

**U.S. Solar Mounts Corp. (USSM)** 08/18/2017

## **STANDARD TERMS AND CONDITIONS**

**Scope and Applicability.** All quotations, orders, and invoices are subject to the Standard Terms and Conditions set forth herein. ANY ADDITIONAL, DIFFERENT OR CONFLICTING TERMS AND CONDITIONS ON ANY DOCUMENT ISSUED BY CUSTOMER AT ANY TIME ARE HEREBY OBJECTED TO AND REJECTED BY USSM, SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE OR SERVICE PERFORMED HEREUNDER, AND SHALL NOT BE BINDING IN ANY WAY ON USSM. Any of the following shall constitute, but is not the sole form of, Customer's acceptance of these Standard Terms and Conditions: (1) submission of a purchase order, (2) delivery of goods, or (3) commencement of services.

**Quotations and Orders.** A written USSM quotation may be accepted by Customer in writing within thirty (30) days from its date or within the period of time otherwise stated in the quotation, whichever is less. Verbal quotations are only valid on the calendar day on which they are given unless confirmed with a written quotation on that calendar day. A USSM quotation is an offer for the Customer to buy. Customer's acceptance of a USSM quotation is subject to these Standard Terms and Conditions. USSM is not required to accept Customer's orders. Any Customer purchase order shall not result in an agreement unless and until such order is accepted by USSM and acknowledged by it or its authorized representative at USSM's office in Sparta, WI, and such order or USSM acceptance shall be subject to these Standard Terms and Conditions. IN THE EVENT THAT THE CUSTOMER'S PURCHASE ORDER, ACCEPTANCE, OR OTHER WRITTEN COMMUNICATION STATES TERMS ADDITIONAL TO OR DIFFERENT FROM THESE STANDARD TERMS AND CONDITIONS, THESE STANDARD TERMS AND CONDITIONS SHALL PREVAIL, AND THE TERMS AND CONDITIONS OF THE CUSTOMER'S PURCHASE ORDER, ACCEPTANCE, OR OTHER WRITTEN COMMUNICATION SHALL BE OF NO FORCE OR EFFECT.

**Payment Terms.** Unless otherwise stated below or on USSM's invoice, payment shall be due upon receipt of USSM's invoice. Payment for the goods and/or services must be made in U.S. Dollars. Any amount payable by the Customer and not paid when due shall bear interest, payable on demand, until such past-due amount is paid in full at the USSM Corp rate of 18.00% per annum as allowed by law. Customer agrees to pay all fees, costs and expenses incurred by USSM in collecting amounts due, including but not limited to attorney fees and expenses. USSM reserves the right to change credit and payment terms when, in USSM's opinion, Customer's financial condition does not justify the making of any shipment (or the provision of services) on the terms specified herein. In such event, USSM may elect to make a shipment C.O.D. or on a cash in advance basis, suspend performance, or revoke its acceptance of Customer's order. If a manufacturer requires a deposit or payment in full at the time of order placement, those same requirements will be passed on to the Customer, which requirements Customer hereby accepts. Payments by Customer shall be applied first to USSM's accrued but unpaid costs of collection, then to accrued but unpaid interest, and then to principal and other fees, charges and costs. Any taxes or import duties imposed by the laws of any country, dominion, state, territory, province, municipality or other authority, which USSM may be required to pay or to reimburse to others by reason of the ownership, use or sale of any goods or services delivered hereunder, will be added to the purchase price, either as a separate item or included in the invoice price of the goods or services, as the law may require or USSM may determine.

**Shipping, Title, Risk of Loss, and Delivery.** Unless otherwise stated on USSM CORP.'s quotation or USSM's order acknowledgment form, all shipments from USSM are made F.O.B. USSM's shipping point. Title and risk of loss shall pass to Customer upon delivery to the carrier at USSM's shipping point or upon delivery to the carrier at the manufacturer's shipping point if the goods are shipped directly from the manufacturer to Customer. In the absence of shipping directions from Customer and without USSM incurring any liability, products will be shipped by the method and via carrier that USSM believes dependable. The carrier may or may not be an agent of USSM. USSM will not be liable for any damage to goods while such goods are in transit. USSM shall have no responsibility or liability for goods shipped directly from the manufacturer.

