



switch

storage solutions

GENERAL TERMS & CONDITIONS OF SALE

These General Terms and Conditions of Sale (“Terms and Conditions”) shall apply to all forecasts, quotations, offers to sell, purchase orders (“POs”, each of which is a “PO”) and deliveries provided or accepted by Switch Storage Solutions, LLC (“Switch”). These Terms and Conditions form a part of the contract made between Switch and its customers (“the Customer”) with respect to the sale of energy storage system products (“Products”), reflecting the Customer’s rights and Switch’s obligations and responsibilities for each PO. Exceptions to these Terms and Conditions shall apply only if confirmed by Switch in writing and noted as an exception. These Terms and Conditions apply and supersede all other terms and conditions, even if Switch acknowledges that the Customer’s terms and conditions may be or are contrary to these Terms and Conditions when Switch delivers Products to the Customer.

1. Quotation

- 1.1 Switch’s quotation shall be valid for a period of thirty (30) days. Unless otherwise stated or referred to in writing by Switch, all prices quoted by Switch shall exclude transportation, insurance, taxes, customs fees, duties and other similar related charges.
- 1.2 The price, quantity, quality and specification of goods shall be those set forth in Switch’s quotations.

2. Delivery

- 2.1 Switch shall prepare and package all Products in a manner consistent with standard requirements and general practices in the industry.
- 2.2 Unless the mutually agreed PO otherwise states, the shipment term shall be EXW Ponca City, OK, Incoterm 2010 for domestic shipments; or FCA Oklahoma, USA, Incoterm 2010 for international shipments. Partial delivery of goods ordered is permissible.
- 2.3 Switch may extend delivery schedules or, at its option, cancel the Customer’s PO in full or in part without incurring liability if the Customer breaches the Terms and Conditions.
- 2.4 Unless otherwise stated in writing by Switch, the Customer is obliged to inspect the Products upon delivery and shall notify Switch of any defect found within seven (7) calendar days after the receipt of the Products. If the Customer fails to notify Switch within the prescribed period, the Customer shall be deemed to have accepted such Products. Any costs and expenses related to the inspection and acceptance of the Products shall be borne by the Customer.
- 2.5 After Switch’s notification of readiness for shipment, if shipment or supply is deferred, re-routed or re-scheduled at the request of the Customer or delayed for reasons attributable to the Customer, Switch may charge extra costs, expenses or losses including but not limited storage or retention costs to the Customer. The Customer agrees to compensate Switch within thirty (30) calendar days upon the receipt of notice of such costs from Switch.

3. Termination or Change

- 3.1 Purchase Orders are not cancellable. Except for permitted changes described below, the Customer may not terminate, suspend performance, reschedule or cancel delivery or issue a “hold” order in whole or in part, without Switch’s prior written consent. Reschedules as allowed below may only be moved out.

Time Period	Permitted Changes
> 120 days prior to delivery date	Non-Cancellable May be rescheduled up to 60 days
60 to 120 days prior to delivery date	Non-Cancellable May be rescheduled up to 30 days
< 60 days prior to delivery date	Non-Cancellable Non-Reschedulable

- 3.2 The Customer’s liability for failing to comply with this section shall include, but is not limited to, the price of the Product delivered or held for disposition, the price of services already performed and the work in progress, incurred costs, reasonable allocation of general and administrative expenses, and Switch’s loss of profits.
- 3.3 The Products may be insured against theft, breakage, damage in transit, fire and water damage, and other insurable risks at the request and cost of the Customer.

4. Price and Payment

- 4.1 Unless otherwise agreed in writing, payment shall be made in US Dollars, and the Customer shall pay the price of the Products within the payment period stated in the Switch quotation. In case the quotation is silent about payment terms, the payment schedule shall be fifty percent (50%) upfront with Purchase Order, forty percent (40%) upon shipment, and ten percent (10%) upon the earlier of commissioning or Net 60 from date of final invoice. Any banking charges associated with the Customer’s payment shall be borne by the Customer.
- 4.2 Each shipment of the Products under each PO shall be considered a separate and independent transaction and payments thereunder shall be made accordingly.
- 4.3 If the Customer fails to make a payment when due:
- 4.3.1 Switch may (1) suspend or withhold further shipments of the Products under the same or other POs until all outstanding amounts are paid; (2) require advance cash payments on further shipments; (3) cancel the Contract or the applicable shipment for delivery; (4) require the Customer to return to Switch or its designee any Bill of Lading or other document issued or to be issued in favor of the Customer; (5) take any other action Switch deems appropriate in its sole discretion; or (6) pursue any remedies available at law or as provided in the Contract.
- 4.3.2 The Customer shall reimburse Switch for Switch’s costs of collection, including legal fees and disbursements, and shall pay 1.5% per month, or the maximum amount allowed by law if less than 1.5% per month, of all past-due balances as a penalty.
- 4.4 If Switch, in its sole discretion, has reasonable doubt as to the Customer’s financial solvency, or if the Customer is past due in payment of any amount owed to Switch, Switch shall have the right, without prejudice to any other remedies, to suspend performance, decline to ship, or stop any Product in transit until Switch receives payment of all amounts owed to Switch or receives adequate assurance of such payment.

