

PowerCET Corporation
TERMS AND CONDITIONS OF SALE



CONTROLLING PROVISIONS: No terms and conditions other than the terms and conditions contained herein shall be binding upon PowerCET Corporation unless accepted by it in a writing signed by an officer of PowerCET Corporation. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on PowerCET Corporation, whether or not they would materially alter this document, and PowerCET Corporation hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.

TERMS: Buyer agrees to pay for the products according to the PowerCET Corporation's payment terms. In the event Buyer fails to make any payment to PowerCET Corporation when due, Buyer's entire account(s) with PowerCET Corporation shall become immediately due and payable without notice or demand. All past due amounts are subject to service charges at the rate agreed upon by the parties, otherwise at the maximum contract rate permitted by law. Buyer does hereby grant PowerCET Corporation a purchase money security interest in the products until such time as PowerCET Corporation is fully paid. Buyer will assist PowerCET Corporation in taking the necessary action to perfect and protect PowerCET Corporation's security interest. No products furnished by PowerCET Corporation shall become a fixture by reason of being attached to real estate until such time as PowerCET Corporation is fully paid.

REMEDIES OF POWERCET CORPORATION: Upon default by Buyer, Buyer agrees to reimburse PowerCET Corporation all attorney fees and court costs incurred by PowerCET Corporation in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable PowerCET Corporation, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by PowerCET Corporation or (f) if PowerCET Corporation, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of PowerCET Corporation herein are in addition to, and shall not exclude, any rights or remedies that PowerCET Corporation may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

GOVERNING LAW: This transaction shall be governed in all respects by the laws of the State of California (excluding choice of law provisions). All actions, regardless of form, arising out of or related to this transaction or the products sold hereunder must be brought against PowerCET Corporation within the applicable statutory period, but in no event more than **ONE (1) YEAR** after the date of invoice.

DELIVERY: PowerCET Corporation will make a good faith effort to complete delivery of the products as indicated by PowerCET Corporation in writing, but PowerCET Corporation assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to PowerCET Corporation, including, but not limited to, liability for PowerCET Corporation's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of PowerCET Corporation. Under no circumstances shall PowerCET Corporation be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

WARRANTY: THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. POWERCET CORPORATION MAKES NO EXPRESSED OR IMPLIED WARRANTIES. POWERCET CORPORATION HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL POWERCET CORPORATION BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD BY POWERCET CORPORATION. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL POWERCET CORPORATION'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY POWERCET CORPORATION AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

WARRANTY SERVICE IN CASES WITHOUT WARRANTY PASS-THROUGH: In cases where the manufacturer's warranty only passes to the first purchaser PowerCET Corporation will service the warranty for the Buyer during the initial warranty period. PowerCET Corporation, at its sole discretion, may replace any product requiring warranty service with a like new product. In the case of a product or system failure, during the warranty period, PowerCET Corporation will provide a "loaner" unit, subject to availability, at no cost to the Buyer until the warranty servicing is complete.

RECOMMENDATIONS BY POWERCET CORPORATION: Buyer acknowledges that PowerCET Corporation does not make and specifically negates, renounces and disclaims any representations, warranties and/or guarantees of any kind or character, expressed or implied, with respect to (i) the products sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose, (ii) the maintenance or other expenses to be incurred in connection with the products, (iii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by PowerCET Corporation and/or its agents, suppliers and employees or (iv) the accuracy or reliability of any information, designs or documents furnished to Buyer. PowerCET Corporation neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its products and/or rendering of its services. Any recommendations made by PowerCET Corporation concerning the use, design, application or operation of the products shall not be construed as representations or warranties, expressed or implied. Failure by PowerCET Corporation to make recommendations or give advice to Buyer shall not impose any liability upon PowerCET Corporation.



INDEMNIFICATION: The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. PowerCET Corporation makes no promise or representation that the products or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of PowerCET Corporation.

PowerCET Corporation shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the products. Buyer shall defend, indemnify and hold harmless PowerCET Corporation and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, PowerCET Corporation, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

INSPECTION AND ACCEPTANCE: Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify PowerCET Corporation, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service previously ordered by Buyer or its representatives or cancels any order without PowerCET Corporation's written consent and payment to PowerCET Corporation of all charges, expenses, commissions and reasonable profits owed to or incurred by PowerCET Corporation. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to the manufacturer's inspection and warranty.

RETURNS: Buyer may return any product which PowerCET Corporation stocks with no restocking charge if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. Buyer's surplus job returns, and those not meeting (i) and (ii), above, will be evaluated on an individual basis after Buyer has contacted PowerCET Corporation's authorized representative for prior written permission. Special orders or non-stock items may be returned if the manufacturer will accept the return. Except for items PowerCET Corporation stocks which meet (i) and (ii), above, credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges.

SHIPMENTS: All products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if PowerCET Corporation ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as PowerCET Corporation's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier.

TAXES: The amount of any sales, excise or other taxes, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides PowerCET Corporation with an exemption certificate acceptable to the taxing authorities. Any taxes which PowerCET Corporation may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to PowerCET Corporation upon demand.

SEVERABILITY: These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance herefrom.

SET-OFF: Buyer shall not be entitled to set-off any amounts due Buyer against any amount due PowerCET Corporation in connection with this transaction.

CERTIFICATIONS: PowerCET Corporation certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. PowerCET Corporation certifies further that its services are performed in compliance with the Fair Labor Standards Act of 1938, as amended.

NON-WAIVER: PowerCET Corporation's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of PowerCET Corporation's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by an officer of PowerCET Corporation.

ENTIRE AGREEMENT: This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by an officer of PowerCET Corporation. All transactions shall be governed solely by the terms and conditions contained herein.