

STANDARD PURCHASING TERMS & CONDITIONS

For purposes hereof, references to "Seller" herein shall refer to the Contractor and references to "Buyer" herein shall refer to the Upwing Energy.

1. **TERMS OF AGREEMENT.** Seller's acknowledgement, commencement of performance of this Purchase Order, or any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Seller of this Purchase Order and all of its terms and conditions. Additional or different terms provided in Seller's acceptance of Buyer's order which vary in any degree to any of the terms herein shall be deemed material and are hereby objected to and rejected. Any such proposed terms by Seller whether by offer or acceptance shall be void unless expressly agreed to in writing by Buyer, and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of contract between the parties, subject to the Priority Manufacturing Services Agreement by and between the Seller and Buyer. Unless otherwise indicated in writing by the Buyer, the required date on this Purchase Order for receipt of the equipment and material which are the subject of this Purchase Order (the "Goods"), or date of performance, controls. Any Goods received before the required date may be, at the Buyer's option, rejected and returned to the Seller at the Seller's expense. The Seller's quotation is incorporated in and made a part of this Purchase Order only to the extent of specifying the nature and description of the Goods and services ordered, and then only to the extent that such items are consistent with the other terms of this Purchase Order. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any of the terms or conditions hereof.

2. **RISK OF LOSS AND TITLE.** The risk of loss of and title to the Goods shall not pass to Buyer until actually received by Buyer at the point of delivery. If any advance payments have been made to Seller by Buyer prior to delivery to the Buyer of the Goods, then in such event title to said Goods shall pass to the Buyer, but the risk of loss shall remain with the Seller until actual delivery to Buyer has been made.

3. **DELIVERY.** Failure to deliver the Goods or provide services of the quality and quantity and within the time or times specified by this Purchase Order shall, at the option of the Buyer, relieve it of any obligation to accept and pay for such Goods as well as any undelivered shipments if there be any; and upon failure to deliver as specified, the Buyer may buy like goods or services elsewhere and charge the Seller with any increased cost or other loss incurred thereon. Any failure by the Buyer to exercise its option with respect to any shipment of Goods shall not be deemed to constitute a waiver with respect to subsequent shipments. This provision is not in lieu of Buyer's other remedies at law or equity.

4. **WARRANTY.** Seller warrants to Buyer and its successors, assigns, customers and users of its products that the Goods shall: (a) be free from defects in design, workmanship and materials and of the quality specified or of the best grade of their respective kinds if no quality is specified; (b) conform to the specifications, drawings, samples and other descriptions contained herein and to any representations made by Seller or its representatives referred to herein; and, when installed, so conform to and operate in the product of the Buyer as not to prejudice the proper operation thereof; (c) strictly comply with all applicable Federal and state laws, municipal ordinances, regulations, rules, labor agreements and working conditions to which the Goods are subject (d) not infringe any valid patent, copyright, trademark or trade secret; and (e) be free of any claims or liens of whatever nature whether rightful or otherwise, of any person, corporation, partnership or association. Seller warrants to Buyer Seller's services will be performed in a good and workmanlike manner. Seller shall repair or replace, at Seller's cost, any Goods which shall be found defective within eighteen (18) months of delivery or twelve (12) months after installation, whichever occurs earlier. Seller shall re-perform, at Seller's cost, any services performed hereunder which shall be found defective within twelve (12) months of completion thereof. Buyer shall provide Seller with prompt advice of such defective Goods or services.

5. **MODIFICATIONS.** This Agreement can be modified only in writing signed by both parties or their duly authorized agents.

6. **WAIVER.** No waiver by either Seller or Buyer with respect to any event constituting a breach or default or any provision or condition of this Agreement, and no course of dealing, shall be deemed to constitute a waiver of any other breach or default of the same or any other provision or condition of this Agreement. No claim or right arising out of a breach of this Purchase Order can be discharged in whole or in part by a waiver of such claim or right unless the waiver is supported by consideration and is in writing signed by the aggrieved party.

7. **BUYER AMENDMENTS; CANCELLATION.** Buyer reserves the right to change specifications, delivery dates and any other terms hereof upon notice to Seller. In such event, Buyer shall be liable only for any additional reasonable costs incurred by Seller as a result of such changes, and the Agreement shall be modified in writing accordingly. Buyer further reserves the right, upon notice to Seller, to cancel this Agreement or any part hereof. In such event, Buyer shall be liable only for any costs incurred by Seller for materials or components procured, or work performed within the authorization of this

Agreement prior to such notice. Seller acknowledges that Seller's "costs" referred to in this section in connection with cancellation do not include Seller's indirect costs or Seller's profits. Seller shall advise Buyer, in writing, of Seller's claim, if any, for such modification or cancellation costs within fifteen (15) days after receipt of the notice of modification or cancellation. In no event shall Buyer be liable for incidental, special, or consequential damages by reason of such cancellation or for any other reason.

