

Attachment B: PV Modules Purchase Terms and Conditions

SunPower hereby sells the PV Modules described in the Agreement to which this Attachment B is attached to Customer on the following terms and conditions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Agreement. SunPower and Customer are referred to herein as "**Party**" or "**Parties**". These terms and conditions are made part of the Agreement and, unless specifically stated to the contrary, in the event these Terms and Conditions conflict or are in any way inconsistent with any other terms or conditions of the Agreement, the below and conditions shall govern.

1. Contract Price. Customer shall pay SunPower the full Contract Price as stated in the Agreement. All payments shall be due and payable thirty (30) days from the invoice date, unless otherwise stated in the body of the Agreement. For any amounts not paid when due, Customer shall pay interest thereon at the rate of 1.5% per month until paid in full. Customer shall pay all sales, VAT and other taxes, however designated or levied, based on the Contract Price, Customer's use of the PV Modules or otherwise arising in connection with the Agreement. SunPower shall be solely responsible for taxes based on its income. PV Modules should be installed and should be used by Customer for the purpose described in the first page of this Agreement.

2. Shipping/ Risk of Loss/Transfer of Title/Insurance. Risk of loss for PV Modules shall pass to Customer on the shipping terms (Incoterms 2000) as stated in the first page of this agreement. Customer will accept partial deliveries from SunPower of any PV Modules described in the Agreement. Customer further agrees that each of the terms of sale listed in the Agreement shall apply individually to any such partial deliveries of PV Modules to a carrier.

3. Delivery. SunPower will endeavor to deliver at the time stated and all delivery dates shall be regarded at best as estimates only. Customer must accept the actual delivery date and SunPower shall not be liable for any losses, costs, damages or expenses suffered by the Customer or any other party as a result of any delay in delivery. Customer shall not be absolved of its payment obligation by reason of any delay in PV Modules delivery. Any deficiency in quantity of PV Modules as the time of delivery shall be notified to SunPower immediately upon receipt. Acknowledgement of the delivery shall be deemed to be acceptance of the quantities as set out by the invoice.

4. All Sales Final. Sale of PV Modules is final upon title transfer and there are no post-sale obligations retained by SunPower. Without limiting the generality of the foregoing, Customer specifically acknowledges the following with respect to the sale of PV Modules:

- a. There are no Customer rights of return or refunds regarding the PV Modules;
- b. Customer is responsible for providing adequate insurance for the PV Modules after risk of loss transfers pursuant to the agreed shipping terms; and
- c. SunPower has no obligation for installation or other obligations relating to the sale of the PV Modules other than its warranty obligations stated in Attachment C.

5. Termination by Customer. Customer may terminate the Agreement for cause by written notice to SunPower if SunPower Materially Breaches any provision of the Agreement, and such breach is not cured within thirty (30)

days of SunPower's receipt of such written notice, except in the case of Customer's failure to make timely payments of the Contract Price, under which situation the provisions of Section 6 below shall be guiding. "Material Breach" shall mean a default in one party's contractual obligations that substantially undermines the economic value of the Agreement to the other Party.

6. Termination by SunPower. SunPower may terminate the Agreement for cause by written notice to Customer if Customer (i) fails to pay any amount payable to SunPower after it becomes due under this Agreement, (ii) is adjudged bankrupt or makes a general assignment for the benefit of its creditors, or (iii) otherwise Materially Breaches any provision under the Agreement.

7. Survival. Following termination of the Agreement, the surviving rights and obligations from the Agreement shall include Sections 1, and 7 through 25 in their entirety.

8. Limitation of liability. Notwithstanding any other provision in the Agreement to the contrary, whether express or implied, neither party shall be liable to the other, whether by way of indemnity or by reason of any breach of this Agreement or warranty or of statutory duty or by reason of tort or the committing of any actionable wrong (including without limitation negligence) or undertaking of any account or otherwise for overheads, loss of actual or anticipated profit, loss of revenue, loss of use, loss of production, loss of opportunity or goodwill, cost of capital, cost of replacement power, financing costs, fuel costs, or for any special, indirect, incidental or consequential loss, damage or expense or any other purely financial or economic loss whatsoever suffered by that other party, its customers or third parties. Notwithstanding any other provision of the Agreement, whether express or implied, SunPower's aggregate liability with respect to any and all losses, damages or claims arising out of the Agreement, its performance or breach (inclusive of its liability for liquidated damages), whether such liability is based in contract, warranty, tort (including negligence of any kind), strict liability or otherwise, shall not exceed the payments actually received by SunPower from Customer under the Agreement.

