



## TERMS AND CONDITIONS OF SALE AS OF APRIL 1, 2018

**1. APPLICABILITY.** This Terms and Conditions of Sale constitutes the entire agreement between eNow, Inc., a Rhode Island corporation (“eNow”) and the undersigned buyer (“Buyer”) for the purchased products (the “Products”) described in any applicable purchase order accepted by eNow (each, an “Order”). Except to the extent expressly agreed to by eNow in a writing signed by an authorized officer of eNow, any different, conflicting or additional terms contained in an Order, Order acknowledgment, sales agreement or other document shall be void. eNow shall not be deemed to have waived any provision of this Terms and Conditions of Sale by failing to object to provisions that may appear on, be incorporated by reference in, or attached to an Order. eNow hereby reserves the right to accept each Order, and each acceptance shall be conditional upon the acceptance by Buyer of this Terms and Conditions of Sale. Any revised and follow-on orders accepted by eNow shall be deemed to be an Order and subject to this Terms and Conditions of Sale. eNow’s acknowledgement of receipt of the revised or follow-on orders shall not constitute acceptance.

### **2. PRODUCT PRICES**

**2.1 Determination of Price.** eNow reserves the right to correct any pricing mistakes that deviate from the pricing set forth in any quote. Subject to any changes requested by Buyer, each Order will be billed at the quoted price for sixty (60) calendar days from the date of such quote, and thereafter at the price in effect at the time of shipment. eNow may charge certain additional non-recurring set-up, routine maintenance and refurbishment charges for tooling, as well as charges for the construction of new tooling. The price quoted by eNow to Buyer is based on the volume levels previously communicated by the Buyer to eNow; if volume levels decrease, additional tooling set-up charges may apply and shall be paid by Buyer before any subsequent orders are processed by eNow. Prices quoted, and orders accepted are also subject to change due to increases in costs of manufacture, processing, or wages, resulting from the operations of any Federal, State, or municipal law or regulatory measure hereafter adopted and/or due to increased costs of labor, services or materials. All quotations are made, and each Order is accepted subject to approval by eNow’s credit department.

**2.2 Taxes.** Prices also do not include applicable taxes, including but not limited to excise, sales or use taxes. Any taxes (other than taxes due on eNow’s net income) that are payable on transactions hereunder shall be the sole responsibility of Buyer. eNow reserves the right to invoice Buyer for any such taxes that are or may become payable by eNow. Each Order is subject to increase sufficient to compensate for any tax, excise, duty or levy hereafter enacted and imposed by any government authority, or for any expenses or charges due to war, hostilities, or other disorders, domestic or foreign, whereby the cost of the production or sale of articles to which such prices apply shall be increased.

### 3. TERMS OF PAYMENT

3.1 Terms. All payments to eNow for purchase of Products due hereunder shall be made within thirty (30) days of the invoice date from eNow; provided, however, that the invoice date shall not be prior to the date the invoiced Products are shipped to Buyer, or as specified by eNow. All payments due hereunder shall be tendered in United States currency.

3.2 Late Payment. In all events, time shall be of the essence with regard to Buyer's payment obligations to eNow hereunder. Any amount not paid by Buyer when due under these Terms and Conditions of Sale shall accrue interest at the lower of one and one-half percent (1½%) per month or the highest legal rate allowed under applicable law. The right of eNow to receive such interest payments shall be in addition to any other rights or remedies of eNow hereunder with respect to such nonpayment, including Termination of these Terms and Conditions of Sale pursuant to Section 13.

### 4. ACCEPTANCE OF ORDERS AND SHIPMENT OF PRODUCTS

4.1 Acceptance. eNow will not be bound by any Order for the Products placed by Buyer until such Order has been accepted by eNow. Upon eNow's acceptance of an Order by way of written Order confirmation, such Order shall constitute a binding agreement of eNow to sell and ship, and of Buyer to purchase and tender payment for, the Products specified. Such Order confirmation shall specify an estimated shipping date for the ordered Products.

4.2 Inconsistent Terms in an Order. In the event any terms or conditions contained in Order made by Buyer and accepted by eNow are inconsistent with, or in addition to, the terms of these Terms and Conditions of Sale, such inconsistent or additional terms or conditions in the Order shall be null and void and shall not be binding on eNow.

