

R&D PWR LLC
doing business as R&D Power
TERMS AND CONDITIONS OF SALE

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Effective as of Buyer's execution or acceptance of the Sales Order (as defined below) pursuant to which Buyer ordered goods from R&D PWR LLC, a Texas limited liability company doing business as R&D Power (the "Company"), these Terms and Conditions of Sale (together with the Sales Order, this "Agreement") are binding upon Buyer and constitute a contract between Buyer and the Company. "Buyer" means the person or entity identified as the purchaser on the Sales Order. "Sales Order" means solely the quotation, proposal, sales order, order confirmation, or invoice issued by the Company and executed or accepted by Buyer, including by electronic acceptance, by issuance of a purchase order or other instruction to proceed in response to it, or by payment. **Any purchase order, form, portal terms, or other document submitted by Buyer is for Buyer's administrative convenience only, is not binding on the Company, and any conflicting or additional terms therein are expressly rejected regardless of the Company's acknowledgment, shipment, or performance.** The Company publishes the current version of these Terms and Conditions at rdpower.net/terms and may revise them from time to time. The version in effect on the date of the Sales Order, identified by its revision date, governs that Sales Order; later revisions do not modify existing Sales Orders.

1. Sale of Goods

- (a) The Company sells to Buyer, and Buyer purchases from the Company, the goods described on the Sales Order (the "Goods") in the quantities and at the prices stated on the Sales Order, on the terms of this Agreement.
- (b) The Goods will conform in all material respects to the specifications, drawings, and revision levels identified on the Sales Order (the "Specifications"). Buyer is responsible for the accuracy and completeness of all specifications, drawings, dimensions, ratings, and other information Buyer furnishes, and for the suitability of the Specifications for Buyer's intended application. The Company may rely on Buyer-furnished information without independent verification.
- (c) Once the Company has accepted a Sales Order, Buyer may not change the Specifications, quantity, configuration, or delivery date without the Company's prior written consent. Approved changes may be subject to additional charges, revised delivery schedules, and other conditions as the Company determines, and are effective only when documented in a written change order or revised Sales Order.

2. Price

- (a) The purchase price for the Goods is the price stated on the Sales Order, subject to adjustment under Section 2(b). Pricing, validity periods, discounts, freight terms, estimated lead times, and payment schedules are as stated on the Sales Order or in the Company's written communications and lapse as stated therein. As to commercial terms, the Sales Order controls over this Agreement.
- (b) **Price in Effect at Shipment.** Unless the Sales Order expressly states that the price is firm, the price invoiced for the Goods is the Company's price for the Goods in effect at the time of shipment, which may differ from the price stated on the Sales Order. The Company may adjust the price at any time before shipment to reflect changes in its costs or circumstances, including without limitation changes in the cost or availability of components, materials, labor, freight, duties, tariffs, taxes, supplier prices or surcharges, exchange rates, quantities, Specifications, or delivery requirements, and shall determine any adjustment in good faith. The Company will notify Buyer in writing of any price adjustment before invoicing the balance due, and Buyer shall pay the adjusted price. A price adjustment under this Section does not entitle Buyer to cancel the Sales Order or any part of it, and Section 7 applies to any cancellation.
- (c) **Taxes, Tariffs, and Shipping Charges.** Buyer is solely responsible for, and shall pay, all shipping and handling charges, insurance, sales tax, use tax, excise tax, import and export duties, tariffs, and other governmental charges associated with the Goods, other than taxes on the Company's income. Any such amounts quoted by the Company are estimates only; Buyer shall pay the actual amounts incurred, and the Company may invoice Buyer for increases in such charges arising between the date of the Sales Order and delivery. The Company will collect Texas sales tax unless, before invoicing, Buyer delivers a properly completed and valid resale or exemption certificate. If a certificate is later determined to be invalid or inapplicable, Buyer shall pay, and indemnify the Company against, the resulting tax, penalties, and interest.