9. Governing Law. This Agreement shall be governed by the laws of England without reference to conflicts of laws principles. The UN Convention on the International Sale of Goods (Vienna 1980) shall not apply.

10. Arbitration. All disputes arising out or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with said Rules. The arbitration award shall be final and binding on both Parties. The language of the arbitration proceedings shall be English and the place of arbitration shall be Geneva, Switzerland.

11. No Waiver. Any waiver of any breach of any term or condition of the Agreement shall not operate as a waiver of any other breach of such term or condition or of any other term or condition of the Agreement.

12. Severability. If any provision of the Agreement shall be held to be invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining provisions of the Agreement.

13. Headings. The headings used in the Agreement are included for convenience only and are not to be used in the interpretation of any provision of this Agreement.

14. Notices. All notices, demands or consents required or permitted under the Agreement shall be in writing. Notice shall be considered effective on the earlier of actual receipt or: (i) the day following transmission if sent by facsimile followed by written confirmation by registered overnight carrier (e.g., Federal Express.) or certified mail; or (ii) one (1) day after posting when sent by registered private overnight carrier or (iii) five (5) days after posting when sent by certified mail. Notice shall be sent to the attention of the current business contact and the "legal department". Parties may change their address for notice purposes by giving notice of such change, provided that such notice is effective only on receipt.

15. Successors and Assigns. The terms and conditions of the Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties.

16. Advice of Counsel. Each Party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of the Agreement. The Agreement shall not be construed against any Party by reason of the drafting of preparation hereof.

17. Force Majeure. Except for Customer's obligations to pay SunPower hereunder, neither Party shall be liable to the other Party for any failure or delay in performance caused by reasons beyond its reasonable control, including, without limitation, acts of God, labor disputes, acts of public authorities, war, riot, embargoes, terrorists, acts of civil or military authorities, fire, flood hurricanes, typhoons, tornados, winds in excess of ninety (90) mph, volcanoes, earthquakes or accidents. Without limiting the generality of the foregoing, SunPower will not be liable or deemed to be in breach of the Agreement by reason of any delay or failure to perform caused by any act or omission of Customer.

18. Confidential Information. As used herein, "Confidential Information" of a disclosing Party means the Agreement and all confidential and/or proprietary information provided by the disclosing Party to the receiving Party and includes, without limitation:

- 1) financial information of the disclosing Party;
- 2) business plans of the disclosing Party;
- 3) information about the business of the disclosing Party
- 4) information about the product roadmap of the disclosing Party;
- 5) all tangible materials embodying any of the foregoing Confidential Information, including any documentation, records, listing, notes, data, sketches, drawings, computer disks, files or records, memoranda, designs, models, accounts, reference materials, samples, equipment, trade-secrets, prices, strategic partners, marketing, strategic or other plans, Customer names or lists, project opportunities and the like;

provided, however that "Confidential Information" of a disclosing Party shall not include information or data of the disclosing Party which:

- i) is already rightfully in the possession of the receiving Party at the time of its disclosure by the disclosing Party,

- ii) is now or becomes a part of the public domain by virtue of publication, free of copyright or other protection, other than by or through the fault of the receiving Party,
- iii) is rightfully received by the receiving Party from a third Party who has a right to disclose such information, without restriction on disclosure and without breach of this or any other agreement, or
- iv) is independently developed by the receiving Party, without any reverse engineering or similar action.

Each Party agrees that, (a) it shall make use of the Confidential Information of the other Party solely for the purpose of facilitating sale of PV Modules provided under the Agreement, (b) neither it nor any of its subsidiaries or affiliated companies or their agents, representatives or assigns will disclose to any other person or entity, or use for its or their benefit, any Confidential Information of the other Party, (c) it shall use its best efforts to prevent any Confidential Information of the other Party from being revealed to any person or entity other than its employees who are required to know such information in order to carry out the purpose described in the foregoing clause (a), and shall notify such employees of the obligation not to use or disclose the Confidential Information of the other Party.

