

## US HYBRID CORPORATION

### Terms and Conditions of Sale

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES OF PRODUCTS ("Products") BY US HYBRID ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Prices. Written quotations expire automatically thirty (30) days from the date issued and are subject to change or termination by notice prior to Buyer's acceptance during that period. All prices will be as specified by US Hybrid or, if no price has been specified or quoted, will be US Hybrid's price in effect at the time of delivery. All prices are subject to adjustment due to change of specifications, quantities, shipment arrangements or other terms or conditions that are not part of US Hybrid's original price quotation.

2. Taxes. All prices are exclusive of all excise, sales, use, transfer and other taxes and duties imposed with respect to the Products or their sale by any federal, state, municipal or other governmental authority, all of which taxes must be paid by Buyer. Buyer is responsible for obtaining and providing to US Hybrid any certificate of exemption or similar document required exempting any sale from sales, use or similar tax liability.

3. Terms of Payment. If Buyer establishes and maintains open account credit with US Hybrid, payment terms shall be net thirty (30) days from date of invoice. If credit is not established or maintained, payment terms shall be net cash on or prior to shipment. US Hybrid reserves the right, in its sole discretion, to require payment on a COD basis, to require full or partial payment in advance or to revoke any credit previously extended. If the Products are delivered in installments, Buyer will pay for each installment in accordance with the terms specified above. Payment must be made for the Products regardless of whether Buyer has made, or plans to make, any inspection of the Products. To the extent permitted by applicable law, overdue payments will be subject to finance charges computed at a periodic rate of 1-1/2% per month (18% per year). Amounts owed by Buyer with respect to which there is no dispute must be paid without setoff for any amounts that Buyer may claim are owed by US Hybrid and regardless of any other controversies that may exist. Payment is considered made when payment is received by US Hybrid at our principal offices or at such other address as US Hybrid indicates to Buyer. Buyer shall also pay or reimburse US Hybrid for all costs and expenses (including reasonable attorneys' fees) incurred or paid by US Hybrid in collecting amounts due from Buyer or in enforcing Buyer's obligations hereunder.

4. Blanket Order. US Hybrid agrees that Buyer may place an order for Product under a single purchase order containing multiple order release dates scheduled over a period of time (a "Blanket Purchase Order") subject to the following: (a) Blanket Purchase Orders shall not have a term (the "Blanket Order Period") in excess of twelve (12) months unless otherwise agreed to in writing by US Hybrid; (b) Buyer agrees to provide US Hybrid with written monthly forecasts for the Blanket Order Period prior to the placement of any Blanket Purchase Order; (c) US Hybrid agrees to provide volume pricing to Buyer for each Blanket Purchase Order for the Blanket Order Period based on the forecasts provided by Buyer in advance of the placement of any such Blanket Purchase Order by Buyer; and (d) US Hybrid reserves the right to review the actual volume or orders placed by Buyer under any Blanket Purchase Order during the Blanket Order Period on a quarterly basis and to adjust pricing based on such actual Product shipments. Buyer agrees that US Hybrid may charge an additional ten percent (10%) fee for expedited deliveries under a Blanket Purchase Order. In addition, Buyer agrees that if any payment by it under a Blanket Purchase Order is not paid as set

forth in Section 3 above, then (a) US Hybrid reserves the right to: (i) cancel the Blanket Purchase Order and/or (ii) adjust the pricing under the Blanket Purchase Order retroactively to reflect the then current Product orders under such Blanket Purchase Order and/or (iii) modify Buyer's payment terms going forward and (b) Buyer shall be responsible for all the inventory, work in progress and finished good for Products associated with the Blanket Purchase Order in addition to being responsible for paying the incremental cost of each Product unit delivered to Buyer by US Hybrid under the Blanket Purchase Order based on the lower actual volume, not the volume contemplated in the Blanket Purchase Order. Warranty terms and cost will be impacted, and spare parts availability terms may be impacted. Buyer agrees that its failure to comply with the terms in this Section 4 or other terms applicable to any Blanket Purchase Order contained in these Terms and Conditions of Sale may result in the immediate termination by US Hybrid of any Blanket Purchase Order.

5. Packaging and Shipment. Unless specific instructions to the contrary are supplied by Buyer, all packaging and methods and routes of shipment will be selected by US Hybrid, but US Hybrid will not assume any liability in connection with shipment nor constitute any carrier as US Hybrid's agent. US Hybrid reserves the right to ship the Products in any order and to make partial shipments. US Hybrid reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to US Hybrid when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only. Unless otherwise instructed by Buyer, US Hybrid will prepay transit insurance and freight and bill Buyer for such amounts. All shipments will be made at Buyer's risk, and Buyer will be responsible for making all claims with carriers, insurers, warehousemen and others for mis-delivery, non-delivery, loss, damage, or delay.

