

# PowerOne Standard Terms and Conditions of Sale

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THE TERMS AND CONDITIONS SET FORTH BELOW CONSTITUTE THE ENTIRE AGREEMENT BETWEEN POWERONE AND CUSTOMER, UNLESS OTHERWISE AGREED TO IN WRITING BY POWERONE. In the event that Customer issues any form of order to PowerOne AUTHORIZING THE PURCHASE OF product(s) and/or service(s) , it is agreed that such order is issued EXCLUSIVELY for the purpose of CONFIRMING Customer's PURCHASE OF THE SPECIFIED ITEM(S) AND THE PRICE(S) THEREOF and that no OTHER terms and conditions specified or preprinted on such order shall add to or modify the terms and conditions of this Agreement and/or any related documentation provided with the items purchased, nor shall such order terms and conditions affect either Party's responsibility to the other Party as defined herein. A CUSTOMER'S purchase order and/or signature on a PowerOne quote shall constitute acceptance of PowerOne's offer as specified in a valid quote or service offering. PowerOne reserves the right to reject any purchase order.

**TERMINOLOGY** As used herein, "Quote" means that document issued by PowerOne to Customer for the sale of third party hardware, and/or third party software and/or services and/or any associated installation, configuration or other services as described therein. As used herein, "Customer" means the purchaser of products and/or services from PowerOne identified in the Quote referencing this Standard Terms and Conditions of Sale document (the "Agreement"). As used herein, "PowerOne" means PowerOne, a Florida corporation, unless otherwise specified in the Quote referencing this Agreement. As used herein, "Product" means any hardware, software, installation or third party-provided maintenance service, service, or services purchased by the Customer hereunder.

**PRICES, DISCOUNTS AND QUOTATIONS** All prices are subject to change without notice prior to receipt of Customer's purchase order or Customer's signature on a valid PowerOne Quote (hereinafter referred to as "Customer's Order") and PowerOne's acceptance of it. All Quotes and prices referenced on any quote are invalid after the expiration date stated and/or if rejected by PowerOne before it is accepted. All invoice prices are those in effect on date the Customer's Order is processed, unless otherwise agreed to by PowerOne in writing. All pricing information in published or printed material is provided for general information and estimation purposes only. Published prices are neither quotations nor offers to sell. Prices do not include applicable federal, state or local taxes and, unless expressly identified and itemized, do not include freight, handling or insurance. All taxes applicable to Products ordered shall be paid by Customer, or in lieu thereof, Customer shall provide PowerOne with a tax exemption certificate acceptable to the taxing authorities. In the event a quoted and/or ordered price includes a trade-in allowance based upon Customer's trade-in of goods, such trade-in goods must be received by the applicable manufacturer on or before the date specified in the Quote or, if applicable, the manufacturer's trade-in agreement which must be signed by the Customer. Customer will comply with the manufacturer's trade in program requirements as identified by PowerOne or the manufacturer. In the event Customer fails to return such trade-in goods by the sooner of the date specified in a Quote, in the manufacturer supplied trade in agreement or fifteen (15) days from delivery of the replacement goods, the trade-in allowance shall be forfeited and PowerOne shall invoice Customer for the amount of the trade-in allowance.

**PAYMENT TERMS** Payment terms are subject to Customer maintaining a credit status acceptable to PowerOne. Payment of all invoices is due no later than thirty (30) days from date of invoice or per the specific terms as specified on a signed quote that has been provided by PowerOne. Any customer with a past due invoice will be placed on "credit hold" and all requests for service, services, and/or products will not be completed until the "credit hold" has been resolved and the Customer's account is in good standings. Customers placed on "credit hold" will have recurring services (Internet Access, Web Hosting, Scheduled Service Visits, etc.) suspended at the sole discretion of PowerOne. Product and/or Service invoices are issued upon acceptance of a quote and payment as specified on the quote must be received before product and/or services will be rendered. All products and/or services provided by PowerOne require a 1<sup>st</sup> payment prior to any products and/or services being provided to the customer. 1<sup>st</sup> payments are NOT refundable deposits.

Unless specifically stated on a signed and valid quote or Service Advantage Program Agreement produced by PowerOne, the following terms and conditions will apply to all Customers.

