

**HELION – STANDARD TERMS AND CONDITIONS**

Available on our company website at: <https://www.helionenergy.com/terms-and-conditions/>

These Standard Terms and Conditions (“Terms”) shall govern the purchase of goods and services (collectively, “Articles”) by Helion Energy, Inc. (“Buyer”) from the seller named on the purchase order (“Seller”). These Terms, together with the accompanying purchase order (“Order”) referencing them, and any prior confidentiality or non-disclosure agreements signed by the parties, constitute the entire agreement between the parties. They supersede all prior or contemporaneous agreements, representations, or communications, whether written or oral.

Seller shall acknowledge receipt of an Order via email within three (3) business days of receiving the Order or any subsequent revisions. However, if Seller fails to provide such acknowledgment but proceeds with execution, fulfillment, or performance under the Order, such actions shall constitute unqualified acceptance of these Terms, including but not limited to the pricing, invoicing, and payment requirements set forth in Section 15. The requirement for email acknowledgment does not limit or override acceptance by performance. No changes or modifications to the Order or these Terms shall be binding on Buyer unless made in writing and signed by an authorized representative of Buyer, or Buyer’s procurement or purchasing office (“Procurement Administrator”). Buyer expressly rejects any additional or inconsistent terms proposed by Seller at any time, regardless of Buyer’s acceptance of or payment for the Articles, unless such terms are made in writing and signed by the Procurement Administrator. These Terms prevail over any of Seller’s general terms and conditions, regardless of whether or when Seller has submitted its sales confirmation or other terms. Notwithstanding the foregoing, if a written contract signed by both parties exists that governs the sale of Articles, its terms shall prevail over any inconsistent provisions in these Terms.

**1. SCHEDULE, DELIVERY & ACCEPTANCE**

- A.** Timely delivery of the Articles in accordance with the schedule specified in the Order, or as otherwise agreed in writing by the parties, is a material requirement. Seller acknowledges that TIME IS OF THE ESSENCE with respect to its obligations hereunder, and Seller’s performance is a material inducement of Buyer entering into this Order. If the delivery schedule is endangered for any reason other than Buyer’s fault, Seller shall ship in accordance with our agreed upon shipping method detailed in the applicable Order. Buyer reserves the right to reject any delivery that is late, deviates from the quantity specified in the Order, or lacks the necessary data and documentation required for the intended use and maintenance of the Articles. Buyer may, at its sole discretion, accept or reject any excess quantities delivered beyond those specified in the Order. Rejected excess quantities, shall be returned to Seller at Seller’s sole risk and expense.
- B.** Seller shall notify Buyer of its shipment of the Articles at the time of delivery to the carrier. Articles shipped materially in advance of Buyer’s delivery schedule may be returned at Seller’s expense. All articles shall be packaged and shipped in accordance with Buyer’s Supplier Shipping and Packaging Policy Number: SC-OPS-000002 or, if none are specified, in a manner that ensures their arrival in undamaged condition and complies with Buyer’s facility security procedures. Title and risk of loss for the Articles shall pass to Buyer upon receipt of the Articles FOB at the delivery point specified in the Order, unless otherwise agreed in writing.
- C.** The Articles shall be deemed accepted by Buyer upon receipt and formal entry into Buyer’s ERP system, regardless of payment, passage of title, or pre-delivery inspection or testing (“Acceptance”). Notwithstanding Acceptance, Buyer reserves the right, at its sole discretion, to reject any Articles that fail inspection or are found to be non-conforming. In such cases, Buyer may, at its discretion, require the prompt repair or replacement of non-conforming Articles, equitably reduce the price, or pursue any other remedies available under the Order or these Terms. Failure to replace non-conforming Articles in a timely manner, as determined by Buyer,

may result in termination of the Order for cause.

## **2. NEW MATERIAL**

None of the Articles to be furnished under the Order shall be surplus, used, remanufactured or reconditioned, nor shall they be of such age or deterioration as to impair their intended usefulness or safety, unless otherwise specified in the Order.

