

HOPPECKE BATTERIES, INC.

STANDARD TERMS AND CONDITIONS

OF

SALE

I. General

HOPPECKE Batteries, Inc. is the "Seller" for all transactions contemplated herein. Any person buying or offering to buy goods or services from Seller is herein referred to as the "Buyer." "Products" shall mean the products, components, and any related services sold or supplied hereunder, including any replacement products, components, or services.

II. Acceptance

2.1 Condition. Seller's issuance of this form is expressly made conditional upon Buyer's assent that seller's quotation and these terms constitute the sole and exclusive agreement (the "Contract") between Seller and Buyer. Such assent shall be deemed given upon the earlier to occur of the following (i) Buyer's full or partial payment of the purchase price for Products, (ii) Buyer's acceptance of the Products, or (iii) Buyer's failure to notify Seller in writing of its objection to specific terms contained herein within five (5) days after Seller's issuance of this form. Issuance of Buyer's form with additional or different terms is not an objection to specific terms hereof.

2.2 No Acceptance. Seller's acceptance of Buyer's order does not constitute an acceptance of provisions on any order or other form of Buyer that are different from or additional to these terms, and such different or additional provisions are hereby expressly rejected and are void. The terms of this form may not be modified, waived, superseded, or rescinded except by a writing signed by a authorized officer of Seller.

III. Modification of Material Furnished by Seller

- 3.1 Catalogues and Written Materials.** All catalogues and other material of Seller are subject to modification by Seller and are not binding unless so stated in writing by Seller. Seller may correct clerical errors and typos at any time.
- 3.2 Prices.** All prices listed in any catalogues, price lists or other materials of Seller are subject to modification by Seller and are not binding unless so stated in writing by Seller.
- 3.3 Product Discontinuation.** Seller reserves the right to modify or discontinue Products at any time without notice.

IV. Prices

4.1 Pricing. Unless Seller has specified in writing that any quotation is binding for a specified period not yet expired, price quotes may be changed at any time prior to shipment of the Products. Unless otherwise indicated in writing by Seller, all pricing is EXW (Incoterms 2020) Seller's plant or warehouse, or other shipping point designated by Seller. The invoice price will be the price in effect when Seller delivers the Products pursuant to Article V hereof. Seller reserves the right (i) to change prices, after shipment of the Products and before full payment is received, to reflect changes in import duties, surcharges, currency parity or other governmental actions or supplemental shipping or fuel charges which affect the total cost of the Products; and (ii) to impose additional charges in the event Buyer requests an extension or cancellation of a scheduled shipping date or requests special packaging, shipping, or handling.

- 4.2 Taxes.** Unless otherwise agreed in writing by the parties, freight, and insurance, as well as sales, use, value added, excise, or similar taxes, are not included in the price.
- 4.3 Minimum Order.** Orders with a value of less than \$100 will be subject to a minimum order handling charge bringing total order value to \$100.

V. Delivery

- 5.1 Delivery Terms; Errors.** Unless otherwise agreed by the parties in writing, delivery is EXW Seller's plant or warehouse, or other shipping point designated by Seller. Any shipping or pricing errors are to be reported by Buyer to Seller within sixty (60) days after delivery or shall otherwise be deemed waived.
- 5.2 Delivery Dates.** Any delivery dates indicated herein or otherwise set by Seller do not bind Seller unless specifically agreed in writing by Seller. Any binding delivery dates are subject to Buyer's timely performance of its obligations in regard to the order, including information, approvals, parts, and materials. Seller has met its delivery obligations when the Products are ready for shipment from Seller's plant or warehouse, or other shipping point designated by Seller. Seller shall not be liable for any loss, damage, expense, or charge of any kind resulting from delay in meeting a scheduled shipment or delivery date.
- 5.3 Separate and Partial Shipments.** Each shipment by Seller is a separate and independent transaction and may be invoiced separately by Seller. In addition, Seller may make partial shipments and submit separate invoices for each such partial shipment. If Buyer defaults in regard to any separate or partial shipment, Seller may suspend any additional shipments unless and until Buyer cures such default.
- 5.4 Changes in Dates.** Delivery dates are subject to change for any cause which interferes with Seller's production, supply or transportation of the Products (whether or not caused or contributed to by Seller's negligence or fault) including, but not limited to, any event of Force Majeure.
- 5.5 Default Shipments.** It shall be Buyer's sole responsibility to ensure that the correct shipping address is promptly communicated to Seller. Seller is not required to contact Buyer to obtain or confirm any shipping destination. If Buyer does not designate a shipping destination to Seller within five (5) days after Seller's estimated ship date, Seller may immediately ship the Products either to Buyer's billing address or other tentative shipping address provided by Buyer.
- 5.6 Return of Products - Batteries or cells filled with electrolyte are not returnable. Standard Hoppecke manufactured parts and accessories that are new, unused and in their original packaging may be returned, less a restocking fee of 15%.**
Buyers wishing to return items should contact Hoppecke for a Return Material Authorization Number (RMA). Hoppecke reserves the right to deny return at inspection. Buyers are responsible for all freight costs for returned products.

