

PV Powered, Inc.
TERMS AND CONDITIONS OF
PURCHASE

1. ACCEPTANCE

The terms and conditions herein become the exclusive and binding contract (the "Contract") between the parties covering the purchase of products and/or services ordered on the face of this purchase order when the order is accepted by Seller by acknowledgment and/or commencement of performance. THE PRODUCTS AND/OR SERVICES SET FORTH ON THE FACE HEREOF MUST BE SUPPLIED ONLY ON THESE TERMS AND CONDITIONS. ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER BY ACKNOWLEDGMENT HEREOF WILL HAVE NO FORCE OR EFFECT UNLESS ACCEPTED IN WRITING BY PV POWERED. ACCEPTANCE OF THE PRODUCTS OR SERVICES DELIVERED UNDER THIS ORDER SHALL NOT CONSTITUTE ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS. No change, modification or revision of this order shall be effective unless in writing and signed by PV Powered's duly authorized purchasing representative. This purchase order and the terms and conditions herein contain the entire agreement of Seller and PV Powered, and failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder.

2. PRICES

Seller warrants that the prices to be charged for products or services identified on the face hereof are not in excess of prices charged to other customers for similar quantities and delivery requirements. Any price decrease applicable to the products or services which are similar to the products or services ordered herein shall automatically reduce the unit price of the unshipped products or services not yet rendered by a comparable percentage, at the time of the price decrease.

3. INVOICES

Invoices shall be submitted in duplicate and shall include the following information: purchase order number, product number, product description, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. Bill of lading or express receipt shall accompany each invoice. Payment of invoice shall not constitute acceptance of products and shall be subject to adjustment for errors, shortages, defects in the products or other failure of Seller to meet the requirements of this order. If any term of this purchase order does not appear on or agree with Seller's invoice as rendered, Seller agrees that PV Powered may change the invoice to conform to this purchase order and make payment accordingly. PV Powered may at any time, set off any amount owed by PV Powered to Seller against any amount owed to PV Powered by Seller or any of its affiliated companies.

4. CASH DISCOUNTS

In connection with the discount, if any, offered by Seller for prompt payment, time will be computed from the latest of (i) the scheduled delivery date, (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received by PV Powered. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of PV Powered's check or the date of PV Powered's wire transfer of funds.

5. TAXES AND EXPENSES

The prices set forth in this purchase order include all applicable federal, state, and local taxes and miscellaneous charges, including but not limited to duties, customs, tariffs, imposts and surcharges. All such taxes and charges shall be stated separately on Seller's invoice.

6. OVERSHIPMENTS

Shipments must equal exact amounts ordered unless otherwise agreed by PV Powered in writing. PV Powered reserves the option to return, at Seller's expense, any shipment of products either in excess of the amount stated on the face of this order or in advance of the agreed upon schedule. Such shipments will be held at Seller's risk and expense including reasonable storage charges while awaiting shipping instructions. Return shipping charges for excess quantities will be at Seller's expense. Material for which return shipping instructions are not received within a reasonable time may be destroyed or sold by PV Powered at public or private sale and the proceeds, if any, applied toward storage charges.

7. PACKING AND SHIPMENT

Unless otherwise specified, when the price of this order is based on the weight of the ordered products, such price is to cover net weight of products ordered only and no charge will be allowed for boxing, crating, carting, drayage, storage or other packing requirements or any allowance for damage in connection with the foregoing. Unless otherwise specified, all products shall be packed, packaged, marked and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practice (ii) acceptable to common carriers for shipment at the lowest rate for the particular products and in accordance with I.C.C. regulations (iii) properly prepaid so as to secure lowest transportation and insurance rates and (iv) adequate to insure safe arrival of the products at the named destination and for storage and protection against weather. Seller shall mark all containers with necessary lifting, handling and shipping information and also purchase order numbers, date of shipment and the names of the consignee and consignor. An itemized packaging sheet must accompany each shipment unless otherwise specified. No partial or complete delivery shall be made hereunder prior to the date or dates shown unless PV Powered has given prior written consent.

8. F.O.B. POINT; RISK OF LOSS

Unless otherwise specifically provided on the face of this order, the products called for hereunder shall be delivered on an F.O.B. destination basis to PV Powered's designated plant or plants. Seller shall bear all risks of loss, damage, or destruction on the products ordered hereunder until final acceptance by PV Powered. Further, Seller shall also bear the same risks with respect to any product rejected by PV Powered, provided however, that in either case, PV Powered shall be responsible for any loss occasioned by the gross negligence of its employees acting within the scope of their employment.

