

ENSURGE MICROPOWER INC.

SALES TERMS AND CONDITIONS

THESE SALES TERMS AND CONDITIONS (the “**Terms**”) apply to all sales of products (“**Products**”) by Ensure Micropower Inc., maintaining its principal place of business at 2581 Junction Avenue, San Jose, CA 95134, USA (“**Ensure**”) to the entity purchasing Products (“**Buyer**”), unless authorized representatives of both Ensure and Buyer have executed and delivered to each other a separate written agreement governing the sale of Products by Ensure to Buyer.

1 APPLICABILITY AND SCOPE

- 1.1 The Terms shall apply to any written quotation of Ensure which is accepted by the Buyer, or any written order of the Buyer which is accepted by Ensure, in each case to the extent signed by both parties (each an “**Order**”). These Terms are subject to the Order and any special conditions set out therein, which may deviate from or supplement these Terms.
- 1.2 Ensure objects to any additional or different terms proposed by Buyer, and such terms will not apply, unless accepted and signed in writing by Ensure’s authorized representative.

2 SALE AND DELIVERY

Deliveries shall take place according to the delivery schedule agreed in an Order. All Products shall be delivered EX WORKS according the current applicable Incoterms, if not otherwise is agreed in the Order, at the address as agreed in the Order. If Ensure becomes aware of a delay or possible delay, Buyer shall be notified promptly. The delivery schedule shall be revised accordingly.

3 CANCELLATION

- 3.1 In the event of material delay of delivery, and provided it is agreed in the Order that “time is of essence”, Buyer may cancel an Order by written notice to Ensure one (1) month prior to delivery date as agreed in the Order. In case of cancellation of non-standard parts and custom Products, Buyer shall accept delivery of all such Products or parts thereof which are completed at the time of cancellation. Those non-standard Products which are in the work-in-process inventory at the time of cancellation, shall be paid for by Buyer at a price equal to the completed percentage of the Product multiplied by the price of the finished Product. Buyer shall also pay promptly to Ensure the costs of settling and paying claims arising out of the termination of work under Ensure’s subcontracts or vendors and any accounting, legal, and other costs arising out of the cancellation.
- 3.2 Ensure reserves the right to cancel any orders placed in an Order or to refuse or delay shipment thereof, if (a) Buyer fails to make any payment agreed to by Ensure and Buyer; (b) Buyer fails to meet reasonable credit or financial requirements established by Ensure, including any limitations on allowable credit; or (c) Buyer fails to comply with the terms and conditions of these Terms. No such cancellation, refusal or delay will be deemed a termination (unless Ensure so advises Buyer) or breach of these Terms by Ensure.
- 3.3 Ensure reserves the right to discontinue the manufacture, sale or supply of Products at any

time. If, however, at any time during the term of these Terms, Buyer purchases certain Products from Ensure on a regular basis, and such Products are to be discontinued (“**Discontinued Products**”), Ensure shall give Buyer prior written notice of such discontinuance and accept last-time-buy orders for such Discontinued Products in accordance with Ensure’s last-time-buy procedure in place at the time of such notice.

4 PRICING AND PAYMENT TERMS

The prices are stated in the relevant Order. Prices are subject to change on thirty (30) days’ notice to Buyer. All prices are exclusive of any sales tax, excise tax, value added tax, import duty or other tax applicable to the sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. Ensure shall issue invoices for supply of Products on delivery. All invoices shall be payable within 30 (thirty) days of issue. If payments by Buyer that are more than 30 (thirty) days overdue, Ensure is entitled to interest at a rate equal to eight point five (8.5) per cent per annum or, if less, the maximum amount allowed by applicable law, on the overdue balance, by issue from time to time of a separate invoice. In no event shall the amount of interest (or any late charge if treated as interest) paid or agreed to be paid by Buyer under the Terms exceed the highest lawful rate. If such interest (or late charge) is treated as involving payment in excess of that permitted, then the obligations of Buyer shall be reduced to the limits so permitted by law and if, from any circumstance, Ensure should ever receive any such excess, such sum shall not be deemed a payment of interest but shall instead be applied to reduce the principal obligations of Buyer to Ensure.

