

Terms and Conditions of Electrical Engineering Services

TERMS AND CONDITIONS. This sale is subject to the terms and conditions stated herein and on the face hereof, which are in lieu of and replace any and all terms and conditions set forth in any documents issued by Client, including, without limitation, purchase orders and specifications. Any additional, different, or conflicting terms and conditions on any such document issued by Client at any time are hereby objected to by Consultant, and any such document shall be wholly inapplicable to any sale made thereunder and shall not be binding in any way on Consultant. No waiver or amendment to these terms and conditions shall be binding on Consultant unless made in writing expressly stating that it is such a waiver or amendment and signed by Consultant. In case of conflict between the terms and conditions stated here and those on the face hereof, those on the face hereof shall Control.

DEFINITION. "Consultant" shall mean Omega Battery Systems Inc., DBA: Omega Power Engineering. "Services" shall mean goods or services provided by Consultant. "Client" is the person(s) or company who retains Consultant.

ACCEPTANCE. All orders received are subject to acceptance by an authorized representative of Consultant. Acceptance of Services Provided by Consultant is acceptance of these terms and conditions. Rejection of services must be made in writing within seven (7) days of providing services by Consultant to Client.

DELIVERY DATES. Delivery dates and service dates are approximate and are not guaranteed. Consultant shall not be liable for delays in delivery or failure to deliver or to provided services due to causes beyond its reasonable control, including but not limited to acts of God, acts of Client, acts of military or civil authorities, fires, strikes, flood, epidemic, war, riot, delays in transportation or inability to obtain necessary permits, labor, material, components, or manufacturing facilities. In the event of any such delay, the date of delivery, or date to provide services shall be extended for a period equal to the time lost by reason of such delay. In the event of impossibility of performance resulting from any of the above causes, Consultant shall have the right to cancel this contract without further liability to Client. Cancellation of any part of this order shall not affect Consultant's right to payment for any services provided hereunder. Orders with indefinite dates are accepted upon the understanding that Consultant shall have the right to fill said order as it sees fit and to hold the Services for Client's account at Client's expense and risk, pending receipt of definite delivery instructions. Changes to shipment dates of orders may result in Consultant charging Client a carrying charge not to exceed 2% per month of delay. On any individual order or release against an order for Services, Consultant reserves the right to ship and invoice for a quantity of Services which may vary up to 5% over or under the quantity specified on the individual release and Client shall accept delivery and pay for such revised quantity and consider the shipment to be complete.

WARRANTY. Unless otherwise explicitly agreed to in writing by Consultant, Consultant makes no warranties, expressed or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose other than as follows: (1) ON GOODS. CONSULTANT WARRANTS ONLY THAT THE GOODS WILL BE IN GOOD WORKING ORDER AND FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP FOR SIX (6) MONTHS FROM THE DATE OF SHIPMENT. (2) ON SERVICES, CONSULTANT MAKES NO WARRANTY WHATSOEVER. If it appears within Six (6) months from the date of delivery that any goods or services provided hereunder does not meet the warranty specified above, and Client notifies Consultant promptly, Consultant shall thereupon correct any such defect by recommending repairs to the defective work. The foregoing shall constitute the sole remedy of Client and the full liability of Consultant.

LIMITATION OF LIABILITY. Consultant's liability on any claim of any kind, including negligence, for any loss or damages arising out of, connected with, or resulting from this contract, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any service covered by or furnished under this Contract, shall in no case exceed the price of the service or part thereof which gives rise to the claim, IN NO EVENT SHALL CONSULTANT BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES IN THE NATURE OF PENALTIES. Any action for breach of this contract by Consultant must be commenced by Client within one year after Client's cause of action has accrued.

NO WARRANTY AGAINST PATENT INFRINGEMENT. Client expressly understands and agrees that Consultant does not warrant that the Services are free of claims of patent infringement by any third party. Consultant hereby disclaims any such warranty or indemnification against patent infringement.

INDEMNIFICATION. Client agrees to indemnify, defend and hold harmless Consultant against any and all loss, liability, expenses and costs (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Consultant in connection with any threatened, pending, completed or future action suit or proceeding to which Consultant is, or is threatened to be, made a party arising from or related to Services that have been provided hereunder. The terms of this section shall survive the termination of this Agreement.

CANCELLATION. Client may Cancel this contract only upon written notice to Consultant and upon payment to Consultant of reasonable and proper Cancellation charges, including but not limited to (1) the proportionate contract price for all services completed, whether shipped or not, prior to Consultant's receipt of notice of cancellation; (2) an amount equal to the percentage of profits on all such costs; and (3) the expenses incurred by Consultant by reason of such cancellation, including reimbursement for any charges arising from termination of subcontract claims.

TAXES. Stated prices do not include any permit fees, customs duties, sales, use, value added, excise, federal, state, local, or other similar taxes. All such duties or taxes shall be paid by Client, or, in lieu thereof, Client shall provide Consultant with an appropriate exemption certificate.

INSURANCE. Client shall provide and maintain adequate insurance for the Services delivered hereunder against loss or damages by fire or other causes during the time between delivery and final payment in an amount fully protecting Consultant, and loss or damage by fire or other cause within such period shall not relieve Client from its obligations under this contract. Client shall provide and maintain adequate liability and workers' compensation insurance covering all who may assist in the use and/or assembly of the Services delivered hereunder.

TERMS OF PAYMENT. (1) All invoices, unless otherwise specified are due within 10 days from date of delivery or the date services are provided. Consultant may open an account for firms with approved credit or ship COD. Consultant reserves the right of declining to make deliveries or providing services except for cash or certified check whenever Consultant for any reason has doubts regarding Client's financial responsibility. In such event, Consultant shall not be liable for nonperformance of the contract and shall not make further delivery until it has received adequate assurance that Client's performance will be duly forthcoming. The failure of Client to provide such assurance within a reasonable time will be regarded by Consultant as a repudiation of the contract by Client, (2) Interest may be charged at the rate of 1.5% per month (18% per year) on all past due invoices. In the even of such rate is in excess of the rate allowed by law, then Client agrees to pay the highest rate allowed by law. (3) Client agrees to pay all costs of collection, including, but not limit to, the cost of litigation and reasonable attorneys fees.

CLAIMS OF SHORTAGES OR DAMAGES. All claims of shortages or damages must be filed in writing within seven (7) days after receipt of services. Claims filed after this time period will not be allowed.

GOVERNING LAW. This agreement shall be governed by the laws of the State of California. Client agrees that California courts have jurisdiction over this agreement and Client further agrees that Long Beach, California is the only appropriate place for venue of any litigation.

ENTIRE AGREEMENT. This terms and condition, including those on the face hereof, (but expressly not including any terms and conditions of Client's document including any purchase order) constitutes the entire agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to said sale. No modification of this contract shall be binding upon Consultant unless in writing and signed by Consultant, and no modification shall be effected by Consultant's acknowledgment or acceptance of Client's purchase order forms containing different provisions.