3. Payment Terms

- (a) **Payment.** Payment shall be made according to the payment schedule stated on the Sales Order or otherwise agreed in writing by the Company. If no schedule is stated, Buyer shall pay fifty percent (50%) of the purchase price stated on the Sales Order upon Buyer's execution or acceptance of the Sales Order, and the balance of the purchase price, as adjusted under Section 2(b), prior to release of the Goods for shipment. All amounts due must be received by the Company in cleared funds before the Goods are released for shipment unless the Company agrees otherwise in writing. Buyer shall make all payments in

U.S. dollars by ACH, wire transfer, or other means acceptable to the Company. The Company will not release a Sales Order to production, and will not place orders for components, until any deposit stated on the Sales Order has been received in cleared funds.

(b) Failure to Make Initial Payment. Unless the Sales Order states a due date or grace period for the initial deposit, the Company may terminate the Sales Order by written notice at any time before the initial deposit is received in cleared funds. If the Sales Order states a due date or grace period, the Company may so terminate at any time after it has passed without receipt of the deposit in cleared funds. Upon such termination the Company has no further obligation under the Sales Order, including any obligation to honor pricing or lead times.

(c) Non-Refundable Payments. Except as the Company may otherwise agree in writing, all amounts paid by Buyer are non-refundable, and any refund is made at the Company's sole discretion. Refund terms, if any, are as stated on the Sales Order.

(d) Reservation Payments. The Company may, in its sole discretion, accept reservation or partial payments on the terms stated on the Sales Order. A reservation payment holds pricing or production scheduling only to the extent, and for the period, expressly stated on the Sales Order, and does not commence production or start any lead time.

(e) Late Payment. If Buyer fails to make any payment when due then, in addition to all other remedies available to the Company: (i) the Company may charge interest on the past-due amount at the rate of 1.5% per month, calculated daily and compounded monthly, or, if lower, the highest rate permitted under applicable Law; (ii) the Company may suspend performance, withhold shipment, and withhold delivery of drawings, documentation, and other deliverables until payment is received; and (iii) Buyer shall reimburse the Company for all costs incurred in collecting any late payment, including attorneys' fees, court costs, and collection agency fees.

(f) Adequate Assurance. If the Company reasonably doubts Buyer's ability or willingness to pay, the Company may require payment in advance or other adequate assurance of performance before proceeding, and may suspend performance until it is received.

(g) Third-Party Financing. Any monthly payment or installment figures provided by or through the Company are estimates from third-party lenders. The Company is not a lender, broker, or guarantor of financing approval. The involvement of any lender does not modify the amounts or timing owed to the Company unless the Company agrees otherwise in writing.

(h) Card Payments. The Company may apply a service fee to credit or debit card payments, disclosed at or before the time of payment, not to exceed amounts permitted by applicable Law, and may decline card payment for any invoice.

(i) Payment Instructions. The Company's bank account and remittance instructions are as provided in writing by the Company. The Company will not change its remittance instructions by email alone; Buyer shall verify any purported change by telephone with a known Company representative before remitting, and bears the risk of any payment made to an account other than the one so verified.

(j) No Setoff. Buyer shall not, and acknowledges that it has no right under this Agreement or any other agreement, document, or Law to, withhold, offset, recoup, or debit any amounts owed or to become owing to the Company or its Affiliates against any amount owed or to become owing to Buyer by the Company or its Affiliates, whether relating to the Company's breach or non-performance of this Agreement or otherwise.

4. Security Interest

Until the Company has received payment in full for the Goods and all other amounts due under the Sales Order, the Company retains, and Buyer grants to the Company, a purchase-money security interest in the Goods and all proceeds of them, including rental income, to secure Buyer's obligations. Buyer authorizes the Company to file financing statements and take any other action necessary to perfect and protect that interest, and shall on request execute any document the Company reasonably requires. Buyer shall keep the Goods free of other liens until paid in full and shall not remove the Goods from the United States without the Company's written consent until paid in full.

5. Delivery

(a) The Goods will be delivered within a reasonable time after Buyer's acceptance of the Sales Order and receipt of any required deposit, subject to availability of components. Any shipment or lead-time date stated by the Company is an estimate based on component lead times quoted to the Company by its suppliers, is not guaranteed, and is not of the essence. The Company shall not be liable for any delay in delivery or for loss or damage in transit.

