

GENERAL TERMS AND CONDITIONS OF SALE

December 5, 2003

MYERS POWER PRODUCTS, INC. is referred to herein as "Seller". The person, firm, or corporation to whom or which these Standard Terms and Conditions of Sale apply is called "Purchaser". The MYERS products covered by these terms are referred to herein as the "Products". These Standard Terms and Conditions of Sale are referred to herein as "Terms and Conditions" and shall remain in full force and effect unless superseded by "Special Terms and Conditions" as submitted by Myers Power Products.

(1) **TERMS OF OFFER** - This quotation constitutes an offer to sell according to the terms set forth herein. Unless otherwise indicated this offer shall remain open for thirty (30) days only from the date of this quotation, and shall be deemed accepted by the purchaser only upon receipt and acceptance by the seller of a purchase order from the purchaser. Acceptance of this offer by the purchaser is expressly limited to the terms hereof and in the event that the purchase order from the purchaser states terms additional to or different from those set forth herein, this offer shall be deemed a notice of objection to such additional or different terms and rejection thereof. Any acknowledgment sent by the seller to the purchaser subsequent to the seller's receipt of a purchase order from the purchaser shall not be deemed to be an acceptance by the seller of any offer by the purchaser, and shall not alter the Terms and Conditions of this offer.

(2) **PRICES AND TERM** - These products are sold F.O.B. point of shipment.

1. Published prices cover standard domestic packing only.
2. Unless otherwise indicated, terms of payment are net thirty (30) days from date of shipment.
3. Payments not made when due shall bear interest at 2% per month until payment is made.
4. Minimum charge on any order is two hundred and fifty dollars (\$250.00) plus transportation costs.
5. When drawings for approval are required for any Product(s), the drawings applicable to those Products must be returned within 30 calendar days from the date of the original mailing of the drawings by Seller. The return drawings must be released for manufacture and shipment and must be marked "APPROVED" or "APPROVED AS NOTED." Drawing re-submittals which are required for any other reason than to correct Seller errors will not extend the 30-day period.
6. If the Buyer initiates or in anyway causes delays in shipment, provision of Services or return of approval drawings beyond the periods stated above, the price of the Products or Services shall be increased a minimum of 1% per month or fraction thereof up to a maximum of 18 months from the date of the Buyer's order. For delays resulting in shipment or provision of Services beyond 18 months from the date of the Buyer's order, the price must be renegotiated.

Prices are subject to change without notice. Unless otherwise indicated seller reserves the right to invoice at prices in effect on date of shipment.

(3) **PAYMENTS** - Unless otherwise indicated, pro rata payments shall become due as shipments are made. If shipments are delayed by the purchaser, then payments shall become due on the date that the seller is prepared to make shipment. If the work to be performed hereunder is delayed by the purchaser, payments shall be made based on the purchase price and the percentage of completion. Equipment held for the purchaser shall be at the risk and expense of the purchaser. If the financial condition of the purchaser at any time does not, in the judgment of the seller, justify continuance of the work to be performed by the seller hereunder on the terms of payment as agreed upon, the seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges, and in the event of bankruptcy or insolvency of the purchaser or in the event any proceeding is brought against the purchaser, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, the seller

shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges.

(4) **DELAYED PAYMENT** - If payments are not made in accordance with these terms, a service charge will without prejudice to the right of Seller to immediate payment, be added in an amount equal to the lower of 2% per month or fraction thereof or the highest legal rate on the unpaid balance. A grace period for the first month is 15 days.

(5) **TAXES** - The amount of any federal, state or municipal tax applicable to the product, which the seller shall be required to pay, either on its behalf or on behalf of the purchaser, shall be added to the prices contained herein and paid by the purchaser unless stated otherwise.

(6) **DRAWING APPROVAL** - Seller will design the Products in line with, in Seller's judgment, good commercial practice. If at drawing approval Buyer makes changes outside of the design as covered in their specifications, Seller will then be paid reasonable charges and allowed a commensurate delay in shipping date based on the changes made.

(7) **DELIVERY** - Delivery dates are estimates of approximate dates of delivery, not a guarantee of a particular day of delivery, and are based on the prompt receipt of all necessary information from the purchaser and return of approval drawings within two (2) weeks after submittal when applicable. Furthermore, delivery dates are based on an assumed ration of acceptances. If this assumption should prove incorrect, the seller may have to allocate its production time and thereby adjust the delivery dates.

