

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934

For the quarterly period ended September 30, 2001

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 For the transition period from to

Commission file number:

ACTIVE POWER, INC.

(Exact name of registrant as specified in its charter)

Delaware

74-2961657

(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer  
Identification No.)

11525 Stonehollow Dr., Suite 110, Austin, Texas

78758

(Address of principal executive offices)

(Zip Code)

(512) 836-6464

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed  
since last report)

Indicate by check mark whether the registrant (1) has filed all reports  
required to be filed by Sections 13 or 15(d) of the Securities Exchange Act of  
1934 during the preceding 12 months (or for such shorter period that the  
registrant was required to file such reports), and (2) has been subject to such  
filing requirements for the past 90 days.  Yes  No

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's  
classes of common stock, as of the latest practicable date. The number of shares  
of common stock as of September 30, 2001 was 40,531,070 with a par value of  
\$0.001 per share.

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## PART I - FINANCIAL INFORMATION

## Item 1. Financial Statements

ACTIVE POWER, INC.  
BALANCE SHEETS

(in thousands)

	September 30, 2001 ---- (unaudited)	December 31, 2000 ----
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 80,005	\$ 92,720
Short-term investments	10,013	42,541
Accounts receivable, net	3,415	1,934
Inventories, net	6,153	2,343
Prepaid expenses and other	1,344	1,177
	-----	-----
Total current assets	100,930	140,715
Property and equipment, net	16,489	4,469
Long-term investments	29,493	10,948
	-----	-----
Total assets	\$ 146,912	\$ 156,132
	=====	=====
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 6,045	\$ 2,133
Accrued expenses	3,057	1,610
	-----	-----
Total current liabilities	9,102	3,743
Stockholders' equity:		
1992 preferred stock	-	-
Common stock	41	39
Treasury stock	(2)	(2)
Deferred stock compensation	(3,604)	(7,519)
Additional paid-in capital	215,029	212,601
Accumulated deficit	(73,654)	(52,730)
	-----	-----
Total stockholders' equity	137,810	152,389
	-----	-----
Total liabilities and stockholders' equity	\$ 146,912	\$ 156,132
	=====	=====

See accompanying notes

ACTIVE POWER, INC.  
STATEMENT OF OPERATIONS

(in thousands, except share and per share amounts)  
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2001	2000	2001	2000
Product revenue	\$ 6,219	\$ 1,343	\$ 18,058	\$ 2,204
Cost of goods sold	6,885	2,085	20,670	3,782
Product margin (loss)	(666)	(742)	(2,612)	(1,578)
Operating expenses:				
Research and development	4,003	3,060	11,562	6,718
Selling, general and administrative	2,908	1,578	8,571	4,138
Amortization of deferred stock compensation	926	1,881	3,197	5,021
Total operating expenses	7,837	6,519	23,330	15,877
Operating loss	(8,503)	(7,261)	(25,942)	(17,455)
Interest income (expense)	1,266	1,548	5,167	2,243
Change in fair value of warrants with redemption rights	-	-	-	(1,562)
Other income (expense)	(123)	(76)	(148)	(80)
Net loss	\$ (7,360)	\$ (5,789)	\$ (20,923)	\$ (16,854)
Preferred stock dividends and accretion	-	(3,669)	-	(19,079)
Net loss to common shareholders	\$ (7,360)	\$ (9,458)	\$ (20,923)	\$ (35,933)
	=====	=====	=====	=====
Net loss per share - basic and diluted	\$ (0.18)	\$ (0.35)	\$ (0.53)	\$ (2.18)
Shares used in computing net loss per share, basic and diluted	40,153,164	27,322,877	39,532,822	16,467,498

See accompanying notes

ACTIVE POWER, INC.  
STATEMENT OF CASH FLOWS

(in thousands)

	Nine Months Ended September 30,	
	2001	2000
	----- (unaudited)	----- (unaudited)
Operating activities		
Net loss	\$ (20,923)	\$ (16,854)
Adjustment to reconcile net loss to cash used in operating activities:		
Depreciation expense	1,704	708
Amortization of deferred stock compensation	3,197	5,021
Change in fair value of warrants with redemption rights	-	1,562
Changes in operating assets and liabilities:		
Accounts receivable, net	(1,481)	(880)
Inventories, net	(3,811)	(1,082)
Prepaid expenses and other assets	(777)	(1,026)
Accounts payable	3,913	1,448
Accrued expenses	1,447	230
Other non-current liabilities	-	(7)
	-----	-----
Net cash used in operating activities	(16,731)	(10,880)
Investing activities		
Purchases of property and equipment	(13,724)	(3,518)
Net maturity (purchase) of investments	13,983	(15,612)
	-----	-----
Net cash provided by (used in) investing activities	259	(19,130)
Financing activities		
Proceeds from issuance of common stock, net of issuance costs	1,489	139,911
Proceeds from exercise of warrants	2,268	30
Payments on notes payable .	-	(55)
	-----	-----
Net cash provided by financing activities	3,757	139,886
	-----	-----
Increase in cash and cash equivalents	(12,715)	109,876
Cash and cash equivalents, beginning of period	92,720	24,856
	-----	-----
Cash and cash equivalents, end of period	\$ 80,005	\$ 134,732
	=====	=====

See accompanying notes.

Active Power, Inc.  
Notes to Financial Statements

(unaudited)

1. Organization

Active Power, Inc. was founded in 1992 as Magnetic Bearing Technologies, Inc. for the purpose of developing and commercializing advances in the field of electromechanics. In the early years, Active Power devoted efforts principally to research and development, pursuing patent protection for intellectual property, successful production of initial prototypes, raising capital and pursuing markets for our flywheel-based power quality and energy storage products. In 2000 and 2001, the size and scope of our operations expanded considerably. We raised our level of new product development, increased our manufacturing capabilities and capacity, and added resources in sales and service to strengthen our distribution channels.

2. Basis of Presentation

The accompanying unaudited interim financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted. These financial statements should be read in conjunction with the audited financial statements and accompanying notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2000. In the opinion of management the financial statements include all adjustments (consisting of normal recurring adjustments) necessary for a fair presentation of the results for the periods presented. Results of operations for any interim period are not necessarily indicative of results for any other interim period or for the full year.

3. Inventory

Active Power states inventories at the lower of cost or replacement cost, with cost being determined on a standard cost basis, which does not differ materially from actual cost.

Inventories consist of the following:

	September 30, 2001	December 31, 2000
Raw Materials	\$ 5,170,147	\$ 2,902,224
Work in Progress	2,540,858	310,330
Finished Goods	50,285	4,981
Less Reserves	(1,608,029)	(874,867)
	<u>\$ 6,153,261</u>	<u>\$ 2,342,668</u>

#### 4. Capital Structure

The following table sets forth the computation of basic and diluted net loss per share:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2001	2000	2001	2000
Net loss to common stockholders (thousands) Basic and diluted:	\$ (7,360)	\$ (9,458)	\$ (20,923)	\$ (35,933)
Weighted-average shares of common stock outstanding	40,318,355	27,820,583	39,769,876	16,894,343
Weighted-average shares of common stock subject to repurchase	(165,191)	(497,706)	(237,054)	(426,845)
Shares used in computing basic and diluted net loss per share	40,153,164	27,322,877	39,532,822	16,467,498
Basic and diluted net loss per share	\$ (0.18)	\$ (0.35)	\$ (0.53)	\$ (2.18)

#### Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with the financial statements appearing elsewhere in this Quarterly Report on Form 10-Q and within our Annual Report on Form 10-K for the year ended December 31, 2000. This report contains forward-looking statements, within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below under the heading "Risk Factors," and other factors detailed in the Company's filings with the Securities and Exchange Commission, specifically our Form 10-K for the year ended December 31, 2000.

##### Overview

We design, manufacture and market power quality products that provide the consistent, reliable electric power required by today's digital economy. We believe that we are the first company to commercialize a flywheel energy storage system that provides a highly reliable, low-cost and non-toxic replacement for lead-acid batteries used in conventional power quality installations. Leveraging our expertise in this technology and in conjunction with Caterpillar Inc., the leading maker of engine generators for the power reliability market, we have developed a battery-free power quality system, which is marketed under the Caterpillar brand name (Cat(R) UPS). Our products are sold for use in the facilities of companies in many different industries that all share a critical need for reliable, high-quality power, such as semiconductor manufacturers, hospitals, credit card processing centers, telecommunications providers, Internet service providers, electric utilities and broadcasters. As an extension of these existing product lines, we are developing additional products to more broadly serve the various market segments within the power quality and reliability market.

Since 1996, we have focused our efforts and financial resources primarily on the design and development of our CleanSource(R) line of power quality products (CleanSource DC and Cat(R) UPS) and on establishing effective

OEM channels to market our products. As of September 30, 2001, we have generated an accumulated deficit of \$73.7 million and expect to continue to sustain operating losses for the next several quarters. We initially funded our operations through sales of shares of our preferred stock, which resulted in gross proceeds of approximately \$42.6 million. We believe the proceeds from our August 2000 initial public offering, approximately \$138.4 million net of commissions and issuance costs, together with cash balances on hand prior to August 2000 will be sufficient to meet our capital requirements through at least the next 24 months. Our cash and investments position at September 30, 2001 was \$119.5 million.

Since our inception, a small number of customers have accounted for the majority of our annual sales. During 1999, our four largest customers accounted for 89% of our sales, with our largest customer, Caterpillar and its dealer network, accounting for 39%. In 2000 and the first nine months of 2001, our volume of business with Caterpillar and its dealer network grew substantially, accounting for 96% and 90%, respectively, of our revenue due to the commercial introduction of the Cat UPS product line. We expect to continue to be dependent on a few OEM customers, primarily Caterpillar, for the majority of our sales for the foreseeable future.

With the commercial release of our second-generation product line, Cat UPS, in May 2000 under the Caterpillar brand name, and a growing market demand for power quality equipment, the demand for our products has increased significantly. To prepare for this growth in demand and to position us for future growth, we have increased the scale of our operations in the following ways:

- o expanded our manufacturing facilities and added manufacturing personnel to address increases in product demand;
- o increased our personnel levels in product development and engineering to accelerate time to market on new products and enhance our existing product lines; and
- o added sales and marketing personnel to support our OEM customers.

Although these efforts have increased our operating expenses, we believe that they will enable us to realize significant revenue growth.

#### Results of Operations

**Product Revenue.** Product revenue primarily consists of sales of our CleanSource power quality products. We recognize revenue upon the transfer of title, which generally occurs upon shipment to our customers. Sales increased \$4.9 million, or 363%, to \$6.2 million for the three months ended September 30, 2001 from \$1.3 million for the three months ended September 30, 2000. For the nine months ended September 30, sales increased \$15.9 million, or 719%, to \$18.1 million in 2001 from \$2.2 million in the same period of 2000. Both of these increases were primarily attributable to a continued ramp up in the sales of our Cat UPS product line and sales of our new CleanSource2 product to General Electric Company's Digital Energy business unit. In the nine months ended September 30, 2001, we sold 306 quarter-megawatt flywheel units, in comparison to the 44 quarter-megawatt flywheel units sold in the same period of 2000. The majority of these units were sold to our Cat UPS distribution partner, Caterpillar.



Cost of goods sold. Cost of goods sold includes the cost of component parts of our product that are sourced from suppliers, personnel, equipment and other costs associated with our assembly and test operations, shipping costs, and the costs of manufacturing support functions such as logistics and quality assurance. Cost of goods sold increased \$4.8 million to \$6.9 million for the three months ended September 30, 2001 from \$2.1 million for the three months ended September 30, 2000. For the nine months ended September 30, cost of goods sold increased \$16.9 million, or 447%, to \$20.7 million in 2001 from \$3.8 million in the same period of 2000. In both periods product costs grew commensurate with the increase in sales and a scale up in our manufacturing operations. Although the absolute dollar amounts increased year over year, we achieved significant improvements in our gross margin as a percent of revenue in each period. These improvements are a result of supplier cost reductions associated with higher volume, changes in our supplier base, engineering design savings, and leverage gained from higher production volumes. In anticipation of future demand for our products, we have significantly expanded our manufacturing capacity by increasing both our manufacturing facilities and production personnel, which has increased our fixed manufacturing expense base. This increase will adversely impact our gross margins until production volumes increase enough to cover these added costs. Over time we believe gross margins will improve as our product volumes increase, and we achieve greater economies of scale in production and in purchasing component parts, and introduce engineering design savings.

Research and development. Research and development expense primarily consists of compensation and related costs of employees engaged in research, development and engineering activities, third party consulting and development activities, as well as an allocated portion of our occupancy costs. Research and development expense increased approximately \$942,000, or 31%, to \$4.0 million for the three months ended September 30, 2001 from \$3.1 million for the three months ended September 30, 2000. For the nine months ended September 30, research and development expense increased \$4.9 million, or 72%, to \$11.6 million in 2001 from \$6.7 million in the same period of 2000. The increase in research and development expense was primarily due to an increase in project development costs on our HIT 6 continuous power system, high power Cat product line extension and CleanSource2 DC products. After the recent completion of a joint development agreement with Caterpillar to extend the Cat UPS product line and a review of our new product opportunities we have adjusted our development priorities. Our near term development efforts will focus on the Cat UPS product line extension, and the development of a 30 to 150 kilowatt continuous power system. As part of this reprioritization we plan to significantly reduce the level of activity and spending on our HIT 6 product development. One of the benefits expected from this change is a decrease in research and development expense over the next few quarters as we phase down spending on our HIT 6 development. Although many of the internal resources committed to this project will be redirected to other new product initiatives, the external funding associated with the HIT 6 development will be eliminated, thereby reducing our overall spending levels.