**Acceptance.** Goods and services shall be inspected by Customer upon delivery and any use of the goods and services for purposes other than inspection and testing during this period shall be considered an acceptance. If the goods or services fail to conform in any way, the Customer shall notify USSM within one (1) day of delivery and failing such notification the goods and services shall be deemed to have been accepted.

**Delivery Dates.** Stated delivery schedules or dates are good faith estimates only and not a commitment as to delivery on specific dates. Such delivery schedules or dates are approximate and are contingent on product availability, manufacturers' estimated factory schedules, and certain other conditions prevailing at the time of placement of a quotation, receipt of an order or fulfillment of an order. USSM will attempt to ship the products or provide the services within the estimated times reflected on the quotes and tracking reports but will not be liable for any failure to do so. USSM SHALL NOT IN ANY EVENT BE LIABLE IN DAMAGES, WHETHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR OTHERWISE, FOR ANY DELAY IN SHIPMENT, DELIVERY OR PERFORMANCE. Delay in delivery of any shipment or performance of any services shall not relieve Customer of its obligations to accept such shipment or any other shipment or any services. If USSM learns that it (USSM) cannot ship within the estimated times, Customer will be advised on the next tracking report of the new estimated ship date. USSM reserves the right to make delivery in installments. Each such installment shall be separately invoiced and paid for when due, without regard to subsequent deliveries. For items on backorder, USSM may ship whenever the products become available without notice to the Customer.

**Return Policy.** All claims for shortages or errors must be made before Acceptance as defined above, must be in writing, and must specify with particularity the nonconformity. Returns require prior written authorization from USSM and are subject to the then effective Return Material Policy of USSM (including without limitation applicable restocking fees), and no credit will be issued by USSM for goods returned without prior written authorization from USSM. Special orders, custom products, and wire cuts are non-returnable and non-refundable. Goods that have been used and/or modified are non-returnable and non-refundable.

**Excused Performance.** Performance by USSM is excused when there is any contingency beyond the reasonable control of USSM (including but not limited to Acts of God, Acts of Nature, inability to obtain materials or energy on terms considered practical by USSM, governmental actions or legislation or labor difficulties) which interferes with USSM's distribution of goods or other performance hereunder. USSM's contractual obligations may be modified by USSM as necessary to sustain business at a commercially practicable level, including but not limited to USSM's use of alternate sources of supply and USSM's cancellation or modification of existing orders. USSM may impose surcharges due to sudden increases in USSM's costs for obtaining

transportation, fuel or materials. Such surcharges will be added to the purchase price to be paid by Customer.

**Suitability of Use.** PRODUCTS MANUFACTURED BY USSM ARE COVERED BY USSM'S SEPARATE, WRITTEN WARRANTY. USSM MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES REGARDING ITS SERVICES OR THOSE OF ANY SUBCONTRACTOR AND PROVIDES ALL SUCH SERVICES AS-IS, WHERE-IS. USSM MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR CONDITION, AND HEREBY DISCLAIMS ANY AND ALL SUCH IMPLIED WARRANTIES THAT MAY ARISE BY OPERATION OF LAW OR OTHERWISE. If there is a manufacturer's warranty with respect to goods acquired by Customer from USSM, USSM is not a party to such warranty and such warranty is between the manufacturer and the Customer.

**Limitation of Damages and Remedies.** UNDER NO CIRCUMSTANCES WILL USSM BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, REVENUE, BUSINESS OR OPPORTUNITY, OR ANY LOSS OCCASIONED BY DELAY IN DELIVERY) BASED ON BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED AS TO THE POSSIBILITY OF SAME. Customer's sole remedies from USSM with respect to goods or services purchased hereunder shall be, to the extent applicable and qualifying (a) replacement of the goods purchased hereunder in compliance with, and subject to, the terms of the paragraph entitled "Return Policy" above, or (b) if allowed in USSM's sole discretion upon return of the goods from Customer to USSM, return of so much of the purchase price as has been paid for the goods or a credit (not to exceed the purchase price paid) against the unpaid purchase price of other goods delivered or to be delivered to Customer. FURTHERMORE AND WITHOUT LIMITING ANY OF THE FOREGOING, IN NO EVENT SHALL USSM'S LIABILITY EXCEED THE AMOUNT ACTUALLY PAID TO USSM BY THE CUSTOMER FOR THE GOODS AND SERVICES. The foregoing is intended as a complete allocation of the risks between USSM and Customer, and Customer hereby agrees that this limitation upon remedies will not have failed of its essential purpose. The Customer's remedies set out herein are exclusive.