5 PROPRIETARY RIGHTS

The Buyer has full right of disposal of the single Products delivered. Ensure (or its licensors) shall retain all right, title and interest in and to all intellectual property rights, such as, but not limited to patents, copyrights and design rights, embedded in the Products. Unless otherwise agreed between the parties and subject to any valid patents or copyrights of Buyer, Ensure shall have a royalty-free, worldwide, sub-licensable, irrevocable and perpetual license to use or incorporate into the Products any suggestions, enhancements, recommendations and other feedback provided by Buyer related to the operation of Products. Buyer shall not modify, copy, emulate or attempt to create derivative works of the Products, or any element thereof. Buyer shall not modify, translate, reverse engineer, decompile or disassemble any software delivered with the Product or any part thereof, or otherwise attempt to derive source code or create derivative works from such software.

Buyer is not allowed to remove, alter or destroy any proprietary, trademark or copyright markings or notices placed upon or contained with the Products. Subject to the terms and conditions of these Terms, Ensure hereby grants to Buyer a non-exclusive, world-wide, royalty-free, revocable license to use Ensure trademarks, in accordance with any guidelines or directions issued by Ensure from time to time, solely in connection with the distribution of the Product. The use of the trademarks hereunder will not create in Buyer any right, title or interest in or to the trademarks. All goodwill arising from such use of the trademarks will inure to the benefit of Ensure and its suppliers.

6 EXPORT

6.1 Buyer accepts full responsibility for compliance with all applicable laws relating to export controls. It shall be the obligation of Buyer to obtain any required export license for the Product. Ensurge may offer reasonable assistance in obtaining any such required license.

7 US GOVERNMENT

If the Products are purchased by Buyer pursuant to or in connection with a U.S. Government contract or subcontract, Buyer shall promptly notify Ensurge in writing of any required provisions of applicable U.S. Government acquisition regulations. Such notified pertinent provisions will be applicable hereto and will be incorporated herein by reference from and after the date of such notification is received by Ensurge.

8 CONFIDENTIALITY

Buyer shall keep confidential all information, pricing, instructions, and advice relating to the Products furnished by Ensurge which is not available to the general public, and shall not disclose any such information, or information relating to the business and operations of Ensurge, to any other party.

9 RESERVED

10 PRODUCT QUALITY AND LIMITED WARRANTY

10.1 Ensurge reserves the right to make modifications to the Products at any time. If, however, at any time during the term of these Terms, Buyer purchases certain Products from Ensurge on a regular basis, and Ensurge is going to materially change the form, fit or function of such Products, Ensurge shall give Buyer prior written notice of such changes, and Buyer shall have the right to cancel the Order by providing a written cancellation notice to Ensurge within five (5) days of receiving the written notice from Ensurge.

10.2 The Products shall be materially in accordance with its specifications in the Order for a period of twelve (12) months from delivery to Buyer. If Products do not materially comply with its specifications, Ensurge will repair or replace Products within a reasonable time or, if not possible to repair or replace within reasonable time, credit or refund Buyer the price paid for the Products. Ensurge shall have a reasonable time period to replace or repair the Products or to credit or refund Buyer. Products are otherwise delivered on a strictly «as is» basis. To the extent permitted by law, Ensurge and its suppliers disclaim all warranties regarding the Products, either expressed or implied, statutory or otherwise, including without limitation warranties of compatibility with another product, functionality or fitness for a particular purpose. Buyer acknowledges that the Products are not designed or intended for use in or in connection with products and/or applications which typically have a potential for severe physical damage or damage to persons. Ensurge and its suppliers disclaim any expressed or implied warranty of fitness for such uses.

