



QUICK PLUG
-THE EVOLUTION OF ROOTS-

GENERAL TERMS AND CONDITIONS OF PURCHASE OF QUICK PLUG CA INC. – JUNE 2018

Article 1. Definitions

In these general terms and conditions of purchase, the following terms are defined as follows:

Affiliates: means an affiliate as that term is defined in the *Business Corporations Act* (Ontario);

Agreement: all agreements between Quick Plug CA and the Supplier regarding the purchase of goods and/or services by Quick Plug CA from the Supplier, inter alia including the framework or master agreements that Quick Plug CA and the Supplier conclude, as well as all other instructions that Quick Plug CA issues to the Supplier, as well as all related (legal) transactions, as well as these general terms and conditions of purchase.

Quick Plug CA: Quick Plug CA Inc. and/or its Affiliates;

Supplier: the party that delivers goods to Quick Plug CA, performs services for Quick Plug CA or has agreed with Quick Plug CA to do so, as well as the party to whom Quick Plug CA has issued other types of instructions;

Article 2. Applicability

2.1 These general terms and conditions of purchase apply to all requests, quotations, offers, instructions, orders, order confirmations, agreements and other legal transactions regarding the delivery of goods, rendering of services, performance of instructions and execution of other work by the Supplier to or for Quick Plug CA.

2.2 Any departures from and/or supplements to these general terms and conditions of purchase can only be agreed upon in writing and explicitly.

2.3 General terms and conditions of the Supplier – under whatever name – are explicitly declared inapplicable.

2.4 In the event that Quick Plug CA and the Supplier have concluded a framework or master agreement, the following order applies in the event of conflicts: (1) contents of the framework or master agreement, (2) contents of an annex to the framework or master agreement, (3) contents of these general terms and conditions of purchase.

Article 3. Establishment of the Agreement

3.1 An Agreement between Quick Plug CA and the Supplier is only established if (i) Quick Plug CA has explicitly accepted a quotation / offer of the Supplier in writing or has sent a written confirmation in this regard and (ii) the Supplier has confirmed Quick Plug CA's order in writing. In the event that the Supplier fails to confirm Quick Plug CA's order in writing within 5 days after Quick Plug CA issued the order, it is assumed that the Supplier has confirmed Quick Plug CA's order in writing and the Agreement is nevertheless established. To the extent that the Agreement is a framework or master agreement, it is established after both Quick Plug CA and the Supplier have accepted the Agreement in writing.

3.2 Oral orders / instructions do not bind Quick Plug CA, unless Quick Plug CA has confirmed the oral order / instructions in writing.

3.3 All costs involved in preparing a quotation / offer shall be at the Supplier's expense.

3.4 In the event that Quick Plug CA has authorized certain (contact) persons within its organizations to perform the Agreement concluded with the Supplier, goods and services can and may only be ordered by these (contact) persons authorized by Quick Plug CA by means of a purchase order. In the event that a person other than an authorized person sends a purchase order, Quick Plug CA is at all times authorized to withdraw the purchase order – at no cost.

3.5 The relationship between Quick Plug CA and the Supplier is non-exclusive. Quick Plug CA does not have any obligation to purchase goods and/or services.

3.6 Every Affiliate of Quick Plug CA has the right to purchase goods and/or services under the framework agreement concluded between Quick Plug CA and the Supplier, if applicable.

3.7 If and as soon as an Affiliate places an order with the Supplier or otherwise purchases goods and/or services from the Supplier, an independent agreement has then come into force between the Supplier and that Affiliate.

Quick Plug CA and/or another Affiliate of Quick Plug CA will in no event be liable for any breach by the Affiliate that is purchasing the goods and/or services from the Supplier. The Supplier is not entitled to exercise any rights of setoff or retention against Quick Plug CA and/or another Affiliate in the event the purchasing Affiliate breaches any of its obligations towards the Supplier.

Article 4. Prices

4.1 Unless explicitly agreed otherwise in writing, agreed prices are in Canadian dollars and prices are exclusive of applicable goods and services, sales, or excise taxes but include all other taxes, levies and costs.