(b) Title to and risk of loss for the Goods pass to Buyer when the Goods are made available to Buyer or Buyer's carrier at the Company's facility in Austin, Texas, in accordance with EXW (Incoterms 2020), unless otherwise agreed in writing by the Company. Retention of a security interest under Section 4 does not delay the passage of risk.

(c) Where the Company arranges shipment or carriage of the Goods, it does so as Buyer's agent and for Buyer's account, and such arrangement does not alter the passage of title and risk under Section 5(b). Freight charges are as stated on the Sales Order and, if not stated, are prepaid by the Company and added to Buyer's invoice.

(d) The Company may, in its sole discretion and without liability or penalty, make partial shipments. Each shipment constitutes a separate sale, and Buyer shall pay for the Goods shipped whether in whole or partial fulfillment of the Sales Order.

(e) If Buyer requests postponement of shipment, or fails to accept or arrange pickup of Goods within the period stated on the Sales Order (or, if none is stated, five (5) business days) after the Company's notice that they are ready, risk of loss passes to Buyer at the end of that period, all amounts due under the Sales Order remain payable as scheduled, and the Company may store the Goods, or arrange storage, at Buyer's expense at a charge of one percent (1%) of the price of the affected Goods per month or part thereof.

(f) The quantity of any shipment as recorded by the Company on dispatch is deemed the quantity received by Buyer unless Buyer proves otherwise. The Company is not liable for any non-delivery unless Buyer gives written notice within five (5) days after the date the Goods would in the ordinary course have been received, and the Company's liability for non-delivery is limited to delivering the missing Goods within a reasonable time or adjusting the Sales Order to reflect the quantity delivered.

6. Inspection and Rejection of Nonconforming Goods

(a) Buyer shall inspect the Goods within five (5) days of receipt (the "Inspection Period"). Buyer is deemed to have accepted the Goods unless it notifies the Company in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence, photographs, or other documentation as the Company reasonably requires. "Nonconforming Goods" means only Goods that differ materially from the Specifications. Damage occurring in transit after risk of loss has passed is not a nonconformity and is Buyer's to pursue against the carrier.

(b) If Buyer timely notifies the Company of Nonconforming Goods, the Company shall, in its sole discretion, (i) repair or replace the Nonconforming Goods with conforming Goods or (ii) credit or refund the price paid for them. Buyer shall obtain a return authorization before returning any Goods and shall ship them, at Buyer's expense and risk of loss, to the Company's facility at 4509 Freidrich Lane, Suite 415, Austin, Texas 78744, or another address the Company specifies. If the Company elects to repair or replace, it shall, after receiving the returned Goods, ship the conforming Goods to Buyer at Buyer's expense and risk of loss.

(c) The remedies in this Section 6 are Buyer's exclusive remedies for delivery of Nonconforming Goods. Except as provided in this Section 6 and Section 11, all sales are final and made on a one-way basis, and Buyer has no right to cancel a Sales Order once accepted or to return any Goods. Any exception must be approved in writing by the Company and may be subject to additional charges or conditions.

7. Cancellation and Restocking Fees

(a) "Production has Commenced" for a Sales Order when the Company has placed an order for components for the Goods with a supplier, or has begun fabrication, whichever occurs first. A Sales Order may not be cancelled after Production has Commenced except with the Company's prior written consent.

(b) The Goods are generally built to order. If the Company permits cancellation of a Sales Order in whole or in part, Buyer shall pay (i) all costs incurred or committed by the Company for the cancelled Goods, including non-cancelable and non-returnable component orders, supplier restocking and cancellation charges, materials, labor, engineering and drawing time, and work in process, and (ii) a cancellation fee of twenty-five percent (25%) of the value of the cancelled Goods. Amounts paid by Buyer are applied first against these charges, and any remainder is refunded only as provided in Section 3(c).

(c) The Company will communicate the applicable cancellation charge upon Buyer's written request to cancel. Cancellation is effective only upon the Company's written confirmation and Buyer's payment of the cancellation charge.

(d) Any return of Goods is subject to the Company's prior written approval and return instructions. Returned Goods must be unused and in resalable condition, and Buyer bears all costs of return, including freight and insurance. Approved returns are subject to the restocking fees above.

