



# General Terms and Conditions

**1. APPLICABILITY:** These general terms and conditions (the “*Terms*”) are an integral part of all commercial or technical proposals, quotations, orders and agreements (each, an “*Order*”) by Vapor Power, 551 South County Line Rd., Franklin Park, Illinois 60131 (“*Vapor*”) for the sale or rental of goods and/or services (the “*Work*”) to the buyer identified in the Order (the “*Customer*”) and, together with Vapor (the “*Parties*”). By signing or executing an offer, quotation or sales order, placing an Order or receiving Work from Vapor, Customer agrees that these Terms supersede any prior written or oral agreement and any terms and conditions contained in Customer’s request for quote, purchase order, invoice, order acknowledgment, change order or similar document and the Order is subject to the Vapor Terms only. To the extent that there is a conflict between these Terms and a valid signed master agreement between the Parties, the specific conflicting terms of such master agreement shall prevail. To the extent that there is a conflict between these Terms and another set of Vapor terms and conditions issued to the Customer as part of an Order, the specific conflicting terms of the Order shall prevail. Any other variation from these Terms shall require the signed consent of an authorized Vapor representative.

**2. QUOTATIONS AND ORDERS:** Quotations are valid for a period of 30 days or as otherwise specified in the quotation and are only applicable to the specific Order.

**3. PRICING:** All prices are exclusive of any federal, provincial, local, sales, use, value added, excise or similar taxes, tariffs or the like imposed on the sale or use of the Work, which will be added to invoices and paid by Customer to Vapor to be remitted to the appropriate authority. If any of Vapor’s costs relating to the Work increase prior to delivery, including but not limited to prices of materials or wages, Vapor shall have the right to increase its prices to reflect those cost increases up to a maximum of 10%. Minimum amount to be charged for each Order is \$500.00 USD.

**4. QUANTITY:** Vapor reserves the right to ship 95% to 105% of the quantity identified in the Order. Vapor reserves the right to ship within plus 10% of required flexible or bulk cable unless specific lengths are requested by Customer and quoted by Vapor in the Order.

**5. WARRANTY:** Vapor warrants that the Work will comply with the specifications of the applicable Order and will be free from defects in materials and workmanship until the earlier of:

(i) 12 months from the date of installation, or (ii) 18 months from the date of delivery (the “*Warranty Period*”). In the event the Work is defective and Vapor is notified of such defect in writing by the Customer within the Warranty Period, then at Vapor’s sole discretion and without further liability therefore, Vapor shall either: (i) repair or replace such defective Work with Work that complies with the applicable specifications, or (ii) refund to Customer any amount paid to Vapor for such defective Work. The Customer may purchase different or extended additional warranties from Vapor. The warranties provided herein shall not apply in the event of defects which are

due to the following: (a) installation, inspection, testing, operation or maintenance that is improper or non-compliant with Vapor’s guidelines and instructions; (b) attachments, modifications, repairs, removals or replacements performed without Vapor’s prior written approval; (c) any use for purposes other than that for which they were designed; (d) unusual mechanical, physical or electrical stress, or normal wear and tear; or (e) latent or hidden defects arising or discovered after expiration of the agreed Warranty Period. Vapor further warrants that the Work will be free from liens or other encumbrances. THE FOREGOING WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, OR ARISING BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

**6. PAYMENT:** Customer shall pay all undisputed amounts of an invoice within 30 calendar days of the invoice date, failing which Customer shall be automatically in default. Interest on late payments shall accrue at the rate of 2% per month, unless prohibited by applicable law. If Customer disputes any invoice or any part thereof, it may withhold payment of the disputed amount, but shall notify Vapor within 10 calendar days of receipt of the invoice in writing the grounds for non-payment. The Parties will use their best efforts to resolve any outstanding disputes before the due date of the original invoice. If Customer fails to pay invoices when due, Vapor may (i) require payment in advance; (ii) revoke any discounts; and/or (iii) immediately suspend its performance of Work, or terminate any Order, without liability. Customer will pay all of Vapor’s reasonable and documented costs, including attorney’s fees and court costs, incurred in connection with the collection of past due amounts.

