

## ENERGY FOCUS, INC. TERMS AND CONDITIONS OF PURCHASE

### SELLER AND BUYER AGREE AS FOLLOWS

1. ACCEPTANCE. BUYER'S ORDER IS EXPRESSLY CONDITIONED UPON SELLER'S ACCEPTANCE OF ALL TERMS AND CONDITIONS HEREOF. THE TERMS AND CONDITIONS HEREOF SHALL CONSTITUTE THE SOLE AND BINDING CONTRACT BETWEEN SELLER AND BUYER CONCERNING THE PURCHASE AND SALE OF THE GOODS ORDERED HEREUNDER. No changes, additions or deletions to the terms and conditions hereof shall be effective unless approved in writing by Buyer. Acceptance of this Purchase Order is expressly limited to the terms hereof. Any terms proposed by Seller which add to, vary from or conflict with the terms hereof shall be void, and terms hereof shall govern. If this Purchase Order has been issued by Buyer in response to an offer or quote from Seller, then the issuance of the Purchase Order by Buyer shall constitute an acceptance of such offer subject to the express condition that the Seller agrees that this Purchase Order constitutes the entire agreement between Buyer and Seller with respect to the purchase and sale of the goods hereunder. Commencement of performance by Seller pursuant to this Purchase Order constitutes acceptance of all terms and conditions hereof by Seller, regardless of the form or media, whether electronic, or in written paper form. It is an express condition of this order that any provisions printed or otherwise contained in any acknowledgement hereof, or in any quote, offer or invoice related hereto, which are inconsistent with or in addition to the terms and conditions herein stated, shall have no force or effect, and that the terms and conditions hereof will control for all purposes.

2. PAYMENT TERMS. Energy Focus Inc standard payment terms unless otherwise specified and agreed upon in writing shall be 45 days from acceptance of materials received.

3. PACKAGING. Seller will package the goods in accordance with good commercial practice so as to ensure that no damage results from weather or transportation, and the cost thereof will be borne by the Seller. Each shipping container will be clearly and permanently marked as follows: (a) Seller's name and address, (b) name and address of Buyer's division or subsidiary, (c) Buyer's purchase order number, and (d) Buyer's part number as shown on the purchase order. If more than one shipping container is used, each container shall also be clearly and permanently marked as follows: (a) identification of the total number of containers as well as the number of the individual container; e.g. box 1 of 2 boxes, and (b) identification of the container bearing the packing slip.

4. PRICE. Unless otherwise stated on this Purchase Order, the prices set forth on this Purchase Order shall include all packaging, cartage, containers and similar items. Seller represents and warrants to Buyer that the prices charged to Buyer hereunder are no higher than prices charged by Seller to other customers of Seller for similar products sold in similar or lower quantities. In the event of a breach of this warranty, the prices charged to Buyer shall be reduced accordingly, both prospectively and retroactively.

5. FREIGHT AND SHIPPING INSTRUCTIONS. Unless otherwise stated on this Purchase Order, the prices set forth on this Purchase Order include all freight. In the event that the Purchase Order requires Buyer to pay freight, the goods shall be shipped by the route and in the manner specified by Buyer. Any freight or cartage cost in excess of the cost of shipment as specified by Buyer shall be reimbursed by Seller to Buyer. Any losses accruing from deviation from the Buyer's routing instructions will be charged to Seller's account.

