



Megapack Reservation Terms

Thanks for your interest in Megapack! Now that we've received your completed reservation details and fee ("Reservation Fee"), you have a reservation ("Reservation") for a Megapack system ("System"). The below terms ("Terms") govern your Reservation, until we both execute definitive agreements for the purchase and long-term service of your System ("Project Agreements").

We look forward to working with you and are excited that you are joining our effort to transition the world to sustainable energy.

- 1. Your Reservation and Pricing.** The price and other terms in your Megapack Reservation Summary (attached) are non-final estimates based on the information you submitted when placing the Reservation. Tesla will contact you soon and begin working with you to complete the scope of Tesla's obligations and the design of the System, for 90 days or longer if necessary (the "Diligence Period"). If Tesla does not contact you to finalize the scope and design of the System within 90 days, you may terminate this Reservation upon notice to Tesla, and Tesla will refund your Reservation Fee. You agree to cooperate with Tesla during the Diligence Period including by promptly providing information and documents reasonably requested by Tesla. Delays in receiving requested information may delay Tesla's diligence or result in Tesla declining to proceed with the System as permitted in Section 2.
- 2. Project Agreements.** After Tesla completes the design of your System, Tesla will send you Project Agreements including the preliminary System design, schedule, and performance tests and guarantees for your System, finalized pricing for the System. You must sign the Project Agreements, or reject them in writing, within 30 days after Tesla's delivery of the Project Agreements. If you don't execute all of the applicable Project Agreements within 30 days, you will be deemed to have rejected them, and these Terms and the reservation of your System may be terminated by notice from Tesla, without liability to Tesla.
- 3. Project Agreement Template.** For your information, attached is a sample form of Project Agreement for small- to medium- sized supply-and-installation projects, which is current as of the date of your Reservation. The actual Project Agreement forms are subject to change, including for larger projects and for equipment-only projects. The Project Agreements that Tesla provides under Section 2 may be different from the one attached.
- 4. Cancellation.** Notwithstanding anything to the contrary, Tesla may determine in its sole discretion not to issue Project Agreements, including without limitation due to insufficient supply or the impracticability of developing the System. If Tesla declines to issue Project Agreements, Tesla will notify you and refund the Reservation Fee within a reasonable time, and these Terms will be terminated with no further liability to Tesla. In addition, at any time prior to executing a Purchase Agreement, you can cancel your Reservation by notifying Tesla in writing. If you cancel, the Reservation Fee will not be refunded, except as set forth in Section 1.
- 5. Assignment.** You are not permitted to assign the Reservation or these Terms to any other party.

Project Agreement Template

SUPPLY & INSTALLATION AGREEMENT (US)

This **Supply & Installation Agreement** (this "Agreement") is entered into as of [•], 20[•] (the "Effective Date") by and between the parties listed below (each, a "Party" and together the "Parties"). This Agreement comprises (i) the Key Terms set out below (the "Key Terms"), and (ii) all exhibits and schedules referenced in the "Attachments" sections of the Key Terms, which are hereby incorporated by reference.

<u>Key Terms</u>		
These Key Terms set out the scope of this Agreement and certain key terms.		
<u>Parties:</u>		
Tesla:	Tesla, Inc., a corporation organized under the laws of Delaware, whose registered office is at 1 Tesla Road, Austin, TX 78725	
Buyer:	[•], a [•] company organized under the laws of [•] whose registered office is at [•].	
<u>Project:</u>		
Project:	Battery energy storage, solar photovoltaic, and charging project located at the Site comprised of (i) the Battery Energy Storage System (" <u>BESS</u> ") described below and in the Scope of Work; and (ii) certain " <u>AC Equipment</u> " and " <u>Ancillary Work</u> ", each as described in the Scope of Work.	
Site:	[<u>Insert address</u>]. A plan of the Site indicating the location of the BESS is attached as <u>Annex 1</u> to the Scope of Work.	
<u>BESS:</u>		
	Standard (energy) mode:	
Nameplate Minimum Power Capacity:	[•]kW/[•]kVA at nominal voltage [•]V AC	
Nameplate Minimum Energy Capacity:	[•]kWh	
BESS Specifications:	Attached as <u>Schedule 1</u> .	
Included Applications:	<u>Description:</u>	<u>Check one or more:</u>
	Standard applications and controls of the BESS.	
	Back-up.	

<u>Project Schedule:</u>		
Initial Project Schedule:	The Initial Project Schedule is attached as <u>Exhibit A, Annex 3</u> . Tesla may update the Project Schedule from time to time during performance of the Work, and shall promptly provide a copy of any updates to Buyer.	
Notice to Proceed Deadline:	[•].	
Site Access Date:	[•].	
Key Milestone Dates:	The following are non-binding estimates of certain key dates in the Initial Project Schedule.	
	Site Mobilization: [•].	
	Target Substantial Completion Date: [•].	
	Final Completion Date: [•].	
Sunset Date:	[•].	
<u>Price & Payment:</u>		
EPC Price*: To be adjusted by Lithium Carbonate Price Adjustment as set forth in <u>Section 6.1</u>	USD [insert] (exclusive of taxes, as specified in <u>Section 7</u> of <u>Schedule 1</u>).	
Milestone Payment Schedule:	<u>Milestone:</u>	<u>% of EPC Price:</u>
	Effective Date:	[•]
	45 days prior to full shipment of equipment from relevant factory(ies) to the Site:	[•]
	Substantial Completion:	[•]
	Final Completion:	[•]
Payment Terms:	Buyer shall pay each invoice submitted by Tesla for milestones upon receipt and for all other Work or Services within 30 days following receipt. The final day of such period shall be the " <u>Final Date for Payment</u> " for such invoice.	
Buyer Invoice Address:	[•].	
Payment Terms:	[•].	
Credit Support:	[•].	

Representatives and Notices:		
Tesla Representative for Day-to-Day Communications:	[Name]([email]).	
Buyer Representative for Day-to-Day Communications:	[Name]([email]).	
Tesla Notice Address:	1 Tesla Road, Austin, TX 78725 Attn: General Counsel / Legal Phone: +1.512.516.8177 Email: legal@tesla.com cc : energynotices@tesla.com	
Buyer Notice Address:	[•] Attn: [•]. Phone: [•]. Email: [•]. Logistics Contact, Phone & Email: [•].	
NDA:		
NDA:	The [Tesla Mutual] Non-Disclosure Agreement dated [•] between Tesla (or its Affiliate) and Buyer (or its Affiliate).	
Exhibits:		
In the event of any conflict between these Key Terms and any Exhibit or Schedule, the order of precedence shall be (i) these Key Terms and (ii) the Exhibits and Schedules, in order of appearance.		
	Description:	Check if applicable:
Exhibit A:	Scope of Work	✓
	Annex 1: Plan of Site	
	Annex 2: Outline Electrical Schematic	
	Annex 3: Initial Project Schedule	✓
Schedule 1:	General Terms & Conditions	✓
Schedule 2:	Lithium Carbonate Price Adjustment	✓
Schedule 3:	BESS Specifications	✓
Schedule 4:	BESS Limited Warranty	✓
Schedule 5:	Insurance	✓
Schedule 6:	Credit Support Terms	✓
Schedule 7:	Project Flowdowns	

EXECUTED by the Parties on the Effective Date.

<p>[BUYER ENTITY]</p> <hr/> <p>(SIGNATURE)</p> <hr/> <p>(PRINT NAME)</p> <hr/> <p>(PRINT TITLE)</p>	<p>TESLA, INC.</p> <hr/> <p>(SIGNATURE)</p> <hr/> <p>(PRINT NAME)</p> <hr/> <p>(PRINT TITLE)</p>
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Exhibit A
Scope of Work

Project Description

Project:
<p>All works and materials required to provide the full turnkey engineering, design, supply and installation of the Project at the Site. The Project consists of:</p> <ol style="list-style-type: none">1. BESS = [Powerpack][Megapack] battery energy storage system with the minimum nameplate power and energy capacities identified in the Key Terms, comprising of the components described in the below Responsibility Matrix. The specifications of the BESS are attached as <u>Schedule 1</u> to this Agreement.2. AC Equipment = Balance of system equipment described in the below Responsibility Matrix.3. Ancillary Work = All other work that is identified as the responsibility of Tesla in the below Responsibility Matrix. <p>An outline electrical schematic for the Project is attached to this Scope of Work.</p>

Responsibility Matrix

1. Client Responsibilities.

- 1.1 Provide as-built drawings of existing electrical system (single line drawing and equipment shop drawings)
- 1.2 Provide as-built drawings of underground services within project area.
- 1.3 Provide as-built drawings of roof structure for roof mounted projects.
- 1.4 Provide information and available documentation of any future projects that may impact the project now, or in future.
- 1.5 Provide sequence of operation for any existing client owned equipment (example: generator and automatic transfer switch operation)
- 1.6 Provide site safety plan and emergency response guide.
- 1.7 Provide access to site for project personnel and equipment.
- 1.8 Provide response to design reviews within 3 business days.
- 1.9 Respond to general requests for information within a mutually agreed timeline in effort to keep project moving forward.
- 1.10 Facilitate signature on project related forms within 3 business days.