6. Delivery. All sales are F.O.B. US Hybrid's premises located at 445 Maple Avenue, Torrance CA, 90503-3807 unless otherwise agreed to in writing. The date of delivery is the date when the Products are ready for pickup at that location by Buyer or by a carrier for delivery to Buyer. US Hybrid will use reasonable efforts to meet requested delivery dates but will not be liable for its failure to do so. US Hybrid will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond its control. In the event of a delay due to any cause beyond our control, US Hybrid may allocate production and deliveries among its customers, the time for delivery to Buyer will be extended for a period equal to the duration of the delay, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of the delay. If, as a result of any cause beyond its control, any scheduled delivery is delayed for a period in excess of thirty (30) days, US Hybrid may, at its option, by written notice to Buyer, cancel any and all scheduled or future deliveries without further liability or obligation of any kind. Products for which delivery is delayed due to any cause within Buyer's control may be placed in storage by US Hybrid at Buyer's risk and expense and for its account. Buyer will be liable for all costs and expenses incurred by US Hybrid in holding or storing Products for Buyer or at Buyer's request. Buyer may reschedule any order release date under a Blanket Purchase Order by written notice to US Hybrid (each, a "Rescheduling Notice"), provided that: (a) Buyer shall be responsible to US Hybrid for all materials, labor, and indirect expenses for all orders for which a Rescheduling Notice is received by US Hybrid less than three (3) months in advance of the original release date; (b) Buyer shall be responsible to US Hybrid for all materials and indirect expenses for all orders for which a Rescheduling Notice is received by US Hybrid at least three (3) months and not more than six (6) months in advance of the original release date; and (c) Order release dates under a Blanket Purchase Order may not be rescheduled by Buyer to a date which is later than twelve (12) months after the initial Blanket Purchase Order was placed. In the event that Buyer cancels a Blanket Purchase Order prior to its termination or fails to order the full Product volume under any Blanket Purchase Order during the Blanket Order Period, Buyer agrees to pay US Hybrid the purchase price for the remainder of the Products

under such Blanket Purchase Order which have not yet been purchased (the "Remaining Products"); provided that, at the election of Buyer and upon receipt of payment for the Remaining Products from Buyer, US Hybrid shall ship all such Remaining Product to Buyer in a single shipment or in mutually agreeable installments over time.

7. Title and Risk of Loss. Subject to Section 8 and to US Hybrid's right to stop delivery of Products in transit, title to and risk of loss or damage for Products (other than software Products or components) will pass to Buyer upon the earlier of delivery to Buyer or delivery to a carrier for shipment to Buyer.

8. Security Interest. US Hybrid reserves and Buyer grants to US Hybrid a security interest in all Products sold and all proceeds to secure the full payment and performance by Buyer of its obligations and liabilities to US Hybrid. Buyer acknowledges that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as US Hybrid may request in order to evidence or perfect its security interest.

9. Cancellation. In the event that Buyer cancels an order, it agrees to pay US Hybrid cancellation charges as follows:

(a) all material, labor and indirect expenses incurred or irrevocably committed to the order up to and including the day of cancellation; and (b) a reasonable profit on the expenses cited above.

10. Specifications. All Products are subject to US Hybrid's standard tolerances for specifications. US Hybrid reserves the right to make substitutions and modifications in the specifications of any Products, provided that such substitutions or modifications do not materially affect the performance of the Products or the purposes for which they can be used.

11. Warranty; Indemnification. (a) US Hybrid warrants that any standard part of the Product sold hereunder shall be free from defects in material and workmanship and shall conform to the applicable specifications when given normal, proper and intended usage for a period (the "Warranty Period") terminating twelve (12) months from the date of first use by Buyer or its customer or fifteen (15) months from the date of notification to Buyer of readiness to ship or six thousand (6,000) operating hours, whichever occurs first, and will perform substantially in accordance with applicable Product specifications in effect at the time of delivery. Notwithstanding the foregoing, US Hybrid parts supplied by US Hybrid under this warranty for replacement or repair will be subject to a warranty period that is equal to the remaining Warranty Period and coverage of the original US Hybrid parts. This warranty does not cover proof of concept or prototype Products and warranties applicable to such Products are as specified by US Hybrid at the time of such order. This warranty is available to the first end user during the Warranty Period only and is non-transferable and requires the completion of a Warranty Acceptance Criteria Checklist covering the specific application, field of use and end user. All claims under this warranty must be made within thirty (30) days of the malfunction of the part or Product.