- 4.5 The Customer acknowledges that both the amounts invoiced by Switch and the shipments in progress are included in the Customer's credit limit with Switch. If at any time the Customer exceeds its credit limit, the Customer shall, within seven (7) business days, make payment sufficient to recover its outstanding credit to maintain its credit limit and will continue to pay invoices on or before their due date. The Customer is not entitled to offset or reduce any payments due to Switch unless otherwise agreed to in writing by Switch.

5. Compliance with Laws and Export Control

- 5.1 The Customer shall be responsible for obtaining all licenses and permits to export or import the Products and shall comply, with all applicable laws and other requirements, including but not limited to, those regarding labeling, safety and usage, handling and disposal of hazardous materials, import and export of materials, and with all other applicable laws and regulations.
- 5.2 Customer hereby acknowledges that the Products supplied by Switch under these Terms and Conditions may be subject to the export control laws and regulations of the United States and certain other countries. Customer shall comply with all such export control laws and regulations, and shall not sell, supply, export, re-export, transfer or divert any of the Products in a manner contrary to, or in violation of, any of those export control laws and regulations. Without limiting the generality of this Section 5.2, Customer agrees that it will not sell, supply, export, re-export, transfer or divert any of the Products directly or indirectly to: (i) any country or region subject to a United States Government export embargo, or any person or entity located in any such country; (ii) any person or entity listed on any United States Government's list of prohibited and restricted parties; or (iii) any other person or entity for use, directly or indirectly, in any activities related to the proliferation of nuclear, chemical or biological weapons, or any ballistic missiles, rockets or unmanned aerial vehicles. To the extent that any export license, permit or other government authorization is required under any of those export control laws and regulations for Switch to supply the Products to Customer, Switch shall have no obligation, and shall be excused from performance, under these Terms and Conditions, if Switch is unable to obtain such export license, permit or other government authorization.
- 5.3 Any product export classification made by Switch shall be for Switch's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section shall survive termination of these Terms and Conditions.

6. Force Majeure

- 6.1 Switch shall not be liable for any failure to deliver or any delay in the performance of the Terms and Conditions or for any loss or damages suffered by the Customer if such failure or delay is directly or indirectly caused by, or in any manner arises from events and causes beyond Switch's reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, materials or services through Switch's usual sources at normal prices, riots, embargoes, fuel shortages, power shortages, materials or supply shortages, delay or default of common carriers, transportation delays, or without limiting the foregoing, any other cause or causes, whether or not similar in nature to any of these specified herein or which are beyond Switch's reasonable control.
- 6.2 Switch shall have the additional right, in the event of the occurrence of any contingency above, to cancel any PO or any part thereof without resulting in any liability, or to extend the date of delivery for a period equal to the time lapsed by the reason stated above. Furthermore, if Switch, for any reason,

is not able to produce enough Products to satisfy all outstanding POs, Switch retains the right and sole discretion to allocate the Products amongst its customers.

7. Price and Payment

- 7.1 Switch warrants, subject to the exclusions contained herein, that:
- 7.1.1 The Products shall be free of defects in material and workmanship for the warranty period of twenty-four (24) months from the date the Products are delivered to the Customer. This warranty excludes any issues and defects caused by abuse, neglect, or improper maintenance of the system, or equipment, as specified in all owner's and operation manuals or any other written information from Switch.
 - 7.1.2 Accessories or other parts, including internal parts of the Products furnished by Switch, but manufactured by others, shall carry whatever warranty, if any, the manufacturers thereof have provided to Switch which can be passed on to the Customer. Customer agrees to look solely to Switch and its manufacturers or suppliers of such accessories or parts for any warranty, repair or product liability claims arising out of the performance, condition or use of such accessories or parts. Switch agrees to cooperate in furnishing assignments of its rights thereto to Customer from such manufacturers and suppliers. Switch shall not be liable for any repairs, replacements or adjustment to the Products or any costs of labor performed by Customer without Switch's prior written approval. The effects of corrosion, erosion and normal wear and tear are specifically excluded from Switch's warranty.
 - 7.1.3 Customer shall, within warranty period, notify Switch in writing of any defect(s) and fully cooperate with Switch in pursuing the remedy thereof. The sole remedy for breach of the foregoing warranty shall be repair and or replacement of any defective Products, as determined by Switch, based on its evaluation and reasonable discretion. In no event shall Switch be liable for special, indirect or consequential damages including but not limited to lost profits, non-compliance penalties, down time related costs or damages to the premises. In no event shall the aggregate liabilities of Switch arising out of these transactions exceed the price for the goods in respect to which such claim is made. Except as stated herein, Switch makes no performance warranty of any kind respecting the Products.
- 7.2 Unless otherwise stated or referred to in writing, Switch warrants that to Switch's best knowledge, the Products sold and manufactured by Switch (1) conform to Switch's specifications; and (2) are free from defects in materials and workmanship (under normal usage, provided that Switch's operation and maintenance instructions are followed by the Customer).
- 7.3 EXCEPT AS EXPRESSLY STATED IN THIS SECTION 7, ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM THE COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE (INCLUDING IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT) ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT.
- 7.4 The Customer shall bear all of the risk, and all of the costs and expenses associated with investigative repair or replacement site visits by Switch or its agents for which there is no product defect found.
- 7.5 Notwithstanding the foregoing, the Customer shall not be entitled to any remedy if (1) the price of the Products has not been paid in full or (2) Product defects are resulted from the manufacture, packaging or delivery in accordance with the Customer's instructions; (3) Product defects are resulted

