

SOLAR MANUFACTURING, INC. PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITION:** Reference to "products" herein shall include, without limitation, goods, services, materials, work and data, expressly or impliedly ordered herein or delivered hereunder, or any part hereof. SPOC refers to a Supplemental Purchase Order Condition. If a conflict occurs between this document and an associated SPOC then the terms of the SPOC shall govern.
2. **OFFER TO PURCHASE/ACCEPTANCE:** This Purchase Order constitutes an offer by Buyer to buy from Seller on the terms and conditions set forth on the face of the purchase order and herein (hereinafter collectively referred to as "Order") and becomes a binding contract on Seller (i) on such terms and conditions either by acknowledgment, the commencement of performance hereof or any other conduct manifesting assent to the Order. At any time prior to acceptance, Buyer may revoke this Order. Acceptance of this Order is strictly limited to the terms and conditions hereof or otherwise communicated as a SPOC notwithstanding any additional or different terms accompanying or set forth in Seller's acknowledgment or any other document or communication and Buyer shall not be bound by any such different or additional terms unless Buyer provides to Seller written acceptance of such different or additional terms. The prices for the products will be specified on the face of this Order. However, if the price is omitted, this Order is to be filled at the lower of the price last quoted or charged or at the lowest prevailing market price at the time of acceptance of the Order.
3. **INVOICES/PAYMENT TERMS:** Invoices shall be submitted in duplicate and shall contain purchase order number, item number, description or items, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. A bill of lading or express receipt shall accompany each invoice and shall, if applicable, state the release price. Buyer reserves the right to withhold payment of invoices until the products have been received and accepted and does not waive the right to deduct the cash discount. The cash discount period to Buyer (if any) shall commence on the date that the products are delivered to and accepted by the Buyer. Additionally, Buyer shall be entitled to set off any amounts owing at any time from Seller to Buyer against amounts owing at any time by Buyer to Seller. Payment terms will be Net forty-five (45) days unless other terms are specified on the face of this Order. Payment of the invoice shall not constitute acceptance of the products and shall, in addition to all other remedies available hereunder or at law or in equity, be subject to adjustments for errors, shortages, defects in the products, or other failures to meet the requirements of this Order.
4. **TIME:** Time is of the essence hereof and if products are not delivered within the time specified in this Order, or within a reasonable time if no time is specified, Buyer may, without liability to Seller, and in addition to all other remedies at law or in equity, (a) cancel this Order and refuse to accept such products, (b) purchase like products elsewhere and charge Seller with any additional costs and losses incurred as a result thereof, including consequential damages such as losses resulting from obligations to third parties in reliance upon Seller's timely performance, or (c) cause Seller to ship the products by the most expeditious means of transportation at its sole cost and expense.
5. **TITLE/RISK OF LOSS:** The property in or title to, and risk of loss of products purchased under this Order shall rest in Seller until such products are delivered to the F.O.B. Buyer's destination unless otherwise specified in the Order. However, even if so specified otherwise, if products are of an explosive, inflammable, toxic, or otherwise dangerous nature, Seller shall defend and indemnify Buyer against any damages caused by such products or by the transportation thereof prior to the completion of unloading at Buyer's facility. In addition to all other risks assumed hereunder, Seller assumes the following risks: (a) all risks of loss or damage to all products and to third parties and their products until delivery thereof as herein provided; (b) all risk of loss or damage to any property received by Seller, from or held by Seller or its supplier, for the account of Buyer until such properties have been delivered to Buyer as provided herein; and (c) all risk of loss or damage to any of the products or part hereof rejected by Buyer, from the time of shipment thereof to Seller.
6. **INSPECTION, NOTIFICATION & RIGHT OF ACCESS:** Seller shall not ship nonconforming product nor make a report or publication of nonconforming test results without notifying Buyer beforehand. Buyer shall have forty-five (45) days after receipt of the products to accept or reject (at Seller's risk and expense) the products furnished under this Order. Acceptance of any non-conforming shipment under this Order shall not be deemed a waiver by the Buyer of its right to require that future shipments be in accordance with the terms of this Order. The Buyer, its Customers and/or appropriate Regulatory Agencies shall have the right to reasonable entry and access to any of the Seller's premises including review of records and materials to observe, inspect and verify the Seller's satisfactory compliance to the requirements of the Order and the quality of the contracted work.
7. **OVERSHIPMENTS:** Buyer shall pay only for maximum quantities ordered in this Order. Seller shall pay return shipping charges for excess quantities delivered to Buyer and the risk of loss with respect to such products shall remain with Seller at all times.
