



TROJAN BATTERY, LLC DEALER PORTAL ACCESS AGREEMENT

This Dealer Portal Access Agreement (this “Agreement”), dated as of the date (the “Effective Date”) that a representative of Dealer (as defined below) clicks on “I have read and agree to the Dealer Portal Access Agreement”, by and between Trojan Battery, LLC (“Trojan”) and each of the other parties hereto (each individually referred to herein as “Dealer”), sets forth the terms and conditions for the use of the Trojanex system (the “System”) and the purchase of Trojan products via the System. In no way limiting the foregoing, the “System” shall include Trojan Lithium Direct Online, accessible as subscribed to or licensed by Dealer (as such terms are defined in paragraph 1(b) below). Unless otherwise noted, references to this “Agreement” shall mean this Agreement and Exhibit A, as amended or supplemented from time to time by any Addenda (as defined below).

WHEREAS, Trojan owns and operates the System to provide its dealership customers with Internet-based access to such selected Trojan products and services as may be offered by Trojan and purchased by such dealership customers from time to time in accordance with this Agreement, including any addenda, schedules and exhibits hereto entered into between Trojan and Dealer (any such addendum, schedule or exhibit, individually an “Addendum”, and collectively, “Addenda”); and

WHEREAS, Dealer has requested to access the System in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. THE SYSTEM

(a) License Granted by Trojan

Trojan hereby agrees to provide Dealer with use of the System under a nonexclusive, nontransferable, revocable license during the term of this Agreement, in accordance with and subject to the terms of this Agreement.

(b) Access to the System; Dealer Authorized User(s)

Dealer’s use of the System (the “Base System”) is currently available free of charge to Dealer and all other dealer subscribers via the website located at the web address : <https://direct.trojanbattery.com/> (the “Trojan Website”).

To obtain access to the System, Dealer must designate one or more persons to act as a “Dealer Authorized User.” The person clicking “I Accept” to this Agreement hereby represents, warrants and covenants on behalf of Dealer and such person that they have been designated as a Dealer Authorized User. Subject to the remainder of this Section 1(B), the Dealer Authorized User(s) will be the only person(s) authorized by Dealer to: (i) grant, modify and revoke access to the System for any other Dealer personnel authorized to conduct transactions on and via the System (each referred to herein as a “User,” which shall also include the Dealer Authorized User(s)), and (ii) designate the level of access that each User shall have to the System, as such access levels are established by Trojan from time to time. Dealer represents, warrants and covenants that the Dealer Authorized User(s) shall be duly authorized to bind Dealer with respect to this Agreement and any Addendum or other amendment or modifications to this Agreement. Upon input of such information regarding each Dealer Authorized User as Trojan may require, Trojan will notify such Dealer Authorized User that it has been granted access to the System via a website notification or notification sent to the e-mail address provided by the Dealer Authorized User. The Dealer Authorized User will then be able to grant, modify or revoke access to the System for other Users. Trojan will then: (i) add each new User to the System, and (ii) assign each new User a unique user identification (“User ID”) and an Initial Temporary Password (defined below) to access the System.

Dealer acknowledges that its Dealer Authorized User(s) and not Trojan are solely responsible for monitoring and controlling each User’s access to and use of the System in accordance with the terms and conditions of this Agreement, the Terms and Conditions of Use (the “Terms of Use”) set forth on the Trojan Website and applicable law, and to ensure that there is no unauthorized access to the System. The Dealer Authorized User(s) will be solely responsible



for the revocation of any User's authorization to access the System. Trojan may from time to time, at its option, and without prior notice to Dealer, change the process through which access may be granted to the System.

Dealer agrees that if at any time a User designated as a Dealer Authorized User is no longer authorized by Dealer to perform the functions of a Dealer Authorized User as described herein, Dealer will promptly notify Trojan. Dealer agrees to maintain an active Dealer Authorized User throughout the term of this Agreement. Dealer hereby authorizes Trojan to designate one or more Users as a Dealer Authorized User if Dealer fails to maintain an active Dealer Authorized User. For purposes of this paragraph, a Dealer Authorized User shall be considered "active" at a particular point in time if he or she: (i) is authorized by Dealer to perform the functions of a Dealer Authorized User at such time and (ii) has accessed the System within the previous three months.

(c) **Password; Security**

The "Password" is a unique identification code granting each User access to the System. In accordance with Section 1(b) above, Trojan will assign to every new User a temporary password (an "Initial Temporary Password") in addition to a User ID consisting of the User's email address. The first time that a new User logs onto the System the User will be required to change his/her Initial Temporary Password to a more individualized Password. Trojan may, at its option, change the password parameters without prior notice to any User, and if it does so, each User may be required to change its Password the next time such User enters the System. Dealer agrees to instruct all Users not to disclose their Passwords to anyone and to use the System in accordance with this Agreement, the Terms of Use, and all applicable law. Dealer acknowledges that Dealer, through its Dealer Authorized User(s) and each other User, shall be solely responsible for preserving the confidentiality of each User's Password and will immediately notify Trojan of any known or suspected unauthorized use of a Password or unauthorized access of the System. In addition, Dealer agrees to comply with all reasonable security measures that Trojan may from time to time specify to Dealer.

(d) **License Granted by Dealer; Trojan Privacy Policy**

Dealer hereby grants Trojan a worldwide, nonexclusive, royalty-free license to use, reproduce, distribute, transmit, disclose, display, modify and create derivative works of the content, data, information and other materials it submits and/or receives via the System (the "Dealer Data") and to authorize others to exercise the foregoing rights. Dealer agrees that all Dealer Data is governed by the [Trojan Privacy Policy](#), and Dealer consents to all actions Trojan takes with respect to Dealer Data consistent with our Privacy Policy. Notwithstanding anything to the contrary in this Section 1(d), Trojan will not disclose or use identifiable nonpublic personal information contained in the Dealer Data other than as may be permitted or required by applicable law.