Selling, general and administrative. Selling, general and administrative expense is primarily comprised of compensation and other personnel costs for marketing, sales, service, and administrative personnel, selling and marketing expenses, professional fees and reserves for bad debt and warranty. Selling, general and administrative expense increased approximately \$1.3 million, or 84%, to \$2.9 million for the three months ended September 30, 2001 from \$1.6 million for the three months ended September 30, 2000. For the nine months ended September 30, selling, general and administrative expense increased \$4.5 million, or 107%, to \$8.6 million in 2001 from \$4.1 million

in the same period of 2000. The increase in selling, general and administrative expense was principally due to increased personnel in our sales and marketing organizations in order to support our main OEM channel partner's sales and service ramp up of the Cat UPS product line. We also incurred higher administrative costs associated with the added responsibilities and reporting requirements of a public company. We believe our selling, general and administrative expense will continue to increase as we add sales and service personnel and costs to position us for future sales growth and to assist in the administration of an expanding work force.

Amortization of deferred stock compensation. Deferred stock compensation reflects the difference between the exercise price of option grants to employees and the estimated fair value determined subsequently by us of our common stock at the date of grant. We are amortizing deferred stock compensation as an operating expense over the vesting periods of the applicable options, which resulted in amortization expense of approximately \$926,000 for the three months ended September 30, 2001 and \$1.9 million for the three months ended September 30, 2000. For the nine months ended September 30, amortization expense was \$3.2 million in 2001 and \$5.0 million in the same period of 2000. We expect amortization expense to decrease during the remainder of 2001 and beyond, as the options for which we are amortizing this expense become fully vested, and to a smaller extent as some employees to whom these options were granted leave the company and any unvested options are canceled.

Interest income. Interest income decreased \$282,000 to approximately \$1.3 million for the three months ended September 30, 2001 from approximately \$1.5 million for the three months ended September 30, 2000. This is primarily due to the decrease in our ending cash and investments balance for the third quarter of 2001 of \$119.5 million compared to an ending cash and investments balance of \$151.8 million for the third quarter of 2000. For the nine months ended September 30, interest income increased \$3.0 million, or 130%, to \$5.2 million in 2001 from approximately \$2.2 million in the same period of 2000. Our interest income in the third quarter of 2001 declined compared to the second quarter of 2001 due to lower interest rates and a lower average cash and investments balance. We believe interest income will continue to decline as cash consumed from operating and investing activities results in lower average cash balances.

Change in fair value of warrants. Due to the redemption feature of warrants we had outstanding in 1999 and 2000, we recorded a liability associated with the fair value of the warrants on the balance sheet and recorded changes in fair value of the warrants in expense. We calculated the fair value of the warrants using a Black-Scholes pricing model. In 2000, the fair value of the underlying common stock increased substantially, resulting in an increase in the warrant value and corresponding expense. For the nine months ended September 30, there was no warrant expense recorded in 2001 and \$1.6 million recorded in 2000. We do not anticipate further warrant-related charges in the future.

#### Liquidity and Capital Resources

Our principal source of liquidity as of September 30, 2001 consisted of \$119.5 million of cash, cash equivalents and investments.

In August 2000, we completed a successful initial public offering, raising approximately \$138.4 million, net of commissions and issuance expenses. This is in addition to our private

financing efforts, including the sale of shares of our preferred stock, which resulted in gross proceeds of approximately \$42.6 million, and \$5.0 million in development funding received from Caterpillar in 1999. During the nine months ended September 30, 2001, cash used by operating activities was \$16.7 million, which compares to \$10.9 million of cash used by operating activities for the nine months ended September 30, 2000. The cash usage in each of these periods was primarily attributable to our focus on the development of products and the expansion of our manufacturing operations and sales activities.

Capital expenditures were \$13.7 million for the nine months ended September 30, 2001 and \$3.5 million for the nine months ended September 30, 2000. The 2001 increase in capital expenditures was primarily due to the build out of our new manufacturing facility, which became fully operational during the third quarter. We expect to incur approximately \$1.0 to \$2.0 million in additional costs in 2001 primarily on additional manufacturing equipment, engineering test equipment, and general computer equipment and software.

During the quarter ended September 30, 2001 we raised \$1.7 million from the exercise of outstanding warrants issued as part of our November 1999 Series E private financings. As of September 30, 2001 no additional warrants were outstanding.

We believe our existing cash balance at September 30, 2001 will be sufficient to meet our capital requirements through at least the next 24 months, although we might elect to seek additional funding prior to that time. Beyond the next 24 months, our capital requirements will depend on many factors, including the rate of sales growth, the market acceptance of our products, the rate of expansion of our sales and marketing activities, the rate of expansion of our manufacturing facilities, and the timing and extent of research and development projects. Although we are not a party to any agreement or letter of intent with respect to a potential acquisition, we may enter into acquisitions or strategic arrangements in the future, which could also require us to seek additional equity or debt financing.

#### Quantitative and Qualitative Disclosures About Market Risk

Our interest income is sensitive to changes in the general level of U.S. interest rates, particularly because the majority of our investments are in short-term instruments. We believe that our investment policy is conservative, both in terms of the average maturity of investments that we allow and in terms of the credit quality of the investments we hold. We estimate that a 1% decrease in market interest rates would decrease our interest income by approximately \$1.2 million. Because of the short-term nature of the majority of our investments, we do not believe a 1% decline in interest rates would have a material effect on their fair value.

We invest our cash in a variety of financial investments, including bank time deposits, taxable and tax-advantaged variable rate and fixed rate obligations of corporations, municipalities, and local, state and national government entities and agencies. These investments are denominated in U.S. dollars.

## Risk Factors That May Affect Future Results

In addition to the other information in this Form 10-Q, the following factors should be considered in evaluating Active Power and our business. These factors include, but are not limited to the potential for significant losses to continue; inability to accurately predict revenue and budget for expenses for future periods; fluctuations in revenue and operating results; overall market performance; a slowing global economy; limited product lines; the inability to expand our distribution channels; our dependence on our relationship with Caterpillar; inability to successfully integrate new OEM channel partners; competition; delays in research and development; inventory risks; risks of delay or poor execution from a variety of sources; limited resources; dependence upon key personnel; the inability to protect our intellectual property rights; potential future acquisitions; and the volatility of our stock price. The discussion below addresses some of these factors. Additional risks and uncertainties that we are unaware of or that we currently deem immaterial also may become important factors that affect us.

We have incurred significant losses and anticipate losses for the next several quarters.

We have incurred operating losses since our inception and expect to continue to incur losses for the next several quarters. As of September 30, 2001, we had an accumulated deficit of \$73.7 million. To date, we have funded our operations principally through the sale of our stock and our product revenue. We will need to generate significant additional revenue to achieve profitability, and we cannot assure you that we will ever realize additional revenue at such levels. We also expect to incur significant product development, sales and marketing and administrative expenses and, as a result, we expect to continue to incur losses.

Due to our limited operating history and the uncertain market acceptance of our products, we may never achieve significant revenue and may have difficulty accurately predicting revenue for future periods and appropriately budgeting for expenses.

We have generated a total of \$24.8 million in product revenue since January 1, 1998, and we have sold fewer than 480 CleanSource DC and Cat UPS products. We are uncertain whether our products will achieve market acceptance such that our revenues will increase or whether we will be able to achieve significant revenue. Therefore, we have a very limited ability to predict future revenue. Our limited operating experience, the uncertain market acceptance for our products, and other factors that are beyond our control make it difficult for us to accurately forecast our quarterly and annual revenue. However, we use our forecasted revenue to establish our expense budget. Most of our expenses are fixed in the short term or incurred in advance of anticipated revenue. As a result, we may not be able to decrease our expenses in a timely manner to offset any revenue shortfall. Further, we have expanded our staff and facilities and increased our expense levels in anticipation of future revenue growth. If our revenue does not increase as anticipated, we will incur significant losses.

Our business is subject to fluctuations in operating results, which could negatively impact the price of our stock.

Our product revenue, expense and operating results have varied in the past and may fluctuate significantly in the future due to a variety of factors, many of which are outside of our control. These factors include, among others:

- o the timing of orders from our customers and the possibility that these customers may change their order requirements with little or no advance notice to us;
- o the rate of adoption of our flywheel-based energy storage system as an alternative to lead-acid batteries;
- o the deferral of customer orders in anticipation of new products from us or other providers of power quality systems;
- o the ongoing need for short-term power outage protection in traditional UPS systems;
- o the uncertainty regarding the adoption of our current and future products, including our recently introduced Cat UPS product, CleanSource2 DC, and other products currently in early development; and
- o the rate of growth of the markets for our products.

Our business is dependent on the market for power quality products and the health of the overall economy, and if this market does not expand as we anticipate, if alternatives to our products are successful, or if a downturn in the economy limits capital spending, our business will suffer.

The market for power quality products is rapidly evolving and it is difficult to predict its potential size or future growth rate. Most of the organizations that may purchase our products have invested substantial resources in their existing power systems and, as a result, may be reluctant or slow to adopt a new approach. Moreover, our products are alternatives to existing UPS and battery-based systems and may never be accepted by our customers or may be made obsolete by other advances in power quality technologies. Improvements may also be made to the existing alternatives to our products that could render them less desirable or obsolete. Furthermore, our business depends on capital expenditures by organizations, which tend to decrease when the U.S. or global economy slows.

We have limited product offerings, and our success depends on our ability to develop in a timely manner new and enhanced products that achieve market acceptance.

We have only one principal product that has any significant operating history at customer sites, CleanSource DC, and we have only recently introduced our CleanSource2 DC and Cat UPS product. To grow our revenue, we must rely on Caterpillar to successfully market our Cat UPS product, and we must develop and introduce to market new products and product enhancements in a timely manner. Even if we are able to develop and commercially introduce new products and enhancements, they may not achieve market acceptance. This would substantially impair our revenue prospects.

Failure to expand our distribution channels and manage our distribution relationships could impede our future growth.

The future growth of our business will depend in part on our ability to expand our existing relationships with OEMs, to identify and develop additional channels for the distribution and sale of our products and to manage these relationships. As part of our growth strategy, we intend to expand our relationships with OEMs and to develop relationships with new OEMs. We will also look to identify and develop relationships with additional partners that could serve as distributors for our products. Our inability to successfully execute this strategy and to reduce our reliance on Caterpillar could impede our future growth.

We are heavily dependent on our relationship with Caterpillar. If our relationship is unsuccessful, our business and revenue will suffer.

If our relationship with Caterpillar is not successful, or if Caterpillar's distribution of our Cat UPS product is not successful, our business and revenue will suffer. Pursuant to a development agreement, Caterpillar provided us with \$5.0 million in funding to support the development of our Cat UPS product. In exchange for this payment, Caterpillar received co-ownership of the proprietary rights in this product. Either we or Caterpillar may license to other entities the intellectual property that we jointly own without seeking the consent of the other and all licensing revenue generated by licensing this intellectual property will be solely retained by the licensing party. However, we may not license the joint intellectual property to specifically identified competitors of Caterpillar until January 1, 2005. Caterpillar may terminate this agreement at any time by giving us 90 days' advance written notice. We also have a distribution agreement with Caterpillar. In 2000 and the first nine months of 2001, our business level with Caterpillar and its dealer network accounted for 96% and 90% of our product revenue, respectively. Pursuant to the distribution agreement with Caterpillar, they are the exclusive distributor, subject to limited exceptions, of our Cat UPS product. Caterpillar is not obligated to purchase any Cat UPS units.

We depend on a limited number of OEM customers for the vast majority of our revenue and service and support functions. The loss or significant reduction in orders, or the failure to provide adequate service and support to the end users of our products, from any key OEM customer, particularly Caterpillar, would significantly reduce our revenue.

We rely on OEMs as a primary distribution channel because they are able to sell our products to a large number of end user organizations. We further rely on our OEMs to provide service and support to the end users of our products because they have the experience and personnel to perform such activities. We believe that the use of OEM channels will enable our products to achieve broad market penetration, while we devote a limited amount of our resources to sales, marketing and customer service and support. Our operating results in the foreseeable future will continue to depend on sales to a relatively small number of OEM customers, primarily Caterpillar. For example, in 2000 and the first nine months of 2001, our volume of business with Caterpillar and its dealer accounted for 96% and 90% of our product revenue, respectively. Therefore, the loss of our key OEM customer, Caterpillar, or a significant reduction in sales to Caterpillar and its dealers, would significantly reduce our revenue. We also have granted Caterpillar semi-exclusive worldwide rights to distribute our Cat UPS product, provided that they meet minimum annual sales requirements.

