

## TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions of Purchase (“Terms”) govern the purchase by you or the legal entity you represent (“Contractor”) from Kennedy Power Systems, LLC, a North Carolina limited liability company (“KPS”) of (a) KPS’s fully-assembled electric vehicle charging system (the “System”), (b) permit drawings for use by electrical contractors in connection with local governmental permitting approval of the installation of Systems Stations purchased (“Permit Drawings), and/or (c) third party-provided products sold by KPS, whether as components incorporated into a System or otherwise (“Third Party Products”). Systems, Permit Drawings, and Third Party Products are collectively defined as “Products”. KPS and Contractor are collectively defined as “Parties,” and each is individually a “Party”.

### 1. Orders

- A. Purchase of Products. Contractor’s purchase of Products from KPS shall be legally binding by an Accepted Order, as defined below, specifying the quantity and model of Products to be purchased and requested delivery date. Unless agreed between the Parties, such delivery date shall be a date that is no less than 120 days after the date of the applicable Accepted Order. Contractor’s purchase of Products is subject to the terms and conditions described in these Terms. In the event there are terms and conditions in the Accepted Order that conflict with these Terms, then these Terms will supersede and control. Contractor acknowledges and agrees that its purchase of Third Party Products, including but not limited to those incorporated into the Systems, may be subject to additional terms and conditions and/or different warranty coverage than the Warranty, as defined below.
- B. Acceptance of Purchase Orders. All purchase orders, and modifications to purchase orders, for Products are subject to acceptance or rejection by KPS in its sole discretion. No purchase order shall be legally binding on KPS until it is accepted in writing by KPS (“Accepted Order”). KPS agrees to use commercially reasonable efforts to notify Contractor of Accepted Order(s) or rejection of purchase orders within three (3) business days after receipt. Accepted Orders shall be non-cancelable and non-refundable.
- C. Deposit. Contractor shall pay to KPS a deposit in an amount equal to twenty percent (20%) of the purchase price upon placement of the order and the balance due prior to shipment. In the event that KPS declines to accept an order, it shall refund the deposit made for such order.
- D. Refusal of Purchase Orders. KPS may withhold shipments of Products to Contractor if Contractor exceeds its applicable credit limit (if any), is in violation of its payment obligations to KPS, and/or otherwise is in material breach of these Terms.

### 2. Delivery

- A. Shipping Costs and Terms. All shipment of Products, unless otherwise agreed by the Parties in writing, shall be FCA KPS’s warehouse. Contractor is responsible for all costs of shipping, transportation, insurance, warehousing, and other charges and costs associated with the shipment of Products to Contractor. All shipping dates are approximate and are based upon prompt receipt of all necessary information from Contractor. In no event shall KPS be liable

for any costs related to the delay in delivery of the Products. Contractor's sole remedy for any material delay in delivery of the Products is to cancel the applicable order prior to shipping.

- B. Transfer of Title. Delivery of Products to Contractor shall be completed upon delivery of the Products to Contractor's freight forwarder. Risk of loss and damage to Products shall pass to Contractor upon the delivery of such Products to such freight forwarder. KPS shall use commercially reasonable efforts to deliver Products ordered by Contractor on the scheduled delivery date. Contractor shall inspect the Products promptly upon delivery for non-conformity. All claims for non-conforming shipments must be made in writing to KPS within twenty (20) days of the passing of the risk of loss and damage, as described above. Any claims not made within such period shall be deemed waived and released.
- C. Substitutions. KPS shall have the right to make substitutions and modifications to Products, including without limitation, the specifications of Products to be delivered pursuant to the applicable Accepted Order; provided, however, that such substitutions or modifications will not materially affect the Product's form, fit, function, or safety specifications.

### **3. Invoicing and Payment**

- A. Invoicing. Unless otherwise agreed in writing by the Parties, KPS shall issue an invoice to Contractor within three (3) days after the date it accepts Contractor's order for Products; provided that, KPS may condition Accepted Order(s) on such credit and/or prepayment terms that KPS determines, in its sole discretion, is necessary for such Accepted Order(s), including without limitation, Contractor's prior payment history and/or the quantity size of the order. If there is any change to the applicable credit and/or prepayment terms, no purchase order or acceptance thereof will be effective until Contractor has consented to such changes in writing thereto. If Contractor causes a delay in delivery, KPS may issue its invoice at any time on or after the scheduled delivery date.
- B. Payment Terms. All invoices shall be paid when due. Invoices not paid when due are subject to interest at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate allowed under applicable law. All non-credit shipments, or shipments in excess of Contractor's available credit line, if any, shall be prepaid prior to shipment.
- C. No Right of Set-Off; No Right of Return. Invoiced amounts are not subject to reduction by set-off or otherwise without the express written permission of KPS. All sales are final, and Contractor shall have no right of return; provided, however that, KPS shall comply with its obligations under the Warranty (as defined below).
- D. Taxes, Duties, Etc. All amounts due to KPS under these Terms and/or any applicable Accepted Orders are net of any duties, any sales, use, excise, value-added, withholding, or similar tax of any kind and any and all other fees and charges of any nature (collectively, "Taxes") imposed by the United States or any foreign, state or local governmental entity, country or regional authority, or instrumentality thereof on the purchase, shipment, use or sale of the Products by or to Contractor, other than taxes measured by KPS's income, corporate franchise, or personal property ownership. Where applicable, KPS shall bill Contractor for the full amount of such taxes and shall include such amount as a separate line item on the invoice(s) sent to the Contractor; provided that, KPS's failure to so bill the Contractor shall not relieve Contractor from the obligation to pay any Tax described in this section.