## **3. TAXES & PACKAGING**

UNLESS OTHERWISE PROVIDED, THE PRICE IN THE ORDER INCLUDES ALL PACKAGING; CRATING; FEDERAL, STATE AND LOCAL TAXES; AND DUTIES AND TARIFFS, AND IS FIRM FOR THE DELIVERY PERIOD.

## **4. BUYER PROPERTY**

Title to property furnished to Seller or paid for by Buyer under this Order (“Buyer Property”) shall be vested in Buyer with the right to demand possession at any time. Seller shall use Buyer Property only in the performance of work for Buyer, and shall establish a system to properly control, protect, and preserve all Buyer Property at its expense. Seller shall bear the risk of loss of all Buyer Property while in Seller’s (or their supplier’s) custody or control. All Buyer Property is subject to removal and return at Buyer’s written request at Seller’s expense, and in the same condition as originally received apart from reasonable wear and tear. Buyer shall have the right to enter Seller’s premises at all reasonable times to inspect Buyer Property and Seller’s records with respect thereto. Buyer does not warrant any aspect of the Buyer Property which it furnishes or purchases for Seller.

## **5. BUYER TECHNICAL INFORMATION & INTELLECTUAL PROPERTY**

- A.** Any information arising in the course of performing the Order that (i) has been supplied to Seller by or on behalf of Buyer (including during technical discussions), (ii) has been designed by Seller at Buyer’s expense, or (iii) has been designed by Seller to meet Buyer-furnished technical requirements, shall constitute “Buyer Technical Information.” For purposes of this provision, “information” includes all work product, deliverables, data, discoveries, concepts, ideas, inventions (whether or not patentable), developments, designs, know-how, trade secrets, improvements, works of authorship, reports, memoranda, documents, computer programs(both source and object code), mask works, and any other materials conceived, created, prepared, developed, made, reduced to practice, or learned by Seller—whether solely or jointly—with all related intellectual property rights contained therein.
- B.** All Buyer Technical Information shall be the sole property of Buyer and shall be considered “works made for hire” under U.S. Copyright Law (17 U.S.C. § 101) and Buyer shall be the author and owner of the Buyer Technical Information. Seller hereby irrevocably assigns to Buyer the ownership of all intellectual property rights in the Articles and Buyer Technical Information, and Buyer shall have the right to obtain and hold in its own name copyrights, patents, registrations, and similar protections at its discretion. For the avoidance of doubt, if any Buyer Technical Information is determined by a court of competent jurisdiction not to be a work made for hire, this agreement shall operate as an irrevocable assignment by the author, and Seller hereby irrevocably assigns (or cause such other applicable author to irrevocably assign) such work and copyright to Buyer, including all right, title and interest globally. Seller agrees to give Buyer or its designees all assistance reasonably required to perfect all such rights.
- C.** To the extent that any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included, or contained in the Articles or Buyer Technical Information and are not owned by Buyer, Seller grants to Buyer an irrevocable, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing items, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.

