

## General Purchase Order Terms and Conditions

### 1. Applicability.

(a) This purchase order constitutes an offer by Trojan Battery Company, LLC (the "Buyer") for the purchase of the goods specified on the face of this purchase order (the "Goods") from the party to whom the purchase order is addressed (the "Seller") upon the terms and conditions ("Terms") set forth herein, together with those appearing in the purchase order (collectively "Order"). The Order, together with any written contract signed by both parties covering the purchase of the Goods identified in the purchase order shall constitute the entire agreement between Buyer and Seller with respect to the sale of the Goods. Any and all other prior agreements, quotes, requests for quotes, negotiations, correspondence, promises, covenants, communications, undertakings, arrangements, representations and warranties, whether oral or written, of Buyer or Seller shall be superseded by the Order. In the event of a conflict between the Order and any written contract covering the same Goods, the terms and conditions of such written contract shall prevail to the extent of such conflict.

(b) These Terms apply to any repaired or replacement Goods provided by Seller hereunder.

2. Acceptance. Written acceptance of the Order, or performance in whole or part of its obligations under the Order, shall constitute Seller's acceptance of the Order. This Order can be accepted by Seller only upon the exact terms and conditions set forth in the Order. Any additional or different terms included by Seller in its acknowledgement form, invoice, billing statement, or any other expression of acceptance are hereby objected to by Buyer and shall not become part of, or in any way alter, the contract. To the extent that Seller's acceptance is expressly made conditional on assent to the additional or different terms, Buyer hereby rejects such additional or different terms and no binding contract shall be formed between the parties unless Buyer withdraws its rejection and expressly assents to the additional or different terms in writing signed by Buyer.

3. Delivery Date. Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.

4. Quantity. If Seller delivers more than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

5. Delivery Location. All Goods shall be delivered to the address specified in this Order (the "Delivery Location") during Buyer's normal business hours or as otherwise instructed by Buyer.

6. Shipping Terms. Delivery shall be made in accordance with the terms on the face of this Order. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill or bill of lading, and any other documents necessary to release the Goods to Buyer within two (2) business days after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order.

7. Title and Risk of Loss. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Unless EXWORKS, Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

8. Packaging. All goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition and in accordance with best industry standards.

9. Amendment and Modification. No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.

10. Inspection and Rejection of Nonconforming Goods. The Buyer has the right to inspect the Goods on or after the Delivery Date. 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.

If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, within five (5) days replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 19. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

11. Price. The price of the Goods is the price stated in the Order (the "Price").

12. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. In the event of a payment dispute, the parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

13. Set-off. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

14. Warranties. Unless otherwise agreed to by the parties, Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, within five (5) to seven (7) days replace or repair the defective or nonconforming Goods and pay for all related expenses, 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.

15. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Buyer's customers (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 the products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

16. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any actual or alleged infringement of patent, copyright, trade secret or other intellectual property right of any third party with respect to the Goods. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent. Without limiting the above remedy, if Buyer's use of any Goods is enjoined because of any actual or claimed infringement of patent, copyright, trade secret or other intellectual property right of any third party, Seller shall at its expense use its best efforts to procure the right for Buyer to continue using such Goods. If Seller is unable to do so, Seller shall at its expense (a) replace such Goods with non-infringing goods without loss of functionality; (b) modify the Goods to be non-infringing; or (c) if unable to replace or modify the Goods,

refund in full all costs paid by Buyer for such Goods and reimburse Buyer upon demand for all additional costs incurred by Buyer in purchasing any replacement goods.

17. **Insurance.** During the term of the Order, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$3,000,000 with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Buyer as an additional insured. 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 Buyer's insurers and Buyer or the Indemnitees.

18. **Compliance with Law.** Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods. In addition, Seller shall comply with Buyer's Supplier Code of Conduct as set forth at [http://www.trojanbattery.com/pdf/Trojan\\_SCC.pdf](http://www.trojanbattery.com/pdf/Trojan_SCC.pdf) as may be revised from time to time.

19. **Termination.** Buyer may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on fifteen (15) days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller 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, then the Buyer may terminate this Order upon written notice to Seller. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

20. **Waiver.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. **Confidential Information.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, 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 the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

22. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or

negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure** Event"). Seller's economic hardship or changes in market conditions are not considered *Force Majeure* Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any *Force Majeure* Event are minimized and resume performance under the Order. If a *Force Majeure* Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than five (5) business days, Buyer may terminate this Order immediately by giving written notice to Seller.

23. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order 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. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

24. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

25. **No Third-Party Beneficiaries.** This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

26. **Governing Law.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of California, United States of America without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

27. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of California, United States of America, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

28. **Cumulative Remedies.** The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

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

30. **Severability.** If any term or provision of this Order 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.

31. **Survival.** Provisions of this Order 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, the following provisions: Set-off, Warranties, General Indemnification, Intellectual Property, Compliance with Laws, Confidentiality, Governing Law, and Survival.