

SPARK POWER

STANDARD TERMS AND CONDITIONS OF PURCHASE

1. **Contract Formation.** These Standard Terms and Conditions of Purchase (the “Terms and Conditions”) are applicable to and form part of the agreement to purchase products, equipment, goods and/or services (“Products”) by Spark Power Corp. and/or its affiliates who purchase Products (the “Buyer”) set forth in a purchase order (the “Purchase Order”) issued by Buyer to supplier (the “Supplier”). Only the Spark Power legal entity named on a Purchase Order shall be liable to the Supplier under such Purchase Order. No prior proposals, quotations, statements, forecasts, course of dealing or usage of trade are part of the Purchase Order. The Purchase Order is deemed to incorporate by reference the Buyer’s contract with its customer (the “Prime Contract”). Supplier hereby agrees to be bound to requirements set forth in the Contract Documents and those documents (the project schedule, supplementary conditions, drawings, and/or specifications, etc.) comprising the Prime Contract between the Owner and the Prime Contractor. The delivery of Products, or, where the Products are comprised of a service, the commencement of such services, by Supplier shall confirm Supplier’s acceptance of these Terms and Conditions in respect thereof, and all terms and conditions under the Contract Documents. Upon acceptance, Supplier agrees to deliver the Products to Buyer in accordance with the terms of this Purchase Order. In the event of any inconsistencies or conflict between the body of these Standard Terms and Conditions of Purchase and other Contract Documents, the following order of precedence from highest to lowest shall be the interpretation hereof or resolution of such conflict hereunder: (i) duly authorized and executed changes to these Standard Terms and Conditions of Purchase pursuant to Section 9; (ii) the Prime Contract requirements; (iii) the body of these Standard Terms and Conditions of Purchase.

BUYER HEREBY OBJECTS TO, AND EXPRESSLY REJECTS, THE PROVISIONS OF ANY ACKNOWLEDGMENT, ORDER ACCEPTANCE, QUOTATION, OR INVOICE WHICH ARE INCONSISTENT WITH OR IN ADDITION TO THE PROVISIONS OF THIS PURCHASE ORDER AND THESE TERMS AND CONDITIONS. THIS PURCHASE ORDER AND THESE TERMS AND CONDITIONS SHALL BE THE COMPLETE AND EXCLUSIVE CONTRACT BETWEEN SUPPLIER AND BUYER WITH RESPECT TO THE PRODUCTS AND MAY BE MODIFIED ONLY IN WRITING SIGNED BY BUYER’S AUTHORIZED REPRESENTATIVE AND BY SUPPLIER. NO PRIOR PROPOSALS, QUOTATIONS, STATEMENTS, FORECASTS, COURSE OF DEALING OR USAGE OF TRADE WILL BE PART OF THE AGREEMENT BETWEEN THE PARTIES, NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY PURPORTING TO VARY THE TERMS CONTAINED HEREIN.

2. **Shipment and Delivery.** Supplier shall dedicate the necessary resources and facilities to ensure the Products subject to any Purchase Order are delivered within the

timeframe (“**the Delivery Date(s)**”) requested by Buyer and specified on the Purchase Order. Supplier agrees to notify Buyer in writing immediately if Supplier ever has reason to believe that any Product will not be delivered set out in the Purchase Order. Unless otherwise expressly provided herein, all tangible Products delivered to Buyer shall be DDP Buyer’s location at the address set forth, or as specified or revised in any Purchase Order. Title and risk of loss to the Products delivered hereunder shall pass to Buyer upon delivery. All customs, duties, costs, taxes (other than Sales Taxes on Products as defined herein), insurance premiums and other expenses relating to transportation and delivery of Products to the DDP point, shall be at Supplier’s sole cost and expense. In the event that delivery of any Product is not made on the date and as set out in the Purchase Order, Buyer may, without limitation to the rights and remedies available to the Buyer under any Purchase Order, or at law or in equity: (i) return to Supplier some or all of the Products in the shipment at Supplier’s risk and expense, including without limitation warehouse or handling cost; (ii) purchase substitute Products elsewhere and charge Supplier with any resulting additional expense; or (iii) direct Supplier to make an expedited shipment of additional or replacement Products, with the difference in cost between any expedited routing and the Purchase Order routing to be paid by Supplier, in case, as applicable. Supplier further agrees to be liable and shall pay Supplier upon demand all excess costs incurred thereby, including additional handling charges and other expenses resulting therefrom, as well as all other direct, consequential, and incidental costs, expenses, damages, penalties, fines, liabilities, and other charges incurred by the Buyer because of Supplier’s failure to meet the delivery dates.