**7. SHIPPING AND TRANSFER OF TITLE:** The Work will be shipped in Vapor’s standard packaging FCA Vapor’s manufacturing facility (the “*Delivery Location*”) (as per the most recent Incoterms). Customer will be the importer of record and responsible for all costs, charges, tariffs, taxes or the like relating to the shipment of the Work. The delivery location will be the location of manufacture, not the one designated in the PO. Customer may request and pay for additional packaging costs associated with special requirements and international shipments. Vapor will confirm delivery dates following receipt of the Order. All delivery dates are estimated dates and are given subject to changes and circumstances beyond Vapor’s control, including but not limited to subcontractors or suppliers failing to meet their delivery obligations. Title to the Work shall transfer to Customer FCA Vapor’s manufacturing facility, unless otherwise agreed upon in writing by the parties. Vapor may, without a notice of default and without the need for any court order, cancel any Order and claim any Work that has been delivered but not paid for in full after the date payment is due and Vapor has given notice to Customer of its intent to reclaim the Work.



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**8. INSPECTION AND TESTING:** Customer shall give reasonable prior notice of its intent to conduct inspections and testing at the manufacturing facility and such inspections and testing shall take place during normal business hours. Customer is responsible for all costs relating to such inspection and testing. If testing is a requirement prior to purchase, all freight charges and transportation costs incurred to transport Work to and from the test location shall be the sole responsibility of Customer.

**9. STORAGE:** Work which is ready for shipment at facility of Vapor or one or more of its Affiliates as identified in the Order but has not been retrieved by Customer will be kept in storage for a maximum of 30 calendar days, or for a longer period as agreed in writing. If such storage continues for more than 30 calendar days, Customer will pay a storage fee equal to 0.5% of the value of the Work per week of storage, up to a maximum of 10%. In the event of such storage, title and risk of ownership shall pass to Customer when the Work is ready for delivery, and shipping terms shall be modified to Ex Works Vapor's facility.

**10. CHANGES TO ORDERS:** Customer warrants that the data, calculations, sizing, specifications and/or other design information provided to Vapor is complete and accurate. Customer is responsible for all costs resulting from changes necessitated after Customer has returned signed approved drawings to Vapor. Customer's signed approval and acceptance of required drawings is required prior to Vapor's commencement of procurement and manufacturing. Any additional changes to an Order requested by Customer may be accepted or rejected by Vapor at its sole discretion and shall only be binding if agreed to in writing signed by both Parties. Vapor shall not charge for any changes to an Order requested by Customer if not confirmed in writing by the Customer.

**11. INTELLECTUAL PROPERTY:** "*Intellectual Property*" means any intellectual property, including but not limited to copyrights, patents, trade secrets, trademarks, software, firmware or other intellectual property rights associated with any ideas, concepts, know-how, techniques, processes, reports, or works of authorship owned, developed or created, and enhancements, improvements or derivatives thereof. Unless the Parties have otherwise agreed in writing, a Party's Intellectual Property shall be and remain the property of that Party. To the extent any Intellectual Property of a Party is incorporated into or necessary for the performance of any Work provided, that Party grants the other Party a non-exclusive, non-transferrable, non-sub-licensable, revocable, royalty-free, right and license to use such Intellectual Property incorporated into the work solely for the purpose of performing or using such work, as applicable. Except as expressly stated herein, neither Party shall have any right or license to use, directly or indirectly, any of the other's Intellectual Property. Any improvement or enhancements to a Party's existing Intellectual Property shall belong to such Party.

**12. CANCELLATION AND RETURNS:** Except for Orders for specialty or custom manufactured Work which cannot be cancelled by Customer without the prior written consent of Vapor, Customer may cancel orders for Work at its convenience. Customer may not return Work prior to receiving Vapor's signed Return Materials Authorization form. Returns of standard catalog and inventory Work will be subject to a restocking charge, which

shall be determined by Vapor in its sole discretion, not to exceed the amount payable to Vapor under the canceled Order. Customer is responsible for any and all repairs or reconditioning necessary to put returned Work in a resalable condition. All returned Work must be in an "as new" condition and in original packaging. For custom manufactured Work, Vapor is entitled to a reimbursement of costs incurred up to the date of cancellation, which shall include costs of labor and materials (without a profit markup on Work completed, thus forfeiting profit on both the Work completed and the work remaining that is cancelled).

**13. INSURANCE:** Vapor shall maintain appropriate and sufficient insurance to cover its obligations under these Terms. The amounts of any insurance taken out by Vapor for the purposes of the Order will only be paid: (i) under the terms of such insurance; (ii) if Vapor has acted with proven fault in the performance of its obligations to the Customer or third parties; and (iii) if Vapor's acts, under (ii), have generated a loss subject to indemnification by the mentioned insurance. Upon request, Vapor can deliver to the Customer a certificate of insurance that shows the insurance applicable to the Order. The Customer will not be considered an additional insured and no coverage from Vapor's insurance will cover any negligence, fraud or willful misconduct by the Customer or any act or omission by it or directly or indirectly related third parties.