These restrictions will further increase our dependence upon Caterpillar. However, Caterpillar is not obligated to purchase any Cat UPS units under this agreement.

We have no experience manufacturing our products in the quantities we expect to sell in the future.

To be financially successful, we will have to manufacture our products in commercial quantities at acceptable costs while also preserving the quality levels achieved in manufacturing these products in more limited quantities. This presents a number of technological and engineering challenges for us. We have not previously manufactured our products in high volume. We do not know whether or when we will be able to develop efficient, low-cost manufacturing capability and processes that will enable us to meet the quality, price, engineering, design and product standards or production volumes required to successfully manufacture large quantities of our products. Even if we are successful in developing our manufacturing capability and processes, we do not know whether we will do so in time to meet our product commercialization schedule or to satisfy the requirements of our customers.

Quality problems relating to one or more of our new or existing products could negatively impact the market's acceptance of our products and cause us to miss our revenue goals.

Because of the nature of the power quality and reliability market, quality problems attributable to the CleanSource DC or Cat UPS product lines could significantly affect the market's perception of our technology and slow their acceptance. This would substantially impair our revenue prospects. Moreover, quality problems for our product lines could cause us to delay or cease shipments of products, or recall products, thus impairing our revenue or cost targets.

We are subject to increased inventory risks and costs because we outsource the manufacturing of components of our products in advance of binding commitments from our customers to purchase our products.

To assure the availability of our products to our OEM customers, we outsource the manufacturing of components prior to the receipt of purchase orders from OEM customers based on their forecasts of their product needs. However, these forecasts do not represent binding purchase commitments, and we do not recognize revenue for such products until the product is shipped to the OEM. As a result, we incur inventory and manufacturing costs in advance of anticipated revenue. As demand for our products may not materialize, this product delivery method subjects us to increased risks of high inventory carrying costs and obsolescence and may increase our operating costs. In addition, we may from time to time make design changes to our products, which could lead to obsolescence of inventory.

We depend on sole source and limited source suppliers for certain key components, and if we are unable to buy these components on a timely basis, our delayed ability to deliver our products to our customers may result in reduced revenue and lost sales.

We purchase a power module and a microprocessor for our products from sole sources. As a result, if our suppliers receive excess demand for their products, we may receive a low priority for order fulfillment as large volume customers will receive priority. If we are delayed in acquiring components for our products, the manufacture and shipment of our products also will be delayed. We are, however, proceeding to engage long-term agreements with key suppliers, using a rolling sales volume forecast to stabilize component availability. Our power module supplier currently maintains a buffer stock and our microprocessor demand is covered by purchase orders for the next two quarters. Lead times for ordering materials and components vary significantly and depend on factors such as specific supplier requirements, contract terms, the extensive production time required and current market demand for such components. Some of these delays may be substantial. As a result, we purchase these components in large quantities to protect our ability to deliver finished products. If we overestimate our component requirements, we may have excess inventory, which will increase our costs. If we underestimate our component requirements, we will have inadequate inventory, which will delay our manufacturing and render us unable to deliver products to customers on scheduled delivery dates. If we are unable to obtain a component from a supplier or if the price of a component has increased substantially, we may be required to manufacture the component internally, which will result in delays. Manufacturing delays could negatively impact our ability to sell our products and could damage our customer relationships.

We depend on key personnel to manage our business and develop new products in a rapidly changing market, and if we are unable to retain our current personnel and hire additional personnel, our ability to develop and sell our products could be impaired.

We believe our future success will depend in large part upon our ability to attract and retain highly skilled managerial, engineering and sales and marketing personnel. In particular, due to the relatively early stage of our business, we believe that our future success is highly dependent on Joseph F. Pinkerton, III, our founder, chief executive officer and president, to provide continuity in the execution of our growth plans. While we have severance arrangements in place with Mr. Pinkerton and with David S. Gino, our chief financial officer, we do not have long-term employment agreements in place with any of our employees. The loss of the services of any of our key employees, the inability to attract or retain qualified personnel in the future or delays in hiring required personnel, particularly engineers and sales personnel, could delay the development and introduction of, and negatively impact our ability to sell, our products.

We have hired some of our employees from our current customers and from some of our competitors, which could damage our customer relationships and expose us to potential litigation.

There is a limited supply of skilled employees in the power quality industry. We have hired some of our current employees from our customers and our competitors. As a result, some of our current customers might begin to view us as competitors in the future, and one or more of our competitors could file lawsuits against us alleging the infringement of their trade secrets and other intellectual



property. Although we do not believe we have infringed upon the intellectual property of our competitors, such lawsuits could divert our attention and resources from our business operations.

We are a relatively small company with limited resources compared to some of our current and potential competitors, and competition within our markets may limit our sales growth.

The markets for power quality and power reliability are intensely competitive. There are many companies engaged in all areas of traditional and alternative UPS and backup systems in the United States and abroad, including, among others, major electric and specialized electronics firms, as well as universities, research institutions and foreign government-sponsored companies. There are many companies that are developing flywheel-based energy storage systems and flywheel-based power quality systems. We also compete indirectly with companies that are developing other types of power technologies, such as superconducting magnetic energy storage, ultra-capacitors and dynamic voltage restorers.

Many of our current and potential competitors have longer operating histories, significantly greater resources, broader name recognition and a larger customer base than we have. As a result, these competitors may have greater credibility with our existing and potential customers. They also may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion and sale of their products than we can to ours, which would allow them to respond more quickly than us to new or emerging technologies or changes in customer requirements. In addition, some of our current and potential competitors have established supplier or joint development relationships with our current or potential customers. These competitors may be able to leverage their existing relationships to discourage these customers from purchasing products from us or to persuade them to replace our products with their products. Increased competition could decrease our prices, reduce our sales, lower our margins, or decrease our market share. These and other competitive pressures could prevent us from competing successfully against current or future competitors and could materially harm our business.

If we are unable to protect our intellectual property, we may be unable to compete.

Our products rely on our proprietary technology, and we expect that future technological advancements made by us will be critical to sustain market acceptance of our products. Therefore, we believe that the protection of our intellectual property rights is, and will continue to be, important to the success of our business. We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. We also enter into confidentiality or license agreements with our employees, consultants and business partners and control access to and distribution of our software, documentation and other proprietary information. Despite these efforts, unauthorized parties may attempt to copy or otherwise obtain and use our products or technology. Monitoring unauthorized use of our products is difficult, and we cannot be certain that the steps we have taken will prevent unauthorized use of our technology, particularly in foreign countries where applicable laws may not protect our proprietary rights as fully as in the United States. In addition, the measures we undertake may not be sufficient to adequately protect our proprietary technology and may not

preclude competitors from independently developing products with functionality or features similar to those of our products.

Our efforts to protect our intellectual property may cause us to become involved in costly and lengthy litigation, which could seriously harm our business.

In recent years, there has been significant litigation in the United States involving patents, trademarks and other intellectual property rights. Although we have not been involved in intellectual property litigation, we may become involved in litigation in the future to protect our intellectual property or defend allegations of infringement asserted by others. Legal proceedings could subject us to significant liability for damages or invalidate our intellectual property rights. Any litigation, regardless of its outcome, would likely be time consuming and expensive to resolve and would divert management's time and attention. Any potential intellectual property litigation also could force us to take specific actions, including:

- o cease selling our products that use the challenged intellectual property;
- o obtain from the owner of the infringed intellectual property right a license to sell or use the relevant technology or trademark, which license may not be available on reasonable terms, or at all; or
- o redesign those products that use infringing intellectual property or cease to use an infringing trademark.

Any acquisitions we make could disrupt our business and harm our financial condition.

Although we are not currently negotiating any material business or technology acquisitions, as part of our growth strategy, we intend to review opportunities to acquire other businesses or technologies that would complement our current products, expand the breadth of our markets or enhance our technical capabilities. We have no experience in making acquisitions. Acquisitions entail a number of risks that could materially and adversely affect our business and operating results, including:

- o problems integrating the acquired operations, technologies or products with our existing business and products;
- o potential disruption of our ongoing business and distraction of our management;
- o difficulties in retaining business relationships with suppliers and customers of the acquired companies;
- o difficulties in coordinating and integrating overall business strategies, sales and marketing, and research and development efforts;
- o the maintenance of corporate cultures, controls, procedures and policies;
- o risks associated with entering markets in which we lack prior experience; and
- o potential loss of key employees.

We may require substantial additional funds in the future to finance our product development and commercialization plans.

Our product development and commercialization schedule could be delayed if we are unable to fund our research and development activities or the development of our manufacturing capabilities with our revenue, cash on hand and proceeds from our initial public offering. We expect that our current cash and investments, together with our other available sources of working capital, will be sufficient to fund development activities for at least 24 months. However, unforeseen delays or difficulties in these activities could increase costs and exhaust our resources prior to the full commercialization of our products under development. We do not know whether we will be able to secure additional funding, or funding on terms acceptable to us, to continue our operations as planned. If financing is not available, we may be required to reduce, delay or eliminate certain activities or to license or sell to others some of our proprietary technology.

Our stock price may be volatile.

Since our IPO in August 2000, we have experienced significant volatility in our stock price. The market price of our common stock may fluctuate significantly in response to numerous factors, some of which are beyond our control, including the following:

- o actual or anticipated fluctuations in our operating results;
- o changes in financial estimates by securities analysts or our failure to perform in line with such estimates;
- o changes in market valuations of other technology companies, particularly those that sell products used in power quality systems;
- o announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- o introduction of technologies or product enhancements that reduce the need for flywheel energy storage systems;
- o the loss of one or more key OEM customers; and
- o departures of key personnel.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.

We are not currently a party to any material legal proceedings.

Item 2. Changes in Securities and Use of Proceeds.

Our registration statement (Registration No. 333-36946) under the Securities Act of 1933, as amended, relating to our initial public offering of our common stock became effective on August 7, 2000. A total of 9,200,000 shares of common stock were registered. We sold a total of 8,900,000 shares of our common stock and a selling shareholder sold 300,000 shares to an underwriting syndicate. The managing underwriters were Goldman, Sachs & Co., Merrill Lynch, Pierce Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated and CIBC World Markets Corp. The offering commenced and was completed on August 8, 2000, at a price to the public of \$17.00 per share. The initial public offering resulted in net proceeds to us of \$138.4 million after deducting underwriting commissions of \$10.6 million and offering expenses of \$2.2 million. The Company has used approximately \$15.8 million of the net offering proceeds for capital expenditures and \$25.3 million for operating activities. The remaining proceeds from the IPO were invested in government securities and other short-term, investment-grade, interest bearing instruments.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Submission of Matters to a Vote of Security Holders.

Not applicable.

Item 5. Other Information.

Not applicable.

Item 6. Exhibits and Reports on Form 8-K.

(a) Exhibit Index

Exhibit Number	Description
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3.1*	Amended and Restated Certificate of Incorporation (filed as Exhibit 3.1 to Active Power's Registration Statement on Form S-1 (SEC File No. 333-36496) (the "IPO Registration Statement))
3.2*	Amended and Restated Bylaws (filed as Exhibit 3.2 to the IPO Registration Statement)
4.1*	Specimen certificate for shares of Common Stock (filed as Exhibit 4.1 to the IPO Registration Statement)

- 10.20+ Distributor Agreement between Powerware Corporation and Active Power, Inc.
- 10.21+ Master Sourcing Agreement between General Electric Company (through its Digital Energy business unit) and Active Power, Inc.

-----

\* Incorporated by reference to the indicated filing  
+ Portions of this exhibit have been omitted pursuant to a request for confidential treatment.

(b) During the fiscal quarter ended September 30, 2001, Active Power did not file any current reports on Form 10-Q.

SIGNATURES\*

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ACTIVE POWER, INC.

By: /s/ JOSEPH F. PINKERTON, III

-----  
Joseph F. Pinkerton, III  
President and Chief Executive Officer

November 9, 2001

/s/ JOSEPH F. PINKERTON, III

-----  
Joseph F. Pinkerton, III  
President and Chief Executive Officer  
(Principal Executive Officer)

November 9, 2001

/s/ DAVID S. GINO

-----  
David S. Gino  
Vice President of Finance and  
Chief Financial Officer  
(Principal Accounting Officer)

Active Power, Inc.

Exhibit Index

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(b) During the fiscal quarter ended September 30, 2001, Active Power did not file any current reports on Form 10-Q.

[ACTIVE POWER LOGO]

[POWERWARE LOGO]  
POWERING THE WORLD

Contract No. AP-01-01

-----  
CONTRACT  
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DISTRIBUTOR AGREEMENT

BETWEEN

POWERWARE CORPORATION

AND

ACTIVE POWER, INC.



DISTRIBUTOR AGREEMENT

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DISTRIBUTOR AGREEMENT

THIS DISTRIBUTOR AGREEMENT (hereinafter referred to as the "Agreement") is entered into by and between Powerware Corporation, with a place of business at 8609 Six Forks Road, Raleigh North Carolina, 27615 (hereinafter referred to as "POWERWARE") and ACTIVE POWER, INC, with a place of business at 11525 Stonehollow Drive, Suite 110, Austin, Texas 78758 (hereinafter referred to as "Active Power"), and is effective on the date it is executed by the latter of POWERWARE and Active Power.

