

## **TERMS AND CONDITIONS FOR PURCHASE OF CHARGERS FOR ELECTRIC VEHICLES**

These Term and Conditions For Purchase of Chargers for Electric Vehicles (“**Agreement**”) are agreed to by the parties on the date on which the applicable Quote (defined below) is signed by the Customer.

### **1. DEFINITIONS**

- a. “**Charger**” means Proterra’s charging system(s) produced by Proterra to charge Customer’s electric vehicles, more fully described in the Quote.
- b. “**Commission(ing)**” means the process to verify the connection and functionality of the Charger following installation.
- c. “**Contract Price**” means the total amount Customer shall pay Proterra for the Chargers as specified in the Quote.
- d. “**Customer**” mans the name of the corporate entity executing the Quote.
- e. “**Delivery Date**” means the date specified for delivery of the Chargers in the Quote.
- f. “**Delivery Site**” means the location for delivery of the Chargers as specified in the Quote.
- g. “**Effective Date**” means the date that Customer signs the Quote.
- h. “**Proterra**” means Proterra Operating Company, Inc.
- i. “**Specifications**” means the written description of the materials, equipment, systems, and standards for the performance of the Chargers, as provided by Proterra.
- j. “**Quote**” means the offer to sell Chargers made by Proterra to Customer, which Customer may accept by signing.

### **2. AGREEMENT TO PURCHASE**

Customer agrees to purchase from Proterra, and Proterra agrees to sell and supply to the Customer, in accordance with the terms of this Agreement, Chargers, and any related services and support as specified in this Agreement, for the total Contract Price set forth in the Quote.

### **3. DELIVERY, COMMISSIONING**

Proterra shall deliver the Chargers to the Delivery Site by the Delivery Date as described in each Quote, using Proterra’s standard methods for packaging and shipping chargers. Customer will ensure that the Delivery Site is convenient and properly prepared for delivery of the Chargers. Unless Customer notifies Proterra in writing within five (5) days of Delivery of any physical damage or failure of the Chargers to conform with the Specifications (“Nonconforming Chargers”), Customer will be deemed to have accepted the Chargers after five (5) business day

following delivery of the Chargers. If Proterra determines that the Chargers are Nonconforming Chargers, at its sole discretion, Proterra shall either (i) repair such Nonconforming Chargers, or (ii) replace such Nonconforming Chargers with conforming Chargers.

Proterra, or a Proterra approved third-party, will Commission the Chargers at or near the Delivery Site as soon as practicable but in no event later than thirty (30) days following the Delivery Date, provided that Customer at its discretion may request a later Commissioning date to accommodate delays beyond its reasonable control such as utility, site host, weather or permitting delays. Proterra shall deliver to Customer written notice confirming the date of successful Commissioning.

#### **4. TITLE AND RISK OF LOSS OF CHARGERS**

Title and risk of loss of the Chargers shall pass to Customer upon delivery of the Chargers to Delivery Site.

#### **5. WARRANTY**

- a. The manufacturer's warranty for the Charger(s) shall be provided with the Quote. (the "**Charger Warranty**"). If Customer detects a defect in a Charger within the Charger Warranty period, the Customer shall immediately notify Proterra and Proterra or a Proterra designated third party agent, shall promptly conduct an inspection of the Charger. Proterra may determine, within its sole discretion, whether a component should be repaired or replaced. In the event a Charger or Charger component is replaced, Proterra shall retain ownership of any such Chargers or components replaced under the Charger Warranty.
- b. In order to maintain warranty coverage, Chargers should be stored indoors upon delivery and prior to installation. Damage to Chargers occurring prior to installation due to outdoor storage will void the Charger Warranty.
- c. **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY STATED HEREIN, PROTERRA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND PROTERRA SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **6. CHARGER INSTALLATION BY CUSTOMER**

The manufacturer's installation manual (the "Installation Manual") for the applicable Chargers

will be provided by Proterra to Customer. Customer shall install the Chargers in accordance with the Installation Manual. Customer's failure to install the Chargers in accordance with the Installation Manual will cause the Charger Warranty to be voided and relieve Proterra of any indemnification obligations hereunder. Following Customer's completion of installation work and prior to scheduling of a Commission date, Proterra may request information from Customer to verify the Chargers have been installed in accordance with the Installation Manual.