2. Tesla Assumptions—General.

- 2.1 Assumes [•] wage rates, excludes weekend/overtime work and expedited schedule (except for work at Tesla discretion) .
- 2.2 Assumes client will hire and pay Inspector-of-Record (IOR) and Laboratory-of-Record (LOR) as required by project AHJ.
- 2.3 OR Includes \$[BLANK] allowance for Inspector-of-Record (IOR) and/or Laboratory-of-Record (LOR) fees.
- 2.4 Includes \$[BLANK] valuation-based not to exceed allowance for all ministerial permit and inspection fees (final determination by AHJ).
- 2.5 Includes land development allowance of \$[BLANK] for all discretionary permits and associated fees; site diligence studies, reports, surveys as needed.

- 2.6 Assumes no protected cultural, archaeological, or biological resources present, excludes any associated permitting, costs, and schedule impact.
- 2.7 Assumes site to be above 100-year base flood elevation. Excludes flood risk mitigation.
- 2.8 Tesla's design deliverable milestones to be CD50, CD90 and Issue for Permit plansets. (Tom to fine tune so to sync w/ the terms of contract related to review period).
- 2.9 Project will have on-site, day-to-day Tesla construction management ("Construction Manager") as well as a remote Project Management lead ("Project Manager") to lead project correspondence, meetings and/or updates.
- 2.10 Assumes to provide Site Safety Plan and Job Hazard Analysis.
- 2.11 Assumes preparation and submission of interconnection application & liaison with utility to achieve interconnection approval and permission to operate.
- 2.12 Assumes preparation and submission of incentive application & liaison with program manager to secure project incentive(s).

3. Tesla Assumptions—Civil and Structural.

- 3.1 Assumes to procure geotechnical survey for project area as defined by Tesla.
- 3.2 Assumes to procure topographical survey for project area as defined by Tesla.
- 3.3 Assumes to procure boundary survey for project area as defined by Tesla.
- 3.4 Assumes to procure title reports for project area as defined by Tesla.
- 3.5 Assumes no structural related upgrades.
- 3.6 Assumes no civil related upgrades.
- 3.7 Assumes minimum carport (low edge) clear height of [BLANK].
- 3.8 Assumes carport column and beam finish: [BLANK]. Assumes carport purlin and fascia finish (x)
- 3.9 Assumes carport foundations depth of (depth) and foundation style to be either flagpole or above grade anchor bolt style.
- 3.10 Assumes ground mounted foundations to be pile driven to (depth) without industry standard equipment.
- 3.11 Assumes no cost to address pre-existing ADA non-compliance.
- 3.12 Assumes ADA upgrade costs not to exceed \$[BLANK].
- 3.13 ADA scope limited to signage and restriping, if applicable.
- 3.14 ADA scope excludes path-of-travel upgrades, curb cutting, ramps, and truncated domes.
- 3.15 Assumes no spill containment for any equipment.
- 3.16
- 3.17 Excludes removal, repair, relocation of landscaping, vegetation, irrigation, drainage and existing site utilities.
- 3.18 Assumes no unforeseen underground conditions. Exclusions include but not limited to soil stabilization and treatment, rock/obstruction drilling or excavation, water mitigation, soil caving, soil refusal, hazardous soil testing and mitigation, underground utilities relocation.
- 3.19 Assumes soils to be suitable for driven pier foundations.
- 3.20 Assumed soils suitable for horizontal directional boring or trenching with standard equipment at discretion of contractor.
- 3.21 Assumes native soil to be suitable for backfill and re-compaction. Excludes off-site spoils disposal or import of new fill material.
- 3.22 Assumes removal of [•] tree(s). Stumps to be ground flush with grade.
- 3.23 Assumes natural site drainage, excludes stormwater mitigation features.
- 3.24 Assumes no landscaping, screening, or sound mitigation features.
- 3.25 Assumes any fence to be code compliant chain link fence, not including privacy slats.
- 3.26 Assumes bollards/no bollards

- 3.27 Assumes hard scape will be repaired to match existing. Joint to joint hardscape repairs are not included.
- 3.28 Assumes landscape will be restored with fine grade finish. Restorative landscaping is not included.
- 3.29 Assumes underground electrical run to be directional boring or open trench at Tesla's discretion.

4. **Tesla Assumptions—Electrical.**

- 4.1 Assumes [•] interconnection.
- 4.2 Assumes system interconnected at [•] V.
- 4.3 Assumes conductors may be Al or Cu at Tesla's discretion.
- 4.4 Assumes below grade conduit to be pvc sch 40. Above grade conduit to be emt or rigid in locations that require impact protection. In corrosive environments PVC may be used at Tesla's discretion.
- 4.5 Assumes approx. [•] ft from Battery Energy Storage System to point-of-interconnection.
- 4.6 Assumes no utility related system interconnection costs.
- 4.7 Assumes allowance not to exceed \$[BLANK] for utility application fees, utility studies, utility upgrades, and/or new service drops.
- 4.8 Assumes no main electrical panel/switchgear upgrades required to support system.
- 4.9 Assumes \$[•] allowance for main electrical panel/switchgear upgrades.
- 4.10 Assumes site lighting for canopy projects where lighting is removed. Assumes new lights will connect to existing circuit.
- 4.11 Includes medium voltage step-up and step-down transformers due to long AC run.
- 4.12 Assumes low voltage auxiliary power provided by others.
- 4.13 Assumes monitoring of site load, PV, BESS and EV at Tesla discretion.
- 4.14 Assumes site load data provided by others to Tesla Controller in compatible format within Tesla latency requirements.
- 4.15 Assumes no non-Tesla monitoring systems or coordination with non-Tesla monitoring systems.
- 4.16 Assumes no monitoring display screen or kiosk of any sort.
- 4.17 Assumes Tesla will coordinate with client and utility to schedule outage for interconnection of energy system to grid power. Tesla to pay for utility outage fees if applicable.
- 4.18 Assumes to provide and install code compliant equipment placards, warning labels and arc flash labels related to Tesla project.
- 4.19 Assumes customer responsible for providing temporary back-up power to site during utility outage(s) for Tesla system connection if back-up power is desired by customer.
- 4.20 Assumes PV system includes modules, inverters, & BOS as designed by Tesla.
- 4.21 Assumes BESS system includes Tesla battery equipment and BOS as designed by Tesla.
- 4.22 Assumes EV system includes Tesla EV Level 2 Charger(s) and BOS as designed by Tesla.
- 4.23 Assumes no lightning protection system.
- 4.24 Resilient (backup enabled) Projects
- 4.25 Assumes battery system to be connected on load side of existing main breaker. Backup of all loads behind an existing single main breaker. If ATS is present assumes battery is connect upstream of ATS, assumes no coordination required w/ATS.
- 4.26 Assumes existing main panel UL listing is current.
- 4.27 Assumes main breaker is already provisioned with or can be provisioned with motorized remote switching functionality.
- 4.28 Assumes sufficient space within existing equipment to connect project to existing electrical system.
- 4.29 Assumes no custom bus bar fabrication to interconnect system.
- 4.30 Assumes no relocation of existing loads to interconnect system.

5. Testing and Commissioning.

- 3.1 Assumes PV to be commissioned via PV Job Check Out (JCO)
- 3.2 Assumes BESS system to be commissioned per BESS Checklist
- 3.3 Assumes EV to be commissioned per EV Checklist
- 3.4 Assumes coordination study & arc flash calculation of Tesla project to interconnection point, not of entire facility.