11 INDEMNITY

Ensurge will settle and/or defend at its own expense and indemnify Buyer against any cost, loss or damage arising out of any claim, demand, suit or action brought against Buyer to the extent that such claim, demand, suit or action is based on a claim that a Product infringes upon any intellectual property rights of any third party, provided that (1) Buyer promptly informs Ensurge in writing of any such claim, demand, action or suit, (2) Ensurge is given control over the defense or settlement thereof and that Buyer co-operates in the defense or settlement. Ensurge agrees that in negotiating any settlement pursuant to this clause, it shall act reasonably and shall consult with the Buyer before agreeing any settlement. If a claim, demand, suit or action alleging infringement is brought or Ensurge believes one may be brought, Ensurge shall have the option at its expense to (1) modify the Product to avoid the allegation of infringement or (2) obtain for the Buyer at no cost to Buyer a license to continue to use the Product in accordance with these Terms free of any liability or restrictions or (3) terminate the Order. Ensurge shall have no responsibility for claims arising from (i) modifications of the Product by Buyer or any third party; (ii) combination or use of the Product with Buyer or third party hardware or software or any other third party product not supplied by Ensurge, or any other unauthorized use, if such claim would not have arisen but for such combinations or use; (iii) Ensurge's modification of the Product in compliance with written specifications provided by Buyer; or (iv) use of other than the latest version of the Product provided to Buyer by Ensurge if the use of the latest version would have avoided the infringement. The foregoing states the sole liability of Ensurge and the exclusive remedy of Buyer in connection with infringement of intellectual property rights. Buyer will settle and/or defend at its own expense and indemnify Ensurge against any cost, loss or damage arising out of any claim, demand, suit or action brought against Ensurge to the extent that such claim arises from (i) modifications of the Product by Buyer or any third party on its behalf; (ii) a breach of these Terms by Buyer; (iii) unauthorized representations or warranties to customers or end users regarding the Product; (iv) a combination of Product with other products or components resulting in an alleged infringement of the intellectual property rights of any third party.

12 LIMITATION OF LIABILITY

Ensurge shall not be liable in contract, tort or otherwise, whatever the cause thereof, for any loss of profit, business or goodwill or any indirect cost, damages or expense of any kind, howsoever arising under or in connection with these Terms, except for injury to persons or attributable to intentional misconduct or gross negligence. The total and maximum liability of Ensurge under any provision of these Terms, or any transaction or acts contemplated by these Terms shall in no event exceed the lower amount of (i) the accumulated fees and payments received by Ensurge from Buyer in relation to the Products as of the date of any claim, (ii) the actual direct damages sustained by Buyer and, (iii) the sum of US Dollars \$ 250,000. In no event shall Ensurge's aggregate liability arising out of any indemnification obligations under Section 11 relating to any intellectual property infringement exceed the lower of (i) the actual direct damages sustained by Buyer as a result of the breach, and (ii) the sum of US Dollars 3 Million. The foregoing limitations of liability shall not apply to damages attributable to breaches of Section 8 (Confidentiality) or to damages attributable to gross negligence or intentional misconduct.

13 TERMINATION

Either party may terminate the Terms by notice in writing to the other having immediate effect if: (i) the other party materially breaches the provisions of these Terms, and, in the

case of a material breach capable of remedy, fails to remedy the same within 30 days of receiving notice from the other party requiring such remedy; or (ii) the other party takes or suffers any action for insolvency in any jurisdiction.

14 FORCE MAJEURE

Ensurge shall not be responsible for any failure to perform due to causes beyond its control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, pandemics, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In the event of any such circumstances, Ensurge shall be relieved from its contractual obligations, and, in the case of delay, excused for a period equal to the time of the delay caused thereby.

15 SEVERABILITY

If any provision of these Terms are declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable than the remaining provisions of these Terms shall continue in full force and effect.

16 DISPUTE RESOLUTION

(a) Referral to Senior Management. In the event of any controversy, claim or dispute between the parties hereto arising out of or related to these Terms or the Order, or the alleged breach, termination, or invalidity hereof or thereof, whether based in contract, tort or otherwise (a “Dispute”), within five (5) business days following the delivered date of a written request by either party (a “Dispute Notice”), (a) each party shall appoint a representative (individually, a “Party Representative”, together, the “Parties’ Representatives”), and (b) the Parties’ Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties’ Representatives cannot resolve the Dispute within seven (7) business days after commencement of negotiations, within ten (10) days following any request by either party at any time thereafter, each Party Representative (i) shall independently prepare a written summary of the Dispute describing the issues and claims, (ii) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (iii) shall submit a copy of both summaries to a senior officer of the party with authority to irrevocably bind the party to a resolution of the Dispute. Within ten (10) business days after receipt of the Dispute summaries, the senior officers for both parties shall negotiate in good faith to resolve the Dispute.