(e) **Proprietary Rights**

Except for the limited license to use the System set forth herein, Trojan (and/or any third party providers of any components of, or integration for, the System, as applicable) shall own all worldwide right, title and interest in and to any applications made available hereunder, the System, and to any modifications, updates, upgrades, copies, derivative works, augmentations or customizations of the applications or the System, whether created by the Dealer or at Dealer's suggestion or request, or otherwise, including all worldwide intellectual property rights to the same, including, without limitation, all United States, Canadian and worldwide patents, patent applications, copyrights, trademarks, service marks, trade secrets, rights of publicity and other proprietary rights (collectively, the "Trojan Proprietary Information"). Dealer hereby assigns to Trojan any and all right, title and interest that may be conferred upon Dealer in any Trojan Proprietary Information. Dealer will execute such documents as may be deemed reasonably necessary to effect such assignment. All rights not expressly granted to Dealer herein are reserved to Trojan (and/or any third-party providers of any components of, or integration for, the System, as applicable).

2. **COMPUTER EQUIPMENT; BROWSER ACCESS; INTEGRATION WITH DEALER MANAGEMENT SYSTEM; AGREEMENTS WITH THIRD PARTIES**

(a) **Installation, Maintenance and Operation of Equipment**



Dealer acknowledges that use of the System depends on Dealer's provision of the appropriate hardware and software as set forth herein, or such other hardware or software as Trojan may require from time to time (collectively, the "Operating Environment"). Dealer shall be responsible for (i) all fees imposed by a telephone or Internet service provider in connection with its access and use of the System and (ii) the cost of procuring and maintaining the Operating Environment. Dealer agrees that Dealer will utilize a reputable antivirus software program on Dealer's equipment and that Dealer will update such antivirus software periodically in accordance with a commercially reasonable schedule.

(b) **Browser Access**

By utilizing an encrypted browser, each of Dealer's Users may access the System via the Internet. Dealer is responsible for obtaining a browser that satisfies the System browser requirements, as may be modified by Trojan from time to time. Dealer further agrees not to attempt to access the System via such browser from outside the United States. Dealer acknowledges that Dealer's use of any browser may also be subject to the license agreements of the browser manufacturer, in addition to the terms and conditions of this Agreement.

If Dealer utilizes a browser to access the System via the Internet, Dealer is additionally responsible for obtaining Internet services via the Internet service provider of Dealer's choice, for any and all fees imposed by such Internet service provider and any communications service provider charges associated therewith. Dealer acknowledges that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet and Dealer hereby expressly assumes such risks (to the extent applicable law allows Dealer to do so). Dealer acknowledges that Dealer has requested access to the System for Dealer's convenience, has made Dealer's own independent assessment of the adequacy of the Internet as a delivery mechanism for accessing information and initiating instructions and that Dealer is satisfied therewith.

3. **NEW SERVICES**

Trojan may, from time to time, introduce new services to the System or modify or delete existing services. Trojan shall notify Dealer of any of these changes to services. By using any new or modified services when they become available, Dealer agrees to be bound by the rules concerning these services. Copies of such rules will be made available to Dealer at Dealer's request or will be sent to Dealer if Trojan is required by applicable law to automatically provide Dealer with such rules.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Dealer represents, warrants and covenants to Trojan that:

- (a) Dealer is an entity, duly organized, validly existing and in good standing under the laws of the state of its organization, as applicable, and Dealer is duly licensed or qualified, in good standing, and authorized to do business in all other jurisdictions where the nature of Dealer's activities makes such licensing or qualification necessary.
- (b) Dealer has the power and authority to (i) own its properties and assets, (ii) engage in and transact the business in which Dealer presently engages and proposes to engage pursuant to this Agreement, (iii) enter into this Agreement and (iv) do all things necessary to the proper performance of this Agreement.
- (c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Dealer.
- (d) This Agreement constitutes the legal, valid and binding obligation of Dealer, enforceable against Dealer in accordance with its terms.
- (e) Dealer is not required to obtain the consent of any other person, or any consent, license, approval or authorization, registration or declaration from any governmental authority, bureau or agency in connection with the execution, delivery or performance of this Agreement.



Dealer, on its behalf and on behalf of each of its Users, represents, warrants and covenants to Trojan as follows:

- (a) That it will comply at all times with all applicable federal, state, and local laws, rules and regulations.
- (b) Except for the disclosures specifically designated by Trojan as available to Dealer's customers, it will not show or display to any of its customers or any other third party, in printed form or in any other manner, any information on or related to the System.
- (c) That it will not use the System for any purpose which is improper or which violates this Agreement, the Terms of Use or any applicable federal, state, provincial or local law, rule or regulation.
- (d) That it will not, nor will it permit any other person, corporation or entity, without the prior written permission of Trojan, to: (i) copy or duplicate the System or any part thereof; (ii) create the source program and/or object program or code associated with any software component of the System; (iii) decompile, disassemble or reverse engineer any software component of the System; (iv) modify, alter or delete any of the copyright notices embedded in or affixed to the copies of any components of the System or any report or document generated therefrom; or (v) export any application provided hereunder or any portion of the System.
- (e) That any transmission of data from its computer equipment or system will be free from (i) intentionally injurious instructions (e.g. "viruses") that are designed to modify, damage, delete or disable the System, or (ii) any hidden passwords that permit unauthorized access to the data or the System by Dealer or any third party.
- (f) That the transmission of any data shall contain no embedded code that could trigger, shut down or disable the System upon the occurrence of any time related event or other event.
- (g) That it will not use the System, including, without limitation, any electronic communication feature thereof, for any purpose that is unlawful, abusive, harassing, libelous, defamatory, obscene or threatening.
- (h) That it has obtained and will continue to obtain and maintain all necessary licenses, releases and consents to grant and/or exercise the rights and licenses set forth herein.

5. **CONFIDENTIALITY**

Dealer agrees to and to cause its parent, subsidiaries, affiliates and employees, agents and independent contractors, including, but not limited to, all Users to, keep confidential any and all proprietary information of Trojan acquired in connection with this Agreement (including, without limitation, the Trojan Proprietary Information), and not publish or disclose in any manner whatsoever such proprietary information to any other person nor use such proprietary information except as expressly set forth herein. Any proprietary information of Trojan shall remain the property of Trojan and shall not in any manner be deemed licensed or transferred to Dealer. Dealer agrees that any proprietary information supplied to Dealer and/or its parent, subsidiaries, affiliates, employees, agents or independent contractors, including, but not limited to Users, by Trojan under this Agreement, or acquired by the activities contemplated by this Agreement shall, at Trojan's request, be returned to Trojan upon the termination of this Agreement. Dealer acknowledges and agrees that: (a) irreparable injury will result to Trojan in the event of breach by Dealer of this obligation of confidentiality, (b) Trojan's remedy at law for such breach is inadequate, (c) Trojan, in addition to any money damages for any such breach, shall be entitled to temporary and permanent injunctive relief without the necessity of proving damages and (d) that Trojan shall not be required to post bond as a condition of such relief.

