



EC POWER Inc.

STANDARD SALES TERMS AND CONDITIONS

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These Terms and Conditions (these "Terms") are the only terms that govern the sale of the goods (the "Goods") described on the accompanying invoice (the "Invoice") between EC POWER Inc. ("Seller") and Buyer (as defined on the Invoice).



FORMATION OF CONTRACT/ACCEPTANCE

Acceptance of Buyer's order hereunder is expressly conditioned on Buyer's agreement to these Terms. The Invoice and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Seller explicitly rejects any and all other terms and conditions of the sale proposed or discussed by the parties in connection with the Invoice or the resulting transaction. An attempted acknowledgement of these terms or the order containing terms and conditions inconsistent with or in addition to these Terms is not binding upon Seller unless specifically accepted by Seller in writing.

PRICE

- (a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth on the Invoice.
- (b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

PAYMENT TERMS

- (a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments due hereunder by wire transfer/check and in US dollars.
- (b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.
- (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.



DELIVERY

The Goods purchased by Buyer are shipped EXW (Incoterms 2020) Seller's facility in Smithfield, Rhode Island or if such location is moved, to such other location as Seller notifies Buyer in writing. The shipment date in any invoice or order acknowledgment, if any, is not fixed or guaranteed. Seller assumes no liability for loss, damage, or consequential damage due to delays.

TITLE AND RISK OF LOSS

Title and risk of loss pass to Buyer once Seller places Goods available for shipment. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under 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) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the State of Rhode Island Uniform Commercial Code.

INSPECTION AND REJECTION OF NONCONFORMING GOODS

- (a) Buyer shall inspect the Goods within five (5) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in the Invoice; or (ii) product's label or packaging incorrectly identifies its contents.
- (b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located in Smithfield, Rhode Island. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods.
- (c) Buyer acknowledges and agrees that the remedies set forth in Section 6(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 6(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.



LIMITED WARRANTY

- (a) Seller warrants to Buyer that for a period of twelve (12) months from the date of shipment of the Goods ("Warranty Period"), that such Goods will be free from material defects in material and workmanship.
- (b) Except for the warranty set forth in Section 7(a), Seller makes no warranty whatsoever with respect to the Goods, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.
- (c) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. For the avoidance of doubt, Seller makes no representations or warranties with respect to any third-party product, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.
- (d) Seller shall not be liable for a breach of the Limited Warranty set forth in Section 7(a), unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within twenty (20) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.
- (e) Seller shall not be liable for a breach of the Limited Warranty set forth in Section 7(a), if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral instructions or written instructions or manuals as to the storage, installation, commissioning, use, service, or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.
- (f) Subject to Sections 7(c), 7(d), and 7(e) above, with respect to any such Goods during the Warranty Period, if applicable, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.



- (g) The remedies set forth in Section 7(f) shall be the Buyer's sole and exclusive remedy and Seller's entire liability for any breach of the Limited Warranty set forth in section 7(a).

BROKER'S FEES

Seller has no liability or obligation to pay any fees or commissions to any broker, finder, or agent or similar consultant with respect to the transactions contemplated by this Agreement for which the Buyer could become liable or obligated or for which a lien or encumbrance could be placed on the equipment. Buyer shall indemnify and hold Seller harmless from claims made by any broker, finder or similar consultant claiming through it for a commission, fee or compensation in connection with the transaction contemplated by this Agreement.

RESELL/TRANSFER

If Buyer intends to resell, lease, or otherwise transfer the Goods sold hereunder, Buyer must advise its customer of the details of the Limited Warranty, if applicable, operating instructions, charging instructions, and/or any other materials provided to Buyer by Seller upon delivery of the Goods sold hereunder.

INTELLECTUAL PROPERTY/CONFIDENTIALITY

- (a) All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
- (b) Nothing in this contract shall be construed as a license to use the intellectual property associated with the Goods, other than to use the technology in their ordinary purpose. Further, nothing in this agreement shall be construed to prohibit Seller from using for any purpose any intellectual property, including without limitation ideas, concepts, know-how, techniques, patentable ideas, and copyrights, learned, conceived, or developed during the course of Buyer's ownership of the Goods. Buyer will disclose, and hereby does assign and transfer to Seller all right, title, and interest in and to the intellectual property. Consistent with this provision, Buyer agrees to execute and



deliver without further compensation such further documents which may be required to evidence or register Seller's rights to such intellectual property in the United States and in any other country in which Seller desires to secure said rights.

- (c) Buyer further agrees that the documentation accompanying the Goods, the Goods themselves, and the technology associated therewith are the intellectual property of Seller. Buyer agrees that no part of the Goods, including their manual, designs, or other intellectual property, may be reproduced in any fashion, nor shall Buyer sell, share, or cause to be sold or shared any of the intellectual property associated with the Goods. Buyer agrees to indemnify Seller, including court costs and attorneys' fees, against any intentional or unintentional reproduction of the Goods or the associated intellectual property. Nothing in this Agreement shall prevent Buyer from using the Goods for their ordinary commercial purpose. Buyer shall, with prior approval from Seller, be permitted to use the Goods in its advertisements and promotional materials, provided that such advertisement does not violate the provisions of this Agreement.