5.7 Delay of Shipment. Shipments of goods delayed at customers request beyond 30 days from the Sellers acknowledged ship date are subject to delay and storage fees of 2% for every month shipment is delayed. Goods stored beyond 90 days of shipment readiness notification, without payment of storage fees or other arrangements agreed to by Seller, in writing, are considered abandoned. Hoppecke will notify customer of such and will attempt to find an alternate buyer. If Hoppecke is unable to find an alternate buyer, Hoppecke will dispose of the goods. Buyer will be entitled to value obtained by Hoppecke, if any, less a 15% handling fee and any unpaid storage fees. If Hoppecke is unable to find an alternate buyer, then original buyer will be responsible for all disposal costs.

5.8 Deferral and Cancellation. Buyer shall have no deferral rights and Buyer shall be liable for cancellation charges, which shall include without limitation a) payment of the full product price for any finished Product or works in progress; b) payment for raw materials ordered pursuant to a firm purchase order; and c) such other direct costs incurred by Seller as a result of such cancellation.

VI. Title/Risk of Loss/Legal Titles

Title shall pass, and the parties' respective legal obligations in regard to delivery and shipment shall be allocated, as specified in INCOTERMS 2020 for the relevant shipping term, provided, however, that in any event risk of loss shall pass when the Products are made available for pick up by the relevant carrier at Seller's plant or warehouse or other shipping point designated by Seller.

VII. Grant or Reservation of Security Interest

7.1 Security Interest. To secure the payment of any sums due hereunder (and under any similar agreement for the purchase of Products), Seller shall retain, and Buyer hereby grants, a security interest or charge in any Products currently, previously, or hereafter sold to Buyer and in the proceeds thereof (including insurance proceeds). Buyer agrees that Seller may execute and file one or more financing or continuation statements or other documents appropriate to create, perfect, preserve and enforce Seller's security interest or charge in the Products pursuant to applicable law, and hereby irrevocably grants to Seller a power of attorney to execute such statements or documents in Buyer's name as Buyer's attorney-in-fact.

7.2 Reservation of Title. The parties agree that, to the extent that a unilateral reservation of title is permitted in the jurisdiction in which the Products are to be delivered, Seller hereby reserves title to all Products sold hereunder as security for full payment of the sums described as secured in Section 7.1.

VIII. Payment

8.1 Payment Terms. Payments shall be made in U.S. Dollars, unless Seller agrees in writing to invoice in another currency. Unless otherwise specified by Seller, Buyer shall pay the invoice for the Products sold hereunder, in full and without any deduction or set-off of any kind, in immediately available funds within 30 days after the invoice date in the currency specified by Seller. Time is of the essence in regard to payment of any amounts. If specified by Seller in writing, a discount is permitted if such invoice is paid in full within the shorter time period specified by Seller.

8.2 Bank Charges. All bank charges in respect of payment instruments shall be paid by Buyer immediately after notification to Buyer of said charges.

8.3 Interest. If the amounts owed are in U.S. dollars, interest will be charged daily on past due amounts at a rate of the lesser of (i) one and one-half percent (1.5%) per month and (ii) the maximum lawful rate of interest. If the amounts owed are in a currency other than U.S. dollars, interest on past due accounts will be charged at the rate of interest customarily charged by Seller on sales in the currency specified.

8.4 Change in Terms. If Seller concludes in its sole discretion that the financial condition of Buyer at any time jeopardizes its ability to pay, Seller may require cash payments or otherwise change payment terms or require additional security satisfactory to Seller before further performance by Seller. Buyer's failure to timely pay any invoice shall make all other invoices of Seller immediately due and payable and, at the discretion of Seller, shall be grounds for cancellation of any further performance by Seller. The receipt by Seller of payment shall not constitute a waiver of any of Seller's rights herein or at law, including the right to cancel.

