

**LUMETA, INC.**  
**TERMS AND CONDITIONS OF SALE**

**1. DEFINITIONS**

"Seller" means Lumeta, Inc. "Buyer" means the legal entity purchasing Goods from Seller. "Goods" means the Goods offered by Seller and/or purchased by Buyer. "Offer" means any quotation, proposal, or offer to sell Goods provided by Seller to Buyer. "Order" means any purchase order or similar instrument issued by Buyer to Seller to purchase Goods. "Terms and Conditions" means these Terms and Conditions of Sale. Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

**2. ACCEPTANCE OF TERMS AND CONDITIONS**

These Terms and Conditions apply to all Offers made by Seller to Buyer and all Buyer's Orders accepted by Seller. Acceptance of Buyer's Orders, and any changes or amendments thereto, is expressly conditioned upon Buyer's assent to these terms and conditions. Unless specifically agreed to in writing by a duly authorized representative of Seller, Seller objects to, and is not bound by, any terms or conditions that differ from or add to the terms and conditions specified herein and such additional or different terms or conditions are hereby rejected. Seller's failure to object to any terms and conditions or any other provisions contained in any communication from Buyer, including, but not limited to, Buyer's Orders, does not waive any of the terms and conditions specified herein. Seller's acceptance of any Order or Buyer's receipt of Goods, whichever occurs first, will conclusively evidence Buyer's unconditional acceptance of these terms and conditions and a waiver of all terms and conditions in Buyer's Order or similar document which are different from those herein.

**3. SHIPPING TERMS AND RISK OF LOSS**

(a) For North American Orders, all sales are made F.O.B. Seller's manufacturing facility, transportation at Buyer's expense. Seller's liability ceases as to delivery and risk of loss ceases upon Seller's delivery of Goods purchased hereunder to carrier at said shipping point. In the event that Seller pays transportation and insurance beyond the point of shipment to the destination specified by Buyer, all such costs will be billed as a separate item on the invoice.

(b) For International Orders, all sales are made EX WORKS (per Incoterms 2000) at Seller's manufacturing facility. Seller's Liability ceases as to delivery and risk of loss ceases upon making delivery of Goods purchased hereunder to carrier at said shipping point. Transportation from this point and consular and brokers' fees shall be at Buyer's expense. In the event that Seller pays transportation and insurance beyond the point of shipment to the destination specified by Buyer, all such costs will be billed as a separate item on the invoice.

**4. TAXES**

Buyer shall reimburse Seller for all taxes, fees, duties and other charges which Seller may be required to pay to any domestic government (national state or local) upon the sale, production or transportation of the Goods sold hereunder. For international Orders (export sales) Buyer shall reimburse Seller for all taxes, including VAT, licenses, fees, duties, and other charges by whatever name known which may be levied or assessed on or account of Goods sold hereunder, or their documents.

**5. PRICES**

Unless otherwise agreed to by Seller in writing, prices shall be those specified in the Offer or price schedule, as applicable, and are valid for a period of thirty (30) days from the date of Seller's Offer. Prices are based on costs and conditions existing on the date of Seller's Offer and are subject to change by the Seller before final acceptance. Prices do not include export or special

packaging, compliance testing or inspection fees and charges. Buyer shall have no right to access Seller's cost or pricing data or other books and records. Unless otherwise specified, prices are in United States dollars payable to Seller in Irvine, California, U.S.A.

