



## PURCHASE ORDER TERMS AND CONDITIONS

1. **Purchase Orders.** For purposes hereof, “Allied” means Allied Power Management, LLC or any of its subsidiaries and affiliates listed on a Purchase Order, and “Supplier” means the person or entity that supplies products or deliverables of any description (“Goods”) and/or services (“Services”) under a Purchase Order issued by Allied (“Order”). Each Order and attachments thereto, including without limitation any Statement of Work, and these terms and conditions (“Terms & Conditions”), constitute an agreement of the Parties (“Agreement”) in respect of the Goods and/or Services specified in the Order, and the exclusive terms and conditions between the parties for the Goods and Services ordered by Allied from Supplier, unless otherwise specifically set forth in an Order. Any terms or conditions contained in any acknowledgment, acceptance, invoice or other communication of Supplier which are inconsistent with these terms and conditions are hereby rejected. No modification of an Order or these Terms & Conditions shall be binding on Allied unless expressly accepted in a writing signed by Allied. Supplier’s acceptance of an Order constitutes Supplier’s agreement to perform the Services and/or provide the Goods, described in, and in accordance with such Order. Shipment of Goods or commencement of Services shall constitute acceptance of the Order unless otherwise advised by Supplier prior to shipment of Goods or commencement of Services.

2. **Nonexclusive.** Nothing herein constitutes an exclusive purchase or supply relationship. Allied may, without restriction, purchase goods from other suppliers and hire other contractors to perform the same or different services for Allied of the type and at any time as specified in any Order.

3. **Delivery.** Delivery according to the schedule specified in an Order is a material requirement of each Order. No completion date or delivery date shall be amended except in writing signed by Allied. If no delivery or completion schedule is specified, the Order shall be fulfilled promptly. Supplier will advise Allied immediately upon receipt of the Order if the specified delivery or completion date cannot be achieved, or immediately upon the occurrence in the event of Force Majeure (defined below). Unless otherwise provided in an Order, all shipments are F.O.B. destination, and bills of lading shall accompany each invoice with sufficient description of each invoiced item to allow identification without specialized knowledge. Freight charges shall be paid by Supplier and indicated separately on all invoices. Title and risk of loss or damage remain with Supplier until items are delivered to Allied’s destination. Allied shall have thirty (30) days after receipt within which to inspect the Goods and/or Services tendered by Supplier. During such period, Allied, at its option, may reject all or any portion of such Goods or Services which do not comply in every respect with the Order and any specifications and/or statement of work included therein, and with these Terms & Conditions.

4. **Payment Terms.** Unless otherwise specified in an Order, Supplier shall provide invoices on a monthly basis. Each invoice shall reference the applicable Order number and shall be in such form and supported by such information and documentation as Allied may reasonably specify. Unless otherwise provided in an Order, invoices shall be payable on the basis of net, thirty (30) days from Allied’s receipt of an invoice. Allied shall be entitled to withhold payment of incorrect invoices. Supplier shall be liable for and shall pay sales taxes and all other fees, taxes, dues, customs duties or other like charges, if any, properly payable in connection with sales of Goods and Services. Final payment for Services shall not be due until Supplier has delivered to Allied a complete release of any and all liens arising out of the Services or receipts covering all labor, materials, and equipment for which a lien could be filed.

5. **Supplier Warranties.** Supplier warrants to Allied as follows, for twenty four (24) months from the date of delivery of Goods and/or Services pursuant to an Order or twelve (12) months from the date Goods and/or Services are first used by Allied, whichever occurs first:

- (i) The Goods, Services and Supplier’s performance of each Order shall be in compliance with all law and regulations and all Goods and Services shall be in accordance with specifications therefor;
- (ii) all Services shall be completed in a good and workmanlike manner;
- (iii) Supplier’s performance of Services and/or delivery of Goods shall not be in conflict with any restriction to which Supplier is subject and all Goods will be free of any liens or encumbrances or rights of any third parties; and
- (iv) all Goods provided will be new and unused, merchantable and free from defects in materials and workmanship.

If Allied identifies a warranty problem with any Goods, Allied will notify Supplier of such problem and shall be entitled to return the Goods to Supplier, at Supplier’s expense.

6. **Personnel and Equipment.** Supplier shall provide sufficient skilled labor to promptly perform the Services, and all materials, tools, equipment, machinery, transportation, and other facilities and services necessary for the proper execution and completion of an Order.