8. INDEMNIFICATION. Seller agrees to protect, indemnify, defend, and save and hold harmless Buyer, its officers and employees, from and against all damages, losses, costs and expenses, including reasonable attorney fees, incurred as a result of claims, liabilities, demands, suits and actions alleging or involving (a) damage to the property of the Buyer or others of whatsoever nature, (b) injury to any persons arising out of or in any way relating to this Purchase Order, and (c) Seller's failure to comply with the covenants and warranties set forth in subparagraphs (c), (d) and (e) of Section 4 hereof.

9. INSURANCE. Seller shall have in place general liability and vehicle liability insurance in reasonable amounts and with carriers who are financially sound and workers compensation insurance for its employees in accordance with applicable law. All such insurance shall include Buyer as a named, additional insured. The general liability and vehicle liability insurance shall each provide coverage at least in the amount of One Million Dollars (\$1,000,000). The workers compensation insurance shall be in at least the statutorily required amount. No such insurance amounts shall limit in any way Seller's liability to Buyer hereunder. Upon Buyer's request, Seller shall provide Buyer with an appropriate certificate evidencing such insurance.

10. INSPECTION. Buyer shall have a reasonable time after receipt and beneficial use, within which to inspect and/or reject the Goods. Buyer shall promptly give written notice to Seller of any rejection of the Goods, and Goods so rejected will, at the Seller's expense, be returned to Seller or disposed of as Seller shall reasonably request. The cost of inspection of the rejected Goods shall be charged to the Seller. When Buyer requires Seller to produce samples, Seller shall not proceed without Buyer's approval in writing of such samples processed or fabricated by means of tooling and process methods to be used in Seller's anticipated performance under this Purchase Order. If Buyer rejects part of the Goods, Buyer shall have the right to cancel any unshipped portion of the Purchase Order. Payment for Goods prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller. The making or failure to make any inspection or acceptance of, or payment for the Goods, shall in no way impair Buyer's right to reject non-conforming Goods, recover damages, or exercise any other remedies to which Buyer may be entitled.

11. PAYMENTS; INVOICES. Payment due dates will be calculated from dates of receipt by Buyer of invoices with bills of lading or other delivery documentation attached. All taxes which Seller is required by law to collect from Buyer shall be included in the price(s) for the Goods or services stated herein. Seller shall separately state on its invoices to Buyer hereunder any and all charges to be paid by Buyer including, without limitation, charges for installation or taxes, whether sales, use or otherwise.

12. FORCE MAJEURE. Performance of any obligation under this Purchase Order may be suspended by either party, without liability, to the extent that an act of God, war, riot, fire, explosion, accident, flood, sabotage, or any other cause beyond the reasonable control of such party, delays, prevents, restricts or limits performance hereunder. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. The delivery date shall be extended by the duration of any such suspension. In the event Seller's performance is so suspended for more than thirty (30) days, Buyer may, at its option, terminate this Agreement upon written notice to Seller, in which event the applicable provisions of Section 7 hereof shall apply.

13. PRICE PROTECTION. Seller warrants that the price(s) set forth on the face hereof are equal to or lower than, and the terms and conditions of sale at least as favorable as, the price(s), terms and conditions afforded by Seller to any other customer for goods or services of comparable nature and quality. Should Buyer be able to purchase comparable goods or services from another source at a lower delivered cost than in effect hereunder, and Buyer gives Seller written notice thereof, Buyer may purchase such goods from such other source at such lower delivered cost unless within fifteen (15) days of receipt by Seller of said notice, Seller shall meet such lower delivered cost for such quantity of goods. Any quantity so purchased from another source by Buyer shall be deducted from the total quantity ordered under this Purchase Order, but the Purchase Order shall otherwise remain unaffected.

14. TOOLING. Seller shall furnish, at Seller's expense, all materials, drawings, specifications, inspection/test records, tools, dies, jigs, gauges, fixtures, patterns, molds, testing apparatus, machinery and equipment and similar materials (collectively referred to herein as "tooling") related to the manufacture of the Goods or furnishing of the services pursuant to this Purchase Order. Should such tooling be furnished by Buyer or at Buyer's expense, such tooling shall remain the property of Buyer, subject to repossession by Buyer at its option. Seller shall be liable for risk of loss of such tooling while in Seller's possession, shall identify tooling as the property of Buyer and shall deliver same to Buyer in the same condition as received by Seller, reasonable wear and tear excepted.