**6. CREDIT APPROVAL AND PAYMENT**

Standard payment terms for North American Orders are net thirty (30) days from date of Seller's invoice, unless otherwise specified in the Offer, and subject to credit approval of Buyer by Seller. Payment for international orders may be cash in advance by wire transfer, with a any remaining balance secured by a standby letter of credit, or other such terms specified in the Offer. If Seller requires a standby letter of credit, such letter of credit shall be in favor of Lumeta, Inc., 17182 Armstrong Avenue, Irvine, California, 92614 USA, confirmed by a bank located in the United States acceptable to Seller. Unless otherwise agreed, such letter of credit shall (i) be valid for a period of time sufficient to enable Seller to receive payment in full and shall be for the total price of the Goods, including any applicable transportation, insurance costs, taxes, or other charges; (ii) be in a form acceptable to Seller; and (iii) authorize partial payments against partial deliveries. The letter of credit shall provide for payment(s) to Seller at sight upon presentation to the confirming bank of Seller's sight draft(s) on the confirming bank for one hundred percent of the Order value of each delivery, accompanied by commercial invoice(s) or by shipping documents. The letter of credit shall permit shipment and presentation of non-negotiable copies of bills of lading provided they are accompanied by Seller's declaration that the originals have been mailed directly to the opening bank. All bank charges in connection with said letter of credit, including those of the confirming bank, shall be for the account of Buyer. Credit terms and shipments are at all times subject to the approval of Seller. Each shipment is a separate and independent transaction and payment must be made by Buyer accordingly. If, prior to shipment of Buyer's Order, or any portion thereof, Buyer fails to fulfill the terms of payment of any prior invoice submitted by Seller or, if in the opinion of Seller, Buyer's financial condition becomes impaired or unsatisfactory, Seller reserves the right to change, without notice, the terms of payment and/or delay or discontinue further shipments without prejudice to any other available legal remedies, until past due obligations have been paid and Seller has received assurance acceptable to Seller regarding Buyer's prompt payment of future obligations. If Seller's performance or shipment is delayed by Buyer, payment shall become due on the date when the Seller is prepared to make shipment and such payments shall be made based on the purchase price and the percentage of completion. All amounts due to Seller but not paid by Buyer on the due date will bear interest payable by Buyer to Seller in U.S. Dollars at a rate that is equal to the lesser of (i) one and one-half percent (1.5%) per month, or (ii) the maximum interest rate permitted under applicable law. Interest accrues on the balance of unpaid amounts as of the date on which portions of those amounts become due until the date payment is received by Seller. Buyer is liable to Seller for any expenses incurred by Seller to collect any past due amounts, including reasonable attorney's fees and court costs. In the event of Buyer's bankruptcy or insolvency, Seller is entitled to cancel any Order then outstanding and to receive reimbursement for all reasonable cancellation costs and expenses.

**7. PROPRIETARY RIGHTS**

Seller's technical data related to Goods and Goods sold to Buyer may contain confidential and/or proprietary information concerning Seller's trade secrets, such as, but not limited to formulas, designs, engineering drawings, devices, compilations of information, Seller's manufacturing methods or processes, treatment and

chemical composition of materials and tooling (collectively "Confidential Information"). Confidential Information shall be kept confidential by Buyer, and shall not be disclosed to third parties without Seller's express written permission. Buyer shall not use any Confidential Information, in whole or in part, or the Goods, to copy, redesign, reverse engineer, replicate or manufacture (or enable manufacture by itself or any third party) the Goods, products similar to the Goods or products derived from the Goods without Seller's express written permission. The price for the Goods does not include any such data and information and nothing shall be deemed to transfer to Buyer any right or license of any kind of Seller's Confidential Information.

## **8. INTELLECTUAL PROPERTY INDEMNITY**

(a) Subject to Sections 8(b), 8(c), and 15 Seller will pay any damages, liabilities or costs (excluding consequential and exemplary damages) finally awarded against Buyer, or agreed to by Seller as settlement or compromise, and will defend Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that Goods manufactured and supplied by Seller to Buyer directly infringe any United States patent, copyright, or trade secret; provided Seller is (i) promptly informed and furnished a copy of such claim, suit, or proceeding, (ii) given all evidence in Buyer's possession, custody or control, (iii) given reasonable assistance in and sole control of the defense of such claim, suit or proceeding and all negotiations for its settlement or compromise. Buyer hereby agrees to make available to Seller the benefit of any defense available to Buyer to any infringement allegation hereunder, including, but not limited to, any license or option to license or sublicense any intellectual property right that is the subject of such infringement allegation.

(b) In the event of an allegation for which Seller is obligated to defend Buyer pursuant to Section 8(a), Seller may, but shall not be obligated to: (i) obtain a license that allows Buyer to continue the use of the Goods, (ii) replace or modify the Goods so as to be non-infringing, but in a manner that does not materially affect the functionality of the Goods, or (iii) if neither (i) nor (ii) is available to Seller at a commercially reasonable expense, as determined by Seller, or at Seller's option, Seller may refund to Buyer the purchase price and the transportation costs of such Goods and prospectively cease to indemnify Buyer with regard to such Goods without being in breach of these Terms and Conditions. If Seller elects to provide either of the options set forth in 8(b)(i) and (ii) above, Seller's indemnity obligation pursuant to Section 8(a) shall be entirely fulfilled as to that individual claim, except for any damages, liabilities, or costs (excluding those specified in Paragraph 15) incurred by Buyer prior to Seller taking such action. If Seller elects the option set forth in 8(b)(iii) above, Seller's indemnity obligation under these Terms and Conditions shall be entirely fulfilled, regardless of any additional claims. Also, if Seller elects the option set forth in 8(b)(iii) above, Buyer shall return to Seller any and all Goods remaining in Buyer's possession, custody or control.

