

SMA America, LLC Standard Terms and Conditions

This order and acknowledgement, and future orders from SMA, are subject to the following terms and conditions as well as those appearing on the reverse side hereof (the "Agreement"). By accepting this Agreement the customer agrees to be bound thereby. If the terms of this Agreement contradict the terms of any purchase order or order acknowledgment, the terms of this Agreement will take precedence. No boilerplate terms in either party's order tracking documents will apply.

1. PRICE AND TERMS OF PAYMENT

- 1.1 **Pricing.** Unless otherwise stated in this Agreement, pricing will be as stated on the order/acknowledgement form except for orders whose requested delivery date is more than 90 days after the confirmed order date. Pricing for orders with requested delivery dates more than 90 days from the confirmed order date will be priced at the applicable rates at the time of shipment.
- 1.2 **Payment Terms.** Customer will pay SMA in US dollars 30 days from the date printed on the invoice, unless otherwise agreed to in a writing signed by SMA.
- 1.3 **Past Due Accounts.** Past Due Accounts are subject to a monthly interest charge of 1.5 (18 % annual interest rate) for the invoice amount (subject to applicable law). All finance charges for overdue payments will be assessed on the Customer's monthly statements, and shall be due upon receipt. In no event shall the terms of this order/acknowledgement require payment in excess of the maximum amount permitted by law. Any such excess which may be collected from Customer shall at final payment of all amounts owed be applied as a credit against future invoices of Customer or returned by SMA to Customer. Drop ship charges are \$25.00 per shipping address.

2. TAXES

- 2.1 **Taxes.** Unless otherwise indicated, no sales, use, retailer occupation, service, occupation, service use, or similar taxes are included in SMA's prices. Customer agrees to pay any taxes which are paid or payable, or assessed in connection with this order.

3. SHIPMENT

- 3.1 **Shipment Terms.** Unless otherwise stated in this Agreement or as agreed upon in writing by SMA, all shipments are F.O.B. SMA plants or warehouses from which material is shipped.
- 3.2 **Packing and Shipping.** SMA will pack and ship products delivered hereunder in accordance with its general practice unless specific instructions are supplied by Customer. Any additional costs incurred by SMA as a result special packaging and/or shipping requests will be paid by entirely by Customer.

4. SECURITY INTEREST

- 4.1 **Purchase Money Security Interest.** SMA or its assigns shall have purchase money security interest in the products purchased hereunder until all charges including installation and/or service charges, if any, are paid in full. Customer agrees to convey power of attorney to SMA for the sole purpose of execution of documents necessary to perfect the Purchase Money Security Interest. Further, Customer agrees to execute and deliver, so that SMA may file or record any documents reasonably requested by SMA for the purpose of protecting and/or perfecting said security interest.

5. TITLE AND RISK OF LOSS

- 5.1. Title and risk of loss shall pass to Customer upon delivery to the carrier by SMA.

6. EQUIPMENT WARRANTY

- 6.1 **Warranty Period.** SUBJECT TO THE EXCLUSIONS SET FORTH IN THIS SECTION 6 AND IN SECTION 7 HEREOF ENTITLED "WARRANTY EXCLUSIONS" The warranty period for SMA products is 24 months from the date of delivery of all SMA equipment, excluding Photovoltaic Inverters, unless a different period is agreed to in writing by SMA. All Photovoltaic Inverters shall have a warranty period of 60 months from the date of delivery. SMA warrants to Customer that the products sold hereunder will be in good working order in accordance with SMA's standard specifications upon delivery to Customer. SMA will at its sole option either repair, replace, or refund the purchase price of the non-conforming product (or component thereof) if the product or component becomes inoperable due to a defect in materials or workmanship during the specified warranty period. Repair parts or replacement products may be new, remanufactured, or refurbished, at the sole discretion of SMA. SMA is not responsible for, and Customer hereby agrees to pay, any costs associated with the installation, removal, reinstallation, or transportation to SMA, or an authorized SMA service representative of the product, or any components thereof for warranty service.
- 6.2 **Extended Warranty.** No extension of the warranty period, beyond that stated in this Agreement, is agreed to by SMA unless specifically agreed to in writing by SMA. Any costs arising from Customer's contractual requirements for extension of said warranty shall be paid by Customer, including any liquidated damages.