IX. Limitation of Warranty

9.1 Warranty. Seller warrants that the Products are manufactured and function in accordance with the Seller's ratings and specifications. The warranty period shall be a minimum of 12 months from initial operation, not to exceed 18 months from shipment, or, if longer, as specified in the Hoppecke quotation. All Products are to be inspected fully and all obvious non-conformities reported in writing to Seller within three business days after receipt by Buyer, even if samples were previously sent. Any latent or subsequent warranty non-conformity is to be reported to Seller in writing within one (1) year after receipt by Buyer. Seller shall not be responsible for any defect in a Product that is created after the Product is made available for shipment by Seller, including Product subjected to misuse, neglect, accident or improper handling or storage or which has been altered or misbranded by anyone other than Seller or its authorized representative or modifications to or adaptations of the Product made by Buyer or others. Buyer may not return Products without first advising Seller of the reasons therefor and observing such instructions as Seller may give in authorizing such return. Seller, upon being satisfied of the existence of such non-conformity for which it is liable, will correct the same by delivering replacement Product to Buyer. If Seller cannot correct such non-conformity by delivering replacement Product, Seller will return to Buyer the purchase price thereof. The foregoing shall be Buyer's sole and exclusive remedies, and the liability of Seller hereunder is expressly limited to replacement of nonconforming Products or the repayment of the purchase price, as the case may be. The warranty set forth in this section applies both to original and replacement Products.

9.2 No Informal Warranties. Any advice, information, or suggestions given by Seller to Buyer in regard to the installation or use of the Products are not warranties unless given in writing and designated specifically by Seller as warranties. Samples are not warranted as conforming to Seller's ratings and specifications unless Seller specifically so warrants in writing.

9.3 Warranty Exclusions. EXCEPT AS STATED IN SECTION 9.1, IT IS EXPRESSLY AGREED THAT THERE ARE NO WARRANTIES GIVEN BY SELLER, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. Failure to use or maintain the Products in accordance with Seller's specifications and instructions shall void any warranties provided in this Contract, including, without limitation, Section 9.1.

9.4 Return or Destruction. No Products shall be returned or destroyed without Seller's prior written consent. Products which Seller consents to have returned shall be shipped at Buyer's risk and expense, freight prepaid, to such location as Seller may designate.

X. Compliance; Indemnity; Insurance

10.1 Compliance with Laws. Buyer shall comply with all federal, state, and local laws, ordinances and regulations governing the storage, handling and use of the Products, and shall indemnify and hold Seller harmless for any non-compliance. Buyer shall at its own expense apply for and obtain any permits or licenses required for the storage, handling and use of the Products.

10.2 Indemnity. Buyer agrees to defend and indemnify Seller against and hold Seller harmless from all costs, losses, expenses, damages, claims, liabilities or fines, including attorneys' fees and court costs (collectively, the "Losses"), resulting from or arising in connection with (i) any claim of infringement of any patent, copyright, or other proprietary rights of any person or party to the extent that the Product was made pursuant to specifications supplied or required by Buyer or through the use of base product or other components supplied by Buyer; or (ii) any and all actual or alleged injuries to, or deaths of, persons and any and all damage to, or destruction of, property arising directly or indirectly from or relating to the Products sold pursuant to this Contract, or any products or items made using such Products, except for such Losses directly caused by or resulting from Seller's willful misconduct or gross negligence.

10.3 Insurance. Buyer shall maintain comprehensive general liability insurance, including product liability, property damage, public liability, completed operations and contractual liability insurance, designating Seller an additional named insured, and have such coverage and limits and be issued by such company as Seller shall deem reasonably adequate for its protection. Buyer shall, within ten (10) days after Seller's request, therefore, furnish to Seller certificates of insurance, issued by the applicable insurers, confirming the coverages, limits, and expiration dates of the respective insurance policies.

XI. Confidentiality; Property Rights

11.1 Confidentiality and Use. Buyer agrees that all specifications, data, and other technical information furnished by Seller to Buyer are the property of Seller, are furnished solely for Seller's performance hereunder, and may not be copied or made accessible to third parties without Seller's prior written consent. Buyer shall promptly return such specifications, data and other technical information and all copies thereof to Seller upon Seller's request. Such request may be made at any time prior to or after delivery of the Products. Buyer agrees not to chemically analyze or reverse engineer any sample to assist and/or allow any third party to do so without the express written consent of the Seller. The foregoing shall survive cancellation or completion of this Contract.

11.2 Other Property. Unless otherwise agreed in writing by Seller, Seller retains all right of ownership in all sketches, drafts, plates, stamps, tools, dies, molds, and the like, except that Buyer shall acquire title to any molds or dies made to Buyer's specifications if Buyer has reimbursed Seller in whole for the cost of producing the same. Seller's obligation to store such tools and dies and other items of Buyer needed by Seller to perform under this Contract shall end six (6) months after delivery of the last Products for which such items are required: Buyer shall nevertheless maintain any desired insurance on such items.

11.3 Identification; Proprietary Rights. Seller reserves the right to place its firm name, symbol, and relevant manufacturing and product identification numbers on Products delivered pursuant hereto. The purchase of Products from Seller confers no license, express or implied, under any patents, trademarks, copyrights, know-how or technology.

