

# Terms and Conditions of Sale

## 1. Scope/Binding Effect.

These terms and conditions of sale (these “**Terms**”) apply to all quotations, offers and agreements made, and purchase orders accepted, by CalPlant I, LLC, and its subsidiaries (“**Seller**”) from any buyer (“**Buyer**”). To the extent that these Terms conflict with or are different from those contained in any Buyer purchase order or other procurement documents, these Terms will control. Buyer’s acceptance of the goods (the “**Goods**”) provided by Seller shall conclusively confirm assent to these Terms. These Terms are subject to change by Seller without prior written notice at any time, in Seller’s sole discretion. The latest version of these Terms will be posted on Seller’s website. Buyer’s continued purchase orders after a posted change in these Terms will constitute Buyer’s acceptance of and agreement to such changes.

## 2. Prices; Payment.

Prices are those in effect at the time of acceptance of an order in a written acknowledgement from Seller (each, an “**Acknowledgment**”) of the purchase order. All prices are in U.S. dollars, F.O.B. point of destination unless otherwise stated in the Acknowledgement. Buyer shall pay Seller the amount shown on Seller’s invoice for all Goods sold to Buyer within 10 calendar days from Seller’s invoice date for the Goods sold. If Buyer pays Seller within 10 calendar days after the invoice date, Buyer shall receive a 1% discount on the total invoice less freight charges. Amounts not paid when due will bear a late payment charge of 1.5% per month or the maximum legal rate, whichever is less.

## 3. Delivery.

- (a) Unless otherwise stated in the Acknowledgement, delivery is F.O.B. point of destination, freight prepaid and allowed. Title and risk of loss for the Goods will pass to Buyer upon delivery to the designated point of destination. The Goods will be delivered to the point of destination designated in the purchase order.
- (b) Delivery dates are approximate. Seller will make reasonable and diligent efforts to meet specified delivery dates. In the event of any delay, Seller shall have such additional time within which to make delivery of the Goods sold as may be reasonably necessary under the circumstances and, if Seller delivers the Goods to Buyer, Seller shall not be liable to Buyer or any third parties for any damages of any kind, direct or indirect, resulting from delay of delivery.

## 4. Buyer-Arranged Shipping.

- (a) Buyer may arrange for pickup by truck (all rail orders must be arranged by Seller) of the Goods at Seller’s plant, but only if the following requirements are satisfied: (1) Buyer shall inform Seller in Buyer’s purchase order that Buyer is electing to arrange its own shipping; (2) Buyer may only arrange for full truck orders; (3) Buyer may only use its own trucks for pickup and shall ensure that it (i) complies with Seller’s safety and other requirements, (ii) has a Department of Transportation safety rating of “Satisfactory,” and (iii) has current insurance meeting the following minimums: \$1,000,000 general liability, \$1,000,000 auto liability, and \$100,000 cargo liability; and (4) Buyer shall (A) make an appointment for a specific date and time for the pickup, (B) cause its trucks to arrive not more than 30 minutes prior to, and in any case not later than, the appointment time, and (C) pick up any order within three days of the date on which Seller has notified Buyer that the Goods will be ready. If Buyer has not satisfied each of the foregoing requirements, Seller shall have the right to arrange freight and ship the order at Buyer’s expense.

(b) Title and risk of loss shall pass to Buyer upon delivery to Buyer's arranged carrier. Seller shall not be responsible for the loss or damage of any Goods in transit. Buyer acknowledges and agrees that a shipment of Goods cannot be refused because of loss or damage and that Buyer is required to accept the shipment and take all reasonably necessary action to minimize damages.

