

Terms of Purchase

1. These terms of purchase (these "Terms") are entered into between EKU Power Drives Inc., a Delaware corporation ("Buyer"), and its supplier ("Seller") who is identified in a separate written purchase order (the "Purchase Order") and governs Buyer's purchase of the goods identified in the Purchase Order (the "Goods"). These Terms are incorporated into the Purchase Order (these Terms and the Purchase Order together referred to herein as the "Agreement") and to the extent there is any conflict with any other written or verbal communication or purported agreement, these Terms the Purchase Order shall control. Buyer's acceptance of any offer to sell Goods is expressly limited to the terms and conditions of the Agreement.
2. Delivery. Shipments of Goods shall be made by Seller on the respective delivery date identified in the Purchase Order. If at any time Seller has reason to believe that deliveries will not be made as scheduled, it shall immediately give Buyer written notice setting forth the cause or causes of the anticipated delay.
3. Delivery Location. All Goods shall be delivered to Buyer at Buyer's location at 2408 Timberloch Place, Suite A5, Spring, Texas 77380 ("Delivery Location") during normal business hours, unless otherwise indicated in writing from Buyer.
4. Packaging. All Goods shall be packed for shipment in a manner sufficient to ensure that the Goods are delivered to the Delivery Location in good and undamaged condition.
5. Title and Risk of Loss. Title to the Goods covered by this Agreement and the risk of loss or damage shall pass from Seller to Buyer upon the completion of unloading of the Goods at the Delivery Location, subject in all cases to Buyer's right of inspection and rejection of defective and nonconforming Goods as provided in Section 7 below.
6. Payment. Seller shall issue an invoice to Buyer on or any time after completion of delivery specifying the quantity of Goods delivered and the related price in accordance with the terms of this Agreement. Subject to the provisions of Section 7 hereof regarding Goods that have been rejected, Buyer shall pay the amount of the invoice in accordance with payment instructions set forth in the invoice.
7. Warranties. Seller expressly warrants to Buyer that for the longer of (i) Seller's standard warranty period and (ii) 24 months from the date of delivery, all Goods covered by this Agreement will: (a) be free of defects in workmanship, material and design, (b) conform to applicable specifications, samples, drawings, designs and other requirements specified by Buyer (if any), (c) be fit and sufficient for their intended purpose and operate as intended, (d) be merchantable, and (e) be free and clear of any liens, security interests or other encumbrances. The foregoing warranty shall survive Buyer's inspection, acceptance, use and subsequent sale of the Goods. Seller hereby extends to Buyer any and all warranties received from Seller's suppliers and agrees to enforce such warranties on Buyer's behalf. All Seller warranties shall run to Buyer, its successors, assigns, customers and users of products sold, leased or otherwise provided by Buyer. Seller agrees to promptly correct all defects in any Goods not conforming to the foregoing warranties or replace such Goods, without expense to Buyer, when notified by Buyer. In the event of Seller's failure to correct or replace such defective or non-conforming Goods, Buyer may, after reasonable notice to Seller, make such correction or replacement at Seller's expense. The foregoing warranties and remedies shall be in addition to any warranties and remedies of additional scope herein or otherwise provided by Seller to Buyer or otherwise provided by law, including, but not limited to, any and all warranties and remedies provided in the Uniform Commercial Code as in effect in the State of Texas. Seller shall compensate, indemnify, defend and hold harmless Buyer and its directors, officers, employees, successors, assigns, customers and users of its Goods ("Buyer Parties") from and against any and all damages, including incidental and consequential damages, claims, liabilities, and expenses (including court costs and attorneys' fees) arising out of or relating to or resulting in any way from a breach of any warranty, whether express or implied, or from any act or omission of Seller, its officers, agents, employees, subcontractors or suppliers. Payment for Goods shall not constitute acceptance thereof by Buyer and such payments shall be deemed to have been made without prejudice to any and all claims Buyer may have against Seller. The remedies hereinabove provided to Buyer are not exclusive and are in addition to all other remedies available to Buyer pursuant to law or equity, as provided in this Agreement or otherwise. In the event of breach of warranty, Buyer shall be entitled to all rights and remedies available at law or equity, including but not limited to credit, replacement or repair of defective goods at Buyer's option, costs of removal of the goods from any component, assembly or system into which the Goods may have been incorporated, and reinstallation of non-defective Goods, and cost of return of the Goods. Seller shall also reimburse Buyer for any incidental and consequential damages caused by such nonconforming Goods including, but not limited to costs, expenses and losses incurred by Buyer: (a) in inspecting, sorting, repairing or replacing such Goods; (b) resulting from any production interruptions; (c) conducting any recall campaigns or other corrective actions and (d) claims for personal injury or property damage.
8. Price Warranty. Seller warrants that the prices for the Goods are not less favorable than those currently extended to any other customer of Seller for the same or similar Goods in similar quantities. If Seller reduces its price for Goods prior to any final delivery of Goods to Buyer, Seller shall reduce the price for such Goods in a corresponding manner.
9. Intellectual Property Warranty Indemnification. Seller warrants that manufacture or use of the Goods and the sale or offer for sale of such Goods will not infringe any United States or foreign patent, copyright or trademark of either Seller or any third party. Seller agrees to defend, indemnify and hold harmless Buyer and the Buyer Parties, from and against any damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, profits, penalties or punitive damages) arising out of or relating to any actual or alleged infringements of such patent, copyright or trademark, or any unfair competition resulting from similarity in design, trademark or appearance, by reason of the manufacture, use, sale or offer of sale of the Goods. Buyer reserves the right to control, actively participate in or monitor, through its own counsel, at Seller's expense, any such claim of infringement or other such action brought against it.
10. Tools and Materials Owned by Buyer. Seller shall keep in good condition, be responsible for and protect against loss of or damage to materials, tools, dyes, molds, and other articles owned by Buyer (including such items made or provided by Seller

