

SUNWIZE POWER & BATTERY TERMS AND CONDITIONS

(Also available at www.sunwizepower.com/terms)

1. **COMPLETE AGREEMENT.** These terms and conditions of sale ("**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by SunWize Power & Battery ("**Seller**") to buyer ("**Buyer**") of the Goods named on the applicable quotation, purchase order, sales acknowledgment, and/or invoice ("**Sales Confirmation**"). The Sales Confirmation and these Terms (collectively, "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the Goods shall be deemed null and void and of no force and effect. No course of prior dealings between Buyer and Seller and no usage of the trade shall supplement or explain any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of the Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity to object.

2. **ORDER MODIFICATION.** Orders cannot be terminated, cancelled or modified, or shipment deferred, after acceptance of Buyer's order by Seller, except with Seller's written consent (which consent it may withhold for any or no reason) and subject to charges, including, without limitation, Buyer's indemnification of Seller against liability and expense incurred and commitments made by Seller, assessment of a 2.0% administrative fee, payment for lost profit, work in process, and contract value of Goods whether or not completed or ready for shipment ("**Modification Charges**"). Upon payment in full of such Modification Charges, Buyer shall have the right to take possession of all work in process.

3. **ONLINE ORDER POLICIES.** Seller's policies that apply to the sale of Goods, and contain Seller's ordering policy, policy on extension of credit, shipping policy, payment and return policy ("**Order Policies**") which are subject to change from time to time and available at the Seller's web site or upon request, are incorporated into these Terms by this reference. The applicable Order Policies are those in effect at the time the Sale Confirmation is accepted by the Buyer. Seller's Order Policies are for explanation and clarification of its processes and do not contravene these Terms. In the event of an ambiguity, these Terms supersede Order Policies.

4. **DELIVERY.** Goods in Seller's stock will be shipped promptly and Goods not in stock will be shipped when available. All shipping dates are approximate, and are based upon current availability of materials, present production schedules, prompt receipt of all necessary information, and credit approval, if applicable. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment, or loss, or damage in transit. Unless otherwise agreed in writing by the parties, Seller shall cause the Goods to be delivered to the location specified on the Sales Confirmation using Seller's standard methods for packaging and shipping such Goods. If Buyer fails to furnish shipping instructions, Seller will select what is, in its opinion, the most satisfactory routing for the shipment. If Buyer is to pick up products and has not done so within seven (7) days after notification that they are ready for shipment, Seller may ship the products via commercial carrier (best way). Any prepayment by Seller for freight charges shall be for the account of Buyer and shall be paid by Buyer with and in addition to the purchase price

5. **PARTIAL SHIPMENTS & NON-DELIVERY.** Buyer shall be responsible for all unloading costs and provide equipment and labor reasonably suited for receipt of the Goods. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of any Sales Confirmation. The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Seller shall make delivery in accordance with the terms on of the Sales Confirmation.

6. **TITLE.** Title and risk of loss passes to Buyer upon delivery of the Goods by Seller to a common carrier. Seller shall not be responsible for insuring Goods in transit unless specifically requested by Buyer in writing and accepted by Seller in writing, and any insurance so requested shall be at Buyer's expense and valuation. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Arizona Uniform Commercial Code. Buyer authorizes Seller to file from time to time such financing statements, financing continuation statements, and financing amendment statements that may be necessary

or desirable to perfect and maintain the perfection of any such security interest.

7. **INSPECTION & NON-CONFORMING GOODS.** Buyer shall inspect the Goods upon receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods within three (3) days after the Inspection Period and furnishes digital photographic, written, and any other or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different from that identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents or (iii) goods are damaged beyond minor cosmetic defects such that technical performance is impaired. If Buyer timely notifies Seller of any Nonconforming Goods and such nonconformance is reasonably due to defects caused by Seller or its agents, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility prior to replacement, credit, or refund. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, replaced Goods. Buyer acknowledges and agrees that the evaluation of nonconformance is entirely up to Seller to determine, and remedies set forth in this section are Buyer's exclusive remedies for the delivery of Nonconforming Goods and foregoes any other remedies. Except as provided under this section, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return to Seller Goods purchased under this Agreement.

8. **TAXES & DUTIES.** Buyer shall purchase the Goods from Seller at the price[s] (the "**Price[s]**") set forth in the Sales Confirmation. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property.

9. **INVOICE & PAYMENT.** Buyer shall pay all invoiced amounts due to Seller in accordance with the payment terms set forth in the Sales Confirmation. Buyer shall make all payments hereunder by wire transfer, check, or other payment methods as set forth on the Sales Confirmation and in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Checks are accepted subject to collection and the date of collection will be deemed the date of payment. The acceptance by Seller of any check will not constitute a waiver of Seller's right to pursue the collection of any remaining balance regardless of any statement to the contrary on the tendered check and/or other communication. Upon execution of the Agreement and at each time Buyer orders and receives any Goods, Buyer hereby represents and warrants that the value of all of its property, at a fair valuation, is greater than the sum of its debts, and that the Buyer is generally paying its debts as they become due unless such debts are subject to bona fide dispute. Buyer shall reimburse Seller for all costs incurred in collecting any payments hereunder, including, without limitation, late payments, interest, and attorneys' fees and expenses. If, after Seller extends Buyer credit, Seller reasonably believes that Buyer's ability to make payment is impaired, Seller may cancel any order or remaining balance thereof, and Buyer will remain liable to pay Seller for Goods already shipped. For credit approval, if any, Buyer will submit such financial information as Seller may reasonably require from time to time for determination of credit terms. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. **LIMITED WARRANTY.** Seller will warranty all products in accordance with the warranty terms stated by the manufacturer in the owner's manual or warranty documents accompanying the product. (Power Ready Systems are covered by Seller's 1-Year Limited Power Ready System Warranty, a pro forma of which Seller provides to Buyer of Power Ready Systems, and Buyer acknowledge receipt.) The warranty will cover only the product and not any installation services provided by the customer or damage caused by the customer. Seller reserves the right to test, repair or replace the item in question at its sole discretion. In the event (1) Buyer modifies any product sold pursuant to this Sales Confirmation without the express written consent of Seller; (2) Buyer fails to implement any changes in the product directed by Seller; or (3) any product to be furnished under this Sales Confirmation is made in accordance with drawings, samples or manufacturing specifications provided or designated by Buyer, Buyer agrees to indemnify and hold harmless Seller from any and all claims, demands, actions or causes of action, costs or expenses incurred thereby whether in contract, tort or admiralty. **EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 10, SELLER**

MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

11. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

12. COMPLIANCE WITH LAW. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in any resale of the Goods by Buyer. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods. Seller certifies that it is in full compliance with applicable federal, state, and local laws that pertain to the rights of employees to equal opportunity and to a safe workplace. Seller and Buyer agree to comply with environmental protection laws that apply to the manufacture and installation of the Goods names in this Sales Confirmation.

13. PATENT INDEMNITY. In the event any product to be furnished under this Sales Confirmation is to be made in accordance with drawings, samples or manufacturing specifications provided or designated by Buyer, Buyer agrees to indemnify and hold Seller harmless from any and all damages, costs and expenses arising from a claim that such product furnished to Buyer by Seller, or the use thereof, infringes any Letters Patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Seller brought upon such claim or claims. In the event any product to be furnished under this Sales Confirmation is not for a U.S. Government application and is not to be made in accordance with drawings, samples or manufacturing specifications provided or designated by Buyer, but rather is the design of Seller, Seller agrees to hold Buyer and its customers harmless against any damages awarded by a court of final jurisdiction in any suit for infringement of any United States Letters Patent by reason of the sale or use of such product as furnished by Seller under this Sales Confirmation. In the event any claim is asserted or threatened, as to which Buyer may seek indemnification hereunder, Seller shall have the sole right to contest, compromise, litigate, or otherwise dispose of said claim, including the right to substitute non-infringing products, and Buyer agrees to cooperate with Seller fully with respect thereto. The foregoing undertaking of Seller shall not apply unless Seller shall have been informed in writing immediately by Buyer of any charge or suit alleging such infringement and shall have been given the opportunity to assume the defense thereof, and further, such undertaking shall not apply if (i) the claimed infringement is settled without the consent of Seller, or (ii) the infringement results from the use of a product delivered hereunder which is (a) modified by Buyer or others without authorization by Seller, or (b) used in combination with a product not delivered by Seller where such infringement would not have occurred from the lone use of the product delivered under this Sales Confirmation.

14. AMENDMENT. These Terms may be amended or modified only in a writing that specifically states that it amends these Terms and is signed by an authorized representative of each party.

15. TERMINATION. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. NO WAIVER. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. ASSIGNMENT. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. Seller retains the right to subcontract work. Any contract resulting from this Sales Confirmation shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

18. INDEPENDENT CONTRACTOR. The relationship between the parties is that of

independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Buyer shall not represent to any third party that it has anything other than an independent contractor relationship with Seller.

19. NO THIRD PARTY BENEFICIARIES. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

20. GOVERNING LAW. These Terms and Conditions and all other contracts between the parties shall be interpreted, construed and governed by and under the laws of the State of Arizona and any action hereunder or between the Buyer and Seller shall be brought only in the United States District Court of Arizona in Phoenix or the Superior Court for Maricopa County at the election of the party initiating suit. In this regard, the Buyer consents to personal jurisdiction in such courts; and waives any and all jurisdictional or forum nonconveniens objections to proceeding in such courts.

21. NOTICE. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

22. SEVERABILITY. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

23. SURVIVABILITY. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

24. DISPUTE RESOLUTION. All claims and disputes between the parties that cannot be resolved by direct negotiation within thirty (30) calendar days of receipt of written notice from one party to the other of such claim or dispute, including a disputed invoice, shall be submitted to non-binding mediation before a certified mediator in Phoenix, Arizona. The cost of said mediation shall be split equally between the parties. Any dispute which cannot be resolved between the parties through mediation shall be resolved through arbitration pursuant to the American Arbitration Association's Commercial Rules with one (1) arbitrator in Arizona.

25. ATTORNEY'S FEES. If any action at law or in equity, including action for declaratory relief and arbitration, is brought to enforce, interpret, rescind or reform any contract resulting from this Sales Confirmation, the prevailing party shall be entitled to actual costs incurred, up to a reasonable amount, in prosecuting or defending the action, including, but not limited to, attorney's fees, consultant's fees or witness fees, which latter fees shall include payment to reimburse the party and/or its employees for time spent in preparation for and participation in defending or prosecuting any said action. The attorneys' fees shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred in good faith.

26. EQUAL OPPORTUNITY EMPLOYMENT. Seller complies with Executive Order 11246, as amended, and its implementing Regulations (including the equal opportunity clause set forth in Section 202 of such Order) and Section 60-1.4 (a) of the Regulations of the Secretary of Labor, Title 41 CFR, Chapter 60, Parts 1-60, which are incorporated into this Sales Confirmation by reference. In addition, this Sales Confirmation incorporates by reference the Affirmative Action clauses of the Rehabilitation Act of 1973 at 41 CFR Section 60-741.1 and the Vietnam Era Veterans' Readjustment Act of 1974, at 41 CFR Section 60-2050.4, as amended.