



Valley

AND THE VALLEY POWER SYSTEMS
FAMILY OF COMPANIES

STANDARD TERMS AND CONDITIONS OF PURCHASE ORDER

DEFINITIONS AND EXPLANATION

"Buyer" means Valley Power Systems, Inc. and its Subsidiaries and Affiliates. "Seller" means the party with whom Buyer is contracting and any reference to "vendor", "subcontractor", "contractor" or "supplier" shall also mean Seller. The word "Purchase Order" ("Order") means the name or title of the instrument of contracting, including all documents, exhibits and attachments referenced thereon, and once accepted by Seller as herein provided shall constitute the entire agreement between Buyer and Seller for the sale and purchase of those goods, services, supplies, materials, articles, items, parts, components or assemblies ("Products") described herein.

ACCEPTANCE OF ORDER: This Order is Buyer's offer to Seller. Seller's acceptance is expressly limited to the terms of the Order and Buyer hereby objects to any additional or different terms in Seller's acceptance. Seller accepts this Order as written by executing and returning to Buyer the Acceptance or Acknowledgement copy of the Order, or by beginning performance.

COMPLETE AGREEMENT: This Order is the complete and exclusive statement of the terms of the agreement between Seller and Buyer.

MODIFICATION: No modification of this Order (including any additional or different terms in Seller's acceptance) shall be binding on Buyer unless agreed to in writing and signed by Buyer's material representative.

PACKING AND SHIPPING: Unless otherwise provided on the face of this Order, the following provisions shall apply to all shipments. Seller shall: (a) Prepare all Products for shipment to prevent damage or deterioration, secure lowest lawful transportation rates, and comply with carrier classifications and tariffs; (b) Defray all direct charges for preparation, packing, crating or cartage unless separately stated in the Order; (c) Consolidate into one shipment all Products to be forwarded on each day by the same means of transportation; (d) Number and mark each container consecutively with applicable Order and part number; (e) Indicate the container and Order numbers on the applicable bill of lading; (f) Place inside the No.1 container, one copy of the packing sheet showing Order number(s).

DELIVERY: Deliveries (as specified in the Order) shall be strictly (neither late nor early) in accordance with the quantities and schedule specified in the Order. If at any time it appears Seller may not meet such schedule, Seller shall immediately by verbal means (to be confirmed in writing) notify Buyer of the reasons for and estimated duration of the delay and, if requested by Buyer, make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and shipping via air or other means of fast transportation. Any additional cost caused by these requirements shall be borne by Seller, unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller or its subcontractors within the meaning of the "Default" clause herein. The foregoing requirements are in addition to all of the Buyer's other rights and remedies as may be provided by law or this Order.

TITLE AND RISK OF LOSS: Unless otherwise specified herein, title to and the risk of any loss of or damage to the Products shall pass from Seller to Buyer F.O.B. Buyer's plant. Freight is to be prepaid and added to invoice. Passing of title upon such delivery shall not constitute acceptance of the Products by Buyer or relieve Seller of any of its obligations hereunder.

PRICE WARRANTY: Seller warrants that the price of the ordered Products does not exceed the price charged by Seller to any other customer purchasing the same Products in like or smaller quantities, and under similar conditions of purchase.

INVOICE AND PAYMENTS: A separate invoice related only to this Order shall be issued for each shipment. No invoice shall be issued prior to shipment of Products. No payment will be made prior to receipt of Products and correct invoice, and Buyer reserves the right to delay payment until the Products have been accepted. Payment due dates, including discount periods, will be computed from date of receipt of Products and correct invoice (whichever is later). Unless freight and other charges are itemized, any discount taken will be taken on the full amount of invoice. Buyer has the right, without loss of

discount privileges, to pay invoices covering Products shipped in advance of the schedule on the normal maturity after the date specified for delivery. Any payment shall not constitute acceptance of the Products.

QUALITY CONTROL: In accordance with the specific requirements of this Order, Seller shall provide and maintain a quality control system acceptable to Buyer covering the Products hereunder. Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of this Order and for such longer period as may be specified elsewhere in this Order. Authorized purchasing, technical and quality assurance representatives of Buyer shall be entitled to enter the plant of Seller at all reasonable times for the purpose of maintaining a liaison between the quality control system and the program, to review Seller's manufacturing and processing plans and records and to conduct preliminary inspection and tests of the Products and work in process. (A like provision giving Buyer the right to enter the plants of Seller's subcontractors and suppliers shall be included by Seller in its subcontracts and Purchase Orders.) Buyer shall be entitled, at Buyer's option, to station Representatives at Seller's plant on a full time basis. Seller shall furnish, free of charge, all reasonable office space, and other facilities and assistance required by Buyer's representatives at Seller's plant. Buyer's personnel shall at all times observe Seller's rules of conduct and security.