W I T N E S S E T H  
-----

WHEREAS, POWERWARE desires to obtain a non-exclusive right to market and distribute standard Active Power Products; and

WHEREAS, Active Power is willing to grant POWERWARE a non-exclusive right and license to market and distribute its standard products;

NOW THEREFORE, in consideration of the representations and agreements contained herein, the parties hereby covenant and agree as follows:

ARTICLE 1.0 - SCOPE OF AGREEMENT  
-----

1.1 Grant of License and Appointment. Subject to (and only during the term of) this Agreement, Active Power hereby appoints and grants to POWERWARE and its Agents, as defined below, and POWERWARE hereby accepts from Active Power, a non-transferable, royalty-free, right and license to: (i) non-exclusively purchase, market, distribute and resell the Active Power flywheel products described in the attached Exhibit A (hereinafter referred to as either the "standard CleanSource products from Active Power" or the "POWERWARE Flywheel Systems" line of Active Power Products, depending on how they are designated in Exhibit A), to end-users located world-wide (hereinafter referred to as the "End Users"); and (iii) incorporate private and/or co-labeling of the Active Power Products using POWERWARE logos. Such "standard CleanSource products from Active Power" and the "POWERWARE Flywheel Systems" line of Active Power Products" may collectively be referred to as "Active Power Products." During the term of this Agreement, POWERWARE and its authorized agents may hold themselves out to the public as an authorized distributor, reseller, and service provider of Active Power Products. Active Power agrees that upon execution of this Agreement, it will take the necessary steps to ensure that only POWERWARE, General Electric Company and Caterpillar Inc. shall have the non-exclusive rights in North America, granted hereunder, to the standard CleanSource products from Active Power.

1.2 Agents License. It is understood and agreed that Active Power hereby grants as a sublicensee to each of the Agents listed in Exhibit E below the same non-transferable, royalty free right and license granted to POWERWARE above and that the Agents shall be entitled to all the licenses, benefits, warranties, discounts, and rights granted to them only through POWERWARE by Active Power under this Agreement; provided, however, that the foregoing license is contingent upon and subject to each Agent being an authorized representative of POWERWARE and bound by the terms of said Agreement. However, Active Power will have no direct obligation to any such Agent and POWERWARE will be fully responsible for performance and compliance by all Agents and all payments and contact from such Agents to Active Power will be through POWERWARE.

ARTICLE 2.0 - TERM OF AGREEMENT

-----

- 2.1 Term. This Agreement shall commence on the effective date of the Agreement and, except as otherwise provided herein, shall continue for an initial term through March 31, 2003.. This Agreement will be extended in additional one (1) year terms, given performance by both parties as outlined below, except that either party may terminate this agreement by giving the other written notice of termination not less than sixty (60) days prior to the expiration of the initial term or any renewal term.

ARTICLE 3.0 - MARKETING

-----

- 3.1 Joint Marketing Efforts. The parties agree to cooperate in the joint marketing of the Active Power Products as mutually agreed in writing by the parties (Exhibit D). Each party shall be responsible for its own travel, living and personnel expenses with respect to the joint marketing of the Active Power Products. Advertising costs shall be borne by each party as mutually agreed in advance. POWERWARE makes no guarantee or commitment as to the success of any marketing effort, and POWERWARE has no obligation to Active Power whatsoever other than as provided in this Agreement.

ARTICLE 4.0 - ORDERS FOR ACTIVE POWER PRODUCTS

-----

- 4.1 Orders. No Active Power Products shall be provided to POWERWARE, its Agents or the End-User by virtue of this Agreement alone. Active Power Products must be requested through issuance of a POWERWARE standard purchase order (hereinafter referred to as the "Order"). Each Order shall reference the POWERWARE contract number assigned to this Agreement and shall include the following minimum information:

- A) The date of the Order and the Order number;
- B) The complete list of the Active Power Products covered by the Order, specifying quantity, type, model number and description for each model number;
- C) The purchase price for the Active Power Products and the applicable discounts available to POWERWARE;
- D) The POWERWARE, Agent or End-User location to which the Active Power Products are to be delivered and, if different, the location where the Active Power Products are to be initially installed or used;
- E) Any applicable site specifications for the Active Power Products;
- F) The requested delivery date for the Active Power Products;
- G) Any non-standard terms and conditions specifically applicable to the Order only.

- 4.2 Acceptance of Orders. Within ten (10) business days after Active Power's receipt of an Order, Active Power shall accept the Order in writing and shall return a legible copy of the accepted Order to the POWERWARE; provided, however, that if an Order fails to provide all required ordering information or incorrectly states prices or other material information relative to the Order, or if the Order is not consistent with Active Power's then current lead time requirements, Active Power may reject the Order by promptly giving written notice of rejection stating in detail the reasons for rejection and the modifications necessary to make the Order acceptable to Active Power. Active Power shall make no changes, amendments, modifications, additions or deletions to an Order without the prior written consent POWERWARE. Acceptance of an Order shall bind Active Power to use reasonable efforts to honor delivery dates, amounts and other ordering information shown on the Order, including supplemental provisions contained therein. The effective date of an Order shall be the date on POWERWARE receives an accepted copy of the Order without modification or amendment.

- 4.3 Survival of Orders. Notwithstanding any provision contained herein to the contrary (and unless otherwise elected by Active Power in the case of termination of this Agreement for POWERWARE's breach), the terms and conditions of this Agreement shall remain in full force and effect (with respect to the applicable Order) until the expiration of the term of any proper accepted Order under this Agreement which was received prior to the termination or other expiration of this Agreement, provided that the delivery date requested is within 90 days of termination or expiration of this Agreement. It is understood and agreed to by the parties hereto that the terms and conditions of this Agreement shall apply to all Orders hereunder with the exception of any nonstandard terms and conditions specifically applicable to the particular Order only that are conspicuously outlined on the face of the Order in variance herewith, subject to Active Power's right to reject any such Order containing terms and conditions varying from those contained herein.
- 4.4 No Agent Orders. This Agreement allows for orders to be issued only by POWERWARE. Active Power will not be required to accept orders directly from Agents of POWERWARE.
- 4.5 Preprinted Order Terms. THE PREPRINTED TERMS AND CONDITIONS APPEARING ON AN ORDER, ACKNOWLEDGMENT, INVOICE, DELIVERY OR MAINTENANCE FORM SHALL NOT APPLY TO OR BECOME PART OF THE ORDER REGARDLESS OF ANY STATEMENT TO THE CONTRARY CONTAINED IN THE ORDER FORM OR OTHER FORM.
- 4.6 Order Forecast. POWERWARE shall provide to Active Power a mutually agreed upon rolling 12-month forecast every 90 days. This shall be a non-binding forecast except that Active Power shall not be obligated to deliver more than 150% of the preliminary forecasted amount.

ARTICLE 5.0 - DELIVERY, INSTALLATION, TITLE AND RISK OF LOSS  
-----

- 5.1 Delivery and Installation. Active Power shall use reasonable commercial effort to deliver the Active Power Products, all applicable manuals and documentation, to the address specified in an Order no later than the date set forth on such Order. Equipment shall be shipped F.O.B. Active Power's facility in Austin, Texas. Unless POWERWARE designates a carrier in the Order, Active Power shall select the carrier, provided, however, that the carrier shall not be construed to be an agent of Active Power. Active Power shall provide POWERWARE not less than ten (10) days prior written notice as to the scheduled delivery date for the Active Power Products. Active Power shall notify POWERWARE immediately in writing in advance of any delay in delivery when such delay first becomes apparent to Active Power.
- 5.2 Delivery Charges. Prices provided from Active Power do not include installation, freight and handling charges unless specifically listed. Unless Active Power is furnished with a proper exemption certificate, there shall be added to the amounts shown on the Quotation a charge for all taxes, however designated, levied or based on this Agreement or the Equipment.
- 5.3 Title and Risk of Loss. Risk of loss for the Active Power Products shall pass to POWERWARE upon shipment of the Active Power Products. Title to the Active Power Products shall pass to POWERWARE, free and clear of any lien, claim and/or encumbrances upon payment in full of the purchase price for the Active Power Products.

ARTICLE 6.0 - PRICES, PAYMENT, AND DISCOUNT RIGHTS

-----

6.1 Active Power Products Pricing. The prices for the Active Power Products are listed on the attached Exhibit A and will be restated on any Order issued hereunder. Each 12-month period POWERWARE shall receive a specific discount from the list price based on the annual volume forecast (entered by POWERWARE on the Effective Date of this Agreement and its respective anniversaries). That discount shall apply to all POWERWARE purchases made during that specific 12-month period. In the event actual purchases made (and payments received) during the year do not meet the forecasted amounts by the anniversary of the Effective Date, Active Power shall adjust the discount for the following 12-month period to reflect the miss in volume in the preceding 12-month period. Below is an example operation of Active Power's discount pricing schedule:

Example:  
[\*\*\*\*]

6.2 Payment of Charges. The charges for the Active Power Products ordered hereunder shall be invoiced directly to POWERWARE, upon shipment of the Active Power Products to installation address indicated in such Order. Payment of the invoice for the Active Power Products shall be due within forty-five (45) days after of the invoice. POWERWARE shall be solely responsible and liable for payment of any Active Power Products ordered hereunder. Unless otherwise agreed in writing, all payments due hereunder shall be made within 30 days of the date of shipment of Equipment or performance of Services. Late payments shall accrue interest at the lower of (a) 1 1/2% per month or (b) the lawful maximum rate on the unpaid balance in the state in which the Equipment is located. POWERWARE hereby guarantees Active Power a security interest in Equipment to secure full payment hereunder.

6.3 Discounts. Purchases made (as evidenced by payments received) in a particular year apply only to the annual volume for that particular year and shall not carry over nor apply to a different year's volumes.

6.4 Training Systems. Active Power will sell a sufficient number of systems at cost to Powerware if and when Powerware determines it is necessary to establish service training capability at Powerware Global Services training centers,

ARTICLE 7.0 - ACTIVE POWER WARRANTIES

-----

7.1 Active Power Warranties. In addition to any other warranties and representations contained herein, Active Power shall provide the warranties set forth below with respect to the Active Power Products:

7.1.1 License Authority. Active Power represents and warrants that it has the absolute right to grant the license and sublicense rights granted herein to POWERWARE and to allow POWERWARE to market and re-sell the Active Power Products hereunder to End-Users in accordance with the provisions of this Agreement.

\*\*Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.\*\*

- 7.1.2 No Liens or Claims. Active Power warrants and represents that the Active Power Products are not subject to any lien, claim or encumbrance inconsistent with the license rights granted herein and that POWERWARE and the End-User shall be entitled to possess and use the Active Power Products, without any interruption by Active Power or any party claiming by or through Active Power, provided that POWERWARE and the End-User shall duly perform its obligations hereunder.
- 7.1.3 Active Power Products Warranty. It is understood and agreed that all Active Power Equipment sold to End-Users pursuant to this Agreement shall be warranted in accordance with the Active Power Equipment warranty set-forth on the attached Exhibit C, which shall be passed through and assigned to the End-User, provided that in no event will the warranty extend more than 18 months after shipment from Active Power. Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that POWERWARE shall have no liability or responsibility what-so-ever with respect to the warranties for the Active Power Equipment and Active Power Software and that Active Power shall either directly or through POWERWARE, support the End-Users with the respective warranty services set-forth therein. POWERWARE shall not expand, modify, or amend the warranties without the prior written consent of Active Power.
- 7.1.4 Notice of Warranty Period. When POWERWARE passes through Active Power's warranty to an End-User as provided above, POWERWARE agrees to notify the End-User of the actual warranty period available to the End-User and the level of warranty service and other details of warranty on any Active Power Products sold by POWERWARE to and End-User, POWERWARE will also notify an End-User if no Active Power warranty is passed through.
- 7.1.5 Infringement Warranty. Active Power warrants and represents that the Active Power Products, including without limitation each component and any unit or part thereof, are not subject to any claim of infringement under any U.S. patent, trademark, tradename, service mark, copyright, trade secret or other proprietary right of any third party. In the event of a third party claim against POWERWARE and/or the End-User asserting a such a patent, copyright, trade secret or other proprietary right violation involving the Active Power Products, Active Power shall defend or settle the claim, at its expense, and shall indemnify POWERWARE and/or the End-User against any loss, cost, expense of liability resulting from or arising out of payments to third parties due to the claim, whether or not the claim is successful, provided that POWERWARE and/or the End-User notifies Active Power in writing within sixty (60) days after POWERWARE and/or the End-User first receives written notice of the claim and gives Active Power necessary authority, available information, and reasonable assistance for the defense or settlement of the claim, over which Active Power will have sole control. If the Active Power Products are in Active Power's opinion likely to or do become the subject of a claim of infringement or violation of a patent, copyright, trade secret or other proprietary right of a third party, Active Power shall have the option to, at its expense and without diminishing its foregoing obligations, either procure for POWERWARE and/or the End-User the right to continue using the Active Power Products or accept the return of the Active Power Products and promptly refund to POWERWARE and/or the End-User the original amount paid for the equipment by POWERWARE and/or the End-User to Active Power with respect to the Active Power Products so effected. Each party shall in all events be



required to mitigate its damages. These warranties and indemnities will survive the termination or expiration of this Agreement and such indemnity is POWERWARE's sole remedy for the types of issues referred to in this section. In the event of any claim, demand or suit based upon an alleged breach of any of Active Power's warranties under this 7.1.5 but subject to the foregoing, POWERWARE will have the right to participate in the defense of the same through counsel of POWERWARE' choosing at its own expense, but no settlement will be affected without Active Power's prior written consent, which consent Active Power will not unreasonably withhold or delay. Active Power and POWERWARE agree to notify each other promptly of any third party claim, and further agree to fully cooperate in the defense thereof.