6. **INDEMNIFICATION**

In addition to any other rights or remedies contained herein, Dealer shall defend, indemnify and hold harmless Trojan, and its parent, affiliates, agents, employees and independent contractors (including, without limitation, all third party providers to Trojan and/or Dealer of any components of, or integration for, the System) from and against any and all losses, liabilities, claims, counterclaims, damages, costs or expenses (including reasonable attorneys' fees and court costs), whether asserted in a



judicial or administrative proceeding, arising out of or relating to: (i) a breach by Dealer or any of its Users of any of the terms of this Agreement, the Terms of Use or applicable law; or (ii) Dealer's or any of its Users' negligence, omission or misconduct in connection with the performance of any other obligations under this Agreement.

7. **OTHER AGREEMENTS**

In addition to this Agreement, Dealer agrees to be bound by and comply with such other written requirements, terms and conditions, rules and regulations (including those transmitted by facsimile, via e-mail or posted on the System or Trojan's website) as Trojan may furnish to Dealer in connection with either the System, product information accessed via the System, or products purchased via the system, including but not limited to the Trojan Terms and Conditions of Online Sale which are incorporated into this Agreement and attached hereto as Exhibit A.

8. **TERM; TERMINATION; SURVIVAL**

The term of this Agreement begins on the Effective Date and continues until terminated as provided herein. Trojan reserves the right to terminate this Agreement and the services covered hereby, in whole or in part, at any time without prior notice to Dealer. Trojan or its suppliers may discontinue or make changes in the information, products or services described herein at any time. Trojan reserves the right to terminate any or all web offerings without prior notice to Dealer and without obligation or liability.

Dealer may terminate this Agreement by providing written notice to Trojan. Termination of this Agreement by Dealer will not relieve Dealer of any obligations under Trojan's Terms and Conditions of Sale and Resale, including but not limited to obligations of payment for Trojan products ordered and/or received by Dealer.

Sections 5, 6, 7, 9, 10, 11, 13, 14, and 16 shall survive the termination of this Agreement.

9. **ALTERATIONS AND AMENDMENTS**

The terms of this Agreement and other documentation and requirements associated with the System may be altered or amended by Trojan. In such event, Trojan shall send notice to Dealer or its Dealer Authorized User via the System, via e-mail or such other address as may appear on Trojan records if Trojan is required by applicable law to provide such notice in such manner. Any use of the System after Trojan sends Dealer or its Dealer Authorized User a notice of such change will signify Dealer's agreement to the change. Trojan's records, kept in the ordinary course of business, shall be presumed to accurately reflect the contents of Dealer's instructions to Trojan and, in the absence of manifest error, will be binding and conclusive.

10. **GOVERNING LAW**

Any disputes arising from or related to the System shall be governed by the laws of the State of Delaware (without reference to the conflict of law rules thereof). With respect to any litigation arising out of or relating to this Agreement, each party agrees that it shall be filed in and heard by the state, provincial or federal courts with jurisdiction to hear such suits located in Montgomery County, Pennsylvania. Notwithstanding the foregoing, Trojan may apply for injunctive relief in any court of competent jurisdiction.

11. **ASSIGNMENT**

Trojan may assign this Agreement. Trojan may also assign or delegate certain of its rights and responsibilities under this Agreement to independent contractors or other third parties. Dealer may not assign this Agreement or any of its rights, responsibilities or obligations under this Agreement, without the prior written consent of Trojan.

12. **DATA RECORDING**

The Dealer Data, e-mail messages, and other information Dealer or any of its Users enter on the System and/or their use of the



System will create an electronic record of such data, use, information and communication. By using the System, Dealer, on behalf of itself and each of its Users and customers, consents to such recording.

13. **COOKIES**

We do not sell your personal information to third parties for money. However, we do use third-party analytical cookies and related technologies. To prevent cookie usage, you may select your cookie preferences and opt-out of non-essential cookies using the pop-cookie Cookie Banner that appears each time you access our site. Otherwise, you may change the cookie settings of your internet browser in your browser's "privacy settings" page to prevent or block all cookies. Cookie preferences may be stored through a cookie. You may be required to re-submit your opt-out request in the event that you visit our website from another browser or device or reset or delete your cookies.

14. **CALIFORNIA RESIDENTS**

Trojan collects, uses, shares, discloses, retains, and secures the personal information we gather about you through our websites and when you interact with us as a customer or otherwise (collectively, the "Services"). Reference our [California Privacy Notice](#) for personally identifiable information we may collect, how we may use it, with whom it may be shared or disclosed, and a description of your rights under the California Privacy Rights Act.

15. **COPYRIGHT NOTICES**

The works of authorship contained in the System including, but not limited to, all design, text, sound recordings, and images, are owned by Trojan or third party providers. Except as otherwise expressly stated herein, they may not be copied, transmitted, displayed, performed, distributed (for compensation or otherwise), licensed, altered, framed, stored for subsequent use or otherwise used in whole or in part in any manner without Trojan's prior written consent, except to the extent permitted by the Copyright Act of 1976 (17 U.S.C. § 107), as each is amended and applicable to Dealer, and then, only with notices of Trojan's proprietary rights.

16. **TRADEMARK NOTICES**

"Trojan" and other associated trademarks, trade names, logos, and associated materials and documentation used by Trojan to describe and promote the products provided by Trojan (the "Trojan Trademarks") are the exclusive property of Trojan. Other featured words or symbols, used to identify the source of goods and services provided by third parties, are the trademarks of their respective owners.

Trojan hereby grants to Dealer a revocable, non-exclusive, non-transferable license, without the right to divide or sublicense, to use Trojan Trademarks as incorporated in advertising and promotional materials solely to promote Dealer's resale of Trojan products. Dealer shall use its best efforts to use the Trojan Trademarks in a professional manner in order to preserve and enhance Trojan's substantial goodwill associated with the Trojan brand. Dealer shall comply with all trademark usage guidelines issued by Trojan from time to time via the System or otherwise. Dealer will not use any Trojan trademark as a corporate, business entity, or domain name, and will not use any name in such capacity that is confusingly similar to the Trojan Trademarks. Dealer shall not modify or otherwise alter any of the Trojan Trademarks in conjunction with its use of the Trojan Trademarks.

