

Purchase Order Terms and Conditions

The following purchase order terms and conditions apply to every purchase order created by EarthCruiser USA LLC.

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1. Parties

The term "Seller" refers to the addressee set forth on the face of EC's purchase orders, and the term "EC" refers to EarthCruiser USA LLC, an LLC organized in the state of Oregon.

2. Scope

The following terms and conditions shall govern any EC purchase order, proposal, or work order, and any plans, specifications or other documents incorporated by reference thereto, in addition to any terms set forth on the face of any of the aforementioned documents (collectively, an "Order"). Acceptance by EC of any offer from Seller is expressly limited to the terms and conditions of the Order, and EC hereby objects to and shall not be bound by any additional, different or conflicting terms, whether printed or otherwise, in any other communication between the parties (including on any of Seller's forms, letter or papers). The terms and conditions of the Order shall prevail notwithstanding any such additional, different or conflicting terms. In the event that the Order does not state prices or delivery, EC will not be bound to any prices or delivery to which it has not specifically agreed to in writing.

3. Acceptance and Limitations

The Order shall be deemed accepted by Seller on the earlier of (a) shipment of goods or rendering of services ordered, in total or in part, or (b) within 15 days of issuance by EC, absent written notification to EC of non-acceptance.

4. Changes

EC may make changes to the Order at any time and Seller shall accept such changes. If a change by EC causes an increase or decrease in the cost or time required for Seller's performance, as soon as practicable, the parties shall agree to an equitable adjustment of the purchase price and/or delivery schedule, as applicable, and incorporate such changes as a revision change to the Order. Any claim by Seller for adjustment under this paragraph 4 must be asserted in writing within ten (10) days from the date of receipt by Seller of notification of the change and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. No other form of notification or verbal agreement shall be binding on EC.

5. Termination for Convenience

EC may, by written notice to Seller, terminate the Order, or any part thereof, for any or no reason, for EC's convenience at any time. Such termination shall not constitute default. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under the Order. Upon notice of termination, Seller shall immediately stop all work and cause its suppliers and/or subcontractors to stop all terminated work in connection with the Order. If EC terminates for convenience, EC shall pay Seller for goods and services accepted as of the date of termination, and, subject to Section 8, for Seller's actual, reasonable, out of pocket costs incurred directly as a result of such termination. EC shall have no responsibility for work performed after Seller's receipt of notice of termination. EC may take immediate possession of all deliverable Work Product resulting from Seller's services upon written notice of termination to Seller.

6. Termination for Cause

EC may, by written notice to Seller, terminate the Order in whole or in part at any time for:

(a) breach of any one or more of its terms, (b) failure to perform the services within the time specified by the Order or any written extension, (c) failure to make progress so as to endanger performance of the Order, or (d) failure to provide adequate assurance of future performance. EC may also terminate this Order in whole or in part in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization, or arrangement by Seller for the benefit of its creditors.

7. Damages

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Without limiting EC's rights and remedies at law or in equity, EC reserves the right to charge Seller for any loss, expense (including reasonable attorneys' fees) or damage sustained as a result of Seller's failure to deliver conforming goods or services or other breach of the Order, including without limitation, expenses incurred in connection with EC's purchase of substitute goods, incidental damages and consequential damages resulting from Seller's failure or breach.

8. Limitation of EC's Liability

EC SHALL NOT BE LIABLE TO SELLER, ITS EMPLOYEES, REPRESENTATIVES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS FOR ANY ANTICIPATED PROFITS OR INCIDENTAL DAMAGES (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN SECTION 5) OR CONSEQUENTIAL DAMAGES. WITHOUT LIMITING THE FOREGOING, EC'S LIABILITY FOR ANY CLAIM ARISING DIRECTLY OR INDIRECTLY UNDER OR IN CONNECTION WITH THE ORDER SHALL IN NO EVENT EXCEED THE COST OF THE GOODS OR SERVICES GIVING RISE TO THE CLAIM. EC SHALL HAVE NO LIABILITY FOR PENALTIES OF ANY KIND. EC'S OBLIGATIONS UNDER THE ORDER ARE CONSIDERATION FOR LIMITING EC'S LIABILITY TO SELLER.

9. Choice of Law

All matters arising under or related to the Order shall be construed and enforced in accordance with the laws of the State of Oregon, without regard to conflicts of law rules.

10. Compliance with Laws

Seller represents and warrants that, in the production and sale of goods to be delivered pursuant hereto, and in the provision of services hereunder, Seller has complied with all applicable federal, state, and municipal laws and regulations, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of such goods, and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity, including without limitation, the requirements of the Fair Labor Standards Act of 1938, as amended, and the rules and regulations of the U.S. Department of Labor.