6.3 **No Other Warranty.** Except as specifically provided in this Agreement or as agreed to in writing by SMA, the warranty shall only apply as long as the Customer owns the product. EXCEPT AS SPECIFICALLY MADE HEREIN, SMA, AND IT'S AFFILIATED SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH THE SOLE EXCEPTION OF A WRITTEN EXTENSION FOR THE WARRANTY PERIOD AS PROVIDED IN ITEM B HEREIN, THE WARRANTY PROVIDED HEREIN IS IN LIEU OF ANY OTHER WRITTEN WARRANTY WHICH MAY DELIVERED WITH PRODUCTS DELIVERED HEREUNDER.

7. WARRANTY EXCLUSIONS

7.1 **Warranty Exclusions.** The warranties provided herein do not cover maintenance required to repair damages, malfunctions, or service failures caused by:

- (a) Failure of Customer or Installer to follow SMA's installation, operation, or maintenance instructions.
- (b) Customer's repair, modification, or movement of the product, or incorrect attachment to other non-SMA products.
- (c) Abuse, misuse, or negligent acts; and;
- (d) Power failure surges, lightning, fire, flood, pest damage, accident, action of third parties, and other events outside of SMA's reasonable control or not arising from normal operating conditions.

7.2 **Time and Materials Service.** SMA may agree to perform maintenance or other services on a time and materials basis.

8. ORIGINAL EQUIPMENT MANUFACTURER'S (OEM'S) WHOLESALERS AND RETAILERS

8.1 **OEM Customers.** If Customer is an OEM, or if otherwise noted in this Agreement, the limitations of the warranty to the original owner shall not apply. In such case the Customer may obtain warranty service for products sold hereunder to the extent set forth in Section 7 and 8 provided the products have been sold only in the ordinary course of Customer's business or as a component of Customer's product, and provided further, any claim for warranty service hereunder shall be made exclusively by the Customer.

8.2 **Resale Customers.** SMA resellers agree to adhere to the additional terms in the attached Reseller Program Addendum.

8.3 **Consumer Resale.** If in the ordinary course of the Customer's business the product purchased hereunder is resold to a "consumer" within the meaning of the Magnuson-Moss Warranty Act, the original consumer purchaser shall be entitled to the rights provided under the SMA Limited Warranty provided for such product expressed in sections 6 and 7 above. It shall be the responsibility of the Customer to insure that a copy of such Limited Warranty and all product installation, operation, and maintenance instructions are furnished to the Consumer at the point of sale.

8.4 **Customer Indemnity.** Customer hereby agrees to indemnify and hold harmless SMA and its affiliated companies against any claims, losses, damages, or expenses arising from Customer's failure to deliver the warranty information detailed herein.

9. RETURNED GOODS

9.1 **Return Policy.** No goods will be accepted for warranty service by SMA unless prior written authorization is obtained from SMA in the form of an SMA Return Merchandise Authorization ("RMA"). Any returned good must be accompanied by the RMA form or RMA number. Customer hereby agrees to indemnify and hold harmless SMA and its affiliated companies against any claims, losses, damages, or expenses arising from loss of such merchandise returned without first obtaining the RMA form or RMA number discussed herein.

10. CHANGES

10.1 **Specialized Product Orders.** If an SMA quotation is premised on products to be customer designed and produced for special application, the quoted price is applicable unless the specifications are changed by the Customer. Such changes in specifications must be agreed to in writing by SMA prior to acceptance. If changes in fabrication or design are required by reason of incorrect information of furnished, or deviation from prints or other information submitted by Customer, it's representatives, or agents, the cost of such changes shall be at Customer's expense and shall be added to the quoted price. If the specification, as modified, can not be met by SMA, SMA may, at its option, terminate the order subject only to Customer's obligation to reimburse SMA as provided in Section 14.

