

## Terms & Conditions of Sale

The following terms and conditions (the "AGREEMENT") govern all sales of Earthwise Energy, LLC or any of its divisions, subsidiaries and affiliates (referred to herein individually or collectively as "SELLER"). Customer (referred to herein as "BUYER") acknowledges and understands that acceptance of Orders and delivery of Sales Orders by SELLER is expressly conditioned upon BUYER's agreement to all Terms and Conditions.

### (1) Orders

BUYER orders should include Manufacturer Part Number and complete descriptions of the Products, as well as quantities, delivery dates and locations. All orders placed by BUYER will be binding on BUYER even if SELLER does not provide an express written order confirmation. Written order confirmations by SELLER will be binding on SELLER. BUYER Orders sent in the body of an email are binding and governed by these Terms and Conditions. SELLER reserves the right to refuse any order based on an error in price or quotation. Modification of any order must be confirmed in writing. SELLER takes exception to and hereby objects to all hold harmless and indemnity provisions, either expressed or implied, set forth in BUYER'S order that seek to impose liability on SELLER. All sales are final. SELLER reserves the right at its sole discretion to charge a cancellation fee of up to twenty-five percent (25%).

### (2) Product Recommendations

Notwithstanding that SELLER may provide BUYER with recommendations regarding designs and products to be used on BUYERS projects, BUYER acknowledges that it is its responsibility to have engineers or other professional approve all designs and product specifications for BUYERS projects.

### (3) Prices

All prices are in US Dollars. Prices subject to change without notice. All sales are final. SELLER reserves the right at its sole discretion to charge a cancellation fee of up to twenty-five percent (25%). Special order, custom built and non-stock items are non-cancelable and nonreturnable. Typographical errors may occur from time to time. Price lists are available in several formats from SELLER. Prices do not include any federal, state or local taxes, or other governmental charges, which, when applicable, will be invoiced in addition to the applicable price. Applicable sales taxes will be charged on all orders.

### (4) Payment and Credit Policy

Available payment terms are (a) pre-payment with order; (b) VISA, MasterCard, Discover, and American Express; each of which do not qualify for Cash Discount; or (c) other payment arrangements as mutually agreed by the parties. SELLER will consider granting credit to BUYERS at SELLER's sole discretion. Contact SELLER to request a credit application. SELLER reserves the right to change credit and payment terms extended to BUYERS at SELLER's sole discretion at any time. SELLER reserves the right to require full payment in advance of shipping Products (including but not limited to charging a BUYER's credit card where that method of payment has been selected), for example in the event that a third party will be shipping the Products directly to BUYER (a "drop shipment"). All late payments shall be charged interest computed on a daily basis from the due date until paid in full at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. On delinquent accounts, SELLER shall not be obligated to continue performance under any agreement with BUYER. BUYER agrees to pay SELLER's costs of collection (including reasonable legal and professional fees) incurred in collecting any overdue amounts. The acceptance and deposit by SELLER of any payment from BUYER or its affiliates, by check, wire transfer or any other means, which payment contains any reference to the effect that such payment constitutes 'payment in full' or 'in full satisfaction', shall not constitute an accord and satisfaction or a waiver by SELLER of any right(s) it possesses, in law or equity, to collect payment in full from BUYER.

### (5) Shipping and Handling

Products are shipped F.O.B. shipping point of origin with shipping costs and handling fees charged to BUYER. SELLER's Shipping Policy in effect at the time of order placement shall govern specific shipping methods, costs, and handling fees, and is incorporated herein by reference. Seller does not guarantee delivery dates. The late delivery of products shall not entitle BUYER to a charge back, setoff, or other damages against SELLER unless a specified delivery date is agree to in writing by SELLER.

### (6) International Orders

Orders below \$5,000 shipped to outside of the U.S. and Canada will be charged an additional \$100 processing fee. SELLER must receive prepayment in U.S. funds before shipping. Please refer to SELLER's current Shipping Policy for other shipping and handling charges.

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**(7) Canadian Orders**

A GST of 5% and a \$250 brokerage fee will be charged on all orders shipping within and into Canada that use SELLER's customs broker, regardless of whether shipped to BUYER or otherwise (e.g. a "blind order" where SELLER is not identified as the shipper). BUYERS that use their own customs broker will not be charged the 5% GST or the \$250 brokerage fee.

