

NATIONAL POWER, LLC
TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (these “**Terms**”) govern the sale and purchase of all products and services of National Power, LLC (the “**Company**”) and are binding on the purchaser of any products and/or services of the Company (“**Customer**”), whether or not they are included in the Company’s proposal, offer, quote, purchase order, acceptance or service agreement (“**Quote**”). The sale of all products and services by the Company to Customer is expressly conditioned upon Customer’s agreement to these Terms, which shall control over any additional, different, inconsistent or contrary provision in Customer’s request for proposal, specifications, purchase order or other purchase/sales forms or other communication by the Customer. The Company hereby rejects any and all such additional, different, inconsistent or contrary provisions. Customer acknowledges that these Terms, together with any special terms provided on the Company’s valid Quote, constitute the sole and complete agreement between the Company and the Customer, and may not be modified and/or amended except by in a separate agreement or amendment signed by the Company’s and the Customer’s authorized representatives. Customer’s purchase of products and/or services of the Company constitutes Customer’s acceptance of these Terms.

1. Pricing. The prices shall be as set forth in the Company’s Quote, or if no prices are stated, the prices shall be at the Company’s standard prices in effect at the time the Company accepts Customer’s order. Except to the extent expressly stated in the Company’s Quote, prices do not include any freight, storage, insurance, taxes (sales, use, excise or otherwise), fees, duties or other government charges related to the products and services. If Customer claims a tax exemption, it must provide the Company with a valid exemption certificate or permit and indemnify, defend and hold the Company harmless from any taxes, costs and penalties arising out of such exemption. The Company reserves the right, without prior notice, to increase the prices of any of its products and services at any time and from time to time.

2. Service Fees. The scope of services will be set forth in the Quote. For major and minor generator periodic maintenance, the scope of services consists only of scheduling and performing the periodic maintenance inspections on the covered equipment and making recommendations based on those inspections. Customer shall be billed for all other services at the Company’s then current rates for labor, materials and mileage. All rates apply portal to portal to and from the location of the nearest Company technician. All calls are subject to a minimum trip charge and emergency calls are also subject to a four (4) hour minimum labor charge. The Company reserves the right to charge a cancellation fee for service appointments that are cancelled by the customer less than two (2) business days before a scheduled service date.

3. Invoices. The Company will invoice Customer on the date of shipment for all products and upon substantial completion of services, unless other terms are set forth in the Quote. Manufacturer service contracts resold by the Company to Customer are contracts between the manufacturer and Customer only and will be invoiced when processed by the manufacturer. Applicable taxes and freight charges will be billed as separate line items, unless otherwise specified in the Quote.

4. Payment. Subject to credit approval and unless otherwise stated on the Company’s Quote, Customer’s payment for the Company’s products and services is due thirty (30) days from the invoice date. Payment shall be made without regard to whether Customer has made or may make any inspection of the products and/or services. Any payment not made in full when due shall be subject to a late charge of 1.5% per month, but not in excess of any lawful rate. All payments shall be made in U.S. dollars. Customer shall make such payment without regard to other shipments, deduction, or setoff. The Company reserves the right, at any time, to decline to make any shipment or delivery of products or to perform any services or work if full payment is not timely made. In addition, the Company may change credit or payment terms, including requiring cash payments in advance and/or other credit enhancements, if the Company believes that Customer’s financial condition or previous payment record may warrant. If the Company deems it necessary to cancel any outstanding order due to Customer’s financial condition, Customer agrees to reimburse the Company for reasonable cancellation charges. The Company may apply any payments received to Customer’s oldest outstanding invoices regardless of any instructions to the contrary from Customer. Payment to the Company shall not be contingent on third party payments to Customer, and no portion of the price of the Company’s products or services shall be held by Customer as a retainer. Customer shall reimburse the Company for all costs and expenses, including reasonable attorney’s fees, incurred by the Company to collect any past due amount.

5. Cancellations and Changes. Customer may not cancel, terminate or change an order, unless the Company provides its prior written consent, in its sole discretion, and Customer pays all of the Company’s costs due to such cancellation, termination or change, including restocking fees for products and cancellation charges for labor and materials, plus a reasonable profit on such costs. Changes to an order are subject to additional charges and modifications to the product delivery or service schedule. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle the Company to an equitable adjustment in the prices and time of performance.

