

## **KBS POWER SOLUTIONS LITHIUM-ION BATTERIES & CELLS**

### **TERMS AND CONDITIONS OF PURCHASE**

1. **ENTIRETY.** These Terms and Conditions of Sale and all documents referenced herein (collectively, the “Terms”) are the only terms and conditions which govern the sale of lithium-ion batteries and cells (“Goods”) and/or services (“Services” and together with Goods, the “Deliverables”) by Koehler-Bright Star LLC (“Seller”) to the buyer (“Buyer”) and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by mutual written agreement. Acceptance is expressly limited to these Terms. Any proposal for additional or different terms or any attempt by Buyer to vary these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to these Terms. The earlier of Seller’s commencement of performance or Buyer’s receipt of any of the Deliverables shall constitute acceptance of these Terms.
2. **PRICES.** Prices quoted are in U.S. Dollars and based on the price at the time of quotation and are subject to change without notice. Clerical errors are subject to correction without liability. As the cost of goods sold is very sensitive to the market cost for raw material, Seller reserves the right to propose a price adjustment on any quote as well as any accepted order that is 90 days or more from the date of delivery. If a mutually agreed price change cannot be established, Seller or Buyer reserves the right to cancel the existing order.
3. **TAXES.** Prices do not include any sales, use, excise, privilege, ad valorem, or other taxes, duties, tariffs or assessments now or hereafter imposed or levied (“Taxes”) by or under the authority of any foreign, federal, state, provincial, or local law, rule, or regulation (collectively, “Law”) concerning the Deliverables or the manufacture or sale or transport thereof. If Seller pays any such Taxes, Buyer shall, upon demand, immediately reimburse Seller for such amounts.
4. **TERMS OF PAYMENT.** All orders are subject to 100% up front payment, unless credit approval has been granted in writing by Seller. In the event credit is granted, payments are due within 30 days from date of invoice unless otherwise specified in writing by Seller. Orders are subject to acceptance in writing by Seller. All payments shall be made without abatement, deduction, discount or setoff. Late payments are subject to a service charge of the lesser of 1.5% per month or the highest rate permitted under applicable Law. Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys’ fees and costs. As collateral security for the payment of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all right, title and interest of Buyer in the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds). This security interest constitutes a purchase money security interest under the UCC. Upon demand, Buyer shall pay all costs and expenses with respect to the administration and enforcement of the foregoing security interest. If, in Seller’s judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.
5. **DELIVERY.** Delivery shall be made FOB shipping point at Seller’s Hanover Township, Pennsylvania facility and risk of loss passes to Buyer at such time. Delivery/performance dates are estimates only. Seller shall not be liable for any claim, loss, expense, contamination or damage of any kind whatsoever for delays, or loss or damage in transit. Claims for loss or damage shall be made solely against the carrier. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order. Delay by Buyer of any scheduled deliveries must be made in writing no less than 30 days of the scheduled delivery. Delay of delivery exceeding 180 days past the originally scheduled delivery are at the discretion of Seller and may incur a penalty to the Buyer up to 15% of the outstanding