8. Ratings, Listings, and Certifications

(a) The electrical ratings of the Goods, and any listing, certification, or mark applicable to the Goods, are solely as stated on the Goods' nameplate, in the Product Documentation, and on the Sales Order. The Company makes no representation regarding any rating, listing, certification, standard, or code compliance except as so stated. Listings and certifications held by the manufacturers of components incorporated in the Goods apply only to those components and do not extend to the assembled Goods unless the nameplate or Product Documentation states otherwise.

(b) Buyer is solely responsible for determining that the Goods, as configured, installed, connected, and used, comply with the electrical codes, authority-having-jurisdiction requirements, utility requirements, and site specifications applicable to each

installation, and for obtaining any required field evaluation, inspection, or approval. The Company does not perform load, coordination, short-circuit, or arc-flash studies or site design, and Buyer shall not rely on the Company for them.

(c) "Product Documentation" means the drawings, nameplate data, installation, operation, and maintenance instructions, and other documentation that the Company provides or makes available for the Goods, as identified on the Sales Order or furnished with the Goods, as revised by the Company from time to time.

9. Buyer-Furnished and Buyer-Installed Items; Modification

(a) Buyer may furnish components for incorporation into the Goods, or may install items after delivery, including circuit breakers, output termination plates, connectors, and cable ("Buyer Items"). Buyer is solely responsible for the selection, ratings, suitability, compatibility, condition, and installation of all Buyer Items. The interrupting rating and short-circuit current rating of the Goods as placed in service depend on the components Buyer installs, and Buyer is responsible for verifying that the Goods as configured are rated for their application. The Company's warranty and any listing or certification mark applied by the Company do not extend to Buyer Items or to work performed by anyone other than the Company.

(b) Buyer shall not modify the Goods, drill, cut, or alter listed components or enclosures other than at openings and provisions designed for that purpose, defeat, remove, or obscure any listing or certification mark, nameplate, label, or serial number, or use the Goods in any manner or for any purpose inconsistent with their nameplate ratings and the Product Documentation. Any such act voids the warranty in Section 11 and any listing or certification of the Goods, and Buyer assumes all resulting risk.

10. Safe Use

The Goods are electrical power distribution equipment that can cause death, serious injury, arc flash, fire, and property damage if improperly transported, installed, connected, energized, operated, or maintained. Buyer shall ensure that all such work is performed only by qualified persons in accordance with the National Electrical Code, NFPA 70E, applicable Law, component manufacturers' instructions, and the Product Documentation, and shall furnish the Product Documentation to every person who installs, operates, maintains, or rents the Goods. Buyer shall maintain the Goods, including bolted connections, gaskets, and enclosure integrity, as required by the Product Documentation.

11. Limited Warranty

(a) **Warranty.** The Company warrants to Buyer that Goods manufactured by the Company will, for a period of twelve (12) months from the date of shipment (the "Warranty Period"), be free from material defects in material and workmanship. A defect is a condition attributable to the Company's material or workmanship that existed at the time of shipment. Damage or deterioration arising from events or conditions occurring after shipment is not a defect.

(b) **Third-Party Products.** Components and products manufactured by others, including transformers, switchboard interiors, circuit breakers, cam-type connectors, and hardware ("Third-Party Products"), may constitute, be contained in, or be incorporated into the Goods. Third-Party Products are not covered by the warranty in Section 11(a). Third-Party Products are warranted, if at all, solely by their manufacturers, and the Company assigns to Buyer, to the extent assignable, the benefit of any such manufacturer warranty. The Company may, at its discretion, provide reasonable assistance in presenting a claim to a manufacturer, but has no obligation to manage, pursue, or fund any such claim. **THE COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THIRD-PARTY PRODUCTS.**