6. Returns. Customer has no right to return any products purchased from the Company without the Company’s prior written consent, which the Company may withhold, delay or condition in its sole discretion. Any request for a return must be made within five (5) days of the invoice date, and if such request is approved by the Company, those products must be returned to the Company no later than (5) days after such approval. Special and custom orders or modified standard products are not returnable. Returned products must be in original packaging and in new and salable condition. Credit for merchandise is subject to inspection by the Company. Returns may be subject to a handling and restocking charge.

7. **Limited Warranty.** Except as otherwise required by applicable law is expressly or as specifically stated in a Quote, the following warranties will apply to products and services purchased and paid for by Customer (and not to indirect purchasers and users) (collectively, the “Limited Warranty”):

- **Product Warranty.** For each product purchased from the Company, the Company makes the following limited warranties: (i) the product is free from defects in material and workmanship, (ii) the product materially conforms to the Company’s specifications (or any other specifications approved in writing by the Company), and (iii) at the time of delivery, Customer will acquire title to the product free and clear of liens.
- **Service Warranty.** For services performed by the Company, the Company makes the following limited warranties: (i) such services will be performed by qualified personnel in a good and workmanlike manner consistent with industry standards, (ii) such services will be free of defects in materials or workmanship.
- **Conditions.** The Limited Warranty is conditioned on (i) Customer discontinuing use of any product or service after it has, or should have had, knowledge of any defect therein, (ii) Customer providing the Company with prompt written notice of any warranty claims within the Warranty Period, (iii) at the Company’s discretion, Customer either removing and shipping the defective product or non-conforming part thereof to the Company, at the Company’s expense, or Customer granting the Company access to the products and/or services claimed to defective at all reasonable times and locations to assess the warranty claims, and (iv) Customer not being in default of any payment obligation to the Company.
- **Exclusions.** The Limited Warranty specifically excludes any parts or equipment comprising part of the products or services that is not manufactured by the Company or not bearing its name. To the extent permitted, the Company hereby assigns to Customer any warranties made to the Company by the manufacturer for such parts or equipment. In addition, the Limited Warranty specifically excludes the following: unauthorized modifications; improper use or operation; abuse, negligence, accident, loss or damage in transit; actions by third parties; improper site preparation; and unauthorized maintenance or repair.
- **Remedy.** In the event of a breach of this Limited Warranty, the sole liability of the Company and the sole remedy of Customer are limited to the repair or replacement of the defective or damaged product, or non-conforming parts thereof, or re-performance of the defective service, or in the alternative, the Company’s sole discretion, credit or refund the price for such products or services. Customer shall have no right of offset from outstanding invoices with respect to any claims made. This Limited Warranty constitutes the sole liability of the Company and the sole remedy of Customer for defective materials or workmanship, whether arising under contract, tort, strict liability or other form of action.
- **Limited Warranty Period.** For purposes of this Limited Warranty, the “Warranty Period” means the period of time beginning with shipment or completion of services, as applicable, and continuing thereafter for (i) one year for products, and (ii) 90 days for services.
- **Transferability.** The Limited Warranty is not transferable by the Customer without the Company’s prior written consent, in its sole discretion, except that the Limited Warranty will be transferable during the Warranty Period to the initial end-user of the product or service (to the extent so transferable).

THE FOREGOING LIMITED WARRANTY IS THE COMPANY’S SOLE AND EXCLUSIVE WARRANTY WITH RESPECT TO ITS PRODUCTS AND SERVICES AND IS SUBJECT TO THE LIMITATION ON LIABILITY SET FORTH BELOW. THE COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL. THE COMPANY HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY IMPLIED WARRANTIES WHICH ARE ALLOWED BY LAW SHALL BE LIMITED IN DURATION TO THE TERMS OF THE APPLICABLE MANUFACTURER’S WARRANTY.

LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY REQUIRED BY LAW, NOTWITHSTANDING ANY PROVISIONS IN THESE TERMS TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL THE COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING FROM ANY PRODUCTS AND/OR SERVICES SOLD BY THE COMPANY, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE COMPANY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. THESE LIMITATIONS SHALL APPLY TO ALL CAUSES OF ACTION RELATING TO THE SALE OF PRODUCTS AND SERVICES IN THE AGGREGATE INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS, REMEDIES AND RECOURSE.

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE COMPANY ARISING UNDER OR IN CONNECTION WITH ANY SALE OF PRODUCTS OR SERVICES EXCEED THE AMOUNT PAID BY CUSTOMER TO THE COMPANY FOR THE PRODUCTS OR SERVICES THAT SERVE AS THE BASIS FOR SUCH CLAIM. SUCH LIMITATION IS AN ESSENTIAL PROVISION OF ANY SALE BY THE COMPANY.

