



# GENERAL TERMS & CONDITIONS FOR THE PURCHASE OF GOODS OR SERVICES

1. **APPLICABILITY:** These terms and conditions of purchase (these “Terms”) are the only terms which govern the purchase of the goods (“Goods”) and/or services (“Services”) between Plug Power Inc. (“Plug” or “Buyer”) and the seller named in the Buyer’s purchase order (“Purchase Order”) that are attached to these Terms (“Seller”). The Purchase Order and these Terms are collectively referred to as this “Agreement”. Buyer and Seller may be each individually referred to as a “Party” and collectively the “Parties”.
2. **FORMS:** This Agreement comprises the entire agreement and understanding between the Parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral between the Parties. These Terms shall prevail over any of Seller’s general terms and conditions of sale, regardless of whether or when Seller has submitted its sales confirmation, Purchase Order acknowledgment, or such terms. This Agreement expressly limits Seller’s acceptance to the terms of this Agreement. Buyer will not be bound by, and specifically objects to, any terms or conditions that are different from, inconsistent with, or in addition to these Terms. Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the Goods and/or Services covered hereby (“Supply Contract”), the terms and conditions of said Supply Contract shall take precedence over these Terms.
3. **ACCEPTANCE BY SELLER:** Seller will be deemed to have accepted these Terms upon the earlier of: (i) Seller’s shipment of the Goods to Buyer or making available the Goods for pick-up; (ii) Seller’s sales confirmation or Purchase Order acknowledgment; (iii) Seller’s acceptance of Buyer’s Payment (as defined herein); or (iv) by other means commercially reasonable under the circumstance.
4. **PRICE:** The price of the Goods and/or Services is the price stated in the Purchase Order (“Price”). Unless otherwise stated in the Purchase Order, the Price is firm and shall not be subject to change unless mutually agreed upon in writing by Buyer and Seller. Unless otherwise stated in the Purchase Order, the Price shall be deemed to include all national, federal, state, and local sales, use, excise, value added, privilege, payroll, occupational, and any other taxes, fees, or duties applicable to the Goods and/or Services furnished to Buyer. No charges of any kind, including, without limitation, crating, boxing, packing, transporting, unloading, assembling, insurance or excess raw material order quantities, will be allowed unless specifically agreed to in writing by Buyer. Any price adjustment not in accordance with this Agreement shall not be binding on the Buyer.
5. **PAYMENT:** Seller shall issue an invoice to Buyer on or any time after the completion of Delivery (defined herein). As a condition precedent to Payment Seller shall submit a correct invoice to Buyer in accordance with this Agreement. Unless otherwise stated in the Purchase Order, Buyer will make payment within sixty (60) days after the later of: (i) Buyer’s receipt of Seller’s correct invoice; or (ii) Buyer’s acceptance of the Goods or Services (“Payment”), except for any amounts disputed by Buyer in good faith. The Parties shall seek to resolve all such disputes expeditiously and in good faith, and Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute. Buyer shall be always entitled to off-set any amount owing at any time from Seller to Buyer against any amount payable at any time by Buyer. Payment by Buyer shall not constitute its acceptance of the Goods and/or Services.
6. **DELIVERY:** Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order (“Delivery”). Seller shall pack all Goods for shipment in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer with: (i) a list of all materials in the Goods purchased hereunder; (ii) the amount of one or more materials; and (iii) information concerning any changes in or additions to such materials. Seller shall provide to Buyer sufficient warning and notice in writing, including appropriate labels on Goods, and their containers and packaging, of any hazardous material that may be a part or component of any of the Goods, including SDS sheets, together with such special handling instructions as may be necessary to advise carriers, Buyer, their respective employees, and, if applicable, Buyer’s end customers of how to exercise that measure of care and precaution that will best prevent bodily injury and property damage in the handling, transportation, processing, use, or disposal of the Goods, containers, and packaging shipped to Buyer or its end customers. If Seller is performing Services, Seller must perform the Services in the time set forth in the Purchase Order. If Seller expects there to be any delay in Delivery, for whatever reason, including a Force Majeure Event (defined herein), Seller shall immediately inform Buyer and use its commercially best efforts to mitigate the delay. Notwithstanding a Force Majeure Event, if Seller fails to meet shipping dates as required, Seller shall expedite the freight at no added expense to Buyer. Seller understands and acknowledges that time is of the essence in Seller’s performance of delivering the Goods and/or performing the Services in accordance with the Purchase Order.
7. **SHIPMENT:** Unless as otherwise stated in the Purchase Order, Delivery shall be made Delivery Duty Paid (“DDP”) at Buyer’s loading dock per Incoterms 2020. Unless otherwise stated in this Agreement, the risk of loss of the Goods will transfer from Seller to Buyer upon Buyer’s acceptance of the Goods, and title to the Goods will pass to Buyer upon Seller making Delivery.
8. **INSPECTION OF GOODS:** Buyer has the right to inspect the Goods on or within a reasonable time after Delivery (“Inspection Period”). Such inspection shall not be considered Buyer’s acceptance of the Goods. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. During the Inspection Period, the Goods will be held at Seller’s sole risk. In the event Buyer has made Payment before it has inspected the Goods, such Payment shall not constitute an acceptance of the Goods thereof, or limit or impair Buyer’s right to assert any legal or equitable right or remedy under this Agreement. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (i) rescind this Agreement in its entirety; (ii) accept the Goods at a reasonably reduced price; or (iii) reject the Goods and require replacement of the rejected Goods. Any inspection or other action by Buyer under this Agreement shall not reduce or otherwise affect Seller’s representations, warranties, or obligations under this Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.
9. **WARRANTIES:** Seller warrants and represents to Buyer, for a period of twenty-four (24) months from the date the Goods are put into service, or in the case of Services, twenty-four (24) months from the date the Services were completed (unless otherwise stated in the Purchase Order) (“Warranty Period”), all Goods supplied under this Agreement shall: (i) be free from defects in material, design, workmanship, and title and will be provided with zero percent (0%) defects; (ii) be fit and sufficient for Buyer’s intended purpose; (iii) will be merchantable; (iv) be free and clear of all liens, security interests, or other encumbrances; (v) if applicable, conform to all required specifications; and (vi) not infringe or misappropriate any third Party’s patent or other intellectual property rights. If applicable, Seller also warrants to Buyer that: (i) it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services; (ii) obtain and maintain all necessary licenses and consents required to comply with all relevant laws applicable to the provision of the Services; (iii) comply with all rules, regulations, and policies of Buyer or Buyer’s end customer; (iv) maintain complete and accurate records relating to the provision of the Services under this Agreement; (v) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; (vi) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified, or accredited as required by