4.2 Prices are fixed, unless the Agreement explicitly stipulates otherwise.

Article 5. Delivery of goods

5.1 Goods must be delivered in the manner and time stipulated in the Agreement. Delivery is made DDP, Incoterms 2010.

5.2 Supplier is in default if an agreed time for delivery of the goods, or any parts thereof, is exceeded. The Supplier will immediately notify Quick Plug CA in writing of any threat of late delivery. This notification is without prejudice to the possible consequences and liability in connection with this late delivery. Failure to provide services or to deliver the goods on or before the date specified in the purchase order shall entitle Quick Plug CA, at its option, to terminate all or any part of the Agreement, without prejudice to any other rights Quick Plug CA may have as a result thereof. In addition, if the Supplier fails to provide the services or deliver the goods within 10 calendar days following the dates specified in the purchase order, the Supplier shall immediately pay Quick Plug CA 5% of the agreed price for the goods or services, plus 1% of the agreed price for every week the late delivery continues, such payments to occur by way of liquidated damages and not as a penalty.

5.3 Unless agreed otherwise in writing, the Supplier is not entitled to make partial deliveries. In the event that partial deliveries have been agreed upon, a delivery is also deemed to be a partial delivery for the application of these general terms and conditions of purchase.

5.4 Delivery of more or less than the quantity ordered is only permitted if this has been explicitly agreed upon in writing.

5.5 Delivery also includes the delivery of all related auxiliary materials and all related documentation.

5.6 The delivery is completed the moment at which the goods have been accepted as delivered by or on behalf of Quick Plug CA and Quick Plug CA has signed for the delivery as evidence of its approval. Any such signature on behalf of Quick Plug CA is made without prejudice to the fact that the delivered goods can be rejected by virtue of Article 7 of these general terms and conditions of purchase. In addition, the Supplier cannot derive any right from the signing referred to in the first sentence of this Article 5.6 and such signing shall not constitute a waiver of any rights by Quick Plug CA.

5.7 The Supplier is not authorized to suspend its delivery obligation in the event that Quick Plug CA fails to fulfill its obligations under the Agreement.

5.8 The Supplier hereby waives all rights and powers it is entitled to by virtue of the right of retention or the right to claim back unpaid goods.

Article 6. Rendering services

6.1 Services are rendered in the manner and the time specified in the Agreement in conformance with the safety regulations in force.

6.2 The Supplier is in default if it fails to meet any agreed term for rendering services.

6.3 The rendering of services is completed the moment at which Quick Plug CA has confirmed in writing that the services rendered have been performed or has approved the services rendered. The Supplier shall not derive any right from this confirmation or approval, and such approval shall not constitute a waiver of any rights by Quick Plug CA.

6.4 The Supplier can only delegate the performance of services to third parties with Quick Plug CA's prior written consent.

6.5 The Supplier is responsible for all the auxiliary materials, personnel and / or third parties employed or retained in connection with the services to be performed.

6.6 The Supplier is not authorized to suspend the performance of the services in the event that Quick Plug CA fails to fulfill its obligations under the Agreement.

Article 7. Inspection / no obligation to complain

7.1 Quick Plug CA is at all times entitled to subject the goods to be delivered (or delivered)

to an inspection (or to have this done) or to examine whether any services rendered have been performed in conformance with the Agreement. The Supplier must render its full assistance in this.

7.2 In the event that goods are rejected, Quick Plug CA will notify the Supplier of this. Quick Plug CA will store the rejected goods at the Supplier's expense and risk. In the event that the Supplier fails to take back those goods within a term of 14 days after Quick Plug CA has informed the Supplier that the delivered goods have been rejected, Quick Plug CA can return these goods to the Supplier at the Supplier's expense and risk without the Supplier's consent, or Quick Plug CA can store, sell or destroy these goods at the Supplier's expense and risk.

7.3 The Supplier cannot derive any right from the results of an inspection or examination referred to in Article 7.1 or from the omission of such inspection or examination.

7.4 Quick Plug CA shall not be bound to any term stipulated by the Supplier within which Quick Plug CA must indicate that the delivered goods are rejected or at least the term within which Quick Plug CA must lodge a complaint.

Article 8. Title and risk

8.1 The title to and risk of the goods passes from the Supplier to Quick Plug CA at the time of delivery, unless (i) the Parties have agreed in writing otherwise or (ii) Quick Plug CA rejects the goods during or after delivery (by virtue of Article 7).