- 7.1.6 Maintenance Assistance. Active Power will provide documentation to POWERWARE for purposes of providing maintenance on Active Power products. Active Power will provide this documentation in both written and electronic form as well grant copyright reproduction of materials to POWERWARE for said maintenance purposes. Active Power will also provide free maintenance training classes to POWERWARE as set forth in Exhibit F, and additional classes may be provided as requested by POWERWARE at the then published training courses prices.
- 7.1.7 Warranty Service. POWERWARE service personnel or Powerware-authorized service providers shall provide all warranty service for the Active Power Products sold by POWERWARE. Active Power shall reimburse POWERWARE for agreed upon expenses for labor, and Active Power's warranty shall govern costs related to parts. Warranty service terms and conditions are set forth in Exhibit G.

#### ARTICLE 8.0 - WARRANTIES OF THE PARTIES

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- 8.1 Warranties of the Parties. In addition to any other warranties and representations contained herein, each party hereby makes the following representations and warranties:
  - 8.1.1 Obligation Warranty. Each party warrants and represents that it will perform its obligations hereunder in a good, professional, workmanlike and competent manner, in accordance with applicable professional standards.
  - 8.1.2 No Authority. Except as otherwise provided herein, it is expressly understood and agreed that neither party has any right or authority to nor shall either party directly or indirectly incur any obligation or responsibilities on behalf of the other party or commit the other party to any matter or understanding or make any warranties or representations with respect to the Active Power Products or other activities hereunder, each party being deemed to be independent. This Agreement shall not create any agency or other similar relationship between the parties.
  - 8.1.3 No Restrictions. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will violate any corporate restriction to which said party is subject or conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which said party is a party or by which said party is bound.

- 8.1.4 Valid Agreement. This Agreement is a legal, valid and binding agreement of said party and, assuming that it is enforceable against each party hereto, is enforceable against the other party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.
- 8.1.5 No Prohibitions. To each parties best knowledge, there is no pending or threatened action, suit or other proceeding or, any investigation before or by any governmental agency which might materially and adversely affect the financial condition or business prospects of said party or which questions the validity of any action taken or to be taken by said party pursuant to or in the pursuit of this Agreement.
- 8.1.6 Corporate Authority. Each party hereto is a corporation duly incorporated and validly existing under the laws of a state in The United States of America, and has full legal right, power and authority to enter into this Agreement and to consummate the transactions provided for herein; and this Agreement has been duly authorized, executed and delivered by said party.
- 8.1.7 Exclusions. THE WARRANTIES EXPRESSED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 9.0 - MISCELLANEOUS

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- 9.1 No Partnership. Nothing contained herein shall constitute a partnership or joint venture nor make either party the agent or representative of the other. Except as otherwise provided herein, neither party has authority to bind the other, incur any liabilities on behalf of the other, nor to direct the employees of the other. Neither party shall have the authority to vary, alter or enlarge any of the other party's obligations hereunder or, except as otherwise provided herein, make representations, warranties or guarantees on behalf of the other.
- 9.2 Publicity. Each party shall use its best efforts not to disclose to any third party without the prior written consent of the other, the terms of this Agreement except as required by law or by governmental regulations, requirements or orders, or as may be necessary to establish or assert its rights hereunder and except on a confidential basis to a party's professional advisors and potential investors/acquirers. POWERWARE agrees to cooperate with Active Power in selective, mutually agreed upon advertisements or press releases of installations to further marketing efforts. POWERWARE and Active Power also agree to cooperate on a press release to announce this agreement as well as the CleanSource2 POWERWARE Line of Active Power Products.
- 9.3 Confidential Information. Each party agrees that if any confidential or proprietary information, which is clearly marked as being confidential or proprietary of the other party which comes into its possession, any such material and information will be held in confidence, and such party will not make any use thereof other than for the performance of this Agreement, will release it only to employees requiring such information, and will not release or disclose it to any other party.

The foregoing will not apply to any information which is already known to or in the possession of the receiving party without restriction on disclosure at the time of disclosure by the disclosing party, is independently developed by the receiving party without reference to the confidential information of the disclosing party, or is or becomes public knowledge through no fault of the receiving party. If either party is required by applicable law, rule, regulation or lawful order or ruling of any court, government agency or regulatory commission to disclose any confidential information of the other party, then the receiving party agrees that it will provide the disclosing party with prompt written notice of such request(s) to enable the disclosing party to seek an appropriate protective order or take steps to protect the confidentiality of such confidential information.

9.4 Limitation of Liability. Neither party shall be liable to the other for any indirect, incidental, consequential or special damages, including, without limitation, any loss of revenues or loss of profits (other than payments under this Agreement) or for cost of procurement of substitute goods or services.

9.5 Trademarks. Active Power hereby grants to POWERWARE the non-exclusive right and license to market the Active Power Products under Active Power's existing trademarks for the applicable Active Power Products in any manner approved by Active Power.

9.6 Administration of Agreement. Each party hereby designates its employees identified below as its contract administrator for this Agreement. The contract administrator(s) shall be responsible for representing their respective employers in contractual and commercial matters relative to the administration of this Agreement. Each party may change its designated administrator(s) by giving not less than ten (10) days prior written notice of its new contract administrator to the other party.

POWERWARE Administrator:  
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Active Power Administrator:  
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Barry J Needle  
Powerware Corporation  
8609 Six Forks Road  
Raleigh, N.C. 27615

Bruce Akins  
Active Power Incorporated  
11525 Stonehollow Drive  
Suite 119  
Austin, TX 78758

Ph: 919-870-3045  
Fax: 919-870-3450  
Email: Barry.Needle@psd.invensys.com

804-530-8457  
804-530-3314  
Email: Bakins@activepower.com

9.7 Default. If either party shall default in the performance of its obligations under this Agreement, including but not limited to non-delivery and nonpayment, and such default continues for a period of thirty (30) calendar days after the defaulting party receives written notice of the default from the non-defaulting party, then the non-defaulting party may terminate this Agreement and/or exercise any right or remedy provided by law or equity.

9.8 Assignment and Subcontracting Prohibited. Except as provided herein, either party shall not assign this Agreement or its obligations subcontracted without the prior written consent of the other party, except to an acquirer of substantially all its business or assets. Any assignment or subcontracting in violation of this provision shall be deemed null and void.

- 9.9 Governing Law. This Agreement shall be governed by, subject to, and construed in all respects in accordance with the laws of the State of Texas, United States of America.
- 9.10 Force Majeure. Neither party shall be deemed to be in default of any provision of this Agreement, or for failures in performance, resulting from acts or events beyond the reasonable control of such party. Such acts shall include but not be limited to acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, or other events beyond the party's reasonable control.
- 9.11 Compliance with Laws. The parties shall comply with, and agree that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.
- 9.12 Severability. If any of the provisions hereof shall be deemed invalid or unenforceable by any tribunal with competent jurisdiction, the remaining provisions of the Agreement, and the application of such invalid or unenforceable provisions to persons and circumstances other than to those to which they were held invalid, shall not be affected thereby.
- 9.13 Notices. All notices and Orders permitted or required to be given under this Agreement shall be in writing and shall be deemed duly given upon personal delivery or transmitted by facsimile machine to the address or facsimile numbers set forth below. All notices shall be delivered or sent to the other party at the address or facsimile numbers shown below or to any other facsimile number as the party may designate by ten (10) days prior written notice given in accordance with this provision.

If to POWERWARE:

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Barry J Needle  
 Powerware Corporation  
 8609 Six Forks Road  
 Raleigh, N.C. 27615

Ph: 919-870-3045  
 Fax: 919-870-3450  
 Email: Barry.Needle@psd.invensys.com

If to Active Power:

-----

VP Sales  
 Active Power Incorporated  
 11525 Stonehollow Drive  
 Suite 110  
 Austin, TX 78758

512 836-6464  
 512 836-4511  
 Email: Bott@activepower.com

- 9.14 Dispute Resolution. All disputes arising in connection with this Agreement shall be settled if possible through friendly consultation between the parties. If no settlement can be reached within thirty (30) days after a dispute arises, either party shall have the right and option to submit the dispute to binding arbitration. The arbitration shall take place in the Austin, Texas metropolitan area, and be conducted pursuant to the rules of the Arbitration Rules of the American Arbitration Association. The cost of the arbitration shall be borne equally by the parties. The decision of the arbitrators shall be final and binding on both parties and shall be enforceable in the courts of Texas.
- 9.15 Rights Upon Orderly Termination. Upon termination of this Agreement, POWERWARE and all of its agents shall discontinue demonstrating, marketing and distributing the Active Power Products; provided, however, that any End-User who previously acquired the right to use any Active Power Products under the terms of a Support Agreement granted hereunder, shall have

the continuing right to use such Active Power Products and to receive maintenance support services from Active Power as set-forth in the Support Agreement. Neither termination of this Agreement nor waiver of any right to terminate shall impair or limit any additional rights or remedies that either POWERWARE or Active Power may have in law or in equity.

9.16 Termination of Orders. Any Order may be terminated by POWERWARE at (and only at) any time more than 60 days prior to the scheduled delivery date on the Order by written notice to Active Power. No orders will be canceled by POWERWARE inside the 60 day scheduled delivery window without accompanying evidence of cancellation by POWERWARE's end user customer. Active Power will be entitled to the pro-rata share (based on total order value) of cancellation charges awarded to POWERWARE including all handling and restocking fees.

9.17 Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties concerning the subject matter hereof, superseding all prior negotiations and discussions.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed in duplicate originals by its duly authorized representative on the respective dates entered below.

Active Power, Inc.  
("Active Power")

Powerware  
("POWERWARE")

By: /s/  
-----  
(Signature)

By: /s/  
-----  
(Signature)

Title:

Title:

Date: October 28, 2001  
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Date: October 28, 2001  
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DESCRIPTION OF ACTIVE POWER PRODUCTS  
Standard CleanSource2(TM) Products

CleanSource Model No.	Product Description	List Price
CS2-250	250 kW Flywheel Energy Storage System - Single Flywheel	\$[****]
CS2-500	500 kW Flywheel Energy Storage System - Dual Flywheel	\$[****]
DSC-250	OPTION, DISCONNECT SWITCH, CS2-250	\$[****]
DSC-500	OPTION, DISCONNECT SWITCH, CS2-500	\$[****]
CSView-2S	CleanSource Monitoring and Display Software - Single User	\$[****]
CSView-2M	CleanSource Monitoring and Display Software - 5 User	\$[****]
SNMP-2	OPTION, SNMP, CS2	\$[****]
MBUS-2	OPTION, MODBUS, CS2 TCP version	\$[****]
MDM-2-115	OPTION, MODEM, EXT I/F, 115V, FACTORY, CS2	\$[****]
MDM-2-230	OPTION, MODEM, EXT I/F, 230V, FACTORY, CS2	\$[****]
MDMF-2-115	OPTION, MODEM, EXT I/F, 115V, FIELD, CS2	\$[****]
MDMF-2-230	OPTION, MODEM, EXT I/F, 230V, FIELD, CS2	\$[****]
NET-2	OPTION, ETHERNET CS2	\$[****]
ESD-2-R	OPTION, REMOTE ESD, CS2	\$[****]
SEIS-2	OPTION, SEISMIC TIE-DOWN, CS2 not including template	\$[****]
SEIS-2-T	OPTION, SEISMIC TIE-DOWN TEMPLATE, CS2	\$[****]
ACV-2-120	OPTION, PROTECTED AC SOURCE, 120 VAC	\$[****]

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\*\*Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.\*\*

Supplier Products, Pricing, and Volume Discounts  
CleanSource2 Pricing

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Active Power  
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POWERWARE's mutually agreed upon annual forecasted volume for the 12-month period beginning on the Effective Date is [\*\*\*\*].

\*\*Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.\*\*

## ACTIVE POWER PRODUCT WARRANTIES

LIMITED WARRANTY. Active Power warrants that, under normal use and service pursuant to the applicable Product Manual, Equipment is free from defects in parts and workmanship for a period of one (1) year from the date of shipment. If in Active Power's opinion, Equipment fails to perform in accordance with specifications set forth in the applicable Product Manual and such failure is properly reported in writing to Active Power within the term of this warranty, the defective part(s) will be repaired or replaced at the option of Active Power with no charge for replacement parts. The cost for replacement equipment, replacement equipment installation, and on site Active Power representative will be provided at no charge by Active Power. Equipment repaired or replaced pursuant to this Limited Warranty will be warranted for the unexpired portion of the original warranty subject to all terms thereof. This Warranty applies to Product installed world-wide. The coverage times in the United States are 8:00am CST to 5:00pm CST Monday through Friday, excluding company paid holidays (a list of company holidays will be provided upon request). The coverage times outside of the United States are 8:00am to 5:00pm local time, Monday through Friday, excluding company paid holidays (a list of company holidays will be provided upon request).

