

## **II Terms & Conditions :**

The P-DUKETechnology company that accepts Buyer's order is herein referred to as "Seller" and the customer or person or entity purchasing products and/or services from Seller is herein referred to as "Buyer." Seller's acceptance of Buyer's order is expressly conditional on Buyer's assent to the additional or different terms and conditions contained or referenced herein. These terms and conditions, any price list or schedule, catalog, quotation, or invoice from Seller relevant to the sale of the Products and/or Services and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of sale of the Products and/or Services by Seller to Buyer. Buyer's acceptance of the Products and/or Services will manifest Buyer's assent to these terms and conditions. If Seller and Buyer have a written agreement in effect that covers the sale of the Products and/or Services, that agreement will govern the terms and conditions of sale exclusively.

- 1. PRICES** : Prices for Products and/or Services, whether specified in Seller's price list or schedule, written quotation, or acknowledgement are subject to change without notice. Such prices shall be adjusted and the invoices will reflect Seller's prices for the Products and/or Services in effect when the Products are shipped and/or the Services are provided. All prices are exclusive of taxes, customs, duties, transportation, and insurance, which are to be borne by Buyer unless Seller's quotation specifies otherwise.
- 2. TAXES** : Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the manufacture, sale, delivery, storage, or use of the Products, shall be for Buyer's account and shall be added to the price.

**3. TERMS OF PAYMENT** : With Seller's approval, payment terms are net thirty (30) days from date of Seller's invoice in the currency designated by the Power Mate company that accepts Buyer's order. Seller shall have the right, among other remedies, either to terminate this sale or to stop Products in transit or to suspend further performance under these terms and conditions and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial condition become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller prior to shipment or for future deliveries for Products theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries. Buyer hereby grants Seller a security interest in all Products sold to Buyer by Seller, which security interest shall continue until all such Products are fully paid for in cash, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

**4. SHIPMENT AND DELIVERY** : Unless Seller's quotation specifies otherwise, shipments of products are made and delivery shall occur F.O.B. Seller's shipping point for shipments from any of Seller's locations or shipping point as determined by Seller. Risk of loss or damage shall pass from Seller to Buyer upon delivery to the first carrier. If Buyer specifies a carrier, Seller will deliver the products to that carrier. If Buyer does not specify a carrier, Seller will deliver the products to a carrier chosen by Seller on Buyer's behalf. In either case, any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the

carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. Buyer shall inspect the products delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within thirty (30) days after receipt of such products shall be an unqualified acceptance of such products. While Seller will use all reasonable commercial efforts to ship in accordance with the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. If Buyer's order does not contain shipping instructions, Buyer will pay freight charges at the rates applicable on the date of shipment. Such freight charges will be included on the invoice for the Products. Freight and other transportation charges incurred in connection with shipping instructions specified by Buyer will be at Buyer's expense and such shipments will be made "COLLECT." If the shipment of the products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom.

5. **LIMITED WARRANTY** : Subject to the limitations of Section 6, Seller warrants that the Products manufactured by Seller will be free from defects in material and workmanship and meet the applicable Product specifications under normal use and service during the applicable Product warranty period starting on the date of manufacture of the Products by Seller. Products listed by part number in Seller's then current Price Book/Catalog ("Standard Products") are warranted for the period specified therein. All other Products ("Custom Products") are warranted for the period specified in Seller's quotation. THESE ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE PRODUCTS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, unsuitable power sources, unsuitable environmental conditions, negligence (other than Seller's), unauthorized modification or alteration, improper installation, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Products and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

If within thirty (30) days after Buyer's discovery of any warranty defects within the applicable warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option, repair, correct or replace F.O.B. point of manufacture, or refund the purchase price for that portion of the Products found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Advance written permission to return Products that are claimed to be defective must be obtained from Seller in the form of Seller's Return Material Authorization ("RMA"). Such Products must be shipped, transportation prepaid, to Seller in accordance with Seller's then current RMA policy and procedures. Products returned without Seller's written permission will not be accepted by Seller. Products repaired or replaced during the applicable warranty period shall be covered by the foregoing warranties for the remainder of the

original warranty period or ninety (90) days from the date of shipment, whichever is longer. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Products, either alone or in combination with other products/components. This Section 5 applies to any entity or person who may buy, acquire or use the Products, including any entity or person who obtains the Products from Buyer, and shall be bound by the limitations therein, including Section 6. Buyer agrees to provide such subsequent transferee conspicuous, written notice of the provisions of Sections 5 and 6.

**6. LIMITATION OF REMEDY AND LIABILITY :** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, BUSINESS INTERRUPTION, LOSS OF USE OR REVENUE, COST OF CAPITAL OR LOSS OR DAMAGE TO PROPERTY OR EQUIPMENT. IT IS EXPRESSLY UNDERSTOOD THAT ANY TECHNICAL ADVICE FURNISHED BY SELLER WITH RESPECT TO THE USE OF THE PRODUCTS IS GIVEN WITHOUT CHARGE,

AND SELLER ASSUMES NO OBLIGATION OR LIABILITY FOR THE ADVICE GIVEN, OR RESULTS OBTAINED, ALL SUCH ADVICE BEING GIVEN AND ACCEPTED AT BUYER'S RISK.

