

General Terms and Conditions

These ELITE POWER SERVICES LLC Standard Terms and Conditions dated June 2022 (these "**Terms and Conditions**") are referenced in purchase orders issued by ELITE POWER SERVICES LLC, for the purchase of various goods and services. These Terms and Conditions are hereby incorporated by reference into each purchase order that references them, as if set out expressly therein. The "**Purchase Order**" as used in these Terms and Conditions means the purchase order issued by ELITE POWER SERVICES LLC as "**Buyer**" which incorporates these Terms and Conditions by reference, the attachments, exhibits and documents expressly referenced in such purchase order, and these Terms and Conditions.

1. DEFINITIONS, ETC. "**Seller**" will be identified and defined as set forth within the purchase order issued by Buyer. "**Goods**" means those goods, work, or services ("**Services**") described in and to be furnished under the Purchase Order. The Purchase Order becomes effective when (a) executed by both the Buyer and Seller or (b) when Seller commences performance or tenders the Goods after issuance of the Purchase Order to Seller by the Buyer. The Purchase Order and these Terms and Conditions constitute the entire agreement between Buyer and Seller with respect to the Goods, superseding all prior or contemporaneous agreements, understandings, proposals, negotiations and counter-proposals related to the subject matter thereof. The Purchase Order will be governed by the laws of the State of Texas, exclusive of conflict of laws principles. Buyer will have no obligation to make any payment to the Seller before and unless the Purchase Order becomes in full force and effect in accordance with this [Section 1](#).

2. CONTROLLING TERMS. These Terms and Conditions prevail over any of Seller's general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. These terms and conditions expressly limit Seller's acceptance to the terms set forth herein. Fulfillment of this Purchase Order constitutes acceptance of these Terms and Conditions. If any part of these Terms and Conditions conflict with any specific terms included within the Purchase Order issued by Buyer, then such specific terms shall control.

3. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES.

a. Seller is responsible for properly and carefully packing and shipping the Goods, at its expense unless otherwise specified in the Purchase Order, FOB ("**Free on Board**") to the destination set forth in the Purchase Order (the "**Destination**") and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). If no Delivery Date is specified, Seller shall deliver the Goods within ten(10) days after Seller's receipt of the Purchase Order. Seller will comply with any documentary requirements as provided for in the Purchase Order or instructions of Buyer in the shipment process. Unless otherwise specified in Purchase Order, title to the Goods (and in the event that the Goods are made to order, then title to all material, inventory and work in progress, design data, other documentation, and all contractual rights thereto) will vest in Buyer immediately upon delivery of the Goods to Buyer at the Destination. Seller warrants that upon passage of title, Buyer shall have good title, free and clear from any and all liens, restrictions, reservations, security interests and encumbrances. Notwithstanding vesting of title and any other provision in the Purchase Order to the contrary, Seller will bear the risk of loss and damage and will insure or self-insure for the benefit of Seller and Buyer the Goods in its care, custody and control, including material supplied to Seller for incorporation into, or work in conjunction with, the Goods, until the same are delivered to the Destination and accepted by Buyer, in accordance with the provisions of [Section 4](#) below.

b. Seller shall provide the Services to Buyer as described and in accordance with the schedule attached hereto and in accordance with the terms and conditions set forth in these Terms.

c. Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in the Purchase Order.

4. CONFORMING GOODS AND ACCEPTANCE. The Goods will conform strictly to the description, data, drawings, plans, specifications, performance criteria, and sample if any, and other requirements of Buyer. The Goods will be new, of the latest design or model conforming to any Buyer requirements, merchantable, fit for the purpose(s) intended under the Purchase Order and of the best quality. No substitution in whole or in part will be permitted without the prior written approval of Buyer. Prior to shipment, Seller will carefully inspect and test the Goods for conformance to the requirements of the Purchase Order. If the words "or equal" are used in the Purchase Order, then proposed equals must be approved in writing in advance by Buyer. There will be no substitutes or shipment of more or less than the quantity specified without the prior written approval of Buyer. Upon delivery of the Goods or in any other location or time as may be specified in the Purchase Order, Buyer will conduct a visual inspection of the Goods in accordance with its standard procedures and may accept or reject the Goods, in whole or in part; *provided, however*, Buyer reserves all rights provided for in the Purchase Order to reject any Goods, in whole or in part, at a later time upon discovery of a latent defect not apparent by such normal visual

inspection. If Goods received do not conform to those ordered, or if more or less than the quantity ordered are shipped, then Buyer may reject such shipment in whole or in part by giving notice thereof to Seller. Seller will remove any rejected Goods at Seller's expense within ten (10) business days after notice. If any Goods are rejected by Buyer, then Seller will not ship any replacement Goods without the prior written approval and directions of Buyer.