- E. Payment Currency. All amounts payable under these Terms shall be paid in United States dollars. If Contractor is located outside of the United States, Contractor agrees to take all necessary actions required to facilitate such payment. Contractor shall remit payment to KPS, at Contractor's option (i) via wire, ACH transfer, or other form of electronic payment acceptable to KPS to an account designated by KPS in writing from time to time or (ii) by check, made out to Kennedy Power Systems, LLC.
  
- F. All Orders Subject to Credit Approval. All orders are subject to credit approval by KPS. The amount of credit or terms of payment may be changed or credit withdrawn by KPS in its reasonable discretion, without advance notice. KPS may, in its discretion, (i) withhold further performance or shipment; (ii) require immediate cash payments for past and future shipments or performance; (iii) require other security satisfactory to KPS before further performance or shipment is made; and/or (iv) may, if shipment has been made, recover Products from the carrier pending receipt of such assurances.
  
- G. Prices do not include Freight, Etc. Except to the extent expressly stated in the applicable Accepted Order(s), KPS's prices do not include any freight, storage, insurance, taxes, excises, fees, duties, or other government charges related to the Products, and Contractor shall pay such amounts or reimburse KPS for any amounts KPS pays. If Contractor claims a tax or other exemption or direct payment permit, it shall provide KPS with a valid exemption certificate or permit and indemnify, defend, and hold KPS harmless from any taxes, costs and penalties arising out of same. KPS's prices include the costs of its standard domestic packing, only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, Contractor should consult with KPS. Any increases, changes, adjustments, or surcharges (including without limitation, fuel surcharges) which may be in connection with the freight charges, rates, or classification included as part of these Terms, shall be paid by Contractor.
  
- H. Remedies upon Payment Default. If Contractor breaches these Terms, then KPS may, in addition to any other rights or remedies it may have at law or otherwise and subject to any cure rights of Contractor, declare the entire balance of Contractor's account immediately due and payable or foreclose any security interest in the delivered Products. If any unpaid balance is referred for collection, Contractor agrees to pay KPS, to the extent permitted by applicable law, (i) reasonable attorneys' fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, (ii) any court costs or expenses incurred by KPS, and (iii) any finance charges accrued on any unpaid balance owed by Contractor.
  
- I. Suspended Shipments. KPS reserves the right to suspend further shipments of Products if Contractor is more than thirty (30) days late in payment of an invoice. KPS reserves the right to terminate any order and/or shipment of Products if Contractor is more than sixty (60) days late in payment of an invoice.

#### **4. Installation**

Contractor shall be solely responsible, as between the Parties, for arranging for the installation and provisioning of the Products and any associated costs thereof. KPS IS NOT RESPONSIBLE

FOR, AND WILL NOT BE LIABLE FOR, THE QUALITY OF ANY INSTALLATION AND/OR PROVISIONING SERVICES OF THE PRODUCTS OR ANY CLAIM IN ANY WAY RELATING TO OR RESULTING FROM SUCH SERVICES.

Contractor further recognizes and acknowledges that (i) it is solely responsible for applying for and securing any governmental approval and/or permitting of Systems and any related Third Party Products, (ii) KPS cannot and does not guarantee that its Permit Drawings will be sufficient to satisfy every related requirement of every governmental permitting authority, and (iii) it is Contractor's sole responsibility to ensure that any materials submitted for such purpose are complete and otherwise sufficient to comply with any and all applicable permitting requirements.