4.3 Shipping of the Products. eNow shall ship to Buyer the Products or components thereof set forth in an accepted Order to Buyer within a reasonable time after eNow's acceptance of such Order; provided, however, that the parties understand and agree that (a) lead times will vary according to manufacturing and other conditions, (b) any and all shipping dates shall be approximate and non-binding, and (c) any and all shipping dates shall be computed from the date that an Order is accepted by eNow. Buyer specifically acknowledges that the Products contain components manufactured by third parties (the "Third Party Components") and that lead times may be negatively impacted by situations outside the control of eNow, including but not limited to inability to obtain, or late shipments of, Third Party Components.

4.4 Terms of Shipment. Unless the parties agree otherwise, eNow shall have the right to select the carrier(s) and routing of shipment. Products sold herein are sold F.O.B. eNow's place of business or F.O.B. eNow's supplier, as specified by eNow at the time of sale. Buyer assumes all responsibility for payment of freight, and all costs associated therewith, which freight charges and other costs may not be reflected in the prices noted on Schedule 3.1 hereto. eNow may, at its option, prepay freight and seek reimbursement from Buyer. eNow's obligation to ship the Products shall be fully and completely discharged, and ownership, legal title, and all risk of loss or damage shall immediately pass to Buyer at the time that the Products are delivered by eNow to the carrier.

## 5. INSTALLATION

5.1 Buyer shall install the Product utilizing an installer approved by eNow (an “Approved Installer”). To the extent Buyer is an Approved Installer, Buyer agrees to abide by and otherwise be subject to eNow’s Approved Installer General Terms and Conditions, as the same may from time to time be amended by eNow in eNow’s sole discretion, a copy of which may be retrieved at [www.enowenergy.com](http://www.enowenergy.com). (the “Installer Terms and Conditions”)

5.2 In furtherance and not in limitation of the indemnification obligations of Buyer otherwise set forth in these Terms and Conditions of Sale or the Installer Terms and Conditions, Buyer shall indemnify and hold harmless eNow and its officers, directors, agents, employees, shareholders, legal representatives, successors and assigns, and each of them, from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, judgments, losses, damages, costs, charges, attorneys’ fees, and other expenses of every nature, kind and character incurred or suffered by reason of any and all claims in connection with the manner of performance by Buyer of any service, installation, maintenance, or repairs of Products or other products manufactured by eNow.

## 6. LIMITED PRODUCT WARRANTY

6.1 Warranties. eNow hereby makes the warranties listed on Exhibit A (“eNow Warranties”), which eNow Warranties shall not be effective unless and until the applicable Products are installed and eNow has approved an appropriate “Solar APU Registration Form” in the form attached as Exhibit B prepared by an approved installer and relating to such Product.

6.2 Exclusive Warranties. **THE ENOW WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

6.3 Component Materials. **ENOW HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE COMPONENT MATERIALS, ANY ADDITIONAL MANUFACTURING PROVIDED BY VENDORS AND ANY INSTALLATION PROVIDED BY INSTALLER. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT ITS SOLE SOURCE OF REMEDY FOR ANY FLAW OR DEFECT IN THE ADDITIONAL MANUFACTURING IS AND SHALL BE THROUGH SEPARATE THIRD-PARTY ACTION WITH OR AGAINST, OR PURSUANT TO WARRANTIES SUPPLIED BY, THE MANUFACTURER OF THE COMPONENT MATERIALS OR APPLICABLE VENDORS.**

6.4 Limited Liability. **THE LIABILITY OF ENOW, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH ENOW’S LIABILITY IS CLAIMED, AND IN NO EVENT WILL ENOW BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE, THAT ARISE IN CONNECTION WITH THE PRODUCTS OR IN CONNECTION WITH EITHER ENOW’S FAILURE TO DELIVER**

**OR ITS LATE DELIVERY OF THE PRODUCTS (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PRODUCTS AND LOSS OF PROFITS).**

6.5 Acknowledgment. **BUYER ACKNOWLEDGES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AVAILABLE TO BUYER AT LAW OR IN EQUITY.**

6.6 Limitation on Deductions. Buyer hereby agrees that, in making any and all payments to eNow under the terms of these Terms and Conditions of Sale, no deductions for warranty or any such other claims against eNow shall be made unless Buyer receives from eNow prior approval of the validity of such a claim; any costs for shipping defective Products to eNow shall be borne by eNow.