3. **Installation.** If Supplier performs any installation or other services to Buyer, Supplier will perform those services in a professional and workmanlike manner in accordance with industry best practices by qualified, licensed (as applicable), persons and/or entities, but in any case, not less than a reasonable standard of care employed by professionals in the same industry performing the services for commercial gain and in accordance with Buyer’s specifications in effect on the date of completion.

4. **Inspection and Rejection.** Products and or Services are subject to Buyer’s right of inspection and rejection. Payments made from Buyer to Supplier do not constitute Buyer’s acceptance of Products and Buyer reserves its rights with respect to defects in Products. Supplier agrees to provide and maintain inspection and process control systems acceptable to Buyer with respect to the Products, and Supplier agrees to maintain, keep and make available complete records (“**Quality Records**”) of all of inspections of work and process control work for the greater of the warranty period and life of the Products as reasonably defined by Supplier. Buyer may inspect the Products at any place without waiving Buyer’s right subsequently to reject or revoke acceptance for undiscovered or latent defects. Supplier agrees to furnish at its expense, documentation and

manuals for all Products purchased, facilities, and assistance reasonably necessary to ensure the safety and convenience of Buyer's personnel. Buyer's failure to inspect and accept or reject Products will not relieve Supplier from any of its obligations. If any Products are found at any time not to conform with the requirements of the Purchase Order (or any applicable samples, drawings, or specifications), or to be defective in design, material or workmanship, Buyer may, at Buyer's option and Supplier's expense, require Supplier to inspect the Products, and remove, repair and/or replace non-conforming or defective Products with conforming and non-defective Products. If Supplier fails to do so on a timely basis, Buyer may elect to take one or more of those actions and charge Supplier for all such costs. These rights are in addition to any other rights that Buyer has under the Purchase Order or applicable law.

5. Security Interest, Title and Risk of Loss. In the event progress payments, advances or deposits are made by Buyer, Supplier hereby grants Buyer a purchase money security interest, or equivalent, in the Products as well as all components, inventory, and raw materials, whether now existing or hereafter arising, and any replacements, improvements, substitutions, attachments, and accessions thereto or thereon purchased by Supplier with progress payments, advances or deposits made by Buyer and to be used by Supplier in manufacturing the Products. Supplier agrees to execute and deliver all documents requested by Buyer to protect and maintain Buyer's security interest. Supplier warrants that upon delivery, Buyer shall acquire good and clear title, free and clear of all liens, encumbrances, and security interests of any nature whatsoever.

6. Price and Payment: Price for Products are not subject to increase except as set forth below under the "Changes" heading. Buyer shall pay the Supplier for the Products the amounts set out in the Purchase Order upon achievement of the milestones set out therein, and if not so set out upon completion, subject to any amount disputed in good faith. Payments are due and payable not later than sixty (60) days of the invoice date. All payments shall be in the currency set out in the Purchase Order unless otherwise specified. Supplier warrants that the prices in this Purchase Order shall be complete, and no surcharges, premiums, or other additional charges of any type (except for applicable sales taxes (collectively, "Sales Taxes")) will be added or payable by Buyer, without Buyer's prior written consent, which may be arbitrarily withheld. Upon proper delivery of the Products specified in any Purchase Order, Supplier shall submit proper invoices to the attention of Buyer, Accounts Payable within 30 days of delivery. All invoices must include the Purchase Order, Supplier's name, Supplier's Sales Taxes or governmental account registration number, Product delivery date and details, and remittance instructions. Failure to submit proper invoices may result in payment delays, no interest or charges will be chargeable by Supplier in the event of any payment delay resulting from Supplier's failure to deliver a proper invoice. Under no circumstances will

Buyer pay late fees, interest, carrying or other charges. Buyer may set-off any amount owed to Buyer or its affiliates from Supplier or any of Supplier's affiliates or subcontractors against any amount payable at any time by Buyer to Supplier.