5. WARRANTY. Seller warrants to Buyer that the Goods furnished under the Purchase Order, whether manufactured, fabricated, or otherwise produced or provided by Seller or others, will (a) strictly conform to the descriptions, data, drawings, plans, specifications, performance criteria, and sample if any, and other requirements referred to in the Purchase Order; (b) be of merchantable quality and fit for the purpose(s) intended; (c) conform with all applicable laws, ordinances, codes and regulations; (d) be performed by personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and (e) be free from defects in materials, performance, operation, and workmanship until the earlier of: (i) one (1) year after being placed in service by Buyer and (ii) twenty-four (24) months following the date of acceptance by Buyer. All work on the Goods or otherwise in the performance of the Purchase Order shall be performed in a skilled manner and will be of first-class quality and workmanship in every respect.

6. WARRANTY REMEDIES. If, within the warranty period specified in [Section 5](#) above, Buyer discovers any defect, error, noncompliance, nonconformity, omission, operational or performance deficiency or breach of any warranty as to the Goods, then Seller will promptly repair, reperform, or replace without cost to Buyer the Goods in question (including removal, reinstallation, access, shipping, and labor costs). If Seller fails after reasonable notice to proceed promptly with and complete the repair, reperformance, or replacement of the defective Goods, then Buyer may repair, reperform, or replace the Goods and charge all related costs (including labor and access costs) to Seller without voiding the warranties in the Purchase Order, and without Buyer waiving any other rights or remedies it may have under the Purchase Order. Such repair, reperformance, or replacement will be warranted for a period of twelve (12) months from its acceptance by Buyer. If Buyer determines, for any reason, that the remedies provided for in the Purchase Order are not adequate or feasible, then Buyer may elect to have such Goods removed at Seller's expense and any portion of the purchase price paid refunded in full. Buyer will have the benefit of the foregoing warranty and warranty remedies in [Sections 5](#) and this [Section 6](#), and such rights and remedies are in addition to any other rights or remedies provided in law, equity, or under the Purchase Order.

7. PAYMENTS, LIENS AND SET OFF. Undisputed portions of any invoice received from Seller shall be paid in accordance with the terms of the Purchase Order, and subject to this [Section 7](#) within thirty (30) days of receipt of such invoice with the appropriate supporting documentation. Regardless of the payment terms in the Purchase Order, Buyer's obligation to pay the purchase price is conditioned upon (a) receipt of completed, non-defective conforming Goods; (b) receipt and acceptance by Buyer of Seller's accurate and properly completed invoice accompanied by satisfactory supporting documentation; and (c) compliance by Seller with all terms and conditions of the Purchase Order. Seller agrees to pay promptly when due all bills for labor, material, equipment or services in connection with the Goods. If such bills are not promptly paid by Seller when due, then Buyer may pay them, and Seller will immediately reimburse Buyer therefor, or Buyer may at its discretion set off these funds owed by Seller against any other amounts due to Seller under any other contract with Buyer or any affiliate of Buyer. Seller agrees to keep the property of Buyer free and clear from any and all such claims, liens and encumbrances. To the maximum extent allowed by law, Seller agrees to release, defend, indemnify, and hold harmless Buyer and its affiliates from and against any and all laborers', materialmen's, mechanic's or other liens arising from, alleged to arise from, or in any way associated with Seller's performance or nonperformance under the Purchase Order. Seller waives all rights of lien against the premises, facilities, equipment and other property of Buyer. Any sums due Seller under the Purchase Order may be applied by Buyer as a set off against any sums owed by Seller to Buyer, or against any claims of third parties against Buyer arising from Seller's performance, whether under this or any other purchase order or other document. At its sole discretion, Buyer may withhold from payments to be made to Seller amounts legally required to be withheld from such payments and remitted to the taxing authority of any jurisdiction relevant to the transaction.