## **6. CHANGES**

- A.** No modification of an Order shall be binding on Buyer unless executed in writing by the Procurement Administrator. Buyer may issue written change orders, at any time, to modify: (i) drawings, designs, or specifications for the Articles; (ii) methods of shipment or packing; (iii) locations or times for inspection, delivery, or acceptance; (iv) the quantity of Buyer furnished property, or (v) the schedule, including work stoppages, in whole or in part. Except for work stoppages, failure to respond to a written change order within 72 hours of issuance shall constitute acceptance. Work stoppage orders shall be implemented immediately upon receipt.
- B.** An equitable adjustment may be made in the price to account for any cost differences due to Buyer's change order. In the case of an extension of the schedule or stoppage of work requested by Buyer, Seller shall take all reasonable steps to minimize the incurrence of costs during the period of extension or stoppage. No claim by Seller for adjustment hereunder shall be allowed unless made in writing for a specified amount within twenty (20) days from the date notice of any such change is received by Seller.
- C.** Buyer personnel may from time-to-time render assistance or give technical advice to Seller personnel concerning the Order. No such action shall be deemed to be a change unless approved in writing by the Procurement Administrator. If Seller considers that the conduct, statement or direction of any of Buyer's personnel constitutes a change hereunder, Seller shall notify Buyer and take no action on the perceived change pending written approval by Buyer's Procurement Administrator. Any change made by Seller without such written approval shall be deemed voluntary by Seller and not compensable in the cost of or time required for performance.
- D.** Seller shall notify the Buyer and obtain written authorization prior to otherwise changing the Articles requested in the Order. Seller shall at no time deliver any knowingly non-conforming Articles without prior written approval of Buyer.

## **7. QUALIFICATIONS & PERFORMANCE ASSURANCE**

- A.** Seller represents and shall ensure that only qualified personnel, appropriately licensed and trained in best practices within the relevant industry and work scope, shall work on Buyer Articles or provide services to Buyer. Seller shall maintain (and represents that it has in place) a quality control system to an industry recognized quality standard and in compliance with any other specific quality requirements identified in this Order. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer in accordance with recognized industry standards (and its customers if permitted by Buyer).
- B.** Where, in Buyer's opinion, there is a significant risk to meeting performance or schedule requirements under the Order, Buyer can request Seller provide a performance assurance plan showing Seller's work in process and yield factors for each major process step. Seller shall provide such a plan to Buyer's satisfaction within seven (7) days after the request. Buyer shall be able to inspect Seller's performance against the performance assurance plan, including on-site visits, and terminate the Order for default if Seller fails to comply with the Order schedule or performance assurance plan.

## **8. IN-PROCESS INSPECTION**

- A.** Buyer shall be able to inspect and/or test the Articles to be furnished under the Order, at the places where the work is being performed, including those of the Seller's suppliers. Buyer shall be able to inspect without prior notice as long as the inspection is during reasonable business hours. In order to effectuate this inspection right, Seller hereby agrees to grant Buyer and its representatives access to all relevant sites at any time upon Buyer request. Seller may not condition access for any reason beyond compliance with local, state, or federal laws.
- B.** This inspection right extends to any manufacturing facilities that are subject to specific

requirements under the Order. Seller shall provide, without charge, reasonable facilities and assistance for safe and convenient inspection and test. Buyer may inspect 100% or a sample of all Articles, at its option, and shall have the right to reject any portion of the articles revealed by inspection, in Buyer's sole opinion, defective or nonconforming. Seller shall maintain a test and inspection process reasonably acceptable to the Buyer for the Articles. Records of all inspections and tests conducted by Seller shall be maintained in full complete and made available to Buyer during throughout the warranty period applicable to the relevant Articles, as specified in Section 9 of these Terms.

## **9. WARRANTY**

- A.** Seller warrants to Buyer, its successors and customers that for a period of twenty-four (24) months from Acceptance of the Articles (or as otherwise provided by Seller or mutually agreed upon through negotiation by the parties), that all Articles will: (i) be free from defects in Seller material, design, and workmanship; (ii) conform to applicable Buyer specifications, drawings, designs, samples, and other requirements set forth in the relevant Order; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party's patent or other intellectual property rights.
- B.** These warranties survive any delivery, inspection, Acceptance or payment of or for Articles by Buyer.
- C.** Seller warrants to Buyer that it shall perform the Articles using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar Articles and shall devote adequate resources to meet its obligations under these Terms.
- D.** The warranties set forth in this Section are cumulative and in addition to any other warranties provided by law or equity. Any applicable statute of limitation shall run from the date Buyer discovers the noncompliance of the Articles with these warranties. If Buyer determines that any Articles fail to meet the warranty requirements pursuant to Section 9 of these Terms, Seller shall, at its sole cost and expense, correct or replace the nonconforming Articles within ten (10) days of receiving notice from Buyer, or provide a corrective action schedule acceptable to Buyer. Buyer retains sole discretion to determine whether Seller shall repair or replace the nonconforming Articles. If Seller discovers a nonconforming Article, it must notify Buyer within forty-eight (48) hours and correct the nonconformance within ten (10) days of receiving Buyer's instructions. If Seller fails to correct the nonconforming Articles within the specified period, Buyer may, at Seller's expense, correct the nonconformance itself or through a third party. In addition to the cost of repair or replacement, Seller shall bear all associated costs, including but not limited to removal, disassembly, failure analysis, reinstallation, reinspection, and retrofitting. The unexpired portion of the Warranty shall remain applicable to any corrected Articles, and the Warranty period shall be extended for the duration the Articles were in a nonconforming state.