**14. RENTAL OF PRODUCTS:** Minimum rental periods are 28 calendar days unless otherwise noted in the Order. Customer shall bear all repair costs for rental materials damaged beyond normal wear and tear. Rental products that are not returned or are damaged beyond repair will be charged at 80% of purchase price if such products have been in use for more than 6 months and at 100% of purchase price otherwise. Rental Product invoices will be sent to Customer every 28 days until rental products have been received at Vapor's defined facility. Rental products returned after the minimum rental period of 28 calendar days will be invoiced at the following discount levels: 1-2 days – 90% discount, 3-8 days – 70% discount, 9-15 days – 40% discount, 16-28 days – 0% discount.

## LEGAL TERMS

**15. INDEMNIFICATION:** Each of the Parties shall be responsible for and shall indemnify and hold harmless each other Party and its entities that control or are controlled by that Party, whether through controlling at least 50% of voting shares, by contract, or otherwise (each, an "*Affiliate*") from and against all claims including, but not limited to, any causes of action, demands, judgments, liabilities, losses, fines and penalties, including reasonable attorneys' fees and costs of litigation relating to or in connection with the Order or Work (collectively, "*Claims*") for: (a) loss of or damage to property of the other Party and (b) personal injury including death or disease to any person employed by the other Party or its affiliates, to the extent that any such loss, damages or injury is caused by the negligence or breach of duty of the indemnifying Party.

**16. LIMITATION OF LIABILITIES: NOTWITHSTANDING ANYTHING CONTAINED IN THESE TERMS TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST OR DELAYED PROFITS, LOST OR DELAYED REVENUE, LOST**



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OR DELAYED PRODUCTION, DOWNTIME, BUSINESS INTERRUPTION, LOSS OF GOODWILL OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN ANY WAY CONNECTED TO THESE TERMS OR THE PERFORMANCE OF THE WORK, WHICH ARE SUFFERED BY THE OTHER PARTY OR ANY OF ITS AFFILIATES, REGARDLESS OF CAUSE. NOTWITHSTANDING ANYTHING CONTAINED IN THESE TERMS TO THE CONTRARY, VAPOR'S MAXIMUM LIABILITY TO CUSTOMER, THIRD PARTIES, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAYABLE TO VAPOR UNDER THE APPLICABLE ORDER GIVING RISE TO THE CLAIM, AND CUSTOMER SHALL RELEASE AND HOLD VAPOR HARMLESS FROM ANY AND ALL CLAIMS TO THE EXTENT THEY EXCEED SUCH AMOUNT, REGARDLESS OF CAUSE. NO CLAIMS, REGARDLESS OF FORM, MAY BE BROUGHT BY CUSTOMER MORE THAN 1 YEAR AFTER THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

**17. FORCE MAJEURE:** Neither Party shall be considered in breach of these Terms if prevented from performing due to an event that renders it wholly or partially impossible for the affected Party to perform its obligations under these Terms, when such event is beyond the reasonable control of the affected Party, is not due to the fault or negligence of the affected Party, and could not have been avoided by the affected Party by the exercise of reasonable diligence (each, a "**Force Majeure Event**"). Force Majeure Events include but are not limited to interruption of operations, faults in materials, lack of raw materials, government orders, pandemics, unsafe site conditions, laws, failure of third parties to deliver, transport difficulties, public disorder, strikes, lockouts, problems with mobilization and other contingencies. If any period of a Force Majeure Event preventing performance of Work continues for more than 30 calendar days, either Party may terminate the effected Order or portion thereof by giving 5 calendar days written notice to the other Party.

**18. LEGAL COMPLIANCE:** Both Parties agree to comply with all applicable laws. The Parties will not offer, promise, authorize or make, directly or indirectly, anything of value to any person or entity in order to obtain or retain business, or secure any other improper business advantage. Customer agrees it will not, directly or indirectly, sell, provide access to, export, re-export, transfer, divert, loan, lease, consign, transship (including a stop in port), transport, or otherwise dispose of any Work to (i) any entity known to be headquartered in, or owned or controlled by a national of, any country or region subject to comprehensive sanctions by the United States, Canada, the European Union or other countries with jurisdiction over the transaction contemplated by the Order; (ii) any other individual or entity identified on a denied or restricted party list of the United States, Canada, the European Union or other countries with jurisdiction over the transaction contemplated by the Order; or (iii) engage in any activity or end-use restricted by applicable laws, without first obtaining all required government authorizations and Vapor's prior written consent. Each Party shall release, defend, indemnify and hold the other Party harmless from and against any Claims relating to such violations.

