



GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Applicability.

- a. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Tecogen Inc. ("**Seller**") to Purchaser of Goods ("**Buyer**") (referred collectively as the "Parties" and each a "Party"). Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- b. The accompanying quotation and/or sales invoice (the "**Sales Confirmation**" and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

- a. The Goods will be delivered on the date(s) specified in the Sales Confirmation documents, however if no date(s) is/are specified, then the Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, unless such delays were caused by the Seller's gross negligence.
- b. Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods in the quantities and to the location specified on the Sales Confirmation documents (the "**Delivery Point**"). Buyer shall pick up Goods at the Delivery Point. Any shipment of Goods will be done using Seller's standard methods for packaging and shipping such Goods. Buyer shall be responsible for all loading costs and shipment costs. Buyer has the right to choose reasonable equipment and labor reasonably suited for shipment of the Goods, which shall be billed to Buyer.
- c. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery

Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-Delivery.

- a. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- b. The Seller shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Seller of the non-delivery within one (1) day of the date when the Goods would, in the ordinary course of events, have been received.
- c. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Quantity. If Seller delivers to Buyer less than the quantity of Goods set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms. Delivery shall be made FOB to Seller's Headquarters, located at 45 First Ave., Waltham, MA 02451 (the "Headquarters").

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon shipment of the Goods from the Seller's Headquarters. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code of the state where the Goods are being installed.

7. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party.

8. Inspection and Rejection of Nonconforming Goods.

- a. Buyer shall inspect the Goods within thirty (30) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and

furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the product shipped is different than identified in Buyer's purchase order;

- b. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Seller's expense and Buyer's risk of loss, the replaced Goods to the Delivery Point.
- c. Buyer acknowledges and agrees that the remedies set forth in Section (b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section (b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price.

- a. Buyer shall purchase the Goods from Seller at the price(s) set forth in the Sales Confirmation documents (the "Price(s)").
- b. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes.

10. Payment Terms.

- a. Buyer shall pay all invoiced amounts, including restocking fees, due to Seller within thirty (30) days from the date of Seller's invoice or date provided for in any Sales Confirmation. Buyer shall make all payments hereunder by wire transfer or check and in US dollars. Checks should be mailed to Seller's Headquarters.
- b. If Buyer terminates purchase order within 10 days of the delivery, the Buyer shall pay a restocking fee of 15% plus any extra labor costs, which include, but are not limited to, the disassembly or customization of the Goods.
- c. Buyer shall pay interest on all late payments at the lesser of the rate of 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due

hereunder and such failure continues for thirty (30) days following written notice thereof.

- d. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. Limited Warranty.

- a. **EXCEPT FOR THE STANDARD WARRANTY PROVIDED BY SELLER UPON PURCHASE, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- b. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section **11(a)**. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- c. The Seller shall not be liable for a breach of the warranty set forth in Section **11(a)**, unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.
- d. The Seller shall not be liable for a breach of the warranty set forth in Section **11(a)**, if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.
- e. Subject to Section 11(c) and Section 11(d) above, with respect to any such

Goods during the warranty period as provided for in Seller's Standard Warranty, Seller shall repair or replace such Goods (or the defective part).

- f. **THE REMEDIES SET FORTH IN SECTION 11(E) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).**

12. Limitation of Liability.

- a. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- b. **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNT PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**
- c. The limitation of liability set forth in Section 12(b)above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and/or (ii) death or bodily injury resulting from Seller's acts or omissions.

13. Compliance with Law. The Parties shall comply with all applicable laws, regulations and ordinances. The Parties shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

14. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with 30 days written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy,

power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, for the purpose of performing this Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly destroy all documents and other materials received from Seller. Buyer shall, upon reasonable request by Seller, supply Seller with proper and authorized documentation certifying that all the documents and materials received by Seller are destroyed. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
17. Force Majeure. Each Party shall not be liable or responsible to the other Party, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of the Party including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
18. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
19. Relationship of the Parties. The relationship between the Parties is that of a buyer and seller. 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.
20. 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, express or implied, 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 these Terms.

21. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts.
22. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of American in the District of Massachusetts in Boston, Massachusetts. If such courts are unavailable for any reasons, then any legal suit, action or proceedings shall take place in Massachusetts Superior Court, Suffolk County, Business Litigation. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
23. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the Parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if the Party giving the Notice has complied with the requirements of this Section.
24. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
25. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Limited Warranty, Limitation of Liability, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.