

**TERMS AND CONDITIONS**

Terms: Net 30 Days

Validity: 60 Days

1. **PRICE.** Unless otherwise specified in this Quotation, prices exclude all taxes (imposed by any state, country or other governmental entity), duties, packing and freight costs (including, without limitation, the cost of loading goods on board a carrier) and related costs and expenses, all of which shall be added to such prices and paid by Buyer. In addition, Buyer shall pay, or reimburse PPC for, reasonable out-of-pocket expenses, including, without limitation, travel and travel-related expenses, incurred by PPC in connection with the performance of its obligations or incurred by PPC at the request or with the approval of Buyer. Should Buyer request any change in goods or services covered by this Quotation, PPC shall not be obligated to proceed with such change until PPC agrees in writing to proceed with such change. If PPC determines that any such change may cause an increase in PPC's costs or the time required for provision of goods or services, or may raise other issues of concern to PPC, an equitable adjustment shall be made with respect to price, schedule or otherwise in order to address such issues.
2. **PAYMENT.** Unless otherwise specified in this Quotation, payment for goods and services covered by this Quotation shall be made, in cash, within thirty (30) days from date of PPC's invoice. Unless otherwise specified in this Quotation, U.S. dollars shall be the currency of account, for all purposes, with respect to this Quotation. Amounts not paid within thirty (30) days of when due by Buyer shall bear interest at the lower of (i) twelve (12%) percent per annum compounded monthly or the highest lawful rate on the unpaid amount from the due date until paid; provided, however, extended payment terms are acceptable only if agreed upon in writing by PPC.
3. **SCHEDULES.** All dates or schedules specified in this Quotation are approximate and are based upon Buyer's and other parties' timely provision of information, and performance of related work and obligations, necessary for PPC to perform its obligations hereunder. PPC shall be excused from any failure to meet such dates or schedules, where such failure is occasioned by any of the circumstances or conditions enumerated in paragraph 13 below. If any failure to meet dates or schedules is occasioned by the fault of PPC, PPC shall make commercially reasonable efforts to remedy such failure as soon as reasonably practicable. Any installation or use of goods or services by Buyer shall constitute a waiver of all claims for delay. PPC has the right to deliver goods at one time or in installments, from time to time, within the period provided for delivery. In the event of partial shipments, PPC may immediately invoice Buyer for the amount(s) due in respect thereof, which amount(s) shall be due and payable in accordance with paragraph 2 above. Delivery of nonconforming goods, or a default of PPC of any nature in relation to one or more installments, shall not substantially impair the value of this transaction, as a whole, and shall not constitute a default hereunder, as a whole.
4. **SECURITY INTEREST.** PPC shall retain, and Buyer hereby grants to PPC, a security interest in goods covered by this Quotation, now owned or hereafter acquired, wherever located, including all returns, repossessions and parts, and all chattel paper, instruments, documents, accounts, general intangibles, contract rights and security agreements (resulting from the sale or other disposition of such goods) and all cash and non-cash proceeds of any of the foregoing, which shall secure the payment of all amounts due from Buyer to PPC as specified in this Quotation. Buyer shall, at the request of PPC, execute, and hereby grants PPC the right to execute in the name of Buyer, any documents necessary to grant to PPC a security interest in such goods and any filings necessary to perfect such security interest in all jurisdictions where PPC deems such filings to be necessary to protect its interest.
5. **INSPECTION.** Buyer shall have the right to inspect goods fabricated hereunder prior to acceptance provided (i) such inspection shall occur at the place of fabrication, during the period of fabrication, (ii) such inspection shall be conducted by an authorized and qualified representative of Buyer, during normal working hours after reasonable notice to PPC and without interference with operations, (iii) Buyer shall ensure that all persons involved in such inspection comply with applicable security and other procedures relating to the place of fabrication and (iv) Buyer shall promptly notify PPC, in writing, in the event that any person involved in such inspection shall discover any defects or other problems with respect to the goods. Any inspection at the facilities of a supplier or subcontractor of PPC shall be subject to securing permission from such supplier or subcontractor, and PPC shall make commercially reasonable efforts to obtain such permission. Buyer shall accept goods, or part thereof, as soon as they are reasonably tendered to Buyer, unless during inspection at the place of fabrication Buyer has notified PPC of the unacceptability of such goods and confirms such notice in writing within ten (10) days of such inspection, but not later than the regularly scheduled shipment of such goods. Buyer may not revoke its acceptance. This paragraph 5 in no way modifies or affects Buyer's remedies or PPC's warranties set forth elsewhere in this Quotation.