(c) **Exclusions.** The warranty in Section 11(a) does not apply to, and the Company has no liability for, any condition arising from or relating to: (i) transport, handling, lifting, dropping, collision, or vibration after shipment, including lifting other than by the fork pockets or lifting points provided; (ii) water or contaminant ingress, including through open doors or damaged or displaced gaskets, or exposure to environments beyond the enclosure rating; (iii) fault events, overcurrent, overload, backfeed, phase rotation, application of incorrect voltage or frequency, or operation beyond nameplate ratings; (iv) mechanical strain on terminations or connectors from cable; (v) submersion, fire, theft, vandalism, or accident; (vi) failure to install, operate, store, or maintain the Goods in accordance with the Product Documentation, including failure to inspect and maintain bolted connections and gaskets at the intervals the Product Documentation specifies; (vii) Buyer Items and anything electrically downstream of a Buyer Item, or any modification, alteration, or repair by anyone other than the Company; (viii) items identified in the Product Documentation as wear, consumable, or sacrificial items, including gaskets, hinges, latches, covers, connector contacts, termination plates, and finish; (ix) normal wear, corrosion, and cosmetic deterioration; (x) Buyer's further use of the Goods after discovery of a defect; or (xi) failure to transport, install, connect, energize, operate, or maintain the Goods in accordance with applicable Laws, codes, and industry-accepted practices, including the National Electrical Code and NFPA 70E.

(d) **Conditions.** The Company shall not be liable for breach of the warranty in Section 11(a) unless: (i) Buyer gives written notice of the defect, reasonably described and including the serial number of the Goods, photographs, and a description of the circumstances of discovery, within five (5) days after Buyer discovers or ought to have discovered it; (ii) Buyer ceases use of the affected Goods immediately upon discovery of the defect and does not resume use without the Company's written consent; (iii) the Company is given a reasonable opportunity after receiving notice to examine the Goods, at the Company's facility or in the

field at the Company's election, and Buyer, if requested, returns the Goods or the affected part to the Company's facility; and (iv) the Company reasonably verifies that the Goods are defective.

(e) Remedy. Subject to Sections 11(c) and 11(d), the Company shall, in its sole discretion, (i) repair the Goods or the defective part, (ii) replace the Goods or the defective part, including by supplying a replacement part for installation by Buyer where the part is field-replaceable, or (iii) credit or refund the price of the Goods at the pro rata contract rate. Remedies are provided EXW the Company's facility. Buyer bears the cost of removal, transportation to and from the Company's facility, and reinstallation, and the risk of loss in transit, unless the Company elects in writing to perform work in the field. Goods or parts repaired or replaced under this warranty are warranted for the remainder of the original Warranty Period.

(f) Non-Warranty Service. The Company may, at its sole discretion and subject to availability, offer repair services, replacement parts, or field service for conditions not covered by this warranty, at the Company's then-current rates and on the Company's then-current terms. Nothing in this Agreement obligates the Company to offer or provide such services or parts.

(g) Beneficiary. The warranty in this Section 11 runs only to Buyer and may not be asserted by Buyer's customers, renters, or other users of the Goods.

(h) Disclaimer. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(a), THE COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTION 11(e) ARE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY.

12. LIMITATION OF LIABILITY

(a) IN NO EVENT WILL THE COMPANY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY (I) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, RENTAL INCOME, REVENUES, OR PROFITS; (II) LOSS OF GOODWILL OR REPUTATION; (III) DOWNTIME, LOSS OF USE, OR COST OF SUBSTITUTE, RENTAL, OR REPLACEMENT EQUIPMENT OR SERVICES; (IV) CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES; OR (V) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; IN EACH CASE REGARDLESS OF WHETHER THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR THEY WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO THE COMPANY FOR THE GOODS GIVING RISE TO THE CLAIM.

(c) Where applicable Law grants Buyer rights or remedies that cannot lawfully be excluded or limited, nothing in this Agreement excludes or limits those rights, and the Company's liability is limited to the maximum extent permitted by applicable Law. The parties acknowledge that the limitations in this Section 12 are an essential basis of the bargain and are reflected in the price.