applicable law and are suitably skilled, experienced, and qualified to perform the Services; and (vii) shall devote adequate resources to meet its obligations under this Agreement. The warranties and remedies set forth in this Agreement are cumulative and in addition to any other warranty or remedy provided by law or equity.

10. **REMEDIES:** If Seller is in breach of Section 9 of these Terms during the Warranty Period, Buyer shall give Seller notice of its noncompliance and breach of its warranty obligations. Seller then shall, at Buyer's sole option and at no additional cost to Buyer, promptly: (i) replace or repair the defective or nonconforming Goods and pay for all related expenses and obligations incurred by Buyer as a result of Seller's breach of its warranty, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer (which shall be shipped expeditiously DDP), any penalties, damages, or credit from Buyer's end customers; and, if applicable, (ii) repair or re-perform the applicable Services.

11. **PROCESS CHANGES:** Seller will obtain Buyer's written consent in advance of any proposed change to the Goods, including but not limited to, critical component changes, changes in the materials utilized to manufacture the Goods, changes in the critical processes used to manufacture the Goods, and changes that will affect Form, Fit, and Function of the Goods. "Form" means appearance visible to the user of the Goods; "Fit" means physical dimensions of Goods; and "Function" means operational characteristics of the Goods. Seller shall not make any changes to the Form, Fit, or Function of the Goods without the express written consent of Buyer, to be given in Buyer's sole discretion.

12. **COMPONENT MARKING:** Goods shall be delivered without Seller part number or any other characteristics that identify origin. Goods shall be marked with Buyer part number, Buyer's Seller identification number, date of manufacture, serial number (if applicable), or any other information which Buyer may request from time to time.

13. **INDEMNIFICATION:** Seller shall defend, indemnify, and hold harmless Buyer and Buyer's its subsidiaries, affiliates, successors, or assigns and its and their respective directors, officers, employees, contractors, and representatives (collectively "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively "Losses") arising out of or occurring in connection with: (i) the Goods and/or Services purchased from Seller; or (ii) due to Seller's negligence, willful misconduct, or breach of this Agreement. Seller shall not enter any settlement without Buyer's prior written consent, to be given in Buyer's sole discretion.