7. Termination for Default. Without prejudice to any other rights or remedies which Buyer may have, Buyer may terminate any Purchase Order, in whole or in part, with immediate effect, without liability, and/or cancel further performance by Supplier upon notice to Supplier, in the event that any of the following occur: (a) the Supplier fails to perform any of its obligations under or is in default of any provision or requirement of any Purchase Order, including these Terms and Conditions (collectively, a "Default") and fails to cure the Default within ten (10) business days of written notice of the Default from Buyer; (b) the Supplier makes an assignment for the benefit of its creditors generally or files a proposal under applicable bankruptcy and insolvency laws or a receiving order is made or a petition is filed under applicable bankruptcy and insolvency laws against the Supplier or the Supplier is subject to or takes any proceedings under any similar legislation in any jurisdiction; (c) a resolution is passed for, or a judgment or order is issued by any court of competent jurisdiction ordering the winding-up or other liquidation or dissolution of the Supplier or Supplier otherwise has its existence terminated; (d) if any trustee in bankruptcy, receiver or other similar official with similar powers shall be appointed for Supplier or of all or any material part of its property and assets; (e) if a creditor takes possession of all or any material part of the Supplier's property or assets, or if a warrant of attachment, distraint, distress or execution or any similar process is levied or enforced upon Supplier or over such property or assets; (f) the Supplier ceases or threatens to cease to carry on business; (g) the Supplier shall generally not pay its debts as such debts become due or shall admit in writing its inability to pay its debts generally as they become due. or (h) there occurs a direct or indirect change in control of Supplier. In addition, Buyer reserves the right, without liability, to cancel any Purchase Order in whole or in part upon notice to the Supplier if the Products are not delivered on the specified date or if in the judgment of Buyer Supplier (a) the Supplier will be unable to deliver Products on the specified delivery date or (b) the Supplier will be unable to deliver Products in accordance with the specifications. In the event of Default by the Supplier, Buyer shall have the right to terminate any Purchase Order without further liability for Products not delivered to Buyer.

8. Cancellation: Any Purchase Order may be terminated by Buyer for convenience and without cause, at any time, without further liability other than to pay for those Products that have already been delivered and the costs set out below. In such event, Supplier shall immediately cease all work and terminate all orders and contracts, and Buyer shall only be liable for Supplier's reasonable actual costs as a direct result of the termination which may not be recovered or mitigated (e.g., purchased materials and labor costs incurred prior to

receipt of notice of termination, non-refundable deposits paid by Supplier, and non-cancellable orders placed by Supplier). Supplier must notify Buyer in writing of such costs within thirty (30) days of termination. The foregoing constitutes Buyer's only liability to Supplier for termination without cause.

9. **Changes.** Buyer may at any time, by written notice, make changes to any Purchase Order, including to any drawings, specifications, scope of work, safety requirements, descriptions, shipping/delivery instructions and quantities. Should any such change affect the Supplier's cost, ability to deliver Products or Services within the agreed upon timeframe ("**Delivery Date(s)**") displayed on the Purchase Order or schedule, Supplier shall notify the Buyer in writing within two business days and provide details of any such pricing or delivery changes within five business days of notice of such change. Supplier's failure to comply with the notice provisions in this section will constitute a waiver of all claims by Supplier in respect of such change. No change to any Purchase Order shall be valid unless agreed in writing by an authorized representative of Buyer and Supplier. The parties agree to reasonably negotiate any requested changes under this paragraph in good faith with a view to minimizing delay and expense.

10. **Intellectual Property.** All molds, materials, designs, drawings, plans, manufacturing aids, equipment, inventions, technology, secrets or other proprietary information, and all intellectual property rights in the foregoing, and other items supplied to Supplier by Buyer or which is developed or acquired at Buyer's expense in connection with the Purchase Order, (collectively, "Buyer Property") are the exclusive property of Buyer and Supplier acquires no rights in such Buyer Property. Supplier hereby assigns and agrees to assign to Buyer, and to cause its employees, representatives, and subcontractors to assign to Buyer, in each case without additional compensation, all such property. No rights are granted to Supplier under any of Buyer's patents, copyrights, trade secrets or other property rights except as may be expressly agreed to in writing by Buyer. Supplier will not use or incorporate into Products any intellectual property of others without their written permission. The names and trademarks of each party shall remain their sole and exclusive property.