(c) Seller shall have no liability for any costs, losses or damages resulting from Buyer's willful acts, or any settlement or compromise entered into or made by Buyer without Seller's prior written consent. Seller shall have no obligation to defend and no liability for any costs, losses or damages, to the extent that an infringement allegation is based upon: (i) Buyer's use of the Goods in combination with any other product, software or equipment; (ii) Buyer's use of the Goods in a manner or for an application other than for which they were designed or intended, regardless of whether Seller was aware of or had been notified of such use; (iii) Buyer's use of the Goods in a manufacturing or other process; (iv) Buyer's modifications to the Goods; (v) Seller's compliance with

Buyer's particular design, instructions or specifications; or (vi) Seller's compliance with any industry or proprietary standard or Buyer's use of the Goods to enable implementation of any industry or proprietary standard (such claims - i.e. those set forth in (i) through (vi) above - are individually and collectively referred to herein as ("Other Claims").

(d) Buyer shall indemnify and hold Seller harmless against any damages, liabilities or costs finally awarded against Seller or agreed to by Buyer as settlement or compromise, and will defend any claim, suit or proceeding brought against Seller insofar as such claim, suit or proceeding is based on an allegation arising from Other Claims.

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR THE IDEMNIFICATION DESCRIBED IN THIS SECTION 8 AND IS IN LIEU OF ANY EXPRESS, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THESE TERMS AND CONDITIONS, AND THAT IN THE ABSENCE OF SUCH INDEMNIFICATION TERMS, THE MATERIAL AND ECONOMIC TERMS OF THESE TERMS AND CONDITIONS WOULD BE SUBSTANTIALLY DIFFERENT.

## **9. DISPUTES**

All claims by Seller for nonpayment by Buyer of the undisputed purchase price of Goods sold, or for redress for other breaches by Buyer of these Terms and Conditions may be brought by Seller before any court of competent jurisdiction without need for prior arbitration. All other claims or disputes in any way arising out of an Order or these Terms and Conditions that cannot be settled amicably by the Parties will be finally settled by arbitration in Orange County, California, U.S.A. under the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the arbitration award or decision may be entered in any court of competent jurisdiction. Arbitration awards and decisions are subject to the damages limitations set forth in Section 15.

## **10. GOVERNING LAW**

These Terms and Conditions and the transactions contemplated herein are governed by and are to be interpreted in accordance with the law laws of the State of California, U.S.A., except for its internal conflict of laws rules and principles. Seller and Buyer agree that these Terms and Conditions exclude the application of the 1980 United Nations Convention for the International Sale of Goods.

## **11. ACCEPTANCE OF GOODS AND RETURNS**

Final acceptance or rejection of the Goods shall be made promptly after the delivery to Buyer; however, unless earlier rejected, the Goods shall be deemed by the parties to be accepted within thirty (30) days after delivery to Buyer. Upon acceptance of Goods, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Any defect or nonconformance in the Goods after such acceptance shall be corrected under and subject to, the conditions of the Section 14. Goods may not be returned without Seller's prior written return authorization. Once a return authorization number is issued by Seller, Buyer may return the Goods transportation and insurance prepaid in accordance with instructions issued by Seller. Failure to follow Seller's return procedures may result in lost Goods, delays, additional service, restocking charges, warranty denial, or refusal of a shipment. The return authorization number must appear on the shipping label along with all paperwork associated with the return. Seller has the right to reject Goods returned without the correct return authorization number clearly

marked on the outside of the shipping container. Granting a return authorization number does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without a fee.

## **12. DELIVERY SCHEDULES AND FORCE MAJEURE**

Shipping dates are approximate and require prompt receipt of all necessary information and materials from Buyer, if applicable. Seller is not liable for any damages, re-procurement costs, or penalties related to late deliveries. Without limiting the generality of the foregoing, Seller is not liable for delays due to force majeure, including, but not limited to, weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of Seller. In the event of such delay, Seller will notify Buyer and the date(s) of delivery will be deferred for a period commensurate with the time lost due to the delay. If the delay under continues for more than ninety (90) days, Seller and Buyer will each have the option of terminating the affected Order(s). If Seller's production is curtailed for any of the above reasons such that Seller is unable to deliver the full quantity of Goods scheduled for delivery to Buyer, Seller may, as it determines in its discretion, allocate deliveries of available Goods among its various customers. When such allocation has been made, Buyer will be notified of the Goods made available.

## **13. CANCELLATION AND CHANGES**

Buyer may not cancel Orders or reschedule shipments of Goods within thirty (30) days of Seller's estimated shipping date for such Goods. Cancellations of Orders or rescheduling of shipments more than thirty (30), but less than ninety (90) days prior to Seller's estimated shipping date may be accepted with the written approval of the Seller and shall be subject to cancellation charges which will include all expenditures made and committed for the Order with a reasonable allowance for prorated overhead expenses, profit and cost(s) of preparing, submitting and negotiating Seller's termination claim. All changes to Orders must be submitted by Buyer to Seller in writing and will not be effective unless and until Seller consents in writing to the change(s). Seller will advise Buyer in writing of the price and/or delivery schedule impact, if any, of the change request. Seller's acceptance of changes will be subject to Buyer's agreement to any price and/or delivery schedule adjustments. Orders may be cancelled or rescheduled by Buyer more than ninety (90) days before Seller's estimated shipping date for such product at Buyer's discretion and without charge.

## **14. WARRANTY**

Seller's sole warranty obligations shall be as set out in the Limited Warranty For Photovoltaic Modules attached hereto or delivered with the Goods. All other conditions or warranties express or implied, statutory or otherwise (including without limitation as to quality, performance, merchantability or fitness or suitability for purpose) are excluded to the fullest extent permitted by law.

## **15. LIMIT OF SELLER'S LIABILITY**

NOTWITHSTANDING ANY PROVISIONS HEREIN TO THE CONTRARY, AND EXCEPT AS PROVIDED IN SECTION 8, SELLER SHALL NOT BE LIABLE TO BUYER, OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, MULTIPLE, ADMINISTRATIVE, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS) IN ANY WAY ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, OR THE MANUFACTURE, SALE, USE OR PERFORMANCE OF THE GOODS, WHETHER

BASED UPON BREACH OF CONTRACT, WARRANTY, OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW, OR OTHER THEORIES OF LIABILITY, IRRESPECTIVE OF WHETHER SELLER HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL AND AGGREGATE LIABILITY FOR ANY CLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, A PARTY'S PERFORMANCE OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, OR THE MANUFACTURE, SALE, USE OR PERFORMANCE OF THE GOODS, SHALL IN NO CASE EXCEED THE PRICE PAID TO SELLER UNDER BUYER'S ORDER AND BUYER AGREES TO INDEMNIFY SELLER FOR ANY EXCESS AMOUNTS. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION(S) HEREOF, SUCH PROVISION(S) WILL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION(S) CONSISTENT WITH THIS PROVISION.

## **16. EXPORT AND IMPORT COMPLIANCE**

Buyer and Seller shall each comply with the laws and regulations of the United States of America (USA) relating to exports and foreign transactions, including but not limited to, the Foreign Corrupt Practices Act (15 U.S.C. §78dd1 through 78dd3), International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the Arms Export Control Act (22 U.S.C. §2778), the Export Administration Regulation (EAR) (15 C.F.R. Parts 730-774) and the Export Administration Act of 1979, as amended (50 U.S.C. §2401 et. Seq.). In particular, the Parties shall not disclose any technical data and shall not deliver, export, re-export or re-transfer any Goods out of the USA, or to foreign persons or entities within or outside the USA, without the proper written authorization and/or licenses from the U.S. Government. Buyer hereby agrees to indemnify and hold Seller harmless from any damages, liability, costs, penalties, attorney's fees and similar expenses of Seller due to Buyer's breach (or threatened breach) of such obligation. The parties shall reasonably cooperate with each other in obtaining all required export and import licenses, approvals and/or notifications pursuant to such U.S. laws.

## **17. U.S. GOVERNMENT CONTRACTS**

If the Goods to be furnished under an Order are to be used in the performance of a U.S. government contract or subcontract, and a U.S. government contract number shall appear on an Order, those clauses of the applicable U.S. government procurement regulations for the purchase of "commercial items" (FAR and DFARS) which are required by federal statute to be included in U.S. government contracts and subcontracts are incorporated herein by reference.

## **18. MISCELLANEOUS**

Any failure at any time of Buyer or Seller to enforce any provision hereof shall not constitute a waiver of such provision nor prejudice the right of Buyer or Seller to enforce such provisions at any subsequent time. In the event that one or more provisions hereof is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision that lawfully enforces the Parties' intention underlying the invalid or unenforceable provision. These Terms and Conditions are the entire understanding between the Parties, and supersede all previous, different, or additional Terms and Conditions, arrangements, and drafts. These Terms and Conditions may be amended or modified only by written agreement of duly authorized representatives of both Parties. Buyer shall not assign its Order or any interest therein or any rights hereunder without the prior written consent of Seller.