#### **7. SUBCONTRACTING**

Proterra shall be responsible for the performance of all subcontractors that Proterra contracts with to furnish or supply services, labor, subsystems, components, or materials under this Agreement.

#### **8. PAYMENT TERMS**

Unless otherwise specified in the Quote, Proterra shall submit an invoice for the Chargers upon delivery thereof and Customer shall make payment within thirty (30) days of receipt of the invoice.

#### **9. TAXES**

Customer shall be responsible for any federal, state and local sales, use, excise, ad valorem, value-added, and other similar taxes and duties ("**Taxes**") imposed on the provision of the Chargers. Proterra shall separately itemize on the applicable invoice to Customer all taxes that are Customer's responsibility and which Proterra has the legal obligation to collect. If Customer has a tax exemption, Customer must provide Proterra the exemption certification that evidences such status as required by local, state or federal law.

#### **10. INDEMNIFICATION**

Each Party ("**Indemnified Party**") shall indemnify and defend the other Party, and its officers, directors and employees ("**Indemnified Parties**"), against any damages, liabilities, claims, actions, judgments, settlements, or fines, that are incurred by Indemnified Parties, to the extent that the same arise out of or are caused by the Indemnified Party's material breach of this Agreement; gross negligence or willful misconduct in connection with its performance of this Agreement; or its failure to comply with any applicable federal, state or local laws.

#### **11. TERMINATION**

A Party may terminate this Agreement at any time in the event of a material breach of the other Party's obligations hereunder and such other Party's failure to cure such breach within thirty (30) days after receiving written specific notice of the breach being asserted.

#### **12. CONFIDENTIALITY**

During the performance of this Agreement, it may be necessary for either Party (the “**Discloser**”) to make confidential information (“**Confidential Information**”) available to the other Party (the “**Recipient**”). The Recipient agrees to use all such Confidential Information solely for the performance under this Agreement and to hold all such Confidential Information in confidence and not to disclose the same to any third party without the prior written consent of the Discloser. The Recipient shall employ sound business practices no less diligent than those used for Recipient’s own confidential information to protect the confidence of all Confidential Information.

### **13. INTELLECTUAL PROPERTY**

Proterra shall retain ownership of (1) any patents, (2) inventions, discoveries (whether patentable or not, and in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data, (3) copyrights, copyright registrations, and applications therefor in the United States and anywhere in the world, and (4) any other proprietary rights, in or to the technology associated with the Chargers supplied to the Customer under this Agreement (collectively, the “**Intellectual Property**”). Any modifications or alterations to Proterra’s Intellectual Property made by Proterra in the performance of this Agreement shall be owned by Proterra. Intellectual Property shall be deemed Proterra’s Confidential Information.

Proterra hereby grants to the Customer a royalty-free, paid-up, non-exclusive, non-transferable license to use the Intellectual Property solely for purposes of operation and maintenance of the Chargers supplied under this Agreement. Except as expressly provided herein, the Customer shall not, and shall not allow any third party, to use the Intellectual Property for any commercial, design, or manufacturing purpose.

### **14. LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF

CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE CONTRACT PRICE.

## **15. GENERAL**

### **a. Governing Law**

The Agreement shall be governed by California law and the parties agree to subject themselves to the jurisdiction and process of the courts of the State of California or federal courts located in the Northern District of California as to all matters and disputes in connection with or arising under this Agreement.

### **b. Force Majeure**

Proterra shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond Proterra's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) action by any Governmental Authority; (f) national or regional emergency; (g) strikes, labor stoppages, or slowdowns or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) epidemics and pandemics (each a "Force Majeure Event").

### **c. Assignment; Change in Ownership or Control**

Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Proterra. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

### **d. Waiver of Terms and Conditions**

The failure of the either Party to enforce one or more of the terms of this Agreement or to exercise any of its rights or privileges hereunder, or the waiver by a Party of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

### **e. Amendments**

This Agreement and the Quote may only be amended or modified by written agreement duly executed by Proterra and the Customer.

**f. Data Ownership**

Proterra shall own all data produced by the Chargers. Proterra agrees to provide access to any data that may be reasonably required to satisfy the requirements of any grants or other sources of funding used to purchase the Chargers by the Customer at an interval of no more frequently than once per month.

**g. Entire Agreement**

This Agreement constitutes and contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to such subject matter. These terms shall prevail over any of Customer's general terms and conditions of purchase. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Agreement.