## **10. TERMINATION & SURVIVAL**

- A.** Buyer may terminate or delay the Order for convenience in whole or in part at any time. Upon receipt of notice of termination, Seller shall cease all work and inform any subcontractors to cease all work. Seller shall comply with the instructions set forth in the notice of termination, and otherwise Buyer and Seller shall cooperate to arrange for the efficient transfer of Articles and Buyer Technical Information from Seller to Buyer. Seller shall be compensated equitably based on the percentage of work completed, however, Seller shall not be paid for any work performed or costs incurred following any stoppage or termination that reasonably could have been avoided. In the event of termination for any reason Buyer's total liability, if any, shall not include

consequential or indirect damages, or exceed the total amount due under the relevant Order or any previously unfulfilled milestones (if applicable, thereunder, at Buyer's sole discretion).

- B. Buyer may terminate the Order at any time in whole or in part for Seller's default: (i) if Seller fails or refuses to perform in accordance or comply with any of the requirements of the Order or these Terms; or (ii) if Buyer has reasonable cause to believe that Seller may within the near term become insolvent or suspend its operations, file a petition for bankruptcy or commence proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for completed Articles delivered and accepted by Buyer, payment for which can be set off against damages to Buyer. Seller shall comply with the instructions set forth in the notice of termination, and otherwise Buyer and Seller shall cooperate to arrange for the efficient transfer of Articles and related Buyer Property and/or Buyer Technical Information from Seller to Buyer at the cost and expense of Seller. In the case of termination for default, Seller shall be liable for damages caused by or resulting from its default, including but not limited to excess costs of re-procurement of undelivered or non-conforming Articles and any other reasonably foreseeable costs and damages. If, after a default termination, it is determined that Seller was not in default, the termination will be considered to have been made for convenience pursuant to subparagraph A of this clause. For avoidance of doubt, Buyer shall be able to recover consequential and indirect damages due to Seller's breach of the Order or these Terms.
- C. In all cases of termination, Buyer shall have the right to audit all elements of any termination claim by Seller and Seller shall make available to Buyer on request all books, records, and papers relating thereto. Termination of the Order will be without prejudice to any other rights and remedies of the Buyer under statute or common law.
- D. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order, including but not limited to Sections: 4. BUYER PROPERTY, 5. BUYER TECHNICAL INFORMATION, 9. WARRANTY, 12. INDEMNITY, 14. COMPLIANCE WITH LAWS & EXPORT CONTROLS, 15. PRICE, PAYMENT & INVOICING; SETOFF, 19. ASSIGNMENT, 20. CONFIDENTIALITY & IP SECURITY, and 22. CHOICE OF LAW & DISPUTE RESOLUTION.