17. **WEB CONTENT AND PRODUCT AVAILABILITY**

The information and materials contained in the Trojan Website and the System and the Terms of Use of such information and materials are subject to change without notice. Not all products are available in all geographic areas. Dealer's eligibility for particular products is subject to final Trojan determination, acceptance, and order acknowledgement.

18. **NO WARRANTIES; LIMITATION OF LIABILITY**

NEITHER TROJAN NOR ANY THIRD PARTY PROVIDER OF ANY COMPONENTS OF, OR INTEGRATION FOR, THE SYSTEM IS RESPONSIBLE FOR ANY ERRORS IN OR OMISSIONS FROM THE INFORMATION CONTAINED



IN OR ACCESSED THROUGH, OR RESULTS OBTAINED FROM, THE SYSTEM. ALL SUCH INFORMATION AND RESULTS ARE PROVIDED "AS IS" TO DEALER WITHOUT EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES AND CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. ALL WARRANTIES AND CONDITIONS IMPLIED BY LEGISLATION ARE HEREBY DISCLAIMED BY TROJAN, FOR ITSELF AND ON BEHALF OF EACH SUCH THIRD PARTY PROVIDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TROJAN DISCLAIMS (FOR ITSELF AND ON BEHALF OF EACH SUCH THIRD PARTY PROVIDER) ANY REPRESENTATION OR WARRANTY THAT THE SYSTEM (I) WILL PERFORM WITHOUT INTERRUPTION OR BE ERROR-FREE OR (II) MEETS DEALER'S REQUIREMENTS. FURTHERMORE, NEITHER TROJAN NOR ANY SUCH THIRD PARTY PROVIDER WILL BE LIABLE FOR ANY DELAY, DIFFICULTY IN USE (INCLUDING, WITHOUT LIMITATION, DEALER'S ABILITY TO COMMUNICATE DATA TO FINANCIAL INSTITUTIONS AND OTHER FINANCING SOURCES), INACCURACY OF INFORMATION, COMPUTER VIRUSES, MALICIOUS CODE OR OTHER DEFECTS IN THE SYSTEM, OR FOR THE INCOMPATIBILITY BETWEEN THE SYSTEM AND THE DEALER'S BROWSER OR OTHER SITE ACCESSING PROGRAM. TROJAN AND SUCH THIRD PARTY PROVIDERS WILL ALSO NOT BE LIABLE FOR ANY OTHER PROBLEMS EXPERIENCED BY DEALER. NO LICENSE TO DEALER IS IMPLIED IN THESE DISCLAIMERS.

EXCEPT AS MAY BE OTHERWISE EXPRESSLY PROVIDED BY WRITTEN AGREEMENT BETWEEN TROJAN AND DEALER, NEITHER TROJAN NOR ANY SUCH THIRD PARTY PROVIDER WILL HAVE ANY TORT, CONTRACT OR ANY OTHER LIABILITY TO DEALER AND/OR ANY THIRD PARTY ARISING IN CONNECTION WITH ACCESS TO OR USE OF (OR INABILITY TO USE) THE SYSTEM, OR RELIANCE ON ANY INFORMATION, RESULTS OR SERVICES PROVIDED BY THE SYSTEM. NEITHER TROJAN NOR ANY SUCH THIRD PARTY PROVIDER WILL UNDER ANY CIRCUMSTANCES BE LIABLE TO DEALER AND/OR ANY THIRD PARTY, REGARDLESS OF THE FORM OF ACTION, FOR ANY LOST PROFITS OR LOST OPPORTUNITY, OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER, EVEN IF TROJAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. **LINKS TO THIRD PARTY SITES**

The System may contain hyperlinks to other World Wide Web sites that are not operated by Trojan. Trojan does not control these websites and is not responsible for their contents, nor should the existence of such links be construed as an endorsement of the material appearing on such sites or as implying an association between Trojan and their operators. Such hyperlinks are provided for your reference only.

20. **GENERAL**

Each party shall remain an independent contractor with respect to the other, and nothing in this Agreement shall be construed to place the parties in the relationship of partners, principal and agent, employer/employee or joint ventures. Under no circumstance shall either party have the right or authority to enter into any contracts or assume any obligations for the other or to give any warranty to or make any representation on behalf of the other. This Agreement, including all schedules, Addenda, the Terms of Use, any additional terms published by Trojan, including Trojan's Terms and Conditions of Sale and Resale and any click-through agreements, constitutes the complete and exclusive agreement between the parties with respect to the subject matter of this Agreement, and supersedes any previous or contemporaneous negotiations, proposals, understandings, and all oral and written agreements between the parties relating to the subject matter of this Agreement. No verbal statement of a Trojan employee shall affect the rights, obligations or warranties of the parties hereunder. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, invalid or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and, in any event, the remaining provisions of this Agreement shall remain in full force and effect. No failure or delay by either party in exercising any right, power, or remedy under this Agreement and its schedules shall operate as a waiver of any such right, power or remedy.



EXHIBIT A

Trojan Battery Company, LLC Standard Terms & Conditions of Online Sale

THESE TERMS AND CONDITIONS OF ONLINE SALE (THESE “**TERMS**”) SET FORTH THE TERMS ON WHICH YOU HAVE AGREED TO PURCHASE, AND TROJAN BATTERY COMPANY, LLC. (“**SELLER**”) HAS AGREED TO SUPPLY, THE GOODS, AS DEFINED BELOW, IN EACH ORDER YOU SUBMIT AND SELLER ACCEPTS ONLINE VIA : <https://direct.trojanbattery.com/> (THE “**SITE**”). THESE TERMS TAKE EFFECT WHEN YOU CLICK “PAY NOW” (THE “EFFECTIVE DATE”). THESE TERMS AND CONDITIONS ARE INCORPORATED INTO THE TROJAN BATTERY COMPANY, LLC DEALER PORTAL ACCESS AGREEMENT.

BY CLICKING “PAY NOW”, YOU AGREE THAT SUCH ACTION HAS THE SAME LEGAL EFFECT AS SIGNING A PAPER VERSION OF THESE TERMS, AND YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS.