11. **Engineering.** Where the Supplier or its subcontractors provide engineering services to the Buyer, such services shall be rendered in a timely manner, and with the degree care, skill and diligence normally provided for similar projects contemplated by the applicable Purchase Order, by a corporation licensed and in good standing to practice in the jurisdiction where the services will be provided and/or implemented, and with relevant experience. Buyer will have royalty-free, perpetual, transferable, non-exclusive license to use any delivered documents for the purpose described in the applicable Purchase Order. Supplier and its applicable subcontractors shall carry professional liability insurance (errors and omissions) in accordance with applicable laws

governing professional engineers and/or firms providing engineering services, in addition to the insurance requirements set out in these Standard Terms and Conditions.

12. **Warranties:** Supplier warrants to Buyer that the Products will: (i) be owned by Supplier and free of all liens, claims or encumbrances; (ii) conform strictly to all express or implied specifications, drawings, plans, instructions, scope of work, samples or other descriptions; (iii) Possess all features and functionalities required for the intended purpose(s) in which they were manufactured and sold, and if Supplier knows (or has reason to know) of a particular purpose for which Buyer or its customers intend to use the Products, will be fit for such particular purpose; (iv) be new (used or refurbished equipment will not be sold to Buyer without its knowledge and consent) and merchantable; and (v) all Products or Services provided will be free from defects in design, material and workmanship, whether latent or otherwise for a period of two years from the date of supply. Supplier represents and warrants that any service provided will be performed in a competent manner and be fit for any purpose for which it knows or has reason to know Buyer, or its customers, intend to use such service. Supplier agrees to present all available Products or Services which meet Buyer's requirements and will not intentionally sell a Product or Service which exceeds Buyer's requirements without Buyer's consent. Supplier represents and warrants that neither the Products nor use of the Products will infringe any patent, copyright, trade secret, trademark, or other property right of a third party. Supplier agrees that these warranties: (x) survive the inspection, acceptance and use of the Products by Buyer and its customers; (y) are for the benefit of Buyer and its successors, assigns, customers and users of Buyer's products and services; and (z) are in addition to any warranties and remedies to which Supplier may otherwise agree, or which are provided by law. Supplier agrees to extend to Buyer's customers and Buyer (and to enforce) any warranties received from Supplier's suppliers. If any of the Products or Services delivered or provided by Supplier do not meet the specified warranties or conditions, Buyer may, at its option, require Supplier to immediately correct any defective or non-conforming Products, components, or workmanship thereof, as applicable, by repair or replacement, at no charge to Buyer. In addition, Products sold to Buyer which are still warrantable and require repair due to defective or non-conforming components, will be repaired with components of the same or higher quality of those included in the Product(s) purchased under this Agreement, or replaced by the Supplier at no charge to the Buyer, regardless of whether the particular Product(s) or component(s) have been discontinued. Supplier will immediately pay to Buyer, any costs, expenses, penalties, liabilities or other charges suffered or incurred Buyer associated with or relating to identifying, testing, sorting, reworking, including without limitation all labor and any other activities associated with dealing with the non-conformance and any downtime costs. If the Buyer determines that the Supplier is unable or unwilling to repair or replace the defective or non-

conforming Product or Service within the time Buyer requires to meet its obligations to its customers, Buyer shall at its sole discretion and option: (i) proceed with correction of the defect or non-conformance and charge all resulting costs and expenses to Supplier (including without limitation all labor and other expense incurred to identify and correct the defect or non-conformity (plus reasonable overhead and profit on such costs); or (ii) return to Supplier at Supplier's expense the defective Products and any other products associated with the defective Products supplied by Supplier, for full refunds of the purchase price paid for such Products and all resulting costs, expenses, liabilities, penalties or other charges suffered or incurred by Buyer relating to, arising out of or in connection with such defective Product. Buyer's action to cure of any defect or non-conformity of any Product shall not relieve Supplier of any of its warranty obligations hereunder. The foregoing shall not be in limitation of any rights that Buyer may have at law, in equity, under contract or by reason of any breach of warranty, expressed or implied, or otherwise. Such warranty shall be in addition to any warranties of additional scope given to Buyer by Supplier. The warranty shall continue in full force and effect for the same duration of the original warranty period for any Product repaired or replaced pursuant to this warranty.