## **11. EXCUSABLE DELAYS**

Neither party will be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence; provided, that any delay or failure to perform by Seller shall be excused only if it is beyond the control and fault of both Seller (and any affected Seller supplier) and unable to be reasonably mitigated. Staffing shortages by Seller or unavailability of requisite materials or resources shall not be grounds for excusable delay without prior written approval of Buyer. Seller shall furnish prompt written notice to Buyer of the occurrence of any such cause which will or may delay Seller's performance for it to be considered excusable. For avoidance of doubt, the presence of an excusable delay does not prevent Buyer from terminating for convenience at any time pursuant to Section 10 of these Terms.

## **12. INDEMNITY**

- A. Seller shall indemnify and hold harmless Buyer and any of its employees, directors, officers, equityholders, agents, invitees, advisors or affiliates ("Buyer Indemnified Parties") from any and all damages, costs, including legal fees, loses, and liabilities resulting from a suit or proceeding from infringement of any patent, trademark, copyright, or trade secret or other form of intellectual property for the sale or use of any Article and/or related Buyer Technical Information provided to Buyer hereunder, and, if Seller does not undertake the defense thereof, from reasonable expenses incurred by Buyer in defense of such suit or proceeding; except that this indemnity will not extend to infringement resulting solely from Seller's compliance with Buyer's specific designs, processes or formulas. Where Seller offers to undertake the defense of Buyer or a Buyer Indemnified Party, Buyer shall in its sole discretion determine whether to accept or

make its own defense. In the event of an injunction or restraining order, Seller will, at its own expense, either procure for Buyer the right to continue to sell and use the Article and related Buyer Technical Information or replace or modify them such that they become non-infringing. Seller shall also indemnify Buyer's customers and agents for such infringement if and to the extent that a Buyer Indemnified Party has agreed so to indemnify them, but to no greater extent than Seller has indemnified Buyer Indemnified Parties hereunder and under the same conditions as set forth herein.

- B. Seller shall indemnify and save harmless the Buyer Indemnified Parties from and against all liability, demands, claims, losses, costs, damages and expenses, including but not limited to attorney's fees, for any property damage, death or personal injury of any kind arising out of or in connection with the performance of the Order, other than to the extent of Buyer's gross negligence or willful misconduct.
- C. Under no circumstances will Buyer's total liability, if any, include consequential or indirect damages, or exceed the total amount due under the relevant Order or any previously unfulfilled milestones (if applicable, thereunder, at Buyer's sole discretion).
- D. **On-Site Services.** To the extent any of the Articles will be provided by Seller onsite at a Buyer facility, Seller acknowledges that Buyer's facilities contain industrial equipment, high voltage areas, and other materials or equipment that can pose a danger if not handled properly. Seller, along with its employees, contractors, subcontractors, agents, and affiliates (collectively, "Seller Representatives"), shall strictly comply with the safety instructions communicated by Buyer personnel and any signage displayed or available upon request within Buyer's facility. Furthermore, Seller Representatives shall wear personal protective equipment as mandated by Buyer's safety guidelines and protocols. Seller and Seller Representatives acknowledge that their entry into Buyer's facility is entirely voluntary and that they assume all risks associated with such entry. Seller and Seller Representatives hereby release each Buyer Indemnified Party from any and all liability for claims, damages, and costs arising from Seller's or Seller Representatives' failure to comply with Buyer's instructions, warnings, posted notices, and other guidance related to their visit. Seller shall remain solely and fully responsible for the actions and performance of Seller Representatives, including pursuant to Section 12.B.

### 13. INSURANCE

Seller shall maintain and carry liability insurance which includes but is not limited to commercial general liability in a sum no less than the amounts set forth below, with financially sound and reputable insurers:

Insurance	Contracts < \$100,000	Contracts < \$1,000,000	Contracts ≥ \$1,000,000 and any On-Site provision of Articles
Commercial General Liability*	\$500,000	\$2,000,000	\$5,000,000
Automobile (for delivery/services)	\$500,000	\$1,000,000	\$1,000,000

\* Insurance amounts shall be per claim (versus aggregate) and include coverage for products and completed operations liability. Appropriate umbrella coverage may be used to meet these requirements. Seller must meet any state or other legal minimum requirements regarding Worker's Compensation insurance.