**19. CHOICE OF LAW:** All matters arising out of or relating to the execution, construction, interpretation or breach of these Terms, are to be governed by the laws of the jurisdiction in which Vapor

is located, excluding such jurisdiction's rules regarding conflicts of laws and the provision of the *United Nations Convention on Contracts for the International Sale of Goods*.

**20. DISPUTES:** The Parties agree to use their best efforts to resolve all disputes informally. All unresolved disputes, claims or legal proceedings in any way pertaining to these Terms or the associated Order, or the execution, construction, interpretation or breach thereof (other than actions for injunctive relief or enforcement of lien rights) shall be brought exclusively in the courts of the jurisdiction specified in Section 19 above (*Choice of Law*) and in no other court or tribunal whatsoever.

**21. RIGHT TO AUDIT:** Vapor shall keep accurate accounts and records of all transactions relating to an Order in accordance with generally accepted accounting principles for a period of at least 7 years after receipt of the final payment with respect to an Order (the "**Audit Period**"). Upon giving 30 calendar days prior written notice, at any time during normal business hours during the Audit Period, Vapor shall permit Customer, at Customer's own costs, and its authorized representatives for which Vapor has provided services, to review Vapor's records relating to the services provided, as may be necessary to audit and verify the completeness and accuracy of any invoice.

**22. CONFIDENTIALITY:** For the purposes of these Terms, of the Order, "**Confidential Information**" means any information, data and/or document related to the Order, in any format, that the Parties obtain from one another. The Parties undertake to maintain absolute confidentiality relative to the Confidential Information during the performance of the Order and for a period of 2 years after its termination, for any reason. The results of the services performed in connection with the Work or information that meets the following provisions will not be considered Confidential Information if: (i) it is known to the receiving Party or is in its power before it is received from the revealing Party; (ii) it is or comes into the public domain before or after having been revealed to the receiving Party; (iii) it becomes known to the receiving Party from other sources, without the breach of any confidentiality obligation between such sources and the revealing Party or a third party; (iv) it is developed independently by the receiving Party; (v) its disclosure is authorized in writing by the revealing Party; or (vi) its disclosure is required by law or legal rules/decisions imposed by any government body/agency with authority over the Parties. **23**

## **23. GENERAL:**

**23.1** Notices shall be given in writing via email with a receipt requested or delivery overnight by a national recognized courier service.

**23.2** Vapor shall have several, and not joint, liability with respect to its obligations under the Order, and Customer may only look to such entity, and not any of its Affiliates, for fulfillment of such obligations.

**23.3** If any of the provisions in these Terms are found to be inconsistent with or contrary to any applicable law, such provisions shall be modified to the extent required to comply with applicable law and as so modified, these Terms shall



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continue in full force and effect. If any provision cannot be modified to comply with applicable law, the term or provision shall be deemed to be deleted from these Terms and the remaining provisions shall remain in full force and effect.

**23.4** Either Party's failure to enforce any term, provision or condition of these Terms shall in no manner affect its right to enforce the same at a later time, and any waiver by Vapor shall not be construed to be a waiver of any subsequent breach.

**23.5** Neither Party may assign its rights or obligations to a third party (other than its Affiliates) without the prior written consent of the other Party.

**23.6** Nothing in these Terms shall be construed to give any person or legal entity, other than Vapor and Customer, any right, remedy or claim under or with respect to the Terms, and the Terms and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.

**23.7 DATA PRIVACY (AS APPLICABLE):** On occasion, Vapor may process personal data of Customer ("Customer Data") for the purpose of compliance with its legal obligations, execution and management of the Order and the commercial relationship maintained with Customer and to send communications. Vapor is the data controller responsible for the processing of the Customer Data. Customer Data may be disclosed to Vapor's Affiliates for internal management and to those subcontractors and service providers that need access thereto, and when required by a legal obligation or a competent authority. Customer may exercise at any time any rights of access, rectification, objection, erasure, restriction and portability, as contemplated by the applicable data privacy regulations, by writing to the to the address of Vapor identified on the Order.