

## HOPPECKE BATTERIES, INC.

### Terms and Conditions of Purchase (“Conditions”)

THESE CONDITIONS APPLY TO THE PURCHASE ORDER SUBMITTED BY THE BUYER (“ORDER”) AND FORM PART OF THE CONTRACT FOR THE PURCHASE OF MATERIALS AND/OR SERVICES (AS DEFINED BELOW) BETWEEN THE BUYER AND THE SUPPLIER NAMED IN THE ORDER (“SELLER”), ANY PROPOSAL OR DOCUMENT FROM SELLER THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT SEEK TO VARY ANY OF THE CONDITIONS ARE OBJECTED TO AND DISALLOWED.

#### 1. BASIS OF CONTRACT.

1.1 The Order constitutes an offer by the Buyer to purchase materials and/or services in accordance with these Conditions. BUYER RESERVES THE RIGHT TO REVOKE THE ORDER, WITHOUT NOTICE, AT ANY TIME PRIOR TO ITS ACCEPTANCE. THE ORDER SHALL BE DEEMED AGREED TO AND ACCEPTED BY SELLER on the earlier of (a) written acknowledgement of the Order or (b) Seller doing any act consistent with fulfilling the Order, at which point the contract between the Buyer and Seller shall come into existence (the “Contract”).

1.2 Seller shall comply with the terms of the Order, which terms include the following:

- these Terms and Conditions of Purchase;
- requirements stated or expressly incorporated therein by reference to the Order;
- descriptions, drawings, planning, quality requirements, instructions, and specifications provided or specified by Buyer from time to time; and
- if the Order is issued in support of a “Government” procurement, supplemental terms and conditions will be provided to Seller which may add to these terms. In the case of conflict between these terms and the supplemental terms, the supplemental terms will supersede these terms.

1.3 Any terms contained in a Seller proposal, purchase confirmation, or other documentation not specifically incorporated by reference in the Order or otherwise agreed to in writing by the parties are hereby rejected and shall be of no force or effect. Buyer is not bound by any such terms even if it has failed to explicitly repeat its rejection upon receipt of such terms.

2. **WARRANTY.** Seller warrants and represents that with respect to all materials, supplies and equipment set out in the Order (herein collectively referred to as “materials”) delivered hereunder: (i) the minimum warranty period shall be the greater of 24 months from delivery to Buyer not to exceed 36 months from date of manufacturing, seller’s standard warranty period or the warranty period quoted in seller’s written proposal; (ii) title shall be good, rightful and the materials free of any security interest, lien or encumbrance; (iii) materials will be new, free from defects in material and workmanship, be of quality, size, description and dimension required by Buyer, be merchantable, and be fit for the purpose for which they are purchased and will meet the specifications set out in the Order; and (iv) the materials, the process by which they are made, the use for which they are designed by Seller, and Buyer’s use of the materials, will not infringe any patent, trademark, copyright, or other rights of any third parties (“Intellectual Property Rights”). Seller further warrants and represents that with respect to all services set out in the Order (herein collectively referred to as “services”) furnished hereunder: (i) the services will be performed in a professional and workmanlike manner by qualified Seller representatives; (ii) the services will be performed in accordance with the highest standard in the industry and all applicable laws; and (iii) the performance of the services will not infringe any third party’s Intellectual Property Rights. These express warranties shall not be deemed waived by reason of either or both the receipt of the materials and services, and payment therefor by Buyer. The foregoing is in addition to any and all other express or implied warranties applicable to the materials and services purchased hereunder.

#### 3. COMPLIANCE WITH LAWS; STANDARDS AND TESTING.

3.1 In performing its obligations under the Contract, Seller shall comply, and ensure that all of its subcontractors and suppliers comply, with all applicable state, federal and local laws, regulations, ordinances, and rules (“Laws”).

3.2 Without limitation to clause 3.1, Seller represents and warrants that:

(a) all materials furnished hereunder, and Seller’s manufacturing thereof, comply with all Laws, and, if applicable, each chemical substance sold hereunder has been reported to the US Environmental Protection Agency (EPA), as required by the Toxic Substances Control Act and regulations (“TSCA”) for inclusion in the inventory of chemical substances compiled by the Administrator of the EPA and TSCA, and Seller has been compiled in all respects with TSCA for each chemical substance sold hereunder.

