

General Terms and Conditions of CPS SERVICE SPE, LLC, a wholly owned subsidiary of



1. **Applicability.** These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") and services ("**Services**") by CPS Service SPE, LLC, a Florida limited liability company and wholly owned subsidiary of Coastline Power Solutions ("**Seller**", and together with Coastline Power Solutions, "**CPS Group**"), to the buyer ("**Buyer**") named on the quotation, purchase order confirmation, invoice, or other Seller document, as applicable, accompanying or referencing these Terms (the "**Sales Confirmation**"). The Sales Confirmation and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms shall prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. For the avoidance of doubt, Seller's failure to object to Buyer's terms and conditions of purchase, shall not be deemed a waiver of the provisions herein, and fulfillment of Buyer's purchase order shall not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. **Order Acceptance.** Any purchase order issued by Buyer to Seller shall not be accepted by Seller until Seller provides Buyer written confirmation that such purchase order has been approved, regardless of whether or not such purchase order references a quotation previously issued by Seller.

3. **Delivery.**

(a) Seller shall use reasonable efforts to meet any shipping or performance dates specified in the Sales Confirmation. Such dates are estimates based upon the projected time to process the order and are subject to change.

(b) Seller shall deliver the Goods FOB to Seller's manufacturing facility, which, if not specified on the face of the Sales Confirmation, shall be: 1965 Bennett Drive, DeLand, FL, 32724 (the "**Delivery Point**"). Buyer shall take delivery of the Goods within thirty (30) calendar days of Seller's written notice that the Goods have been delivered to the Delivery Point. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). If Seller elects to store the Goods at the Delivery Point, unless otherwise provided on the face of the Sales Confirmation, Seller shall charge Buyer the greater of four dollars per square foot per month (\$4.00/sq. ft./month) or five hundred dollars per month (\$500.00/month), which shall be prorated for a partial month.

(c) Buyer shall (i) cooperate with Seller and provide access to project premises and other facilities as may reasonably be requested by Seller, for the purposes of supplying the Goods and/or performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to deliver the Goods and/or perform the Services in accordance with the requirements of this Agreement; (iii) provide such materials or information as Seller may request to deliver the Goods and/or carry out the Services in a timely manner and ensure that such materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Goods and/or Services.

4. **Title and Risk of Loss.** Regardless of freight payment, title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point as set forth above. For the avoidance of doubt, Seller shall not be liable for any delays, loss, or damage in transit from the Delivery Point. Buyer shall make claims for delays, loss or damage to the Goods while in transit from the Delivery Point against the carrier. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the applicable state's Uniform Commercial Code. Buyer hereby grants Seller power of attorney to file any necessary financing statements to perfect such security interest.

5. **Buyer's Acts or Omissions.** If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. **Price.** Orders are accepted and approved with the understanding that the Goods will be billed at Seller's price in effect at the time of material procurement and production of the Goods begin (the "**Price**"), which may differ from Seller's originally quoted price. Seller may accordingly adjust the price of the Goods, in which case, these Terms shall be construed as if the adjusted price was originally inserted herein, and Buyer shall be billed by Seller on the basis of such adjusted price. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

7. **Payment Terms.**

(a) For purchase orders with an aggregate Price of less than or equal to fifty thousand dollars (\$50,000.00), the entire Price shall be invoiced by Seller when the Goods are ready for delivery ("**Delivery**").

(b) For purchase orders with an aggregate Price greater than fifty thousand dollars (\$50,000.00), progressive payments will be invoiced as follows: (i) twenty five percent (25%) of the Price invoiced upon issuance of the purchase order or notice-to-proceed, as applicable ("**Deposit**"), (ii) in the specific amount(s) for the completion of specific milestone(s) stated on the face of the Sales Confirmation ("**Milestone Payments**"), (iii) the amount, when aggregated with the Deposit and all Milestone Payments, equaling ninety five percent (95%) of the Price upon Substantial Completion (as defined below), and (iv) the remaining five percent (5%) of the Price upon Delivery.

(c) "**Substantial Completion**" shall be achieved when Seller, in its discretion, has substantially completed manufacturing all of the Goods and/or substantially completed all of the Services, within its scope, as applicable. For the avoidance of doubt, Substantial Completion shall not include: (i) non-material issues/punchlist items, and (ii) integration or other work that Seller has yet to complete due to unfurnished Buyer equipment/materials or other Buyer caused delays, including incorrect or defective Buyer provided equipment/materials.

(d) Buyer shall pay all invoiced amounts due to Seller within thirty (30) calendar days from the date of Seller's invoice, provided, however, for any purchase orders involving Goods that are to be ultimately installed outside of the continental United States, the entire Price, as well as any other amounts outstanding and due to Seller, must be paid in full before Seller is obligated to ship or release the Goods to Buyer.

(e) Notwithstanding the foregoing, payment terms shall be subject to the provisions of credit approval and may be adjusted by Seller in its sole discretion in writing, depending on historical volume of business from Buyer to Seller, as well as other factors.

(f) Buyer shall make all payments hereunder by wire transfer, ACH, or check, as directed by Seller, and in US dollars.

(g) Buyer shall pay interest on all late payments at the lesser of the rate of eighteen percent (18%) per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

(h) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise. Furthermore, in no case shall Buyer be entitled to withhold retainage from Seller from any amounts due and outstanding to Seller.