(b) This warranty applies to (x) standard US Hybrid components and parts, including any motor controller, motor, drive system, auxiliary component, power converter, specialty electrical and mechanical component, and (y) any optional part designed and provided by US Hybrid only. This warranty does not apply to (i) optional parts or accessories or interface controls manufactured or purchased from or installed by other suppliers; (ii) expendable components, such as, but not limited to, fuses and bulbs; (iii) traction batteries (iv) connectors, receptacles, cable harness, pumps, fans and valves used on a vehicle; (v) internal combustion engines and transmission and

power train components used as part of internal combustion hybrids; (vi) firmware and software used for operation and maintenance reporting; and (vii) fuel cell power plant used as part of fuel cell hybrid propulsion.

(c) Subject to this Section 11, at US Hybrid's expense, US Hybrid agrees to repair or replace at its option all defective parts and Products and to use reasonable efforts to correct all software Products not performing substantially in accordance with applicable Product specifications, provided that Buyer has given US Hybrid written notice of such warranty claim within the Warranty Period and that if Buyer's warranty claim relates only to a defective part of the defective Product Buyer, and not US Hybrid, shall be responsible for removal of such defective part from the defective Product. If US Hybrid is unable, after reasonable efforts, to repair or replace such defective Product or to correct such Product not performing substantially in accordance with applicable Product specifications, Buyer's sole remedy shall be the refund of an amount not to exceed the actual payments received by US Hybrid for such Product. All repairs will be done during normal working hours. All replaced parts shall become US Hybrid's property. US Hybrid may require that the defective Products or defective parts be shipped to it and returned to Buyer, both at US Hybrid's expense, FOB a US Hybrid facility for warranty service to be performed. If US Hybrid determines that Products for which Buyer has requested warranty service are not eligible for warranty service, for any reason, Buyer shall pay or reimburse US Hybrid for all costs of investigating and responding to such request at its then prevailing time and materials rates. If US Hybrid provides repair services or replacement parts that are not covered by the warranty provided in this Section 11, Buyer shall pay US Hybrid at its then prevailing time and materials rates.

(d) US Hybrid shall have no obligation to make repairs, replacements or corrections which result, in whole or in part, from (i) normal wear and tear, shipping, or vandalism,, (ii) catastrophe, fault or negligence of or lack of maintenance by Buyer, (iii) improper installation or improper or unauthorized operation or use of the parts or Products, (iv) use of the parts or Products in a manner for which they were not designed and approved of by US Hybrid in writing, or (v) use of the Products in combination with equipment or software not supplied by US Hybrid. Without limitation of the foregoing, specifically excluded from the warranty is damage caused by power quality disturbances (sags, surges and harmonics) in grid connected operation, and operation of the gas, air, or liquid compression outside the pressure, temperature and flow and mechanical under/over torque, coupling, mounting and environmental specifications provided by US Hybrid or specified for the part applications. Buyer agrees that US Hybrid's warranty shall not be enlarged by, nor shall any obligation or liability of US Hybrid arise due to, US Hybrid providing technical advice, facilities, or service in connection with any Products.

(e) If notified promptly in writing of any action (and all prior related claims) brought against Buyer based on a claim that a Product infringes any valid United States patent, copyright or trade secret, US Hybrid shall defend such action at its expense and pay all costs and damages finally awarded in such action or settlement which are attributable to such claim. US Hybrid shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. Buyer shall cooperate fully with US Hybrid in the defense, settlement, or compromise of any such action. In the event that a final injunction is obtained against Buyer's use of a Product by reason of infringement of a valid United States patent, copyright or trade secret, or if in US Hybrid's opinion any Product is likely to become the subject of a successful claim of such infringement, US Hybrid may, at its option and expense, (i) procure for Buyer the right to continue using the Product, (ii) replace or modify the Product so that it becomes non-infringing (so long as its functionality is essentially unchanged), or (iii) accept the return of the Product and refund to Buyer the purchase price therefore as depreciated

on a straight-line seven year basis. US Hybrid may withhold further shipments of any such Products.