6. **INSTALLATION/SERVICE.** Unless otherwise specified in this Quotation, all goods shall be installed by and at the expense of Buyer. If so specified in this Quotation, PPC shall furnish technical personnel to assist in installation and startup of goods, in which case Buyer shall pay PPC, at PPC's then current commercial billing rates, for the resources utilized in connection with such assistance. In the event of service calls, exclusive of service calls necessitated by PPC's breach of the warranties set forth elsewhere in this Quotation, Buyer shall pay PPC, at PPC's then current commercial billing rates, for the resources utilized in connection with such service calls.
7. **SPECIFICATIONS.** In the event Buyer is to specify the form, measurement, features or other specifications for goods, or to provide other information with respect to goods or services, Buyer shall deliver and secure PPC's written acceptance of such information on or before the agreed date or, if no date has been agreed upon, within a reasonable time after receipt of a request from PPC. PPC's quality assurance and other procedures, specifications and drawings, as approved by Buyer, shall be deemed for all purposes to comply with any procedures, specifications and drawings of Buyer and to supersede any conflicting terms thereof.
8. **COOPERATION.** Buyer shall cooperate with PPC in connection with PPC's performance of its obligations through, among other things, performing its responsibilities set forth in this Quotation, securing performance of related work by other parties and making available, as reasonably requested by PPC, access, management decisions, information, approvals and acceptances in order that PPC may perform its obligations in a timely manner.
9. **WARRANTIES.**
  - a. *General.* PPC warrants to Buyer that, under normal use, each item of goods covered by this Quotation shall be free from defects in workmanship and material for a period of twelve (12) months from the date of installation or eighteen (18) months from date of shipment, whichever occurs first. In the event this Quotation specifies a performance warranty or guaranty, PPC warrants to Buyer that, under normal use, each item of goods covered by this Quotation shall perform, in all material respects, in a manner consistent with such performance warranty or guaranty for the period specified in such performance warranty or guaranty or, if no such period is specified, for the period specified in the immediately preceding sentence. "Normal use", as used herein, includes only such uses under such conditions as have been fully disclosed, in writing, to PPC prior to the date of this Quotation. In addition, PPC warrants to Buyer that PPC shall use reasonable care in providing services covered by this Quotation and that such services shall be provided in a workmanlike manner. In the event there are any nonconformities with these warranties, which nonconformities are reported by Buyer to PPC during the applicable warranty period, PPC shall promptly repair or replace the nonconforming goods and re-perform the nonconforming services. In the event Buyer claims a nonconformity with these warranties, PPC or its appointee shall have the right to finally approve or disapprove such claim. In each instance of nonconforming goods, PPC may elect, at its sole option, to (i) return goods, or part thereof, covered by this Quotation and to which the nonconformity relates, to PPC, at PPC's fabrication facility, risk of loss en route to PPC's facility to lie with Buyer, for PPC's inspection and approval or disapproval or (ii) request an on-site inspection of such goods. If PPC approves a claim, all transportation costs and other incidental costs incurred in PPC's inspection of the goods, or part thereof, shall be borne by PPC; otherwise, Buyer shall bear all such costs.