6. Closeout Deliverables.

- 6.1 Final permits
- 6.2 Record drawings
- 6.3 Utility Permission to Operate letter
- 6.4 Monitoring access to Powerhub platform

Annexes

- 1. Plan of Site
- 2. Outline Electrical Schematic
- 3. Initial Project Schedule

Exhibit A, Annex 1
Plan of Site

[Insert]

Exhibit A, Annex 2
Outline Electrical Schematic

[Insert]

Exhibit A, Annex 3
Initial Project Schedule

[Insert]

Schedule 1
General Terms & Conditions

1. Tesla's Responsibilities.

- 1.1 The Work. Tesla shall engineer, design, construct, start-up, test and Commission the Project, including procuring and installing all required equipment and materials, in each case as described in the Scope of Work (collectively, the "Work").
- 1.2 Standard of Performance. Tesla shall perform the Work exercising the reasonable skill and care of an installation contractor and in accordance with (i) mandatory laws, regulations and permits applicable to the Work and the Site, (ii) all manufacturer and vendor manuals and warranties relating to the equipment installed at the Project, (iv) any Buyer-Provided Information (as defined in Section 2.3); and (v) the Scope of Work (collectively, the "Work Standards").
- 1.3 Permits. Tesla shall obtain and maintain all of the permits that are expressly identified as the responsibility of Tesla in the Scope of Work.
- 1.4 Safety. Tesla shall (directly or through its subcontractor) be responsible for developing safety procedures and requirements, which shall include without limitation compliance with regulations imposed by the Occupational Safety and Health Administration and similar state entities ("Construction Safety Standards") at the Site during prosecution of the Work, and ensuring all onsite personnel comply with the Construction Safety Standards. Tesla shall (or shall ensure that its subcontractor shall) make Work in progress available for inspection by Buyer at reasonable times, subject to Buyer's compliance with the Construction Safety Standards.

2. Buyer's Responsibilities.

- 2.1 Access. Buyer shall, from and after the Site Access Date, provide access to the Site as reasonably necessary to enable Tesla's performance of the Work. For clarity, Tesla has no obligation to commence work at the Site on the Site Access Date.
- 2.2 Permits, etc. Buyer represents and warrants that as at the Effective Date it has obtained, and shall maintain, all leases, easements, permits, consents and approvals necessary for the construction and operation of the Project, except for any permits required to be obtained by Tesla under the Scope of Work ("Tesla-Acquired Permits"). Buyer shall provide copies of such leases, easements, permits, consents and approvals to Tesla as reasonably requested. Buyer shall reasonably assist Tesla to obtain any Tesla-Acquired Permits, including by attending meetings with any relevant parties as reasonably requested by Tesla.
- 2.3 Buyer Scope. Buyer shall perform all obligations that are identified as Buyer's responsibility in the Scope of Work in accordance with the then-current version of the Project Schedule, including without limitation (i) making available on the Site such supplies of electricity, water, gas, air and other materials and services that are identified as Buyer's responsibility in the Scope of Work, for use by Tesla for purposes of performing the Work; and (ii) promptly providing Tesla with any data, design criteria or other documentation and information that are identified as Buyer's responsibility in the Scope of Work, and promptly (and in any event within 5 Business Days of request) providing any feedback reasonably requested by Tesla on any matter relating to the Scope of Work. Any data, design, criteria or other documentation or information provided by Buyer to Tesla before or after the date of this Agreement constitutes "Buyer-Provided Information". Tesla may rely on Buyer-Provided Information and shall have no liability for defects, errors or omissions in any Buyer-Provided Information.

- 2.4 Credit Support. If identified in the Key Terms, Buyer shall deliver Credit Support in accordance with Schedule 6 during the Credit Support Term (as defined in Schedule 6).
3. Representatives. Each Party appoints the representative identified in the Key Terms as the primary point of contact for all day-to-day communications with respect to this Agreement. Each Party may change this representative by written notice to the other Party in accordance with Section 25.9.
4. Subcontractors. Tesla may employ its Affiliates, independent consultants and/or subcontractors to assist in the performance of the Work. Buyer has no right to approve the identity of such Affiliate, consultants or subcontractors. Tesla shall be solely responsible for the Work.
5. Substantial Completion and Final Completion.
- 5.1 Timing. Tesla shall make commercially reasonable efforts to achieve Substantial Completion of the Work on or prior to the Target Substantial Completion Date, and achieve Final Completion within 60 days following Substantial Completion. Without limiting the foregoing, the Key Milestone Dates identified in the Key Terms are for reference purposes only, and are non-binding. Buyer's sole remedy for delay on the part of Tesla is termination in accordance with Section 22.2(iii).
- 5.2 Substantial Completion. The Work shall be deemed to have achieved "Substantial Completion" when (i) Tesla has completed the Work in accordance with the Work Standards (other than any minor snagging items that do not impact on the safe operation of the Project and that Tesla identifies in to Buyer in a written "Punch List"), (ii) Tesla has commissioned the Project in accordance with the Scope of Work (if applicable) and Tesla's then-current practices, which such practices will be provided to Buyer upon request ("Commissioning"); (iii) Tesla's personnel, tools and materials have been removed from the Site; (iv) the Project is capable of operating without safety risk to operator; (v) Tesla has delivered copies of any warranties required pursuant to Section 13.1; and (vi) Tesla has certified in writing to Buyer that Substantial Completion has been achieved. The date that the Project achieves Substantial Completion shall be the "Substantial Completion Date".
- 5.3 Final Completion. The Work shall be deemed to have achieved "Final Completion" when Tesla has (i) achieved Substantial Completion; (ii) completed all items on the Punch List to Buyer's reasonable satisfaction; and (iii) delivered to Buyer (A) the as-built drawings of the Project; and (B) copies of all Tesla-Acquired Permits.
6. EPC Price; Invoicing; Payment.
- 6.1 EPC Price. The price for the Work shall be the EPC Price set out in the Key Terms; provided that the EPC Price will be adjusted by the "Lithium Carbonate Price Adjustment" set forth in Schedule 2, and the term "EPC Price" means the EPC Price as adjusted by the Lithium Carbonate Price Adjustment, once the adjustment has been applied in accordance with Schedule 2.
- 6.2 Payment Notice and Invoice. On achievement of each of the milestones identified in the Milestone Invoice Schedule in the Key Terms, Tesla shall submit to Buyer at the email address set out in the Key Terms an invoice that identifies the amount that Tesla considers to be due and payable (which shall include the relevant installment of the EPC Price and any additional fees, expenses or disbursements that are payable by Buyer to Tesla under this Agreement) and reasonable supporting documentation.

- 6.3 Payment. Buyer shall pay invoices in accordance with Payment Terms set out in the Key Terms. Payments shall be made in the currency in which the EPC Price is denominated in the Key Terms, by wire transfer or other electronic means approved by Tesla.
- 6.4 Invoice Disputes. Buyer shall notify Tesla of any invoice dispute and provide substantiating documentation within 20 days of Buyer's receipt of the disputed invoice. Notwithstanding any dispute, Buyer shall pay all undisputed amounts in accordance with the Payment Terms. Buyer shall reimburse Tesla for all costs incurred in collecting any late payments, including attorneys' fees. Notwithstanding any dispute, Buyer shall pay all undisputed amounts in accordance with the payment terms of the Agreement. The Parties shall seek to resolve all disputes expeditiously and in good faith in accordance with Section 23.
- 6.5 Late Payments. If any sum payable by Buyer is not paid by the Final Date for Payment, Buyer shall pay interest to Tesla on the sum that is overdue (calculated from the Final Date for Payment of the relevant sum) at a rate equal to the lesser of 1.5% per month or the highest rate permissible under applicable Law, accruing at a daily rate (based on a 365 day year) until payment of the overdue sum is received by Tesla.
7. Taxes.
- 7.1 The EPC Price is inclusive of all import/export duties or tariffs unless otherwise stated in the Key Terms. The EPC Price is exclusive of, and Buyer is solely responsible for, all sales, use and excise taxes, and any other similar taxes and charges of any kind imposed by any governmental authority on any amounts payable by Buyer.
- 7.2 Where required by law, unless Buyer furnishes to Tesla lawful evidence of exemption, Tesla will invoice Buyer for the amount of any such tax and remit such amount to the applicable taxing authority on Buyer's behalf. If Buyer is required by law to deduct or withhold any amount of tax from a payment to Tesla, Buyer shall (i) promptly remit such amount to the applicable taxing authority and provide Tesla with a receipt for such remittance and (ii) increase the amount of its payment to Tesla by the amount necessary to ensure Tesla receives the full amount which it would have received if no deduction or withholding had been made. For clarity, neither Party is responsible for any taxes imposed on, or with respect to, any of the other Party's income, revenues, gross receipts, employees, real or personal property or other assets.
8. Set-off. Buyer shall not deduct or set-off amounts owed by Tesla to Buyer against any part of the balance due or to become due to Tesla from Buyer under this Agreement unless Buyer has invoiced Tesla for such amount and Tesla has not paid or disputed the invoice within the time required under this Agreement.
9. Title and Risk of Loss.
- 9.1 Title. Subject to payment of the EPC Price by Buyer in accordance with Section 6, title to all Work (except the Proprietary Rights identified in Section 16) will pass to Buyer on the earlier of (i) the date of Substantial Completion or (ii) payment by Buyer of the full EPC Price.
- 9.2 Risk of Loss. Buyer shall bear all risk of theft of, or loss or damage to, all items, materials, and equipment comprising the Project delivered to or located at the Site.
- 9.3 Security Interest. Notwithstanding anything to the contrary herein, to the maximum extent permitted by law, if title to the Work transfers from Tesla to Buyer prior to Buyer's payment in full of the EPC Price, until Tesla is paid the EPC Price in full, Tesla shall retain, and Buyer hereby grants, a first priority security interest in and to all of the right, title and interest of Buyer in, to and under