(b) Arbitration Procedure. Notwithstanding anything to contrary elsewhere herein or in the Order, except as permitted with respect to injunctive relief as provided herein, any Dispute that is not resolved pursuant to Section 16(a) shall be submitted for arbitration before three (3) arbitrators, provided, however, that in cases of dispute amounts lower than US Dollars 2.5 Million, the tribunal will have a one (1) arbitrator, in both cases to be appointed in accordance with the Comprehensive Arbitration Rules (and Expedited Procedures thereunder) then pertaining (the “Rules”) of Judicial Arbitration and Mediation Services (“JAMS”). Any party desiring arbitration shall serve a demand for arbitration on the other party and the office of JAMS in San Francisco, California (an “Arbitration Notice”). All arbitration shall take place in San Francisco, California, USA, unless otherwise agreed to by the parties. The arbitrator shall have no power to award (a) damages inconsistent with the terms of these Terms or the Order, (b) punitive or exemplary damages, or (c) damages in

excess of the limitations set forth in these Terms. Subject to the foregoing, in no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrator have power to make an award or impose a remedy that could not be made or imposed by a court sitting in the jurisdiction and venue agreed to by the parties in Section 18 of these Terms deciding the matter in accordance with the law agreed to by the parties in such Section 18 as the governing law. All aspects of the arbitration shall be treated as confidential except as are required under applicable laws and regulations, hereunder disclosure requirements related to the stock exchange. The award of the arbitrator shall be binding and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The parties reserve the right to seek non-monetary, injunctive or other equitable relief outside of arbitration from a court of competent jurisdiction.

17 ATTORNEYS' FEES

If any party hereto institutes legal action or arbitration proceedings against any other party arising out of or in connection with these Terms or the Order, including hereto to interpret or enforce the Terms or the Order or to obtain damages for any alleged breach hereof or thereof, the prevailing party in such action or arbitration shall be entitled to reimbursement from the other party of all costs and expenses, including reasonable attorneys' fees and costs, the fees of the arbitrator, costs of arbitration, and costs of enforcement. The "prevailing party" shall be determined by the court or arbitrator based on an assessment of which party's major arguments or positions taken in the proceedings could be fairly said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's or arbitrator's opinion.

18 GOVERNING LAW; CONSENT TO JURISDICTION

These Terms and all matters arising hereunder or in connection herewith shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of California, without regard to conflicts of law principles. The parties' stipulation to the application of California law includes the Uniform Commercial Code as adopted in such State, and the parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. Each of the parties hereby irrevocably consents and agrees that any legal action or proceedings brought to seek any non-monetary, injunctive or other equitable relief, shall be brought in the United States or state courts located in Northern California, and by execution and delivery of these Terms, each of the parties hereby (a) accepts the jurisdiction of the foregoing courts for purposes of seeking such equitable relief, (b) irrevocably agrees to be bound by any final judgment (after any appeal) of any such court with respect thereto, and (c) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect hereto brought in any such court, and further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceedings brought in any such court has been brought in an inconvenient forum.

19 AMENDMENTS

No purported variation of the Terms shall be effective unless made in writing and signed by Ensurge.

20 ENTIRE AGREEMENT

The Terms, together with the Order, sets forth the entire agreement and understanding between the parties, and supersedes any other negotiations, agreements, understandings, oral agreements and representations with respect to the subject matter of the Terms and the Order.

21 NOTICES

All notices and other communications required or permitted by these Terms or by law to be served upon or given to a party by the other party shall be in writing (including by electronic mail) and mailed (by certified or registered mail), sent or delivered to the respective parties hereto at or to their respective addresses or email addresses set forth in the Order, or at or to such other address or email address as shall be designated by any party in a written notice to the other party hereto. All such notices and communications shall be effective (i) if delivered by hand, sent by certified or registered mail or sent by an overnight courier service, when received; and (ii) if sent by electronic mail, when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient).