

SATCON POWER SYSTEMS
TERMS AND CONDITIONS OF SALE FOR PRODUCT

All sales of product including, without restriction, equipment, parts, repairs and related services (“Product”) by SatCon Power Systems Canada Ltd. (“Seller”) are subject to the terms and conditions set forth herein.

1.0 ACCEPTANCE OF TERMS AND CONDITIONS

Purchaser shall be deemed to have accepted these terms and conditions upon the earlier of (i) receipt of Seller’s Order Acknowledgement (such Order Acknowledgement and these terms and conditions collectively “this Agreement”), or (ii) receipt in whole or in part of Seller’s shipment of the Product, or (iii) payment in whole or in part for the Product. Any other terms, conditions or any deletion from or alteration to these terms and conditions including without restriction in Purchaser’s order shall not apply unless agreed in writing by an authorized representative of Seller.

2.0 PRICES

2.1 Unless otherwise stated prices:

- (i) are in US Funds;
- (ii) are subject to delivery terms stated in Paragraph 4.0;
- (iii) are valid for thirty (30) days from date of quotation by Seller; and
- (iv) do not include federal, provincial, state, local, or any other, taxes, charges, levies and duties.

3.0 PAYMENT TERMS

3.1 Unless otherwise stated, terms of payment shall be:

- (i) for sales of Product in aggregate amount not exceeding \$250,000.00, payment in full net 30 days on issuance by Seller of invoices and evidence of readiness to ship; and
- (ii) for sales of Product in aggregate of greater than \$250,000.00, ten percent (10%) with order, balance payable in equal monthly payments commencing one (1) month after issuance of Purchaser’s order and final payment net 30 days on issuance by Seller of invoices and evidence of readiness to ship.

3.2 Any late payment shall bear interest at the rate of one percent (1%) per month (12% per annum), and shall be calculated and due on a monthly basis.

4.0 DELIVERY, TITLE and RISK

4.1 Product sold hereunder shall be delivered FCA Seller’s factory (INCOTERMS 2000). Risk of loss and damage shall pass to Purchaser on delivery.

- 4.2 Any delivery dates given are approximate and are based upon prompt receipt from Purchaser of all information essential to the proper execution of Purchaser's order.
- 4.3 The title to and property in any Product shall not pass to Purchaser until immediately prior to any sale of the Product by the Purchaser to any third party or until full purchase price of the Product has been paid, whichever occurs first, and Purchaser hereby grants to Seller a security interest in the Product and in any proceeds received by Purchaser on its resale of the Product to secure payment of all monies due to it by Purchaser from time to time under or pursuant to this Agreement or otherwise which Purchaser acknowledges include without restriction purchase monies for the Product. The Purchaser agrees that the security interest attaches immediately upon execution of this Agreement or upon execution of the formal Purchase Order to which the Terms and Conditions are attached. Purchaser acknowledges that Seller may make such filings and registrations with and give such notices to such government and non-government authorities and such third parties as it deems necessary to perfect and protect its security interest in the Product.
- 4.4 In the event that Purchaser fails to pay any amount owing or perform any of its obligations hereunder, becomes insolvent, initiates or becomes subject to any proceedings or seeks any relief under any bankruptcy or insolvency legislation, or any receiver, trustee, liquidator or custodian is appointed for Purchaser or any of its property, or if a distress or analogous process is levied upon the property of Purchaser or any part thereof, then Seller shall be entitled to exercise any remedies against all or part of the Product contemplated by the personal property security legislation of the jurisdiction applicable to the Product and the security interest granted hereby, and for this purpose Purchaser irrevocably grants Seller access to any premises where Product is located and authorizes Seller to use whatever means necessary to enforce such right of access.
- 4.5 So long as any amount remains owing by Purchaser to Seller hereunder, Purchaser shall exercise proper care in the possession and use of Product and shall keep same at all times in good repair and free of all liens, options, taxes, charges, pledges, privileges and encumbrances. Purchaser shall insure physical Product against loss, destruction or theft for the full value of the replacement purchase price of the Product.
- 4.6 If shipment is delayed beyond the agreed delivery date due to the fault of Purchaser, Seller shall store the Product at Purchaser's expense (which may be at the place of manufacture). In such event:
- (i) risk of loss and damage shall pass to Purchaser on agreed delivery date; and
 - (ii) any amounts payable to Seller on or after delivery shall be payable on presentation of Seller's related invoices; and
 - (iii) all storage costs incurred by the Seller, including, but not limited to, all expenses of preparation into storage, material handling, storage, inspection, preservation, and insurance shall be for Purchaser's account and amounts shall be payable on presentation of Seller's related invoices.