the Work, as well as any insurance proceeds covering the Work, and Buyer authorizes Tesla to file financing statements in such regard and will take such action as is requested by Tesla to protect such interest. The security interest granted hereunder constitutes a purchase money security interest under the Texas Uniform Commercial Code or the analogous law or regulation in the state in which the Site is located. In addition, until the EPC Price has been paid in full, nothing shall prohibit Tesla from exercising its rights under applicable mechanics' and suppliers' lien laws or any common law liens such as a common carrier's lien and other similar liens arising by operation of law or statute.

10. Force Majeure; Buyer Delays.

10.1 Definitions.

10.1.1 "Buyer-Caused Delay" means a delay in Tesla's performance of its obligations under this Agreement, to the extent due to Buyer's failure to perform any of its obligations under this Agreement, or Buyer's failure to provide any information or cooperation reasonably requested by Tesla.

10.1.2 "Change in Law" means the enactment, adoption, promulgation, modification (including a change in interpretation by a governmental authority) or repeal of any law or permit, including of any tariff applicable to the goods Tesla will provide pursuant to this Agreement, after the Effective Date, other than publicly known proposals for changes in laws and permits applicable to Tesla's obligations that have been adopted by the applicable governmental authority on or before the Effective Date.

10.1.3 "Differing Site Condition" means (A) any condition at the Site (including any concealed or latent subsurface conditions at the Site or any subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar significance); or (B) a change in surface or subsurface conditions at the Site following the Effective Date.

10.1.4 "Direct Costs" means Tesla's actual and reasonably documented direct cost of performing one or more applicable acts (whether internal or external), plus 20% of the foregoing amount for overhead and profit.

10.1.5 "Force Majeure" means any act or circumstance beyond the reasonable control and not attributable to the fault or negligence of Tesla, including acts of God, epidemic, pandemic, flood, fire, earthquake, climatic conditions at the Site that are unusual for the time of year, explosion, action or inaction of a public authority (including delays caused by permitting authorities) for reasons other than Tesla's fault, war, terrorist threats or acts or other civil unrest, piracy, lock-outs, strikes or other labor disputes, restraints or delays affecting carriers, and shall include the inability or delay in obtaining supplies of adequate or suitable materials to the extent caused by a Force Majeure.

10.2 If a (i) Buyer-Caused Delay, Change in Law, or Differing Site Condition increases Tesla's costs or delays Tesla's performance of its obligations under this Agreement, or (ii) Buyer wishes to change the scope of Tesla's obligations hereunder and such change is agreeable to Tesla in its sole discretion, then Tesla shall be entitled to a corresponding adjustment to the EPC Price to account for Tesla's Direct Costs, and an adjustment to the Estimated Delivery Date and Sunset Date.

- 10.3 If a Force Majeure increases Tesla's costs or delays Tesla's performance of its obligations under this Agreement, Tesla shall be entitled to a corresponding adjustment to the Estimated Delivery Date and Sunset Date, but not the EPC Price.
- 10.4 To the extent that Tesla is affected by the circumstances in Sections 10.5 or 10.6, Tesla shall provide a change order to the Buyer detailing the adjustment it believes is warranted by the applicable section. Such proposal shall be deemed accepted by Buyer if Buyer has not disputed such proposal in writing within 10 days after Tesla provides it.

11. Suspension of Work by Buyer.

- 11.1 Suspension by Buyer for Convenience. Buyer may at any time, with or without cause, order Tesla in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Buyer may determine, not to exceed 90 days in aggregate.
- 11.2 Impact of Suspension by Buyer. The EPC Price and Project Schedule shall be equitably adjusted for increases in cost and/or time caused by any suspension, delay or interruption ordered by Buyer under Section 11.1 in accordance with Section 10.5 and 10.6, *provided* such suspension, delay or interruption is not attributable to Tesla's breach of this Agreement. The adjustment to the EPC Price may include, without limitation, (i) standby, storage and demobilization/remobilization costs incurred by Tesla (including reasonable overhead and profit) and (ii) Tesla's costs of capital invested in equipment comprising the Project (whether manufactured by Tesla or procured by Tesla from a third party). Any standby, storage, demobilization/remobilization and capital costs incurred by Tesla resulting from a suspension or recommencement of Work under this Section 11 shall be reimbursed monthly to Tesla.

12. Suspension of Work by Tesla.

- 12.1 Suspension by Tesla due to Hazardous Materials. If Tesla encounters any Hazardous Materials or identifies any other unsafe environmental condition at the Site, Tesla shall so notify Buyer as soon as possible, and Tesla may stop performing Work in the affected area without being in breach of its obligations hereunder until such time as Buyer has properly abated and disposed of such Hazardous Materials and Tesla has determined, in its sole discretion, that it is appropriate to resume performance of the Work. "Hazardous Materials" include any hazardous or toxic wastes, materials or substances, and any other pollutants or contaminants. This provision does not apply to Hazardous Materials that were brought onto the Site by Tesla or unsafe environmental conditions that were caused by Tesla's negligence.
- 12.2 Suspension by Tesla due to Buyer Breach. If Buyer breaches any of its material obligations under this Agreement, without limiting its other rights under this Agreement or at law, Tesla may stop performing Work without being in breach of its obligations hereunder until such time as Buyer's breach is cured.
- 12.3 Impact of Suspension by Tesla. If Tesla suspends Work in accordance with Section 12.1 or 12.2, the EPC Price and Project Schedule shall be equitably adjusted for increases in cost and/or time caused by such suspension in accordance with Section 10.5 and 10.6. The adjustment to the EPC Price may include, without limitation, (i) standby, storage and demobilization/remobilization costs incurred by Tesla (including reasonable overhead and profit); and (ii) Tesla's costs of capital invested in equipment comprising the Project (whether manufactured by Tesla or procured by Tesla from a third party). Any standby, storage, demobilization/remobilization and capital costs incurred by Tesla resulting from a suspension or recommencement of Work under this Section 12 shall be reimbursed monthly to Tesla.

13. Project Warranties.

13.1 BESS Limited Warranty. Tesla provides the manufacturer's limited warranty for the BESS as set out in Schedule 2 (the "BESS Limited Warranty").

13.2 Limited Warranty for AC Equipment and Ancillary Work.

13.2.1 Tesla warrants that the AC Equipment and Ancillary Work shall be free from defects in design, materials and workmanship for 2 years following the Substantial Completion Date (such warranty the "BOS Limited Warranty", and such period the "BOS Limited Warranty Period"). Tesla's liability for any breach of the BOS Limited Warranty shall be limited to repairing or replacing the defective portion of the AC Equipment or Ancillary Work. As part of its remedy, Tesla may elect to do any of the following in its sole discretion:

13.2.1.1 repair parts (including removing such parts and reinstalling the same after repair); and/or

13.2.1.2 use (i) repaired, remanufactured or refurbished parts to the extent such parts have remaining lives equivalent to or better than that of the part being replaced; or (ii) equivalent or improved versions of Tesla products, features or options.