XII. Cancellation

- 12.1 No Cancellation by Buyer.** The Contract may not be cancelled by Buyer without the prior written permission of Seller, and Buyer shall hold Seller harmless from any and all costs and damages flowing from any wrongful cancellation.
- 12.2 Products Made to Order.** If Buyer purports to cancel this Contract in violation of Paragraph 12.1 in respect of any Products specially manufactured for Buyer, Seller shall also be reimbursed by Buyer for all direct costs of labor, raw materials and parts purchased or contracted to be purchased and overhead costs incurred by Seller in the manufacture of said Products. Buyer agrees that Seller's cost calculation shall be accepted by the parties hereto. In addition, Seller may complete and sell to a third party any specially manufactured Products for which the order has been purportedly cancelled by Buyer, without any liability whatsoever to Buyer.
- 12.3 Seller's Cancellation.** If Buyer shall (i) become insolvent or otherwise fail to pay its debts on time; (ii) be placed in receivership; (iii) be the subject of any voluntary or involuntary bankruptcy petition; or (iv) default in the performance of its obligation under this Contract and fail to cure such default within thirty (30) days written notice thereof, Seller may cancel all or any portion of Buyer's pending orders.

XIII. Force Majeure

13.1 Definition. "Force Majeure" means any cause not within the reasonable control of the party affected, but no payment of monies can be exempted by Force Majeure. Events of Force Majeure include, without limitation, acts of God, lockouts or other labor disturbances, wars, blockades, quarantine embargoes, riots, fires, explosions, failures of production facilities, shortages of fuel, transportation, utilities, or raw materials, ability of the affected party to obtain, on terms such party deems reasonable, material, labor, or equipment and governmental laws and regulations.

13.2 Consequences. The party prevented from performing shall promptly so notify the other party hereto and shall provide notice of the termination thereof. Upon termination of the Force Majeure the performance of any suspended obligation shall recommence. Either party may terminate this Contract if any Force Majeure lasts more than ninety (90) days. Seller's insolvency may not be asserted as the basis for Force Majeure.

XIV. Miscellaneous

- 14.1 Severability.** The invalidity or unenforceability of any terms of this Contract shall not affect the validity and enforceability of the remaining terms hereof.
- 14.2 No Waiver.** The failure of Seller to insist upon strict performance by the Buyer of any term hereof or to exercise any right hereunder shall not be deemed to be a modification of or a waiver of the future performance of such term. No waiver by Seller with respect to any breach or default of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default of any other right or remedy, unless such waiver be expressed in writing and signed by Seller.
- 14.3 Successors and Assigns; Assignment.** The provisions hereof shall inure to the benefit of, and be binding upon, the permitted successors and assigns of the parties hereto; but neither this Contract nor any rights or obligations hereunder may be assigned by Buyer without the written consent of Seller.
- 14.4 Infringement.** Seller warrants that the Products and Buyer's use of the Products will not infringe any U.S. patent or trade secret owned by a third party, but Seller shall have no obligation for (i) any Products modified either by Buyer or any third party without the express written permission of Seller; (ii) any aspects or qualities of Product which have been specified by Buyer; or (iii) any claims of infringement based upon the use of the Products by Buyer or any third party not in conformity with Seller's authorized use of the Product.
- 14.5 Governing Law.** This form and this Contract shall be governed by New Jersey law, as if this Contract were performed entirely within New Jersey, but the provisions of the U.N. Convention on Contracts for the International Sale of Goods are excluded in their entirety.
- 14.6 Arbitration.** Any controversy or claim arising out of or relating to this Contract, or the negotiation or breach hereof, or of any sales pursuant hereto or thereto, shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in New York, New York, before a single arbitrator mutually agreeable to Seller and Buyer, or if no agreement can be reached, then selected by the American Arbitration Association. The arbitrator shall render a reasoned opinion and shall award reimbursement of attorneys' and other experts' fees and disbursements and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate.
- 14.7 Construction.** This Agreement shall not be construed against the party preparing them but shall be construed as if all parties jointly prepared these terms and any uncertainty or ambiguity shall not be interpreted against any one party.

XV. Damages, Limits and Exclusions

- 15.1 Limitation of Liability.** In no event shall Seller's liability for any damages arising out of the sale of Products, regardless of the legal theory on which such damages may be based, exceed the amount that Seller has been paid for such Products giving rise to the claim for damages under this Contract.
- 15.2 Exclusion of Consequential Damages.** It is expressly understood and agreed that seller shall not be liable to buyer or any other person, whether by way of indemnification or contribution or otherwise, for special, consequential or punitive damages, whether arising from defective workmanship or materials or design, breach of warranty, delays in delivery or other breach of contract, force majeure, or from any other cause whatsoever, including the negligence or misconduct of seller or its agents or employees.