  - b. *Exceptions.* Notwithstanding anything to the contrary, if any nonconformities with these warranties arise, in whole or part, as a result of
    - i. work performed by, or the act or omission of, Buyer or any other party, the maintenance or modification of goods other than by PPC, (iii) Vendor Items (as hereinafter defined), (iv) operation or use of goods or services in a manner inconsistent with any design conditions or other than as anticipated by applicable specifications or other than in accordance with operating instructions provided by PPC, or (v) any services, software, equipment or other items provided by Buyer or a third party, such nonconformity shall not constitute a nonconformity with these warranties and PPC shall not be responsible therefor. Notwithstanding anything to the contrary, and except as otherwise specifically agreed in writing by PPC, PPC shall have no responsibility for suggesting, specifying or confirming the appropriateness of Buyer's specification of any goods, materials or other items used in the fabrication of goods or any other thing and no warranty in respect thereof is made by PPC. No failure which directly or indirectly relates, in whole or part, to such goods, materials or other items shall be, in any respect, the responsibility of PPC or a nonconformity with these warranties. These warranties shall not apply to any goods, materials, items or services supplied to PPC by Buyer. PPC hereby assigns to Buyer any warranties given by PPC's suppliers or subcontractors ("Vendors") in connection with any goods, materials items or services obtained by PPC from such Vendors ("Vendor Items") and included as a part of goods or services covered by this Quotation, to the extent such warranties are so assignable at no additional cost to PPC. To the extent that any such warranties are not assignable, PPC shall, upon the written request of Buyer and at Buyer's expense, take commercially reasonable actions to enforce any applicable warranty which is enforceable by PPC in its own name. However, PPC shall have no obligation to resort to litigation or other formal dispute resolution procedures to enforce any such warranty. With the exception of applicable Vendor's warranties which PPC is able to pass through for Buyer's benefit, Vendor Items are provided on an "AS IS" basis without

warranty and, notwithstanding anything to the contrary, Buyer agrees to look solely to the applicable Vendor for any and all

warranty claims respecting Vendor Items.

- c. **Disclaimer.** THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS, TITLE OR NONINFRINGEMENT OF ANY PATENT OR OTHER PROPRIETARY RIGHT AND OF ANY OTHER OBLIGATION ON THE PART OF PPC, except as may be otherwise specified in this Quotation. Other warranties specified in this Quotation, if any, are strictly limited to their respective terms and in no way modify, alter, or waive the general effect of this disclaimer as to all other express or implied warranties. No agent, distributor or representative of PPC has any authority to bind PPC to any affirmation, representation or warranty, either written or oral, concerning goods or services covered by this Quotation or any other matter or thing and, unless an affirmation, representation or warranty made by an agent, distributor or representative is specifically included within this Quotation, it shall not be enforceable by Buyer. The remedies set forth in this paragraph 9 constitute Buyer's sole and exclusive remedies for any nonconformity with these warranties.
- d. **Suspension.** Notwithstanding anything to the contrary, PPC may, at its option, suspend performance under this paragraph 9 in the event Buyer is not in full compliance with this Quotation and its obligations hereunder. While, during any such suspension, PPC shall have no obligations under this paragraph 9, such suspension shall not result in any extension of applicable warranty periods or otherwise modify these warranties.
- 10. BUYER'S REMEDIES.** Buyer's exclusive and sole remedies, except as provided in paragraph 9 above, for any default hereunder by PPC, are strictly limited to either, at PPC's option, (a) refund of the price paid by Buyer for goods and services in question and return of such goods to PPC or (b) repair and/or replacement of nonconforming goods, or parts thereof, and re-performance of nonconforming services. Notwithstanding anything to the contrary, in the event this Quotation provides for liquidated damages or any other specified amount to be paid, or indemnification or any other specified action to be taken, by PPC, such amount or action shall constitute Buyer's sole and exclusive remedy for the circumstance or condition upon which such amount or action is based. Under no circumstances shall (i) Buyer have the right to claim or recover any punitive, exemplary, incidental or consequential damages or (ii) PPC be liable, in the aggregate for any and all matters arising out of, under, or in connection with this Quotation, whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise, for more than the amount paid by Buyer for goods and services covered by this Quotation.
- 11. PPC'S REMEDIES.** All of PPC's remedies set forth in this Quotation, in the event Buyer fails to comply with this Quotation or any of its obligations hereunder, shall be cumulative and in addition to, and not in lieu of, any other remedies available to PPC at law, in equity or otherwise, and may be enforced concurrently or from time to time and PPC shall additionally be entitled to recover its reasonable attorney's fees and costs incurred by PPC in the enforcement of its rights and remedies. Without limiting the foregoing, in the event Buyer fails to make one or more payments when due, or otherwise defaults in the performance of any of its obligations, PPC may, at its option, suspend performance hereunder until such default is cured or terminate its obligations hereunder, or both.