Seller shall, if requested by Buyer, promptly furnish certificates of insurance from its carrier on the foregoing coverage's naming Buyer as additional insured. Such coverage shall not be decreased without thirty (30) days advance written notification to Buyer, and Seller shall retain liability for any insurance shortfalls due to changes in insurance that were not properly notified.

Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or any indemnified parties hereunder. All insurance should be primary and noncontributory.

#### **14. COMPLIANCE WITH LAWS & EXPORT CONTROL**

- A.** Seller shall comply with (and represents that it is compliance with) all applicable federal, state and local laws, executive orders, rules and regulations during performance of this order, including but not limited to the Occupational Safety and Health Act of 1970 as amended; Toxic Substances Control Act as amended; the Fair Labor Standards Act of 1938 as amended; the Clean Air Act as amended; U.S. export controls and sanctions laws including the Export Administration Regulations, and the Anti-Kickback Act of 1986 as amended. Seller shall obtain all necessary permits or authorizations required to deliver the Articles.
- B.** Seller shall procure all licenses/permits, and pay all fees, and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority, necessary to complete the Order.
- C.** If, as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, any fines, penalties, or interest are assessed on Buyer, or Buyer incurs any other costs or damages, Buyer may reduce a corresponding amount (in whole or in part) owed under this Order or any other contract with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded.
- D.** Seller shall provide to Buyer with each delivery any Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder or its State approved counterpart.
- E.** Seller represents and warrants that it is aware of U.S. export control laws, and no export-controlled information (e.g., information controlled for export from the United States under the Export Administration Regulations at 15 C.F.R. § 730 *et seq.*) will be provided as part of the Order, except where previously notified in writing by Seller. Any export-controlled information provided by Seller shall be clearly marked, including with the relevant export control classification numbers (“ECCN”) or designation describing the basis for application of export controls. Seller represents that it has appropriate and effective protocols for managing export-controlled information in place, and Buyer shall have a right to inspect this protocol at its discretion.

#### **15. PRICE, PAYMENT & INVOICING; SETOFF**

Prices for the Articles must be explicitly stated in the Order. Invoicing shall occur monthly in arrears, and any price increase requires Buyer’s prior written consent (email is acceptable) and must be clearly referenced in the Seller’s invoice as proof of approval. Unless otherwise agreed in the Order, Buyer will pay all undisputed amounts within forty-five (45) days of the later of Article Acceptance or receipt of Seller’s accurate and complete invoice. Invoices must be sent to [helionaccountspayable@supplierinvoices.com](mailto:helionaccountspayable@supplierinvoices.com) with Seller’s Helion point of contact copied and must comply with Buyer’s format and content requirements, including justifications for billed amounts, purchase order numbers, and descriptions of delivered Articles. Invoices that do not reference the relevant Order will not be paid. Seller must also provide supporting documentation upon Buyer’s request. Buyer’s payment of an invoice does not constitute a waiver of any claim or right. Buyer is not obligated to pay invoices submitted more than 120 days after Article acceptance, except for re-issued invoices correcting inaccuracies, provided the original invoice was submitted within the 120-day period. Buyer may, without prior notice, deduct, offset, or postpone payment if Seller owes Buyer any amount for any reason or if Buyer disputes the invoice amount in good faith. This right is in addition to any other remedies available to Buyer under law or equity.

#### **16. SUBCONTRACTORS & AFFILIATES**

Seller shall obtain Buyer’s written consent, which may be given or withheld in Buyer’s sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors, agents, and affiliates of Seller, other than Seller’s direct employees, to provide any portion of the Articles

to Buyer (each such approved subcontractor or other third party, a “Permitted Subcontractor”). Buyer’s approval shall not relieve Seller of its obligations under the Order, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees as if they were Seller’s own employees. Seller shall 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. Seller shall clearly flow down all potentially applicable requirements in the Order and these Terms to its Permitted Subcontractors (including for avoidance of doubt the requirement for Buyer approval before a Permitted Subcontractor transfers work to additional sub-suppliers or third parties, and the right to inspect Permitted Subcontractor facilities). Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier. Seller shall require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer’s written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is satisfactory to Buyer.