- (a) **Allied Equipment.** In the event the use of Allied equipment by Supplier is necessary, Supplier shall inspect the Allied equipment and will not use same unless it is suitable for the intended use and conforms with any and all law and orders. Allied makes no representation as to the suitability of any Allied equipment. Supplier assumes full responsibility for the proper use of the Allied equipment and shall return same to Allied in at

least as good condition in which it was borrowed, ordinary wear and tear excepted. Allied equipment shall only be operated by Supplier's trained and/or qualified personnel.

- (b) **Supplier Equipment.** In the event the use of Supplier Equipment by Allied is necessary, Supplier shall, within five (5) days upon return of the equipment, inspect the equipment, note the damages found and inform Allied in writing of the monetary value, if any, of the damages.

7. **Materials Handling.** Supplier shall be solely responsible for the handling, transportation and disposal of any and all materials, substances and chemicals which Supplier or any subcontractor brings on to any Allied site, and any waste generated or resulting from the use thereof, including, but not limited to, hazardous substances in accordance with law. Supplier shall supply Allied with a Material Safety Data Sheet ("MSDS") for any material provided under an Order for which an MSDS is available.

8. **Indemnification.** Supplier agrees to defend, indemnify and hold harmless Allied and its affiliates and their respective officers, employees, owners, agents, guests, invitees and customers from and against any and all liability, loss, damage, fine, penalty, interest, cost or expense (including attorneys' fees) by reason of any allegation, claim, action or suit, whether for death, bodily injury or property damage arising out of or in any way related to (a) Supplier's performance of an Order; (b) the omission, negligence or willful misconduct of Supplier; (c) failure of the Goods or Services supplied to meet specifications or warranties or other defect; (d) any alleged or actual, direct or contributory infringement or misappropriation of any patent, copyright, trade secret or other proprietary right arising from the purchase, use, manufacture, or sale of such Goods or Services; or (e) any leak or spill of any substance while being transported or delivered in or to an Allied facility, or in connection with the Services.

9. **Default.** Either party may terminate any Order upon written notice to the other party in the event of breach of an Agreement in any material respect if such breach is not remedied within five (5) days of written notice of such breach. In addition, Allied shall have the right in its absolute discretion to terminate an Order in whole or in part, upon fifteen (15) days' prior written notice to Supplier at any time and for any or no reason, and Supplier shall thereupon stop all performance under the Order, except as otherwise directed by Allied. In the event Allied cancels an Order as provided hereunder, Allied shall be required to pay to Supplier only: (a) the agreed unit prices for those Services satisfactorily performed and those conforming Goods delivered to Allied through the date of termination; and (b) actual direct costs and expenses, including cancellation charges under binding subcontracts, as Supplier may incur in connection with such cancellation; provided, however, that under no circumstances shall the total of such payments exceed the total Order price. If Allied suspends an Order, Supplier shall be entitled to compensation for any out-of-pocket costs caused by the

suspension upon delivery of written evidence of such costs. If the suspension lasts for more than two (2) months, the Order shall be deemed to be terminated unless otherwise agreed by Allied and Supplier.

10. **Change Orders.** Allied may order changes, modifications, deletions, and additions to an Order by issuance of written change orders to a specified Order ("Change Order"). Supplier shall make no change in an Order without the prior receipt of a written Change Order, and Supplier shall not be entitled to compensation for any change unless in accordance with a written Change Order designating the nature of the change and the amount of additional compensation to be paid therefor. In the event of a deletion or addition to an Order, the compensation due Supplier shall be adjusted by a fair and reasonable valuation based upon the original contract prices or rates.

11. **Insurance.** Supplier shall maintain the following insurance coverages throughout performance of any Order:

- (a) Comprehensive General Liability Insurance with a limit of not less than five million dollars (\$5,000,000.00) per occurrence and per project or per location aggregate. Such policy shall be occurrence based, shall include products coverage, and shall be endorsed to cover liability Supplier's indemnity obligation hereunder.
- (b) Comprehensive Automobile Liability Insurance covering the operation of all automobiles used in connection with the performance of any Services, with a combined single limit of one million dollars (\$1,000,000) per accident for bodily injury and property damage.
- (c) Workers' Compensation, providing statutory benefits, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000.00).
- (d) Excess or Umbrella Liability to policies required by above paragraphs (a) and (b), with a limit of not less than ten million dollars (\$10,000,000.00) per occurrence and per project or per location aggregate.
- (e) Pollution Liability Insurance, if required by Allied, for coverage limits specified in an Order.