- 12. RISK OF LOSS AND PASSAGE OF TITLE.** Unless otherwise specified in this Quotation, all goods to be delivered by PPC are sold ex works (as defined in Incoterms 2000, ICC Publication NO. 460) and title to such goods shall pass to Buyer at the earlier of (i) the date when Buyer obtains physical possession of such goods or part thereof or (ii) the date such goods are loaded on a carrier for delivery to Buyer. If no carrier is specified by Buyer sufficiently in advance of the required date(s) of shipment, PPC may select any mode(s) of transportation and any common carrier satisfactory to PPC and such selection shall conclusively be deemed satisfactory to Buyer. In the absence of a written agreement to the contrary, Buyer bears all risks of shipment of any goods sold hereunder.
- 13. FORCE MAJEURE.** PPC shall be excused from performance hereunder for any period, and to the extent, that it is hindered or prevented from performing pursuant hereto, in whole or in part, as a result of delays caused by Buyer or unrelated third parties, floods or other acts of God, war, revolution, terrorism or civil disturbance, governmental action, statute, ordinance or regulation, court order, strike or other labor dispute, fire, damage to or destruction in whole or in part of goods or place of fabrication, lack or inability to obtain raw materials, labor, fuel or supplies or any other circumstances or conditions beyond PPC's reasonable control. In the event of nonperformance occasioned by any of the foregoing circumstances or conditions, the time for performance shall be extended to the extent of such delay. Such nonperformance shall not be a default hereunder or a ground for termination hereof and shall not excuse Buyer from its payment obligations hereunder or extend the time for such payment.
- 14. VERIFICATION OF INFORMATION.** This Quotation, including, without limitation, prices, schedules and specifications set forth herein, is based upon information furnished by Buyer to PPC. If any such information should prove to be inaccurate or incomplete in any material respect, PPC may, at its option and by giving written notice thereof to Buyer, make appropriate adjustments to the provisions hereof including, without limitation, prices, schedules and specifications.
- 15. OWNERSHIP.** Unless otherwise specified in this Quotation, Buyer shall not obtain any rights or interests in any patent, copyright, proprietary right or confidential know-how, trademark or process owned by PPC or any other party. Any and all intellectual property rights, including rights of patent, copyright and trademark, in any reports, drawings, documents, specifications, calculations, confidential know-how, materials, or processes (the "Intellectual Property Rights") owned or created by PPC and used or embodied in goods or services covered by this Quotation shall remain the sole property of PPC. Any and all Intellectual Property Rights developed by PPC, whether in the provision of goods and services covered by this Quotation or independently thereof, shall belong to PPC. Any and all right, title or interest that Buyer or any other party may have or obtain in or to PPC's Intellectual Property Rights by common law or otherwise is hereby irrevocably assigned to PPC and Buyer shall take, or cause to be taken, all necessary or appropriate actions to vest such Intellectual Property Rights in PPC.
- 16. CONFIDENTIALITY.** Buyer shall handle confidentially all designs and specifications and technical, commercial, financial and other information which Buyer receives from PPC pursuant to this transaction and shall not use, copy or communicate such information to others except in the performance of Buyer's obligations pursuant to this Quotation or as necessary for operation and use of the goods, without prior written consent of and the payment of fair compensation to PPC. If Buyer discloses such information to any other party, as permitted by this paragraph 16, Buyer shall secure such party's written agreement to the same confidentiality restrictions as stipulated herein and shall cause such party to comply with such confidentiality restrictions. Buyer may not use or reproduce, in whole or in part, any PPC drawing or specification, except in connection with the Quotation, and may not remove any designation of "PPC," "Performance Pulsation Control, Inc." or the term "confidential" or "proprietary" from document furnished to Buyer from PPC.