#### **17. NOTICES**

All notifications by Seller to Buyer shall be made over e-mail to Buyer and include the Procurement Administrator indicated in the Order (or if that contact has changed, also including the most up-to-date Procurement Administrator Seller is aware of). If within 48 hours Buyer has not acknowledged receipt of the notification, Seller shall resubmit the notification. Any correspondence not meeting these requirements shall be considered inadequate notice.

#### **18. NECESSARY TAX INFORMATION REPORTING**

Seller understands that Buyer is engaged in manufacturing and electricity production activities that may qualify for certain state and federal tax credits. As a material inducement to entering into the Terms and any Order, Seller agrees to provide Buyer information regarding Seller’s or any of its subcontractors’ (and to cause any applicable subcontractor to provide information regarding) supply chain, or labor wage and apprenticeship/labor status, or such other information as Buyer may reasonably request to help Buyer meet any applicable federal income tax or state income tax reporting requirements (including relating to any voluntary or involuntary reporting or tax incentive regimes). This information will be provided at least quarterly (no later than ten Business Days prior to the end of any quarter) during the term of any Order or the Terms and Seller will cooperate in good faith to exchange such information at the direction of Buyer and using the systems identified by Buyer for such exchange.

#### **19. ASSIGNMENT**

Any assignment or delegation of the Order by Seller shall be void unless consented to in writing by Buyer. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

#### **20. CONFIDENTIALITY & IP SECURITY**

- A.** Seller shall not, without the prior written consent of Buyer, release any information concerning this Order or any other information about Buyer, including the existence of the supplier relationship between Seller and Buyer, other than to Seller’s employees and subcontractors as required for the reasonable execution of this Order or as may be necessary to comply with a subpoena or other proper mandatory legal demand. This includes providing copies of this Order or identifying the Articles sold or to be sold by Seller to Buyer, use of Buyer’s name in any advertising or publicity, or disclosing the existence of the supplier relationship between Seller and Buyer.
- B.** To maintain the security of Buyer confidential information (including Buyer Technical Information), no cameras (except general room security cameras) shall be allowed in the Seller work area where Buyer work product or confidential information is located. Photographs or video of Buyer confidential information will not be allowed unless clearly required for performance of the Order. All electronic copies of Buyer confidential information shall be stored and accessed only on Seller-owned and maintained devices. Seller shall not be able to take Buyer

confidential information outside of the Seller work area except in a secure fashion to enable work-from-home. Any copies of Buyer confidential information taken off site to enable work-from-home shall be maintained securely, on password-protected Seller devices (for electronic copies) or in locked cabinets (for hard copies).