INSURANCE AND SUPPLIER QUALIFICATION: Before commencing work or shipment of goods, Seller shall submit a completed "Supplier/Contractor Qualification Form" and furnish Buyer with certificates of insurance from companies meeting an A.M. Best rating of at least A- showing that Seller is covered by 1) Commercial General Liability, including Products and Completed Operations, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 for Products-Completed Operations, naming *Valley Power Systems, Inc., and its Subsidiaries and Affiliates* as additional insured and including a waiver of subrogation in favor of same; and 2) Umbrella policy (if appropriate) in the amount of \$3,000,000 each occurrence. If the scope of work requires Seller to perform work on Valley's property or Valley's customer's property, the following coverage is also required: 3) Auto Liability covering all autos with a limit of \$1,000,000 and naming *Valley Power Systems, Inc., and its Subsidiaries and Affiliates* as additional insured; and 4) Worker's Compensation & Employers Liability insurance as required by law with a waiver of subrogation in favor of *Valley Power Systems, Inc., and its Subsidiaries and Affiliates*. Pollution Liability coverage of \$1,000,000 per occurrence is required if hazardous materials are involved. Professional Liability insurance, including Errors and Omissions, affording protection of not less than \$1,000,000 per incident is required if Order includes professional services. Buyer reserves the right to require higher or lower limits where warranted. Completed Supplier Qualification Form and properly endorsed Certificates of Insurance shall be sent to the following fax, email or address prior to commencement of any product shipment or performance of services and upon renewal of insurance policies:

Valley Power Systems, Inc.
Risk Management Department
425 S. Hacienda Blvd.
City of Industry, CA 91745
Fax: (626) 934-6223
Email: supplier.info@valleypsi.com
Questions: (626) 934-6164

Forms can be found at: <http://www.valleypowersystems.com/literature.html>.

INSPECTION, ACCEPTANCE AND REJECTION

All Products are subject to (i) inspection during manufacture (ii) inspection prior to shipment, and (iii) final inspection and acceptance at destination, notwithstanding the FOB point or any payment or prior inspection at source. Final inspection will be made at a reasonable time after receipt of Products. Seller shall furnish to Buyer if required all information and data as may be reasonably required by Buyer in Order to perform a proper inspection and acceptance. Inspection and Acceptance of any Products by Buyer shall not be deemed to alter or affect the obligations of Seller or the rights of Buyer and its customers under Warranties herein or as may be provided by law. Buyer's

failure to inspect any of the Products hereunder shall neither relieve Seller from responsibility for such Products that are not in accordance with the requirements of this Order nor impose liability on Buyer therefore. Any tender of Products which is nonconforming as to the quality or quantity or the delivery schedule shall constitute a breach of this Order and Buyer shall have the absolute right to reject such Products. Buyer shall notify Seller as to such rejection. In addition to and without waiver of Buyer's other rights and remedies under the law, and at Seller's risk and expense, Buyer may elect to (i) hold such rejected Products or return same to Seller at Buyer's election and at Seller's risk and expense, (ii) to replace or correct Seller's Products and charge to Seller the cost occasioned to Buyer thereby or require the delivery of replacements for such Products at an equitable reduction in price, if Seller fails to remove promptly such rejected Products or unless Seller corrects or replaces the defective Products within the time required by the delivery schedule, and (iii) to recover from Seller, by equitable price reduction, credit, offset or otherwise, an amount for the diminished value of any uncorrected Products and all costs and expenses incurred by Buyer in connection with rejected Products. If the unit price of the Products being ordered exceeds \$50.00 or the total Order price is in excess of \$25,000, and if rejected Products are later repaired or corrected in some manner and are being returned to Buyer, Seller shall indicate on an appropriate tag affixed to such Products (i) that the Products were previously rejected by Buyer, and (ii) describe the specific defect(s) which was repaired or corrected. Freight charges for returning rejected Products to the Seller are the responsibility of the Seller.

WARRANTIES: Seller warrants that all Products delivered under this Order Shall conform to the requirements of this Order (including without limitation all technical descriptions, performance criteria, specifications and drawings), shall be free from defects in material and workmanship and shall, to the extent not manufactured pursuant to detailed designs furnished by the Buyer, be free from defects in design and fit for the intended purpose as Buyer has relied upon Seller's ability, expertise and awareness of such intended purpose. Seller warrants that all Products sold to Buyer shall be free of any rightful third parties claims of infringement of patent, trademark, or any other industrial or intellectual property rights. Buyer's approval of designs furnished by Seller or any approval of Seller's "First Article" shall not relieve Seller of its obligations under this Warranty. All of Seller's warranties set forth in this Order shall be enforceable by Buyer's customers and any subsequent owner or operator of the Products, as well as by Buyer. Any inspection or acceptance of the product by Buyer shall not be deemed to alter or affect the obligations of Seller or the rights of Buyer and its customers under these warranties.