8. **WARRANTIES/INDEMNITY:** Seller warrants that all products delivered hereunder shall (i) conform to the descriptions and specifications set forth or referred to herein or otherwise communicated to Seller by Buyer in writing prior to delivery, (ii) be of merchantable quality, (iii) be free from defects (including latent and patent defects) in workmanship, material and design, and (iv) be fit for any use intended by Buyer which Seller knows or has reason to know. The warranties set forth above are in addition to and not in lieu of all warranties arising by operation of law. Should Buyer request, Seller, at its sole expense, shall repair or replace F.O.B. Buyer's facility, all or any part of any product covered by this Order which proves within one (1) year from the date it is placed in operation, but no later than eighteen (18) months from the date of shipment, to be defective in material, workmanship, or design, unless Seller's standard warranty or service guarantee is for a longer period, in which case the warranty hereunder shall last for the duration of Seller's standard warranty. This warranty of repair or replacement does not constitute a waiver of any other rights of Buyer, express or implied herein, at law or in equity, and shall run to Buyer, its customers and users of its products and shall survive inspection and acceptance. Seller further acknowledges and agrees (as evidenced by acceptance of this Order), that Seller has assigned all rights, title and interest in and to any and all manufacturers' warranties. Seller agrees to indemnify and hold Buyer, its officers, directors, agents, and employees harmless from any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses) arising out of (i) any defect (whether latent or patent) in any product sold hereunder; (ii) failure of any products to comply with any warranty of Seller and (iii) any other warranties provided by Seller to Buyer hereunder.
9. **TERMINATION FOR CONVENIENCE:** Buyer may terminate all or any part of this Order at any time for its convenience, in which event, Buyer's entire obligations shall be to reimburse Seller for (a) those products actually shipped and accepted by Buyer up to the date of termination and (b) reasonable costs incurred by Seller for those unfinished products, which were being specifically manufactured for Buyer (and which are not standard products of the Seller), as of the date of termination. In no event shall Buyer be responsible for loss of anticipated profits or incidental or consequential damages as a result of such termination, nor shall in any event such reimbursement exceed the Order price.
10. **CANCELLATION FOR INSOLVENCY:** In the event of any proceedings, voluntary or involuntary, in bankruptcy, insolvency or other similar law by or against Seller, in the event of the appointment with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, trustee or other charge, Buyer shall be entitled to in addition to any other right or remedy at law or in equity, cancel any unfilled part of this Order without any liability whatsoever.
11. **EXCUSABLE DELAYS:** Neither party shall be liable for damages for delay arising out of causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, nor shall such delay affect the remainder of this contract. Seller will notify Buyer in writing within ten (10) days after the beginning of any cause for an excusable delay or such shall be deemed waived.
12. **DISCLOSURE OF ORDER:** Seller shall not, without the prior written consent of Buyer, in any manner advertise or publish the fact that Buyer has placed this Order with Seller.
13. **BUYER'S INFORMATION:** Any specifications, designs, drawings, sketches, models, samples, patterns, technical information or data, written, oral or otherwise (all hereinafter called "information"), furnished to or left with Seller by Buyer in contemplation hereof or in connection herewith shall remain Buyer's sole property. All copies of such information in written, graphic or other tangible form shall be returned to Buyer or destroyed by Seller, as Buyer specifies. All of Buyer's information shall be kept confidential by Seller and shall be used only to the extent necessary to perform its obligations hereunder.
14. **SELLER'S INFORMATION & RECORD RETENTION:** No information furnished by Seller to Buyer hereunder or in contemplation hereof shall be deemed to be confidential or proprietary insofar as Buyer is concerned unless specifically agreed to by Buyer in writing. Seller shall maintain records of product description and conformance to Purchase Order requirements for a minimum of seven (7) years.
15. **PATENT LICENSE:** Seller, as part consideration for this Order and without further cost to Buyer, hereby grants to Buyer an irrevocable, non-exclusive, worldwide royalty-free right and license (with the right to sublicense) to use, 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 Order.
16. **INFRINGEMENT INDEMNITY:** Seller agrees to indemnify Buyer, its officers, directors, employees, agents and its customers and other users of the products and their respective successors and assigns against any liabilities, claims, demands, losses, damages, costs and expenses, including costs and expenses (including reasonable attorneys' fees and costs), for or by reason of any actual or alleged infringement of any patent, copyright, trademark or any other proprietary rights arising out of the manufacture, use, sale, delivery or disposal of the products furnished under this Order. Buyer shall notify Seller, as soon as practicable, of any claim of infringement received by it. The foregoing shall not apply to any infringement resulting solely from Seller's adherence to written specifications or drawings submitted by Buyer.