14. **INSURANCE:** Seller will promptly furnish, upon request, Buyer with a certificate of insurance or other documentation evidencing product liability coverage with protection extending to Buyer under a seller endorsement. Such insurance shall cover all Goods and/or Services sold by Seller to Buyer and shall be maintained with an insurance carrier or carriers reasonably acceptable to Buyer with minimum limits of liability of \$1,000,000.00 combined single limit per occurrence with a policy aggregate of \$5,000,000.00. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

15. **INTELLECTUAL PROPERTY:** "Intellectual Property" shall include any invention, discovery, concept, expression or work, whether or not patented or patentable, including, without limitation, discoveries, compositions, know-how, procedures, technical information, processes, methods, devices, formulas, protocols, techniques, software code, designs and drawings, any physical embodiment thereof, and any patent (and applications therefor), copyrights (and applications therefor), trade secret, or other intellectual property right related thereto. Each Party shall retain all rights to ownership, title, or interests to any proprietary information, any inventions, and any Intellectual Properties independently developed by the Party pre-existing the date of this Agreement. Buyer shall be the exclusive owner of all rights to ownership, title, and interest throughout the world in all Intellectual Property independently or jointly developed by either Party in connection with or related to the Goods and/or Services ("Developed Intellectual Property"), and all Goods and/or Services performed by Seller in accordance with this Agreement shall be considered a "Work Made for Hire" as defined by U.S. Copyright laws. Seller shall notify the Buyer in writing within sixty (60) days of the identification of any Developed Intellectual Property. With respect to all Developed Intellectual Property, Buyer shall direct and control the patent application process (including interferences and foreign oppositions) as appropriate in Buyer's sole discretion. Seller shall, at its expense, defend, indemnify, and hold harmless Buyer and any Indemnitee against all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods and/or receipt of the Services infringes or misappropriates the Intellectual Property of any third Party. In no event shall Seller enter any settlement without Buyer's or Indemnitee's prior written consent, to be given in Buyer's sole discretion.

16. **BUYER OWNED TOOLING:** All components, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, and other items furnished by Buyer, either directly or indirectly to Seller to perform and deliver the Goods and/or Services pursuant to the Purchase Order ("Buyer Tooling") shall be and remain the property of Buyer, and Seller shall bear the risks of loss of and damage to Buyer Tooling. Buyer Tooling shall: (i) always be properly housed and maintained by Seller; (ii) not be used by Seller for any purpose other than the performance of delivering the Goods and performing Services pursuant to the Purchase Order; (iii) be conspicuously marked "Property of Buyer"; and (iv) not be moved from Seller's premises without Buyer's prior written approval, to be given in Buyer's sole discretion. Upon the request of Buyer, such property shall be immediately delivered to Buyer by Seller DDP at Buyer's specified location.

17. **TERMINATION:** In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or Seller's delivery of the Services, if Seller: (i) has not performed or complied with any of these Terms, in whole or in part; or (ii) 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.

18. **NON-DISCLOSURE:** All non-public, confidential, or proprietary information of Buyer, including but not limited to, this Agreement, the Payment, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, 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 purpose of performing this Agreement, and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Seller shall not, without obtaining written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or agrees to furnish Buyer the Goods and/or Services covered herein. Buyer shall be entitled to injunctive relief for any violation of this Section 18. If the Parties have signed a separate non-disclosure or confidentiality agreement ("NDA"), the terms of that NDA shall take precedence over the terms of this Section 18.

19. **FORCE MAJEURE:** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)": (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or action; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) other similar unforeseeable events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice immediately of the Force Majeure Event to the other Party, stating the period the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 19, the other Party may immediately thereafter terminate this Agreement.

20. NON-ASSIGNMENT: The Payment and the rights and obligations hereunder may not be assigned by Seller without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

21. GOVERNING LAW AND SUBMISSION TO FORUM: The rights and obligations arising out of this transaction shall be determined by the laws of the State of New York. Seller irrevocably consents to the jurisdiction of the courts of the State of New York with venue in Albany County and of the District Court of the United States, for the Northern District of the State of New York. Seller waives any objections to jurisdiction and venue in such courts.

22. 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 in this Agreement. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), by facsimile or electronic mail (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: (i) upon receipt of the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section 22.

23. SEVERABILITY: If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. AMENDMENT AND MODIFICATION: These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each Party.