(f) US Hybrid shall not have any liability to Buyer to the extent that any infringement or claim thereof is based upon (i) use of a Product in combination with equipment or software not supplied by US Hybrid where the Product would not itself be infringing, (ii) compliance with Buyer's designs, specifications or instructions, (iii) use of the Product in an application or environment for which it was not designed or not contemplated hereunder, (iv) modifications of the Product by anyone other than US Hybrid, or (v) any claims of infringement of any patent, copyright or trade secret in which Buyer or any affiliate or customer of Buyer has an interest or license.

(g) Buyer shall not bring any suit or action against US Hybrid for any reason whatsoever more than one (1) year after the related cause of action has accrued.

EXCEPT AS STATED ABOVE, US HYBRID DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE PRODUCTS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING INDEMNIFICATION PROVISIONS STATE US HYBRID'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS AND OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE PRODUCTS. US HYBRID'S MAXIMUM LIABILITY ARISING OUT OF THE SALE OF THE PRODUCTS OR THEIR USE, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PAYMENTS RECEIVED BY IT IN CONNECTION THEREWITH. IN NO EVENT SHALL US HYBRID BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING HEREUNDER OR FROM THE SALE OF THE PRODUCTS.

(h) Buyer shall indemnify, defend and hold US Hybrid harmless against all claims, liabilities, damages, expenses, judgments and losses (including reasonable attorneys' fees) arising from (i) infringement or alleged infringement of any patent, copyright, trade secret, trademark or other intellectual property or proprietary right as a result of our compliance with Buyer's designs, specifications or instructions, (ii) Buyer's breach of any of its obligations hereunder and (iii) Buyer's use and/or misuse of the Products. No sale of any Product shall be construed as granting to Buyer any license or other proprietary or intellectual property right applicable to the Products. Buyer may not alter or remove, and shall abide by, any patent, trademark, copyright, trade secret, proprietary or other notices contained on or in the Products.

12. Installation. If requested by Buyer, US Hybrid will install the Products supplied hereunder anywhere in the continental United States in accordance with US Hybrid's published schedule of installation charges and service rates. Installation will be considered complete when the Products supplied hereunder successfully complete US Hybrid's standard acceptance test procedures at Buyer's site. Buyer must prepare an appropriate installation site that meets US Hybrid's requirements and make this installation site available to US Hybrid at least seven (7) days before the scheduled installation date.

13. Host Equipment. All equipment attached by Buyer as a supplementary host to the Products supplied by US Hybrid must be in a configuration approved by US Hybrid in advance. All such equipment not provided by US Hybrid must be under a current maintenance contract with its vendor.

14. Software. (a) Buyer agrees not to sell, transfer, license, loan or otherwise make available to third parties the software Products and

related documentation that may be provided hereunder. Buyer may not modify, enhance, or otherwise change or supplement the software Products provided hereunder without US Hybrid's written consent. The source code for the software Products supplied hereunder will not be disclosed to Buyer, and Buyer may not disassemble, decompile, or reverse engineer the software Products supplied hereunder. Buyer agrees to hold in confidence the software Products and related documentation supplied hereunder and not to disclose or make available in any form the same, except to US Hybrid's and Buyer's employees and agents.

(b) Certain of the software Products provided by US Hybrid may be owned by one or more third parties and licensed to US Hybrid. Buyer and US Hybrid intend and agree that software Products owned by third parties and provided hereunder are being sublicensed to Buyer, that such third parties retain ownership of and title to such software Products and that such third parties may directly enforce Buyer's obligations hereunder in order to protect their respective interests in such software Products. The warranty and indemnification provisions set forth herein shall not apply to software Products owned by third parties and provided hereunder.

15. Compliance with Laws. (a) Buyer shall comply with all applicable governmental laws, ordinances, codes, rules, regulations and orders in its performance hereunder, and shall obtain all permits or licenses required in connection with the purchase, shipment, installation and use of any of the Products.

(b) The export of the Products supplied hereunder may be subject to regulation or restriction under the Export Administration Act, the Arms Export Control "ACT" or other laws. Therefore, prior to exportation, Buyer must obtain any licenses that may be necessary under any of these laws and the regulations thereunder and supply us with copies thereof. Buyer shall not sell, transfer, or otherwise dispose of the Products in violation of U.S. export laws. Buyer agrees that the Products will not be exported directly or indirectly from the United States, separately or as part of a system, without first obtaining a valid license from the U.S. Department of Commerce, Department of State or any other appropriate agency of the U.S. Government, as required, and otherwise in compliance with all U.S. Government Export Regulations. Buyer shall have sole responsibility for obtaining all such licenses or other required permits at its sole cost and expense. Buyer shall also have sole responsibility for obtaining any other documentation or assurances necessary for legal export, such as written assurances from a subsequent purchaser with respect to re-export. No failure to obtain any such license or documentation shall excuse any nonperformance by Buyer of its obligations hereunder. Buyer shall provide US Hybrid with full information and documentation required by US Hybrid to ensure that Buyer has complied with all export restrictions.