8. Security Interest. Customer hereby grants to the Company a lien on and a purchase money security interest in all right, title and interest of Customer in and to any products purchased by Customer (and all proceeds thereof), wherever located, until the purchase price for such products has been paid in full by Customer. Customer hereby authorizes the Company to execute and file a financing statement as Customer's attorney in-fact in all appropriate jurisdictions to perfect the Company's security interest in any products so purchased. At the Company's request, Customer shall promptly execute all documents necessary to protect the Company's interest in the secured property.

9. Shipment and Delivery. All products are sold, and all shipments are made, FOB shipping point or such other destination set forth in the Quote. While the Company will endeavor to meet the shipment date set forth in any Quote, any lead time or shipping date is an estimate only and not a guaranteed lead time or shipment date. The Company shall not be responsible for any damage, loss or expense incurred by Customer resulting, whether directly or indirectly, from delays in shipments or delivery dates that are not reasonably within the control of the Company. Unless otherwise set forth in any Quote, partial shipments may be made, which may be separately invoiced. Delays in delivery will not relieve Customer of its obligation to pay for products or to accept subsequent deliveries. In the event of shipment errors, such as wrong product or quantity, or shipment to the wrong location, Customer must notify the Company within ten (10) days from invoice date. The Company will then verify the claim and ship replacement parts or correct the error, as appropriate.

10. Title and Risk of Loss. Title and risk of loss and damage to products shall pass to Customer upon delivery to the shipping point.

11. Force Majeure. The Company is not liable or responsible for performance delays or for non-performance due to events of Force Majeure, and the Company's performance will be excused and extended for the time that the Force Majeure continues. If a Force Majeure event occurs, the Company may, at its option, (i) extend the shipping date and/or (ii) allocate its available supply as it deems equitable and appropriate. As used herein, "Force Majeure" means any act, occurrence, circumstance or condition that is beyond the Company's reasonable control, including, without limitation, war, civil commotion or disturbance, national emergency, act of God, pandemic, epidemic, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal), fire, flood, earthquake or other natural disaster, shortages of materials or supplies, delays of couriers, declared acts of terrorism, disruption of normal production, inadequate yield of products or materials despite reasonable efforts, or an interruption of the means of transportation.

12. Compliance with Laws. Customer shall comply with applicable federal, state, local and foreign laws, regulations and ordinances relating to the purchase, resale, exportation, transfer, assignment, disposal, use and operation of the Company's products and services. The Company may suspend performance if Customer is in violation of applicable laws, regulations or ordinances. Customer agrees that no products are being or will be acquired for, shipped, transferred, exported or re-exported, directly or indirectly, to prohibited or embargoed countries, nor be used for any prohibited end-use.

13. Assignment. Customer shall not, in whole or in part, assign these Terms or any of its rights or delegate any of its duties hereunder without the prior written consent of the Company. The Company may assign any its rights and delegate any of its obligations under these Terms to its affiliates and grant a security interest in any order and assign proceeds of any order without Customer's consent. Subject to the foregoing, these Terms will be binding upon, enforceable by, and inure to the benefit of the Company and the Customer and their respective successors and permitted assigns. Any attempted assignment or delegation in violation of these Terms shall be null and void.

14. Applicable Law and Jurisdiction. Except as otherwise provided in a writing signed by the Company and Customer, (i) these Terms shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its choice or conflict of laws principles, and (ii) any action, claim, right, obligation or dispute arising with respect to any sale of products or services or under these Terms shall be brought exclusively in a federal or state court in the State of North Carolina and the Company and Customer agree to submit to such jurisdiction. CUSTOMER WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO A SALE OF PRODUCTS OR SERVICES OR THESE TERMS.

15. Severability. If any provision of these Terms is held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of such term in all other respects, and of the remaining provisions in all respects, will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of these Terms as nearly as possible.

16. End of Life. The Company may, without notice or liability, terminate production of any product and performance of any service.

17. Bankruptcy. If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the Company may cancel any unfulfilled order without liability.

18. Government Contracting. Unless otherwise separately agreed in writing by the Company, the Company shall not be deemed to have accepted any provision required in any U.S. Government contract or subcontract relating thereto nor shall any provision of any such government contract become part of these Terms or be deemed imposed upon or binding on the Company.

19. Updates and Changes to Terms. These Terms are subject to revisions, updates and other changes from time to time by the Company based on business, market, industry, economic and other factors.

Revised: December 8, 2022