

Lumina Power, Inc Terms & Conditions of Sale

1. Customer's Terms and Conditions of Sale.

The Product(s) offered by Seller in this Quotation/Acknowledgment are offered only on the terms and conditions stated herein. Notwithstanding any terms or conditions on Customer's order, Seller's performance of any contract is expressly made conditional on Customer's agreement to Seller's Terms and Conditions of Sale unless otherwise specifically agreed to in writing by Seller. The word Product(s) shall be deemed to include, but not be restricted to, equipment, service, repair and parts.

2. Prices

Seller's prices specified in this Quotation/Acknowledgment are subject to the following:

- (a) UNLESS OTHERWISE SPECIFIED, PRICES ON THIS Quotation/Acknowledgment ARE FIRM and are good for thirty (30) days from the date of the quotation; budgetary Quotation/Acknowledgments and estimates are furnished for preliminary information only and shall neither constitute offers, nor impose any responsibility of liability upon Seller.
- (b) Unless otherwise specified, regardless of destination all prices quoted are in U.S. dollars and are based on packing for domestic shipment.
- (c) Unless otherwise stated in writing by Seller, all prices quoted shall be exclusive of transportation from the FOB point, insurance, taxes including without limitation, any sales, use or similar tax, and any tax levied on or assessed to Seller after Product(s) delivery by reason of Seller's security interest in Product(s), license fees, customs fees, duties and other charges related thereto.
- (d) Engineering charges ("NRE") are solely for adaptation of existing technology of Seller to customer packaging, interface and other requirements. Provision of equipment and/or documentation by Seller does not impart any ownership of technology or design to Customer or to any third party; no transfer of rights to manufacture this equipment is included in the terms of sale.

3. Terms of Payment

Unless credit is granted, payment is due upon delivery. All payments for Product(s) released and shipped on approved credit accounts shall be due in full thirty (30) days from day of invoice therefor. Past due balances shall be subject to a service charge of 1½% per month (18% per annum), but not more than the amounts allowed by law. Partial shipments will be billed as made and payments therefor are subject to the above terms. Seller may cancel or delay delivery of Product(s) in the event Customer fails to make prompt payment therefor, or in the event of an arrearage in Customer's account with Seller. It is agreed that Seller hereby retains a purchase money security interest in all Product(s) which are the subject of this Quotation/Acknowledgment or any contract of sale entered into pursuant hereto until Customer has made payment in full therefor in accordance with the terms hereof.

4. Transportation and Risk of Loss

Transportation will normally follow Customer's shipping instructions, but Seller reserves the right to ship Product(s) freight collect and to select the means of transportation and routing when Customer's instructions are deemed unsuitable. Unless otherwise advised, Seller may insure to full value of the Product(s) or declare full value thereof to the transportation company at the time of delivery and all such freight and insurance costs shall be for Customer's account. Title and risk of loss or damage shall pass to Customer upon delivery of the Product(s) to the transportation company or the Customer, as the case may be, at the FOB point, whether or not installation is provided by or under supervision of Seller. All Product(s) must be inspected upon receipt and claims should be filed with the transportation company when there is evidence of damage, either concealed or external. As used in the clauses appearing herein or attached hereto, "delivery" shall occur when Product(s) are delivered at the FOB point which, unless otherwise specified on the face of this Quotation/Acknowledgment or elsewhere in writing by the Seller, shall be the point of manufacture, notwithstanding installation by or under supervision of Seller.

5. Performance

Seller will make all reasonable efforts to observe its dates indicated for delivery or other performance. However, Seller shall not be liable in any way because of any delay in performance hereunder due to unforeseen circumstances or to causes beyond its control, including, without limitation, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of equipment, component shortages, subcontractor, supplier or Customer caused delays, inability to obtain or substantial rises in the price of labor, material or manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, delays in obtaining any necessary export licenses, or compliance with any law, regulation or order, whether valid or invalid, of any cognizant governmental body or any instrumentality thereof whether now existing or hereafter created. Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its execution.

6. Acceptance

The furnishing by Seller of a Product(s) to the Customer shall constitute acceptance of that Product(s) by Customer, unless notice of defect or nonconformity is received by Seller in writing within thirty (30) days of receipt of the Product(s) at Customer's designated receiving address. Notwithstanding the foregoing, any use of a Product(s) by Customer, its agents, employees, contractors or licensees, for any purpose, after receipt thereof, shall constitute acceptance of that Product(s) by Customer. Seller may repair or, at its option, replace defective or nonconforming parts after receipt of notice of defect or nonconformity.