(c) Specifically, but not by way of limitation, Buyer represents and warrants that neither the Products supplied hereunder nor the direct Products thereof, is intended to be shipped, directly or indirectly, to any country other than the countries listed in Country Groups T and V of the Export Administration Regulations from time to time. Buyer assures US Hybrid that, unless prior authorization is obtained from the U.S. Office of Export Administration or U.S. Office of Munitions Control, as appropriate, Buyer will not knowingly re-export the Products supplied hereunder, the direct Products thereof, or the confidential and proprietary information related thereto for the installation, maintenance or operation of the Products or for any other purpose to any country other than the countries listed in Country Groups T and V of the Export Administration Regulations from time to time.

16. Government Contract Provisions. If Buyer is the U.S. government or any agency thereof the following provisions apply:

(a) All Technical Data provided herein is provided with "Limited Rights" as provided for in 52.227-14, and in the case of the Department of

Defense, as provided for in DFARS 252.227-7013(b)(1), and in case of the National Aeronautics and Space Administration, NASA FAR SUP 1852.227-74(g)(2).

(b) Buyer may provide the Technical Data to the U.S. government or any agency thereof only if its agreement with the U.S. government or agency thereof provides for the U.S. government or agency thereof to obtain the Technical Data with "Limited Rights." Buyer shall appropriately label all Technical Data to protect such rights if they are not so labeled by US Hybrid.

(c) For purposes of this Section 15, the term Technical Data shall have the meaning ascribed to such terms in the Federal Acquisition Regulation.

17. Assignment. Buyer may not delegate any duties nor assign any rights or claims hereunder without US Hybrid's prior written consent, and any such attempted delegation or assignment shall be void.

18. Governing Law. The rights and obligations of the parties hereunder shall be governed by and interpreted, construed, and enforced as a sealed instrument in accordance with the laws of the State of California.

19. Authorization. Buyer represents and warrants that it has been duly authorized to execute and deliver this document and to perform its obligations hereunder, and the person signing on Buyer's behalf has the power and authority to do so.

20. Force Majeure. In the event that US Hybrid is prevented from performing, or are unable to perform, any of its obligations hereunder due to any act of nature, act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, riot, insurrection, sabotage, inability to procure materials, labor, equipment, transportation or energy sufficient to meet its needs, delay in delivery, or any other cause beyond its reasonable control, and if US Hybrid shall have used reasonable efforts to avoid such occurrence and minimize its duration and have given prompt written notice to Buyer, then its failure to perform shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence.

21. Severability; Remedies; Waiver. In the event that any one or more provisions contained herein (other than the provisions obligating Buyer to pay US Hybrid for the Products) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The remedies contained herein are cumulative and in addition to any other remedies at law or equity. US Hybrid's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

22. Notices. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three days after being sent via first-class mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.

23. Entire Agreement. This is the complete and exclusive statement of the contract between Buyer and US Hybrid with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Buyer and US Hybrid. In case of a conflict between the terms and conditions on the face of this

document and the terms and conditions contained on this reverse side of this document, the terms, and conditions on the face of this document shall control.

24. Additional or Inconsistent Terms. Any term or condition of Buyer's purchase order or any other document provided to US Hybrid by Buyer which is in any way different from, inconsistent with or in addition to the terms and conditions set forth herein will not become a part of the contract between US Hybrid and Buyer or be binding upon US Hybrid. To the extent that this document may constitute an acceptance, this acceptance is expressly conditioned upon Buyer's assent to the terms and conditions set forth in this document. If Buyer objects to any term or condition set forth herein, this objection must be in writing and received by US Hybrid at the address stated on the opposite side prior to US Hybrid's delivery. Retention by Buyer of any Products delivered by US Hybrid will be conclusively deemed as assent by Buyer to the terms and conditions set forth herein. US Hybrid's failure to object to terms contained in any communication from Buyer will not be a waiver of the terms set forth herein. Buyer shall not condition any acceptance of delivery upon the abrogation or modification of any of the terms and conditions included in this document.

**BUYER**

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_