IMPORTANT NOTICE REGARDING AMENDMENTS: THESE TERMS MAY BE AMENDED FROM TIME TO TIME WITHOUT YOUR CONSENT, AND THE AMENDED TERMS WILL BE EFFECTIVE WHEN POSTED ON THE SITE. SELLER WILL PROVIDE YOU WITH ADVANCE NOTICE OF ANY SUCH AMENDMENT AS, AND IF, REQUIRED BY LAW, SUCH AS WHEN SELLER DEEMS ANY SUCH CHANGE TO BE MATERIAL. EXCEPT AS PROVIDED IN THESE TERMS, IT IS YOUR RESPONSIBILITY TO CHECK THE SITE FOR UPDATES TO THESE TERMS. BY CONTINUING TO USE THE SITE AND PURCHASING GOODS FOLLOWING ANY AMENDMENT TO THESE TERMS, YOU AGREE TO BE BOUND BY ALL SUCH AMENDMENTS.

1. Definitions:

- a. “**Buyer**” shall mean the person or entity that purchased the Goods from the Seller.
- b. “**Days**” shall mean calendar days, unless otherwise specified herein; *provided, however*, if the final calendar day of any period falls on a Saturday, Sunday, or federal holiday, then such period shall be extended to include the next weekday that is not a federal holiday.
- c. “**Goods**” shall mean the products and related services (if applicable) that Buyer has either purchased or contracted to purchase from Seller.

2. Order and Order Acceptance: Buyer acknowledges and agrees that by placing an order through the Site by clicking or activating the button or hyperlink to submit an order, Buyer is placing a legally binding offer, which will become effective when accepted in writing by Seller (each such accepted order being referred to in these Terms as an “**Order**”). An order will be deemed accepted only when Seller sends an email or other writing to Buyer accepting the order. Seller’s confirmation on the Site that it has received an order or processed payment does not constitute acceptance. Each accepted Order will be deemed a separate agreement between the parties, governed by these Terms.

3. Prices: All prices, discounts, and promotions posted on the Site are subject to change without notice. The price charged for a product or service will be the price advertised on the Site at the time the order is placed, subject to the terms of any promotions or discounts that may be applicable. The price charged will be clearly stated in an order confirmation email. Price increases will only apply to orders placed after the time of the increase. Posted prices do not include taxes or charges for shipping and handling. Seller reserves the right to adjust final prices for all Goods at the time of shipment to the extent lead time is greater than 30 days at the time an Order is acknowledged and accepted.

4. Lead Adjustment: To the extent that any of the Goods contain lead, Seller reserves the right, at any time, to adjust the unit price of such Goods in the event of a material increase in the average price of lead, as published by the London Metals Exchange.



5. **Additional Charges:** Seller reserves the right to impose additional charges on Buyer in the event Buyer requests an extension or acceleration of a scheduled ship date or specifies special packaging or shipping and handling instructions.
6. **Limited Warranty:** Goods sold by Seller hereunder will be subject to the Seller's then-current warranty with respect to such Goods in effect as of the shipment date (the "Standard Warranty"). No other warranty terms shall apply. The Standard Warranty will not be applicable unless the affected Goods have been installed, maintained and operated under normal conditions and in accordance with the specifications provided with the Order and/or the Goods. In no event will the Seller be responsible for damage resulting from misuse, abuse, or improper storage or handling of any Good. The remedies set forth in the Standard Warranty shall be Buyer's sole and exclusive remedies with respect to any claim related thereto.

Notwithstanding anything to the contrary contained herein, the warranty on purchased items, assemblies or accessories that are provided or installed as a separate component shall not extend beyond the warranty made by the manufacturer of such component.

7. **DISCLAIMER OF OTHER WARRANTIES:** THE APPLICABLE STANDARD WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
8. **LIMITATION OF DAMAGES:** IN NO EVENT SHALL SELLER'S LIABILITY FOR ANY DAMAGES ARISING OUT OF THE SALE OF ANY OF THE GOODS HEREUNDER, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED, EXCEED THE AMOUNT THAT SELLER HAS BEEN PAID FOR SUCH GOODS UNDER THE APPLICABLE ORDER. UNDER NO CIRCUMSTANCES SHALL SELLER BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR CONTINGENT DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR GOODWILL.

FURTHER, TO THE EXTENT APPLICABLE, BUYER ACKNOWLEDGES ITS OBLIGATION TO INSTALL (OR HAVE INSTALLED) AND TO MAINTAIN (OR HAVE MAINTAINED) THE GOODS IN ACCORDANCE WITH ALL PROCEDURES AND GUIDELINES THEREFOR, IF ANY, PROVIDED BY SELLER AND/OR ITS AGENTS, CONTRACTORS AND SUBCONTRACTORS AND IN ANY EVENT IN ACCORDANCE WITH PRUDENT INDUSTRY PRACTICES. UNDER NO CIRCUMSTANCES SHALL SELLER BE SUBJECT TO, AND BUYER ASSUMES, ANY AND ALL LOSSES, DAMAGES, DEMANDS, CLAIMS OR LIABILITIES, ACTIONS, CAUSES OF ACTION, SUITS, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND DEFENSE COSTS) ARISING OUT OF OR RESULTING IN ANY WAY FROM THE NEGLIGENCE, IMPROPER INSTALLATION, APPLICATION, STORAGE, MAINTENANCE, COMBINATION WITH OTHER COMPONENTS OR OTHER MODIFICATION OR ALTERATION OR REPAIR BY BUYER OR ITS EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS OR SUBCONTRACTORS OF ANY OF THE GOODS.

9. **Product Liability:** Buyer acknowledges that the Seller has no control over, and is not responsible for, the manner in which the Goods will be used or otherwise dealt with by the Buyer. The Buyer therefore agrees to assume all responsibility for, and shall indemnify, defend and hold the Seller harmless from and against, any and all losses, liabilities, actions, claims, damages, demands and expenses (including without limitation attorneys' fees and court costs) (collectively, "Losses") arising out of or in any way connected with the installation, maintenance, use or operation of the Goods, or the design, construction or composition of any item or items made or handled by the Goods supplied hereunder, other than as set forth in Section 22 hereof.
10. **Claims for Errors in Shipment:** Upon delivery, Buyer agrees to promptly inspect the delivered Goods for conformity to Buyer's Order. Buyer shall have a period of thirty (30) Days from the date of Seller's delivery of the Goods to reject the Goods or otherwise notify Seller of any nonconformity of the Goods to Buyer's Order or any applicable packaging, shipping and handling or delivery specifications. If no such notice has been received by Seller within such 30-Day period, Buyer shall be deemed to have accepted the Goods and waived any claims (other than warranty and patent infringement claims which shall be unaffected) associated with conformity of the Goods to the Order and any delivery specifications.
11. **Returns:** Buyer must request and receive a return authorization number from Seller prior to returning any Goods to Seller for any reason. Seller shall have no obligation to accept return of any Goods for which it has not issued a return authorization number. All returned Goods must be returned to Seller at the location specified by Seller, transportation prepaid by Buyer, in either their original packaging or packaging that has been approved by Seller in advance. Custom Goods made to Buyer's specifications will not be accepted for return.