13.2.2 Any remedial work performed by Tesla under this Section 13.2 shall be re-warranted for 1 year from the date the remedial work is completed but in no event shall Tesla have warranty liability under this Section 13.2 after the expiry of 3 years following the Substantial Completion Date.

13.3 No Other Warranties. Following the Substantial Completion Date, the obligations and warranties contained in the BESS Limited Warranty and the BOS Limited Warranty (collectively, the "Project Warranties") are Tesla's sole and exclusive liability and Buyer's sole and exclusive remedy with respect to the quality of the Project and the Work. The BOS Limited Warranty is conditional upon the maintenance of the Project being carried out either (i) by Tesla; or (ii) by a Tesla-approved third-party in accordance with the manufacturers' and suppliers' operating and maintenance manuals and good industry practice. Except as provided in this Section 13 and to the greatest extent permitted by law, there are no warranties or guarantees, express or implied, with respect to the Work, and Tesla disclaims any implied warranties or warranties imposed by law including warranties of merchantability or fitness for a particular purpose. Without limiting the foregoing, Tesla does not make any warranty regarding the incorporation of the Project into any larger project and shall not be responsible to the extent that a particular design, process or product of a particular manufacturer or manufacturers is required or specified by Buyer or where copyright violations are contained in drawings, specifications or other documents prepared or provided by Buyer or others for whom Buyer is responsible.

14. Remote Monitoring; Firmware Upgrades; etc.

14.1 As a condition to providing the Project Warranties, Tesla requires the ability to (i) remotely monitor performance of the Project; and (ii) provide remote firmware and software upgrades to the Project. Buyer hereby consents to Tesla performing such remote monitoring and providing such firmware and software upgrades as Tesla reasonably deems appropriate, at any time and without further notice to or consent from Buyer.

14.2 "Buyer Data" consists of the data defined to be owned by Buyer in the appendices of the Communications Manual as defined in Section 14.4. Buyer Data shall be owned by the Project owner and shall be made available by Tesla to the Project owner on request, in a reasonably accessible format. Buyer grants to Tesla an irrevocable, perpetual worldwide, royalty-free license to use of all data obtained via the remote monitoring of the Project. Tesla may use Buyer Data

(i) to perform its obligations under the Manufacturer's Limited Warranty, (ii) to improve Tesla's products and services generally (including by performing analyses on such information); provided that Tesla shall not reverse engineer such data to expose Buyer's dispatch algorithms, and (iii) to aggregate with other data. Notwithstanding anything to the contrary in the NDA, public disclosure of such information by Tesla is permitted if neither Buyer nor the owner or long-term occupant of the site where the Project is located (the "Site Host") could reasonably be identified from the publicly disclosed information.

14.3 Any information obtained by Tesla through remote monitoring of the Project that is not Buyer Data shall be owned by Tesla ("Tesla Data"), shall be Confidential Information of Tesla, and shall not be required to be made available by Tesla to any person.

14.4 Buyer represents and warrants that, prior to the installation of the Project, it will obtain the written consent of the subsequent owner and (if different) the Site Host with respect to the matters addressed in this Section 14. "Communications Manual" means the Controls and Communication Manual for the Project that is published by Tesla or otherwise made available by Tesla to Buyer.

15. Confidentiality; Publicity.

15.1 Confidentiality. The NDA sets out the Parties' confidentiality obligations under this Agreement. It is incorporated by reference into this Agreement, and the terms and conditions of the NDA will continue in force throughout the term of this Agreement and for 3 years following its expiration or early termination. The terms and conditions of this Agreement, and any information regarding the Project shall be the Parties' Confidential Information for purposes of the NDA.

15.2 Publicity. Neither Party shall advertise or issue any public announcement regarding the execution of this Agreement or its contents, or use the other Party's mark, name or logo in any marketing literature, web sites, articles, press releases (including interviews with representatives of media organizations of any form), or any other document or electronic communication, without the prior written consent of the other Party. The foregoing shall not prohibit a Party from making any public disclosure or filing that it determines in good faith is required by law or the rules of the stock exchange on which its shares, or the shares of its parent company, are listed.

16. Proprietary Rights.

16.1 As between the Parties, Tesla shall remain the sole and exclusive owner of any and all patents, trademarks, copyrights, mask work rights, trade secrets and any other intellectual or proprietary rights ("Proprietary Rights") associated with the Project or any parts or derivations thereof, including those developed in connection with its performance of the Work, and in the services performed by it pursuant to this Agreement (including all warranty-related Work).

16.2 Effective when Tesla has been paid the EPC Price in full, Tesla grants to Buyer a limited, royalty-free, perpetual, world-wide, non-exclusive, non-sublicensable license to use, copy, distribute, and make derivative works from (i) any drawings, specifications, documents provided or developed by Tesla in connection with this Agreement; and (ii) any software (i.e., firmware) embedded by Tesla in the Project, (ii) any manuals and similar documents provided by Tesla in connection with this Agreement (all of the foregoing, collectively, the "Licensed Materials") to the extent necessary for the ownership, operation, and maintenance of the Project. Except for the foregoing, no license or other right to Tesla's the Licensed Materials or other Tesla intellectual property is granted under this Agreement. The licenses granted by Tesla under this Section 16.2 only relate to the Licensed Materials in the final forms provided by Tesla to Buyer

- 16.3 For the avoidance of doubt, Buyer is not granted any license to modify the Licensed Materials and shall bear all responsibility for its use of the Licensed Materials other than as permitted by Tesla's license granted under Section 16.2. The Licensed Materials are not intended or represented to be suitable for reuse on extensions of the Project or any other project other than the Project. Any such reuse, modification without Tesla's prior written approval or other action in breach of the scope of the license granted under Section 16.2 will be at Buyer's sole risk and without liability or legal exposure to Tesla.
- 16.4 The licenses provided in Section 16.1 will terminate upon termination of this Agreement as the result of Buyer's breach for failure to pay, except if Buyer has paid Tesla the Buyer Termination Payment.
17. Insurance. Each Party shall pay for and maintain in full force and effect the insurance coverage or insurance program required of it in Schedule 5, as applicable
18. Representations.
- 18.1 Mutual. Each Party represents and warrants to the other Party that (i) it is a legal entity, duly organized, and in good standing under the laws of jurisdiction of incorporation; (ii) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms; and (iii) the execution, delivery and performance of this Agreement (A) is within its powers, (B) has been duly authorized by all requisite action and (C) will not violate any agreement, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.
- 18.2 Buyer. Buyer further represents and warrants to Tesla that (i) it and any person providing Credit Support is not insolvent and is capable of paying all of its debts as they become due; (ii) all information, financial or otherwise, that it has provided to Tesla is true and accurate and, in the case of financial information, fairly represents Buyer's and any person providing Credit Support's financial position as at the date it was provided; and (iii) any Credit Support is in full force and effect.
19. Indemnities.
- 19.1 General Indemnity. Each Party shall defend, indemnify and hold harmless the other Party, its Affiliates, and their respective directors, officers, partners, members, shareholders, agents, employees, subcontractors, successors and assigns (collectively, "Representatives") from and against any losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees (collectively, "Losses") arising from (i) any claim, action, suit, proceedings, demand, investigation or assessment made or brought by any third party (excluding any of the foregoing brought by shareholders or employees of the indemnified Party) (collectively, "Claims") alleging injury or death of persons, or damage to or loss of property, to the extent caused by or arising from the negligent acts or omissions or acts of willful misconduct of the indemnifying Party or its Representatives in connection with the Project, its use, or the performance of this Agreement; or (ii) any failure by the indemnifying Party or its Representatives to comply with applicable laws (including, without limitation, the FCPA (as defined in Section 21) and any applicable export control laws).
- 19.2 Environmental Indemnity.
- 19.2.1 Tesla shall defend, indemnify, and hold harmless Buyer and Buyer's Representatives from and against all Claims arising out of or relating to any violations of any environmental laws

by Tesla, including the release at, on, above, below or near the Site in connection with the performance of this Agreement, of any hazardous materials to the extent such violation or release relates to (i) pre-existing hazardous materials or hazardous materials brought to the Site by Buyer or anyone for whom Buyer is legally responsible (other than Tesla or its subcontractors), in either case whose presence and location were previously made known to Tesla by Buyer and that were negligently released on the Site by Tesla or its subcontractor, or (ii) hazardous materials brought to the Site by Tesla or its subcontractor that are released by Tesla or its subcontractors.