(8) **PREPAID FREIGHT DELIVERY** - The method and route of all prepaid freight shipments are optional with the seller. Where the purchaser specifies that shipment be made other than the usual method and route of shipment, the additional expense will be borne by the purchaser. If destination may be reached in part by boat shipment only, water shipment will be made at the purchaser's expense collect. In addition to the water shipping charges, cartage to the boat will be made at purchaser's expense. If shipment is accepted by the purchaser at one destination and re-forwarded by him, the re-forwarding is at the purchaser's expense. No allowance will be made for freight if purchaser accepts shipments at the factory or if collect shipments are requested.

(9) **TITLE AND INSURANCE** - Title to the product(s) and risk of loss or Damage shall pass to Purchaser at the F.O.B. point, except that a security interest in the product(s) and proceeds and any replacement shall remain in Seller, regardless of mode of attachment to realty or other property, until the full price has been paid in cash. Purchaser agrees to do all acts necessary to perfect and maintain said security interest, and to protect Seller's interest by adequately insuring the product(s) against loss or damage from any external cause with Seller named as insured or co-insured.

(10) **FORCE MAJEURE** - The seller shall not be liable to the purchaser for any failure or delay in complying with the Terms and Conditions of this agreement if such failure or delay shall be due to any act of God, nature or the public enemy, accident, explosion, operation malfunction or interruption, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor disputes, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant), federal, state, or municipal legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain raw materials,

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supplies, equipment, fuel, power, labor or other operational necessities, interruption or curtailment of power of other energy or fuel supply or any other circumstances of a similar nature beyond the reasonable control of the seller. In this connection, the seller shall not be required to resolve labor disputes or disputes with supplier of raw materials, supplies, equipment, fuel or power, but may in accordance with its best interest do so. This section shall be cumulative with the provisions of the applicable section of the Uniform Commercial Code, or similar laws, enacted in the state described in the paragraph captioned "Governing Laws", relating to excuse of seller by reason of the failure of presupposed conditions.

(11) CLAIMS FOR SHORTAGES OR SHIPPING

DAMAGES - Any material received damaged must be so noted on the delivery receipt by the delivering carrier at time of delivery and reported to the seller no later than seven (7) days after receipt of shipment. Concealed damage claims must be reported and confirmed in writing to the delivering carrier no later than ten (10) days from date shipment was originally received in accordance with ICC regulations. Claims for shortage material, in writing, must be made to the seller within twenty (20) days after receipt of shipment. For any claims under this Paragraph (11) for which the seller may be liable, the purchaser's exclusive remedy shall be the repair or replacement, F.O.B. factory, as the seller may elect, of such material and No in and out charges are allowed.

(12) CONCEALED DAMAGE - Except in the event of F.O.B. destination shipments, Seller will not participate in any settlement of claims for concealed damage.

When shipment has been made on an F.O.B. destination basis, the Buyer must unpack immediately and, if damage is discovered must:

1. Not move the Products from the point of examination.
2. Retain shipping container and packing material.
3. Notify the carrier in writing of any apparent damage.
4. Notify Seller representative within 72 hours of delivery.
5. Send Seller a copy of the carrier's inspection report.

(13) RETURN OF MATERIAL - The seller's permission must be obtained in writing before any products are returned to it by the purchaser for any reason whatsoever. If products are returned without such permission, purchaser authorizes the seller, in addition to such other remedies as it may have, to hold the returned products at purchaser's sole risk and expense. When the purchaser requests authorization to return material for reasons of his own, the purchaser will be charged for placing the returned goods in salable condition, restocking charges and for any outgoing and incoming transportation paid by the seller.

(14) STORAGE - Any item of the product(s) on which manufacture or shipment is delayed by causes within Purchaser's control, or by causes which affect Purchaser's ability to receive the product(s), may be placed in storage for an agreed upon amount by Seller for Purchasers account and risk.

(15) WARRANTY - Seller warrants title to the product(s) and, except as noted below with respect to items not of Sellers manufacture, also warrants the product(s) on date of shipment to Purchaser, to be of the kind and quality described herein, merchantable, and free of defects in workmanship and material.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS, AND CONSTITUTES THE ONLY WARRANTY OF SELLER WITH RESPECT TO THE PRODUCT(S).