**7. INDEPENDENT CONTRACTOR RELATIONSHIP**

7.1 Buyer agrees that, with respect to all matters relating to these Terms and Conditions of Sale, Buyer shall be deemed to be an independent contractor and shall bear all of its own expenses in connection with these Terms and Conditions of Sale. Buyer acknowledges that it is not a partner, joint venture, franchisee, or agent of eNow. Buyer shall have no authority, whether express or implied, to assume or create any obligation on behalf of eNow nor shall Buyer issue or cause to be issued any quotations or draft any letters or documents over the name of eNow.

**8. FORCE MAJEURE AND AVAILABILITY OF MATERIALS**

8.1 Force Majeure. Except for Buyer's payment obligations to eNow, neither party will be in default in the performance of its obligations under these Terms and Conditions of Sale if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, riot, strike, labor dispute, lack or failure of transportation facilities, epidemic, fire, wind, earthquake, storm or flood, use of any law, order, proclamation, regulation or ordinance of any government, or of any subdivision thereof, because of Acts of God or for any other cause, whether similar or dissimilar to those enumerated, that is beyond the reasonable control and without the fault or negligence of the party whose performance is affected (any such act is hereinafter called "Force Majeure").

8.2 Notice of Event of Force Majeure. In each instance of Force Majeure, the party \*whose performance is affected shall give the other party written notice thereof no later than five (5) days after having knowledge of the circumstances of Force Majeure or as soon as circumstances otherwise permit. Such notice must include a brief description of the events or circumstances constituting Force Majeure and an estimate of the anticipated delay in performance caused thereby. Not later than five (5) days after knowledge of the cessation of any such continuing events or of circumstances constituting Force Majeure, the party whose performance was affected shall give the other party written notice of the date of such cessation. However, no occurrence of any such event is to be construed to prevent the other party from canceling or terminating these Terms and Conditions of Sale in accordance with the provisions of Section 13 hereof.

## **9. ENTIRE AGREEMENT; AMENDMENT**

These Terms and Conditions of Sale, together with the applicable Order and, as applicable, Installer Terms and Conditions or any Reseller Terms and Conditions, contain the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral negotiations and agreements between them regarding the subject matter hereof. These Terms and Conditions of Sale may be amended only by a writing signed by both of the parties.

## **10. SEVERABILITY**

If any provision of these Terms and Conditions of Sale is determined to be invalid or unenforceable by a court of competent jurisdiction, (a) such provision shall be deemed to be severable from the remainder of these Terms and Conditions of Sale and shall not cause the invalidity or unenforceability of the remainder of these Terms and Conditions of Sale in such jurisdiction and (b) the entire Agreement shall remain enforceable in every other jurisdiction.

## **11. NO IMPLIED WAIVERS**

The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at any later time nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of such provision.

## **12. ATTORNEYS' FEES**

If any legal proceeding is brought for the enforcement of these Terms and Conditions of Sale, or because of an alleged breach, default or misrepresentation in connection with any provision of these Terms and Conditions of Sale or other dispute concerning these Terms and Conditions of Sale, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that proceeding, in

## **13. SECTION REFERENCES**

Any reference in these Terms and Conditions of Sale to a section or subsection shall be deemed to include a reference to any subsidiary sections thereof whenever the context requires.

## **14. CAPTIONS**

The captions of the sections, subsections, and subsidiary sections of these Terms and Conditions of Sale are included for reference purposes only and are not intended to be a part of the Agreement or in any way to define, limit, or describe the scope or intent of the particular provision to which they refer.

## **15. GENDER**

Masculine, feminine, and neuter terms shall be interchangeable (and shall include a corporation, a partnership, or another entity), and shall be singular and plural, where context makes a change of gender or number appropriate.

## **16. GOVERNING LAW**

These Terms and Conditions of Sale shall in all respects (including, but not limited to, all matters of interpretation, validity, performance, and the consequences of breach) be construed, governed, and enforced in accordance with the internal laws (excluding all conflicts of laws rules) of the State of Rhode Island, as from time to time amended and in effect, and any applicable federal laws of the United States of America, as from time to time amended and in effect. Each party hereby consents to the exclusive jurisdiction of the state courts of the State of Rhode Island, and the United States District Court for the such district, in all matters arising out of these Terms and Conditions of Sale. Each party consents to service of process by certified mail, return receipt requested at the U.S. Address. Any suits, actions, or other legal proceedings arising hereunder shall be brought only in the Federal or State courts located in the State of Rhode Island. Each of the parties hereby consents to the personal jurisdiction of each such court in any suit, action or proceeding and waives any objection which it may have to the personal jurisdiction or venue of such suit, action or proceeding in such court.