Prior to the delivery of any Goods or commencement of any Services, Supplier shall furnish to Allied a certificate of its insurance coverages, evidencing the foregoing coverages and including a provision for thirty (30) days' written notice to Allied by the insurer prior to cancellation or material change in policy coverage. Subcontractor's coverage under (a) and (b) shall (i) name Allied as an additional insured; (ii) shall be primary coverage; and (iii) waive rights of subrogation against Allied.

12. **Independent Contractor.** Supplier is an independent contractor and has no authority to, and will not purport to, bind Allied to any contract, debt or

obligation. All persons used or employed, directly or indirectly, by Supplier or any subcontractor in the performance of the Order (collectively, "**Supplier Employees**") shall be deemed to be employees or agents of Supplier and not employees or agents of Allied. Supplier shall have and exercise exclusive control and direction of Supplier Employees and assumes full responsibility for the compliance with and payment of all taxes, contributions, pensions, workers' compensation, social security, and all other obligations and benefits owed to or with respect to Supplier Employees. Except as otherwise agreed by Allied in writing, Supplier shall be solely liable for all expenses incurred in the performance of the Order, and any expenses which Allied so agrees to reimburse must be evidenced by proper documentation.

**13. Confidentiality; Intellectual Property.** Supplier shall not use for other than performance of an Order or disclose to any third party, any information concerning the terms of an Agreement, or any data or information of Allied received by Supplier pursuant to an Order, without first obtaining the prior written consent of Allied. Allied shall own all intellectual property developed by Supplier during and in connection with performance of an Order.

**14. Force Majeure.** No delay in or failure of performance by either party shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by acts of God or the public enemy; expropriation or confiscation of facilities; compliance with any order or request thereof of any governmental authority; act of war, rebellion, sabotage or damage resulting therefrom; fires, floods, explosion, accidents, riots, strikes or other concerted acts of workmen, whether direct or indirect; or other any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of the party whose performance hereunder is affected thereby (collectively, "**Force Majeure**"). Supplier shall be entitled to a reasonable extension of time for performance of the delivery of any Goods or Services under this Agreement, to the extent that performance hereunder by Supplier is affected by an event of Force Majeure.

**15. Safety.** Supplier shall comply with Allied's health and safety rules and regulations as they exist from time to time, and shall implement safety precautions and programs and take every reasonable precaution for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to (a) persons working on or about the Services (including Allied's employees) and other persons who may be affected thereby; (b) the Services and the materials and equipment to be incorporated therein, whether in storage, on or off the site, and whether under the care, custody or control of the Supplier or the Supplier's subcontractors; and (c)

other property at the site or adjacent thereto.

**16. Miscellaneous.**

- (a) **Governing Law.** The terms and conditions of this Order shall be governed by and interpreted pursuant to the rules and laws of the state of destination of Goods or in which Services are performed, as applicable.
- (b) **Statutory Employer.** Allied and Supplier agree that, for all Services performed in Louisiana, Allied is designated the statutory employer of employees of Supplier and its subcontractors, pursuant to La. R.S. 23:1061 and acknowledge that the Services required of Supplier pursuant to an Order are an integral part of and essential to performance by Allied of its business.
- (c) **Severability; Waiver.** Any provision of an Order or these Terms & Conditions which shall prove to be invalid, void, or illegal will in no way affect, impair, or invalidate any other provision hereof and such remaining provisions shall remain in full force and effect. The failure of either of the parties hereto to exercise any of its rights or remedies under this Order shall not operate as a waiver of any such right or later remedy on later occasions.
- (d) **Entire Agreement.** This Agreement sets forth the full and complete understanding of the parties as of the date of the Order, and it supersedes any and all agreements and representations made or dated prior thereto.
- (e) **Amendment.** No Order or provision of these Terms & Conditions may be amended except by a written instrument signed by both parties.
- (f) **Notices.** All communications hereunder shall be in writing, and shall be addressed to Supplier or to an authorized Allied representative at the address specified below or as otherwise referenced in an Order, and shall be considered given when (a) delivered personally, (b) upon confirmation of successful transmission, if transmitted electronically, (c) on the next business day, if by commercial overnight courier, or (d) on the third business day after having been sent, postage prepaid, by first class or certified mail.
- (g) **Assignment.** Supplier shall not assign any Order or Agreement in respect thereof without prior written consent of Allied.
- (h) **Nondiscrimination.** Supplier agrees not to discriminate in hiring or employment based on race, color, religion, sex, or national origin as required by Executive Order 11246, or otherwise by law, rule, regulation, or order of the Secretary of Labor.