(b) it shall treat materials prior to shipment to Buyer in accordance with testing standards requested by Buyer, and shall furnish Buyer certifications in support thereof.

(c) it shall take appropriate measures to prevent the use, purchase, or sale of counterfeit or suspected unapproved goods (being any item misrepresented as having been designed and/or produced under an approved system or other acceptable method). Further, Seller shall have a process in place to (i) ensure the sourcing of safe, reliable goods, (ii) mitigate the risk of counterfeit goods from entering into its system, and (iii) notify the Buyer’s quality department or other appropriate individual within Buyer’s organization.

(d) if the materials comprise raw materials the Seller shall: (i) notify the Buyer of changes in product and/or process definition and, where required, obtain organizational approval; (ii) allow rights of access for the Buyer, its customers, and regulatory authorities to all relevant facilities and all applicable records; (iii) flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required; and (iv) maintain records of all quality related information pertaining to the Order for a minimum of 15 years.

3.3 In accordance with clause 3.1, Seller shall grant Buyer entry to its facilities to determine and verify Seller’s compliance with Laws, Seller’s processes, and the quality of material and the work intended for incorporation into the goods at all production stages.

3.4 Seller shall ensure that at all times it has, and that it shall maintain, all the licences, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Contract.

3.5 If Seller becomes aware of any breach of this clause 3 it shall notify the Buyer immediately in writing.

4. **INDEMNITY.** Seller will defend, indemnify, and hold harmless Buyer, its affiliates, vendors, and their officers, directors, shareholders, employees, and agents from and against any and all loss, liability and expense by reason of (i) any actual or alleged violation of Laws, (ii) any actual or alleged infringement of Intellectual Property Rights, (iii) injury, death, or property damage resulting, in whole or in part, from any negligent act or omission on the part of the Seller or which may result from the installation, operation, or use of the materials or services furnished hereunder, (iv) a defect in the manufacture, design, or warnings of the materials supplied hereunder, or (v) any breach or alleged breach by Seller of any representation, warranty, or other provision of these Conditions. Upon notification from Buyer, Seller shall promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer or any of its subsidiaries, affiliated companies, agents, and vendors in connection with the indemnities set forth herein. Seller shall not, without the prior written consent of the Buyer, enter into any compromise or settlement that commits the Buyer to take, or to forbear to take, any action. Buyer reserves the right to control any such suit or proceeding. Seller shall further indemnify and hold Buyer, its subsidiaries, affiliated companies, agents, and vendors harmless from any and all expenses, losses, claims, royalties, profits, and damages, including court costs and attorneys’ fees, resulting from the bringing of such suits or proceedings or the threat thereof and from any settlement, decree or judgment thereon.

#### 5. COVER; DELIVERY.

5.1 The dates and time of delivery and quantities specified herein firm and binding and are of the essence for the Order. Delivery must be effected within the specified time period or as otherwise agreed in writing by the parties. Seller shall immediately notify Buyer if it becomes aware of any circumstances that may cause a delay in delivery. If deliveries are not made on time and in the quantities specified, Buyer reserves the right to cancel the Order and to purchase the materials and/or services elsewhere and hold Seller accountable, therefore. Additional specific penalties for late delivery, if applicable, will be written in the buyer’s purchase order. Standard penalties, if applicable are as follows: “If the Seller is in delay in delivery, the Buyer is entitled to claim contractual penalty amounting to 1% of the net price for each full calendar week, not exceeding however the amount of 5% in total of the net price of the materials which are delivered late. The Buyer is entitled to claim payment of the contractual penalty in addition to proper performance and as a minimum amount of damages to be paid by the Seller by virtue of law; this is without prejudice to the right of the Buyer to claim compensation of further damage incurred by the Buyer. If the Buyer accepts the delayed delivery, the Buyer will claim payment of the contractual penalty no later than upon final payment.”

5.2 Seller shall cooperate with Buyer in respect to all customs formalities applicable to the import or export of the materials, shall be responsible for determining proper import or export classifications, and shall provide Buyer documentation to Buyer’s satisfaction for such classifications.

