not binding upon Freedom

Power.

17. Successors and Assigns

The Sales Agreement binds and inures to the benefit of Buyer and Freedom Power and their respective successors and permitted assigns. The Buyer may not assign any interest in, nor delegate any obligation under the Sales Agreement, without Freedom Power's prior written consent.

18. Governing Law

The validity, construction and performance of the Sales Agreement is governed by, and must be construed in accordance with, the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sales of Goods does not apply to the Sales Agreement and all of the terms of the Sales Agreement must be construed in accordance with the Uniform Commercial Code as enacted in the Commonwealth of Massachusetts.

19. Export Controls

With respect to the resale, export or any other disposition of the Products or technical information furnished hereunder, Buyer will comply fully with all export control laws and regulations of the Government. Buyer agrees not to export or re-export either directly or indirectly, any technical data furnished hereunder or the direct product of such technical data to any country which, as set forth in the Export Administration Regulations of the United States Department of Commerce, is prohibited.

20. Dispute Resolution

Freedom Power reserves the right to invoke the jurisdiction of any competent court to remedy or prevent violation of any provision of the Sales Agreement or to otherwise protect its interest. Any dispute with Buyer in connection with the Sales Agreement may, at Freedom Power's sole discretion, be resolved through binding arbitration in the Commonwealth of Massachusetts, pursuant to the commercial arbitration rules of the American Arbitration Association ("Arbitration"). Freedom Power, may, in its sole discretion, elect to have a judicial forum for dispute resolution. Buyer's only forum for dispute resolution is Arbitration. The Arbitration proceedings must be conducted in the English language and all submissions must be made in English or with an English translation. Witnesses may provide testimony in a language other than English if simultaneous English translation is provided. The results of Arbitration will be final and nonappealable.

21. Jurisdiction and Venue

Buyer irrevocably submits and agrees to the jurisdiction of the state courts of the State of Texas and the Federal courts within the State of Texas, in any action, suit or proceeding related to, or in connection with, the Sales Agreement. To the extent permitted by applicable law, Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim: (a) that Buyer is not personally subject to the jurisdiction of the state courts of the State of Texas and/or the Federal courts within the State of Texas; (b) that the venue of the action, suit or proceeding is improper; (c) that the action, suit or proceeding is brought in an inconvenient forum; or (d) that the subject matter of the Sales Agreement may not be enforced in or by the State and or Federal courts of the State of Texas. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings by personal or prepaid mailing (air mail if international) in registered or certified form a copy of the process documents to the Buyer at the address set forth in Paragraph 24.

22. Waiver

The waiver by Freedom Power of any breach by Buyer of any provision of the Sales Agreement may not be construed to be either a waiver of the provision itself as to subsequent application or any other provision of the Sales Agreement.

23. Severability

If any provision of the Sales Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Sales Agreement remain in full force and effect.

24. Notices

No notice or other communication under the Sales Agreement is sufficient to affect any rights, remedies or obligations of either party unless the notice or communication is in writing and (as elected by the party giving the notice) is: (a) personally delivered; (b) transmitted by facsimile (with a receipt acknowledgment); (c) transmitted by electronic computer mail; (d) transmitted by a recognized courier service; or (e) mailed (air mail if international) in registered or certified form, to the party to which notice or communication is being given at the following address:

If to Freedom Power, at the address on the SOA
If to Buyer, at its last address designated on the Purchase Order

Except as otherwise specified in the Sales Agreement, all notices or communications are deemed to have been duly given: (a) on the date of receipt if delivered personally; (b) on the date of transmission if delivered by facsimile or electronic computer mail; (c) one day after pickup by courier if delivered by courier; or (d) five days after mailing if delivered by the postal service. Either party may change its address by notice to the other party.

25. Construction

The headings of the paragraphs in these Terms are provided for convenience only and may not be considered in the interpretation of the Sales Agreement. The parties agree that the provisions of the Sales Agreement may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the Sales Agreement.

26. Survival

The terms of the Sales Agreement that by their nature are reasonably intended by the parties to survive its expiration or earlier termination, survive the expiration or termination of the Sales Agreement.