- C. Seller shall maintain (and represents that it maintains) commercially reasonable cybersecurity protection, including an up-to-date firewall, anti-malware, and antivirus. Such cybersecurity protections shall also be consistent with ISO/IEC:27001 or equivalent industry standards to protect such information against unauthorized processing, disclosure, loss, destruction, or damage. Upon request, Seller shall respond to any requests for information regarding its information security practices (including audit results or standards certifications)
- D. Seller shall prohibit any third parties from accessing Buyer confidential information on Seller's systems without prior Buyer approval. In the event of the identification of any material security-related risk to Buyer Information, Seller shall notify Buyer within 24 hours and take immediate remedial action. In the event Seller fails to promptly notify Buyer or take such remedial action, or in the event such remedial action does not correct the risk, Buyer shall have the right at its sole option to terminate the Order. For the avoidance of doubt, a material security-related risk includes discovery or reason to believe of any unauthorized intentional or unintentional access to, or disclosure, modification, destruction, or loss of Buyer's confidential information, or the copying of Buyer's confidential information to unauthorized media.
- E. Seller shall comply (and represents that it is compliance with) with all applicable privacy laws, including the European Union General Data Protection Regulation, applicable to any Buyer personally identifiable information (as the term is defined by the U.S. government) provided to Seller directly or indirectly related to this Order. Seller shall keep and maintain all personally identifiable information in strict confidence, using best practices to avoid unauthorized access, use, or disclosure of such information, and shall consider such information Buyer's confidential information.
- F. In addition to the above, any prior non-disclosure agreements signed by the Parties shall remain in effect and these Terms shall not restrict any remedies otherwise available under those agreements. If there is any disagreement between these Terms and a separate non-disclosure agreement signed by the parties, the more stringent terms shall prevail. If the non-disclosure agreement expires prior to a year following satisfaction of the covenants under these Terms, then the term of the non-disclosure agreement is hereby extended until 12 months following the satisfaction of the covenants under these Terms or valid termination thereof.

## **21. GOING CONCERN & SECURITY INTEREST**

- A. Seller represents that it is a going concern and is not at risk or otherwise anticipating becoming insolvent or petitioning for bankruptcy over the next twelve months.
- B. Any advance payment by Buyer under this contract shall constitute a loan secured by any materials currently in Seller's inventory, or designs or equipment being produced for Buyer (in any state), that would satisfy the Order. Such materials and in-process designs and equipment shall constitute collateral for the Buyer's loan, and Buyer shall have a security interest in those items to be terminated only upon Seller's full satisfaction of the Order. Buyer shall have a right to execute appropriate UCC documentation to perfect its security interest at its discretion, and Seller shall support perfection of the security interest.

## **22. CHOICE OF LAW & DISPUTE RESOLUTION**

- A. The Order and these Terms shall be governed by the laws of the state of Washington. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

- B. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator, unless the claim amount exceeds one million dollars (\$1,000,000), in which case the dispute shall be heard by a panel of three arbitrators. The place of arbitration shall be Seattle, Washington. The award shall be made within six (6) months of the filing of the notice of intention to arbitrate (“demand”) unless the claim exceeds one million dollars (\$1,000,000), and within twelve (12) months of the demand when the claim exceeds one million dollars (\$1,000,000), and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, these time limits may be extended by the arbitrators for good cause shown, or by mutual agreement of the parties. The prevailing party shall be entitled to an award of reasonable attorney fees. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. To the extent that the issue in dispute between Buyer and Seller is related to an issue in dispute between Buyer and its customer, Seller agrees to a stay arbitration proceeding at Buyer’s sole discretion until Buyer’s dispute with its customer is finally resolved. The place of arbitration shall be Snohomish County, Washington.
- C. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Order as directed by Buyer.

**23. WAIVER**

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

**24. 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, employment or fiduciary relationship, and neither party shall have authority to contract for or bind the other party.

**25. 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 this Agreement.

**26. 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.

**27. NO GUARANTEE OF PURCHASE**

Acceptance of these Terms does not constitute a guarantee of purchase or any obligation on the part of the Seller to procure goods or services from Buyer. Orders or other written agreements explicitly referencing these Terms will serve as the binding commitment for transactions under these Terms.

**28. ACCEPTANCE OF TERMS**

By clicking “Accept” or otherwise indicating your agreement, Seller acknowledges that it has read, understood, and agrees to be bound by these Terms governing the sale of Articles to the Buyer. This acceptance constitutes a legally binding agreement. Buyer reserves the right to modify these Terms from time to time without notice. If Seller does not agree to these terms, it must not proceed with the provision of Articles.

**29. SELLER REPRESENTATIONS**

By accepting these terms, you represent and warrant that you possess the authority to enter into this agreement on behalf of Seller and agree to comply with all applicable laws, regulations, and the obligations outlined herein.