6. **PACKAGING.** Buyer’s purchase order number must be shown on all packing cases and invoices. All materials shall be packed for shipment according to Buyer’s written instructions and, in any event, in a manner sufficient to ensure the materials are delivered in good and undamaged condition. Buyer shall not (unless otherwise agreed in writing) be required to return any packaging material. Any return of such packaging material shall be at Seller’s expense.

7. **PRICES.** Unless otherwise agreed to by the parties in writing, orders shall not be filled at prices higher than those prices set out in the Order. Unless otherwise agreed to by the parties in writing, prices include packaging, labelling, crating, taxes, and duties. Unless otherwise agreed to by the parties in writing, all prices include shipping, and delivery will be Cost, Insurance and Freight (CIF) (based on ICC 2010 standards).

8. **INSPECTION AND REJECTION.** Materials and services are subject to inspection, test, and acceptance by Buyer and the ultimate purchaser. Buyer shall have a reasonable number of days from the date of arrival to inspect the materials and review the services and notify Seller of any non-conformity to the Order (including quantity, quality, delivery dates, and any other specifications set out in the Order). Such inspection may not occur until final sale of the materials or services to Buyer’s customers. Buyer reserves the right to reject any material or service, even after delivery and inspection at customer’s site, which does not fulfill the specifications of the Order and to (i) return rejected materials to Seller at Seller’s risk and expense for full credit at the Order price; (ii) to require Seller at Seller’s expense to replace rejected materials, or reperform rejected services; or (iii) consider the Contract breached as to the rejected quantity or service and cancelled as to any unfulfilled portion of the Order. The remedies set out above are without prejudice to the Buyer’s right to claim damages for any other costs, loss, or expenses incurred by the Buyer which are in any way attributable to the Seller’s failure to carry out its obligations under the Contract, and Seller is not relieved of the responsibility imposed by this clause, either as to proper packaging, quantity of materials, quality of materials or services, or specifications, by reason of acceptance by Buyer.

9. **CHOICE OF LAW; JURISDICTION.** The Contract shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of New Jersey without giving effect to its principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any dispute arising out of or relating to this Contract shall be brought in the state or federal courts located in the State of New Jersey, the exclusive jurisdiction of which the parties consent to for such purpose. Each party waives any right to object to the venue of such courts on grounds of *forum non conveniens*.

10. **PAYMENT AND INVOICING.** Invoices and bills of lading showing full routing should be dated and mailed at the time of shipment and a separate invoice must be made for each destination showing point of shipment and how the goods were shipped. Invoices bearing transportation charges must be supported with attached original receipted transportation bills and, in the case of consolidated cartload shipments, must show weight and rate. The discount period, if any, stated in the face of the purchase order shall be calculated from the date of receipt by Buyer of a proper invoice from Seller. Buyer is not liable to pay interest on any amounts past due. Unless otherwise agreed to by the parties in writing, payment of the Order shall be due within thirty (30) calendar days from completion and delivery of all associated materials and services. Buyer shall have the right of set-off with respect to any amounts due Seller.

11. **FORCE MAJEURE.** If the manufacture, transfer or receipt or use by either party of any materials covered hereby, or the performance, receipt or use of by either party of any services covered hereby, is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party, upon prompt notice to the other party (and in the case of Buyer, prior to actual shipment), shall be excused from making or taking deliveries of materials or services hereunder to the extent of such prevention, restriction or interference but, at Buyer’s option, deliveries so omitted shall be made upon notice thereof to Seller, upon cessation of such contingency.

12. **ASSIGNMENT.** Seller may not assign the Contract or assign or subcontract any of Seller’s obligations hereunder without Buyer’s written consent.

13. **INSURANCE.** Seller shall maintain at its own expense at all times while performing hereunder occurrence-based liability insurance and product-liability insurance with a reputable and financially responsible carrier(s) satisfactory to Buyer for coverage in amounts not less than USD \$5 million per occurrence, USD \$10 million in aggregate, respectively, and all other insurance required by applicable law. Seller shall furnish insurance certificates as directed by Buyer, satisfactory in form and substance to Buyer, showing the above coverages, and providing for at least 10 days prior written notice to Buyer by the insurance company of cancellation or material modification.