13. Indemnification

Buyer shall indemnify, defend, and hold harmless the Company and its members, managers, officers, employees, agents, Affiliates, successors, and permitted assigns (each, an "Indemnified Party") from and against any and all Losses incurred by any Indemnified Party arising out of or resulting from any claim of a third party arising out of or in connection with (a) the transport, installation, connection, energization, use, rental, resale, modification, maintenance, or repair of the Goods by or on behalf of Buyer or any person obtaining the Goods or access to them through Buyer; (b) Buyer Items; (c) Buyer's or its Representatives' negligence, willful misconduct, or violation of Law; or (d) Buyer's breach of this Agreement. **THIS INDEMNITY APPLIES TO LOSSES CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OF AN INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THE LOSS IS FINALLY DETERMINED TO HAVE BEEN CAUSED BY (I) A DEFECT IN THE COMPANY'S MATERIAL OR WORKMANSHIP COVERED BY SECTION 11(a) OR (II) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PARTY.** Buyer shall not settle any claim in a manner that admits fault of or imposes any obligation on an Indemnified Party without the Company's prior written consent.

14. Rental and Resale by Buyer

If Buyer rents, leases, or resells the Goods, Buyer alone is responsible to its customers, renters, and users; shall pass through to them the safe-use requirements in Section 10 and the warranty and liability limitations in Sections 11 and 12; shall not make any representation regarding the Goods, their ratings, or their listing or certification beyond what the Company has stated in writing; shall maintain the Product Documentation with the Goods; and shall maintain commercial general liability insurance, including

products and completed operations coverage, in commercially reasonable amounts, and shall provide a certificate of insurance on request. This Agreement confers no rights on any customer, renter, or user of Buyer.

15. Intellectual Property

(a) The Company owns all right, title, and interest, including all Intellectual Property Rights, in its designs, drawings, models, bus and enclosure configurations, Product Documentation, know-how, and any tooling, fixtures, or software developed by the Company, whether or not furnished to Buyer or paid for in part by Buyer, and no sale of Goods transfers any of them. Drawings and Product Documentation are furnished solely for Buyer's use in installing, operating, maintaining, and renting the Goods.

(b) If Buyer or its Representatives provide suggestions, feedback, or design input regarding the Goods, Buyer grants the Company a perpetual, irrevocable, worldwide, royalty-free license to use and incorporate them without restriction or obligation. Where Buyer furnishes specifications, drawings, or samples, Buyer warrants that it has the right to do so and shall indemnify the Company against any claim that Goods made to them infringe a third party's rights.

16. Software

To the extent any Goods include or are accompanied by software or firmware provided by the Company ("Software"), the Software is licensed, not sold. Subject to this Agreement, the Company grants Buyer a non-exclusive, non-transferable license (transferable only together with the Goods on which it is installed) to use the Software solely to operate those Goods. Buyer shall not copy, modify, reverse engineer, decompile, or disassemble the Software, or bypass any security measure in it, and shall not remove any proprietary notice. The Company retains all rights in the Software. THE SOFTWARE IS PROVIDED "AS IS" AND IS NOT COVERED BY THE WARRANTY IN SECTION 11(a). Any separate software license or service terms identified in the Product Documentation or on the Sales Order apply to the Software in addition to this Section 16 and control over it in the event of conflict.

17. Confidentiality

(a) "Confidential Information" means information in any form disclosed by one party (the "Discloser") to the other (the "Recipient") in connection with this Agreement that is marked or identified as confidential or that a reasonable person would understand to be confidential, including, in the Company's case, non-public drawings, schematics, bus configurations, Product Documentation, pricing, and supplier information, and, in Buyer's case, non-public drawings, specifications, site and customer information, and fleet and purchasing information. Confidential Information does not include information that the Recipient can demonstrate (i) was rightfully known to it without restriction before disclosure, (ii) is or becomes generally available to the public other than through the Recipient's breach, (iii) was rightfully received from a third party without a duty of confidentiality, or (iv) was independently developed without use of the Discloser's Confidential Information.

(b) The Recipient shall use the Discloser's Confidential Information only to perform and exercise its rights under this Agreement; shall not disclose it to anyone other than its Representatives who need to know it for that purpose and are bound by obligations at least as protective as this Section 17; shall protect it with at least reasonable care; and shall promptly notify the Discloser of any unauthorized use or disclosure. Buyer shall not use the Company's Confidential Information, including drawings and Product Documentation, to design, develop, or have manufactured any product competing with the Goods. If compelled by Law to disclose Confidential Information, the Recipient shall, to the extent permitted, give the Discloser prompt notice and reasonable assistance in seeking protective treatment, and shall disclose only what is legally required.

