

ENDURANCE SOLAR SOLUTIONS, INC.
GENERAL TERMS AND CONDITIONS OF SALE

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods ("**Goods**") by Endurance Solar Solutions, Inc., a New Hampshire corporation ("**Seller**"), to [NAME OF BUYER], a [STATE OF FORMATION] [TYPE OF ENTITY] ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, these Terms shall prevail to the extent they are inconsistent with the terms and conditions of said contract.

(b) The accompanying quotation and/or purchase order, as the case may be (each a "**Sales Confirmation**" and together with these Terms the "**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 of 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.

2. Quotations, Orders, and Confirmation.

(a) Quotations made by Seller in whatever form are not binding upon Seller and merely constitute an invitation to Buyer to place an order. All quotations issued by Seller are revocable and subject to change without notice. Orders are not binding until accepted by Seller in writing ("**Seller's Confirmation**"). Seller is always entitled to refuse an order without indication of its reasons.

(b) Oral statements and agreements made by Seller's employees, officers, representatives and/or agents are not binding upon Seller unless and only to the extent that such oral statements are confirmed or made in writing by duly authorized representative(s) of Seller.

(c) Unless the Specifications (as defined below) have been agreed to be firm for a certain period or quantity of Goods, Seller reserves the right to change or modify the Specifications, construction and/or manufacture of Goods and to substitute materials used in the production and/or manufacture of Goods from time to time upon written notice. Buyer acknowledges that data in Seller's catalogues, specification sheets and other descriptive publications distributed or published on its websites by Seller, may accordingly be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of Seller in relation to the Specifications, the Goods and the use thereof shall be furnished for the accommodation of Buyer only.

3. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Seller's Confirmation. Unless the prices have been indicated as firm by Seller in Seller's Confirmation, Seller is entitled to increase the price of the Goods still to be delivered, if the cost price determining factors, have been subject of an increase. These factors include but are not limited to raw and auxiliary materials, energy, products obtained by Seller from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Seller shall notify Buyer of any such increase.

(b) Unless agreed otherwise, Seller's prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Goods or the delivery thereof ("**Taxes**"). The amount of any Taxes levied in connection with the sale of the Goods to Buyer shall be for Buyer's account and shall be added to each invoice or separately invoiced by Seller to Buyer. If Seller grants a discount, this discount only relates to the delivery specifically mentioned in Seller's Confirmation.

4. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer and in US dollars.

(b) Buyer shall pay interest on all late payments at the higher of the rate of 12% per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly (the "**Late Fee**"). Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. 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 and such failure continues for thirty (30) days following written notice thereof. Each payment made shall be credited first, to any costs of collection incurred by the Seller, second, to any accrued and outstanding Late Fees, and then, to the balance of the oldest outstanding invoice.

(c) Buyer shall notify Seller in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute) within eight (8) days from the date of receipt of invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes, and shall pay all undisputed amounts due under such invoices within the period set forth in Section 4(a). The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Buyer's obligation to pay all due and

undisputed invoice amounts. 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.

5. Delivery.

(a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit. Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.

(b) Unless otherwise agreed in writing by the parties, all deliveries of goods shall be Ex Works Seller's production facility, as the term Ex Works shall have the meaning assigned to same in the latest version of INCOTERMS published by the International Chamber of Commerce at Paris, France, at the time of Seller's Confirmation (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within three (3) days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) 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 Buyer's purchase order.

6. Cancellation.

(a) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

(b) Buyer's wrongful non-acceptance or rejection of Goods or cancellation or repudiation of Seller's Confirmation shall entitle Seller to recover, in addition to any other damages caused by such action (i) in the case of Goods which reasonably cannot be resold by Seller to a third party, the price of such Goods; or (ii) in the case of Goods which can be resold by Seller or where an action for the price is not otherwise permitted

by law, damages equal to fifty percent (50%) of the price for the Goods as liquidated damages.

7. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within seven (7) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period with respect to defects which would be apparent from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim was or ought to have been apparent, but in no event later than six (6) months from the date of delivery of the Goods, and in each case, Buyer shall furnish written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; (ii) product's label or packaging incorrectly identifies its contents; or (iii) product does not materially conform to the agreed upon Specifications. Use or processing of the Goods shall be deemed to be an unconditional acceptance of the Goods and a waiver of all claims in respect of the Goods.

(b) A determination of whether or not delivered Goods conform to the agreed specifications for the Goods as stated in Seller's Confirmation or, in the absence of agreed specifications, to the most recent specifications held by Seller at the time of delivery of the Goods (the "**Specifications**"), shall be done solely by analyzing the samples or records retained by Seller and taken from the batches or production runs in which the Goods were produced in accordance with the methods of analysis used by Seller..