9. WARRANTY AGAINST INFRINGEMENT AND ENCUMBRANCES

Seller warrants that all products supplied are free from claims of others with respect to royalties, patent rights, and mechanics' liens or other encumbrances or charges. Seller further warrants that the sale or use of products covered by this purchase order either alone, or in combination with other materials, will not infringe, misappropriate or contribute to the infringement or misappropriation of any patents, copyrights, trade secrets, trademarks, or other intellectual property rights either in the U.S.A. or foreign countries, and Seller shall indemnify, defend and hold PV Powered harmless from all liability, damages, settlements, costs and expenses for all claims and suits made or brought against PV Powered or any party selling or using any products provided hereunder for any alleged infringement of any patents, copyrights, trade secrets, trademarks, or other intellectual property rights by reason of the sale or use of said products either alone, or in combination with other products and to pay all expenses and fees of counsel which shall be incurred in connection with defending every such claim or suit and all related costs, damages, settlements and profits. The foregoing warranty and indemnification shall not apply to any portion(s) of the products supplied hereunder that are made in accordance with PV Powered's written custom specifications.

10. PRODUCT WARRANTY

(a) Seller warrants that all products delivered hereunder, including all components and raw materials incorporated therein as well as products corrected under this warranty, shall be free from defects in workmanship, materials, and where design is Seller's responsibility, be free from defects in design. Seller further warrants all products purchased hereunder shall be of merchantable quality and shall be fit and suitable for the purpose intended by PV Powered. Seller shall comply with the requirements of this Contract, including compliance with any drawings or specifications incorporated herein or to any samples furnished by Seller. The foregoing warranties are in addition to all other warranties, whether expressed or implied, and shall survive any delivery, inspection, acceptance, or payment by PV Powered.

(b) If any products delivered hereunder do not meet the warranties specified herein or otherwise applicable, PV Powered, may at its election (i) require Seller to promptly correct, at no cost to PV Powered, any defective or non-conforming products by repair or replacement, at the location as specified by PV Powered, or (ii) return such defective or non-conforming products at Seller's expense to Seller, and recover from Seller the order price thereof. The foregoing remedies are in addition to all other remedies at law or in equity or under this order for damages or otherwise, and shall not be deemed to be exclusive. All warranties shall run to PV Powered and to its customers.

(c) PV Powered's approval of Seller's product or design shall not relieve Seller of the warranties set forth in this clause, nor shall waiver by PV Powered of any drawing or specification requirement for one or more of the products constitute a waiver of such requirements for the remaining products

to be delivered hereunder unless so stated by PV Powered in writing. The provisions of this clause shall not limit or affect the rights of PV Powered under the clause hereof entitled "Inspection".

(d) Claims by PV Powered under this warranty may be exercised at any time within a minimum period of one (1) year after final acceptance, unless specifically agreed otherwise in writing.

11. INSPECTION

(a) All products purchased hereunder shall be subject to inspection and test by PV Powered to the extent practicable at all times and places during and after the period of manufacture and, in any event, prior to final acceptance by PV Powered. If inspection or test is made by PV Powered on Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of PV Powered's inspectors. No inspection or test made prior to final acceptance shall relieve Seller from responsibility for defects or other failure to meet the requirements of this order.

(b) In case any product is defective in material or workmanship, or otherwise not in conformity with the requirements of this order, PV Powered shall have the right either to reject it, require its correction, or conditionally accept it. PV Powered reserves the right to return such conditionally accepted products for credit within a reasonable period of time after receipt in the event that PV Powered determines that such products are unsuitable for its purposes. Any product which has been rejected or required to be corrected shall be replaced or corrected by and at the expense of Seller promptly after notice. If, after being requested by PV Powered, Seller fails to promptly replace or correct any defective product within the delivery schedule, PV Powered, at its sole discretion (i) may by contract, or otherwise, replace or correct such product, and charge to Seller the cost occasioned thereby, or (ii) may, without further notice, terminate this order for default in accordance with the clause hereof entitled "Termination For Default", or (iii) may utilize the deficient product and require an appropriate reduction in price.

(c) Notwithstanding any prior inspections or payments hereunder, all products shall also be subject to final inspection or acceptance at PV Powered's plant within a reasonable time after delivery. Seller shall provide and maintain an inspection system which is acceptable to PV Powered. Records of all inspection work shall be kept complete and available to PV Powered during the performance of this order and for such further period as PV Powered may determine.