(c) These obligations continue for three (3) years after the last Sales Order between the parties, and for Confidential Information that constitutes a trade secret under applicable Law, for so long as it remains a trade secret. If the parties have executed a separate confidentiality or non-disclosure agreement, that agreement controls over this Section 17 as to any information within its scope.

18. Compliance with Law; Export Control

Buyer is in compliance with, and shall comply with, all applicable Laws, and has and shall maintain all licenses, permits, and authorizations needed to perform its obligations under this Agreement. Buyer shall not, and shall not permit any other Person to, export, re-export, or release, directly or indirectly, any Goods, Software, or Product Documentation to any country, jurisdiction, or Person to which such export, re-export, or release is prohibited by applicable Law, or without first completing all required undertakings, including obtaining any necessary export license or governmental approval.

19. Term and Termination

(a) This Agreement commences upon Buyer's execution or acceptance of the Sales Order and continues until the parties have fully performed their obligations under it, unless terminated earlier under this Section 19.

(b) The Company may terminate this Agreement or any Sales Order, with immediate effect upon written notice to Buyer, if Buyer (i) fails to pay any amount when due, subject to Section 3(b); (ii) breaches any other provision of this Agreement and, if the breach is curable, fails to cure it within ten (10) days after written notice; (iii) is dissolved or liquidated, becomes insolvent or generally unable to pay its debts as they become due, becomes the subject of any voluntary or involuntary bankruptcy or

insolvency proceeding, makes a general assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee, receiver, or custodian for a substantial part of its property; or (iv) transfers or attempts to transfer this Agreement in violation of Section 21(b).

(c) On termination, all amounts payable by Buyer of any kind become immediately due and payable no later than seven (7) days after termination, Buyer's cancellation obligations under Section 7 apply to any Goods not yet shipped, and each party shall return or destroy the other's Confidential Information on request. Termination does not relieve Buyer of any obligation accrued before termination.

20. Force Majeure

The Company will not be liable or responsible to Buyer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in performance when and to the extent caused by circumstances beyond the Company's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake, or explosion; war, terrorism, riot, or civil unrest; epidemic or pandemic; embargo or blockade; national or regional emergency; strikes, labor stoppages, or other industrial disturbances; passage of Law or governmental action, including import or export restrictions, tariffs, or quotas; shortage of power, telecommunications, or transportation; and, without limitation, supplier allocation, extended or changed supplier lead times, shortages or unavailability of components or materials, and carrier delays. In such event the Company may extend the time for performance by the period of the delay, may allocate available components and production capacity among its customers in any reasonable manner, and may adjust the delivery schedule accordingly. Either party may terminate the affected Sales Order if a Force Majeure Event continues substantially uninterrupted for one hundred eighty (180) days or more, in which case Buyer shall pay for work performed and costs incurred or committed through the date of termination.

21. General Provisions

(a) **Relationship of the Parties.** The parties are independent contractors. Nothing in this Agreement creates any agency, partnership, joint venture, franchise, employment, or fiduciary relationship, and neither party may bind the other. No relationship of exclusivity arises from this Agreement.

(b) **Assignment.** Buyer shall not assign, transfer, or delegate any of its rights or obligations under this Agreement without the Company's prior written consent, and any purported assignment in violation of this Section is void. The Company may assign, transfer, or subcontract any of its rights or obligations under this Agreement without Buyer's consent, including to an Affiliate or a successor to its business. This Agreement binds and benefits the parties and their respective successors and permitted assigns.

(c) **No Third-Party Beneficiaries.** Except for Indemnified Parties under Section 13, this Agreement benefits solely the parties and their permitted successors and assigns, and nothing in it confers any right, benefit, or remedy on any other Person.

(d) **Publicity.** Neither party shall issue any press release or public announcement relating to this Agreement, or use the other party's trademarks, trade names, or logos, without the other's prior written consent, not to be unreasonably withheld; provided that the Company may identify Buyer as a customer in its customer lists and marketing materials unless Buyer objects in writing.