THE WARRANTIES SET FORTH HEREIN ARE CONTINGENT UPON THE PROPER USE OF THE EQUIPMENT IN ACCORDANCE WITH THE APPLICABLE PRODUCT MANUAL AND SPECIFICATIONS FURNISHED IN WRITING BY ACTIVE POWER, AND DO NOT APPLY TO EQUIPMENT WHICH HAS BEEN subject to neglect, accident, abuse, misuse, misapplication, incorrect connection or WHICH has been REPAIRED OR MODIFIED BY PERSONS OTHER THAN THE AUTHORIZED REPRESENTATIVES OF ACTIVE POWER.

Active Power's obligations under this Limited Warranty are conditioned upon Purchaser's payment of all amounts due, and its obligations hereunder shall be suspended for any period of time in which such amounts are past due. Any such suspension of Active Power's warranty obligations shall not operate to extend the term of the original warranty period specified herein.

Purchaser shall be exclusively responsible for, and ACTIVE POWER MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO, (a) determining whether the Equipment will achieve the results desired by Purchaser or any third person, (b) selecting, procuring, installing, operating and maintaining complementary equipment to insure correct operation of the Equipment, (c) training Purchaser's personnel in operation of the Equipment, (d) ensuring the accuracy of any configuration design or implementation that utilizes the Equipment, and (e) establishing adequate safety procedures for operation of the Equipment. In the event of any alteration or attachment to the Equipment not authorized by Active Power, Active Power shall have no liability or responsibility for: (a) any hardware, software, equipment, or services provided by any persons other than Active Power; (b) the proper functioning of the Equipment; or (c) damage caused by any malfunction of the Equipment.

ACTIVE POWER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE. ACTIVE POWER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE, OR DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT.



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\*\*Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.\*\*

## POWERWARE Approved Agents

Company Name	Code	Rep Code	Address	Contact Name	Phone	Fax
Alcan Electrical & Engineering Co.	IPM	M59	6670 Arctic Spur Road Anchorage, AK 99518	Chris Mues	(970)563-3737	
Applied Power Systems	PW/S	6AR	2300 Mill Park Drive Suite 114 Maryland Heights, MO 63043	Larry Boyd	(314) 427-5100	(314) 427-1080
Arthur N. Ulrich Company	IPM	L21	PO Box 11 Etna, OH 43018 10340 Palmer Road, SW Pataskala, OH 43062 (courier)	Arthur Ulrich	(740) 927-8244	(740) 927-6017
Bates & Associates, Inc.	PW	80C	16 Jeep Pl. PO Box 934 Mashpee, MA 02649	Kenneth Bates	(508) 477-3311	(508) 477-3561
Bates & Associates, Inc.	PW	80C	927 Temple Street Whitman, MA 02382	Steve May	(781) 857-3600	(781) 857-2287
Blackmon Agency	PW/IPM	M47	4 Office Park Circle, Ste. 304 Birmingham, AL 35223 Box 531312 Birmingham, AL 35253	Fred Blackmon	(205) 879-0100	(205) 879-0102
Capitol Power	PW/S	7BW	46859 Harry Byrd Hwy. Suite 301 Sterling, VA 20164	Bob Wilkens Kevin McGaughey	(703) 433-2000	(703) 433-2128
Circa, Inc.	PW/S	9CI	709 Glenlake Dr. Edmund, OK 73013	John Taylor	(405) 751-8806	(405) 749-9322
Computer Enviroments	PW/S	4HI	92-123 Lei Papa Way Kapolei, HI 96707	Mark Sumstine	(808) 722-1815	(808) 672-6582
Computer Enviromental Systems	PW/S	70F	1700 Water Pl.,NW, Suite 311 Atlanta, GA 30339	Don Hamilton	(770) 956-0091	(770) 953-6449
Computer Power Technology	IPM/PW/S	4CP	3949 S 200 E, Suite A-1 Salt Lake City, UT 84107-1589	Max I. Carrigan	(801) 263-8333	(801) 263-8380
Connecticut Power Solutions	PW	8AA	10 Lamplighter Ln. New Milford, CT 06776-2458	Joe Pagano	(860) 354-6505	(860) 355-4065
Core Power	PW/S	8CP	1717 Swede Road, Ste. 202 Blue Bell, PA 19422	Jim Davis (ext.101) Scott Stilley (ext.109)	(610) 279-0700	(610) 279-7404
Critical Power Resource, LLC	PW	6AG	6070 Six Forks Road, Suite F Raleigh, NC 27609	Ken Agee	(919) 844-6447	(919) 844-9845
Cunningham Company, Inc.	IPM	M57	310 Fernando Street, Ste. 105 Newport Beach, CA 92661	Jack Schaefer	(949) 723-7020	(949) 723-7022
Datatec, Inc.	PW/S	81G	1100 Goffle Rd. Hawthorne, NJ 07506	Sal Picheria	(973) 423-0005	(973) 423-5702
Datatec, Inc.	PW/S	81H	1100 Goffle Rd. New York Hawthorne, NJ 07506 Burroughs	Sal Picheria	(973) 423-0005	(973) 423-5702
David G.Leggett Co.	PW	60L	909 King Ave. Ste. 200 Columbus, OH 43212	David G. Leggett	(614) 299-0202	(614) 299-0303
Devices, Inc.	IPM	M55	10300 N. Central Expressway Suite 330 Dallas, TX 75231	Ron Barrier	(972) 250-2093	(972) 250-6870
E Technologies, Inc.	PW/S	6ET	806 Sun Ridge Ln. Chargin Falls, OH 44022	John Enghardt	(440) 338-6184	(440) 338-6186

Company Name	Code	Rep Code	Address	Contact Name	Phone	Fax
E & T Equipment, Inc.	IPM	M54	15200 E. Girard Avenue Suite 2100 Aurora, CO 80014	Dennis A. Edwardson	(303) 617-6068	(303) 617-6117
Electrorep-Energy Products	IPM		2121 Schuetz Road PO Box 460200 St. Louis, MO 63146	Tim Supranowich	(314) 991-2600	(314) 991-3852
Electrorep-Energy Products	IPM		5897 Raytown Road, Ste. 100 Raytown, MO 64133	Cliff Niederbremer	(800) 678-2606	(816) 358-9292
Electrorep-Energy Products	IPM		208 South Grand East Springfield, IL 62704	Ray Sitki	(217) 789-4504	(217) 789-0302
EMR Associates	PW/S	7EM	9080 Barbee Lane #100 Knoxville, TN 37923	Alex Campen	(865) 769-1998	(865) 769-2227
EMR Associates	PW/S	7EM	PO Box 32741 Knoxville, TN 37930-0741	Alex Campen	(865) 769-1998	(865) 769-2227
EMR Associates	PW/S	7EM	603 W. Iris Ave. Nashville, TN 37204	Mike Hughes	(615) 292-1977	(615) 292-1560
EMR Associates	PW/S	7EM	PO Box 40741 Nashville, Tn 37204-0747	Mike Hughes	(615) 292-1977	(615) 292-1560
Grant Goodrich, Inc.	IPM	M24	1343 Wentworth Ave. Jacksonville, FL 33259 (courier) PO Box 24846 Jacksonville, FL 32241	Grant Goodrich	(904) 287-0254	(904) 287-3614
H.M. Cragg Co.	PW/S	60R	9201 Penn Ave., Suite 25 Bloomington, MN 55431-2328	Ben Platter, Sr. Dale Jones	(952) 884-7775	(952) 884-7739
IndCom Systems	IPM	M27	616 Papworth Ave. Metairie, LA 70005 (coourier) PO Box 24358 New Orleans, LA 70184	Walter Case, Sr.	(504) 833-3833	(504) 833-3389
Innovative Electrical Technology	IPM/PW/S	M28	PO Box 10 1855 P Avenue Conroy, IA 52220	Sandra Serbousek Larry Serbousek	(319) 662-9876	(319) 662-9877
Jones Engineering Sales	PW/S	7GE	1114 State St. Cayce, SC 29033	Gene Jones	(803) 796-2920	(803) 791-8154
Kramer Datapower, Inc.	PW/S	61K	5410 Newport Dr., Unit 38 Rolling Meadows, IL 60008	Bill Kramer	(847) 255-3140	(847) 255-3893
Kramer Datapower, Inc. WI	PW/S	61K	2223 N. 66th St. Wauwatosa, WI 53213	Tom McCaughn	(414) 443-6476	(414) 443-6478
LDP Associates, Inc.	IPM		10221 North 32nd Street, Ste. N Phoenix, AZ 85028	Lyle Porter	(602) 494-7220	(602) 494-7170
Lynn Associates, Inc.	IPM/PW/S	81F	125 Wolf Road Albany, NY 12205	Bob Lynn Wendy Snyder	(518) 459-1239	(518) 459-4810
Lynn Associates, Inc.	IPM/PW/S	82F	6622 Main St., Suite 4 Buffalo, NY 14221	Richard Lynn	(716) 631-0054	(716) 631-0101
Lynn Associates, Inc.	IPM/PW/S	8FF	2593 Wexford-Bayne Road Ste. 303 Sewickley, PA 15143	David Johnson	(724) 933-8970	(724) 933-8980
Metro Power Associates, Inc.	IPM/S	8MP	3327 Jackson Avenue Wantagh, NY 11793	Ed Bombeck	(516) 781-0623	(516) 781-0624
Metro Power Associates, Inc.	IPM/S	8MP	39 Valley Pond Road Katonah, NY 10536	Tony Ianello	(914) 248-6808	(914) 248-7438
Nolan Power Group	PW/S	7NB	6141 River Road Harahan, LA 70123 Payments to: PO Box 54986 New Orleans, LA 70154-4986	Bobby Nolan	(504) 733-4300	(504) 733-2650

Northern Power Technologies	PW/S	60J	712 Columbus Street Rapid City, SD 57701	Gary Johnson	(605) 342-2520	(605) 343-9688
Performance Power Concepts	IPM/PW/S	4PG	14865 SW 74th Street, Ste. 260 Tigard, OR 97223	Gary Lukas	(503) 672-9400	(503) 672-9300

Company Name	Code	Rep Code	Address	Contact Name	Phone	Fax
Performance Power Concepts	IPM/PW/S	4PH	11000 NE 10th Street, Suite C Bellevue, WA 98004	Gary Lukas John Hessen	(425) 638-0340	(425) 638-0341
Power Source	PW/S	4SY	1150 South Bascom Ave., Ste. 29 San Jose, CA 95128	Craig Waterman	(408) 279-7500	(408) 279-7501
Precise Power	PW/S	7PP	1714 E. Franklin Street Richmond, VA 23223	Steve Olson	(804) 225-5573	(804) 225-5574
Precise Power	PW/S	7PP	1309 Simms Arch Chesapeake, VA 23322	Ray Cruz	(757) 482-4550	(757) 482-4571
Precision Environment, Inc.	PW/S	70U	1644 First Avenue, North St. Petersburg, FL 33713	Robin Singh	(727) 894-8200	(727) 822-7164
Precision Environment, Inc.	PW/S	70U	692 Vistawilla Drive Winter Springs, FL 32708	Patrick Henry	(407) 971-2223	(407) 971-2225
Precision Environment, Inc.-North	PW/S	7UU	3015-7 Hartley Rd. Jacksonville, FL 32257	Tom Naylor	(904) 886-4292	(904) 886-0144
Precision Environment, Inc.-South	PW/S	7UM	Commercial Place 1-Ste. 160 3230 W. Commercial Blvd. Oakland Park, FL 33309	Tony Rizzo Chad Tyree Joyce Kaeser	(954) 497-3115	(954) 497-3119
Process Sales	IPM	M52	743 Annoreno Drive Addison, IL 60101	Bill Esposito	(630) 543-7400	(630) 543-7411
Pure Power	IPM/PW/S	3PP	P0 Box 255 407 E. Main St., Suite 2 Port Jefferson, NY 11777	Garry Luerssen	(631) 474-7886	(631) 474-7957
Quality Power Systems, Inc.	IPM	M38	45000F Underwood Ln. Sterling, VA 20166	Dan Toland	(703) 709-2224	(703) 709-0524
Ramtek, LLC	PW/S	4RT	18011 Sky Park Circle SuiteA Irvine, CA 92614	Kurt Richard Dean Miles	(949) 798-1480	(949) 798-1485
RC Merchant and Co., Inc.	PW/S	6RC	23735 Research Dr. Farmington Hills, MI 48335	John Merchant	(248) 476-4600	(248) 476-3162
Sobek Enterprises, Inc.	PW/S	6SE	1432 Sadlier Circle East Drive Indianapolis, IN 46239	Bob Sobek	(317)351-8145	(317) 351-8149
Sun Sales Co.	PW/S	94F	3949 Corrales Rd., Suite 200 Corrales, NM 87048	Paul Hardy	(505) 922-0000	(505) 899-7674
SupportTek	PW/S	4AB	425 Santa Fe Drive Denver, CO 80204	Tom Ebner	(303) 892-6500	(303)892-6100
SWM Co.	PW/S	9SW	11926 Radium St. San Antonio, TX 78216	Steve McKim	(210) 308-7390	(210) 308-7391
T.S. Williams & Associates	IPM	M50	102 Amos Drive Cumming, GA 30040	Sky Williams	(678) 947-1400	(678) 947-1444
Tubbesing Sales Corporation	PW/S	6TD	1771 International Pkwy., Suite 115 Richardson, TX 75081	Jim Tubbesing	(972) 234-3855	(972) 234-8865
Tubbesing Sales Corporation	PW/S	6TH	15621 Blue Ash, Suite 100 Houston, TX 77090	Mike Watts	(281) 876-0341	(281) 876-2912
Weisler & Associates, Inc.	IPM	M60	10235 West Little York Houston, TX 77040	Thomas Barnett	(713) 849-3799	(713) 849-3755
WW Enterprises	PW/S	9WW	Wagon Wheel Trade Center 10912 E. 2nd Tulsa, OK 74128	Jack Dobbins	(918) 438-6100	(918) 438-5434



Active Power Training

ACTIVE POWER shall offer POWERWARE designated representative(s) training on installation, operation, maintenance and repair of the Active Power Products.