8. NON-DISCLOSURE OBLIGATION. Seller shall not use or disclose, and shall not allow its employees or representatives to use or disclose, to third parties any information regarding Buyer's (or their respective affiliates or customers') business affairs, finances, technology, processes, plans, facilities, properties, installations, product information, know-how, design drawings, specifications, inventions, ideas, or other information which is or may be confidential or proprietary ("**Confidential Information**") which is received or learned by Seller in connection with the Purchase Order or is developed pursuant thereto. Seller shall use all commercially reasonable efforts to prevent the disclosure of Confidential Information. This Section shall not apply to information that was in the prior possession of Seller, that is or becomes a part of the public domain through no fault of the Seller, or to the extent required by applicable law to be disclosed in legal proceedings. The confidentiality obligations of the Seller set out herein shall survive the expiration,

fulfillment, cancellation, or other suspension or termination of the Purchase Order. Seller shall have no ownership of or interest, including copyrights, in any Confidential Information. Additionally, Seller shall not advertise, publish or issue any news release or make any public announcement or confirmation concerning the fact that the Seller has furnished or has contracted to furnish Goods to Buyer. The provisions of this Section 8 are in addition to, and not in lieu of, any other confidentiality obligations agreed to by the Parties.

9. LAWS. In its performance under the Purchase Order, Seller agrees to strictly comply with all applicable laws, treaties, ordinances, codes and regulations, and specifically with, but not limited to, health, safety and environmental laws, treaties ordinances, codes and regulations of any jurisdiction where the Purchase Order may be performed. Seller shall furnish to Buyer Material Safety Data Sheet(s), including warnings and safety and health information about the Goods. Buyer acknowledges receipt of such information and agrees to communicate such warnings and information to persons whom it can reasonably foresee may be exposed to or may handle such Goods, including its employees, agents and contractors.

SELLER AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER, ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AND EMPLOYEES, FROM AND AGAINST ANY LOSS, COST (INCLUDING ATTORNEY FEES AND COURT COSTS), CIVIL OR OTHER FINES AND PENALTIES, DAMAGE OR LIABILITY, ARISING FROM OR ALLEGED TO ARISE FROM ANY VIOLATION, ALLEGED VIOLATION, OR FAILURE TO COMPLY WITH, THE TERMS OF THIS SECTION BY SELLER OR ANY PERSON FOR WHOM SELLER MAY BE RESPONSIBLE.

10. ASSIGNMENT AND NOTICE OF SELLER CHANGES. Seller will not sell, assign, or transfer the Purchase Order, or any part thereof, or any money due under the Purchase Order, without the prior written consent of Buyer. If consent is granted, then any such assignment by Seller will not (a) increase or alter Buyer's obligations, (b) diminish the rights of Buyer or (c) relieve Seller of any of its legal obligations under the Purchase Order. Buyer reserves the right to assign the Purchase Order to any party, in whole or in part, including a collateral assignment to Buyer's secured financing parties and the exercise of rights and remedies by such secured financing parties in connection therewith. Seller will give Buyer prompt written notice of any material change in its ownership or organization or any other operational change which may affect its performance under the Purchase Order, including in the manufacture or production of the Goods; however, in such event, Buyer reserves the right to cancel the Purchase Order without obligation under Section 11 below.

11. CANCELLATION. Unless otherwise provided in the Purchase Order, Buyer has the right at any time to cancel all or any separable part of the Purchase Order by written notice. Termination by Buyer for cause is covered under Section 19 below. No cancellation payment will be owed by Buyer to Seller unless mutually agreed upon in writing, and any such payment will be based on that portion of the Purchase Order price as the work satisfactorily performed to the date of the cancellation bears to the entire work contracted for, less any money paid to Seller. ***Seller will not be entitled to any lost profit, lost revenue, lost business opportunity, or any incidental, indirect, economic, consequential or other damages because of cancellation.*** At the time of such cancellation by Buyer, Seller will immediately discontinue all work pertaining to the Purchase Order, including not placing additional purchase orders or making any other commitment, and canceling forthwith any existing purchase orders and commitments on the best possible terms. Pending Buyer's instructions, Seller will preserve and protect the Goods on hand, work in progress, supplier data, and completed work, both in its own and in its suppliers' facilities. If the Goods have been paid for in whole or in part, then Buyer has the immediate right to enter Seller's premises to take possession and remove the Goods and all drawings, records, materials and equipment to be incorporated into the Goods.