- 12. Delays:** Seller shall not, under any circumstances, be liable for any delay in or default of any of its obligations hereunder when such delay or default is directly or indirectly caused by, or in any manner arises out of, any cause beyond its reasonable control and not due to its gross negligence, including, without limitation, fire, flood, acts of God, war, embargo, acts of terrorism, labor actions, or supply chain disruptions.
- 13. Adequate Assurances:** In the event that either, (a) Buyer is determined to be insolvent; (b) Buyer is placed in receivership; (c) Buyer becomes the subject of any voluntary or involuntary bankruptcy petition; or (d) in the opinion of Seller, a material adverse deterioration in Buyer's financial condition has occurred, Seller may, in addition to any other remedies available at law or in equity, elect to require that Buyer provide adequate assurance of payment, including, without limitation, full or partial prepayment of the cost of any Goods for which Buyer has submitted an order.
- 14. Cancellation of Orders:** Buyer acknowledges and agrees that any Order accepted by Seller may not be modified or cancelled except with Seller's written consent and upon terms that will hold Seller harmless against all costs, expenses, losses and damages associated with such modification or cancellation, including restocking fees and/or other cancellation charges which shall take into account, among other things, anticipated profits, expenses incurred and commitments already made by Seller in connection with such Order. If shipments are delayed by Buyer, payment shall become due on the date when Seller is prepared to make shipment, unless otherwise agreed in writing by the Seller at the time of such delay. Goods held for the Buyer shall be held at Buyer's risk and expense.
- 15. Delivery Terms:** Buyer agrees that, except as may otherwise be specified in writing by Seller, delivery of the Goods shall be made F.O.B. shipping point (i.e., Seller's designated shipping facility). Title and risk of loss or damage to the Goods shall pass from Seller to Buyer at the shipping point upon delivery to the carrier. Buyer assumes full responsibility for resolving any claims with the carrier or its insurance provider in the event of misdelivery, loss or damage, including those cases where insurance and transportation have been secured by Seller at Buyer's request. Buyer acknowledges that any shipping dates communicated or otherwise indicated by Seller are approximate and are contingent upon prompt receipt by Seller of all information, parts, materials and approvals to be supplied by Buyer, if any.
- 16. Default Shipping Address:** If Buyer has not designated a shipping destination or address to Seller within twenty-four (24) hours of Seller's estimated ship date, Buyer agrees that Seller shall be permitted to immediately ship the Goods either to Buyer's billing address or to any other tentative shipping address provided by Buyer at the time of placement of the Order.
- 17. Taxes:** Posted prices on the Site do not include taxes. All such taxes and charges will be added to the total price and will be itemized in Buyer's shopping cart and in a confirmation email.
- 18. Fuel Surcharge:** In connection with each sale of Goods, Seller reserves the right, at any time, in its sole discretion and without advance notice, to impose a surcharge on the Goods to cover Seller's increased production costs associated with increases in the cost of fuel imposed upon Seller by its freight carriers. Such fuel surcharge(s) will be charged to Buyer on a pass-through basis and included on Buyer's invoice as a separate line item.
- 19. Payment Terms:** Terms of payment are within Seller's sole discretion and payment must be received by Seller before acceptance of an order. The following payment methods are accepted: Visa, American Express, Mastercard, Discover, and Diners Club for all purchases. Buyer represents and warrants that (i) the credit card information supplied by Buyer to Seller is true, correct and complete, (ii) Buyer is duly authorized to use such credit card for the purchase, (iii) charges incurred by Buyer will be honored by the credit card company, and (iv) Buyer will pay charges incurred by Buyer at the posted prices, including shipping and handling charges and all applicable taxes, if any, regardless of the amount quoted on the Site at the time of the Order. Without limiting Seller's rights and remedies under these Terms or applicable law, Seller will be entitled to immediately suspend its provision of Goods if Seller does not receive payment of fees in full when due.
- 20. Payment Processing:** Buyer authorizes Seller to charge Buyer's credit card for any amounts owed for an Order. Buyer acknowledges that Seller's third party payment processor receives and stores Buyer's credit card information for this purpose. If Seller is unable to process Buyer's payment using Buyer's designated payment method, Seller reserves the right to charge any payment method it has on file for Buyer or that Seller obtains through a payment card "updater" service or other similar means. Seller may provide links to other third party websites or resources in relation to the purchase process. Seller is not responsible for the security of such external sites or resources and does not endorse nor is responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. Seller is not responsible or liable, either directly or indirectly, for any damage or loss caused or allegedly caused by or in connection with the use of, inability to use or reliance on any such privacy policy, content, goods or services available on third party



sites or resources. Seller will not be responsible for any misdirected payments by Buyer as a result of cyber fraud (e.g., phishing) or Buyer error.

- 21. Security Interest:** Seller shall have a purchase money security interest in the Goods until payment therefor is received in full. Buyer agrees to do all acts necessary to perfect and maintain such security interest in favor of Seller.
- 22. Patent Infringement:** Seller agrees upon the written request of Buyer, to indemnify and hold Buyer harmless against all Losses that arise out of or result from any claims alleging that any of the Goods infringe any U.S. patent or trademark owned by a third party. Seller shall have no obligation under this Section for (a) any Goods modified by either by Buyer or Buyer's agent without express written permission from Seller or (b) any claims of infringement based upon the use of the Goods by Buyer or Buyer's agent in conjunction with machinery, equipment or processes not sold or supplied to Buyer by Seller either with, as part of, or in connection with the Goods.