17. **TAXES/TARIFFS/IMPORT EXPORT FEES:** Unless otherwise provided herein, prices shown on this Order are deemed to include all taxes not expressly imposed by law on Buyer of the products ordered hereunder and Seller shall indemnify and hold harmless Buyer for all losses, damages, claims, costs and expenses (including reasonable attorneys' fees and expenses) arising out of Seller's failure to pay any and all such taxes or disclose any applicable tariffs or import/export fees.
18. **CHANGES:** Buyer shall have the right to make, from time to time and without notice to any sureties or assignees or other third parties, changes as to packing, testing, destinations, designs, specifications and delivery schedules, but no additional charges shall be allowed unless authorized in writing by Buyer. If such changes affect the amount to be paid by Buyer, Seller shall notify Buyer immediately and negotiate an adjustment. Notwithstanding the foregoing, if Seller should fail to deliver to Buyer in writing a detailed statement of changes in the price as a result of such changes within five (5) business days after notice of the changes, then Seller shall not be entitled to any modification of the price for such changes.
19. **COMPLIANCE WITH LAWS:** Seller shall in the performance of this Order comply with all laws, ordinances, rules and regulations, federal, state and local, applicable thereto. Seller represents, warrants and certifies to Buyer that the products purchased by Buyer hereunder were produced in compliance with all applicable laws, rules, and regulations, including (without limitation) (a) Fair Labor Standards Act of 1938, as amended, (b) Sec. 503 of the Rehabilitation Act of 1973 (41 CFR 60-741.4), (c) Sec. 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (CFR 60-250.4), (d) Executive Order 11246, Equal Employment Opportunity, as amended (30 CFR 60-1.4), (e) the United States Occupational Safety and Health Act of 1970 and all regulations and rules thereunder and (f) all applicable state, federal and local environmental laws, rules and regulations (including without limitation the Toxic Control Substances Act, the Clean Air Act and the Clean Water Act and the rules and regulations promulgated thereunder). Seller shall indemnify and hold harmless Buyer, its officers, directors, employees and agents from any and all claims, demands, losses, damages, costs and expenses (including reasonable attorneys' fees and costs) arising out of its failure to comply with this Section.
20. **PRODUCTS INDEMNIFICATION/INSURANCE:** Seller agrees to indemnify, defend and save harmless Buyer, its officers, directors, employees, agents, customers and other users of the products, and their respective successors and assigns from and against all claims, losses, damages, costs and expenses (including reasonable attorneys' fees and costs) made by any person or persons, including but not limited to its employees, subcontractors and their employees, for property damages and damages because of bodily injury, sickness or disease, including death, arising out of the products herein ordered and Seller's obligations hereunder. Seller shall carry comprehensive general liability insurance, including contractual and product liability coverage with minimum limits acceptable to the Buyer and workers' compensation insurance coverage in compliance with applicable laws. Seller shall, at the request of the Buyer, supply certificates evidencing such coverage.
21. **INDEPENDENT CONTRACTOR:** The relationship of Buyer to Seller established hereunder is solely that of an independent contractor. Nothing herein shall be deemed to establish a partnership, joint venture or other like relationship between the parties for any purpose.
22. **SUBCONTRACTING AND ASSIGNMENT:** Seller shall not assign this Order or any part thereof, or subcontract or delegate any performance hereunder, without first obtaining Buyer's written consent. Any such assignment, delegation or subcontracting without Buyer's prior written consent shall be void.
23. **NON-WAIVER:** The failure of Buyer 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, and shall not affect the right of Buyer thereafter to enforce each and every provision.
24. **ENTIRE AGREEMENT:** This Order, when accepted by Seller, is the entire agreement of the parties, and may not be orally modified. Any shipment of products or performance of services by Seller shall be deemed to be only upon the terms and conditions contained herein, except as Buyer may expressly consent in writing to such modifications or alterations.
25. **APPLICABLE LAW:** This Order as accepted shall be governed by the laws of the Commonwealth of Pennsylvania without regard to conflicts of law principles.
26. **SEVERABILITY:** In the event that any provision of this contract is declared invalid, the remainder of its provisions shall not be affected thereby.
27. **SURVIVAL, ETC:** Sections 4, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, and 20 (together with the other provisions that may be reasonably interpreted as surviving this contract) shall survive termination or cancellation hereof or acceptance of the products and payment thereof. The indemnification obligations set forth herein are in addition to and not in lieu of all other rights and remedies available to the parties.