

Generac Power Systems, Inc. Purchase Order Terms and Conditions

- 1. Acceptance of Order (“Acceptance”).** This purchase order is Generac Power Systems, Inc.’s (including its subsidiaries; collectively, “Generac”) offer to Seller and becomes a binding contract, subject to the terms hereof, when accepted by acknowledgement or commencement of performance by Seller. Generac objects to all additions, exceptions, or changes to these terms, whether contained in any printed form of Seller, by oral proposal or elsewhere, unless expressly approved by Generac in writing. To the extent there are any inconsistencies between any terms proposed by Seller and those contained in this order, the latter will control. This order may be revoked without penalty any time prior to acceptance with or without cause. This order is subject to cancellation by Generac in whole or in part at any time prior to shipment, in which events Generac shall reimburse Seller on a negotiated basis, for reasonable expenses incurred to the time of cancellation.
- 2. Warranty.** Seller warrants that all the materials, articles and services furnished hereunder will be in exact conformity with this order and with any order description, specification, drawing or sample supplied by Seller or Generac, shall be free from defects in material and workmanship and shall be merchantable and fit for the purpose, if any, indicated by Generac to Seller. Seller warrants that all such goods or services will conform to any statements made on the containers, labels or advertisements for such goods or services, and that all goods will be adequately contained, packaged, marked and labeled. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect Seller’s obligation under this warranty, and all warranties shall survive inspection, test, acceptance and use. Seller’s warranty shall run to Generac, its successors, assigns, customers and users of products sold by Generac. Seller agrees to replace or promptly correct defects of any nonconforming goods or services without expense to Generac. If Seller fails to correct defects in or replace nonconforming goods or services promptly, Generac, after reasonable notice to Seller, may make such corrections or replace such goods and services, and charge Seller any cost incurred.
- 3. Packaging and Shipment.** Seller is expected to adhere to Generac requirements and expectations as set forth in the Domestic and International Routing Guides which the Seller shall find at <https://www.generac.com/about/supplier-support/>. Seller shall ship all goods FCA nearest ocean port (for foreign sellers) or FCA Seller’s dock (for domestic sellers) whichever is applicable (INCOTERMS 2010) (the applicable shipment point being the “Delivery Point”) whereby risk of loss and title will transfer to Generac at the Delivery Point. The delivery schedule specified on the face hereof, or as revised in writing by Generac, must be strictly adhered to. Generac may refuse to accept premature shipments and/or billing, partial shipments, and quantities in excess of ordered material.
- 4. Inspection and Acceptance of Goods.** All goods shall be delivered subject to Generac’s right of inspection and rejection. Payment for goods on this order prior to inspection shall not constitute acceptance thereof and acceptance of the goods by Generac shall not relieve Seller from any of its obligations and warranties. Defective goods or goods which fail to conform in any respect with Generac’s specifications will be held by Generac for no more than 30 days while awaiting Seller to provide instructions regarding return of the product at Seller’s expense. If return authorization is not received at Generac within 30 days, Generac reserves the right to dispose of the failed goods and process a debit memo. Generac shall have the right to cancel any unshipped portion of the order quantity.
- 5. Price.** Prices must not be in excess of those last quoted. Generac shall receive the benefits of any price reduction by Seller made effective after receipt of this Order but before delivery. No additional charges of any kind will be allowed unless agreed to and supported by Generac provision of new or revised purchase order prior to shipment.
- 6. Invoices.** Separate invoices must be rendered for each shipment to show Generac’s purchase and part numbers and the invoice with the last shipment should state "order completed". Bills of lading must accompany invoices and include weight and rate of freight. A packing list must be placed in all packages and boxes and a purchase order number must appear on all invoices, packing slips and bills of lading.
