

# Terms and conditions of Sale

Dated on November 15.2018



SUNTEC INDUSTRIES Incorporated.  
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The Following Terms and Conditions of Sale (which were set forth in our Quotation, if any, to Buyer) shall be the only Terms and Conditions applicable to the agreement between Suntec Industries Incorporated (hereinafter referred to as Suntec) and Buyer (the "sales contract") resulting from Suntec's acceptance of Buyer's order, and shall apply to the order regardless of anything which may appear on Buyer's purchase order. Buyer's assent to the Terms and Conditions of sale set forth below and the reverse side hereof shall be conclusively presumed from Buyer's failure, within 10 days of order acknowledgement date, reasonably to object in writing or from Buyer's acceptance of all or any part of the products ordered. This sales contract contains the total agreement of the parties and all proposals, negotiations, representations, or agreements made or entered into prior to or contemporaneously with this sales contract are excluded whether oral or in writing.

**1. PRICES.** Prices are FOB Suntec plant of manufacture unless otherwise specified. Prices shown herein are subject to revision and such revision may be affected by Suntec giving written notice to Buyer.

Purchase prices are stated in United States Dollars and payment shall be made in United States currency.

**2. PAYMENT.** The total price indicated on the reverse side is due and payable in full in thirty (30) days, unless otherwise indicated, from the date also indicated on the reverse side. Thereafter, the unpaid balance of the total shall bear interest at the rate of one and one-half percent (1.5%) per month until paid in full. The rate of interest to be charged will be subject to Illinois state law.

**3. TAXES AND CLEARANCES.** Prices do not include sales, use, and excise of any similar tax. Any tax or other governmental charge upon the production sale, shipment, or use of the product which Suntec is required to pay or collect from Buyer shall be paid by Buyer to Suntec unless Buyer furnishes Suntec with a tax exemption certificate acceptable to the applicable taxing authority. Buyer shall be responsible for obtaining any necessary governmental clearances including import and foreign exchange licenses, which may be required by any government other than the United States.

**4. SHIPMENTS AND RISK OF LOSS.** Suntec will ship in accordance with instructions supplied by Buyer, but if Buyer fails to furnish such instructions, Suntec will select what is in its opinion, the most satisfactory routing for the shipment. If Buyer is to pick up the products and has not done so within seven days after notification that they are ready for shipment, Suntec may ship the products commercial carrier (best way). Title to and risk of loss for the products passes to Buyer upon delivery to carrier and Buyer shall, at the expense of Buyer, insure the products and keep the products insured in favor of Suntec as the interest of Suntec may appear until the purchase price is paid in full. Any loss, damage or destruction to any products purchased by Buyer shall not release Buyer from its obligations and liabilities to Suntec under this contract. Any prepayment by Suntec of freight charges shall be for the account of Buyer and shall be paid by Buyer with the purchase price.

**5. SHIPPING DATES.** Shipping dates are given to the best of Suntec's knowledge based upon conditions existing at the time Buyer's order is placed and information furnished by Buyer. Suntec will, in good faith, endeavor to ship by the estimated shipping date but shall not be responsible for any delays or any damages arising therefrom. Furthermore, Suntec shall not be liable for any failure to perform its obligations under this sales contract resulting directly or indirectly from or contributed to by any acts of God, acts of Buyer, acts of Civil or Military authority, priorities, fire, strikes or other labor disputes, accidents, flood, epidemics, war, riot, delays in transportation, lack or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Suntec's reasonable control whether similar or dissimilar to the foregoing.

**6. MODIFICATION AND TERMINATION.** Buyer's order may not be modified or rescinded except in writing signed by Suntec and Buyer. If all or part of Buyer's order is terminated by such modification or rescission, Buyer, in the absence of a contrary written agreement between Suntec and Buyer, shall pay termination charges based upon cost determined by accepted accounting principles plus a reasonable profit except that any products scheduled for completion within 60 days of Buyer's request for termination or rescheduling will be accepted and paid for in full by Buyer.