5.0 WARRANTY

- 5.1 Seller warrants that any Product sold hereunder shall be free from defects in material and workmanship and shall substantially conform to the applicable specifications for a period (the “Warranty Period”) terminating eighteen (18) months from the date of delivery or twelve (12) months from the date of first use for commercial purposes, whichever occurs first. In full satisfaction of any claim under this warranty, Seller shall, if satisfied after its inspection, tests or other assessment that the Product is defective, either (i) repair any defective part or parts, or (ii) make available to Purchaser such repaired or replacement part or parts or such service as is required in the opinion of Seller to correct the defect. Parts shall be delivered in accordance with the delivery terms applicable to the parts and services hereunder and any excess or replaced parts shall be returned FCA Seller’s factory (INCOTERMS 2000). Service shall be performed during normal working hours at times mutually agreed upon in advance by Seller and Purchaser. The conduct of any tests required to determine whether a Product is defective shall be mutually agreed upon in advance by Seller and Purchaser. Where a defect cannot be corrected by Seller’s reasonable commercial efforts, the parties shall negotiate an equitable adjustment in price.
- 5.2 This warranty shall be void if: (i) the Products have been damaged in shipment or improperly stored, installed or maintained or otherwise have not been used in conformance with Seller’s applicable instructions or have been altered or repaired without Seller’s written consent; (ii) Purchaser fails to notify Seller promptly in writing of any claim under this warranty; or (iii) Purchaser fails to make any Product subject of a claim promptly available for inspection and correction.
- 5.3 THIS WARRANTY CONSTITUTES PURCHASER’S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS IN RESPECT OF DEFECTIVE OR NON-CONFORMING PRODUCTS HEREUNDER AND IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES OR REPRESENTATIONS RELATING TO THE PRODUCTS HEREUNDER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, IN CONTRACT, TORT OR OTHERWISE, INCLUDING WITHOUT RESTRICTION ANY WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE, AND ANY SUCH WARRANTY, CONDITION, GUARANTEE OR REPRESENTATION IS HEREBY EXCLUDED.
- 5.4 SELLER SHALL NOT BE HELD LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSS OF USE ASSOCIATED WITH WARRANTY CLAIMS FOR said Product. For greater certainty, any claims under this Section 5 are subject to the limitations in Sections 6.1.
- 5.5 SELLER’S TOTAL LIABILITY FOR ANY AND ALL WARRANTY CLAIMS AND COSTS under this Section 5 SHALL NOT EXCEED THE PRICE RECEIVED FOR SUCH PRODUCT.

6.0 LIMITATION OF LIABILITY

- 6.1 **Consequential Damages.** Notwithstanding the patent infringement provisions in section 9.0. In no event, whether as a result of a breach of contract, warranty, tort (including without

restriction negligence) or otherwise, shall Seller be liable for any loss of profits or for any special, direct, indirect, consequential, incidental, exemplary or punitive damages, losses, injury, costs or expenses of any nature relating to any Product or related services sold hereunder.

- 6.2 **Limitation of Liability**. Notwithstanding the warranty provisions in Section 5.0 and the patent infringement provisions in Section 9.0, Seller's total liability to Purchaser or any third party for any and all claims concerning the Products or related services under these terms and conditions or otherwise, whether as a result of a breach of contract, warranty, tort (including without restriction negligence) or otherwise, shall not exceed in aggregate the price received for such Product.

7.0 *EXCUSABLE DELAY (FORCE MAJEURE)*

- 7.1 Seller shall not be liable for delays in the performance of its obligations hereunder due to causes beyond its reasonable control including but not limited to acts of God, acts of Purchaser, fires, strikes, labour disturbances beyond Seller's control, floods, epidemics, quarantine restrictions, war, insurrection or riot, acts of a civil or military authority compliance with priority orders or preference ratings issued by any Government, freight embargoes, car shortages, wrecks or delays in transportation, or severe weather.
- 7.2 Seller shall notify the Purchaser promptly of any delays set forth in Paragraph 7.1, and shall specify, as soon as practicable, a new shipment date.
- 7.3 Where the period lost is at least sixty (60) days and the parties have not agreed upon a revised basis for performing the work, either party may, upon thirty (30) days written notice, terminate this Agreement. Cancellation charges shall be determined in accordance with Paragraph 8.0.

8.0 *CANCELLATION*

- 8.1 The Purchaser may cancel this Agreement at any time upon written notice and payment to the Seller of cancellation charges referred to in Paragraph 8.2.
- 8.2 In the event that this Agreement is cancelled pursuant to Paragraph 8.1, or the Excusable Delay Paragraph 7.1, the cancellation charges payable by the Purchaser to the Seller shall be calculated as follows:
- (i) Material, labour and indirect expenses committed or incurred to date of cancellation; and
 - (ii) Reasonable profit on (i) herein above cited.