SUBJECT DATA

In light of the proprietary technology used in the Goods purchased under this Agreement, it is necessary that Seller be able gather certain electronic data regarding the use of the equipment hereunder. This data assists Seller in, among other things, servicing the Goods, malfunction diagnosis, and product improvement. Buyer may access this data in connection with the following terms:

- (a) The term "Subject Data" means all recorded information produced, generated, measured, or observed in the performance of this Agreement, regardless of the form or method of recording. It shall include, but not be limited to, data derived from Seller's property, Buyer's property, third-party property, anonymized operator information and atmospheric or environmental conditions. Subject Data shall remain the property of Seller and may be used by Seller for any lawful purpose without restriction. Notwithstanding the foregoing, Seller shall treat as proprietary to Buyer any Subject Data produced, generated, measured or observed in the performance of this Agreement which is exclusively derived from Buyer's property, and it shall be protected from disclosure to third parties unless such disclosure is authorized in writing by Buyer.
- (b) All Subject Data disclosed hereunder by Seller to Buyer, its officers, employees, personnel, and agents, is deemed proprietary unless otherwise identified in writing by Seller to the contrary. All Subject Data shall be protected from disclosure to third parties by using all reasonable precautions and shall not be used by Buyer unless such use is authorized in writing by Seller. Buyer agrees that the data received is restricted to the sole use by the Buyer for the purpose intended, and shall not be used, directly or indirectly, for the purpose of "reverse engineering,"



complete or partial manufacture of the Goods, or the manufacture of any spare parts for the Seller's Goods, including any portion thereof. Further, Buyer agrees that it will not convey, in any manner or form whatsoever, to any third-party, any of the technical information or data received from Seller under the terms of this Agreement, without the prior express written permission of Seller. The provisions of this clause shall survive the expiration, completion, or termination of this Agreement.

- (c) Seller hereby grants a "Special Purpose License" to the Buyer for Subject Data which provides the Buyer with a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free license to make use of the Subject Data for research or other permitted Buyer purposes, as expressly authorized herein. Research or other permitted Buyer purposes do not include the right to have or permit others to practice an invention or use, duplicate, prepare derivative works, distribute or disclose copyrighted works or proprietary information for commercial purposes.

TERMINATION

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

INDEMNIFICATION

Buyer agrees to indemnify, defend, and hold harmless Seller and/or Seller's officers, directors, employees, agents, parent, affiliate and subsidiaries now existing or hereafter made for, against all liability, claims, actions, demands, damages, and expenses based upon bodily injury, property damage, or economic loss, arising directly or indirectly in respect to the Goods sold hereunder, or the use, failure, or transportation thereof, as (1) are caused by the negligent acts or omissions of the Buyer or Buyer's agents; (2) the failure of the Buyer, Buyer's officers, agents or employees to follow manufacturer's instructions, warnings, recommendations; (3) the failure of Buyer, Buyer's officers, agents or employees to comply with federal, state, or local laws or regulations applicable to the use of such machinery or equipment, including but not limited to the 1970 Occupational Safety and Health Act as amended; (4) any breach of this Agreement by Buyer; or (5) liability and expenses based upon or resulting from any theory of breach of warranty of any kind. This indemnity includes claims based upon strict or product liability causes of action. If any part of such indemnity is made void or otherwise impaired by any law controlling the construction thereof, the balance of such indemnity shall be deemed to conform to the extent permitted by law.



LIMITATION ON LIABILITY

- (a) In no event shall Seller be liable to Buyer or any third party for any loss of use, revenue or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages 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.
- (b) In no event shall Seller's aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to Seller for the goods sold hereunder [or \$25,000, whichever is less].

FORCE MAJEURE

Seller shall not be liable for any defaults, damages, or delays in filling any order caused by condition beyond Seller's control, including but not limited to acts of God, pandemic strike, lockout, boycott or other labor troubles, war, riot, flood, new governmental regulation, or delays of Seller's vendors, sellers, subcontractors or suppliers in furnishing machinery, materials or supplies due to one or more of the foregoing or like causes. Seller reserves the right to suspend, without any liability to or recourse from Buyer, all or part of its obligations to be performed hereunder (including the building and shipment of Goods) during any period when, in the reasonable judgment of Seller, the health and/or safety of Seller and/or its subcontractors' personnel performing any such service could be jeopardized by an event under this provision.

GOVERNING LAW

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Rhode Island without giving effect to any choice or conflict of law provision or rule (whether of the State of Rhode Island or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Rhode Island.

CONSENT TO VENUE AND JURISDICTION

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the courts of the State of Rhode Island in each case located in the City of Providence and County of Providence, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Buyer hereby irrevocably waives all rights to a trial by jury in any proceedings hereafter instituted by or against Buyer arising out of this agreement.



NOTICES

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Invoice or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

HEADINGS

Captions and headings in this Agreement are strictly for the purpose of convenience and general reference only and shall not affect the meaning or interpretation of any of the provisions of this Agreement.

ENTIRE AGREEMENT/MODIFICATIONS

This Agreement constitutes the entire agreement between the parties thereto and may not be modified except in writing signed by authorized representatives of Buyer and Seller. This Agreement shall be binding and inure to the benefit of the parties hereto and their successors.

WAIVER

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

SEVERABILITY

If any provision of these Terms shall be held invalid, illegal, unenforceable, or inoperative under any jurisdiction, the balance of the terms and conditions shall remain in full force and effect as if such provisions had not been included.

SURVIVAL

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Intellectual



Property/Confidentiality, Limitation of Liability, Governing Law, Consent to Venue and Jurisdiction, Indemnification, and Survival.

ASSIGNMENT

Seller shall have the right to assign this Agreement to its affiliates. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

RELATIONSHIP OF THE PARTIES

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

NO THIRD-PARTY BENEFICIARIES

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.