**General Conditions** Customer acknowledges that all product, software, and/or services will be delayed if payment terms as specified in this document and/or as specified on any signed quote, are not completed in a timely manner and as indicated. If Customer secures a leasing arrangement with a third party leasing company ("Customer Lessor") and PowerOne deems evidence of such leasing arrangement to be sufficient, PowerOne will work with Customer and the Customer Lessor to facilitate payment from Customer Lessor. Notwithstanding the foregoing, Customer shall remain primarily responsible for and liable for complete and timely payment of all invoices issued hereunder.

**Payment for Products and/or Software** Customer will pay PowerOne 100% of invoice amount for all products specified on each quote before any products and/or software will be ordered on behalf of the Customer. Should product and/or software be delivered to the Customer without full payment being received, the Customer will immediately affect full payment to PowerOne. Items ordered, including but not limited to hardware, software and manufacturing service, service, and services that have been acted upon by PowerOne for staging, warehousing and/or pre-configuration purposes will be invoiced to the Customer before shipment from the manufacturer/supplier. Walk-in Customers will be charged an estimated parts fee for any repairs or new a minimum service fee for any equipment dropped off at our facilities before service work is commenced. **ONLINE PAYMENT OF INVOICES AND QUOTES CAN BE COMPLETED AT WWW.POWER1.COM**

**Payment for Labor and/or Service** <sup>1st</sup> Payment must be received equal to 50% of all labor and services anticipated by PowerOne for all service fees quoted and/or anticipated through a request from Customer to provide service and/or support that will exceed \$1,000.00. Full payment of the amount specified on each quote and/or any invoice for service/services must be received immediately following the service /services being provided by PowerOne. Walk-in Customers will be charged a minimum service fee for any equipment dropped off at our facilities before service work is commenced. Customer will not withhold payment for service/services provided.

**Late Fees** PowerOne has the right to charge a late payment charge of 1.5% or the highest amount permitted by law in the State of Florida of the outstanding balance per month for each month, or partial month, any invoice remains unpaid beyond its due date. Customer will pay collection and legal fees incurred by PowerOne to effect settlement of any past due invoice. If Customer secures a leasing arrangement with a third party leasing company ("Customer Lessor") and PowerOne deems evidence of such leasing arrangement to be sufficient, PowerOne will work with Customer and the Customer Lessor to facilitate payment from Customer Lessor. Notwithstanding the foregoing, Customer shall remain primarily responsible for and liable for complete and timely payment of all invoices issued hereunder.

**SHIPPING, DELIVERY, AND WAREHOUSING** Customer shall be responsible for all freight, handling and insurance charges. PowerOne shall select the carrier unless otherwise instructed by Customer. In no event shall PowerOne have any liability in connection with shipment, nor shall the carrier be considered an agent of PowerOne. PowerOne shall not be liable for damage or penalty for delay in delivery or for failure to give notice of any delay. All freight charges for drop shipments via surface or airfreight will be prepaid by the manufacturer or PowerOne, unless paid in advance by Customer or otherwise agreed by PowerOne. Any prepaid freight charges for such shipments shall be added to the charges listed on the applicable invoice and Customer agrees to reimburse PowerOne for such freight charges. Unless expressly specified otherwise in the applicable Quote, Customer shall accept and pay for partial shipments of goods. Unless otherwise specified by PowerOne, title and risk of loss to hardware shall pass to Customer upon delivery to the common carrier (F.O.B. origin). PowerOne retains a purchase money security interest in all hardware and such security interest is released when payment in full for such hardware is received by PowerOne. Customer agrees to pay a warehousing fee equal to one percent (1%) per month (or portion of a month) of the list price for any Product(s) purchased hereunder and held in a warehouse either at Customer's request or due to Customer's failure to accept delivery. Warehousing fees will be calculated from date Products are delivered to the warehouse.

**CANCELLATION OF ORDERS** Customer may not cancel or modify a Customer Order without the written consent of PowerOne. If PowerOne consents to Customer's cancellation or modification of a Customer Order, Customer agrees to be responsible for and pay PowerOne all costs, expenses and fees incurred by PowerOne from the manufacturer, the supplier or its shippers as a direct result of cancellation or modification of such order. If the manufacturer withholds its consent to the cancellation or modification of a Customer Order, PowerOne will deliver the ordered items to Customer, and payment in full will be due from Customer for such items.