12. CHANGES IN THE GOODS. Seller will make no unilateral change, substitution, or revision without Buyer's prior written consent. Buyer has the right to request changes in the character or quantity of the Goods, or in the manner or time of performance of the Purchase Order. Notice of any such request will be in writing and signed by a duly authorized representative of Buyer. If Seller is unable to comply with the request, then Seller will notify Buyer in writing, within five (5) days of receipt of such notice, otherwise such request will be deemed accepted.

13. INDEMNIFICATION. SELLER AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER, INCLUDING ITS AFFILIATES, AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, OR AGENTS, AGAINST ANY COSTS (INCLUDING ATTORNEY FEES AND COURT COSTS), FINES, PENALTIES, DAMAGES, AND LIABILITIES, ARISING FROM, ALLEGED TO ARISE FROM, OR IN ANY WAY ASSOCIATED WITH ANY DEFECT IN THE GOODS FURNISHED AND/OR SERVICES PROVIDED UNDER THE PURCHASE ORDER OR THE NEGLIGENCE OR FAULT OF SELLER OR THOSE FOR WHOM IT IS RESPONSIBLE.

14. INSURANCE. At minimum, Seller shall maintain auto liability insurance and general liability insurance each in amounts not less than \$1 million per occurrence and \$2 million aggregate during the course of the performance of any services, naming Buyer as additional insured, and waiving rights of subrogation. Seller shall carry Workers Compensation Insurance as required by law, and provide Buyer with a certificate of insurance and endorsements evidencing all required insurance coverage. All such Seller insurance coverages and policies shall be primary to, and not additional to, supplemental of, or contributing with, any insurance coverages or policies of Buyer,

any customer of Buyer, any of their respective affiliates, or any other contractor, subcontractor, seller, supplier, agent, or representative of any thereof. Seller shall bear all responsibility with respect to any hazardous materials generated, stored, or removed from any site.

15. TAXES. All prices are inclusive of all excise, sales and use taxes, value added tax, export duties and fees, import duties, fees, expenses and costs, or taxes and duties of a similar nature which may be lawfully imposed on the sale of the Goods.

16. PATENTS, COPYRIGHTS, TRADEMARKS AND TRADE SECRETS. Seller warrants, represents and covenants that in the absence of detailed and customized specifications of Buyer, the design, fabrication, manufacture, production, sale, distribution and intended use of the Goods do not infringe, directly or indirectly, in whole or in part, upon any patent, copyright, trade secret, trademark, trade name, or other intellectual property right of any third party. **IN REGARD TO CLAIMS MADE AGAINST BUYER BY ANY THIRD PARTY, SELLER AGREES TO RELEASE, DEFEND, PROTECT, INDEMNIFY AND HOLD BUYER, ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, SUPPLIERS, USERS, SUCCESSORS, AND ASSIGNS, HARMLESS FROM AND AGAINST ANY AND ALL COSTS (INCLUDING ATTORNEY FEES AND COURT COSTS), EXPENSES, FINES, PENALTIES, LOSSES, DAMAGES, AND LIABILITIES ARISING OUT OF ANY ALLEGED OR ACTUAL PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE NAME, OR OTHER INTELLECTUAL PROPERTY RIGHT INFRINGEMENT OR OTHER CLAIM, DEMAND OR ACTION ARISING FROM OR RELATED TO THE DESIGN, FABRICATION, MANUFACTURE, PRODUCTION, SALE, DISTRIBUTION OR USE OF THE GOODS.**