8.2 The Supplier warrants that title to the goods delivered to Quick Plug CA shall be free and clear of liens, encumbrances, securities interests or other claims of rights of third parties.

8.3 The Supplier hereby waives all rights and powers it is entitled to by virtue of the right of retention or the right to claim back unpaid goods.

Article 9. Packaging and dispatch

9.1 The Supplier will package the goods at its own expense subject to the requirements stipulated in the Agreement and under applicable law in a manner that is appropriate for the goods. The Supplier is liable for the damage caused by insufficient or inadequate packaging.

9.2 Each delivery must be accompanied by a packing list.

9.3 The Supplier must take back any packaging material forthwith upon Quick Plug CA's request to this effect.

9.4 All packaging required to be returned, shall be done at the Supplier's sole cost and expense.

Article 10. Payments

10.1 Payment will be made within a payment term of 60 days, provided that the delivered goods or the performed services have been approved and after receipt of all related documentation, including the correctly addressed and complete invoice.

10.2 Invoices must contain the following information: the Supplier's name and address; Quick Plug CA's name and address; Quick Plug CA's purchase order/article number (if applicable); a clear description of the goods and/or services to be delivered; the quantity of goods and/or services to be delivered; the unit price excluding applicable goods and services, sales, or excise taxes; the amount to be paid for applicable goods and services, sales, or excise taxes; the registration number for all taxes being charged to Quick Plug CA; the Supplier's code (if applicable); the Supplier's bank account number; the delivery date; and (if applicable) the packing slip number.

10.3 Payment by Quick Plug CA does not constitute any waiver of right whatsoever.

10.4 Quick Plug CA is at all times authorized to offset claims of the Supplier against Quick Plug CA and/or its Affiliates against claims that Quick Plug CA and/or its Affiliates have against the Supplier on any account whatsoever.

Article 11. Prepayment

11.1 In the event that prepayment has been agreed upon, Quick Plug CA is entitled to require, at any time, that the Supplier provides security for the prepaid amount in a form satisfactory to Quick Plug CA, at its sole discretion.

11.2 In the event of prepayment for the production of a good, notwithstanding anything else contained herein, the title to the good passes to Quick Plug CA at the time the prepayment is made.

11.3 In the event of prepayment, the Supplier will report the performance of the Agreement to which the prepayment pertains to Quick Plug CA on a weekly basis at a minimum.

Article 12. Additional work

12.1 The Supplier shall ensure that the agreed budget for performing the Agreement is not

exceeded. If the Supplier observes that the actual compensation will (possibly) exceed the total amount budgeted, the Supplier will immediately notify Quick Plug CA of this. Quick Plug CA is only required to pay compensation for the time worked in excess of the budgeted time if Quick Plug CA has granted its prior written approval for this.

Article 13. Warranty

13.1 The Supplier warrants that the goods to be delivered or the services to be rendered conform to the Agreement. This warranty at a minimum stipulates that:

- the goods comply with the Supplier's published or assured specifications;
- the goods are new and free of defects and third party rights, including but not limited to encumbrances;
- the goods or the services are fit for the purpose for which the order was issued or the Agreement entered into;
- the services will be performed in a skilful/expert manner using the latest state of the art technology and shall be free from errors, omissions and other defects;
- the goods and/or services meet the requirements stipulated by Quick Plug CA;
- the goods display all designations required by law;
- the goods are provided with and accompanied by all the information and instructions required for a correct and safe use; and
- the goods are provided with and accompanied by all the documentation that Quick Plug CA has requested, irrespective of whether Quick Plug CA requested this documentation before, during or after concluding the Agreement.

13.2 The Supplier also warrants inter alia that (i) it will not act in breach of the legislation applicable to the Supplier in the area of child labor, (ii) it will not discriminate based on race, gender, religion, etc., and that any form of discrimination will be prohibited, (iii) no forced, hidden or dangerous work or community service will be involved, except for the work of prisoners who can freely choose their work location and receive a salary that is in conformance with market terms, (iv) its employees are offered sound and secure working and living conditions and (v) the right of freedom of association with others will be respected.