(d) PV Powered may accept or reject shipments in accordance with its established inspection procedures. Where rejection of shipment is appropriate, based on PV Powered's normal inspection level, PV Powered may elect, at its option, to conduct 100% testing of such shipment. When such rejection endangers PV Powered's production schedules by reason of the fact that at least some of the products are necessary to meet such production schedules, then PV Powered, at its option, may charge Seller for the reasonable costs of an above-normal level of inspection up to and including 100% inspection of such shipment.

12. CHANGES

PV Powered may at any time, by a written order, and without notice to sureties or assignees, suspend performance hereunder, increase or decrease the ordered quantities, or make changes in any one or more of the following:

- (a) applicable drawings, designs or specifications,
- (b) method of shipment or packing, and/or
- (c) place of delivery

PV Powered reserves the right to reschedule and/or cancel, by written order, any shipment thirty (30) days prior to its receipt at no charge. The provisions of this paragraph 12 shall not limit or affect PV Powered's right to terminate this purchase order for default of Seller.

If any such change causes an increase or decrease in the cost of, or the time required for performance of, this order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the order shall be modified in writing accordingly. No claim by Seller for adjustment hereunder shall be valid unless asserted in writing accompanied by an estimate of costs, within fourteen (14) days from the date of receipt by Seller of the notification of change and, in any event, Seller must submit its final claim in writing with supporting documentation within the next succeeding twenty (20) day period. Failure of Seller to either (i) assert a claim within twenty (20) days, or (ii) submit a final claim within the next succeeding twenty (20) days as provided above, shall constitute an unconditional and absolute waiver by Seller of any right to make a claim for adjustment.

PV Powered reserves the right to verify claims hereunder and Seller shall make available to PV Powered, upon its request, all relevant books, records, inventories and facilities for its inspection and audit.

No changes will be honored by PV Powered or be effective unless included in a PV Powered written change order to this purchase order. All products are to be of the kind and quality ordered.

13. TERMINATION FOR DEFAULT

(a) It is understood and agreed that time is of the essence under this order or any extension thereof effected by any change order. PV Powered may, by written notice, terminate this order in whole or in part if Seller fails to: (i) make delivery of the products or to perform the services within the time specified herein, or any extension thereof by written change order or amendment, (ii) replace or correct defective products in accordance with the provisions of those clauses hereof entitled "Product Warranty" and "Inspection", or (iii) perform any of the other provisions of this order or to so fail to make progress as to endanger performance in accordance with the terms hereof, including delivery schedules.

(b) In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then PV Powered shall be entitled, at its sole option, to cancel any unfulfilled part of this purchase order without any liability whatsoever. PV Powered reserves the right in its sole discretion, at any time, to require adequate assurance of future performance in such form as PV Powered may specify, and if such assurance is not given to PV Powered promptly, PV Powered shall have the right to terminate this agreement in whole or in part forthwith.

(c) If this order is terminated pursuant to paragraph (a) or (b), PV Powered, in addition to any other rights provided herein, may require Seller to transfer title and deliver to PV Powered, in the manner, time and to the extent directed by PV Powered, (i) any completed products and (ii) such partially completed products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has produced or acquired for the performance of the terminated part. Seller shall grant PV Powered a royalty-free, assignable, non-exclusive license to use, and license others to use, Seller's designs, processes, drawings, and technical information and data substantially relating to the products terminated hereunder. Seller shall upon direction of PV Powered, protect and preserve such products and materials in Seller's possession or control. Payment for completed products delivered to and accepted by PV Powered shall be in an amount agreed upon by Seller and PV Powered in writing, however, such amount shall in no event exceed the order price per unit, and Seller's obligation hereunder to carry out PV Powered's direction as to delivery, protection and preservation shall not be contingent upon prior agreement as to such amount.

(d) If PV Powered issues a notice of termination for default and it is subsequently determined that PV Powered's termination under this clause is inappropriate, the termination shall be deemed by PV Powered and Seller to have been originally issued under, and the rights and liabilities of the parties hereto shall be governed by, paragraph 14 "Termination for Convenience."

(e) Failure of PV Powered to enforce any right under this paragraph 13 shall not be deemed a waiver of any other right hereunder. The rights and remedies of PV Powered under this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or equity or under this order.

14. TERMINATION FOR CONVENIENCE

(a) PV Powered may terminate work under this purchase order in whole, or from time to time, in part by giving written notice to Seller specifying the extent to which performance of work is terminated and the time at which such termination becomes effective.