**RETURN POLICY** Customer's right to return hardware and software is subject to the return policies and fees imposed by the applicable manufacturer and vendors selected by PowerOne. No credit for items delivered to Customer will be issued by PowerOne without prior written approval from PowerOne. Such approval, when provided, must be in the form of a written Return Material Authorization (RMA), which must accompany the returned items. An RMA must be requested by Customer from PowerOne within twenty (20) days from the original ship date, unless a shorter period is required by the applicable manufacturer. Items returned pursuant to the foregoing procedure may be subject to a manufacturer and/or PowerOne restock fee which PowerOne shall pass through to Customer and Customer shall assume and satisfy in full. Returned items must be in the original shipping cartons, undamaged, unused and unaltered. Equipment received without an RMA and or in a condition other than described entitles PowerOne the right to reject return of the items and/or may be subject to additional

charges which Customer agrees to pay. Opened software is not returnable. All shipments of returned items must be shipped prepaid by Customer to the warehouse location specified in the RMA. Upon receipt of the returned items, PowerOne will inspect such items for compliance with the foregoing conditions for proper return. A credit for properly returned items will be entered against the original invoice for the ordered items. All RMA's issued are valid for fifteen (07) days from the date the RMA is issued after which time the RMA will be cancelled.

**WARRANTY** All Products provided under these terms are subject to the warranties provided by the manufacturer as legally and contractually permissible for PowerOne to pass onto, resell or assign to Customer. PowerOne warrants that its services hereunder will be performed in a professional and workmanlike manner conforming to generally accepted industry standards and practices, and in strict accordance with all applicable laws, regulations, codes and standards of government agencies or authorities having jurisdiction. PowerOne services hereunder are supported against defects in workmanship for thirty (30) days after installation. POWERONE MAKES NO WARRANTY AS TO THE RESULTS OF ANY SERVICES PROVIDED. EXCEPT AS SET FORTH IN THIS PARAGRAPH, POWERONE DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT.

**LIMITATION OF LIABILITY NOTWITHSTANDING** ANYTHING ELSE HEREIN, ALL LIABILITY OF POWERONE UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO MONEY PAID TO POWERONE UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY AND IN THE CASE OF DAMAGES RELATING TO ANY ALLEGEDLY DEFECTIVE OR INFRINGING PRODUCT, SHALL, UNDER ANY LEGAL OR EQUITABLE THEORY, BE FURTHER LIMITED TO THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH PRODUCT. IN NO EVENT SHALL POWERONE BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, OR ANY OTHER INDIRECT DAMAGES EVEN IF POWERONE HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

**SERVICE CONDITIONS** All service prices are based on work being performed during normal business hours (Monday through Friday from 8:00 a.m. until 5:00 p.m.). Customer will accompany any PowerOne employee or agent while on-site at a Customer location. Any third party maintenance or support services provided under these terms shall be subject to the applicable third party terms and conditions for such services, as identified by such third party. Installation Service and Service Fees are based on PowerOne being provided with accurate and complete information as to the scope of work and location of work provided. Cancellations of scheduled site visits by PowerOne must be completed 24 hours in advance or PowerOne retains the right to charge customer a minimum service fee. If the scope of work or the number of devices/office locations to be implemented changes at the Customer's request from that specified in any quote or offer of services, PowerOne retains the right to review and change the terms of any related accepted Customer Order, including, without limitation, pricing and any delivery requirements that are affected or impacted by such request.

**SOFTWARE** Any software provided under these terms is subject to the license terms that are provided with it. All software license terms are established directly between the Customer and the owner or manufacturer of the software. Unless PowerOne is identified as the owner or licensor of the software, PowerOne is not a party to any software license terms and PowerOne makes no warranties or representations related to the ownership, use or operation of the software.

**GOVERNING LAW** Each transaction between Customer and PowerOne made under this Agreement will be governed by the applicable state laws for the PowerOne location specified in the applicable Quote, excluding any conflict of laws rules that may apply in such state. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of the applicable court in the aforementioned PowerOne location and each party submits to the jurisdiction thereof. Customer waives any defense to the validity or enforceability of this Agreement arising from any electronic submission of it to Customer. Customer acknowledges and agrees that it has the ability to access each URL referenced in any Quote.