19. Infringement. SunPower shall defend, at its own expense, any suit or claim that may be instituted against Customer or any customer of Customer for alleged infringement of patents, trade secrets, copyrights or other intellectual property rights relating to the PV Modules, and SunPower shall indemnify Customer and its customers for all costs and damages arising out of such alleged infringement, provided that: (i) Customer gives SunPower reasonably prompt notice in writing of any such claim or action and permits SunPower, through its counsel of choice, to answer the charge of infringement and control the defense of such action; and (ii) Customer provides SunPower information, assistance, and authority (at SunPower's expense for reasonable out of pocket expenses incurred by Customer in connection therewith) to enable SunPower to defend such claim or action. SunPower will have no liability under this Section to the extent that infringement is attributable to (x) Customer's design and/or requirements placed upon SunPower or (y) Customer's modification or combination of one or more products with designs not supplied by SunPower.

Export Compliance; FCPA. Export Compliance.

Customer shall not commit any act or cause or permit any person to commit any act with respect to any PV Modules purchased hereunder which would violate any applicable export control laws, rules or regulations (including but not limited to those of the United States), and Customer will take any and all actions within its ability to assure compliance with all such laws, rules or regulations. Customer shall not, directly or indirectly, export, re-export or transship any PV Modules purchased hereunder or any technical data relating to such PV Modules in violation of any applicable export control laws promulgated and administrated by the government of any country having jurisdiction over the parties or the transactions contemplated herein. It is SunPower policy to comply fully with all economic sanctions and trade restrictions promulgated by the United States government. Customer agrees to comply, in performing this agreement, with all applicable laws, including, without limitation, all statutory and regulatory requirements under the Export Administration Regulations (15 C.F.R. § 730 et seq.) administered by the U.S. Department of Commerce; the laws, regulations, and executive orders implemented by the Office of Foreign Assets Control of the U.S. Department of the Treasury; and equivalent laws in any jurisdiction in

which the Customer operates. **FCPA Compliance.** Each party acknowledges that it has reviewed a copy of the U.S. Foreign Corrupt Practices Act (the "FCPA") and confirms its understanding that the FCPA prohibits the payment or giving of anything of value either directly or indirectly, to an official of a foreign government, foreign political party or official thereof, or any candidate for foreign political office, for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with the foreign government, to assist in obtaining or retaining business for or with, or directing business to, any person. Each party agrees that each party shall comply with the FCPA and will take no action that would cause any party to be in violation of the FCPA. Each party agrees to notify immediately the other party of any request the party receives to take any action that might constitute, or be construed as, a violation of the FCPA. Both parties agree that either party is authorized to take all appropriate actions that such party reasonably deems is necessary to avoid a violation of the FCPA.

20. Publicity. Customer agrees that any and all marketing, press releases, references and / or any public information regarding the Agreement and / or the use of the PV Modules purchased through the Agreement is subject to the review and approval by SunPower prior to release.

21. No Additional Obligations. SunPower has no obligation for installation or other post-sale obligations relating to the sale of the PV Modules.

22. Entire Agreement. The Agreement, which shall include associated Attachments, constitutes the sole and entire agreement between the parties, and supersedes all prior oral or written agreements, commitments, representations or understandings with respect thereto. No other document or amendment of this Agreement shall be

part of this Agreement, unless in writing and signed by the Parties' authorized representatives. The Agreement may be executed in multiple counterparts (including by means of facsimiled signature pages), each of which shall be an original and all which taken together shall constitute one and the same agreement.

23. Assignment. Customer shall not assign or otherwise transfer (either in whole or in part) any of its rights or obligations under the Agreement without having first obtained the express written permission of SunPower, any purported assignment without such consent shall be deemed null and void.

24. Third Party Rights. For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not confer on any person who is not a party to it, any right to enforce any of its provisions, except as expressly provided in the Agreement.

25. Exclusive Remedies. Notwithstanding any other provision of the Agreement, the full extent of SunPower's liabilities, warranties, representations and guarantees in connection with the Agreement are set forth herein, and no other liabilities, warranties, representations or guarantees shall, or shall be deemed to, apply. The Customer's remedies, as identified in the Agreement, shall be the sole and exclusive remedies available to the Customer, in respect of matters to which they are said to relate in the Agreement, irrespective of any rights and remedies which might otherwise be available at common law, in tort, by statute or otherwise.