8. **Warranty.**

(a) Seller warrants to Buyer that for a period of twelve (12) months from the date of delivery of the Goods, or if such other period of time is indicated on the face of the Sales Confirmation, for such period of time from the date of delivery ("**Warranty Period**"), that such Goods will be free from material defects in material and workmanship. The warranty in this Section 8(a) shall cover Goods manufactured by and Services performed by CPS Group, and shall not cover any brokered sales of parts or equipment from third parties outside of the CPS Group. In particular, sales of used equipment shall be sold on an "as-is" "where-is" basis with no guarantees or warranties.

(b) **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 8(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in [Section 8\(a\)](#), and are covered under any original manufacturer warranty. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH**

RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(d) The Seller shall not be liable for a breach of the warranties set forth in [Section 8\(a\)](#) unless: (i) Buyer gives written notice of the defective Goods, reasonably described, to Seller within five (5) business days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in [Section 8\(a\)](#) to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business (or to such authorized repair facility designated by Seller) freight prepaid for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in [Section 8\(a\)](#) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises due to Buyer's improper storage, installation, commissioning, use, or maintenance of the Goods, or due to Buyer's misapplication or attempts to operate the Goods above the rated capacity or in abnormal environments, or normal wear and tear; or (iii) Buyer alters, moves to another location, or repairs such Goods without the prior written consent of Seller. The warranty in [Section 8\(a\)](#) may only be exercised by the Buyer, the owner of the property when and where the Goods are first installed, or such owner's general contractor for the project associated with the purchase order, and so long as the Goods remain in the location where first installed, both as specifically indicated by written notice from Buyer to Seller prior to shipment. If such notice is not duly provided, the exercisable party and the location shall default to the Buyer and the consignee address in the bill of lading, respectively, unless otherwise agreed in writing. In order to maintain the warranty in [Section 8\(a\)](#), Buyer must also use and perform all maintenance as described in any operating or maintenance manuals and instructions provided by Seller. For the avoidance of doubt, use and provision of proper lubricants, cooling air and ventilation is the responsibility of the Buyer, and for tank warranties ten (10) years and greater, Seller shall not be responsible for any corrosion related damage. Buyer must also furnish records evidencing proper maintenance upon request by Seller in connection with any warranty claim.

(f) Subject to [Section 8\(d\)](#) and [Section 8\(e\)](#) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part), and deliver the repaired or replacement Goods to the Delivery Point, or (ii) credit or refund the price of such Goods (or the defective part) at the pro rata contract rate provided that, if Seller so requests, Buyer shall return such Goods (or the defective part) to Seller. Seller shall be given reasonable time to perform any warranty repairs or replacement, and such repairs or replacement shall be performed during normal business hours. Notwithstanding the foregoing and for the avoidance of doubt, in the event Goods are installed or Services are performed at a location outside of the continental United States, Seller's warranty obligations shall not include the costs of travel/accommodation, and transportation of parts and equipment, to and from the foreign location.

(h) THE REMEDIES SET FORTH IN [SECTIONS 8\(E\)](#) AND [\(F\)](#) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN [SECTIONS 8\(A\)](#).

9. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE OR LOSS OF GOODWILL, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICE OR REPLACEMENT POWER, COST OF DOWNTIME, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

(c) The limitation of liability set forth in [Section 9\(b\)](#) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

(d) No penalty or liquidated damages clause of any description, in any specification or order, will be effective, unless specifically approved in writing with the signature of an officer of Seller.

10. Changes. Any change requested or caused by Buyer in the design or specifications, or any change in the assumptions upon which the quotation associated with the order is based, including, without limitation, changes in applicable law, changes in materials or labor costs, incorrect or unplanned Buyer furnished materials, etc., shall entitle the Seller to an equitable adjustment to the Price and any shipment and/or performance dates, as applicable, to the extent Seller is impacted by such change.

11. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced

against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. In the event a purchase order is cancelled or terminated early, without limitation to any of Seller's rights and remedies available under applicable law and this Agreement, Buyer shall pay Seller as follows: (i) all engineering hours expended shall be reimbursed at one hundred fifty dollars per hour (\$150.00/hour); (ii) all purchased and processed materials that Seller determines it cannot utilize for other orders, shall be reimbursed at cost; (iii) all purchased and processed materials that Seller determines it can utilize for other projects will be assessed a restocking fee of five percent (5%) of cost; and (iv) the proportional amount of the Price after subtracting Seller's material purchase costs and prior payments from Buyer for the order (provided, however, such subtracted amount cannot exceed the Price), based upon actual manufacturing hours expended relative to the estimated manufacturing hours to complete the order at the time of submittal documents approval. Buyer acknowledges and understands that due to the project specific and customized nature of the Goods, that in the event a purchase order is cancelled or terminated, Seller's ability to mitigate damages with respect to purchased and processed materials may be limited.

12. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

13. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or inability or delay in obtaining necessary labor, or restraints or delays affecting carriers, or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

14. Assignment. Except as immediately follows, Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

15. Governing Law and Jurisdiction. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Florida. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Florida in each case located in the City of DeLand and County of Volusia, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail.

17. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18. Amendment, Waiver, and Severability. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information, Governing Law and Jurisdiction. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.