13. Indemnity. Supplier agrees to defend, indemnify, and hold Buyer and its directors, officers, employees, agents, contractors, affiliates, successors, and/or customers (collectively, the "Indemnified Parties") fully harmless from and against any and all claims, and the investigation of any such claims (including without limitation actual or threatened claims for infringement of intellectual property, breach of contract, death or injury to a person or injury to property, or other tort claims), liabilities, damages (whether direct or indirect, incidental or consequential) and expenses (including court costs and legal and other professional fees and the costs of any settlement incurred by Indemnified Parties) arising directly or indirectly out of or relating to the delivery and/ or installation of Products and/ or Services provided by Supplier, breach by Supplier of any covenant, representation or warranty, or from any act or omission of Supplier or its agents, employees or subcontractors, including any breach or non-compliance with applicable law. Buyer will not be responsible or liable to Supplier whether in contract, tort, under law or otherwise, for any Liability incurred by Supplier related to the delivery or installation of Products or Services provided, unless such Liability is due to Buyer's gross negligence or willful misconduct. In the event the injury or damage is caused by joint or concurrent negligence of the Parties, the loss or expense shall be borne by each party in proportion to its degree of negligence. All of Supplier's subcontracts shall include an indemnity in favor of Buyer.

14. Insurance. Supplier agrees to maintain the following insurance coverages for the duration of its performance obligations under any Purchase Order, written on an occurrence basis and underwritten by insurers with a

minimum rating of A- VII by A.M. Best, and each such policy shall name the Buyer as an additional insured:

- a) Commercial auto liability with a limit of liability not less than \$5 million per occurrence combined single limit for bodily injury and property damage of \$5 million, including owned, non-owned and hired automobiles;
- b) Commercial general liability with a limit of liability not less than \$5 million per occurrence combined single limit, including coverage for operations, completed operations, and Products liability, with a \$10 million aggregate;
- c) Workers' compensation with statutory limits and Employer's Liability coverage with limits of at least \$5 million;
- d) Umbrella or excess liability insurance with a limit of liability not less than \$3 million per occurrence;
- e) Product liability and product recall insurance with a limit of not less than \$10 million.

15. Confidentiality. All Confidential Information (as defined below) made available by Buyer to Supplier, or that comes to the attention or the knowledge of Supplier in connection with the supply of Products or its relationship with Buyer whatsoever, shall be held in confidence by Supplier. Supplier shall not provide any other person or entity with access to or make use of such Confidential Information for the benefit of any person other than Buyer, and Supplier shall only use such information in connection with fulfilling its obligations to Buyer under any Purchase Order, and not for any competitive or other purpose whatsoever. Supplier agrees to protect the Confidential Information and hold it in the strictest confidence by using the same degree of care to prevent the unauthorized use, dissemination, or publication of the information as Supplier uses to protect its own confidential information, provided that in no case shall such standard of care be less than a reasonable degree of care. Notwithstanding the foregoing, the Supplier may disclose Confidential Information to its directors, officers, employees and contractors to the extent that they have a *bona fide* need to know such information for purposes relating to fulfilling its obligations under any Purchase Order involving the Buyer, provided such persons or entities to whom disclosure is made, are made aware of the confidential obligations, agree to bound by the confidentiality obligations, and the Supplier shall be liable for any breach of the confidentiality obligations of such persons or entities. Confidential Information means and includes all non-public information regarding Buyer or its related or affiliated entities or subsidiaries, including, technical data, product design and development, sales information, trade secrets, intellectual property, quantity and kind of products purchased or sold, prices and methods of pricing, marketing techniques and plans, product returns, unannounced products, product and process information and information of a scientific, business, financial or technical nature, and any other information that, if disclosed to others, might be competitively detrimental to the Buyer or that by

its nature should be considered confidential and proprietary information of Buyer. Unless expressly agreed in writing to the contrary, Confidential Information regarding Buyer or its related or affiliated entities or subsidiaries does not include (i) Confidential Information which is generally known or in the public domain at the time of disclosure; (ii) was in the Supplier's possession before receipt from the Buyer; (iii) though originally Confidential Information, subsequently becomes a matter of public knowledge through no fault of the Supplier, as of the date of its becoming part of the public knowledge; (iv) is rightfully received by the Supplier without obligations of confidence from a third party who is free to disclose the information; (v) is disclosed by the Buyer to a third party without a duty of confidentiality on the third party; or (vi) is disclosed by the Supplier with the Buyer's prior written approval. Supplier acknowledges that Buyer will use and rely upon information Supplier furnishes to Buyer and that Supplier will indemnify and hold Buyer harmless from all costs and damages suffered by Buyer because of any inaccuracies in such information.