If within one year from date of initial operation, but not more than eighteen months from date of shipment by Seller of any item of product(s), Purchaser discovers that such Item was not as warranted above and promptly notifies Seller in writing thereof, Seller shall remedy such nonconformance by, at Seller's option, adjustment or repair

or replacement of the item and any affected part of the product(s). Purchaser shall assume all responsibility and expense for removal, reinstallation, and freight in connection with the foregoing remedies. The same obligations and conditions shall extend to replacement parts furnished by Seller hereunder. Seller shall have the right of disposal of parts replaced by it.

ANY SEPARATELY LISTED ITEM OF THE PRODUCT(S) WHICH IS NOT MANUFACTURED BY SELLER IS NOT WARRANTED BY SELLER, and shall be covered only by the express warranty. If any, of the manufacturer thereof.

THIS STATES PURCHASER'S EXCLUSIVE REMEDY AGAINST SELLER AND ITS SUPPLIERS RELATING TO THE PRODUCT(S), WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING COST OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE. Seller and its suppliers shall have all obligation as to any product which has been improperly stored or handled, or which has not been operated or maintained according to instructions in Seller or supplier furnished manuals.

(16) WARRANTY FOR SERVICES - Seller warrants that the Services performed by it hereunder will be performed in accordance with generally accepted professional standards.

The Services, which do not so conform shall be corrected by Seller upon notification in writing by the Buyer within one (1) year after completion of the Services. Unless otherwise agreed to in writing by Seller, Seller assumes no responsibility with respect to the suitability of the Buyer's equipment or with respect to any latent defects in the same. This warranty does not cover damage to Buyer's equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. Buyer will, at its cost, provide Seller with unobstructed access to the defective Services, as well as adequate free working space in the immediate vicinity of the defective Services and such facilities and systems, including, without limitation, docks, cranes and utility disconnects and connects, as may be necessary in order that Seller may perform its warranty obligations. The conducting of any tests shall be mutually agreed upon and Seller shall be notified of, and may be present at, all tests that may be made.

(17) CANCELLATIONS - Cancellations or modifications of an order by the purchaser will only be accepted by the seller in writing and on the basis that the seller will be paid for expenses incurred up to the time that the cancellation or modification is accepted by the seller. A minimum charge of \$500.00 will be assessed. Unless otherwise provided, if there has been an accumulation of materials engineering or drafting, the cancellation will be based on actual costs incurred, plus a reasonable allowance for overhead and profit up to 100% of selling price.

(18) LIQUIDATED DAMAGES - Contracts which include liquidated damage clauses for failure to meet shipping or job completion promises are not acceptable or binding on Seller, unless such clauses are specifically accepted in writing by an authorized representative of the Seller at its headquarters office.

(19) BACKCHARGES AND ALTERATIONS - The seller will not be responsible for any backcharges to correct any possible manufacturing error, or any modifications to meet existing conditions or for any reason whatsoever unless authorized by the seller in writing. Any field problem should be reported to MYERS POWER PRODUCTS.

(20) LIMITATION OF LIABILITY - The purchaser's exclusive remedy on any claim of any kind for any loss or damage arising out of, connected with, or resulting from this contract, or from the performance or breach thereof, or from the design, manufacture,

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sale, delivery, resale, or repair or use of any products covered by or furnished under the contract, including but not limited to any claim of negligence or other tortious breach, shall be the repair or replacement, F.O.B. factory, as the seller may elect, or the product or part thereof giving rise to such claim, except that the seller's liability for such repair or replacement shall in no event exceed the contract price allocable to the products or part thereof which gives rise to the claim. THE SELLER SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

(21) **GENERAL** - Any assignment of the order, or any rights hereunder, by the purchaser without written consent of the seller shall be void. The provisions of any contract resulting from the order are for the benefit of the parties thereto and not for any other person. No waiver, alteration, or modification of any of the provisions hereof shall be binding unless in writing and signed by a duly authorized representative of the seller.

ANY PURCHASE ORDER PURSUANT TO THE ACCOMPANYING QUOTATION SHALL BE SUBJECT TO THE APPROVAL OF SELLER'S CREDIT DEPARTMENT AND SHALL NOT RESULT IN A CONTRACT UNTIL IT IS ACCEPTED AND ACKNOWLEDGED BY SELLER AT SELLER'S FACILITY.

(22) **GOVERNING LAW** - Any contract formed pursuant to this quotation shall be governed by and construed in accordance with the laws of the State of California.