17. DOCUMENTATION AND RIGHT OF AUDIT. Where Seller's invoice includes compensation for work performed at a unit price or for changes in the work, Seller will submit Seller's determination of units of work performed, determined in accordance with the provisions of the Purchase Order and substantiated by documents satisfactory in form and content to Buyer. Upon verification by Buyer of said documents, Buyer will advise Seller in writing of either Buyer's acceptance of Seller's determination of such units, or of Buyer's determination of such units. Where Seller's invoices include compensation for work performed for a reimbursable price, all costs, expenses and other amounts so invoiced will be substantiated and supported by documents satisfactory to Buyer and verified by Buyer. Seller will maintain for a minimum period of two (2) years after final payment has been made to Seller under the Purchase Order all records and accounts pertaining to work performed under the Purchase Order. Seller agrees that Buyer will have the right to audit, copy and inspect, or cause to have audited, copied and inspected, Seller's records and accounts pertaining to performance under the Purchase Order at all reasonable times during the course of performance under the Purchase Order and for a minimum period of five (5) years after final payment has been made to Seller.

18. DEFAULT AND TERMINATION FOR CAUSE. In the event of Seller's (a) actual or anticipated breach of or default under any provision of the Purchase Order, or (b) organizational or operational change as stated in Section 10 adversely affecting, or which may adversely affect in Buyer's opinion, Seller's performance under the Purchase Order, or (c) bankruptcy, reorganization, receivership, insolvency, or making an assignment for the benefit of creditors, or (d) evidencing financial or organizational instability, Buyer has the right, in addition to any rights or remedies it may have in law, in equity, or under the Purchase Order, to immediately cancel the Purchase Order for cause by written notice to Seller, and Seller will not be entitled to any cancellation charge or other fee or penalty, nor will Buyer be liable to pay any costs of cancellation.

19. RELATIONSHIP OF THE PARTIES. The relationship between the parties is that of independent contractors. Nothing contained in these Terms and Conditions or any Purchase Order subject hereto shall be construed otherwise and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. WAIVER. No waiver by either party of any breach by the other party or any of the covenants or conditions contained herein shall be construed as a waiver of any succeeding breach of the same or any other condition or covenant or condition hereof.

21. CLAIMS AND DISPUTE RESOLUTION. Seller will submit any claims or disputes arising under the Purchase Order to Buyer in writing within sixty (60) days after final payment is made to Seller, or Seller's discovery of the facts giving rise to the claim or dispute, whichever occurs earlier, and Seller's failure to do so will constitute a waiver by Seller of any legal or equitable rights with respect to the subject matter of the claim or dispute. Seller agrees that any claims and disputes submitted by Seller which cannot be resolved through direct negotiation between Buyer and Seller will be submitted to binding arbitration, which shall be conducted by the American Arbitration Association in Houston, Texas, in accordance with its Commercial Rules and Procedures. Each party will bear its own expenses in any dispute resolution proceeding.

22. SEVERABILITY. If any of these Terms and Conditions is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms and Conditions or invalidate or render unenforceable such term or provision in any other jurisdiction.

23. SURVIVAL. Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Purchase Order including, but not limited to, the following provisions: Laws, Claims and Dispute Resolution and Survival.

24. NOTICE. Any notice required or permitted under the Purchase Order shall be in writing and shall be sent by hand delivery, nationally recognized overnight courier (for example, Federal Express), certified U.S. mail (with postage prepaid and return receipt requested), or electronic mail, in each case directed to the street address or email address as referenced within the Purchase Order, or to such address as may be designated by either party from time to time by written notice to the other party.

25. COOPERATION WITH FINANCING EFFORTS. Seller acknowledges that Buyer may finance Buyer's facilities on a non-recourse or limited recourse basis. Seller agrees to

cooperate with Buyer's financing efforts and to execute direct agreements (or consent and agreements) on reasonable and customary terms satisfactory to Seller and Buyer's financing parties, and to provide information reasonably requested by Buyer's financing parties.

26. FOREIGN CORRUPT PRACTICES ACT. Neither Buyer nor Seller will knowingly take any action which would cause either Party to be in violation of the United States Foreign Corrupt Practices Act concerning payments to government officials, political parties or candidates.

A handwritten signature in black ink, consisting of several stylized, overlapping loops and lines.

Signature

06-25-2022

Date