**EXHIBIT A**

**Warranties**

**Limited Warranty Terms and Conditions eNow Solar Product System**

eNow, Inc. (“eNow”) provides the following limited warranties to purchasers of the eNow Solar Product System product line of solar powered generator systems (“System”), subject to the exclusions, limitations, conditions, and procedures set forth below. The eNow limited warranties run for the time periods specified in Section 1 beginning on the date of installation to the original end customer (the “Original End Customer”).

**SECTION 1 - Limited Warranties**

A. Limited Warranty of Materials (5 years) and Workmanship (5 year)

The eNow Solar Product System has a 5-year parts and a 5-year labor warranty on the System unit, under normal use, installation, operation, and service (and provided that the System is installed, operated, and serviced as specified in the eNow Solar Product System User Guide issued with the System (the “User Guide”). This limited warranty of materials and workmanship does not warrant a specified level of power output, which is exclusively covered under the limited warranty of power output. If the System is in breach of the foregoing limited warranty, eNow will, in its sole discretion: (i) repair the System, or (ii) replace the System, or (iii) refund the original purchase price paid to eNow for the System by eNow’s direct customer or the eNow authorized dealer or reseller, as the case may be. If eNow elects to repair or replace the System instead of refunding the original purchase price paid to eNow, this will not result in a new warranty or new warranty terms or in an extension of the time periods applicable to the original limited warranty.

**SECTION 2 - Exclusions From Warranty Coverage**

A. The limited warranties do not apply to a System if the defect or the degradation in power output is determined by eNow to be a result of any of the following conditions (or a combination of any of them):

- (1) Improper use, installation, writing, handling, storage, maintenance, or cleaning of the System.
- (2) Damage due to installation at a location where conditions deviate from the standard operating conditions set forth in the User Guide, including, without limitation, damage due to water pooling on the System.
- (3) Damage from abuse, alteration, or vandalism, or due to plants, insects, or animals, or due to accidents or damage to the vehicle, or due to repairs performed by anyone other than eNow or an eNow authorized repair facility.
- (4) Improper storage or transportation prior to installation.

- (5) Damage from external stress, impact, foreign objects, or falling rocks or debris, but during the two-year warranty period for the limited warranty for materials, or the one-year warranty period for the limited warranty for workmanship, this exclusion does not include damage that is attributable to a defect in the System materials or workmanship.
- (6) Damage caused by vibrations, rust, scratching, abrasions, cuts, or penetrations.
- (7) Environmental pollution (whether man-made or not), including soot, ozone pollution, air pollution, sale damage, or acid rain.
- (8) Damage or corrosion caused by roofing materials, chemicals, or substrates, including those used for corrosion resistance, thermal expansion and contraction, and moisture barriers and sealing.
- (9) Power or voltage surges or damage caused by the electrical grid.
- (10) Natural disasters, earthquakes, fires, typhoons, tornadoes, hurricanes, volcanic activity, volcanic clouds, dust storms, dust clouds, floods, tsunamis, lightning, or other acts of God, or other events that are beyond the reasonable control of eNow.
- (11) Acts of terrorism, criminal acts, riots, wars, civil unrest, nuclear explosions or releases, radiation, or man-made disasters.

B. Discoloration or stains on the System are excluded under the limited warranties, unless they cause degradation in power output that is covered by the limited warranty of power output.

C. The limited warranties are void and coverage is excluded if the type or serial number of the System has been intentionally altered, removed, or made illegible.

D. Except as provided in Section 1.A, the limited warranties do not cover the costs of any on-site labor and any costs associated with the installation of the System, or the removal and transportation of the System in connection with a warranty claim, or reinstallation of the System or any components thereof, or any costs of labor or materials associated with the mounting structures or the balance of system or electrical components or connections related to the System.

**SECTION 3 - Disclaimer of Other Warranties**

THE LIMITED WARRANTIES SET FORTH ABOVE ARE THE ONLY WARRANTIES APPLICABLE TO THE SYSTEMS. ENOW HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

**SECTION 4 - Limitations Applicable to Warranties and Remedies**

A. TO THE FULLEST EXTENT PERMITTED BY LAW, ENOW SHALL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE



DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE OR USE OF THE SYSTEM, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST SERVICES, OR THE COST OF SUBSTITUTE SERVICES.