7. Cancellation and Delays

Any order for a Product(s) acknowledged herein that is canceled in whole or in part by Customer prior to delivery shall be subject to a cancellation charge, as liquidated damages, equal to (1) 25% of the order price for the canceled portion if notice of cancellation is received by the Seller 30 days or more before the scheduled delivery date, (2) 50% of the order price for the canceled portion if notice of cancellation is received by the Seller less than 14 days before the scheduled delivery date (3) Cancellation within 7 days of delivery is not acceptable and 100% payment will be required. Buyer delayed shipments and de-expedited orders will be charged at the additional rate of 1½% per month of the selling price of the delayed material. Delay of more than 6 months will constitute a cancellation by Buyer and the cancellation charge will then apply. Seller shall have the sole right to cancel orders that extend past 12 months unless agreed upon in writing.

8. Patents and Other Industrial Property Rights

In the event of a claim against the Customer which charges that the equipment purchased from the Seller infringes a U.S. patent subsisting when the equipment was shipped, the Seller shall, at its sole option, procure for the Customer the right to use the

equipment; or replace the equipment with non-infringing equipment; or modify the equipment to be non-infringing; or remove the equipment and refund the purchase price, less depreciation, at the rate of fifteen percent (15%) per year.
THE FOREGOING STATES SELLER'S ENTIRE LIABILITY FOR CLAIMS OR PATENT INFRINGEMENT. Seller shall have no liability whatsoever if the claim of infringement arises out of Seller's compliance with Customer's specifications. Seller shall have no liability whatsoever if a claim of infringement is based upon the Customer's use of the equipment as part of a patented combination where the other elements of the combination are not supplied by Seller, or in the practice of a patented process.

9. Limited Warranty

Seller warrants each System sold by it to be free of defects in materials and workmanship as defined in our Standard Limited Warranty. For a complete copy of the Limited Warranty contact Lumina Power, Inc. customer service.

11. Limitations on Seller's Liability

IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES. SELLER'S LIABILITY FOR DAMAGES SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY SELLER FOR THE UNIT OR PRODUCT (S) FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE.

12. Proprietary Information

All manuals and documentation provided with the Product(s), and the information contained therein (other than information which is in the public domain) shall be and remain the property of the Seller, and Customer will not copy or use such manuals or documentation or use such information for any purpose other than to operate, repair and maintain the Product(s) purchased from Seller without the express written consent of Seller. Notwithstanding the foregoing, Customer may furnish the user manual for a Product(s) incorporated into one of Customer's systems to the end-user of such system if Customer obtains a written agreement from such end-user protecting such information from further disclosure without written consent of Seller.

13. Disputes

This agreement shall be governed by the internal laws of the Commonwealth of Massachusetts, U.S.A., and any claims arising hereunder shall be prosecuted in the federal or state court of competent jurisdiction in Massachusetts, and in no other place. Provided that, in Seller's sole discretion, such action may be heard in some other place designated by Seller so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS OF THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH THE PRODUCT (S) FURNISHED BY SELLER, MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

14. Miscellaneous

This Quotation/Acknowledgment is issued only to the Customer named on the face hereof. Any assignment by Customer of this Acknowledgment or any contract entered into pursuant to this Acknowledgment is void without the express written consent of Seller. Customer's order will be deemed a representation that Customer is solvent and able to pay for items ordered. If Customer fails to make payments due, or if bankruptcy or insolvency proceedings are instituted by or against Customer, or if Customer makes an assignment for the benefit of Creditors, Customer will be deemed in default and Seller will have the right to require reasonable progress payments for work in process or, in the absence such progress payments, to terminate its obligations without affecting the obligation of Customer to pay for Product (s) delivered and work in process as of such termination. All contracts for the sale of Product(s) entered into pursuant to this Quotation/Acknowledgment shall be construed under and governed by the laws of Massachusetts. If any part, provision or clause of the terms and conditions of sale, or the application thereof to any person or circumstances, is held invalid, void or unenforceable, such holding shall not affect and shall leave valid all other parts, provisions, clauses or applications of the terms and conditions remaining, and to this end the terms and conditions shall be treated as severable.