13.3 In the event that – regardless of the results of previous inspections – it is demonstrated that delivered goods do not satisfy the provisions of

Article 13.1, forthwith upon Quick Plug CA's request, the Supplier will repair or replace the goods or supplement any missing goods at its own expense unless, at Quick Plug CA's discretion, Quick Plug CA prefers to terminate the Agreement in accordance with the provisions of Article 19 of these general terms and conditions of purchase, all this without prejudice to Quick Plug CA's other rights on account of failures (including without limitation the right to compensation). All related costs (including without limitation the costs of repair and disassembly) come at the Supplier's expense.

13.4 In urgent cases and in cases in which it must be reasonably assumed following consultations with the Supplier that the latter will fail to fulfill its obligations, Quick Plug CA is entitled to repair or replace the article itself at the Supplier's expense or to have this done by one or more third parties. This does not discharge the Supplier from its obligations under the Agreement.

13.5 Unless agreed otherwise in writing, a warranty term of three years after delivery of the goods or performance of the services applies.

13.6 The Supplier warrants that after delivery, it will be able to supply parts of the delivered goods and/or services to Quick Plug CA for a minimum period of five years.

13.7 An agreed warranty term recommences after the repairs, replacement or supplements to which the warranty terms apply have been accepted.

Article 14. Unfair advantage

14.1 The Supplier declares, ensures and warrants that, in fulfilling its obligations under the Agreement,

(i) it will refrain from improperly or inappropriately encouraging or ensuring any unfair advantage for Quick Plug CA or any Quick Plug CA employee;

(ii) it will not, directly or indirectly, offer, promise, pay, give or accept any offer, promise or gift of an amount or any other advantage that has monetary value; and

(iii) it did not make any offers, promises, payments, gifts or assurances referred to above prior to concluding the Agreement.

14.2 The Supplier must impose the obligations referred to in Article 14.1 upon its (executive or lower-level) employees or third parties that the Supplier called in for the performance of the Agreement. The Supplier warrants that these

employees / third parties will not act in breach of the relevant obligations.

Article 15. Confidentiality

15.1 The Supplier acknowledges and agrees that it must maintain absolute confidentiality in respect of all information originating from Quick Plug CA (including ideas, know-how, trade secrets, data, procedures, substances, samples and the like) of which the Supplier has become aware in the scope of fulfilling its obligations under the Agreement, and which Quick Plug CA has designated as confidential information or that is of a confidential or proprietary nature ("Confidential Information"). The Supplier shall limit access to Confidential Information to the persons who need this information for fulfilling its obligations under the Agreement. Unless Quick Plug CA's prior written consent has been obtained, the Supplier will not disclose any Confidential Information or any part thereof to any person, firm, company or other entity; the Supplier will not use the Confidential Information or any part thereof for any purpose other than for fulfilling its obligations under the Agreement.

15.2 The duty of confidentiality referred to in Article 15.1 does not apply to information for which the Supplier can provide written evidence demonstrating that such information:

- was fully in the Supplier's possession prior to the disclosure by Quick Plug CA without the Supplier being bound by a duty of confidentiality in respect of Quick Plug CA or a third party; or
- at the time of disclosure by Quick Plug CA was already generally known or available or subsequently became generally known or available other than as the result of an act or omission on the part of the Supplier; or
- was acquired by the Supplier from a third party that was not bound by a duty of confidentiality regarding that information; or
- was independently developed by the Supplier without using any of the information disclosed by Quick Plug CA; or
- must be disclosed by the Supplier by virtue of the law, any regulation or rule from an institution recognized by the authorities, or a binding decision of a court or other government body not open to appeal. In that case, the Supplier will notify Quick Plug CA of this in a timely fashion, so that the scope of the disclosure by the Supplier can be limited to what is strictly necessary in consultation with Quick Plug CA.

15.3 The Supplier is required to impose the same obligation referred to in Article 15.1 upon its employees or any third parties called in by the Supplier to fulfill its obligations under the Agreement. The Supplier warrants that these employees / third parties will not act in breach of the duty of confidentiality.