19.2.2 Buyer shall defend, indemnify, and hold harmless Tesla and its Representatives from and against any and all Claims made against any Tesla and its Representatives in connection with or arising from (i) pre-existing environmental conditions, including pre-existing hazardous materials, on the Site, (ii) any releases of hazardous materials other than those for which Tesla is responsible under this Agreement, and (iii) any violations of any permits or environmental laws by Buyer or end user.

19.3 IP Indemnity. Tesla shall indemnify, defend and hold harmless Buyer and its Representatives from any Losses arising out of any Claim alleging that the Project infringes the intellectual property rights of a third party. However, Tesla shall have no obligation to indemnify Buyer or any of its Representatives to the extent the Claim arises out of: (i) use of the Project in combination with any other products, materials or equipment not expressly authorized by Tesla in circumstances where the infringement would have been avoided by the use of the Project not so combined; or (ii) any modifications or changes made to the Project other than by Tesla in circumstances where the infringement would have been avoided without such modifications or changes. If a Claim for infringement or alleged infringement of any intellectual property rights is made, Tesla may, at its own expense, (A) modify any or all of the intellectual property rights so as to avoid the infringement or the alleged infringement; or (B) take such other action as Tesla deems reasonable to avoid or settle such Claim in accordance with Section 19.4, and this shall be the sole and exclusive remedy available to Buyer in respect of such Claim.

19.4 Indemnification Procedures. The indemnified Party will give the indemnifying Party prompt written notice of any claim for which indemnification is sought under Section 19. Failure to give prompt notice will not diminish the indemnifying Party's obligations under this Section 19.4 to the extent such failure does not materially prejudice the indemnifying Party's ability to defend the claim. The indemnifying Party shall control the defense of the claim, and the indemnified Party may participate in the defense at its own expense with counsel of its choice. The indemnified Party shall make available information and assistance as the indemnifying Party may reasonably request, at the indemnifying Party's expense. The indemnifying Party may not, without the prior written consent of the indemnified Party, consent to any judgment or settlement that (i) provides for injunctive or other non-monetary relief affecting the indemnified Party or its Representatives or (ii) does not provide for an unconditional and full release of the indemnified Party and its Representatives and does not diminish any rights of the indemnified Party under this Agreement or result in additional fees or charges to the indemnified Party. If the indemnifying Party, within a reasonable time after receipt of a request for indemnification, fails to take reasonable steps to defend indemnified Party or its Representative against a claim, the indemnified Party may undertake the defense of such claim without waiving its rights and remedies under this Agreement.

20. Limitations of Liability.

20.1 Waiver of Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR

NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

- 20.2 Liability Cap. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE WORK EXCEED THE FOLLOWING AMOUNTS IN THE FOLLOWING PERIODS:
- (i) PRIOR TO THE SUBSTANTIAL COMPLETION DATE, THE EPC PRICE.
 - (ii) FROM THE SUBSTANTIAL COMPLETION DATE UNTIL THE END OF THE BOS LIMITED WARRANTY PERIOD, 20% OF THE EPC PRICE.
- 20.3 Exclusions. The limitations of liability set forth above shall not apply to: (i) Buyer's obligations to make payments for the Work and the Services under this Agreement; (ii) claims under the BESS Limited Warranty, which are capped at the amount referenced in that document; (iii) damages attributable to either Party's breach of its confidentiality obligations; (iv) any violation of a Party's intellectual property rights; (v) claims that are the subject of indemnification under this Agreement; (vi) damages attributable to a Party's intentional torts, unlawful conduct or gross negligence; or (vii) any other acts or omissions for which liability cannot be disclaimed or limited under applicable law.
21. Anti-Bribery Laws. Each Party is in compliance with all national or international anti-bribery Law applicable to a Party from time to time, including without limitation the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA") and shall, at all times during the term of this Agreement, remain in compliance and maintain appropriate policies and procedures to ensure ongoing compliance with all such laws. As of the Effective Date, (i) neither Party has any employees who are foreign officials as defined under the FCPA, and (ii) no foreign official as defined under the FCPA has any legal or beneficial interest in a Party (or, if a Party or its direct or indirect parent company is a publicly listed company, a more than 5% legal or beneficial interest in such Party). Each Party shall promptly notify the other Party in writing if any of the foregoing representations would be untrue if made by Buyer at any time during the Term. Each Party acknowledges that any violation of this Section 21 constitutes just cause for immediate termination of this Agreement by the other Party.
22. Term; Termination.
- 22.1 Term. This Agreement shall become effective on the Effective Date and shall continue until it is fully performed, unless terminated early as set forth in this Section 22.
- 22.2 Termination by Buyer for Cause. Buyer may terminate this Agreement for cause if (i) an Insolvency Event occurs with respect to Tesla; (ii) Tesla has breached any material provision of this Agreement and, within 30 days after Tesla's receipt of written notice of such breach from Buyer, Tesla has failed to cure such breach (or for breaches which Tesla has notified Buyer cannot be cured within 30 days but can be cured within 60 days, such breach has not been cured within 60 days); or (iii) upon 10 days' notice, the Project has not achieved Substantial Completion by the Sunset Date. Insolvency Event. An "Insolvency Event" occurs with respect to a Party, that (i) the affected Party makes a general assignment for the benefit of its creditors; (ii) a receiver is appointed on account of the insolvency of the affected Party; (iii) the affected Party files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against a Party (but not by such Party) such proceeding is not dismissed within 60 days after such filing.

22.3 Termination by Tesla for Cause. Tesla may terminate this Agreement for cause if (i) an Insolvency Event occurs with respect to Buyer or any person providing Credit Support, (ii) Buyer fails to make payment of an undisputed invoice when due and fails to cure such breach within 10 days after receipt of written notice from Tesla; (iii) Buyer has breached any material provision of this Agreement (other than non-payment) and, within 30 days after Buyer’s receipt of written notice of such breach from Tesla, Buyer has failed to cure such breach (or for breaches which Buyer has notified Tesla cannot be cured within 30 days but can be cured within 60 days, such breach has not been cured within 60 days); (iv) the person providing Credit Support breaches the terms of such Credit Support, or any Credit Support ceases to be in full force and effect and Buyer fails to replace it with alternative credit support acceptable to Tesla within 5 days of written notice from Tesla; or (v) Buyer suspends the Work pursuant to Section 11.1 for more than 90) days in aggregate.

22.4 If Tesla terminates this Agreement for Buyer’s default, Tesla shall be entitled to:

22.4.1 retain all Milestone Payment(s) already received by Tesla as of the effective date of the termination; and

22.4.2 Invoice for and Buyer shall pay the following amounts, as reasonably calculated by Tesla (collectively the “Buyer Termination Payment”):

22.4.2.1 the value of all Work performed by Tesla in accordance with this Agreement up to the date of such termination for which Tesla has not previously received payment (including, for the avoidance of doubt, payment for all amounts which are payable but unpaid in respect of Milestone Payments owing as of such termination;

22.4.2.2 the value of all Equipment in transit to the Site but not yet covered by a Milestone Payment as of the date of such termination for which Tesla has not previously received payment; plus

22.4.2.3 an additional amount set out in the table below applicable to the effective date of the termination:

Effective date of termination	Amount
Prior to NTP	N/A.
After NTP or the NTP Deadline, as applicable:	30% of remaining Equipment Price applicable to the portion of the Equipment not delivered or in transit at the time of the termination. The Contract Price shall include the Lithium Carbonate Price Adjustment, if applied to the Contract Price at the time of termination.

22.4.2.4 all Direct Costs incurred by Tesla in connection with the termination of this Agreement, including demobilization costs, and protecting the Work and leaving the Site in a clean and safe condition as reasonably directed by Buyer;

22.4.2.5 all Direct Costs incurred by Tesla in connection with the termination of this Agreement, including demobilization costs, and protecting the Work and leaving the Site in a clean and safe condition as reasonably directed by Buyer;

22.4.2.6 all Direct Costs incurred by Tesla in collecting the foregoing amounts

22.4.3 Tesla's claim (which shall contain detailed supporting documentation) shall be submitted within 30 days after the effective date of termination under this Section 5.3 (excluding if applicable collection costs incurred after the date of termination, which shall be submitted within a reasonable time).