11. Confidentiality

"Confidential Information" means EC's proprietary information, inventions and developments, including customer lists, business plans, source code quotes, proposals, protocols, procedures, reports, pricing, and all other information whether or not marked "Proprietary" or "Confidential," and whether oral or written, that is maintained in confidence by EC or might permit EC to obtain a competitive advantage over its competitors who do not have access to such information.

Seller shall preserve in strict confidence all Confidential Information, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care.) Confidential Information shall not include information that Seller can demonstrate by written evidence was publicly available at the time of disclosure or was independently developed by Seller without reference to Confidential Information. Seller will not (i) disclose or cause to be disclosed at any time any Confidential Information obtained from EC, or (ii) use or cause to be used any of such Confidential Information for any purpose, except as required in the performance of the services required by the Order. Seller represents, warrants and covenants that it shall maintain physical, electronic and procedural safeguards designed to (1) insure the security, integrity and confidentiality of all Confidential Information, (2) protect against any anticipated threats or hazards to the security, integrity or confidentiality of Confidential Information, and (3) protect against unauthorized access to or use or disclosure of Confidential Information.

The obligations of this section 11 will survive termination of the Order or completion of the Order.

12. Discount Terms

If cash discounts are offered and identified, such discount periods will be computed from the date of delivery of the goods or services ordered; or the date of EC's receipt of a correct and proper invoice, whichever is later. Payment or

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other terms identified on the Seller's invoice which are contrary to those of the Order shall have no force and effect unless acted upon or approved in writing by EC. EC will make every effort to pay invoices within the terms prescribed in the Order, however, in no event will EC be obligated to pay late fees or penalties for invoices paid outside the Order terms.

13. Entire Agreement

The Order represents the entire agreement between Seller and EC with respect to the goods and services described in the Order.

14. Freight Charges

Except as expressly provided in the Order, packing, shipping, unloading, assembling and installation are included in the purchase price set forth in the Order and EC shall not be charged any additional amounts for such services. All shipments on which freight charges are due must be prepaid. Collect shipments cannot be accepted.

15. Inspection

EC shall have the right to inspect and test all goods and/or services delivered under the Order. Neither receipt nor payment for goods and/or services shall constitute acceptance. EC may reject any or all items that are nonconforming, as determined by EC's sole reasonable judgment. EC's failure to inspect shall not relieve Seller of any of its responsibilities. Material shipped in quantities in excess of EC's stated requirements may be returned at Seller's expense. If goods are rejected, they will be held at Seller's risk and expense and Seller shall bear the risk of loss or damage to such goods until received by Seller.

16. Indemnity

Seller shall indemnify, defend and hold harmless EC, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns, and customers from and against all claims, liabilities, losses, damages, costs and expenses (including legal fees), all expenses of litigation and or settlement and court costs, resulting from or arising in connection with any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under the Order, including, any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, with respect to the goods or services provided under the Order.

17. Invoice Payments

Unless otherwise specified in the purchase order, Payment terms will be Net 45. All quotes and amounts paid under the Order shall be in U.S. Dollars. Seller shall bear the risk of fluctuation in foreign exchange rate. EC shall have no obligation to pay any amount prior to EC's receipt of a correct and proper invoice for such amount prepared in accordance with the Order. Except as expressly provided in the Order, payment shall not be due until final acceptance by EC. EC shall have the right to reduce and set off against amounts payable under the Order any indebtedness or other claim which EC may have against Seller, however and whenever arising.

18. No Assignment

Seller may not assign, transfer or subcontract any part of the Order without the prior written consent of EC, and any assignment in violation of this provision shall be null and void.

19. Packing & Seller's Q.A. Inspection document.

EC's purchase order number and specific delivery location must appear on the outside of each package and on all packing slips, invoices, and allied papers. A packing slip must be included with each shipment. Except as expressly provided in the Order, Seller shall pack, mark and prepare all shipments to meet the carrier's requirements, at Seller's expense. If requested by EC, Supplier shall provide with each shipment a Quality Inspection (Q.A.) document detailing

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evidence that Seller's goods or services comply with the all drawings, specifications, tolerances, test criteria, and other requirements specified by EC.

20. Intellectual Property and Proprietary Rights

Except as otherwise provided in the Order, no licenses or rights under EC's intellectual property rights are implied or granted in the Order. EC retains full ownership of all its inventions and intellectual property whether in existence as of the date of each Order or thereafter.