- 17. BUSINESS RELATIONSHIP.** PPC, in providing goods and services to Buyer, is acting only as an independent contractor and under no circumstances shall PPC be deemed to be in any relationship with Buyer carrying with it fiduciary or trust responsibilities, whether through partnership or otherwise. Unless otherwise specified in this Quotation, PPC has the sole right and obligation to supervise, manage and direct the provision of all goods and services covered by this Quotation. PPC does not undertake by this Quotation or otherwise to perform any obligation of Buyer, whether regulatory or contractual, or to assume any responsibility for Buyer's business or operations. Buyer shall (i) accurately represent goods and services covered by this Quotation, including, without limitation, as to quality, function, purpose and compatibility, (ii) not attempt or purport to create any obligation of PPC with respect to goods, services or otherwise, not add, remove, obstruct, conceal, change or deface any notice, legend, logo, designation or other mark on, or affixed to, any goods or any packing or other materials provided with goods, (iv) permit operation, maintenance and use of goods only in accordance with, and in a manner anticipated by, applicable design conditions, specifications and operating instructions and (v) market and distribute goods and services only in the form provided to Buyer by PPC. Buyer shall indemnify, defend and hold PPC harmless from any and all damages, liabilities, costs, and expenses, including without limitation, reasonable attorneys' fees and expenses, arising out of, under or in connection with any claim, demand, charge, action, cause of action or other proceeding relating to the conduct of Buyer's business, including without limitation, the acquisition, transfer, operation and/or use of goods and services covered by this Quotation. This Quotation is not intended to confer any rights or benefits on any third party, including, without limitation, any employee, customer, business associate, creditor or affiliate of Buyer.
- 18. WAIVER.** Waiver or non-enforcement by PPC of a right or privilege with regard to, or of a default by the other of, any term or condition of this Quotation shall not be deemed a waiver of future compliance therewith, and such terms or conditions shall remain in full force and effect.
- 19. ASSIGNMENT.** Buyer shall not assign or transfer its rights or obligations under this Quotation, or any part hereof, without PPC's prior written consent.
- 20. HEADINGS.** The headings contained in this Quotation are for reference purposes only and shall not in any way affect the meanings or interpretations hereof.
- 21. CHOICE OF LAW AND FORUM.** This Quotation shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to principles of conflict of laws. The United Nations Convention on the International Sale of Goods shall not be applicable to this transaction. Any dispute that may arise out of or in connection with this transaction shall be subject to the exclusive jurisdiction of the courts of the State of Texas and the U.S. federal courts located in such state, and Buyer irrevocably submits to the personal jurisdiction of such courts for purposes of any suit, action or proceeding involving any such dispute.
- 22. ENTIRE AGREEMENT.** The terms and conditions set forth in this Quotation constitute the entire agreement between the parties with respect to the subject matter hereof. This Quotation wholly cancels, terminates and supersedes any and all letters, requests for quotes, quotes, purchase orders, acknowledgments, bills of lading, agreements and understandings, whether oral or written, between Buyer and PPC with respect to the subject matter hereof. Terms and conditions set forth in any letter, request for quote, quote, purchase order, acknowledgment, bill of lading, agreement or other document utilized or exchanged by the parties shall not be incorporated herein or binding unless expressly agreed upon in writing by PPC. This Quotation may not be modified or terminated orally, and no modification, termination or waiver shall be binding on PPC unless accepted and acknowledged by a written instrument signed by a duly authorized representative of PPC.
- 23. EXPORTS.** If all or any portion of the goods to be provided pursuant to this Quotation are to be exported from the United States, Buyer agrees that such exportation is subject in all respects to, and Buyer shall comply in all respects with, United States laws with respect to such export and subsequent re-export of such goods. PPC makes no representation or warranty relative to the export or re-export of such goods.
- 24. SURVIVAL.** All representations, warranties, covenants and indemnities made in this Quotation shall survive the consummation of the transactions contemplated by this Quotation. Termination of all or any part of this Quotation, for any reason, shall not release Buyer from any liabilities or obligations set forth in this Quotation which (i) expressly survive any such termination or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination.
- 25. SAVINGS CLAUSE.** If any provision of this Quotation is declared or found to be illegal, unenforceable or void, then obligations arising under such provision shall be null and void and each provision not so affected shall be enforced to the full extent permitted by law.
- 26. ARBITRATION.** Any controversy arising out of this transaction shall be finally settled by arbitration. The arbitration shall be carried out pursuant to the commercial arbitration Rules of the American Arbitration Association then in force by one or more arbitrators appointed in accordance with such rules. The arbitration shall take place in Dallas, Texas, U.S.A., and the award shall be deemed a State of Texas award. The English language shall be used in the arbitration proceedings. The award shall be

made and shall be payable in U.S. dollars free of any tax or other deduction. The award shall include interest from the date of any breach or other violation of this Agreement to the date when the award is paid in full at an appropriate rate of interest fixed by the arbitrators. Judgment upon the award may be entered in any court of appropriate jurisdiction.