Article 16. Intellectual property

16.1 To the extent that any intellectual property rights apply to goods delivered by the Supplier and/or services rendered by the Supplier, including the related documents, which the Supplier can prove already existed prior to the Agreement coming into effect and which were held by the Supplier or were developed independent of fulfilling its obligations under the Agreement, those intellectual property rights are held by the Supplier. The Supplier grants Quick Plug CA a non-exclusive, perpetual, irrevocable, worldwide and transferable right of use such intellectual property rights for any purpose that is related to Quick Plug CA's business or activities. This right of use granted to Quick Plug CA also comprises the right to grant such a right of use to potential buyers or to other third parties with whom Quick Plug CA maintains a relationship in connection with the performance of its business.

16.2 The Supplier warrants that the use (including the re-sale) of goods that the Supplier delivered or services that the Supplier rendered will not infringe any intellectual property rights or other rights of third parties.

16.3 The Supplier agrees to indemnify, defend and save harmless Quick Plug CA against any third-party claims that result from any infringement of the rights mentioned in Article 16.2 of these general terms and conditions of purchase.

16.4 All drawings, materials and other auxiliary materials that Quick Plug CA provided or which the Supplier produced or purchased at Quick Plug CA's expense are the property of Quick Plug CA and can be immediately claimed by Quick Plug CA at all times. The Supplier will manage all these auxiliary materials and keep them in good condition at its own expense and risk. The Supplier will not use these auxiliary materials for or allow them to be used by third parties, unless Quick Plug CA has authorized the Supplier in writing for such purpose. Article 15 applies mutatis mutandis to all the auxiliary materials referred to in this Article 16.4.

16.5 All intellectual property rights regarding all materials, methods, data, drawings,

information, reports, know-how, inventions, trade secrets, improvements, techniques and other results, as well as related documentation, which arise in connection with or as the result of any relationship (including the Agreement) between Quick Plug CA and the Supplier will be exclusively held by Quick Plug CA from the time such rights are established. To the extent required, the Supplier hereby unconditionally transfers those intellectual property rights to Quick Plug CA; Quick Plug CA accepts this transfer. In the event that a deed or other formal transaction is required for the transfer or to enter the transfer in the relevant registers, the Supplier hereby agrees that it will render its unconditional cooperation for this, or hereby irrevocably authorizes Quick Plug CA to effectuate that transfer or the entry of such transfer (or other formal transaction), should the occasion arise.

16.6 In the event that the Supplier collects and records information in connection with the delivery of goods and/or services to and/or the performance of work for Quick Plug CA (hereinafter: the "Data"), these Data are designated as Confidential Information referred to in Article 15.1; the Supplier is required to maintain absolute confidentiality regarding such Data. At Quick Plug CA's initial request to this effect, the Data will be provided to Quick Plug CA; without Quick Plug CA's prior consent, the Data will not be shared with any party other than Quick Plug CA. The Supplier is not permitted to change, destroy or use the Data other than in conformance with this provision. To the extent that the Data are subject to any intellectual property rights, including but not limited to copyrights or database rights, the Supplier will transfer these rights to Quick Plug CA at Quick Plug CA's initial request to this effect.

Article 17. Indemnity

17.1 The Supplier agrees to defend, indemnify and save harmless Quick Plug CA and its agents or employees, against any and all costs, sustained or incurred which arises or results from (i) the breach by the Supplier of any representation, warranty or covenant of the Agreement, or (ii) any act or omission of the Supplier or any of its directors, officers, employees, agents, representatives or contractors.

17.2 Without limiting the scope of the provisions of Article 16.3, the Supplier agrees to indemnify, defend and save harmless Quick Plug CA and its agents or employees, against any and all

costs, claims against any and all costs, claims, or liabilities arising out of, resulting from, related to, or in connection with any third-party claims made against Quick Plug CA and its agents or employees in connection with the obligations of the Supplier under this Agreement.

17.3 The Supplier will take out adequate insurance or be adequately insured for the liability referred to in this Article 17; if requested, the Supplier will make the insurance policy available for inspection to Quick Plug CA. This insurance obligation also covers auxiliary materials that are involved in the performance of the Agreement in any way whatsoever.

17.4 Quick Plug CA is not liable for any damage suffered on the part of the Supplier, unless the damage is the result of intentional or willful recklessness on the part of Quick Plug CA's executive employees.