CHANGES: Buyer's purchasing representatives may at any time, by a written Order, make reasonable increase or decrease within the general scope of this Order, in any one or more of the following: (I) Technical requirements and descriptions, drawings, designs, statements of work, or specifications; (II) Method of shipment or packing; (III) Place of delivery, inspection, or acceptance; (IV) reasonable increases in quantities; (V) reasonable changes in delivery schedules. Seller shall proceed immediately with such direction and avoid unnecessary costs related thereto. If any such change causes an increase or decrease in the cost of or in the time required for the performance of any part of the work under this Order, whether changed or not changed by any such directive, an equitable adjustment shall be made in the purchase price or delivery schedule, or both, and this Order shall be so modified in writing.

CONFIDENTIAL DISCLOSURE: Seller shall keep confidential and otherwise protect from disclosure all designs, processes, drawings, specifications, reports, data and other technical or proprietary information and the features of all parts, equipment, tools, gauges, patterns and other items furnished or disclosed to Seller by Buyer. Unless otherwise provided herein or authorized by Buyer in writing, Seller shall use such information and items, and the features thereof, only in the performance of this Order, thus, Seller shall not sell, or otherwise dispose of as scrap or otherwise any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use. Upon completion, termination or cancellation of this Order, Seller shall, at Seller's expense, make such disposition of all such information, items and Products as herein required or as may be subsequently directed by Buyer. Seller is responsible to ensure that all its suppliers shall comply with this provision.

SELLER'S DATA: Any knowledge, information drawings, designs, data or computer programs (herein called "Data") which Seller discloses to Buyer in connection with this Order, which Data Seller has not marked with a proprietary legend, shall not be considered as proprietary to Seller or in any way restrict Buyer's use of such Data.

TERMINATION/CANCELLATION

TERMINATION CONVENIENCE: The performance of work under this Order may be terminated in whole or in part, by Buyer for Buyer's convenience at any time and for any reason on Buyer giving written termination notice to Seller and shall pay to Seller termination charges computed in the following manner: (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Seller prior to the date of termination for completed work, work in process, materials directly related to the Order, for orderly phase-out of performance as requested by Buyer in order to minimize the costs of the termination and for preparation and settlement of Seller's termination claim and (2) a reasonable profit on work performed; provided, however, that Buyer shall not be liable to Seller for any costs which should not have been charged had the Order not been terminated nor for any sum in excess of the total price stated in the Order for the terminated goods.

CANCELLATION DEFAULT: Except in the case of delays in deliveries resulting from these conditions and circumstances described in Section 2-615, "Excuse by Failure of Presupposed Conditions," of the Uniform Commercial Code, Buyer shall be entitled, by written cancellation notice to Seller, to cancel the whole or any part of this Order for default, without granting an extension of time, and to have all other rights against Seller by reason of Seller's default as provided by law. If it be found that Seller was not in default, the rights and obligations of the parties shall be the same as if the Notice of Cancellation had been issued pursuant to section "TERMINATION/CANCELLATION, Termination Convenience."

DELEGATION AND ASSIGNMENT: No delegation of any duties under this Order shall be binding upon Buyer until its written consent thereto has been obtained.

SUBCONTRACTING: No goods to be delivered under this Order shall be procured by Seller from a third party in completed or substantially completed form without Buyer's prior written consent. No purchase Order or subcontract placed by Seller under this Order shall be on a cost plus percentage of cost basis.

COMPLIANCE WITH LAWS

FEDERAL, STATE AND LOCAL LAWS: Seller warrants that in the performance of this Order, it will comply with all applicable Federal, State and local laws. On its invoice or in other form satisfactory to Buyer. Seller agrees that the Products covered by this Order were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219) as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

EQUAL OPPORTUNITY: Buyer is an "Equal Opportunity" employer and Seller shall, therefore, comply with the provisions of the President's Executive Order 11246, as supplemented, and all related regulations of the Department of Labor.

NON WAIVER: Any and all failure(s) of Buyer or delay(s) or forbearance(s) by Buyer in enforcing at or for any times any of the provisions of this Order shall not be construed as a waiver thereof or of this clause or of Buyer's rights or subsequent enforcement.

PARTIAL INVALIDITY: If any provision of this Order is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

PUBLICITY: No publicity, news release, including photographs and films, advertisement, public announcement, denial or confirmation of same, on any part of the subject matter of this order or any phase of any program hereunder shall be made without prior approval of Buyer's Purchasing Representative.

TAXES: All prices herein, unless otherwise provided, include all applicable Federal, State and local taxes as may be assessed against Seller except those sales or use taxes required by law to be paid by Buyer.

APPLICABLE LAW: This Order shall be governed in all respects by the law of the State of California, including the California Uniform Commercial Code.