15. **PACKING AND CARTAGE.** Seller may not charge for packing, boxing or cartage, unless otherwise agreed to in writing by Buyer. Damage to any Goods not properly packed will be charged to Seller. Buyer's order number and part number for the Goods and the quantity of Goods shipped will be marked or tagged on each package and bill of lading related to the Goods. Buyer's count will be accepted as final and conclusive on any shipment not accompanied by an itemized packing slip. Delay in, non-receipt of or errors or omissions in packing lists, statements or invoices will be just cause for Buyer's withholding payment without loss of any applicable cash discount privilege.

16. **QUANTITY.** The quantities of goods as indicated on the face hereof must not be exceeded without prior written authorization from Buyer. Excess quantities may be returned to Seller at Seller's expense.

17. **SELLER OUTSOURCING.** In the event that the Goods or services purchased hereunder are subcontracted outside of the United States by the Seller, the Seller shall first obtain written consent from the Buyer before outsourcing Goods or services from the United States. In the event the Seller does not receive a written consent from the Buyer, the Seller is not authorized to outsource any Goods or services from the United States.

18. **BUYER'S PERFORMANCE OF A PRIME OR SUBCONTRACT OR GOVERNMENT CONTRACT.** In the event that the Goods or services purchased hereunder are ordered in connection with Buyer's performance of a prime or subcontract with another party, including specifications and drawings applicable thereto, and such prime or subcontract is referred to on the face of this Purchase Order or in Seller's quotation, confirmation or acknowledgment, Seller shall deliver such Goods and perform such services in full compliance with the requirements of such prime or subcontract, which are hereby incorporated by reference into this Purchase Order and made applicable to and undertaken by Seller for the benefit of Buyer. Further, and without limitation of the foregoing, if the Goods or services to be furnished under this Purchase Order are to be used in the performance of a Government contract or subcontract of Buyer, Seller agrees to comply with all federal and state laws, orders and regulations applicable to such contracts and agrees that the terms, conditions, and requirements of the "equal opportunity clause" (41 C.F.R. §60-1.4) and "affirmative action clause" (41 C.F.R. §60-250.5, §60-300.5 and 41 C.F.R. §60-741.5) and "no segregated facilities clause" (41 C.F.R. §60-1.8) under Executive Order No. 11246 of September 24, 1965, as amended, §402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and §503 of the Rehabilitation Act of 1973, respectively, and any other clauses mandatorily required by federal or state law to be included in Government contracts and subcontracts are herein incorporated by reference and expressly made a part of this Purchase Order agreement as if fully set forth herein. Seller is notified that it may be subject to the provisions of 41 C.F.R. §60-1.7(a), 48 C.F.R. §52.222-54(e); and 29 C.F.R. Part 471, Appendix A to Subpart A.

19. **PROPRIETARY INFORMATION.** All information (including data, designs, drawings, specifications, photographs, sketches, and other documents) supplied to Seller by Buyer or developed by Seller in the performance of this Purchase Order shall be treated by Seller as Buyer's proprietary information and shall not be used or disclosed except as may be necessary in the performance of this Purchase Order and then only on a confidential basis. Such proprietary information shall not include information which has been independently developed by Seller prior to this Purchase Order by Seller or is already validly in the public domain. All such information developed by Seller under this Purchase Order shall be Buyer's property and may be used or transferred by Buyer in any manner it deems appropriate. All such information shall be delivered to Buyer upon request and in any event upon completion or termination of the performance of this Purchase Order.

20. **ASSIGNMENT.** No right or interest in this Purchase Order and no obligation owed by Seller hereunder shall be assigned or delegated by Seller without Buyer's prior written permission. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes. Should Seller intend to use subcontractors to perform any or all of its work hereunder, Seller shall notify Buyer of such intention and warrant that such subcontractors shall be subject to all applicable terms of this Purchase Order. To the extent Seller performs services hereunder on Buyer's premises; Seller shall comply with Buyer's rules and regulations with respect thereto.

21. **COMPLIANCE WITH LAW.** Seller shall comply with all applicable laws and regulations in connection with supplying the Goods or services hereunder.

22. **ARBITRATION.** All disputes, controversies or differences which may arise out of or in relation to any aspect of this Purchase Order or any breach hereof or any default hereunder shall be resolved by arbitration administered by the American Arbitration Association by one or more arbitrators in accordance with the then applicable Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be held in the city of Los Angeles, California. The arbitrators sitting in any such proceedings shall have no power to alter or modify any express provisions hereof or to render any award which by its terms effects any such alteration or modification. The expenses and fees, other than counsel fees, of any such arbitration proceedings shall be borne equally by the Buyer and Seller. The award of the arbitrator or arbitrators shall be final and binding upon the parties and judgment upon any such award may be entered in any court having competent jurisdiction thereof. Notice shall be deemed given, if properly addressed, when it is deposited with the United States postal service if by Mail or when received if sent by telegraphic means.

23. **GOVERNING LAW.** This Purchase Order shall be governed and construed according to the laws of California, without giving effect to the conflicts of law provisions thereof.