- sales order amount and/or storage fees.
6. **INSPECTION.** Buyer shall inspect the Goods upon receipt and Services upon performance, and Buyer shall, within 10 days of receipt, notify Seller in writing of any claims that the Deliverables are different than identified in Buyer's purchase order whereupon Seller shall determine the remedy pursuant to Section 12. Failure to give such written notice upon receipt will constitute irrevocable acceptance by Buyer of all Deliverables. Buyer shall only use or forward Deliverables in accordance with the provisions of Section 12 and shall not use or forward Deliverables without first inspecting them for apparent damage and defects. Buyer shall not use any Deliverables which appear defective or to have been damaged.
  7. **CHANGES OR CANCELLATION.** Changes in specifications or designs to any Deliverables, changes in delivery or performance schedules or reschedules or cancellations of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer. Once ordered, Deliverables may not be cancelled by Buyer. Seller reserves the right to cancel any purchase orders or releases thereunder, or terminate any agreement relating to purchase of Seller's Deliverables, upon 10 days' notice to Buyer.
  8. **RETURNS.** Goods may not be returned without prior written authorization of Seller and compliance with Seller's return policies and procedures then in effect. Buyer agrees that returned Goods are not subject to a refund in purchase price unless Seller determines a refund is owed in connection with a warranty claim. If written authorization for the return has not been received by Seller, the return will be rejected.
  9. **STORAGE.** In the absence of agreed shipping dates, Seller may invoice Buyer and ship the Deliverables once they are ready for shipment. If, because of Buyer's inability to take delivery on a mutually agreed delivery date, the Deliverables are not shipped, stopped in transit or returned, Seller may store them for Buyer at Buyer's expense and title and risk of loss shall pass to Buyer when the Deliverables are placed in storage and such date shall constitute the date of shipment for purposes of beginning the warranty and payment periods.
  10. **SERVICE TERMS.** (a) Services will be provided at Seller's then current service rates; (b) If the site is not prepared for the Services upon Seller's arrival, Seller may charge a service fee and for any delay and/or travel time; (c) Buyer shall provide Seller with advance notice of any rules, requirements and Laws; (d) Seller may refuse, without any liability, to provide Services and to allow Seller service personnel to suspend Services or vacate any site where, in Seller's opinion, provision of Services would pose a risk to the safety of any person. In such event, Buyer is responsible for payment of any delay and/or travel time at Seller's regular service rates; (e) Buyer is solely liable for all damages or injuries caused or contributed to by Buyer that may occur; and (f) Buyer must provide at least 72 hours' notice of cancellation of any Service order. If Buyer cancels with less than 72 hours' notice, Buyer is responsible for any costs incurred by Seller caused by such cancellation.
  11. **INSURANCE.** Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2 million per occurrence, \$2 million products-completed operations aggregate and \$2 million general aggregate with insurance carriers having an AM Best rating of "A- VIII" or better. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material reduction of coverage in Buyer's insurance policy. Except where prohibited by law, Buyer shall waive, and shall require its insurer to waive, all rights of subrogation against Seller's insurers and Seller.
  12. **LIMITED WARRANTIES.** Unless otherwise provided by Seller in its written warranty, Seller warrants that for (i) for a period of 12 months after shipment, Goods (x) will be free from defects in material and workmanship and (y) will conform to the specifications in the data sheet provided by Seller ; and (ii) for a period of 10 days after completion of the Services, the Services will be performed in a timely and competent manner in accordance with industry standards. THESE ARE SELLER'S ONLY WARRANTIES. SELLER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE

IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

If during the warranty period, Buyer notifies Seller in writing that the Deliverables are not in conformity with the warranty and Seller agrees, after Seller's return of such Goods and inspection (at its option), then: (a) for Goods, Seller will repair, replace or refund the total amount received by Seller therefor, at its sole option, provided Buyer returns such Goods to Seller's plant for inspection; in a condition which allows for suitable testing by Seller and (b) for Services, Buyer's sole remedy is for Seller, at its sole option, to re-perform the Services or credit Buyer's account therefor. These shall be Buyer's exclusive remedies for Seller's liability. Any claims not made during the warranty period are deemed waived. Seller's warranty does not attach to Deliverables or parts not manufactured by Seller. If Deliverables alleged by Buyer to be damaged or defective are returned to Seller for repair as provided in this section and are: (a) not within the warranty period; or (b) are determined by Seller in its sole discretion not to be defective; or (c) defective or damaged due to any cause or condition not covered under the Seller warranty provided herein, Buyer shall reimburse Seller for all reasonable expenses incurred by Seller for travelling to and/or the shipping, handling, and inspection of such Deliverables. Any contract created between Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract.

Buyer warrants to Seller that: (a) the Goods/cells shall not be handled by individual consumers and shall not be sold to individual consumers by individual markets, (b) the Goods/cells should only be handled and used by pack manufacturer(s), system manufacturing companies or applicable regulatory agencies and must be packed in accordance with applicable lithium-ion cell and pack shipping regulations, (c) the Goods/cells shall not be disassembled or reconstructed from the original equipment or packaging to prevent against the potential fire risk from short circuits or dangerous reverse current flow, and (d) the Goods are prohibited from being used in e-cigarette, vaporizers (e-cig, vape, mod) or any other similar device applications and Buyer agrees it shall not sell Goods for usage in and/or use the Goods for e-cig, vape applications and any applications not permitted

in Goods' specifications.

Upon the occurrence of any event described in the preceding sentence or in Section 14(g)(i)-(viii), the Seller's warranty relating to the Deliverables set forth in this Section 12 shall be void. Seller its employees, representatives or agents, shall not be liable for any damages resulting from Buyer's violation of Buyer's warranty provided in the preceding paragraph.

