

# Terms of Service and Conditions of Sale

## Introduction

The PowerOne Terms of Service and Conditions of Sale are set forth below and also include the Acceptable Use Policy as well as the Disclosure and Privacy Policy [together referred to as the "Documents"] which together detail the mutual rights and obligations between the PowerOne customer ["you or your"] and PowerOne, its officers, agents, employees, contractors, vendors and affiliates ["PowerOne Affiliated Parties"].

You agree to be bound by the terms and conditions of all of these Documents, and as such should take the time to understand them completely. These agreements are effective from your acceptance thereof, which is indicated by your initial use and/or continued use of the Service and/or delivery of product. If you do not agree to these terms, you should not use this Service and/or accept delivery of product. Please read all "Documents" carefully and contact us if you have any questions.

PowerOne shall have the right to modify this Agreement at any time in any manner. Any modification shall be effective upon notice as provided under Section 9. Your continued use of the Service and/or accepted delivery of product shall be deemed acceptance of all modifications.

1. This Agreement, the **Acceptable Use Policy**, **Section 23**, and the **Disclosure and Privacy Policy**, **Section 22**, [together referred to as the "Documents"] constitutes the entire Agreement between Purchaser and PowerOne, with respect to the Service and/or the product, including any parts or product furnished as a replacement. The "Documents" supersede all prior or contemporaneous communications, advertisements, proposals, or information provided (whether via electronic, written, oral, or by other means of communications) between you and PowerOne. No representation or statement not expressed herein shall be binding on PowerOne. The foregoing terms and conditions shall prevail notwithstanding any variance with the terms and conditions of any order submitted by purchaser with respect to the product. Purchaser's signature on the Quotation, or by acknowledging the Quotation in a Purchase Order, or by acceptance of delivery shall constitute Purchaser's acceptance of these terms and conditions.
2. **Acceptance** - Acceptance of this Agreement by PowerOne is contingent upon (1) a satisfactory credit report of Purchaser and (2) with regard to the dollar amounts stated herein, the absence of any mathematical error or deviation from PowerOne standard prices. You agree to provide PowerOne with accurate and complete billing information including your legal name, address, and telephone number. All changes to this information must be reported to PowerOne within 30 days of the change.

3. **Relationship of the Parties**. It is expressly understood and acknowledged that it is not the intention or purpose of this Agreement to create, nor shall the same be construed as creating, any type of partnership, relationship or joint venture.
4. **Payment** - Purchaser agrees to pay the Net Amount set forth on the face of the Invoice or Quotation. All sales are F.O.B. shipping point, and all transportation, rigging, drayage, uncrating and similar charges will be paid by Purchaser. You agree to pay PowerOne all fees and charges for the Service including all applicable start-up fees, monthly or yearly usage fees (or other rate plan selected), early termination charges, if applicable, or software purchases. Setup fees are non-refundable. PowerOne will issue refunds for monthly fees paid in advance only if such refunds are in excess of \$100.00, subject to any termination charges. All invoices are due upon receipt and will be considered late after 15 days from the date of invoice. IF PAYMENT IS NOT RECEIVED WITHIN THIRTY (30) DAYS FROM DATE OF INVOICE PURCHASER AGREES TO PAY INTEREST THEREON AT A RATE EQUAL TO THE LESSER OF 1 1/2% PER MONTH OR THE MAXIMUM INTEREST RATE PERMITTED BY LAW. A service charge will be assessed to your account for each check that is returned to PowerOne for insufficient funds. Any Payments due for product purchases shall not be contingent upon any test in place. You must contact the PowerOne Customer Service Department at (352) 253-2200 within 30 days of the invoice or transaction date of any charge if you believe PowerOne has made a billing error. Refunds, credits or adjustments will not be given for any charges which are more than 60 days old. Purchaser agrees to pay PowerOne costs and expenses of collection and/or repossession, including the maximum attorney's fee permitted by law.
5. **Taxes** . PowerOne shall have the right to bill and collect any applicable taxes where required by law. Purchaser will pay all taxes, fees or charges of any nature whatsoever imposed by any governmental authority on, or measured by, the transaction between Purchaser and PowerOne. If PowerOne is required to collect the foregoing, such amounts will be separately stated on the invoice, and must be paid by Purchaser unless Purchaser provides PowerOne with a valid tax exemption certificate authorized by the appropriate taxing authority. Purchaser agrees to provide PowerOne with a valid resale certificate for the Hardware purchased for resale.
6. **Severability** - If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
7. **Modification and Waiver** - PowerOne reserves the right to modify these Terms at any time without notice. Purchaser is responsible for reviewing these Terms before placing an order with PowerOne. No modifications or amendments to these Terms by Purchaser will be accepted by and binding on PowerOne unless an authorized representative of PowerOne agrees in writing to such modifications

or amendments. PowerOne 's waiver of any of these Terms in any instance shall be limited to that Term and instance and shall not constitute a waiver of any other Terms or a waiver of such Term on any future occasion. PowerOne 's failure to enforce any of these Terms or assert any rights hereunder shall not excuse any other breaches or constitute a waiver of such rights.