16. Compliance with Laws and Regulations. Supplier covenants and agrees to comply with all applicable federal, provincial, local, and foreign laws and regulations and all other pronouncements, policies, guidelines and orders of any government or governmental authority that have the force of law including all laws relating to occupational health and safety, employee and employment matters, tax and withholdings and environmental matters.

17. Relationship of the Parties. Supplier and Buyer are independent contractors and nothing in this Agreement shall be construed or interpreted to make the Buyer and Supplier partners, joint venturers, or agents of one another for any purpose whatsoever. Neither the Buyer nor the Supplier shall have any authority to bind the other.

18. Time. Time is of the essence for performance under any Purchase Order.

19. Entire Agreement. With respect to any purchase of Product, the applicable Purchase Order, including these Terms and Conditions, unless otherwise expressly agreed in writing, constitutes the entire agreement between the Buyer and Supplier with respect to purchase and sale of Product and cancels and supersedes any prior understandings and agreements between the parties with respect to such subject matter. Neither the Buyer nor Supplier shall be bound by any oral or other agreement or understanding (including course of conduct, custom or trade) which is not expressly contained in the Purchase Order or otherwise in a writing signed by the parties. These Terms and Conditions apply to all Purchase Orders and any subsequent supply of Product by Supplier to Buyer. Acceptance of any Purchase Order is made upon the express understanding that it will be governed by these Terms and Conditions. These terms and conditions shall be applicable whether they are attached to or enclosed with the Purchase Order or are made publicly available on Buyer's website.

20. Anti-Bribery. The Supplier shall comply with and will take all reasonable measures to ensure that the Supplier's personnel or other third parties subject to its control or determining influence will comply with all applicable anti-corruption laws and policies, including the *Foreign Corrupt Practices Act* (USA), the *Corruption of Foreign Public Officials Act* (Canada), the *Bribery Act* (UK) and any applicable laws of similar effect (collectively, "Anti-Corruption Laws"). The Supplier represents and warrants that it has instituted and maintains policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance with Anti-Corruption Laws, including policies and procedures designed to ensure that all agents, consultants, or other persons working on the Supplier's behalf comply with Anti-Corruption Laws.

21. Modern Slavery. The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its supply chain have not been convicted of any offence involving modern slavery, as defined by applicable law. The Supplier must immediately notify the Buyer if it becomes aware of any actual, potential or perceived modern slavery in its operation or its supply chain. The Supplier warrants that it and its supply chain will conduct their business in a manner so as to reduce the risk of modern slavery in their operations and supply chains, in accordance with applicable law, and that it shall deliver evidence of such compliance to the Buyer on request.

22. ISNetworld. If Buyer or Buyer's customers require Supplier to be prequalified through ISNetworld, the Supplier and its subcontractors will be and will always remain in good standing with ISNetworld at Supplier's expense.

23. Construction Liens. To the extent not expressly prohibited by law, Supplier shall not suffer or permit any lien or other encumbrance to be filed or to remain of record as a claim against any building, materials, or project site of the Buyer or its customers, or against any monies due or to become due in which Buyer has communicated and made payment arrangements with Supplier, for any services performed or materials furnished by or on behalf of Supplier, by any of its sub-subcontractors or material suppliers, workers or any other party engaged by or under Supplier; nor shall Supplier suffer or permit any such lien or encumbrance to be so filed because of any claim or demand against, or any action or non-action of Supplier, or any of its sub-subcontractors or material suppliers, workers or any other party engaged by or under Supplier. Supplier shall defend, indemnify and hold harmless Buyer, Buyer's sureties, Buyer's customer and the owner of any site on which Buyer is engaged with from any lien or claim of lien filed or maintained by any sub-subcontractor, or material supplier, worker or any other person or entity directly or indirectly acting through, or under Supplier, against such project or any part thereof or any interest therein or against any monies due or to become due. Without limiting the foregoing, Supplier shall cause any such lien or claim of lien to be satisfied, removed, or discharged by bond, payment, or

otherwise within ten (10) days from the date of receipt by Supplier of written notice from Buyer to remove the lien.

24. Assignment. The Supplier may not assign its rights or obligations under any Purchase Order. Any Purchase Order shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Any attempted assignment or delegation in breach of these provisions will be wholly void and totally ineffective for all purposes. Supplier shall not use a subcontractor except with the express written consent of the Buyer, which may be arbitrarily withheld.

