



## PURCHASE ORDER STANDARD TERMS AND CONDITIONS

- 1. Acceptance of Purchase Order.** This purchase order constitutes Solaris Power Systems, LLC's ("**Buyer**") offer to Seller and shall become a binding contract upon the terms and conditions stated herein upon acceptance by Seller by any expression of acceptance, or commencement of performance, whichever occurs first. Acceptance of this purchase order is expressly limited to and made conditional upon the exclusivity of the terms and conditions contained herein, and is expressly made conditional upon Seller's assent to terms and conditions which differ from or are additional to those in Seller's quote. Further, any terms and conditions proposed by Seller in acknowledging or accepting Buyer's offer which are different from or in addition to the terms set forth in this purchase order shall not be binding upon Buyer and shall be void and of no effect, except to the extent expressly accepted in writing by Buyer's authorized procurement representative(s).
- 2. Scope.** These terms and conditions, as may be amended from time to time, apply to the purchase by Buyer of all products and/or services ("**Products**") from Seller as described on the face of the purchase order or other documents referenced on the face of such purchase order. The term Products throughout these terms and conditions includes without limitation, the drawings, materials, supplies, components, technical data, intellectual property, services and other items identified and/or listed in the purchase order. No purchase order is valid unless issued by Buyer on its official, electronic or otherwise generated, purchase order to the Seller.
- 3. Packing and Shipping** The Seller shall make delivery to the specified destination by the due date stated on the purchase order or as otherwise agreed in writing by the Parties. All prices payable by Buyer for the Products include the cost of packaging and delivery. Buyer's order numbers must be plainly marked on all packages, bills of lading and shipping orders and all Products shall be suitably marked and shipped in accordance with the requirements of common carriers and in a manner to secure the lowest transportation cost, unless otherwise agreed by the Parties. Seller shall use the carrier(s) selected by Buyer if Buyer so requests. Title to the Products and all risk of loss or damage to such Products shipped shall be in Seller, irrespective of FOB or other delivery terms, and shall remain in the Seller until the Products have been delivered to the location specified on this purchase order. Any such stated due date is of the essence and the Seller shall notify Buyer promptly if it reasonably anticipates that delivery will not be on time. Seller shall incur all costs related to unauthorized early delivery and shall pay all additional costs related to delivery of late shipments.
- 4. Inspection.** The Products may be inspected and/or tested by Buyer at any time, place or stage of production, and if at Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance required for safe and convenient inspection and testing. The foregoing shall not relieve Seller of its obligation to permit Buyer full and adequate inspection and testing away from Seller's premises. Payment shall not constitute Buyer's acceptance of the Products nor impair Buyer's right to inspect and/or test the Products or exercise any of its remedies. Upon notice of rejection of defective Products, risk of loss of such Products shall be upon Seller until redelivery, if any, to Buyer. Rejected Products may be returned to Seller or held by Buyer, both at Seller's risk and expense, subject to Seller's disposal instructions.
- 5. Warranty.** Seller warrants that all Products will conform to applicable specifications, drawings, descriptions, and samples, and will be of new manufacture, good workmanship and materials, and free from design defect, claim, encumbrance or lien, and be suitable for the purpose intended by Buyer. Seller warrants that it has full title, right, power and authority to enter into this purchase order and perform its obligations under the purchase order. Seller warrants that Products that are services shall be performed in a professional and workmanlike manner. If the Products delivered under this purchase order do not meet the warranties specified in this purchase order or other applicable warranties, Buyer may, at its option, return at Seller's expense, the defective or nonconforming Products for credit, refund or set-off, or require Seller to correct or replace, at no cost to Buyer, any defective or nonconforming Products, including, without limitation, re-perform any Products that are services. Return shipping to Buyer of corrected or replacement Products shall be at Seller's expense. Products required to be corrected or replaced (including, without limitation, the re-performance of any Products that are services) shall be subject to this Section 5 and Section 4 ("Inspection") in the same manner and to the same extent as Products originally delivered under this purchase order. Seller's warranties shall run to Buyer, and its customers or users of the Products and shall not be deemed to be exclusive of any other remedy at law or in equity available to Buyer, its customers or



users of the Products. Buyer's inspection, approval, acceptance, use of, or payment for all or any part of the Products shall in no way affect its warranty rights.