Factory Training

ACTIVE POWER offers to provide 1 free training class per year for POWERWARE's training staff and technical support personnel, such training class shall be for up to seven people.

Active Power also agrees to provide, upon request by POWERWARE, training classes at ACTIVE POWER's published training rates. These rates are currently set at \$4,000 per class of up to seven people. POWERWARE shall be responsible for its own travel and living arrangements during these sessions.

As required, ACTIVE POWER agrees to work with POWERWARE to arrange and support specific training requirements.

## Warranty and Post-Warranty Service

Buyer's service personnel must successfully complete Supplier's certified training course (administered by either Supplier or a certified CleanSource Buyer trainer) in order to provide warranty support for the Product.

Supplier will reimburse Buyer at the following rates for warranty repair performed on Supplier's Product. These rates assume Supplier's normal warranty support, which is 8am CDT to 5pm CDT Monday through Friday, excluding holidays.

Travel Time and On-Site Labor- \$90/hr Monday through Friday 8:00 am to 5:00 pm local time excluding holidays; \$110/hr all other times.

Supplier will also reimburse Buyer for documented, customary and reasonable expense incurred by Buyer on behalf of Supplier. Any disputed charges will be resolved by the VP of Sales or Director of Field Services for Active Power and the VP, Global Services or Director of Field Services for POWERWARE (this Agreement assumes that typical travel labor would average less than 4 hours and not include an overnight stay).

Warranty Parts -Supplier will provide warranty replacement Spare Parts at no charge to Buyer during the warranty period. These Spare Parts will replace the spare parts inventory purchased by Buyer per the attached Spare Parts list. Buyer will purchase the initial stock of spare parts inventory at Supplier's published list price less 35%. These Spare Parts should cover 95% of expected repairs to all CleanSource models. Subsequent spare parts purchases will be available to Buyer at Supplier's published list price less the discount granted buyer on their hardware purchases. Upon receiving a Spare Part covered under warranty and accompanied by the supporting documentation, (See attachment 1), Supplier will provide a repaired, remanufactured or a Supplier approved Spare Part to replace the Buyer's inventoried Spare Part. Buyer will be responsible for the shipping of the affected Spare Part to the approved Supplier Parts Center. Supplier will be responsible for the freight cost of the replacement Spare Part to the Buyer logistic support center designated by Buyer. In warranty cases requiring express shipping, Supplier will be responsible for the express freight charges.

Warranty Service Escalation Plan- For any system down more than 48 hours and being covered by the Supplier's Service Escalation Plan, Supplier technical support coverage will be expanded to 24 hours per day 7 days per week for the specific event. (See Attachment 2)

Supporting Warranty Documentation - summary of Field Activity Reports (attached hereto as Exhibit G - Attachment 5) will be provided by Buyer's affiliate, Buyer's global services unit to Supplier for its actual cost for providing Supplier warranty services to Buyer Customers. Buyer's global services unit will invoice Supplier for such costs. This must include documentation of specific failures and summary information on the causes of such failures.

At any time during the warranty period with respect to each Product, Supplier reserves the right to meet and confer, upon ten (10) days prior written notice regarding the Buyer provided warranty service on each such Product if: in any three (3) month period an uncorrected (i) repetitive problem occurs, (ii)



Buyer repair has been repeatedly done incorrectly and/or (iii) the expenses incurred by Buyer to resolve or correct problems has been materially higher than the average expense for the applicable problem. If, after meeting and conferring, the parties are unable to reach a mutually acceptable resolution of the foregoing issues, then, upon ten (10) days prior written notice, Supplier may assume future warranty obligations.

Spare Parts Seller's List Price  
Effective 8/24/01

Buyer's Logistics & Support Center Inventory  
CleanSource2 CS250KW or CS500KW with DC Disconnect Option

Item	P/N	DESCRIPTION	QTY	UM	Unit Price	Extended List Price
*1	30538-1	PWA, APC Controller	1	Each	\$2,970.00	\$2,970.00
*2	85793-1	Field Coil Driver	1	Each	\$1,549.68	\$1,549.68
3	85595-02	Vacuum Pump	1	Each	\$1,857.02	\$1,857.02
4	85503	Vacuum Pump Oil	1	Each	\$37.44	\$37.44
5	86088-1	Left SkiIP	3	Each	\$1,975.60	\$5,926.80
6	85648	Fan Module	1	Each	\$342.34	\$342.34
7	86064-2	Armature Fuse	1	Each	\$843.81	\$843.81
8	85799	Upper Bearing Cartridge	1	Each	\$1,122.00	\$1,122.00
9	85885-1	Lower Bearing Cartridge	1	Each	\$2,395.80	\$2,395.80
*10	30114	PWA, SIO	1	Each	\$858.00	\$858.00
*11	30038-1	PWA, CTI	1	Each	\$462.00	\$462.00
*12	30158	PWA, Fan Monitor	1	Each	\$233.44	\$233.44
*13	30160	PWA, PWD	1	Each	\$347.71	\$347.71
*14	30166-1	PWA, FWI	1	Each	\$509.30	\$509.30
*15	30188	PWA, SKI	1	Each	\$105.31	\$105.31
*16	85593	Assy, Com Accel	1	Each	\$586.26	\$586.26
*17	85792-2	Assy, Users Interface	1	Each	\$1,286.43	\$1,286.43
**18	86087-1	Assy, SKiIP, Right	1	Each	\$1,975.60	\$1,975.60
19	11200	Hose, Vacuum	11	FT	\$2.57	\$28.27
20	25808-15	Fuse, 15 AMP	5	Each	\$5.50	\$27.50
21	25808-8	Fuse, 8 AMP	5	Each	\$5.50	\$27.50
22	25837-03	Fuse, 3 AMP	5	Each	\$8.32	\$41.60
23	25834-30	Fuse, 30 AMP	5	Each	\$10.38	\$51.90
24	25834-10	Fuse, 10 Amp	5	Each	\$9.72	\$48.60
25	25809-10	Fuse, 10 Amp	5	Each	\$5.60	\$28.00
26	25809-12	Fuse, 12 Amp	5	Each	\$5.60	\$28.00
27	25809-01	Fuse, 1 Amp	5	Each	\$5.60	\$28.00
28	25809-20	Fuse, 20 Amp	5	Each	\$5.60	\$28.00
Total						\$23,746.31

Pricing is subject to change. Always consult with the factory for the most current pricing. If purchased as a kit, take a 10% discount from the "Total Price."

\*This part may be subject to an up-revision charge from time to time.

\*\*Required only on CS500KW system.

Typical Service Escalation Chart

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- o The escalation chart below is to be used as the maximum allowable time from identification of warranty issue before the next responsible party is notified and has an obligation to provide service response. These times are not to be considered the minimum time allowed prior to notifying a responsible party. Buyer may contact Supplier anytime for technical assistance after showing a responsible effort on Buyer's party to resolve the related issue.

Chart: 1  
 Typical Service Escalation  
 Responsible Parties

Elapsed Time	Buyer Field Service	Buyer Parts & Logistics	Technical Support	Active Power Help Desk	Active Power Parts & Logistics	Active Power Service Austin, TX	*Active Power On-site Service
T + 24Hrs.	X						
T + 48Hrs.	X	X	X	X			
T + 72 Hrs.	X	X	X	X	X	X	
T + 96 Hrs.	X	X	X	X	X	X	X

Supplier's Warranty And Post Warranty Return Material Authorization Procedures  
-----

Before returning a Product for repair or replacement, Buyer must first contact Supplier and obtain a Return Material Authorization (RMA) number. The following information must be supplied in order to obtain an RMA number:

1. Name of the Buyer's Customer
2. Serial number of the original Product
3. Shipment or delivery date
4. Description of the problem
5. Offsetting Order for replacement Product (if the Product is approved for replacement)

Upon receipt of the RMA number, which will be supplied by Supplier before the end of the next business day, Buyer or Buyer's Customer will return the Product to Supplier or an authorized service center at Buyer's or Buyer's Customer's expense. The RMA and Product serial number must be referenced on all correspondence regarding the returned Product, as well as on the shipping container or package and all shipping documents. Products returned without RMA numbers or actual RMA authorization will not be accepted. All returned Products must be properly and commercially reasonably packed. Supplier is not responsible for damage to Products incurred in shipment or due to inadequate or improper packaging. Supplier will promptly repair or replace any defective Product and return the replacement or repaired Product to Buyer or Buyer's Customer (with notice to Buyer) at Supplier's expense.

Return Goods Documentation\*

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Active Power RMA# :

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Date:

-----

CleanSource Model Number:

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CleanSource Serial Number:

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Part Number:

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OLD Part Serial Number:

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New Part Serial Number:

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Technician:

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Location:

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Problem Description:

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Frequency of Problem:

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Hard Failure

Hot

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Charging

Cold

-----

Discharging

Other:

-----

Explain Other:

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Signature:

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\*The attached procedure applies to all returned goods

POWERWARE Field Activity Report

Request ID:  
Place ID:  
Place Name:  
Place Address:

Phone:  
Contact:  
P.O.:

Technician:  
Arrival Date/Time:  
Completion Date/Time:

Problem Description:

Service Notes:  
Code:

Text:

Products Serviced:  
Model ID:  
Serial ID:

Revision:  
Contract ID / Version:

Services:  
Model ID:

Service Description	Quantity
---------------------	----------

Non-Product Part and Non-Part Usage

Part Need Details

Post-Warranty Support

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Buyer's service personnel must successfully complete Supplier's certified training course (administered by either Supplier or a certified CleanSource Buyer trainer) in order to provide warranty support for the Product.

Buyer will inventory and maintain appropriate Spare Parts to provide its standard level of service. The attached Spare Parts list reflects 95% coverage of all expected repairs.

CS2 - 250 & CS2 - 500 Spares Parts List

Upon Buyer obtaining a RMA number from Supplier for a returning part, Supplier will ship the replacement part to Buyer's Logistics facility designated by Buyer. In the event express shipping is required, Buyer will be responsible for the freight charges.

Field Service Support - Supplier will make available after market Field Service Support to Buyer

Technical Communications - Supplier Field Service will provide Buyer any notifications of technical changes and enhancements for the CleanSource product line through a Field Engineering Advisory (FEA). This will include changes to the fit, form and function of the CleanSource product line. Buyer will assign a delegate to receive and distribute the information to its staff.

Service Escalation Plan - Buyer will, upon receiving a service call, follow the typical escalation plan as shown in Chart C-1, Typical Escalation Chart. In response Supplier will offer assistance via telephone support and, if required, on-site service at the expense of Buyer in cases of non-warranty coverage.

## MASTER SOURCING AGREEMENT

This MASTER SOURCING AGREEMENT (the "MSA") is entered into as of the 13th day of July, 2001, by and between General Electric Company, a New York corporation acting through its GE Digital Energy business unit, having a principal place of business at 4200 Wildwood Parkway, Atlanta, Georgia 30339 USA ("GE" or "Buyer") and ACTIVE POWER, INC ("Active Power" or "Seller"), a Delaware corporation, having a principal place of business at 11525 Stonehollow Drive, Suite 110, Austin, Texas 78758. (GE and ACTIVE POWER being referred to herein individually as a "Party" and collectively the "Parties").