Any and all models, drawings, sketches, parts and other information supplied by one party to the other shall remain the property of the party who shall have supplied it. The Goods are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license or right to Buyer, expressly or by implication, to manufacture, duplicate or otherwise copy or reproduce any of the Goods or any part thereof.

- 23. Privacy:** Seller's Privacy Policy, available at <https://cdtechno.com/privacy-policy/>, is incorporated into these Terms. For Buyers who are residents of countries located in the European Economic Area ("EEA"): Seller is the controller of information of personal information collected from residents of countries located in the EEA. Where permitted by applicable law, Buyer agrees that Seller may need to transfer Seller's personal information to the United States or jurisdictions that may not be deemed to provide the same level of data protection as Buyer's home country. Buyer further agrees that notwithstanding Buyer's consent, such a cross-border transfer of data may be necessary for the performance of a contract between Buyer and Seller or for contracts concluded in the interest of Buyer between Seller and another natural or legal person.

Buyer represents that Buyer has read and accepts the provisions of Seller's Privacy Policy, and specifically consents to the processing, sharing, and cross-border transfer of Buyer's personal information as may be applicable or required.

- 24. Waiver:** Except as otherwise expressly provided herein, no waiver, alteration or modification of any of the provisions hereof or any right granted hereunder shall be effective unless such waiver is in writing and signed by a duly authorized officer or employee of Seller. Any waiver (express or implied) by either party of any default or breach of these Terms shall not constitute a waiver of any other subsequent default or breach. These terms and conditions shall not be modified, varied or supplemented by any course of dealing, usage of trade or otherwise except as agreed in writing signed by the parties hereto.
- 25. Authority of Agents:** Buyer acknowledges that Seller's distributors and sales representatives have not been granted any authority from Seller to modify any of these terms and conditions on behalf of the Seller, to make additional representations or offer additional warranties concerning the Goods which are not otherwise expressly provided herein, or to otherwise legally bind the Seller.
- 26. Governing Law:** This sale transaction shall be governed, construed and enforced solely by the laws of the State of Delaware. Buyer and Seller further agree that venue for any action to enforce or interpret these terms and conditions shall be adjudicated exclusively in a state court located in Montgomery County, Pennsylvania, or in the federal courts for the Eastern District of Pennsylvania and all parties hereby consent to the jurisdiction of such court in any such action or proceeding and waive any objection to venue based on inconvenient forum. Buyer and Seller hereby waive all rights under and agree that these Terms shall not be governed by, Article 2 of the Uniform Commercial Code or any version of the U.N. Convention For The International Sale of Goods.
- 27. Notices:** All notices, requests, demands and other communications required or permitted hereunder shall be in writing and delivered by registered mail to the respective addresses of the parties listed on the applicable Order. Notices shall be deemed to have been duly given, made and received upon actual receipt by the recipient.
- 28. Successors and Assigns; Assignment:** Buyer may not assign or delegate any of its rights or obligations under these Terms or any Order without the prior written consent of the Seller. Any attempted assignment or delegation in violation of this Section will be null and void. Subject to the foregoing, these Terms shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

- 29. Export Controls:**



- a. Buyer acknowledges that certain U.S. export control and economic sanctions laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) (22 CFR 120, et seq.), the Export Administration Regulations (EAR) 15 CFR 730-774), regulations of the Bureau of Alcohol, Tobacco, and Firearms (BATF) (27 CFR 447, et seq.), and regulations maintained by the U.S. Treasury Department, Office of Foreign Assets Control (OFAC) (31 CFR 500-599) (collectively, the “Export Control Laws”) may apply to the performance of these Terms and/or any Order. Buyer shall comply at all times with all applicable Export Control Laws.
- b. Buyer represents that it has obtained all registrations and licenses necessary to perform its obligations under these Terms and/or each Order. Buyer shall not transfer any export controlled items, technical data, technology, or service, unless the Buyer is registered with appropriate U.S. authorities and obtains all required export licenses, license exceptions, or license exemptions, as applicable, under applicable Export Control Laws.
- c. Buyer represents that neither Buyer nor any parent, subsidiary, or affiliate of Buyer is included on any of the restricted party lists maintained by the U.S. Government, including, but not limited to the Specially Designated Nationals List administered by OFAC, the Denied Persons List, Unverified List or Entity List maintained by the U.S. Commerce Department’s Bureau of Industry and Security (BIS), or the List of Statutorily Debarred Parties maintained by the U.S. State Department’s Directorate of Defense Trade Controls (collectively, “Restricted Party Lists”). Buyer shall immediately notify the Seller if Buyer, or any parent, subsidiary, or affiliate of Buyer becomes listed on any Restricted Party List or if Buyer’s export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

30. Anti-Corruption:

- a. Buyer acknowledges and agrees that it is aware of and familiar with the provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd-1, et seq., and all other applicable anti-corruption laws or regulations (“Anti-Corruption Laws”) and further agrees that it shall comply with and take no action and make, offer, or receive no payment or other advantage in violation of or that might cause Buyer or the Seller to be in violation of any Anti-Corruption Law.
- b. Buyer will indemnify, defend and hold the Seller harmless from and against any Losses suffered or incurred in connection with a breach of Section 29 or this Section 30 by Buyer and/or its affiliates, employees, agents or representatives.

31. Code of Conduct: Buyer hereby covenants and agrees that it accepts and shall comply with Seller’s Business Partner Code of Conduct, available at <http://www.cdtechno.com/Legal>, as it may reasonably be amended by Seller from time to time.

32. Entire Agreement: These Terms are intended by the parties as a final expression of their agreement with respect to such terms and also as a complete and exclusive statement of such terms. No failure by Seller to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

33. Severability: In case any one or more of the provisions contained in these Terms shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and these Terms shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Terms and Conditions of Resale

If the Buyer is purchasing the Goods for resale, the following additional terms and conditions will apply:

34. Terms of Resale: Any resale of the Goods by Buyer to one or more third parties (each, a “Customer”) will be made on the same terms and conditions (and subject to the same limitations) set forth herein, and Buyer will not purport to bind Seller to any duties, obligations or liabilities other than those expressly set forth herein. Without limiting the generality of the foregoing, Buyer shall not extend any warranties or guarantees, orally or in writing, respecting the performance, design, quality, merchantability or fitness for purpose of the Goods, in addition to or in excess of Seller’s Standard Warranty (and Buyer shall expressly exclude all other warranties, express or implied).