(b) After receipt of such notice and except as otherwise directed by PV Powered, Seller shall stop all work under this order to the extent specified in the notice of termination.

(c) Within thirty (30) days after receipt of the notice of termination, Seller shall submit to PV Powered its written termination claim. Failure of Seller to submit its termination claim as provided herein shall constitute an unconditional and absolute waiver by Seller of any claim arising from PV Powered's notice of termination.

(d) Seller shall reasonably assess costs for raw materials, work in process and subassemblies as may be included within its termination claim to determine whether or not such items may be used by Seller for the manufacture of associated products or diverted for any other purpose, and to correspondingly reduce its termination claim by the value of such items. When settlement has been made, title to any of such items determined not usable by Seller and charged to PV Powered as the termination claim shall vest in PV Powered upon payment of the claim and shall forthwith be delivered to PV Powered.

(e) Seller's termination claim shall consist solely of the following:

(1) Completed products accepted by PV Powered and not theretofore paid for the sum determined by multiplying the number of such products by the unit price therefore as specified in this order, and,

(2) The total of (i) the cost of work in process not to exceed the average unit cost multiplied by the number of units in process, provided however, that such number of units in process shall not exceed that amount which has been previously placed on firm release by PV Powered and (ii) a sum, as profit on paragraph (e)(2)(i) at a rate not to exceed the rate used in establishing the original purchase price; provided, however, if it appears that Seller would have sustained a loss on the entire purchase order had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. Such amounts shall not include any costs attributable to Seller's products paid or to be paid under subparagraph (e)(1) above. The total sum to be paid to Seller under subparagraph (e)(1) and (2) above, shall not exceed the total order price minus (A) the amount of payments otherwise made and (B) the price of work not terminated under this order.

(f) In no event shall Seller be entitled to incidental or consequential damages, anticipated or projected profits, costs of preparing claims, attorneys' fees, costs of tooling or equipment or sales or agents commissions on the terminated quantity.

(g) PV Powered reserves the right to verify claims hereunder and Seller shall make available to PV Powered upon its request, all relevant books, records, inventories and facilities for its inspection and audit. In the event Seller fails to reasonably afford PV Powered its rights hereunder, then Seller shall be deemed to have relinquished its claim asserted under the provisions of this paragraph 14.

15. WAIVER

The failure of PV Powered to enforce, at any time, any of the provisions of this order, or to exercise any election or option provided herein, or to require at any time performance by Seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this order or any part thereof, or the right of PV Powered thereafter to enforce each and every such provision.

16. PV POWERED'S PROTECTION IN CONNECTION WITH WORK DONE AT ITS PLANT

Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents or subcontractors of Seller at PV Powered's plant or facilities and Seller shall defend, indemnify and hold PV Powered harmless from and against all loss, liability, and damages arising from or caused directly or indirectly by any act or omission of such agents, employees, or subcontractors of Seller. Seller shall maintain insurance against public liability and property damage, including, but not limited to, Employee's Liability and Compensation Insurance, as will protect PV Powered against the aforementioned risks and against any claims under any Workmen's Compensation and Occupational Disease Acts.

17. COMPLIANCE WITH LAWS

Seller warrants that no law, rule or ordinance of the United States, a state or any other governmental agency has been violated in the manufacture or sale of the products or in the performance of services covered by this order, and will defend, indemnify and hold PV Powered harmless from loss, cost or damage as a result of any such actual or alleged violation. Upon written request by PV Powered, Seller agrees to execute and furnish a certification of compliance, which may be on PV Powered's form and which shall certify compliance with any applicable federal, state or local laws or regulations, including but not limited to, FLSA, EEO, OSHA, and any Economic Control statutes or regulations.

Seller warrants specifically that is in compliance with the requirements of Executive Order 11246, 11625, 11758, Section 503 of the Rehabilitation Act of 1973, Executive Order 11701 and the Vietnam Era Veterans Readjustment Act of 1974.

18. GRATUITIES

Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of PV Powered any gratuity with a view toward securing any business from PV Powered or influencing such person with respect to the terms, conditions or performance of any contract with or order from PV Powered. Any breach of this warranty shall be a material breach of each and every contract between PV Powered and Seller.

19. NON-DISCLOSURE OF CONFIDENTIAL MATTER AND PUBLICITY

Products purchased pursuant to PV Powered's specifications or drawings shall not be quoted for sale to others without PV Powered's prior written authorization. Such specifications, drawings, samples, or other data furnished by PV Powered shall not be used or disclosed by Seller except as expressly provided herein, shall be treated by Seller as confidential

information, shall remain PV Powered's property and shall be promptly returned to PV Powered upon request. Any publicity regarding this order (including, without limitation, pictures, descriptions or samples) is prohibited except with PV Powered's prior written approval.