8. **Applicable Law** - Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States and the laws of the State of Florida, USA for all claims without regard to its conflicts of law provisions.. Both parties hereby consent to the exclusive jurisdiction of the state and federal courts in Lake County, Florida, USA. with respect to all disputes arising out of this Agreement, your use of the Service or otherwise between you and PowerOne.
9. **Notices** - PowerOne may provide notice to you by the following methods: Electronic mail (e-mail) addressed to your e-mail account; general posting to PowerOne's web site at [www.power1.com](http://www.power1.com); or by U.S. Mail or courier service at the address you provided PowerOne when you registered for the Service. All notices or other communications to you shall be deemed effective on the first (1st) calendar day following the date of electronic mailing or posting or on the fourth (4th) calendar day following the date of first-class mailing or deposit with a commercial courier service. These are the only means of official communication recognized for the purpose of actively communicating with you regarding your Service.
10. **Transferable** - Neither this Agreement, nor any of your rights or obligations arising hereunder, shall be transferable or assignable by you to any third party without PowerOne's prior written consent. PowerOne shall have the right to assign all or part of its rights and obligations under this Agreement.
11. **Force Majeure**. Neither Party shall be considered in default in performance of its obligations should its performance thereof be delayed or prevented by force majeure. "Force Majeure" shall include, but not be limited to: hostilities, restraint of rules or peoples, revolution, civil commotion or riots; strikes or lockout; epidemic; accident, fire, flood, earthquake, windstorm or explosion; lack of or failure of transportation facilities; lack of or failure of power facilities; regulation or ordinance, demand or requirement of a denial of approval by any government or governmental agency having or claiming to have jurisdiction over the subject matter of this Agreement or over the parties; or any act of God or any act of Government, or any cause, whether, of the same or different nature, existing or future, which is beyond the control and without the fault or negligence of the parties.
12. **Deemed Unenforceable** - In the event any part of this Agreement shall be deemed unenforceable by a court of law all other provisions of this Agreement shall remain in full force and effect. Any terms that are determined to be unenforceable will be construed in a manner that is consistent with the intentions of this Agreement.

13. **Title** - Until full payment of the Net Amount, Purchaser hereby grants PowerOne a purchase money security interest in the product sold hereunder in accordance with the Uniform Commercial Code. PowerOne may, at any time, file a copy of this Agreement or a financing statement (which Purchaser agrees to execute upon PowerOne's request) with appropriate authorities as a financing statement in order to perfect PowerOne's security interest. Any such filing shall not constitute acceptance of this Agreement by PowerOne. Title shall not pass to Purchaser until the Net Amount (including all freight and taxes, if applicable) has been paid.
14. **Default** - If Purchaser defaults hereunder, if a Petition in Bankruptcy is filed, or any proceeding under any bankruptcy, insolvency or similar law is commenced by or against Purchaser, or if Purchaser makes an assignment for the benefit of creditors: PowerOne, in addition to other remedies, may repossess the product without notice; and Purchaser grants to PowerOne all rights to enter the job site which Purchaser may have in order to enable PowerOne to affect such repossession.
15. **Risk of Loss** - Risk of loss or destruction of or damage to the product shall pass to Purchaser upon the earlier of delivery to Purchaser or delivery to a carrier for delivery to Purchaser. Merchandise received by Purchaser shall be inspected for damage and quantity counts, at time of receipt and, if not objected to in writing within thirty (30) days thereafter, shall be deemed accepted by Purchaser as to condition and quantity, and the Purchaser shall be responsible for all merchandise thereafter.
16. **Warranty of Product** - Product warranty is provided by the respective manufacturer. Purchaser acknowledges that no other representations were made to it or relied upon by it with respect to the purpose, quality and function of the product. This warranty shall not apply to the product or any part thereof which has been subject to accident, negligence, tampering, alteration, abuse or misuse, or if damage to the product has been caused by attachment thereto or use in connection therewith of parts, components and/or product not sold by PowerOne. In no event will PowerOne have any obligations or liability for damages, including but not limited to consequential or special damages, arising out of or in connection with the use or performance of the product. The warranties set forth herein are in lieu of any and all other warranties, express or implied, including any implied warranties of merchantability or fitness for a particular purpose.
17. **Delivery of Product** - PowerOne shall not be liable for failure to deliver or for delays in delivery occasioned in whole or in part by causes beyond its control, including, without limitation, strikes and other labor disputes, fires, embargoes, war or civil disturbance, acts of God, inability to obtain transportation or shipping space for materials, machinery breakdowns, delays of carriers or suppliers and governmental acts and regulations.
18. **Cancellation and Returned Product** - Orders may be cancelled only with PowerOne 's written consent and upon payment of reasonable and proper cancellation charges. Goods may be returned only when specifically authorized in writing by PowerOne, and Purchaser will be charged for placing

returned goods in saleable condition, any sales expenses then incurred by PowerOne plus a 25% restocking charge and any outgoing and incoming transportation costs which PowerOne pays. PowerOne reserves the right to not accept used or opened product under any circumstances.