at Buyer's behest or cost) that are in the possession or control of Seller, provided, however, that Seller shall not be responsible or liable for normal loss of or damage to such items arising from processing or manufacturing in accordance with good shop practices. Seller shall not use such items except for performance of work or manufacture of Goods for Buyer. All such items shall be plainly marked or otherwise adequately identified by Seller as property of Buyer and shall be safely stored separately and apart from Seller's property. Unless otherwise directed by Buyer, Seller, upon completion of deliveries made on this Agreement, or upon termination of this Agreement for any reason, shall return all such items to Buyer at Buyer's direction and expense. In addition, Buyer shall have the right to take possession of any such items and the right of entry for such purpose.

11. Indemnity. Seller agrees to indemnify, defend and hold harmless Buyer and Buyer Parties from and against any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, penalties, or punitive damages) arising out of or relating to resulting in any way from any actual or alleged death or injury to any person, damage to any property or any other damage or loss that results, or is claimed to result, in whole or in part, from any actual or alleged defects in the Goods.

12. Insurance. Seller will maintain such public liability insurance, including without limitation, general liability insurance and products liability insurance, and other insurance as will adequately protect Buyer and Buyer Parties against such damages, claims, liabilities, losses, and expenses (including without limitation court costs, attorneys' fees, penalties or punitive damages).

13. Confidentiality. Seller shall consider all specifications, plans, instructions, samples and other information furnished by Buyer, or prepared by Seller specifically for Buyer in connection with this Agreement to be confidential and shall not (i) disclose any such information to any other persons, or (ii) use such information itself for any purpose other than performing this Agreement. Without Buyer's prior written permission, Seller shall not advertise or publish the fact that Buyer has contracted to purchase Goods from Seller, disclose information relating to the Agreement, nor use the name of Buyer, or any of its customers, in advertising or other publication.

14. Termination by Buyer.

14.1 Termination for Convenience. Buyer reserves the right to terminate this Agreement at any time for its convenience. Upon receipt of notification of such termination from Buyer, Seller shall immediately stop all work hereunder and, as necessary, shall cause its suppliers or subcontractors to cease such work. Buyer shall pay a reasonable termination charge based on the percentage of work on a delivery completed by Seller prior to receipt of Buyer's notification, plus any actual direct costs incurred by Seller related to the termination; provided that Seller deliver to Buyer such portion of produced Goods as requested.

14.2 Termination for Seller Breach. Upon the occurrence of any of the following events: (i) the failure of Seller to perform any obligation in this Agreement and such failure is not excused or cured within 10 days after written notice thereof from Buyer to Seller, provided, however, that Seller shall have an additional 15 day period (commencing immediately upon the expiration of the initial 10 day period) to cure such failure if Seller commences curative action within such 15 day period and proceeds diligently and in good faith thereafter to cure such failure until completion, or (ii) Seller becomes insolvent, files a petition for bankruptcy or winding up or commences or has commenced against it proceedings in bankruptcy, reorganization, receivership or makes an assignment for creditor benefit, then Buyer, in its sole discretion and without limitation, may terminate this Agreement immediately by written notice to Seller without any obligation to Seller. Buyer shall be entitled to and may exercise all rights and remedies against Seller to which it is entitled under this Agreement or at law or in equity.

15. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance beyond the reasonable control of that party (each an "Force Majeure Event"). Force Majeure Events include, but are not limited to: Acts of God or public enemy, government restriction, fire, flood, earthquake, tempest, strikes, war, terrorist acts, embargo, civil commotion, and industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. A party affected by a Force Majeure Event shall give prompt notice thereof to the other party, use all reasonable efforts to end the delay or failure in its performance, ensure that the effects of the Force Majeure Event are minimized and resume performance hereunder as soon as reasonably possible.

16. Applicable Law and Venue. The rights of the parties hereunder and the construction of every provision hereof shall be governed by the laws of Texas, without giving effect to principles of conflicts of law. The parties agree that any action arising out of this Agreement or in connection with the Goods covered hereunder shall be brought exclusively in a federal, state, or local court located in Montgomery County, Texas and the parties hereby consent to such exclusive personal jurisdiction in such courts and waive any objection based on jurisdiction or venue of any such action.