**5. Limited Warranty/Limitation of Liability**

- A. Limited Warranty. Subject to the provisions contained in this Section and in these Terms, KPS warrants the labor for assembly of its Systems for two (2) years from delivery (the "Limited Warranty"). Contractor understands and expressly acknowledges and agrees that (i) KPS is not a manufacturer of the component parts of its Systems, (ii) assembles its Systems from component parts that are Third Party Products purchased from their manufacturers and/or other third parties, (iii) all Third Party Products are covered solely by the terms and conditions of any applicable warranty of the manufacturer of the applicable Third Party Product, and (iv) as between KPS and Contractor (or any party claiming under Contractor), any and all such third party warranty claims shall be the responsibility of Contractor. KPS extends this Limited Warranty to Contractor as the purchaser of a new System. This warranty applies only to Contractor and is not transferable. Because KPS cannot control the quality of Products sold by third party sellers, this Warranty applies only to Systems purchased from KPS.
- B. Exclusions. The Limited Warranty shall not apply to defects or service repairs resulting from the following: (i) improper site preparation or maintenance, improper installation, cosmetic damage such as scratches and dents, or normal aging; (ii) abuse, vandalism, damage or other problems caused by accidents, misuse or negligence (including but not limited to physical damage from being struck by a vehicle), or use of a System in a way other than its intended use; (iii) damage to a System caused by any product not supplied by KPS; (iv) installation, alteration, disassembly, modification, or relocation of the System that was not performed by a licensed electrician; or (v) damage as a result of extreme power surge, extreme electromagnetic field or any acts of nature.
- C. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, NEITHER KPS NOR ANY OF ITS SUPPLIERS MAKES ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE PRODUCTS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. KPS AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS BY THE PRODUCTS, OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. KPS DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS.
- D. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, IN NO EVENT SHALL KPS OR ITS SUPPLIERS BE

LIABLE TO CONTRACTOR OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- E. Exclusive Remedies. CONTRACTOR'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH BY KPS OF ITS OBLIGATIONS OR WARRANTIES UNDER THESE TERMS SHALL BE LIMITED TO, AT KPS'S OPTION, REPAIR OR REPLACEMENT OF THOSE PRODUCTS TO WHICH SUCH BREACH IS APPLICABLE OR REFUND BY KPS OF ALL OR A PART OF THE PURCHASE PRICE OF THE NON-CONFORMING PRODUCTS. THE REMEDIES CONTAINED IN SECTION 5 ARE CONTRACTOR'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CONTRACTOR MAY HAVE AGAINST KPS WITH RESPECT TO NON CONFORMANCE OF THE PRODUCTS.

## 6. **Intellectual Property**

- A. Restrictions on Use. Contractor shall not: (i) create derivative works based on the Products, (ii) copy, frame or mirror any part or content of the Products, (iii) reverse engineer any Products, and/or (iv) access or use the Products for any improper purpose whatsoever, including without limitation, to (1) build a competitive product or service, and/or (2) copy any features, functions, interface, graphics or "look and feel" of the Products.
- B. Ownership of Intellectual Property. As between the Parties, all right, title and interest in and to any intellectual property related in any way to the Systems is, and shall remain, the exclusive property of KPS and/or its suppliers, as applicable. Contractor shall not become the owner of any intellectual property by way of its purchase of a System. For these purposes, the term "intellectual property" shall mean, all of a Party's patents, patent applications, patent rights, copyrights, moral rights, algorithms, devices, application programming interfaces, databases, data collections, diagrams, inventions, methods and processes (whether or not patentable), know-how, trade secrets, trademarks, service marks and other brand identifiers, network configurations and architectures, proprietary information, protocols, schematics, specifications, software (in any form, including source code and executable code), techniques, interfaces, URLs, web sites, works of authorship, and all other forms of technology, in each case whether or not registered with a governmental entity or embodied in any tangible form and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world in any way arising prior to or during the term of these Terms.

## 6. **General**

- A. Attorneys' Fees. If any action at law or in equity is necessary to enforce these Terms, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and expenses in addition to any other relief to which the prevailing Party is otherwise entitled.
- B. Force Majeure. KPS shall not be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account strikes, shortages, riots, insurrection,

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fires, flood, storm, explosion, acts of God, war, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such Party.

- C. Waiver. The failure of either Party to require performance by the other Party of any provision hereof shall not affect such Party's full right to require such performance at any time thereafter, nor shall the waiver by either Party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- D. Severability. If any provision of these Terms shall become unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render these Terms unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.
- E. Assignment. The rights and liabilities of the Parties hereto shall bind and inure to the benefit of their successors, executors or administrators; provided however, that neither KPS nor Contractor may assign or delegate these Terms or any of its licenses, rights or duties under these Terms, whether by operation of law or otherwise, without the prior written consent of the other Party in its reasonable discretion.
- F. Notices. Any notice, request, demand or other communication required or permitted by these Terms to be given by one Party to the other shall be in writing and will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.
- G. 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 any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- H. Governing Law. These Terms shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without application of principles of conflicts of laws.
- I. Arbitration. Any dispute, controversy, or claim arising out of or related to this Agreement or any breach or termination of this Agreement, whether sounding in contract, tort, or statute, shall be submitted to and decided by binding arbitration. Arbitration shall be administered by the American Arbitration Association and held in Charlotte, North Carolina, before a single arbitrator, in accordance with the American Arbitration Association's Commercial Arbitration Rules. The Expedited Procedures of the AAA Rules will apply to any claim of \$75,000 or less. Any arbitral award determination shall be final and binding upon the Parties. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction.

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- J. Entire Agreement. These Terms and the attachments hereto (if any) constitute the entire agreement between the Parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. These Terms shall not be modified unless done so in a writing signed by an authorized representative of each Party.