22.5 Subject to Tesla's receipt of the amounts described in Section 22.4.2 including the Buyer Termination Payment, all materials manufactured by Tesla and delivered (or in transit) to Buyer at the effective date of the termination shall be covered by the Megapack Limited Warranty and Tesla's standard licenses that Tesla grants or makes available to ordinary course purchasers of such goods, as applicable. The terms of such equipment sale not specified in this Section 5.3.4 will otherwise be in accordance with Tesla's then-standard utility scale equipment supply agreement available on Tesla's website.

22.6 Effects of Termination. Except as otherwise set forth in this Agreement, the expiration or termination of this Agreement will not affect any rights or obligations of the Parties that were incurred or that accrued prior to such expiration or termination. Termination shall not be deemed an election of remedies, and the non-defaulting party shall have all rights and remedies available under applicable law following such termination.

22.7 Survival. Provisions of this Agreement which by their nature contemplate or govern performance or observance subsequent to the termination or expiration of this Agreement or any transactions contemplated herein shall survive such termination or expiration

23. Governing Law; Dispute Resolution.

23.1 Governing Law. This Agreement will be governed by and interpreted in accordance with Texas law.

23.2 Dispute Resolution. Any dispute arising from or relating to this Agreement shall first be promptly referred to the Parties' senior level management for resolution. If the Parties' senior level management are unable to resolve any such dispute within 20 days after referral, then either Party may take a dispute to binding arbitration in accordance with the then-current Streamlined Arbitration Rules of the Judicial Arbitration and Mediation Services ("JAMS"). The existence, content and result of the arbitration shall be held in confidence by the Parties, their representatives, any other participants and the arbitrator. The arbitration will be conducted by a single arbitrator selected by agreement of the Parties or, failing such agreement, appointed in accordance with JAMS. The arbitration shall be conducted in English and in Austin, Texas. The arbitration award shall be final and binding on the Parties hereto and the Parties shall not have the right to appeal any such award. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in their discretion, award reasonable costs and fees to the prevailing Party. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.

24. Miscellaneous.

24.1 Interpretation. Unless the context otherwise requires, references in this Agreement to "Sections" means the section of the exhibit or annex in which the reference is made, and references to "Exhibits", "Annexes" and "Schedules" mean the exhibits, annexes and schedules to this Agreement. The headings in this Agreement are for reference purposes only and may not be construed to modify or restrict any of the terms of this Agreement. This Agreement will be deemed to have been written by both Parties.

- 24.2 Certain Defined Terms. In this Agreement, “Affiliate” means, with respect to an entity, an entity that controls, is controlled by or is under common control with such entity; (ii) “control” means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise; and (iii) “Business Day” means any day other than weekends and days when banks are not generally open for business in Austin, Texas.
- 24.3 Cumulative and Certain Exclusive Remedies. Except as set out in Section 5.1 and Section 13, all rights and remedies provided under this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.
- 24.4 Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, representations and understandings, oral or written, between the Parties regarding the subject matter hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such term shall be severable from the remainder of this Agreement and the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by the law.
- 24.5 Amendment; Waiver. No amendment or modification of this Agreement is effective unless it is in writing and signed by each Party. No waiver by either Party of any provision of this Agreement is effective unless explicitly set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right or remedy hereunder precludes any other or further exercise thereof or the exercise of any other right or remedy.
- 24.6 Assignment; Collateral Warranty.
- 24.6.1 Subject to Section 24.6.2, neither Party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing Tesla may assign this Agreement to a successor in interest following a merger, acquisition or corporate reorganization. Within 14 days of a written request from Buyer, Tesla will, execute and deliver to Buyer a collateral warranty in favour of Buyer's funder, in a form to be agreed by the Parties, each acting reasonably.
- 24.6.2 Permitted Assignments. Each Party may (i) assign this Agreement to a successor in interest following a merger, acquisition or corporate reorganization, and (ii) without the other Party's consent, collaterally assign this Agreement as security to any Financing Party; provided, however, that no assignment of this Agreement pursuant to the foregoing clause (ii) shall release the assignor from its obligations and liabilities under this Agreement. A permitted assignee under this Section 24.6.2 shall be bound by the obligations of this Agreement upon consummation of a foreclosure of its security interest and shall, upon the other Party's request, deliver a written assumption of assignor's rights and obligations under this Agreement to the other Party
- 24.7 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the

Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

- 24.8 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 24.9 Notices. All notices under this Agreement shall be in writing and shall be deemed given (i) if sent by courier, on the date when left at the address of the recipient if such date is a Business Day or on the next Business Day if such date is not a Business Day and (ii) if sent by email, upon receipt by the sender of an email confirming receipt of the notice by the recipient (in which case the email will be deemed received on the date it was actually received by the recipient if such date is a Business Day, or on the next Business Day if such date is not a Business Day). An automatic "read receipt" shall not constitute confirmation of receipt for purposes of this Section 24.9. Notices shall be sent to the notice address given for Tesla and Buyer on the cover page of this Agreement, or such other address as either Party may notify the other Party in writing from time to time. Nothing in this Section 24.9 shall be construed to restrict the transmission of routine communications between representatives of Buyer and Tesla.
- 24.10 Counterparts. This Agreement may be signed in duplicate originals, or in separate counterparts, which are effective as if the Parties signed a single original. A .pdf of an original signature or electronically signed version transmitted to the other Party is effective as if the original was sent to the other Party.

Schedule 2
Lithium Carbonate Price Adjustment

1. The Contract Price shall be adjusted in accordance with the following price adjustment mechanism based on wholesale market pricing for lithium carbonate (the "Contract Price Adjustment").
2. Tesla shall notify Buyer of the Contract Price Adjustment no later than 15 days following the Lithium Carbonate Observation Period (the "Adjustment Notice"). Tesla's notice shall identify the LCE_m and F_x values used to calculate the Contract Price Adjustment. Buyer shall provide Tesla a written confirmation of the Contract Price Adjustment promptly upon request.
3. If the Contract Price Adjustment is positive, it will increase the Contract Price and Tesla may invoice for the Contract Price Adjustment contemporaneously with, or any time within sixty (60) days after, Tesla's issuance of the Contract Price Adjustment. If the Contract Price Adjustment is negative, it will reduce the Contract Price and Tesla will credit the difference against subsequent Milestone Payments.
4. If the Adjustment Notice indicates that the value for LCE_m is greater than 750,000 RMB (the "RMB Threshold"), either party may notify the other within 15 days after the date of the Adjustment Notice that it desires to negotiate a Contract Price adjustment that differs from that indicated in the Adjustment Notice. If Buyer fails to so notify Tesla, Buyer shall be bound by the Contract Price Adjustment indicated in the Adjustment Notice. If a Party timely notifies the other Party that it desires to negotiate a Contract Price adjustment that differs from that indicated in the Adjustment Notice, the Parties will seek to reach agreement in good faith on a revised Contract Price within 30 days following such notice.
5. If the Parties fail to agree on a revised Contract Price within the time required under Section 4 above, either Party may terminate the Agreement by written notice, provided that Buyer shall only be permitted to terminate this Agreement if no default of Buyer has occurred and is continuing under the Agreement at the time of termination. Upon a termination of this Agreement by either Party under this Section 5, Tesla shall be entitled to invoice, and Buyer shall be liable to pay Tesla, a termination payment in an amount equal to ten percent (10%) of the Contract Price (the "Lithium Threshold Termination Payment"); provided that, if the amount resulting from the foregoing calculation is a negative number, Tesla shall credit Buyer the difference against the unpaid portion of the Contract Price. Buyer shall pay the Lithium Threshold Termination Payment within 30 days after receipt of an invoice from Tesla in respect thereof.
6. The Contract Price Adjustment is calculated as follows, using the Lithium Carbonate Observation Period to determine the respective LCE_m and F_x values:

If LCE_m is *less than* LCE_f :

$$\text{Contract Price Adjustment} = (LCE_f - LCE_b) \times (MP_x / 1000) \times (1 / F_x) \times (\text{Estimated Actual Energy Capacity})$$

If LCE_m is *greater than* LCE_f :

$$\text{Contract Price Adjustment} = (LCE_m - LCE_b) \times (MP_x / 1000) \times (1 / F_x) \times (\text{Estimated Actual Energy Capacity})$$

The terms used in above calculations have the following meanings:

Estimated Actual Energy Capacity means:	[•] kWh
Lithium Carbonate Baseline Price (" LCEb ") means:	[•] Ren Min Bi/metric ton
Lithium Carbonate Floor Price (" LCEf ") means:	75,000 Ren Min Bi/metric ton

Lithium Carbonate Market Price ("LCEm") means:	Means the Average Lithium Carbonate Market Price identified by Tesla during the Lithium Carbonate Observation Period, as determined by reference to the Shanghai Metals Market ("SMM") price index for battery-grade pricing, or its successor, as identified in Renminbi/ton as indicated on https://www.metal.com/Chemical-Compound/201102250059 .
Lithium Carbonate Observation Period means:	[•]
Megapack Cost Factor ("MPx") means:	0.844
Quarter Average Fx Rate ("Fx") means:	The F _x identified by Tesla based on the average daily RMB rates during the Lithium Carbonate Observation Quarter per one (1) USD (or the currency in which the Megapack System Price is denominated) as reported by the Wall Street Journal.