6. **WARRANTY.** In addition to all other express and implied warranties made by Seller, Seller warrants that, for one year from the date of delivery, the goods furnished to Buyer hereunder will conform to the specifications or other descriptions or samples furnished or specified, will be free from defect, merchantable, of good material and workmanship and fit for the particular purpose for which such goods are required. The warranty contained in this paragraph shall survive any inspection, acceptance or payment by Buyer.
7. **INSPECTION.** Final inspection shall be on the Buyer's premise unless otherwise agreed in writing. Materials rejected as not conforming to this Purchase Order, or as otherwise defective, may be returned at Seller's expense, including transportation and handling costs.
8. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH.** Each installment or lot of this Purchase Order is dependent on every other installment or lot and a delivery of non-conforming goods or a default by Seller of any nature under one installment or lot will constitute a total breach of this Purchase Order as a whole.
9. **TAXES.** Except as may be otherwise specifically provided in this Purchase Order, the prices include all applicable Federal, state and local taxes.
10. **INVOICES.** Seller shall submit a separate invoice for each delivery, which references this Purchase Order number. Invoices shall be itemized, and taxes and transportation charges, if any, shall be listed separately. A bill of lading must accompany each invoice.
11. **FORCE MAJEURE.** Neither party shall be held responsible for any losses resulting if the supply or receipt of the goods ordered hereunder is delayed or prevented by war, acts of enemies, strikes, fires, floods, acts of God, or without limiting the foregoing by any other causes not within control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent.
12. **NO ASSIGNMENT.** No right or interest in this Purchase Order may be assigned by Seller without the prior written permission of the Buyer, and no delegation of its obligations owed, or of the performance of any obligation, by Seller may be made without the prior written permission of the Buyer. Any attempted assignment or delegation by Seller shall be void unless made in conformity with this paragraph.
13. **BUYER FURNISHED PROPERTY.** All tooling, dies, fixtures and equipment furnished or specifically paid for by Buyer (together "Buyer's Tooling") shall be and remain the property of the Buyer, and shall be subject to removal at any time without additional cost upon demand by the Buyer. Seller agrees that Buyer's Tooling shall be used only in filling orders for the Buyer, shall be kept separate from other tooling, dies, fixtures and equipment and shall be clearly identified as the property of the Buyer. Seller assumes liability for loss or damage to the Buyer's Tooling, with the exception of normal wear and tear.
14. **INDEMNITY AND INSURANCE.** Seller shall indemnify and hold Buyer and its customers that purchase goods harmless from and against any and all losses, liabilities, damages and expenses (including reasonable attorneys' fees) arising or resulting from (a) any property damage, personal injuries, or death arising out of Seller's performance or the goods supplied hereunder, (b) Seller's breach of any warranty, obligation or other term hereunder, or (c) any actual or alleged infringement of any patent, copyright, trademark or other intellectual property or proprietary right of a third party or the misappropriation of a trade secret of a third party resulting from the marketing, sale or use of the goods by Buyer or any of its customers. Seller shall maintain general liability insurance covering

its obligations under this paragraph and Seller shall maintain all statutorily required workers compensation insurance. Seller agrees to supply certificate of such insurance to Buyer upon Buyer's request.

15. **ARBITRATION.** Any dispute between Buyer and Seller arising out of this Purchase Order, or the performance of either party hereunder, except for Seller's performance under Paragraph 14 hereof, shall be subject to arbitration in accordance with the rules of the American Arbitration Association.

16. **COMPLIANCE WITH LAW.** By acceptance of this order, Seller represents that with respect to the production of and the price to be charged for the goods covered by this order, Seller has complied with all local, state and Federal laws including intellectual property and trademark obligations as well as the Robinson-Patman Act and the Fair Labor Standards Act.

17. **NONDISCRIMINATION.** Seller agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, place of birth, or national origin. Seller shall take affirmative action to ensure that applicants are employed and that employees are treated equally during their employment without regard to their race, religion, color, sex, age, disability, place of birth, or national origin. Seller agrees to comply with all applicable provisions of all Federal laws, regulations and executive orders regarding nondiscrimination in employment and the rules, regulations and relevant orders of the Secretary of Labor. Seller further agrees that this paragraph will be incorporated in all contracts entered into with its suppliers of materials and services, and its contractors and labor organizations which perform any labor or services in connection with this Purchase Order.

18. **CHANGES.** Buyer shall have the right to make, from time to time, changes as to packing, testing, destinations, specifications, designs, and delivery schedules hereunder. Seller shall immediately notify the Buyer of any increases or decreases in costs caused by such changes and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to this Purchase Order.

19. **CANCELLATION.** Buyer reserves the right at any time and from time to time without cause, to cancel all or any part of the undelivered portion of this order by notice to Seller. In the event of such cancellation, Buyer shall not be liable to Seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect Buyer's right to terminate this purchase order for default of Seller.

20. **CONFIDENTIALITY.** Buyer shall at all times have title to all drawings, specifications and other information furnished by Buyer to Seller and intended for use in connection with this Purchase Order (together "Buyer's Information"). Seller shall use Buyer's Information only in connection with this Purchase Order, and shall not disclose Buyer's Information to any third party, other than Seller's subcontractors, or suppliers who require Buyer's Information and who agree to be bound by this obligation of confidentiality to Buyer. Upon the Buyer's request or upon completion of this Purchase Order, Seller shall promptly return all Buyer's Information to Buyer.

21. **NO WAIVER.** The acceptance of late or defective deliveries shall not be deemed a waiver by Buyer of its right to cancel this order, or to refuse to accept further deliveries. The failure of Buyer to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights which Buyer may have at law or in equity.

22. INCORPORATED DOCUMENTS. All specifications, drawings, and technical data provided by Buyer to Seller, or referenced in this Purchase Order, are deemed to be incorporated herein by reference as if fully set forth herein. Buyer's drawing(s) for the part number(s) in this Purchase Order, including all specifications and requirements contained on such drawing(s), are specifically included as documents which are incorporated herein by reference.