11. FAILURE TO PAY

11.1 **Remedies for Breach of Payment Terms.** In the event Customer fails to fulfill the terms of payment or if SMA shall have any doubt at any time as to Customer's financial responsibility, SMA may decline to make any further deliveries except upon receipt of payment in cash or other security satisfactory to SMA. In addition, SMA shall have all rights and remedies at law or equity available under California law to collect any unpaid amounts

owed by Customer. Customer hereby agrees to indemnify and hold harmless SMA and its affiliated companies against any claims, losses, damages, or expenses arising from a refusal to make deliveries resulting from Customer's failure to pay described herein.

12. ADVERTISING

12.1 **Advertising Policy.** Customer is authorized to advertise its relationship with SMA and Customer is encouraged to use SMA's products in its advertising. However, SMA retains the right to revoke the consent granted in this section at its sole discretion with or without cause.

13. FIELD INSTALLATION AND SERVICE

13.1 **Installation and Service.** All products are sold exclusive of field installation, use tracking, etc., except as specifically provided in this Agreement or as otherwise agreed upon by SMA in writing.

14. CANCELLATION AND RETURNS

14.1 **Order Cancellation.** Except as agreed to by Customer and SMA in writing, Customer may cancel orders for products specifically identified in the SMA pricing schedules (stock products), subject to cancellation charges set forth below:

(a) 15 percent of total order amount if cancellation is received by SMA within 14 days before confirmed ship date.

(b) 10 percent of total order if cancellation is received 15 to 30 days before confirmed ship date.

(c) No charge when cancellation is received more than 30 days before confirmed ship date.

14.2 **Other Cancellation.** Customer may terminate or cancel an order if SMA fails to perform or observe any material term or condition of the order and such failure shall continue unremedied for 30 days after receipt of written notice of the default from Customer.

14.3 **Cancellation>Returns.** Upon termination or cancellation of any order, the product will be returned to SMA in the same condition as originally supplied, ordinary wear and tear excepted, or Customer will pay for restoration of the product to such condition. If the Customer does not return the product, then, in addition all other remedies at law or in equity available to SMA, all payment obligations of the customer shall remain in full force and effect.

14.4 **Non-Unique Goods.** The parties hereto acknowledge that the goods to be supplied by SMA hereunder are not unique unless the item(s) or system(s) is ordered or manufactured to the Customer's unique specifications.

14.5 **Restocking Fee.** Customer agrees to pay SMA a 15% restocking fee on all products shipped from stock (i.e. not involving custom specification), if they are returned by Customer to SMA subject to the terms in sections 10 or 15 herein.

(a) **Return or Cancellation of Custom Orders.** In the event Customer cancels a custom ordered item or system, Customer agrees to pay SMA as liquidated damages, the agreed upon price for custom ordered goods which are completed plus 10 percent of the contract price for the uncompleted portion of the goods ordered, if any, with no further responsibility on the part of SMA. Within a reasonable time after Customer's written request, such completed goods will be forwarded to Customer at Customer's expense. No liquidated damages shall apply if the Customer terminates the order under section 14.2 prior to delivery.

14.6 **SMA Cancellation.** Notwithstanding anything contained herein to the contrary, SMA shall have the right to cancel this Agreement, without any liability whatsoever; by delivery of written notice to Customer at any time on or before that date which is 10 business days after the date of the execution of this Agreement or receipt of an order.

15. EXCLUSIVE REMEDIES

15.1 **Customer Remedies.** Except as provided specifically below, Customer's sole remedy against SMA for loss or damage caused by any product defect or failure, or arising from the performance or non-performance of any work, hereunder regardless of the form of action, whether in contract, tort, including negligence, strict liability or otherwise, shall be:

(a) Customer's right to demand repair;

(b) Replacement or refund set forth in Section 6 hereof;

(c) Customer's right to terminate as set forth in Section 14.2 hereof; or

(d) the lesser amount of actual direct damages which are proved by Customer or the amount of this order.