## RECITALS

WHEREAS, GE and ACTIVE POWER and their respective affiliates are engaged in the manufacture, production, assembly and sale of Power Conditioning equipment and components and ancillary services (collectively "Equipment"); and

WHEREAS, GE and ACTIVE POWER desire to expand their business relationship and grow on terms satisfactory to both parties and they hereby execute this MSA for purposes of confirming the issuance by GE to ACTIVE POWER of the purchase orders (the "Purchase Orders") for the products defined in Attachment A in accordance with the pricing schedule defined in Attachment B.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein the Parties agree as follows:

1. Supply/Purchase of ACTIVE POWER Flywheel Energy Storage System ("FESS") Designed Systems. The Parties hereby enter into this FESS sourcing agreement, whereby ACTIVE POWER shall supply GE, and GE shall purchase from ACTIVE POWER, Clean Source 2 Flywheel Energy Storage System on the following conditions:

(a) That the ACTIVE POWER designed FESS systems shall be manufactured and produced in accordance with and shall comply with the GE design and specification requirements referenced in Attachment A [\*\*\*];

(b) Subject to the Agreement, ACTIVE POWER hereby appoints and grants to GE and its affiliates, as defined below, and GE hereby accepts from ACTIVE POWER, a non-transferable, royalty-free, right and license to: (i) non-exclusivity purchase, market, distribution and resell the ACTIVE POWER flywheel products used with uninterruptible power systems ("UPS") described in Attached B (hereinafter referred to as the "standard CleanSource products from ACTIVE POWER") to end-users located world-wide (hereinafter referred to as the "End Users"); (ii) incorporate private and/or co-labeling of the ACTIVE POWER products using GE logos (where approved exclusively by GE). During the term of this Agreement, GE and its affiliates may hold themselves out to the public as an authorized reseller of ACTIVE POWER products.

(c) ACTIVE POWER further acknowledges that GE's willingness to pursue placement of volume of Equipment orders with ACTIVE POWER is subject to ACTIVE POWER demonstrating to the satisfaction of GE, among other reasonable requirements that GE may establish for purchase of the Equipment: (1) completion of first piece qualification of the Equipment, (2) that ACTIVE POWER has the necessary capacity, equipment and resources to timely and properly supply the Equipment, (3) that ACTIVE POWER can meet the price, Six Sigma quality and delivery targets and requirements for the Equipment established by GE, and (4) that the Equipment will conform to any GE-supplied or approved drawings and specifications issued for the Equipment. The Parties acknowledge that the quantities of the



Equipment identified on Attachment B are GE's current estimate of its needs for Equipment during the time period specified and are subject to adjustment to the discretion of GE based on its actual volume, customer and business requirements. GE shall provide to ACTIVE POWER at the beginning of each calendar quarter (by the 15th of the first month), a forecast of orders for that calendar quarter along with a preliminary forecast for the following quarter (i.e. on April 1, forecast for Q2 as well as a preliminary forecast for Q3). Forecasts provided by GE shall not create any commitment by or obligation upon GE to place any order. Within 10 business days of GE submitting such forecast, ACTIVE POWER shall confirm its capacity to meet forecast demand for the following two quarters. Upon such confirmation, ACTIVE POWER guarantees to sell such volume to GE in any quarter upon its request, within the established lead times defined in Attachment B. The scope, price, cycle, schedule and other requirements are set forth on Attachment B hereto;

(d) ACTIVE POWER pricing shall be [\*\*\*\*] and mutually agreed upon by GE, as set forth in Attachment B.

(e) The commercial provisions of this MSA include the terms of Attachment C "GEDE Master Terms and Conditions - GEDE-STD-0001 Rev. A";

(f) The Parties may agree to additional provisions appropriate for a multi-year sourcing agreement between the Parties, including provisions providing for ACTIVE POWER on-line access to GE drawings and the extranet, and confidentiality, compliance with laws and termination for cause provisions consistent with those set forth in Attachment C.

(g) ACTIVE POWER agrees to provide application, technical and engineering support for GE bid proposal activity and related system design reviews on site, as requested. ACTIVE POWER shall provide GE with phone support for technical, service and field installation related questions. ACTIVE POWER shall provide supervision of start-up and commissioning of field installations as set forth in Attachment D and instructed by the GE Purchase Order.

(h) ACTIVE POWER shall provide documentation to GE for purposes of providing maintenance on ACTIVE POWER products. ACTIVE POWER shall provide this documentation in both written and electronic form as well grant GE a royalty-free license to reproduce materials for said maintenance purposes.

(i) ACTIVE POWER shall offer to GE designated representative(s) factory training at a mutually agreed to price schedule and intervals as referred to in Attachment D.

2. Effective Date and Agreement Expiration. This MSA shall commence on the date first written above and, except as otherwise provided herein, shall continue for an initial term through October 30, 2002. This Agreement will be extended in additional one (1) year terms, given the performance by both parties as outlined in the Agreement, except that either party may terminate this Agreement by giving the other written notice of termination not less than sixty (60) days prior to the expiration of the initial term or any renewal term.
3. Confidentiality. No announcement or statement concerning this MSA or the subject matter of, or any matter referred to in, this MSA shall be made or issued by or on behalf of either Party without the prior written approval of the other, provided that nothing shall restrict the making by one party (even in the absence of agreement by the other) of any statement which may be required by law or called for by the requirements of any recognized stock exchange on which its shares or other securities are traded (but then only to the extent so required).
4. Confidential Information. Each party agrees to protect information in accordance with Attachment E, Confidentiality Agreement Dated July 10, 2001.

5. Counterparts. This MSA may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same instrument.
6. Governing Law. This MSA shall be governed and construed in accordance with the laws of the State of New York, USA (without regard to the conflicts of law rules of such jurisdiction).
7. Assignment. Neither Party shall assign its rights and obligations hereunder to any third party without the prior written consent of the Party; provided, that either Party may assign any of its rights and obligations hereunder to any controlled affiliate of such Party, but such Party shall remain primarily liable hereunder.
8. Notices. All notices and Orders permitted or required to be given under this Agreement shall be in writing and shall be deemed duly given upon personal delivery, transmitted by facsimile machine or electronically via the internet and duly acknowledge to the address or facsimile numbers or e-mail addresses set-forth below. All notices below or to any other facsimile number or e-mail address as the party may designate by ten (10) days prior written notice given in accordance with this provision.

<p>If to ACTIVE POWER: ----- Active Power 11525 Stonehollow Drive Suite 110 Austin, Texas 78758 Attention: Vice President Sales Bill Ott</p> <p>FAX: 512-836-4511</p> <p>Email: bott@activepower.com</p>	<p>If to GE: ----- GE Digital Energy 4200 Wildwood Parkway 32-12 Atlanta, GA 30339 Attention: Sourcing Manager Randolph M. Rowe</p> <p>FAX: 678-844-5925</p> <p>Email: randy.rowe@ps.ge.com</p>
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9. Entire Agreement. This MSA contains the entire agreement of the Parties with respect to the subject matter hereof. All prior correspondence, negotiations and agreements, oral or written, among the Parties with respect to the subject matter hereof are superseded by this MSA. Notwithstanding the terms of this MSA, or any issued purchase orders between the Parties and their affiliates shall remain in full force and effect in accordance with their terms until such time as they are modified or amended by separate written agreement by the Parties or their respective affiliates. No variation, supplement, deletion or replacement of this MSA or any of its terms shall be effective unless made in writing and signed by each of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this MSA to be executed by this respective authorized representatives as of the date first set forth above.

GENERAL ELECTRIC COMPANY

ACTIVE POWER, INC.

By: /s/  
-----

By: /s/  
-----

Name: Randolph M. Rowe  
-----

Name: Bill Ott  
-----

Title: Sourcing Leader  
-----

Title: Vice President,  
Sales & Service  
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ATTACHMENT A

Flywheel Energy Storage System ("FESS"):

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\*\*Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.\*\*

ATTACHMENT B

ACTIVE POWER commits to offer [\*\*\*\*] on each opportunity GE requests ACTIVE POWER with a not to exceed price levels noted below:

Product: ACTIVE POWER CleanSource 2 Flywheel Energy Storage System  
-----

250kW Flywheel Energy Storage Systems  
Key Product Features:

- o Single flywheel configuration.
- o DC power ranges of 40kW for 120 seconds up to 250kW for 12.5 seconds of ride-through.
- o Remote Monitoring Interface and Software

500kW Flywheel Energy Storage Systems  
Key Product Features:

- o Dual flywheel configuration.
- o DC power ranges of 40KW for 120 seconds up to 500KW for 12.5 seconds of ride-through.
- o Remote Monitoring Interface and Software

Produced in Compliance with:

- o UL 1778 (CUL), Standards for Uninterruptible Power Supply Equipment CE Mark
- o FCC Rules and Regulation of Part 15, Subpart J, Class A
- o National Electrical Manufacturer's Association (NEMA)
- o National Fire Protection Association (NFPA-70)
- o National Electrical Code (NEC)
- o Occupational Safety & Health Administration (OSHA)

Demand Forecast:

On a quarterly basis, GE shall provide ACTIVE POWER with an updated forecast of GE's semi-annual product requirements. For released purchase orders, GE shall provide ACTIVE POWER a firm 90-day delivery requirement schedule.

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ATTACHMENT B (continued)

Pricing Schedule:

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-----  
General Electric Digital Energy  
-----

Active Power CleanSource 2 Flywheel Quotation  
-----

10-Jul-01  
-----

Item

List Price

-----  
CS2/250 Flywheel System

[\*\*\*\*]

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CS2/500 Flywheel System  
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CS2/250 DC Disconnect  
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-----  
CS2/500 DC Disconnect  
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CSView Software  
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Total  
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Options (Purchased with initial order)  
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CS2/250 Year 2 Parts Only Extended Warranty  
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CS2/250 Year 3 Parts Only Extended Warranty  
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CS2/500 Year 2 Parts Only Extended Warranty  
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-----  
CS2/500 Year 3 Parts Only Extended Warranty  
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-----  
Extended Total  
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The pricing set forth in the table above is based on GE making the following  
Volume Commitment and is fixed for the initial term of this Agreement.

VOLUME COMMITMENT  
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In the event this volume is not achieved by the end of the contract period,  
ACTIVE POWER shall invoice GE for the difference between the commitment and  
actual purchases (includes recovery of unearned discounts, future price  
adjustments, etc.). ACTIVE POWER'S discount schedule is set forth below the  
following example.

[\*\*\*\*]

ATTACHMENT B (continued)

Active Power

[\*\*\*\*]

Annual CS2-250 CS2-500

Volume \$K Unit Price Unit Price

[\*\*\*\*] [\*\*\*\*]

(less than)500

501-1000

1001-2000

2001-4000

4001-6000

6001-10000

10001(and greater)

Productivity

Continuous Improvement & Six Sigma

ACTIVE POWER shall commit to a mutually agreed to Continuous Improvement program addressing product performance, cost improvement and cycle time reduction. GE shall work with ACTIVE POWER on Six Sigma projects to support this effort. Improvements shall be negotiated and mutually shared.

Invoice and Payment Terms

ACTIVE POWER Invoices, in US Dollars, shall be presented at the time of shipment release, after release from FOB - Austin, Texas. [\*\*\*\*]

Lead Times, Cycle and Delivery Schedule

FESS units order shall be delivered in accordance with instructions in the released purchase order.

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\*\*Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.\*\*

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\*\*Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.\*\*

ATTACHMENT C

"GEDE Master Terms and Conditions - GEDE-STD-0001 Rev. B-AP"

(Referenced document attached)



ATTACHMENT D

ACTIVE POWER FESS training

ACTIVE POWER shall offer GE designated representative(s) training on installation, operation, maintenance and repair of their FESS systems.

Factory Training

ACTIVE POWER offers to provide 1 free training class for GE's training staff and technical support personnel, such training class shall be for up to seven people. Active Power will provide GE two free sets of the tools identified in the table below for the training staff class. GE may purchase additional sets of tools at a 25% discount from the identified list price.

Part Number	Description	Active Power List Price	QTY
55520	TOOL, BEARING INSERTION, FLYWHEEL ASSY.	\$ 155.00	1
55530	TOOL, BEARING REMOVAL	\$ 210.00	1
55521	TOOL, GUIDE PIN, BRG CARTRIDGE	\$ 40.00	2
55550	TOOL, ROTOR SHIM, APS ROTOR	\$ 40.00	4
90008	KIT, SPARE, SHIM	\$ 80.00	1
67002	Software, CS View	\$ 950.00	1

Active Power also agrees to provide Training classes at a 25% discounted rate from ACTIVE POWER published training rates. These rates are currently set at \$4,000 per class of up to seven people. GE shall be responsible for its own travel and living arrangements during these sessions.

As required, ACTIVE POWER agrees to work with GE to arrange and support specific training requirements.

Field Training

Commencing after shipment of the first unit, for six months, or until the members of the training staff (attendees of free training class) are certified, whichever is earlier, ACTIVE POWER shall provide free on-site assistance for 1 working day during the start up, commissioning and acceptance of a FESS system. If additional on-site assistance is required after the system acceptance, GE shall pay Active Power's standard billing rates, less a 25% discount. All travel and lodging expenses shall be paid in full at their actual cost.

Warranty Service Obligations

GE service personnel shall provide all warranty service for the FESS systems sold by GE. ACTIVE POWER shall reimburse GE for agreed upon expenses for labor, and ACTIVE POWER's warranty shall govern costs related to parts. Within 60 days from the date of this Agreement, the Parties shall agree on the following:

1. Spare Part Pricing Schedule
2. Spare Part Inventory List
3. Warranty Labor Billing Rates from GEDE back to Active Power

ATTACHMENT E

Mutual Non-Disclosure Agreement

(Referenced document attached)