**(8) Order Receipt and Acceptance**

BUYER shall each inspect and accept or reject each shipment upon receipt. Such acceptance or rejection shall only apply to (a) the completeness of the shipment and (b) reasonably apparent visible damage to the Products (or the packaging for such Products). BUYER must notify the shipping carrier upon receipt of shipment of any reasonably apparent problems with the shipment or Products, and notify SELLER in writing of nonconforming shipments or Products within 48 hours of receipt. BUYER's written notice to the shipper carrier should be on the "Bill of Lading" or "Delivery Notice," at the time of receipt. FAILURE TO NOTIFY BOTH THE SHIPPER AND SELLER OF ANY NONCONFORMITY, DEFECT OR DAMAGE IN OR TO THE PRODUCT SHALL BE DEEMED A WAIVER OF BUYERS RIGHTS TO REVOKE ITS ACCEPTANCE OF THE PRODUCT AND/OR REJECT THE PRODUCT AS NONCONFORMING, DEFECTIVE OR DAMAGED.

**(9) Returns Policy**

No merchandise may be returned without prior authorization from SELLER. If a return is authorized, BUYER will be issued a return authorization (RA/RMA) number, which must be clearly marked on the package. Only the original BUYER may return Products to SELLER. All subsequent purchasers must return Products through the BUYER from whom they directly or indirectly purchased Products. SELLER will credit the purchase price of all normally-stocked merchandise returned with a RA number and in new condition, in original packaging; provided that SELLER reserves the right, in its sole discretion, to charge a restocking charge on merchandise returned of up to twenty percent (20%) plus original shipping fee, absent a verifiable warranty issue. All items must be returned with shipping prepaid and insured to the address specified by SELLER (which may be the address of the manufacturer). Contact [info@earthwiseenergyproducts.com](mailto:info@earthwiseenergyproducts.com) for details and instructions. Items that (a) BUYER seeks to return more than 30 days after purchase, (b) are not in salable condition, (c) are not normally stocked, or (d) are special-order items, such as appliances, trackers and other custom electronics, may not be returned for credit. Products returned to SELLER that have been damaged by BUYER or another recipient will not be eligible for return credit, and will be held by SELLER only for 15 days. BUYER will be notified that they will not receive credit due to the damaged Product, and must make arrangements for Product pickup. After 15 days, all such Products will be disposed of without further liability to SELLER. BUYER agrees that any credit balances issued will be applied within one (1) year of issuance. IF NOT APPLIED OR REQUESTED WITHIN ONE (1) YEAR, ANY BALANCE REMAINING WILL BE SUBJECT TO CANCELLATION, AND SELLER SHALL HAVE NO FURTHER LIABILITY.

**(10) Warranty & Repairs**

The products shipped to the BUYER may be covered by a Manufacturer's Warranty, which is not affected by SELLER'S Terms and Conditions. SELLER DISCLAIMS ALL AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER CONCERNING PRODUCTS SOLD AND DESCRIBED HEREIN. SELLER DOES NOT ADOPT OR AFFIRM ANY OF THE WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, MADE BY ANY OF THE MANUFACTURERS OF ANY OF THE PRODUCTS DESCRIBED HEREIN. SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, WHETHER IN CONTRACT, TORT, PRODUCT LIABILITY OR ANY OTHER THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED DAMAGES FOR LOSS OR PROFITS, REVENUE, SALES OR CUSTOMERS OR FOR LABOR, REMOVAL OR INSTALATION COSTS, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBIITY OF SUCH DAMAGES. BUYER acknowledges that SELLER is selling the product "AS IS" and "WITH ALL FAULTS." Warranty repairs must be performed by the manufacturer. Contact [info@earthwiseenergyproducts.com](mailto:info@earthwiseenergyproducts.com) for instructions. SELLER makes no warranties or representations as to the accuracy or completeness of system drawings. BUYER assumes all risk and liability with regards to systems installed according to such drawings. Many states and localities have codes and regulations governing sales, construction, installation, and/or use of products for certain purposes, which may vary from those in neighboring areas. SELLER cannot guarantee compliance, and cannot be responsible for how the product is installed or used. Before purchase and use of a product, please review the product application, and national and local codes and regulations, to be sure that the product, installation, and use will comply with them.

**(11) Security Interest**

SELLER retains a security interest in the Products delivered to BUYER, and in their accessories, replacements, accessions, proceeds and products, including accounts receivable (collectively, the "Collateral") to secure payment of all amounts due under this Agreement. If BUYER fails to pay any amount when due, SELLER shall have the right to repossess and remove all or any part of the Collateral from BUYER, but not from BUYER's BUYERS. Any repossession or removal shall be without prejudice to any other remedy of SELLER hereunder, at law or in equity. BUYER agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by SELLER to transfer, create, perfect, preserve, protect and enforce this security interest.