- 7. Indemnity.** Seller shall defend, indemnify and hold harmless Generac against all damages, claims or liabilities and expenses (including reasonable attorneys’ fees) arising out of or resulting in any way from any defect or nonconformance in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. Generac may be represented by and actively participate through its own counsel at its own expense in any suit or proceeding. Seller shall not obligate Generac to any legal settlement without the express written consent of Generac. Except for articles manufactured to Generac’s own specifications and plans, Seller agrees to defend, protect, indemnify and hold harmless, Generac and its customers from all costs, expenses or damages arising out of any actual or claimed patent infringement pertaining to the item covered by this Order or any uses contemplated by the parties at the time of delivery to Generac.
- 8. Offsets.** Without prejudice to any other right or remedy it may have, Generac may deduct all or any part of any damages it may suffer (resulting from any breach of the contract by the Seller) from any amount payable by Generac to the Seller.
- 9. Anti-Corruption.** Seller agrees that in performing its duties under these Terms and Conditions it will not offer, promise, or make any payments, loans, gifts of money, or anything of more than nominal value to an official or employee of any government; or to an official or employee of any department, agency, or instrumentality of a government; or to an employee of any corporation or entity owned or controlled by a government; or to an immediate family member of such officials or employees; or to any political party, party official, or political candidate; or to any other person if Seller knows or has reason to believe that any part of the payment, loan, or gift will be given directly, indirectly, or through a third party to any of the persons described above. Seller represents and warrants that none of its agents, partners, owners, principals, or employees is or will be an official or employee of any government department, entity, instrumentality, or government-owned corporation, nor of any political party, nor is any of them a political candidate. Seller agrees that it has no right to assign any portion of this contract, and that it will not use sub-agents, representatives, or sub-partners that have not been approved in writing by Generac. Seller agrees to make and keep books, records and accounts that accurately, fairly, and in reasonable detail reflect its performance hereunder.
- 10. Compliance with Laws.** In the performance of the Seller and in the furnishing of material under this order, Seller agrees to comply with all applicable laws and regulations thereunder, including without limitation, those with respect to wages, hours, labor conditions and the Occupational Safety and Health Act of 1970. If this order (or sub-contract) covers material and/or services to be utilized in the fulfillment of a Government Contract, Seller (or Contractor) agrees to comply with the Equal Opportunity Clause set forth in Section 202 of Executive Order 11246 (and any amendments thereto), the Affirmative Action Clause prescribed by the Vietnam Era Veterans Readjustment Assistance Act of 1974; Minority Business Enterprises Clause requirements of Executive Order 11625; and the Affirmative Action Clause prescribed by Executive Order 11758 unless exempt from such compliance.
- 11. Entire Agreement/Assignment.** This order constitutes the entire agreement between the parties (except for any master supply agreement) and may not be modified or amended except by a writing signed by Generac. It may not be assigned or subcontracted by Seller without Generac’s prior written consent.
- 12. No Waiver.** Failure of Generac to insist upon strict performance of any of the Terms and Conditions in this order shall not be considered a continuing waiver of any of Generac’s rights, or of such Terms and Conditions.
- 13. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, AND IRRESPECTIVE OF ANY FAULT, NEGLIGENCE, OR GROSS NEGLIGENCE OF ANY KIND, IN NO EVENT SHALL GENERAC OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO SELLER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE OR INDIRECT DAMAGES.
- 14. Governing Law.** This order will be construed in accordance with, and all disputes will be governed by, the laws of the State of Wisconsin, without regard to its conflict of laws rules. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Seller irrevocably consents to the personal jurisdiction of the state and federal courts in and for the State of Wisconsin, United States, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.
- 15. Proprietary Information – Confidentiality.** Seller shall consider all information furnished by Generac to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this purchase order unless Seller obtains written permission from Generac to do so. This paragraph shall apply to drawings, specifications or other documents prepared by Seller for Generac in connection with this purchase order. Seller shall not advertise or publish the fact that Generac has contracted to purchase goods from Seller, nor shall any information relating to the purchase order be disclosed without Generac’s written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Generac shall be deemed secret or confidential, and Seller shall have no rights against Generac with respect thereto except such rights as may exist under the patent laws.