9.0 *PATENT INFRINGEMENT*

- 9.1 Seller shall defend any suit or proceeding brought against Purchaser to the extent based on any claim that any Product, or any part thereof, manufactured and sold hereunder by Seller, infringes any patent and shall pay all damages and costs (excluding consequential, incidental,

exemplary or punitive damages or costs) awarded therein against Purchaser, provided that Purchaser notifies Seller promptly in writing of such suit or proceeding and gives Seller authority to defend and such information and assistance (at Purchaser's expense) required for defense of same. In case said Product, or any part thereof, is in such suit held to constitute infringement and the use of said Product or part is enjoined, the Seller shall, at its own expense at its option: (i) procure for the Purchaser the right to continue using said Product or part; (ii) replace same with non-infringing Product; (iii) modify it so it becomes non-infringing; or (iv) remove said Product.

- 9.2 Seller's total liability under this Section 9.0, including without restriction for damages, losses, costs and expenses, shall not exceed in aggregate the price received for such Product.
- 9.3 This Section 9.0 shall not apply to and the Seller shall assume no liability for any infringement resulting from (i) any Products, or any part thereof, manufactured to Purchaser's design or, (ii) circumstances in which a claim arises from using Products in combination with Purchaser's equipment or process and Purchaser agrees to indemnify, defend and hold Seller harmless from and against any costs, expenses, claims or other liability arising from or relating to any such infringement.
- 9.4 In respect of any Product not manufactured by Seller, the patent infringement protection offered by the manufacturer thereof shall apply in lieu of the foregoing.

10.0 CONFIDENTIALITY

- 10.1 All plans, drawings, technical specifications, documents, software, microfilm, data, and proprietary information relating to the Products hereunder are the confidential and proprietary information of Seller, and shall be treated in confidence by Purchaser, and shall not be copied, reproduced, or communicated to any third party in any way whatever except in connection with the operation and maintenance of the Product, under terms and conditions specified by Seller in writing.

11.0 SOFTWARE

- 11.1 If not governed by a separate license or agreement, any software furnished hereunder whether separately or incorporated with supplied hardware, including any subsequent updates, is provided for use by Purchaser on a restricted, non-exclusive, non-transferable basis on the following terms and conditions:
- (i) the software and any part thereof is to be used only by Purchaser for its own internal operations and on the Product on which the software is first installed;
 - (ii) software and hardware documentation developed by Seller shall not be copied in whole or in part; additional copies of software and any documentation may be obtained from Seller or its representatives at Seller's then standard charges, subject to applicable import and export laws and regulations;
 - (iii) any third party licensed software will be identified as such and Purchaser will be required to complete any sublicense specified by the software licensor; and
 - (iv) source code for software is not included (unless provided under separate agreement).

12.0 GENERAL

- 12.1 This Agreement shall constitute the entire agreement and shall supersede all prior agreements, arrangements, obligations, commitments and undertakings, oral or written between Purchaser and Seller with respect to the subject matter of this Agreement. Except as otherwise expressly set forth herein Seller makes no representation, warranty, condition or guarantee, express or implied, relating to the subject matter of this Agreement.
- 12.2 Purchaser shall not assign this Agreement or any part thereof without the prior written consent of the Seller.
- 12.3 Any order received by the Seller is subject to credit approval and may be cancelled if the Purchaser's credit standing is not satisfactory to Seller.
- 12.4 No penalties shall apply pursuant to the execution of Seller's obligations hereunder, unless accepted in writing by an authorized representative of the Seller.
- 12.5 Any provision hereof which is contrary to law shall not invalidate any other provision hereof and any provision required to be included in this Agreement by applicable law shall be deemed to be incorporated herein.
- 12.6 The waiver by Seller or any breach or the failure by Seller to enforce any of the terms or conditions contained herein shall not in any way effect, limit or prevent Seller's right thereafter to rely on, enforce and compel strict compliance with each term or condition contained herein.
- 12.7 This Agreement shall be governed by the domestic laws of Ontario and of Canada applicable therein excluding the *International Sale of Goods Act* (Ontario) without reference to conflict of law rules and the parties hereto irrevocably attorn to the non-exclusive jurisdiction of the courts of such province.
- 12.8 (Applicable to the Province of Quebec, Canada). It is the express wish of the parties that this contract and all documents in connection with this contract be drawn up in English. Il est la volonté expresse des parties que le présent contrat et tous les documents qui s'y rattachent soient rédigés en langue anglaise.