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**(12) Statute of Limitations**

No action by BUYER may be brought at any time more than twelve (12) months after the facts occurred upon which the cause of action arose.

**(13) Limitations of Liability**

THE LIABILITY OF SELLER HEREUNDER FOR ANY AND ALL CLAIMS SHALL NOT EXCEED THE SUM OF BUYER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE DISPUTE. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES, ANTICIPATED OR LOST PROFITS, INCIDENTAL DAMAGES, LOSS OF TIME, OR OTHER LOSSES INCURRED BY BUYER OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR PRODUCTS SOLD HEREUNDER.

**(14) Governing Law; Venue**

The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of California. SELLER and BUYER specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement. The parties hereto agree that any suits, actions or proceedings arising out of this Agreement that may be instituted by any party hereto shall be instituted only in the state or federal courts in the city of San Rafael, California, and the parties hereto do hereby consent to the jurisdiction of those courts and waive any objection which they may now or hereafter have to venue of those suits, actions or proceedings.

**(15) Force Majeure**

Except for the payment of amounts due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by circumstances beyond its control (a "Force Majeure"), including, but not limited to, fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes. If any Force Majeure occurs, the party delayed or unable to perform (the "Delayed Party") shall give immediate notice to the other party (the "Affected Party"), and the Affected Party, upon giving prompt notice to the Delayed Party, shall be excused from performance under this Agreement for the duration of the Force Majeure; provided, however, that the Affected Party shall take all reasonable steps and cooperate with the Delayed Party to avoid or remove the cause of non-performance and shall promptly resume performance hereunder when the Delayed Party resumes performance. If the Delayed Party cannot remove the cause of non-performance within sixty (60) days, the Affected Party may terminate this Agreement.

**(16) Non-Waiver**

No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition.

**(17) Order of Precedence**

This Agreement supersedes any additional or different terms and conditions asserted or provided by BUYER, including but not limited to different terms and conditions in BUYER's form of purchase order. SELLER's acceptance of purchase orders is conditioned upon BUYER's acceptance of these terms and conditions, irrespective of whether BUYER accepts these terms and conditions by a written acknowledgment, by implication, or acceptance and payment of goods ordered hereunder. SELLER's failure to object to provisions contained in any communication from BUYER varying the terms herein shall not be deemed a waiver of the provisions herein. Neither SELLER's commencement of performance nor delivery shall be deemed or constituted as acceptance of any additional or different terms and conditions of BUYER. SELLER reserves the right to modify any aspect of this Agreement in its sole discretion, provided that orders placed with SELLER will be governed by the Agreement as it existed at the time that such order was placed.

**(18) Entire Agreement**

This Agreement, including the SELLER documents and policies incorporated herein by reference, shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall not be modified or rescinded. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement.

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## Shipping and Freight Policy

### Freight Charges

All prices are F.O.B. shipping point of origin. SELLER charges actual shipping costs based on SELLER's negotiated rate (if any) with that carrier plus an additional fee to cover SELLER's packing and handling of the order (collectively "Actual Shipping"). Fees for residential delivery and lift-gates will be charged per SELLER's negotiated rates with the carrier.

Delivery of batteries, mounts, large appliances and other large or heavy items, as well any drop-shipped items, may be shipped and invoiced separately and charged based on Actual Shipping. This may result in multiple invoices from one order.

On freight shipments, SELLER will charge an additional \$50 charge where the BUYER requests call-ahead service.

### Shipping Timeframes

SELLER will use reasonable efforts to ship orders for in-stock items within two (2) business days of order placement. SELLER will make a reasonable attempt to notify BUYER in the event that order will not be shipped in this time period.

If next day or two-day delivery is requested on orders eligible for small package delivery service, orders will be considered a rush and will be prioritized. These orders will be charged Actual Shipping rates, with an additional \$75 rush fee.

Freight shipments can be requested to ship on a rush basis for an additional fee of 5% of the order total with maximum charge of \$250. SELLER reserves the right to refuse requests for same-day freight shipment at its discretion.

### International Orders

For orders below \$5,000 to be shipped outside of the US and Canada, SELLER reserves the right to charge an additional \$100 processing fee. SELLER must receive prepayment in U.S. funds before shipping to such destinations. All international shipments will be charged Actual Shipping rates.

### Canadian Orders

A GST will be charged on all orders shipping within and into Canada that utilize SELLER's customs broker regardless of whether the order is shipped to BUYER or otherwise (e.g. a "blind order" where SELLER is not identified as the shipper). In addition, a \$250 brokerage fee will be assessed to each such order.

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