6. **Change Orders.** Buyer shall have the right to change the terms of this purchase order by written notice to Seller, including changing the drawings or specifications, the time, method or place of delivery or the method of shipment or packaging or to suspend delivery of the Products. Upon receipt of such notice, Seller shall promptly make such changes. If any such change causes a change in the cost of the Products or the time required for performance, Seller shall immediately notify Buyer, and an equitable adjustment shall be negotiated and this purchase order shall be modified in writing accordingly. Seller shall not substitute or replace raw materials or components in the Products or change the specifications related to such Products without notifying Buyer in writing and receiving Buyer's written consent.
7. **Intellectual Property.** Seller shall, at its own expense, indemnify and hold Buyer, its directors, officers, employees, affiliates, subsidiaries, agents and customers harmless from all claims, losses, suits, damages, liability, and all expenses, (including but not limited to reasonable attorney's fee) arising out of or related to any such actual patent, copyright, trademark or other property rights infringement or alleged direct or contributory infringement by reason of the manufacture, use or sale of the Products.
8. **Indemnification.** Seller agrees, at its expense to indemnify, defend and hold harmless Buyer, its officers, employees, affiliates, agents, customers and end users from and against any and all claims, judgments, fines, penalties, damages (including special, consequential, punitive and liquidated damages), costs and expenses, including attorney's fees, experts and consultants, incurred in connection with any claims (including lawsuits, administrative claims, regulatory actions, and other proceedings to recover for personal injury or death, property damage or economic losses) arising out of or resulting in any way from the Products, Seller's representations, or any act or omission of Seller, its agents, employee or permitted subcontractors in performance or failure to perform Seller's obligations under any purchase order, including claims based on Seller's breach or alleged breach of warranty or caused or alleged to have been caused by the use of any Product as shipped or delivered by Seller to Buyer. Seller's indemnification specifically includes Seller's indemnification of Buyer for any liquidated damages assessed by Buyer's customer for any failure to timely perform. Seller's obligation to indemnify will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability, or otherwise, except to the extent any such liability arises solely out of the gross negligence or willful misconduct of Buyer, its employees or authorized representative. This indemnification shall be in addition to Seller's warranty obligations.
9. **Termination.** Buyer reserves the right to terminate all or any part of each purchase order, without liability, of Buyer to the Seller, in the event: (a) Seller repudiates, breaches, or threatens to breach any of the terms of the purchase order including without limitation, Seller's warranties, (b) Seller fails to perform or deliver Products as specified by Buyer, (c) Seller fails to provide Buyer with adequate and reasonable assurances of Seller's ability to perform timely any of Seller's obligations under any purchase order, including without limitation, delivery of Products, (d) Buyer terminates for breach of any other purchase order issued by Buyer to Seller in accordance with the terms of such purchase order, or (e) Buyer gives Seller written notice requiring Seller to immediately cease performance under the purchase order prior to drawings being approved and/or any work being performed. Buyer may also, at any time terminate this purchase order for convenience, in whole or in part, by written notice at which time Seller shall immediately stop work and take any actions necessary to mitigate any impact of such notice.
10. **Limitation of Liability.** In no event shall Buyer be liable for any incidental, indirect, special, and consequential or punitive damages, even if Buyer knew or should have known of the possibility of such damages.
11. **Assignment.** Seller shall not assign, transfer, delegate, subcontract or otherwise dispose of any duty or right under this purchase order without the prior written consent of Buyer. Any assignment not made in accordance with the terms and conditions of this Section is void and of no effect.
12. **Compliance with Laws.** Seller agrees to comply with all federal, state, and local laws, rules and regulations that may be applicable to Seller's performance of its obligations to under this purchase order.