15.2 **Delivery delay.** If delivery by SMA is delayed by more than 30 days or more by cause not attributable to Customer (except for force majeure conditions as defined in Section 15.4). Customer's sole remedy shall be the right to cancel the order without payment of any cancellation charges. These remedies shall be exclusive of all other remedies against SMA and its affiliates, except for Customer's right to claim damages to bodily injury to any person.

15.3 **Limit on Liability.** Notwithstanding any other provisions in this Agreement, neither SMA nor its affiliates shall be liable for any indirect, incidental, or consequential damages (including loss of profits) sustained or incurred in connection with the performance of the order or the use or operation of the products and services provided hereunder, or for damages due to causes beyond the reasonable control of SMA, its employees, sub-contractors, and agents.

15.4 **Force Majeure.** Neither SMA nor its affiliates shall be liable in any way for delays, failures in performance, loss or damages due to any of the following force majeure conditions: fire, strike, embargo, explosion, power blackout, earthquake, volcanic action, flood, war, water, the elements, labor disputes, civil disturbance, government requirement, civil or military authority, acts of God, public enemy, inability to secure products, transportation, facilities, acts of omission of carriers or other causes beyond its reasonable control whether or not similar to the foregoing.

16. **CONFIDENTIALITY**

16.1 **Confidential Information.** The parties may obtain information about each other that is considered confidential. "Confidential Information" includes all non-public information regarding SMA or Customer, such as technical data, product design and development, sales information, quantity and kind of products sold, prices and methods of pricing, marketing techniques and plans, product returns, unannounced products, product and process information, and any other information that, if disclosed to others, might be competitively detrimental to the disclosing party. Confidential Information does not include any information that has been publicly disseminated in writing by the disclosing party, any information that the other party can show it knew before the disclosing party's disclosure, or any information that was rightfully received by the other party from a third party without restriction.

16.2 **Non-Disclosure.** Each party will maintain the other party's Confidential Information in strictest confidence, may not disclose it to any third party, and may use it only as necessary to perform under this Agreement. The parties will cause their officers, directors, employees, and agents to abide by the terms of this Section 16, and will be responsible for any wrongful disclosure and use by any of them.

17. **INDEMNITY**

17.1 **General Indemnification.** Customer will defend and indemnify SMA and SMA's affiliates, directors, employees and contractors (collectively "Indemnitees") against any claim or action brought by a third party against an Indemnitee arising from (a) an allegation of Customer's negligence or willful misconduct, or (b) Customer's failure to comply with the requirements of this Agreement.

18. **DISPUTE RESOLUTION**

18.1 **Good Faith Negotiation.** The parties will first attempt to resolve any dispute relating to this Agreement through good faith informal negotiation.

18.2 **Arbitration.** Any action to enforce or interpret this Agreement shall be settled by arbitration in accordance with the rules of JAMS. Any party may commence arbitration by sending a written demand for arbitration to the other party. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at the JAMS facility nearest Nevada City, California. The substantive law of the State of California shall be applied by the arbitrator of the dispute. The parties shall share equally in the initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney's fees, costs, and reasonable expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

18.3 **Governing Law.** Any dispute arising out of this Agreement shall be subject to the laws of the State of California. Venue for any action filed to enforce this Agreement shall be Nevada County, California.

18.4 **SURVIVAL. THIS SECTION 18 WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

19. **MINIMUM ORDERS**

All purchase orders are to be a minimum of \$2,500.00. Any purchase order placed under this amount will incur a \$25.00 processing fee.

20. **ASSIGNMENT**

20.1 **No Assignment.** Neither party may assign this order, or any portion thereof, without the written consent of the other.

21. **HEADINGS**

21.1. **Article, Section, and Paragraph Titles.** The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

22. **ENTIRE AGREEMENT**

22.1 **Entire Understanding of the Parties.** This Agreement, together with the Exhibits and the Documents incorporated by reference, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations, promises or inducements, written or oral regarding its subject matter. No failure or delay in exercising any right is a waiver of that right. All notices and other communications must be delivered to the addresses designated on the first page of this Agreement.

Company Name: _____

Signature: _____

Date: _____