**7. WARRANTY.** Warranty shall be in accordance with Suntec warranty policy (warranty form #2523 currently revision I dated on November 15.2018) or subsequent version in effect as of the date of Buyer's order for Fuel Units. **SUNTEC DISCLAIMS ANY LIABILITY FOR THE USE FAILURE OF PERFORMANCE OR MALFUNCTION OF THESE PRODUCTS RESULTING DIRECTLY OR INDIRECTLY FROM THE PRESENCE OF**

**WATER, RUST, TEFLON TAPE OR CONTAMINATES IN THE SYSTEM, OR BUYER NEGLIGENCE.** Warranty is limited to repair or replacement by and at Suntec option.

**PARTIAL OR FULL DISASSEMBLY OR ATTEMPTED REPAIR PRIOR TO RETURN SHIPMENT TO SUNTEC VOIDS THE WARRANTY.**

**NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS POLICY, SUNTEC SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OR IN CONNECTION WITH THE MISUSE OR IMPROPER USE OF THE GOODS WHICH IS NOT IN ACCORDANCE WITH INSTALLATION AND OPERATIONS MANUAL INCLUDING BUT NOT LIMITED TO USE OF THE NEWLY APPROVED FUEL IN THE NON-APPROVED GOODS WITH THIS NEW FUEL.**

Suntec shall not be liable for damages for any breach of warranty in any amount exceeding the purchase price of Goods found to be defective. In no event shall Suntec be liable for incidental or consequential damages. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT BY WAY OF LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**8. BREACH OF AGREEMENT.** In the event Buyer claims that Suntec has breached any of its obligations under this sales contract, whether of warranty or otherwise, Suntec may request the return of the products and tender to Buyer the purchase price theretofore paid by Buyer and in such event, Suntec shall have no further obligation under this sales contract except to refund such purchase price provided that the products are in a saleable condition not requiring rework by Suntec upon re-delivery and inspection of the products. If Suntec so requests the return of the product, the products shall be re-delivered to Suntec in accordance with Suntec's instructions and at Suntec's expense. The remedies provided for in this and the preceding paragraph shall constitute the sole recourse of Buyer against Suntec for breach of any of Suntec's obligations under this sales contract, whether of warranty, negligence, or otherwise. In no event shall Suntec be liable for incidental and consequential damages nor shall Suntec's liability for any claims or damage arising out of or connected with this sales contract or the manufacture, sale, delivery, or use of the products exceed the purchase price of the products.

**9. LETTERS PATENT.** In the event any product to be furnished under Buyer's order is to be made in accordance with drawings, samples, or manufacturing specifications designated by Buyer, Buyer agrees to hold Suntec harmless from any and all damages, costs, and expenses relating to any claim arising from the design, manufacture, or use of the product or arising from a claim that such product furnished to Buyer by Suntec, or the use thereof, infringes upon any Letters Patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Suntec brought upon such claim or claims. In the event any product to be furnished under Buyer's order is not to be made in accordance with drawings, samples, or manufacturing specifications designated by Buyer, but rather is the design of Suntec, Suntec agrees to hold harmless Buyer and its customers against any damage awarded by a court of final jurisdiction in any suit or suits for the infringement of any United States Letters Patent by reason of the sale or use of such product furnished by Suntec under Buyer's order. The foregoing undertaking shall not apply unless Suntec shall have been informed as soon as practicable by Buyer of the

charge or suit alleging such infringement and shall have been given the opportunity to take the defense thereof, and further, such undertaking shall not apply if (i) the claim infringement is settled without the consent of Suntec unless required by a final unappealable decree of a court of competent jurisdiction, or (ii) the infringement results from the use of a product delivered under Buyer's order in combination with a product not delivered hereunder, where such infringement would not have occurred from the use of the product alone delivered hereunder.

**10. DESIGN CHANGES** Suntec reserves the right to make changes in the design of its products at any time without incurring any obligation to make equivalent changes in products previously manufactured or shipped.

**11. RETURN AUTHORIZATION.** Any product may, with prior written authorization and shipping instructions from Suntec, be returned by Buyer provided that the products being returned are free of damage and in a saleable condition without requiring repair by Suntec. Where authorization has been obtained from Suntec for the return of products, a restocking charge of 35% of the purchase price will be charged to Buyer in addition to any transportation costs and/or rework charges incurred by Suntec.

**12. CLAIMS** Immediately upon receipt of the goods, Buyer shall inspect the same. Any claim for shortage must be made in writing and received by Suntec within ten days after Buyer's receipt of the goods.