**13. LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES, DAMAGES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE RECEIVED BY SELLER FOR THE DELIVERABLES WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED.

**14. INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees) (collectively, "Losses"), arising out of or relating to: (a) Buyer's or its agents provided specifications, design, structure, operation, material or method of making Deliverables ("Buyer's Specifications"), including without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's (or any third party who has acquired Goods, directly or indirectly from Buyer) use, misuse or disposal of Deliverables or materials; (c) Buyer's non-compliance with any Law; (d) breach of these Terms by Buyer; and (e) Buyer's use in conjunction with any other product; (f) Buyer's violations of warranty provided in the third paragraph of Section 12; and (g) Deliverables subjected to: (i) improper or negligent handling,

transportation, use, installation or storage; (ii) accident, damage, abuse or misuse; (iii) improper or abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Deliverables; (v) disassembly, alterations or modifications made to all or part of the Deliverables; (vi) improper maintenance; (vii) assembly by other than Seller; or (viii) a use or application other than or varying in any degree from the specifications and Seller's instructions.

Except as expressly provided for in Section 12, Seller, its employees, representatives or agents, shall not be liable for any damages resulting from defective Goods or Goods failing to meet the Goods' specifications.

15. **PATENTS.** Sale of Goods or any part thereof does not convey to Buyer any license, express or by implication, estoppel or otherwise, under any patent or patent claim with respect to which Seller can grant licenses covering completed equipment, or any assembly, circuit, combination, method or process in which any such products are used as components (notwithstanding the fact that such products may have been designed for use in or may only be useful in such patented equipment, assembly circuit, combination, method or process and that such products may have been purchased and sold for such use). Seller expressly reserves all rights under such patent or patent claim
16. **TOOLING.** In no event shall Buyer have any interest in any tools, jigs, dies, patterns, etc. (collectively, "Tooling") which is made or obtained for the production of the Deliverables. Such Tooling shall remain the property of Seller.
17. **CONFIDENTIALITY.** All non-public or proprietary information of Seller, including all IP, specifications, quotations and pricing information, is confidential, solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized by Seller in writing.
18. **INTELLECTUAL PROPERTY.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefor, and other information or intellectual property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, "IP") are and will remain the property of Seller. Buyer shall have no claim to, nor ownership interest in, any IP and such information, in

whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any IP, other than the limited right to use the Deliverables purchased from Seller.

19. **EXPORT COMPLIANCE.** Any items provided by Seller are controlled by the United States Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the United States Government or as otherwise authorized by U.S. Law and regulation.
20. **FORCE MAJEURE.** Seller shall not be liable for any delay in or failure to perform due to any event or contingency beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Seller's employees or the employees of others), raw material shortages and material increases in costs of raw materials, including those material increases in costs resulting from the imposition of tariffs. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Deliverables among itself and its purchasers in such manner as Seller, in its sole judgement, deems fair and equitable.
21. **TERMINATION.** Seller shall have the right to cease work or terminate these Terms or any purchase order, in whole or in part, at any time, without liability, if: (i) Buyer breaches or defaults under these Terms or any other agreement it has with Seller; (ii) a petition under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance within 10 days

after written request therefor by Seller. In all cases, Seller's rights are cumulative, are not exclusive and in addition to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

- 22. WAIVER.** All waivers by Seller shall be in writing. Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.
- 23. GOVERNING LAW.** Any dispute arising out of or related to these Terms will be governed by and construed in accordance with the laws of the State of Illinois without regard to any rules on conflicts of laws and exclusively litigated in either (i) a state or federal court located in Cook County, Illinois, or (ii) a state or federal court located in the state of Seller's principal place of business, at Seller's sole discretion.
- 24. SEVERABILITY.** The unenforceability or invalidity of any clause in these Terms shall not have an impact on the enforceability or validity of any other clause in these Terms. Any unenforceable or invalid clause shall be regarded as removed from these Terms to the extent of its unenforceability and invalidity.
- 25. MISCELLANEOUS.** Buyer shall not assign any of its rights or obligations under these Terms or any purchase order without Seller's prior written consent. Buyer shall comply with all applicable laws. There are no third-party beneficiaries. Provisions which by their nature should survive will remain in force after any termination or expiration of any sale of Deliverables. The section headings are included solely for the convenience of the parties.