35. Resale Pricing; Risk of Collection: Resale prices for the Goods shall be established by Buyer in its sole discretion. Buyer shall not be paid any commission or other compensation by Seller for any sale or resale of Goods. Buyer’s sole compensation for such sale/resale is the amount by which the resale price of Goods to a Customer exceeds the sale price charged by Seller to Buyer for such Goods, if any.



- 36. Standard of Conduct; Compliance with Law:** In reselling the Goods, Buyer will at all times conduct itself in an ethical and professional manner in accordance with all applicable laws, rules, regulations and orders (“Applicable Laws”), including without limitation all Export Control Laws and Anti-Corruption Laws. Without limiting the generality of the foregoing, Buyer will (a) avoid deceptive, misleading or unethical practices that are, or might be, detrimental to Seller, the Goods or the public; (b) make no false or misleading representation with respect to Seller or the Goods; (c) obtain and maintain all registrations and licenses necessary to perform its obligations under these Terms in accordance with Applicable Laws; and (d) procure and maintain insurance of such types and in such amounts as are sufficient to support its obligations hereunder, naming Seller as an additional insured.
- 37. Cooperation with Respect to Customers:** Buyer will (a) promptly respond to all inquiries from Customers with respect to the Goods, including complaints; (b) cooperate with Seller in dealing with any Customer complaints concerning the Goods and to take any action requested by Seller to resolve such complaints; and (c) cooperate with Seller in any retrofits, recalls, parts changes and similar adjustments and modifications with respect to the Goods required by and in accordance with instructions received from Seller.
- 38. Warranty Claims:** In the event that Buyer or any of its Customers wish to return any allegedly defective Goods under the Standard Warranty provisions, Buyer shall be responsible for making all arrangements for such return, including payment of shipping and insurance charges. Buyer must obtain a return authorization from Seller prior to shipment, and return such Goods to Seller’s designated return location in accordance with the packing and other instructions provided by Seller.
- 39. Limitation of Liability:** Seller’s obligations and liabilities to Buyer and its Customers in connection with the Goods, including warranties, are limited to those provided in Seller’s Standard Warranty and as provided herein. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, BUYER’S CUSTOMERS OR ANY END-USER OF THE GOODS FOR USE OF THE GOODS WITH ANY PRODUCT OR SERVICE NOT PROVIDED EXCLUSIVELY BY SELLER. SELLER SHALL NOT BE LIABLE TO BUYER, BUYER’S CUSTOMERS OR ANY END-USER OF THE GOODS AS A RESULT OF ANY DELAY OR FAILURE TO PERFORM DUE TO ACTS OF GOD, FIRE, FLOOD, LABOR STRIKE OR DISPUTE, WORK STOPPAGE, TERRORISM, WAR, COMMERCIAL IMPRACTICALITY, UNAVAILABILITY OF RAW MATERIALS, VENDOR DELAYS OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF SELLER.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, BUYER’S CUSTOMERS, OR TO ANY END-USER OF THE GOODS FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EXCESS REPROCUREMENT COSTS AND/OR DAMAGES FOR DELAY ARISING FROM ANY CAUSE IN CONNECTION WITH THE GOODS OR THESE TERMS AND CONDITIONS, WHETHER FROM BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY OR TORT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE MAXIMUM AGGREGATE AMOUNT OF MONEY DAMAGES FOR WHICH SELLER MAY BE LIABLE TO BUYER, ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBDISTRIBUTORS, CUSTOMERS OR ANY THIRD PARTY UNDER AN ORDER OR IN CONNECTION WITH THE RELATIONSHIP OF THE PARTIES, RESULTING FROM ANY CAUSE WHATSOEVER, WILL BE LIMITED TO AMOUNTS ACTUALLY PAID BY BUYER TO SELLER FOR THE GOODS GIVING RISE TO SUCH LIABILITY.

40. Proprietary Rights:

- a. Buyer acknowledges that the Goods contain proprietary and confidential property of Seller which is protected by U.S. patent, copyright, trade secret and other laws, as well as certain international treaties and/or conventions. Buyer agrees that Seller owns all, right, title, and interest in and to all patents, trademarks, trade names, inventions, copyrights, know-how, trade secrets and other intellectual property and proprietary rights (collectively, “Proprietary Rights”) relating to the Goods and the design, manufacture, marketing, sale, operation or service thereof. Buyer further agrees that it will not, directly or indirectly, take any action or permit any third party to take any action, in derogation Seller’s Proprietary Rights in the Goods and/or the aforementioned laws, treaties and conventions.
- b. The Goods are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license, expressly or by implication to manufacture, duplicate or otherwise copy or reproduce any of the Goods or any part thereof. Buyer will take appropriate steps with Buyer’s Customers to inform them of and assure compliance with the restrictions contained in this paragraph.



- c. Buyer will acquire no right, title or interest in Seller's name, logotypes and trademarks (collectively, "Trademarks"), and Buyer will not use any such Trademarks as part of Buyer's corporate or tradename or permit any third party to do so without the prior written consent of Seller.
 - d. Buyer will not, without the prior written consent of Seller, remove or alter any patent numbers, Trademarks, notices, serial numbers, labels, tags or other identifying marks, symbols or legends affixed to any Goods or containers or packages.
- 41. Indemnity:** Buyer shall indemnify, defend and hold Seller, its affiliates, and their respective officers, directors, shareholders, employees, agents, representatives, successors and assigns harmless from and against any loss, damage, claim, liability, fine or other expense (including, without limitation, attorneys' fees and expenses of litigation) arising out of or in relation to Buyer's resale of the Goods and/or any breach of these terms and conditions by Buyer, its subdistributors or any of their respective directors, officers, employees or agents. The minimum insurance coverages required hereunder shall not be deemed to limit Buyer's liability hereunder.
- 42. Relationship of Parties:** Buyer shall act at all times as an independent contractor, not as a partner, joint venturer, agent, servant or employee of Seller. Further, Buyer shall not be deemed a franchisee of Seller, and the relationship of the Parties shall not be subject to the franchise laws of any jurisdiction. Buyer and its employees are not authorized to act as legal agents of Seller, and shall have no authority to legally bind or obligate Seller in any manner, to accept service of process on behalf of C&D Technologies and/or Trojan Battery Company, LLC or to settle any claim against Seller.