25. Amendment. Unless otherwise expressly provided, no provision of any Purchase Order, including these Terms and Conditions shall be modified, supplemented, or waived except by an instrument in writing executed by the party to be bound thereby. No waiver of any such provision shall constitute a continuing waiver of such provision or a waiver of any other provision. Failure by either party at any time to demand performance by the other party, or to claim a breach, of any provision of any Purchase Order, including these Conditions, shall not constitute a waiver or otherwise affect the rights of such party.

26. Severability. If any provision of any Purchase Order, including these Terms and Conditions is, for any reason, held to be invalid, illegal, or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of such documents, and such document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

27. Notices. Any notice or other writing required or permitted to be given under any Purchase Order, including these Terms and Conditions to any party shall be in writing sufficiently given if: (i) delivered personally, (ii) transmitted by email, fax or other form of recorded communication tested prior to transmission, (iii) sent by registered or certified mail return receipt requested, postage prepaid, or (iv) sent by commercial overnight courier with written verification of receipt, to such party at the addresses set out or to such other address as may be designated by a party by giving notice to the other party pursuant to this Section. Any such notice shall be effective on the earlier of (a) confirmation of receipt; (b) five days after posting; and (c) the next day business day in the event of delivery by electronic means. Any notice to Buyer shall be given to: Spark Power Corp., Attention: Legal Department, to the address for Buyer set forth in the Purchase Order. Notice to Supplier shall be given to the address set forth in the Purchase Order or, if no such information is provided, to any person with apparent authority at the Supplier's place of business or to the registered office address of the Supplier, at the discretion of the Buyer.

28. Survival. The terms, provisions, covenants, representations, and warranties contained in the Purchase Order, including these Terms and Conditions, that by their sense and context are intended to survive the performance thereof by either party or both parties and the expiry or

termination of the Purchase Order relating to the purchase and sale of Product, including without limitation the Indemnity, Warranty, Confidentiality, and Intellectual Property provisions shall so survive such completion of performance, expiration or termination.

29. Headings. The division of these Terms and Conditions into sections and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction of interpretation of the Purchase Order and/or these Terms and Conditions.

30. Governing Law. The provisions of the Purchase Order and the Conditions of Purchase shall be construed in accordance with:

(a) the laws of the State of Delaware where the Product is delivered to the Buyer in the United States; or

(b) the laws of the Province of Ontario where the Product is delivered in Canada.

and shall be treated in all respects as a contract entered into under such law. Each of the Buyer and Supplier irrevocably submits to the non-exclusive jurisdiction of the courts of competent jurisdiction in such jurisdiction in respect of any action or proceeding relating in any way to the subject matter hereof. Neither Buyer nor Supplier shall raise any objection to the venue of any proceedings in any such court, including the objection that the proceedings have been brought in an inconvenient forum. The parties expressly exclude the application of the *UN Convention on Contracts for the International Sale of Goods*.

31. Language. The Parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules, and authorizations, have been and shall be drawn up in the English language only. *Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.*

32. Dispute Resolution. If any dispute arises between the Parties relating to the application, interpretation, implementation or validity of any Purchase Order, or any payment due, either party may give the other party written notice of such matter which shall include the full particulars of the reasons for such dispute. The parties shall promptly meet and attempt to resolve any dispute. If the parties are unable to resolve such dispute within 10 days, the matter shall be resolved by binding arbitration. Either party may, on written notice to the other, propose the appointment of a single arbitrator. If the parties are unable to agree on the appointment of an arbitrator within 10 days of such notice, either party may bring an application in the courts of competent jurisdiction for the appointment of single arbitrator to resolve the dispute. Unless otherwise agreed, the arbitration shall be held in the English language, in

Dallas, Texas with respect to Products or Services delivered in the United States, or Toronto, Ontario with respect to Products or Services delivered in Canada. The arbitrator shall have the power to make costs awards in respect of the arbitration.

33. **JURY TRIAL WAIVER.** WHERE APPLICABLE LAW PERMITS A PARTY TO ELECT A TRIAL BY JURY, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF, OR RELATED TO, THE PURCHASE ORDER, THESE TERMS AND CONDITIONS, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

34. **Buyer References.** Supplier shall, in the performance of Services or in the delivery of Products, comply with all health and safety policies, and other procedures of Buyer and/or its customers. Copies of such policies and procedures are available on request, however Supplier's failure to request such materials shall not relive it of its obligations hereunder.