(c) If Buyer timely notifies Seller of any Nonconforming Goods, 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. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. 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, the replaced Goods to the Delivery Point.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 7 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

(e) Defects in parts of the Goods stated in Seller's Confirmation do not entitle Buyer to reject the entire delivery of the Goods. Complaints, if any, do not affect Buyer's obligation to pay as set forth in Sections 3 and 4. Upon receipt of a notice of defect,

Seller is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.

8. Title and Risk of Loss.

(a) Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. 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 New Hampshire Uniform Commercial Code.

(b) Goods for which delivery is suspended pending payment by Buyer, as well as Goods of which delivery is wrongfully rejected or not accepted by Buyer, shall be held and stored by Seller at the risk and expense of Buyer.

(c) As long as title to the Goods remains with Seller pursuant to this paragraph 8, Buyer is entitled to use the Goods solely to the extent required in its ordinary course of business, and, to the extent possible, shall (i) keep the Goods separate and in a clearly identifiable manner; (ii) notify Seller immediately of any claims by third parties which may affect the Goods; and (iii) adequately insure the Goods.

9. Limited Warranty.

(a) Seller warrants to Buyer that on the date of delivery such Goods will materially conform to the Specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship.

(b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 9(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by the warranty in Section 9(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b)**

WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 9(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller in accordance with Section 7; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in Section 9(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 9(d) and Section 9(e) above, with respect to any such Nonconforming Goods, 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. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. 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, the replaced Goods to the Delivery Point.

(g) **THE REMEDIES SET FORTH IN SECTION 9(e) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 9(a).**

10. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH**

DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) 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 THAT ARE SUBJECT OF THE CLAIM.

(c) No action by Buyer shall be brought unless Buyer first provides written notice to Seller of any claim alleged to exist against Seller within thirty (30) days after the event complained of first becomes known to Buyer and an action is commenced by Buyer within twelve (12) months after such notice.

11. **Indemnification.** Buyer shall indemnify and hold Seller harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Goods, Buyer's use thereof and/or Buyer's use or application of any information disclosed or provided by or on behalf of Seller.

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

13. **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 the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

14. **Assignment.** Neither party shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party, provided however, that Seller may assign such rights and obligations, wholly or partly, to any of its parent companies, subsidiaries or affiliates or to a third party acquiring all or a substantial part of Seller's assets or business relating to the Goods. 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.

15. **Suspension, Termination.**

(a) If (i) Buyer is in default of performance of its obligations towards Seller, (ii) if Seller has reasonable doubts with respect to Buyer's performance of its obligations to Seller and Buyer fails to provide to Seller adequate assurance (such as by means of ongoing credit approval) of Buyer's performance before the date of scheduled delivery, or in any case within thirty (30) days of Seller's demand for such assurance; (iii) if Buyer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Buyer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Buyer or (iv) if Buyer makes any assignment for the benefit of its creditors, then, without prejudice to any other rights of Seller, Seller may by notice in writing forthwith (x) demand re-delivery and take repossession of any delivered Goods which have not been paid for, for which purpose Buyer hereby grants an irrevocable right and license to Seller to enter upon all or any of the premises where the Goods are or may be located and all costs relating to the recovery of the Goods shall be for the account of Buyer; and/or (y) suspend its performance or terminate Seller's Confirmation for outstanding delivery of Goods unless Buyer makes such payment for Goods on a cash in advance basis or provides adequate assurance of such payment for Goods to Seller; without any intervention of courts being required and without liability for Seller of whatsoever kind arising out of or in connection with such suspension or termination, or (z) terminate this Agreement.

(b) In the event Seller suspends or terminates any Agreement pursuant to Section 14(a), all outstanding claims of Seller shall become due and payable instantly in proportion to the quantity of Goods delivered to Buyer and not re-possessed by Seller.

16. 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 right, 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. 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.

18. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New Hampshire without giving effect to any choice or conflict of law provision or rule (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New Hampshire.

19. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New Hampshire, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

20. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of sixty (60) consecutive days following written notice given by it under this Section 19, either party may thereafter terminate this Agreement upon written notice.

21. Survival. 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 including, but not limited to, the following provisions: Compliance with Laws, Confidential Information Governing Law, Submission to Jurisdiction and Survival.

22. Relationship of the Parties. 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.

23. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received

from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

24. 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.

25. Notices. All notices, requests, 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.