20. ASSIGNMENTS

Seller shall not delegate any duties or obligations, nor assign any rights or claims under this order (including, without limitation, the right to receive moneys due hereunder), without the prior written consent of PV Powered. Any purported delegation or assignment, without such consent, shall be null and void.

21. PV POWERED FURNISHED PROPERTY

All tools, drawing, specifications and other materials furnished by PV Powered for use in the performance of this order shall remain the property of PV Powered (or the Government, as the case may be), shall be used by Seller in the performance of this order only, in accordance with the requirements of the order relating to such use, and shall be returned to PV Powered when requested upon the completion or termination of the order to the extent not previously delivered to PV Powered. Seller agrees to exercise reasonable care in the safeguarding and preservation of all PV Powered furnished property and assumes all responsibility for loss, damage or destruction while such property is within its possession or control.

22. PATENT LICENSE

Seller, as part consideration for this purchase order and without further cost to PV Powered, hereby grants and agrees to grant to PV Powered, and to the extent requested by PV Powered an irrevocable, non-exclusive, royalty-free, worldwide right and license to use, import, sell, manufacture and cause to be manufactured, products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with the performance of this purchase order.

23. SPECIAL TOOLING

If special tooling used in the performance of this order has been charged to this order, or to this order and other orders placed by PV Powered, title to such special tooling shall vest in PV Powered, at the option of PV Powered. Such tooling is to be used only in the performance of such purchase orders unless otherwise approved by PV Powered. Seller agrees that it will follow normal industrial practice in the identification and maintenance of the property control records on all such tooling, and will make such records available for inspection by PV Powered or the Government at all reasonable times. After the termination or completion of such order(s) and upon the request of PV Powered, Seller shall furnish a list of such tooling in the form requested and shall make such tooling available for disposition by PV Powered.

24. GOVERNMENT CONTRACTS

If this order is issued for any purpose which is either directly or indirectly connected with the performance of a prime contract with the Government or a subcontract thereunder, each of the named clauses, as set forth in the Acquisition Regulations in effect on the date of this order, is incorporated herein by reference. Seller will comply with the requirements of the clauses so incorporated in such manner as will enable PV Powered to meet its obligations arising out of the Government prime or subcontract.

25. FORCE MAJEURE

In the event of an actual or potential delay or failure of performance because of acts of God, or other causes beyond Seller's control, including but not limited to labor disputes, Seller shall immediately give notice thereof to PV Powered. In the event of any of the foregoing, PV Powered has the option of either (i) extending time of performance, or (ii) terminating the uncompleted portion of the order at no cost to PV Powered.

26. CHANGES IN PROCESS OR METHOD OF MANUFACTURING

Seller agrees that it will not invoke any changes in process or method of manufacturing affecting form, fit or function during the term of this order without PV Powered's prior written consent. Seller further agrees that any contemplated changes in process or method of manufacturing affecting form, fit or function will be submitted to PV Powered in sufficient time to enable PV Powered a reasonable opportunity in which to evaluate such changes.

27. NOTICE

Any notice required or permitted under this Contract shall be given in writing and shall be deemed effectively given: (i) immediately upon personal delivery, e-mail or confirmed fax transmission to the parties to be notified, (ii) one (1) day after deposit with a commercial overnight courier with tracking

capabilities, or (iii) three (3) days after deposit with the United States Postal Service, by registered or certified mail, postage prepaid and addressed as follows, or such other address that PV Powered or Seller may advise from time to time.

To PV Powered at: 150 SW Scalehouse Loop
Bend, OR 97702
Attn: CFO and Purchasing
Fax: 541-383-2348
E-mail: Rogerlaubacher@pvpowered.com

To Seller at: The address as it appears on the purchase order

28. SEVERABILITY

The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

29. GOVERNING LAW; INTERPRETATION

This order shall be governed, controlled, interpreted and defined by and under the laws of the State of Oregon and the United States, without regard to the conflicts of laws provisions thereof and without regard to the United Nations Convention on International Sales of Goods. This order shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not made a part of the order by its express terms. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

30. ATTORNEYS' FEES

In any action or proceeding to enforce the rights under this Contract, the prevailing party will be entitled to recover costs and attorneys' fees.