**Warranty Replacement of Parts.** If parts or components for any product manufactured by USSM Corp are issued under a warranty replacement, defective part/component(s) must be returned to USSM within 14 days. If customer fails to return defective parts/component(s), the customer understands that they will be charged the MSRP price for the components.

**Governing Law; Jurisdiction; No Jury Trial.** All orders and these Standard Terms and Conditions shall be governed by, and construed in accordance with, the laws of the State of WI without regard to its conflict of law provisions. Customer (1) agrees that any suit, action or other legal proceeding arising out of or related to the sale of goods or other performance by USSM to Customer shall be brought in the Monroe County, Wisconsin District Court or the U.S. District Court for the Western District of Wisconsin; (2) consents to the jurisdiction of each such court in any such suit, action or other legal proceeding; and (3) waives any objection which Customer may have to the venue of any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. CUSTOMER WAIVES THE RIGHT TO A JURY TRIAL.

**Time Limit for Bringing any Suit.** In addition to the other limitations contained herein, any action hereunder must be commenced within 6 Calendar Months following the original purchase of the goods or services.

**Geographical Limitations.** Customer understands and agrees that the Terms and Conditions listed in this document shall be applicable to all sales, regardless of Customer's business location, job site location or delivery location. These Terms and condition shall be considered in force and binding in any of the 50 United States and, further, in any other country, as may be relevant to international orders.

**Customer Data.** USSM shall be allowed to process and store Customer's business data such as the Customer's contact persons' personal data and share such data with the affiliated companies of Customer and/or USSM and any other company that may be retained by USSM for debt collection purposes.

**Termination by USSM.** If Customer fails to fulfill any of its payment obligations, USSM may suspend performance and delivery. Any cost incurred by USSM due to such suspension, including but not limited to storage costs, shall be payable by Customer upon submission of USSM's invoices. Performance of USSM's obligations shall be extended during Customer's nonfulfillment

of any part of the payment terms (whether or not USSM suspends performance) and such additional time as may be necessary. If the Customer does not correct such failure in a time and manner satisfactory to USSM, USSM may, at its option, terminate the transaction as to goods not delivered and services not yet performed. If Customer becomes bankrupt or insolvent, or if any proceeding is brought against Customer, voluntarily or involuntarily, under the bankruptcy laws or any insolvency laws, USSM shall be entitled to terminate the transaction as to goods not delivered and services not yet performed. Customer shall pay USSM its reasonable termination charges in the event of any such termination. USSM's rights under this paragraph are in addition to, and not in lieu of, any additional rights provided to USSM hereunder or by law or in equity.

**Canceled Orders.** A quotation or any other offer to sell by USSM, upon acceptance by Customer, may only be canceled or altered with USSM's express written consent. In the event that Customer cancels an order for any reason, USSM shall be paid a reasonable cancellation charge consisting of a percentage of the purchase price reflecting the percentage of the work performed and material costs incurred by USSM prior to the notice of termination from Customer, plus actual direct costs incurred by USSM resulting from cancellation. Cancellation charges associated with orders for custom goods or special orders specifically manufactured or sourced to Customer's specification may equal the actual purchase price of the affected goods.

**Assignment by USSM.** USSM may use subcontractors and/or third parties for services or goods to be provided. No quotation or any offer to sell may be assigned by Customer in whole or in part without USSM's prior written consent. Any attempted assignment by Customer without such consent shall be void.

**Third Party Contract Obligations of Customer.** In the event that Customer has obligated itself with any third party for the completion of any portion of any project in which USSM's goods or services will be used, Customer and USSM agree that USSM is not a party to such obligation, and USSM does not assume any liability or obligation under any such obligation of the Customer. Customer releases and agrees to defend, indemnify, and hold USSM harmless for any claims of any nature whatsoever related to any obligation, risk, liability or responsibility which was or is Customer's under any contract, or which was assumed by Customer, towards any third party involving the goods or services supplied by USSM.

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**Amendment to Standard Terms and Conditions.** No alteration, variation, amendment, modification or waiver of any of these Standard Terms and Conditions shall be binding on USSM unless expressly stated in writing and signed by an authorized officer of USSM. USSM may elect to make amendments to these Standard Terms and Conditions from time to time, which shall be effective immediately when such amendment is made.