Seller shall not use the name, logo, trademark, or any other reference to EC, either direct or indirect, in publicly releases, advertising, case studies, sales literature or reference of or to EC nor disclose advertise or publish the existence of the terms and conditions of the Order, without the prior written consent of EC. Seller agrees it will not use EC's name and/or data in any manner which may cause damage to EC's reputation or business.

Seller agrees that all work created by Seller solely or in collaboration with others in the course of performing services under this Order or designing or developing materials to be delivered, including all intermediate and partial versions ("Work Product") shall automatically be the sole property of EC upon their creation or (in the case of copyrightable works) fixation in a tangible medium of expression, and EC shall own all rights, including all proprietary and intellectual property rights, title and interest. Seller hereby assigns to EC all of its right, title and interest in and to all of the Work Product and all copies of any of the foregoing, including, without limitation, all copyright and other proprietary rights thereto throughout the world (and all renewals and extensions).

21. Risk of Loss

Seller shall bear the risk of loss of or damage to all goods purchased pursuant to the Order until they are received by EC.

22. Severability

If any provision of the Order is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

23. Timely Delivery

Time is of the essence in fulfillment of the Order. Shipment and delivery shall be made in accordance with the Order; provided, that if not addressed in the Order, delivery shall be made within ten (10) days of EC's issuance of the Order. EC may, at its option, and without limitation of any of its other rights, cancel any unfilled part of the Order if complete, conforming delivery is not made within the times specified. EC is not required to accept partial or incomplete delivery. Acceptance of any part of the Order shall not bind EC to accept any future shipments.

24. Waiver

No waiver by EC of any provision of the Order or any breach hereunder shall be deemed a waiver of any other provision or subsequent breach, nor shall any such waiver constitute a continuing waiver. Delay or failure of EC to insist on strict performance of any provision of the Order or to exercise any rights or remedies hereunder shall not be deemed a waiver.

25. No Solicitation

Except as may be agreed in writing during the term of the Order, or for twelve (12) months after its termination or expiration, Seller will not solicit directly or indirectly for employment or employ any person then employed (or who was employed within the preceding twelve (12) months by EC who has been involved in the activities to which the Order relates.

26. Warranties

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Seller warrants that all material, Work Product, and merchandise supplied under the Order (a) shall strictly conform to all specifications, drawings, samples, or other descriptions furnished to and approved by EC, (b) shall be fit and serviceable for the purpose intended, as agreed to by EC and Seller (c) shall be of good quality and free from defects in materials and workmanship, (d) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by EC, and (e) shall not infringe any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party. In addition, Seller warrants that EC shall have good and marketable title to all goods (including all components thereof) purchased by EC pursuant to the Order, free of all liens and encumbrances and that no licenses are required for EC to use such goods. With respect to services, Seller warrants that all services shall be provided in a professional and workmanlike manner, with a degree of skill and care consistent with current, good and sound professional procedures. Neither receipt of material, Work Product or merchandise nor payment therefore shall constitute a waiver of this provision. If a breach of warranty occurs, EC may, in its sole discretion, and without waiving any other rights, return for credit or require prompt correction or replacement of the nonconforming goods or services. Notwithstanding the foregoing, if Seller is unable to promptly correct or replace the nonconforming goods or services in a timely matter (as determined by EC), EC shall be entitled to repair or replace the defective goods and to charge back Supplier for its reasonable incremental costs.

27. Insurance

Seller shall procure and maintain, at its own expense, such public liability insurance, including product liability, contractual liability, completed operations, contractor's liability and protective liability, automotive liability insurance (including non-owned automotive liability), workers' compensation and employer's liability insurance with an insurance company acceptable to EC that will adequately protect EC against damages, liabilities, claims, losses and expenses. All insurance coverage provided to EC by Seller pursuant to these Purchase Order Terms shall be primary insurance with respect to Seller's obligations, and shall not be or be considered to be contributing insurance with any of EC's policies of insurance. Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by EC. Notwithstanding the foregoing, in no event shall Seller's insurance required in accordance with this section have respective limits of less than the following:

Type of Coverage

Workers Compensation	Per Statutory Limits
Employer's Liability	\$1,000,000 per occurrence
Motor Vehicle (covering leased, Owned and non-owned vehicle)	\$1,000,000 of primary and/or umbrella/excess coverage per occurrence for bodily injury and/or property damage
General Liability (including completed operations coverage, products liability coverage, broad form of property damage and blanket contractual liability coverage endorsed to cover Seller's contractual liability assumed under these Purchase Order Terms).	\$1,000,000 of primary and/or umbrella/excess coverage per occurrence for bodily injury and/or property damage