All other claims, including claim for alleged defective goods, to the extent they are not disclaimed by Suntec under paragraph 8 hereof, must be made in writing and received by Suntec within 15 days after Buyer learns of the facts upon which such claim is based, but in no event later than 30 days after Buyer's receipt of the goods. All claims not made in writing and received by Seller within the time period specified above shall be deemed waived.

With respect to any defects incapable of discovery until in use or in processing in the manufacture of other products and not disclaimed by Seller under paragraph 8, all claims for any damages or losses as a result of such defects shall be deemed waived unless made in writing and received by Suntec prior to the expiration of warranty period of shipped product as noted in paragraph 7 above. After the expiration of said period, Buyer expressly assumes all liability for such damages or losses, irrespective of any processing or use which shall have taken place or whether the alleged defect shall have occurred or been discovered prior to expiration of such period.

**13. SUNTEC'S SECURITY INTERESTS.** Until the entire purchase price for the products ordered (as set forth in invoices or other memoranda from time to time issued to Buyer by Suntec) has been paid in cash and until any and all other liabilities or indebtedness (including obligations of performance) due, owing or arising hereunder or due, owing or arising under any other contract, purchase order, agreement, document or instrument heretofore, now or hereafter executed and delivered by Buyer to Suntec have been paid in cash or otherwise satisfied (all such obligations, liabilities and indebtedness of Buyer to Suntec being sometimes collectively referred to herein as "Liabilities"), Suntec shall have, to secure payment of such Liabilities, a continuing senior purchase money security interest in the products ordered and proceeds therefrom. Buyer represents that, except for the security interest granted hereby, Buyer is and will at all times be the owner of the products ordered free from any adverse lien, security interest or encumbrance, and that Purchaser will defend the products ordered against all claims and demands of all persons at any time or times hereafter claiming the same or any interest therein. Buyer further represents that there do not and will not exist any financing, security or lien arrangements, whether or not filed in any public office, which affect or purport to affect Suntec's security interest in the products ordered or the proceeds therefrom. Buyer will execute and deliver to Suntec, upon Suntec's request, such financing statements and other documents and will take such other action as Suntec deems necessary or desirable to perfect and maintain perfected Suntec's security interests hereunder.

**14. DEFAULT.** Buyer shall be in default under this agreement upon the happening of any of the following events or conditions: (a) failure to pay or perform any of the Liabilities contained or referred to herein, or failure to perform any provision hereof; (b) any warranty, representation or statement made or furnished to Suntec by or on behalf of Buyer proves to be false in any material respect when made or furnished; or (c) a receiver is appointed for Buyer or Buyer's business or Buyer becomes insolvent or makes an assignment for the benefit of creditors, or Buyer becomes the subject, either voluntarily or involuntarily, or a state or federal bankruptcy proceeding, or Buyer fails generally to pay its debts as such debts become due.

**15. REMEDIES.** In the event of a default by the Buyer hereunder, and at any time or times thereafter, Suntec may declare all Liabilities secured herein immediately due and payable and shall have all the remedies given a secured party under the Uniform Commercial Code and other applicable state and federal law. Any requirement under any applicable law or decision of reasonable notice of sale or other disposition of the products sold by Suntec shall be deemed met if such notice is mailed, postage prepaid, to Buyer at Buyer's place of business, at least 10 days before the time of such sale or disposition. The net proceeds realized by Suntec upon any such sale or other disposition, after deduction for the expenses of holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Suntec in connection with such sale and in connection with the enforcement of this agreement, shall be applied in satisfaction of Buyer's Liabilities hereunder. Suntec will account to Buyer for any surplus realized upon such sale or other disposition and Buyer shall remain liable for any deficiency. The commencement of any action, legal or equitable, or the rendition of any judgment or decree for any deficiency, shall not affect Suntec's security interest in the products sold or proceeds thereof, until the Liabilities hereunder of any judgment therefore are fully paid.

This sales contract shall be governed by the Uniform Commercial Code as adopted in the State where Suntec accepted Buyer's order, as effective and in force on the dates hereof. Wherever a term defined by said Uniform Commercial Code is used herein, the definition contained in the Uniform Commercial Code is to control. No action for breach of sale, this sales contract, or any covenant or warranty arising therefrom shall be brought more than one year after the cause of action has accrued.