(e) **Notices.** All notices under this Agreement must be in writing and addressed, if to Buyer, to the address or email on the Sales Order, and if to the Company, to R&D PWR LLC, Attention: Legal, 4509 Freidrich Lane, Suite 415, Austin, Texas 78744, info@rdpower.net, or to such other address as a party designates by notice. Notices may be delivered by hand, nationally recognized overnight courier, certified mail (return receipt requested), or email, and are effective on receipt; a notice sent by email is effective when sent if no delivery failure is received, except that notice of breach, termination, or a warranty claim sent by email must also be sent by one of the other methods.

(f) **Entire Agreement; Order of Precedence.** This Agreement, together with the Sales Order (which is incorporated by reference, including any exhibits, drawings, and attachments identified in it), is the sole and entire agreement of the parties regarding its subject matter and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, written or oral, regarding it. In the event of conflict between this Agreement and the Sales Order as to commercial terms, the Sales Order controls. Where this Agreement is incorporated by reference into another written agreement between the Company and any party, references to the Sales Order mean that agreement or ordering document.

(g) **Amendment; Waiver.** No amendment or modification of this Agreement is effective unless in writing and signed by an authorized representative of each party. No waiver is effective unless explicitly set forth in writing and signed by the waiving party, and no failure or delay in exercising any right operates as a waiver of it or of any other right.

(h) **Cumulative Remedies.** Except as otherwise provided in this Agreement, all rights and remedies are cumulative and not exclusive; provided that Buyer's rights under Sections 6 and 11 are Buyer's exclusive remedies for the matters they address.

(i) **Severability.** If any term of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, that does not affect any other term or the validity of that term in any other jurisdiction, and the court may modify this Agreement to effect the parties' original intent as closely as possible.

(j) Survival. Sections 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19(c), and 21, and any other provision that by its nature should survive, survive the completion, expiration, or termination of this Agreement.

(k) Governing Law. This Agreement and all matters arising out of or relating to it are governed by and construed in accordance with the Laws of the State of Texas, United States of America, without regard to conflict-of-laws principles that would require application of the Laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and is expressly excluded.

(l) Choice of Forum. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind arising from or relating to this Agreement, including contract, equity, tort, fraud, and statutory claims, in any forum other than the federal district courts or the courts of the State of Texas sitting in Travis County, Texas, and any appellate court from any of them, and submits to the exclusive jurisdiction of those courts. A final judgment in any such action is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. The prevailing party in any such action is entitled to recover its reasonable attorneys' fees and costs.

(m) WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY IT.

(n) Counterparts; Electronic Acceptance. This Agreement and any Sales Order may be executed in counterparts, each of which is deemed an original and all of which together are one agreement. A signed copy delivered by email or other electronic transmission, and acceptance by electronic signature or click-through, has the same legal effect as delivery of an original signed copy.

22. Certain Definitions

"Affiliate" of a Person means any other Person that directly or indirectly controls, is controlled by, or is under common control with that Person, where "control" means the power to direct the management and policies of a Person, whether through ownership of voting interests, by contract, or otherwise.

"Intellectual Property Rights" means all registered and unregistered rights granted, applied for, or otherwise existing under patent, copyright, trademark, trade secret, or other intellectual property Laws anywhere in the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision, or any court or tribunal of competent jurisdiction.

"Loss" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right under this Agreement and of pursuing any insurance provider.

"Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"Representatives" means, with respect to a Person, that Person's employees, officers, directors, managers, members, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.

Other capitalized terms are defined where they first appear: "Agreement," "Buyer," "Company," and "Sales Order" (preamble); "Goods" and "Specifications" (Section 1); "Inspection Period" and "Nonconforming Goods" (Section 6); "Production has Commenced" (Section 7); "Product Documentation" (Section 8); "Buyer Items" (Section 9); "Warranty Period" and "Third-Party Products" (Section 11); "Indemnified Party" (Section 13); "Software" (Section 16); "Confidential Information," "Discloser," and "Recipient" (Section 17); and "Force Majeure Event" (Section 20).