from the Customer's alteration, disassembly, modifications or repair without Switch's prior written authorization; (4) cause of actions arise from Products that are used or operated in a way other than the intended purpose for which Products were designed or if Customer failed to follow specified instructions in the user operational manual; (5) any consumable component of the Product such as fuses causes the Product malfunctions; and (6) cause of actions arise from Products that have been in storage or immobilized for more than one year after delivery.

- 7.6 This warranty is transferable by Customer to end users upon Customer's request. This warranty shall not be offered, extended, altered or modified except by written instrument executed by Switch.

8. Price and Payment

- 8.1 Unless otherwise stated in a separate Non-Disclosure Agreement executed by the parties, Customer acknowledges that all information and materials that come into Customer's possession or knowledge in connection with past and future purchases of Products from Switch and which has been marked, identified, accepted as confidential or proprietary by the circumstances of its disclosure and the improper disclosure or use of which will be damaging to Switch are confidential information ("Confidential Information").
- 8.2 Customer agrees to hold all Confidential Information in confidence, to disclose Confidential Information only to those of its employees having a need to know, and not to disclose Confidential Information to any other party. Customer agrees that it will not use any of Switch's Confidential Information without Switch's consent, and to the fullest extent permissible under applicable law, will not modify, reverse engineer, reverse-compile, reverse assemble, synthesize or in any way use any Switch Confidential Information for any purposes other than the intended purpose at the time of Switch's disclosure.

9. LIMITATION OF LIABILITY

- 9.1 EXCLUSION OF CERTAIN DAMAGES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SWITCH BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, LOST DATA, LOSS OF USE, LOST BUSINESS OPPORTUNITIES OR OTHER ECONOMIC ADVANTAGE, OR LOSS OF GOODWILL), OR FOR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS TERMS AND CONDITIONS OR THE USE OR PERFORMANCE OF ANY PRODUCTS OR SERVICES PROVIDED BY SWITCH, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT SWITCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FOR THE AVOIDANCE OF DOUBT, THE PARTIES HEREBY EXPRESSLY AGREE THAT THE CATEGORIES OF DAMAGES DESCRIBED HEREIN CONSTITUTE SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES REGARDLESS OF WHETHER SUCH DAMAGES WOULD BE CONSIDERED DIRECT DAMAGES UNDER ANY APPLICABLE LAW GOVERNING THE PARTIES' AGREEMENT. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS TERMS AND CONDITIONS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- 9.2 Total liability. Switch's total liability to Customer under these terms and conditions, for all causes of action and under all theories of liability, will be limited to the payments actually received from Customer in the preceding six (6) months for the Products giving rise to such liability.

- 9.3 In no event shall Switch be responsible for loss of power production or energy dispatch, including without limitation any rebate, refund or other benefit associated therewith.
- 9.4 Basis of Bargain. The parties expressly acknowledge and agree that Switch has set its prices and entered this contractual relationship in reliance upon the limitations of liability specified herein, which allocate the risk between Switch and Customer and form an essential basis of the bargain between the parties.

10. License and Ownership

- 10.1 To the extent that the Product contains software supplied by Switch, Switch represents that it either owns such software or has procured a transferable license to such software and hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable license to use the software and related documentation in the territory where the Product is received.
- 10.2 The Customer's use of the Product evidences its acceptance of this license and the Terms and Conditions.
- 10.3 Title to such software shall at all times remain with Switch or its suppliers/partners from whom Switch procured the software.
- 10.4 The Customer acknowledges that the software, all enhancements, related documentation, trade secrets embedded in the software and the derivative works will remain the sole property of Switch or its suppliers/partners from whom Switch procured the software.
- 10.5 The Customer agrees to treat the software and related documentation as confidential and agrees not to copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties.
- 10.6 The Customer agrees not to disassemble, decompile, reverse engineer, create derivative works from or otherwise translate, customize, localize, modify, add to, or in any way, alter, rent, or loan the software or related documentation.

11. Non-Assignment

- 11.1 Customer may not assign any of its rights or obligations under the Terms and Conditions without the prior written consent of Switch.

12. Governing Law and Venue

- 12.1 These Terms and Conditions shall be governed, construed, interpreted and enforced in accordance with the laws of the State of Texas, U.S.A., without regard to any rules governing choice of laws. The 1980 United Nation Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions.
- 12.2 Any dispute, suit or action arising out of or relating to these Terms and Conditions or the sales of Products supplied by Switch, whether based in contract or tort, shall be exclusively submitted to the courts in Travis County, Texas.



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