## **5. Inspection.**

- (a) Buyer shall inspect the Goods at their freight destination promptly upon arrival. Buyer must make shortage claims within five days after delivery. Buyer's acceptance of the Goods will be conclusively presumed and any breach of warranty waived if Buyer fails to give Seller notice of defective or non-conforming Goods within five days after delivery in the case of defects discoverable through inspection and within 15 days after discovery in the case of defects not discoverable through inspection.
- (b) If any Goods are lost or damaged in transit, Buyer shall immediately stop unloading if it sees any damage or load displacement and proceed as follows:
- i. Buyer shall (1) if applicable, advise the carrier's driver of the damage and ensure that the driver makes a detailed notation of the damage on the delivery document; and (2) note the date, time and full name of the person with whom Buyer speaks and the outcome of that conversation.
  - ii. Buyer shall take photographs of the Goods while they are in place inside the railcar or truck, including close-ups of the damage and wide-angle photographs that provide an overall frame of reference. Buyer shall take a photograph that identifies the railcar or truck on which damage occurred.
- (c) After completing the steps described in clause (b) above, Buyer shall proceed as follows:
- i. Complete unloading the entire shipment, sorting the damaged Goods from the undamaged. Buyer shall set aside, protect and hold the allegedly defective Goods (without charge to Seller) until Seller has had a reasonable opportunity to inspect the allegedly defective Goods and to investigate all defect claims.
  - ii. Notify Buyer's sales representative at Seller. The notice shall describe the rejected Goods and the defects upon which the claims are based.
  - iii. Complete any claims forms provided by Seller's sales representative, and include (1) the value of the damaged or missing Goods, substantiating such value with a copy of Seller's invoice; (2) a description of the damage in detail, including photographs, copies of delivery documents with the damage notation and the record of telephone calls made to the carrier; and (3) documentation for any expenses directly attributable to the damage, such as the costs of sorting and segregating damaged Goods.
- (d) Repair or replacement of defective Goods, or repayment of the purchase price for the defective Goods, will be made only upon the return of the defective Goods, which shall not be returned until Seller has consented to the return and has delivered to Buyer written shipping instructions. Any use of the allegedly defective Goods by Buyer which is not related to acceptance testing shall constitute acceptance.

## **6. Taxes.**

All prices are exclusive of any present or future sales, revenue, excise tax, duties or other similar charges, all of which shall be paid by Buyer.

## **7. Quantity Variation.**

Unless specifically noted, a quantity variation of up to 10% of the quantity order is authorized. All shortage claims must be supported by an affidavit within 72 hours after receipt by Buyer and Buyer shall, if requested by Seller, cause the total shipment to remain intact for inspection by Seller.

## 8. Warranty.

Seller warrants that the Goods will conform to applicable specifications and will be free from material defects in materials or workmanship. Seller will repair or replace, at its option, any Goods found to be defective or nonconforming, provided that: (a) Buyer has given prompt written notice of the defect or nonconformity to Seller; (b) at Seller's request, Buyer has returned the nonconforming Goods to Seller, freight prepaid; and (c) Seller has determined in its sole discretion that Buyer has not improperly handled or shipped the Goods, or subjected the Goods to misuse, misapplication, accident, alteration, neglect, improper or inadequate protection in storage. Seller makes no warranty with respect to Goods custom made to Buyer's specifications, and Buyer agrees to hold Seller harmless from claims based upon compliance with such custom specifications. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR OBLIGATIONS OF SELLER, EXPRESS OR IMPLIED. SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 9. Limitation of Liability.

IN NO EVENT WILL SELLER BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED FROM ANY CAUSE OR ARISING OUT OF ANY LEGAL THEORY, WHETHER CONTRACT, NEGLIGENCE, STRICT TORT LIABILITY OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE GOODS. THESE LIMITATIONS INCLUDE ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS. ANY LAWSUIT BY BUYER AGAINST SELLER ARISING OUT OF ANY SALE OF THE GOODS SHALL BE FILED WITHIN ONE YEAR FROM DELIVERY OF THE GOODS SOLD BY SELLER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OR OF THE LIMITED REMEDY PROVIDED IN THESE TERMS. In addition, Seller's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity) for damages or loss, howsoever arising or caused, shall in no event exceed the amount Buyer paid to Seller for the Goods to which the liability relates. Buyer recognizes that the pricing associated with the Goods reflects this allocation of risk and is the basis of the bargain between Buyer and Seller.