Article 18. Force majeure

18.1 Force majeure means any event or occurrence beyond the reasonable control of a party, including without limitation, acts of God, laws, orders, rules, regulations, acts and restraints of armies, militaries, enemies, terrorists, and governmental authorities; war, political and civil unrest or insurrection, embargos; outbreak of disease and quarantine; inclement weather including floods, tornados, hurricanes, tsunamis, earthquakes, volcanic eruptions and landslides; explosions and fire; delays or defaults in or caused by, and shortages of, power, water, facilities, goods, materials and supplies; breakdowns in or the loss of production; and non-availability of relevant markets and the state of the marketplace. Notwithstanding the above, force majeure on the part of the Supplier shall not include: shortage of personnel, strikes, default by third parties called in by the Supplier, breakdown of auxiliary materials, liquidity or solvency problems at the Supplier and government measures against the Supplier, and other events or occurrences within its reasonable control.

18.2 In the event that a party falls victim to force majeure, the fulfillment of the Agreement is fully or partially suspended for the duration of the force majeure period, without either party being required to compensate the other party on this account. In the event that the force majeure situation lasts longer than thirty (30) days, the other party is entitled to terminate the Agreement with immediate effect upon written notice,

without this giving rise to any right to compensation.

Article 19. Termination

19.1 Quick Plug CA may, at its sole discretion, terminate the Agreement, without any valid reason and without incurring any penalty or other obligation to the Supplier, upon providing the Supplier with 3 calendar months notice.

19.2 Quick Plug CA is entitled to suspend, withdraw, dissolve or terminate any Agreement with the Supplier with the Supplier with immediate effect, without judicial intervention, without being required to pay the Supplier any damages in the event that:

- (i) the Supplier fails to fulfill one or more obligations under the Agreement and the failure has not been cured within 30 days of written notice of that failure having been given by Quick Plug CA to the Supplier.
- (ii) the Supplier becomes insolvent, makes an assignment for the benefit of creditors or is the subject of any proceeding under any bankruptcy and/or insolvency law;
- (iii) the Supplier winds up, dissolves or takes steps to do so or otherwise ceases to function as a going concern;
- (iv) a receiver or other custodian (interim or permanent) of any of the assets of the Supplier is appointed by private instrument or by court order or if any execution or other similar process of any court becomes enforceable against the Supplier or its assets or if distress is made against any of the Supplier's assets;
- (v) a person or entity other than the Supplier's parent company on the date of the Agreement (A) has become the holder of more than 50% of the shares in the Supplier's share capital, or (B) can exercise more than 50% of the voting rights in the Supplier's general meeting, whether or not by virtue of an agreement with other parties entitled to vote;
- (vi) the permits required for the Supplier's business activities are revoked or the terms and conditions of such permits are changed, as a result of which the Supplier can no longer continue its business activities in the manner agreed upon; or
- (vii) the Supplier transfers its rights and obligations under an Agreement to a third party without Quick Plug CA's prior written consent.

19.3 All claims that Quick Plug CA has or may acquire against the Supplier in the events mentioned in Article 19 above will be immediately due and payable in full.

Article 20. Assignment

20.1 The Supplier shall not transfer all or part of the rights and obligations that arise to the Supplier under the Agreement to a third party without Quick Plug CA's prior written consent.

20.2 The Supplier shall not contract out the fulfillment of all or part of its obligations under the Agreement to third parties without Quick Plug CA's prior written consent.

Article 21. Invalidity of one or more provisions

21.1 Each provision of the Agreement is distinct and severable. The invalidity of one of the provision of the Agreement does not affect the validity of the other provisions of the Agreement.

21.2 If and to the extent that a provision of the Agreement is invalid, a provision will apply between the parties whose objective corresponds to the original provision to the extent possible and is acceptable, taking all circumstances into account.

Article 22. Applicable law and Jurisdiction

22.1 This Agreement and all amendments, modifications, alterations or supplements hereto, and all rights of the parties hereunder shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario, Canada and the laws of Canada applicable therein, without regard to its principles of conflicts of law; applicability of the Vienna Sales Convention is excluded.

22.2 All disputes arising out of or in connection with the Agreement, or in respect of any legal relationship associated with or derived from the Agreement, shall be referred exclusively to the jurisdiction of the courts of the Province of Ontario.

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