19. **Limited Liability - Product** - In no event will PowerOne be liable for any direct, indirect, special, incidental, or consequential damages arising out of or relating to any product or shipment, including, but not limited to, loss of use; loss of revenue; loss of actual or anticipated profits (including loss of profits on agreements); loss of the use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; or any indirect or consequential loss or damage howsoever caused including the replacement of product and property. This limitation of liability applies whether a claim is made or damages are sought under this warranty or as a tort claim (including negligence and strict product liability), an agreement claim, or any other claim. This limitation of liability shall apply even if PowerOne or an authorized representative of PowerOne has been advised of the possibility of any such damages. this limitation of liability shall not apply to death or personal injury claims.

20. **Termination of Service Agreement**

20.1. You may change or cancel your account by the following means only: first-class registered or certified mail, return receipt requested, addressed to PowerOne, Account Termination, P.O. Box 428, Tavares, Florida 32778, or email your changes and cancellations to [cancellations@power1.com](mailto:cancellations@power1.com). Cancellations require a 30 days written notice.

20.2. Payment is expected monthly on the due date for the service to be rendered. PowerOne may charge a late fee (up to the maximum rate allowed by the law) or take other action to compel payment of past due amounts, including suspension and termination of services, unless prohibited by law or regulation. Service that is suspended or terminated for non-payment may be subject to a reconnection charge. PowerOne's acceptance of late or partial payments (even those marked "paid in full") and late payment charges is not a waiver of its right to collect the full amount due. Customer's payment obligations include late charges and third-party collection costs, including reasonable attorney fees.

20.3. Subject to payment of any applicable early termination charges, you shall have the right to terminate this Agreement at any time with or without cause upon 30 days notice to PowerOne as described above. PowerOne will issue refunds for monthly fees paid in advance only if such refunds are in excess of \$100.00 and only if your account is not subject to any termination fees. In the event you terminate Service prior to the expiration of the term of Service you originally ordered, you shall be required to pay an early termination charge. Any refund due you will be adjusted to reflect the higher service charge rate applicable to such shorter term.

20.4. PowerOne may immediately terminate or suspend service at any time for a violation by you of

our Acceptable Use Policy, **Section 23**. In addition, PowerOne may remove or refuse material posted by you if we believe, in our sole discretion that it infringes on another's property rights or if we believe the material is inappropriate

## **21. Limitation of Liability and Indemnification of Service Agreement**

21.1. If you are dissatisfied with the Service or any of its terms, conditions, rules, policies, guidelines, or practices, your sole and exclusive remedy against PowerOne or the PowerOne Affiliated Parties is to terminate this Agreement and discontinue using the Service by canceling the account by following the procedures described in this Agreement.

21.2. All information you receive from or through the service is provided "as-is", "as available," and all warranties, express or implied, are disclaimed (including but not limited to any implied warranties of merchantability and fitness for a particular purpose, course of dealing or usage of trade). The information and service may contain bugs, errors, problems or other limitations. PowerOne and PowerOne affiliated parties have no liability whatsoever for your use of the service, inability to use the service or your reliance on or use of information from the service or through the service that results from mistakes, omissions, interruptions, deletions of files, errors, defects, delays in operation or any failure of performance. In particular, but not as a limitation, PowerOne and its affiliated parties are not liable for any direct, indirect, special, incidental or consequential damages, including damages for loss of business, loss of profits, litigation or the like, whether based on breach of contract, breach of warranty, tort (including negligence), product liability or otherwise, even if advised of the possibility of such damages. The negation of damages set forth above are fundamental elements of the basis of the bargain between PowerOne and you. The service would not be provided without such limitations. You agree to commence any cause of action you may have with respect to the service within one (1) year after the claim or cause of action arises.

21.3. All responsibility or liability for any damages caused by viruses contained within any electronic file you obtain from the service is disclaimed. PowerOne's maximum liability to you under all circumstances relating to our provision of the service will be equal to the fees you have paid for the specific service giving rise to the claim.

21.4. You are solely responsible for any international use of our service. PowerOne makes no representation that materials on this site are appropriate, legal, or acceptable when used outside the United States. Accessing any site or information, in any territories that deem such materials or access as illegal is prohibited by PowerOne. You are responsible for compliance with any and all local laws and customs. Your access of our Service when outside the United States is at your sole risk.