## 10. Force Majeure.

Seller shall not be responsible for delays caused by acts of God, fires, floods, strikes, accidents or delay by suppliers of material, shortages of material, inability to obtain necessary labor or manufacturing facilities or other causes beyond Seller's reasonable control (any of the foregoing, a "**Force Majeure Event**"). Seller may, without liability to Buyer or any third party, suspend its performance when Seller's performance is delayed or prevented by a Force Majeure Event, and if such condition continues for 90 consecutive days, Seller may terminate its performance to Buyer.

## 11. Seller's Remedies.

If Buyer defaults in its purchase obligation under any order for the Goods, Seller shall have all remedies afforded under the Uniform Commercial Code and at law or in equity. Without limiting the foregoing, Seller may immediately accelerate all amounts due from Buyer to Seller, bring an action for the price, withhold further deliveries, terminate any order without notice or stop in transit any shipment to Buyer or Buyer's designee. Seller shall have the power, but not the duty, of resale of any Goods in Seller's possession for Buyer's account after seven days' written notice thereof has been given to Buyer. Seller's remedies are cumulative.

## **12. Buyer's Indemnity.**

Buyer assumes all liability (including, without limitation, liability for injury to person or property, economic loss or business interruption) for all claims arising from the sale or use of the Goods. Buyer will indemnify, defend, protect and hold harmless Seller, at all times, for, from and against all claims, damages, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses (specifically including reasonable attorneys' fees and expenses of investigation and penalties) incurred by Seller as a result of or arising from (a) any Goods sold by Seller to Buyer, (b) any use of the Goods sold under these Terms by Buyer or any third party, (c) any nonfulfillment of any covenant or agreement on the part of Buyer under these Terms, and (d) any claim made by a third party, or the commencement of any action or proceeding by a third party, that would give rise to Seller's right of indemnification under these Terms.

## **13. GHG Reduction Claims.**

Seller reserves all rights, privileges and claims to any greenhouse gas (GHG) reductions or GHG reduction attributes associated with the Goods. Buyer shall not assert or claim any interest in any such rights, privileges or claims, directly or indirectly, to such GHG reductions or attributes.

## **14. Disputes.**

Venue in any lawsuit between Buyer and Seller will lie exclusively in state or federal courts in California, and the prevailing party in such litigation will be entitled to recover all reasonable attorneys' fees and costs and other expenses (in addition to statutory "costs" of litigation), including attorneys' fees and expenses in connection with any trial, appeal or petition for review. Prior to commencing litigation, Buyer and Seller will mediate their dispute pursuant to the mediation rules of the American Arbitration Association, with the mediator's fees to be split equally between Buyer and Seller.

## **15. Governing Law.**

Except where inconsistent with these Terms, all orders shall be governed by the Uniform Commercial Code provisions applicable to transactions in goods, regardless of whether the order is characterized as a transaction in goods or a transaction in services. Any order for Goods shall be interpreted and enforced, and the rights and liabilities of Buyer and Seller will be governed, under the laws of the State of California.

## **16. Modifications and Amendments.**

No waivers, amendments or modifications of any of these Terms shall be valid unless reduced to writing and signed by both parties. These Terms shall not be amended or modified by the course of performance or course of dealing between Buyer and Seller.

## **17. Mutuality.**

All debts and obligations of Seller and Buyer to each other are mutual and subject to set-off. For purposes of this paragraph, "Seller" and "Buyer" shall be deemed to include each of their respective subsidiaries and affiliates that directly or indirectly control or are controlled by them.

## **18. Entire Agreement.**

With respect to any order for the Goods, these Terms and such order shall constitute the entire agreement between Buyer and Seller, and supersedes all prior or contemporaneous agreements, understandings or representations with respect to the subject matter hereof. These Terms may not be modified or amended except in writing signed by Buyer and Seller.