14. **SELLER’S REPRESENTATIVES.** If Seller’s employees, subcontractors, consultants, or other representatives under Seller’s control perform any services at Buyer’s premises or at Buyer’s direction at the premises of others, (i) such persons shall comply with all rules and regulations of such premises and (ii) Seller shall keep materials and the premises on which the work is performed free and clear of all liens for material and labor incident to the performance of Seller’s services hereunder.

#### 15. TERMINATION.

15.1 Buyer may terminate the Contract, in whole or in part at any time before delivery with immediate effect by giving the Seller written notice, whereupon the Seller shall discontinue all work on the Order. The Buyer shall pay the Seller fair and reasonable compensation for any work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

15.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect, and without any liability on Buyer’s part by giving written notice to the Seller if: (a) the Seller commits a material breach of any term of the Contract and (if such breach is remediable) Seller fails to remedy that breach within 7 days of being notified in writing to do so; or (b) any proceeding, voluntary or involuntary, in bankruptcy or insolvency is brought by or against Seller, or a receiver or assignee is appointed for the benefit of creditors, with or without Seller’s consent.

16. **BUYER’S PROPERTY.** All tools, dies, patterns, designs, molds, drawings, specifications, and other data or papers, and the like furnished by Buyer to Seller in connection with this order by Buyer remains the property of Buyer. In the event materials furnished by Buyer to Seller include any intellectual property of Buyer, Seller is granted a non-exclusive, non-transferable, non-sublicensable and non-assignable license required only for the production of materials under this order, and shall use Buyer’s intellectual property only for that purpose. Except for this license, no right, interest, ownership or privilege of use of Buyer’s intellectual property shall inure to the benefit of Seller.

17. **SPARE PARTS.** Seller shall maintain spare parts for the materials sold under the Order for a period of at least ten (10) years following delivery. If Seller intends to discontinue the product of such spare parts, Seller must inform Buyer promptly, and in all events at least twelve (12) months prior to the production is

17. **AMENDMENT AND MODIFICATION.** No change to the Contract is binding upon Buyer unless it is in writing, specifically states that it amends the Contract, and is signed by an authorized representative of Buyer.

18. **NOTICE.** For the purpose of any notice required to be given by this contract or under any applicable provisions of the Commercial Code or pursuant to other pertinent law, notice to Buyer shall be sent to: Hoppecke Batteries, Inc. 2 Berry Drive, Hainesport, NJ 08036 attention: Purchasing Department.

19. **EXPORT CONTROL.** Provided items and/or technical data herein may be subject to export control under the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR). Such data should not be disclosed, exported, or transferred in any manner to any foreign person or any foreign country without prior written approval of the Office of Defense Trade Controls, U.S. Department of State, the Bureau of Industry and Security, or the U.S. Department of Commerce. All suppliers of the Buyer shall be required to have a documented ITAR Compliance Program.

20. **ETHICAL BEHAVIOR.** In performing its obligations under the Contract, Seller shall conduct its business in an ethical manner and hold its workforce, employees, contractors, and agents accountable for ethical behavior. Seller shall ensure that its workforce, employees, contractors, and agents are aware of their contribution to product conformity and safety. Buyer reserves the right to request training documentation from Seller in order to verify that ethical behavior expectations are being communicated to Seller’s workforce, employees, and agents.

21. **Waste Disposal.** In the event the purchase order from Buyer is for waste disposal, the following additional terms and conditions shall apply: (i) Title to Waste, together with all responsibility and liability in connection therewith, will pass to Contractor upon Contractor’s acceptance of the Waste at Contractor’s facility or designated transfer site unless shipment of the Waste is the responsibility of Contractor, in which event title, responsibility and liability will pass upon delivery to, and acceptance by, Contractor at the commencement of shipment. Title and liability for Nonconforming Waste will remain with Customer at all times, regardless of whether physical possession of Nonconforming Waste has passed to Contractor. (ii) Seller agrees to disposal of waste according to all laws and requirements as defined by all responsible US Government agencies and all laws as defined in the State of New Jersey. (iii) Seller agrees to provide any and all documentation requested in buyers purchase order including, but not limited to: (a) manifest, (b) Seller’s US EPA certification, (c) verified weight(s) (d) an official death certificate from the disposal location which lists the receiving number, weight, receipt date.