21.5. PowerOne provides access to third-party merchant sites ["Merchants"] from which you may purchase certain goods or services. You understand that PowerOne does not operate or control the products or services offered by Merchants and that PowerOne is not a party to the transaction

entered into between you and any and all Merchants. You agree that use of any such merchant is at your sole risk and is without warranties of any kind by PowerOne or PowerOne affiliated companies, expressed, implied or otherwise including warranties of title, fitness for purpose, merchantability or non-infringement. under no circumstances is PowerOne or PowerOne affiliated companies liable for any damages arising from the transactions between you and merchants or for any information appearing on merchant's sites or any site linked to a PowerOne site.

21.6. You agree to defend, indemnify, and hold PowerOne and PowerOne Affiliated Parties harmless from any and all liabilities, costs, and expenses, including reasonable attorneys' fees, related to or arising from: any violation of this Agreement by you or those who access the Service through your account and, the use of the Service or the Internet and the placement or transmission of any message, information, software, or other materials on the Internet by you or by those who have access to the Service through your account.

## 22. **Disclosure and Privacy Policy**

22.1. The content, organization, graphics, design, compilation and other matters related to the PowerOne WebSite ["the Site"] are protected under applicable copyrights, trademarks and other proprietary rights. The copying, redistribution, use or publication by you of any such materials or any part of the Site, except as allowed under **Section 22.3**, is strictly prohibited. You do not acquire ownership rights to any content, document or other materials viewed through the Site or the Service.

22.2. PowerOne is the registered trademark of Evalcor, Inc. dba PowerOne. Other product and company names mentioned on the Site may be trademarks of those respective owners.

22.3. The viewing, printing or downloading of any content, graphic, form or document from the Site grants you only a limited, nonexclusive license for use solely by you for your own personal use and not for republication, distribution, assignment, sublicense, sale, or preparation of derivative works.

22.4. PowerOne provides access to information, via the Internet, of all kinds relating to a wide variety of subjects on virtually any topic imaginable. Some of this material may be offensive, misleading, or controversial in nature. You might find some of this material offensive or inappropriate for you or for any minors who may be accessing the Internet through your account. Third party sites are not controlled by PowerOne and you understand, acknowledge, and accept that PowerOne is not responsible for the content, accuracy, effectiveness, or any other matter relating to content of any such site. Links found on or through the PowerOne service does not imply any endorsement, association, or approval of the site by PowerOne. Please use good judgment when accessing the Internet, and supervise minors who may be using your account. For more information on this topic, **please see our Acceptable Use Policy, Section 23.**

22.5 PowerOne is continually updating and improving its Service as well as upgrading product to meet evolving technological standards used by the industry. These changes may occasionally cause

degraded or interrupted services. PowerOne will make every attempt to communicate planned outages or interruptions through our notification process.

### 23. **Acceptable Use Policy**

23.1. As a PowerOne customer, you are responsible for all activities that occur in relation to your account. PowerOne provides you with a limited, non-exclusive license to user names and other specific account and network information related to the PowerOne architecture. The responsibility for the use of those Services and any consequences of the use or abuse of those Services is yours and yours alone, whether this use was intentional or unintentional. Misuse of any product, Internet access or Services provided by PowerOne can result in the termination of some or all services at the sole discretion of PowerOne. PowerOne is not required to provide Service to anyone for any reason, and reserves the right to terminate Service at any time.

23.2. You are responsible for the security of all Services provided by PowerOne. Because PowerOne holds you responsible for the activity on your account, you will also be held responsible for actions on your account performed by others who have acquired your passwords or access to your systems with or without your knowledge.

23.3. With respect to each electronic mail address assigned to you, PowerOne reserves the right to deny delivery of any new e-mail transmissions until your electronic mail address information storage is reduced to below the maximum capacity.

23.4. In order to maintain an account with PowerOne, you must be 18 years of age or older. By accepting this agreement, you certify that you meet this minimum age requirement. Minors are permitted to use PowerOne Services with the express permission of a registered adult. The actions of that minor while using the account are the sole responsibility of the adult to whom the account is registered.

23.5. You are responsible for all financial transactions made between your account and third parties using PowerOne Services, knowingly or unknowingly. Please keep your password confidential, and insure you know of all activity that takes place on your account. Use caution when providing personal information while connected to the Internet, as PowerOne cannot protect you from potential fraud or charges occurring through third party vendors with whom you may be in contact with through your Internet Service.

23.6 All information with respect to the design, operation or other characteristics of the product furnished directly or indirectly by PowerOne (except such information as may be established to be in the public domain) shall be received and held by Purchaser in confidence, and Purchaser shall exercise reasonable care to prevent the improper use of such information.