Schedule 3
BESS Specifications

Schedule 4
BESS Limited Warranty

Schedule 5
Insurance

Tesla and Buyer shall maintain in effect with responsible insurance carriers with a Best Insurance Reports rating of "A-" or better or through a formal self-insurance mechanism that has either (a) a Best Insurance Reports rating of "A-" or better; or (b) a financial size category of "VI" or higher, provided, that if such self-insurance program does not meet either (a) or (b), then the party's use of self-insurance for the coverages herein shall be subject to the other party's approval, not to be unreasonably withheld, conditioned, or delayed:

1.1. Tesla's and Buyer's Commercial General Liability Insurance.

- 1.1.1. USD \$1,000,000 each occurrence or per claim, combined single limit for third party bodily injury or property damage.
- 1.1.2. USD \$2,000,000 general aggregate

1.2. Tesla's and Buyer's Business Automobile Liability Insurance.

- 1.2.1. USD \$1,000,000 combined single limit for third party bodily injury or property damage,
- 1.2.2. Coverages.
 - 1.2.2.1. Coverage with respect to any and all vehicles of each party whether owned, hired, leased, borrowed, or non-owned, assigned to or used in connection with the work performed under this Purchase Order.

1.3. Tesla's and Buyer's Workers Compensation and Employers Liability Insurance.

- 1.3.1. Workers Compensation
 - 1.3.1.1. Coverages.
 - 1.3.1.1.1. As required by state or federal laws.
 - 1.3.1.1.2. Each party may waive Workers' Compensation Insurance requirement if they are a qualified self-insured in the state in which the Work is performed.
- 1.3.2. Employer Liability
 - 1.3.2.1. USD \$1,000,000 bodily injury for each accident.
 - 1.3.2.2. USD \$1,000,000 bodily injury by disease for each employee.
 - 1.3.2.3. USD \$1,000,000 bodily injury by disease policy limit.

1.4. Subcontractor Insurance. Tesla shall require each of its subcontractors performing Work at the Site to maintain insurance coverage in accordance with the insurance requirements of Tesla's standard subcontract, supplier or designer agreements, as applicable.

Schedule 6
Credit Support Terms

1. Beginning at the time indicated in the Key Terms, and through the day before the commissioning of the Project is completed, Buyer shall provide Tesla with Credit Support in the amount set forth in the Key Terms, to be held by Tesla as security for Buyer's obligations until the applicable Contract Price is paid in full ("Credit Support Term").
2. To the extent that Buyer provides a Letter of Credit as Credit Support, Buyer shall ensure that the Letter of Credit permits partial draws. Any such Letter of Credit shall have an expiry date no sooner than 12 calendar months after its issuance, and Buyer will furnish extensions or replacements of such Letter of Credit at least 30 days prior to the expiration thereof from time to time through the expiration of the Credit Support Term.
3. During the Credit Support Term, Buyer may substitute one form of Credit Support for another form. If Tesla receives substitute Credit Support from Buyer, Tesla will return the prior Credit Support to Buyer within 10 Business Days after such receipt. If Buyer's prior Credit Support was a Letter of Credit, Buyer shall be entitled to immediately cancel such Letter of Credit upon Tesla's receipt of substitute Credit Support.
4. If, at any time during the Term, Buyer's Credit Support fails to meet the qualifications for Credit Support under this Agreement (including if the Credit Support Provider's financial condition experiences a material, adverse decline in creditworthiness indicating Credit Support Provider's inability to perform in accordance with the Credit Support provided by it, regardless of whether its Credit Rating has changed), Buyer shall provide replacement, compliant Credit Support to Tesla within 5 Business Days after such failure.
5. Notwithstanding anything to the contrary, if Buyer fails to deliver and maintain the Credit Support or the Credit Support Provider becomes Insolvent (as defined in the Agreement) or repudiates or breaches its obligation to pay thereunder, each of the same shall constitute a material breach of this Agreement to which no cure period applies and, in addition to any other remedies available to it under this Agreement, Tesla shall be excused from performing any obligations until such time as Buyer shall have delivered Credit Support in a form acceptable to Tesla in its sole discretion.
6. Tesla will have the right to draw against Credit Support in connection with any amounts owed by Buyer under this Agreement without the need for any prior notice to Buyer upon: (i) the occurrence of a Default by Buyer involving matters other than the provision or maintenance of Credit Support, or (ii) Buyer's breach of any of its Credit Support obligations under this Agreement.
7. Tesla shall return to Buyer any unused portion of the Credit Support held by Tesla and to which Tesla has no claim pursuant to the terms of this not more than 60 Days following the expiration or earlier termination of this Agreement. If Buyer's Credit Support was posted as a Letter of Credit, Tesla shall return the Letter of Credit to Buyer following such expiration or termination and any Tesla draw upon such Credit Support and Buyer shall then be entitled to cancel such Letter of Credit.
9. Buyer shall bear all costs of providing and maintaining Credit Support.
10. The following definitions shall apply to this Schedule 6.

Acceptable Credit Rating means a Credit Rating of at least BBB- from S&P Global Ratings ("**S&P**") or Fitch Ratings ("**Fitch**") or Baa3 from Moody Investor Service ("**Moody's**"); provided that if the Person has a Credit Rating from S&P or Fitch and Moody's, it must meet all of the preceding ratings requirements, as applicable.

Bond means a payment bond based on AIA form 312-2010 and issued by an Issuer.

Credit Rating means, with respect to any person, the rating then assigned to such person's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody's or Fitch, as applicable.

Credit Support means (a) a Letter of Credit; (b) a Guaranty; (c) a Bond, or (d) another form of Credit Support acceptable to Tesla.

Credit Support Provider means (a) a Guarantor; (b) an Issuer; or (c) another provider of Credit Support acceptable to Tesla.

Financing means the provision by a Financing Party, directly or indirectly, of:

(a) senior or subordinated construction, interim or long-term debt or equity financing or refinancing to Buyer for or in connection with the purchase of equipment for, or the development, construction, purchase, installation, or operation of, the Project, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing), including any equity or tax investor directly or indirectly providing financing or refinancing for the Project or purchasing equity ownership interests of Buyer, and any trustee or agent acting on their behalf,

(b) interest rate protection agreements to hedge any of the foregoing obligations, or

(c) participation in a sale leaseback or leveraged leasing structure with respect to the Project.

Financing Certificate means a certification by Buyer evidencing that Buyer has secured Financing sufficient to pay the Contract Price in the form attached hereto as Exhibit J.

Financing Party means any person or entity providing Financing to Buyer for or in connection with the Project; provided, that if more than one Financing Party is involved in the Financing, at least one of such persons shall have an Acceptable Credit Rating.

Guarantor means a person with an Acceptable Credit Rating and otherwise reasonably acceptable to Tesla.

Guaranty means a guaranty that is executed and delivered by a Guarantor and contains an obligation of such Guarantor to unconditionally guarantee Buyer's payment obligations on terms acceptable to Tesla.

Issuer means a U.S. financial institution or a U.S. branch of a foreign financial institution, with such financial institution for so long as such entity has a Credit Rating of at least A- from S&P or Fitch and A3 from Moody's and net assets of at least \$750,000,000 dollars; provided that if such entity has an S&P or Fitch credit rating and a Moody's credit rating, that entity must meet all of the preceding ratings requirements, as applicable, to remain an "Issuer;" provided, that if a propose Issuer of a Bond is not rated by such entities, such Issuer must be rated at least "A" (excellent or above) according to A.M. Best Company, Inc.'s Financing Strength Rating and "VIII" according to A.M. Best Company, Inc.'s Financial Size Rating.

Letter of Credit means one or more irrevocable, transferable standby letters of credit issued by an Issuer in a form acceptable to Tesla.