B. ENOW’S AGGREGATE LIABILITY FOR SALE OR USE OF THE SYSTEM SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED THE ORIGINAL PURCHASE PRICE PAID TO ENOW FOR THE SYSTEM BY ENOW’S DIRECT CUSTOMER OR THE ENOW AUTHORIZED DEALER OR RESELLER.

C. THE REMEDIES SET FORTH ABOVE ARE THE EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY BY ENOW. The sole purpose of this exclusive remedy shall be to provide for the repair, replacement, or supplementation of, or the refund of the purchase price of, Systems in breach of warranty. This exclusive remedy shall not be deemed to have failed its essential purpose so long as eNow is willing and able to repair, replace, or supplement, or refund the specified portion of the purchase price of, the Systems in breach of warranty, as described under the terms of the foregoing limited warranties.

D. The rights granted by this limited warranty are in addition to any mandatory or non-waivable statutory or other legal rights granted or existing under laws of the jurisdiction in which the System was delivered or first installed and those legal rights are not affected by this limited warranty. If required by the law of the jurisdiction in which the System was delivered or first installed (but only to the extent so required), nothing in this limited warranty shall operate or shall be construed to operate so as to exclude or restrict the liability of eNow for death or personal injury caused by reason of the negligence of eNow or its servants, employees, or agents.

**SECTION 5 - General Condition Applicable to Warranties**

The following general conditions apply to ALL warranted eNow Systems and are a limitation on the limited warranties provided herein:

A. Warranty claims must be filed in accordance with the procedure under Section 5 within the applicable limited warranty period to be valid. The Original End Customer may make a warranty claim, but if the Original End Customer did not purchase the System directly from eNow, then it must file the warranty claim with the eNow authorized dealer or reseller from whom the Original End Customer purchased the System, or if no longer in business, another designated eNow authorized dealer or reseller, to be valid.

B. Only one remedy selected by eNow in its sole discretion (supplying extra Systems, or repairing or replacing the original Systems, or refunding the original purchase price paid to eNow (as adjusted, if applicable)), will be carried out. eNow’s total liability under either or both limited warranties shall not exceed the amount of the original purchase price paid to eNow for the System by eNow’s direct customer or the eNow authorized dealer or reseller.

C. Notwithstanding anything to the contrary in this warranty document, the limited warranties provided herein shall apply only so long as the System has not been removed from the vehicle on which the System was first installed, except for purposes of return in accordance with the procedures under Section 6.

D. Systems or parts thereof that are replaced by eNow will become the property of eNow. If eNow rejects the warranty claim, the customer must arrange to ship or dispose of the System at its own expense. eNow has the right to dispose of the System, if it is left at eNow or its authorized laboratory or repair facility for more than 90 days following the sending of a notice of rejection of the warranty claim.

**SECTION 6 - Procedures for Obtaining Warranty Service**

If the customer believes that there is a claim covered by these limited warranties, the customer must promptly notify eNow. Warranty claims must be submitted to eNow with a description of the claimed defect, the System Serial Number, and evidence indicating the purchase date. eNow will give advice on handling the claim and obtaining a Return Materials Authorization (“RMA”) number. eNow will not accept the return of any Systems without its prior written authorization and the issuance of a RMA number, which must accompany the warranty claim. You must arrange and pay for shipping of the System to eNow’s headquarters in Warwick, Rhode Island, USA, or to an authorized repair facility approved in writing by eNow in its sole discretion.

**EXHIBIT B**

**eNow Solar APU Warranty Registration Form**

To be filled out completely and sent to eNow Inc. by the end user or installer.

eNow solar APU Kit model number	
eNow solar panel serial number	
eNow charge controller serial number	
End user company	
End user email	
End user phone number	
Installer name	
Installer email	
Installer phone number	
Trailer or vehicle make and model number	
Trailer or vehicle serial number or asset number	
Auxiliary or starter battery make and model number	
Quantity of starter or auxiliary batteries	
Battery type (Flooded, AGM, LI, unknown)	
Other equipment powered by auxiliary batteries (ex: inverter, heater)	
Install completion date	
Battery voltage at install	
Solar voltage at install	
Comments or suggestions from installer/end-user	

*Sample only. Please complete product registration form on eNow website: [www.enowenergy.com](http://www.enowenergy.com)*

**“Void Until Receipt of Applicable Install Proof Form”**