**7. PATENTS AND COPYRIGHTS** : Subject to the limitations of Section 6, Seller warrants that the Products manufactured by Seller, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the following conditions: (i) that Buyer promptly notifies Seller of any claim or suit or threat thereof involving Buyer in which such infringement is alleged; (ii) that Buyer provides all reasonable assistance and cooperation requested by Seller in settling or defending against the claim or suit; and (iii) that Buyer permits Seller to control completely the defense, settlement or compromise of any such allegation of infringement. This warranty only applies to infringement arising out of operation of the Products according to Seller's specifications. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore: (i) if infringement is based upon use of the Products in connection with products not manufactured by Seller or in a manner for which the Products were not designed by Seller; (ii) if the Products were not designed by Seller; or (iii) if the Products were designed by Buyer or were modified by or for Buyer in a manner to cause them to become infringing. In the event any such Products are held to infringe any such U.S. patent or copyright in any such suit, and the use of such Products is enjoined, or in the event that Seller elects to compromise or settle the claim, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Products, to replace them with non-infringing Products, to modify the Products to become non-infringing, or to grant Buyer a credit for the depreciated value of such Products and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel this sale as to future deliveries of such Products, without liability.

**8. EXCUSE OF PERFORMANCE** : Seller shall not be liable for delays in performance or for non-performance due to acts of God; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; inability to secure materials; default or delay of suppliers; acts of Buyer; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the sale shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Products, or to obtain materials used directly or indirectly in the manufacture of the Products, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Products (without obligation to acquire other supplies of any such Products or materials) among its purchasers as Seller determines in its sole discretion to be appropriate without liability for any failure of performance which may result therefrom.

**9. CANCELLATION AND RESCHEDULING** : Buyer may reschedule or cancel its order only in accordance with Seller's then current Cancellation and Rescheduling Policy. Buyer agrees to pay any applicable cancellation or rescheduling charges. Such charges may include, among other things, all costs and expenses incurred to cover commitments made, overhead, and a reasonable profit allocable to work in process. Seller's determination of all such charges shall be conclusive.

**10. CHANGES** : Buyer may request changes or additions to its order. In the event that such changes or additions are accepted by Seller, Seller may revise the price and dates of delivery. Seller reserves the right to change designs and specifications for the Products or to

discontinue production of the Products without prior notice to Buyer, except with respect to Products being made in accordance with Buyer's specifications. Seller will give Buyer ninety (90) days notice in the event that Seller decides to discontinue manufacture of Products being made in accordance with Buyer's specifications. In the event of any of the foregoing changes, Seller agrees to use reasonable commercial efforts to assist Buyer in selecting a suitable alternative in accordance with Seller's then current End of Life Policy. Seller shall have no obligation to make such change for any Products manufactured prior to the date of such change.

**11. NUCLEAR AND MEDICAL :** PRODUCTS AND SERVICES SOLD HEREUNDER ARE NEITHER FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS NOR FOR USE AS COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS INTENDED FOR SURGICAL IMPLANT INTO THE BODY OR INTENDED TO SUPPORT OR SUSTAIN LIFE WITHOUT SELLER'S PRIOR WRITTEN CONSENT. Buyer accepts the Products with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action is based in tort, contract or otherwise, including allegations that Seller's liability is based on negligence or strict liability.

**12. INDEMNIFICATION :** Buyer shall indemnify, defend and hold harmless Seller from and against any and all liabilities, losses, expenses, liens, claims, demands and causes of action arising out of any negligent act or omission of Buyer, its officers, agents, employees, contractors or assigns.

**13. ASSIGNMENT :** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written



consent of Seller, and any such assignment, without such consent, shall be void.

- 14. U.S. EXPORT CONTROL REGULATIONS** : All Products sold to Buyer are subject to the export control laws of the United States and Buyer agrees not to re-sell or divert any Products contrary to such laws.
- 15. DOCUMENTATION** : Seller shall provide Buyer with any applicable documentation for Standard Products and the documentation which is specifically identified in Seller's quotation for Custom Products. If additional copies of documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect. Seller's documentation (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement is the property of Seller, and Seller retains all rights thereto, including without limitation, exclusive rights of use, licensing and sale. Possession of such documentation does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such documentation to Seller immediately upon request therefor.
- 16. TOOLING** : Tool, die, and pattern charges, if any, are in addition to the price of the Products and are due and payable in accordance with Seller's quotation. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer title to or rights to possession of the tools, dies, or patterns or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.
- 17. RELATIONSHIP OF THE PARTIES** : Each party is an independent contractor and neither party has any right or authority to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party. Each party agrees to

indemnify and hold the other party harmless from and against any and all claims (including reasonable attorneys' fees and costs of litigation) arising out of any violation of this provision. Neither these terms and conditions nor any activities pursuant to these terms and conditions shall impair any right of either party to design, develop, manufacture, market, service, or otherwise deal in, directly or indirectly, other products or services including those which are competitive with those offered by the other party.

**18. DEFAULT** : A party shall be in default if (a) it materially breaches a term of these terms and conditions; or (b) it shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or other federal or state statute relating to insolvency or the protection of rights of creditors. Upon the occurrence of an event of default, the party not in default may immediately terminate these terms and conditions by giving written notice to the party in default. The rights and remedies provided to the parties in this provision shall not be exclusive and are in addition to other rights and remedies provided by these terms and conditions or by law or in equity.