13. **Hazardous Chemicals and Hazardous Materials.** Prior to shipment or transfer of any hazardous chemical(s), as defined by regulations promulgated pursuant to the Occupational Health and Safety Act ("OSHA"), Seller shall provide Buyer with a complete, up-to-date Material Safety Data Sheet and shall properly mark such hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standard (29 CFR Part 1910.1200 et seq.).
14. **Payment.** Payment terms are stated on the face of the purchase order, unless otherwise agreed between the parties.
15. **Confidentiality.** Any specifications, samples, designs, formulations, trade secrets, patents, financial data, or other information that Buyer identifies as or otherwise deems confidential ("**Buyers Confidential Information**") and discloses to the Seller in connection with the purchase order shall remain the exclusive property of the Buyer and shall, along with any information derived from the same, be kept confidential by the Seller and its employees and agents and shall not, without Buyer's prior written consent, be disclosed to any third party or used except for purposes of the purchase order. Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Seller can demonstrate by written record that it was previously known by the Seller, became generally available to the public through no fault of the Seller, was disclosed to the Seller by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process. The Buyer and Seller agree that the covenant of confidentiality and nondisclosure set forth above shall survive termination of this Agreement and shall remain in effect for so long as the Buyers Confidential Information remains confidential.
16. **Default/Remedies.** In the event Seller fails to perform in accordance with the purchase order ("**Breach**"), should any Products fail to conform to the warranties, or should Seller or any Products provided by Seller fail to meet any of the conditions or specifications set forth in this purchaser order, and without prejudice to any other rights or remedies it may have under applicable law or in equity, Buyer shall have the right, after any applicable cure period, to recover from the Seller any and all mitigated losses and reasonable additional expenses incurred by Buyer arising from Seller's Breach, and at Buyer's option: (a) require the Seller promptly cure such Breach with conforming delivery at no additional charge or expense to Buyer and/or, (b) reject any non-conforming Products, cancel any and all outstanding deliveries, cover by purchasing replacement Products from one or more other suppliers.
17. **Insurance.** The Seller agrees to maintain insurance covering the Products and its performance under the purchase order in compliance with applicable legal requirements and including but not limited to comprehensive commercial general liability (including products liability completed operations and third party liability coverage) for not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate with an umbrella liability policy which incorporates excess products Liability Insurance of not less than \$25,000,000 per occurrence and \$25,000,000 annual aggregate. Such insurance shall name the Buyer an additional insured. Seller shall furnish Buyer annually with a certificate evidencing such insurance.
18. **Force Majure/Delays.** Seller shall not be deemed in default for failure to deliver Products as provided in the purchase order for any cessation, interruption or delay in the performance of its obligations due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of the Seller, provided that Seller immediately notifies Buyer of any such delay and its cause. In addition, Seller shall take all reasonable steps to avoid or remove the cause of such delay and mitigate the harm of such delay to Buyer, and resume performance as soon as the cause of delay is removed. In the event the Seller's performance is delayed or is expected to be delayed by more than fifteen (15) days in the aggregate, Buyer, upon written notice to Seller, may terminate this purchase order and all its obligations to Seller.
19. **Entire Agreement.** Unless otherwise agreed in writing by the parties, the purchase order contains the entirety of the terms and conditions and neither Buyer nor Seller shall be bound by oral or written agreements not expressly included in this purchase order. This purchase order may be amended and altered only by a writing signed by authorized representatives of both Seller and Buyer expressly referencing the terms or conditions being modified, and purporting to constitute an amendment to this purchase order.



20. **Governing Law and Venue.** This purchase order shall be governed by and construed and interpreted in accordance with the laws of the State of Texas. Seller and Buyer consent to the exclusive jurisdiction of and venue in any appropriate court in Harris County, Texas.
21. **Waiver.** Any failure or delay of Buyer to insist upon performance of any provisions of these terms and conditions or to exercise any rights hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right.
22. **Enforceability.** To the extent any term contained herein is held to be invalid, illegal, or unenforceable (in whole or in part), by a court of competent jurisdiction, the remainder of the terms, and provisions, shall remain in full force and effect.
23. **Notices.** Any notice required or permitted to be given in connection herewith shall be sent by certified mail, return receipt requested, by fax, with receipt confirmed, or by express delivery service to the address set forth on the purchase order or to any other business address furnished in writing by the intended recipient to the sender. The date of notice shall be deemed to be the date on which such notice has been sent by fax, received by mail, or by express delivery service.
24. **Headings.** Section headings are for convenience only and are not to be construed as part of this purchase order.