



Tecogen Inc.'s General Terms and Conditions for the Purchase of Goods

1. Applicability.

(a) These terms and conditions of purchase (the "Terms") are the only terms which govern the purchase of goods ("Goods") by Tecogen Inc. and its subsidiaries ("Buyer") from the seller ("Seller") specified in any purchase order or similar document for goods (the "Purchase Order"). 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) Any Purchase Order and these Terms (collectively, this "Agreement"), constitutes the sole and entire agreement of the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance of the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these Terms.

2. Acceptance. The Purchase Order is not binding on Buyer until Seller accepts the Order in writing or starts to perform in accordance with the Purchase Order. Buyer may withdraw the Purchase Order at any time before it is accepted by Seller.

3. Delivery Date. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). If no delivery date is specified, Seller shall deliver the Goods within a commercially reasonable time. Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date without providing advance written Notice to Buyer, Buyer may terminate the Purchase Order immediately by providing written Notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date.

4. Quantity. If Seller delivers more than 100% or less than 100% of the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

5. Delivery Location. All Goods shall be delivered to the address specified in the Purchase Order (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed by Buyer on the applicable Purchase Order.

6. Shipping Terms. Delivery shall be made FOB Delivery Point. The Purchase Order number shall appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order.

7. Title and Risk of Loss. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

8. Packaging. All Goods shall be packed for shipment in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written Notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

9. Amendment and Modification. No change to the Purchase Order and/or these Terms by the Seller is binding upon Buyer unless it is in writing, specifically stating that it amends the Purchase Order and/or these Terms and is signed by an authorized representative of Buyer.

10. Inspection and Rejection of Nonconforming Goods. The Buyer has the right to inspect the Goods on or within 30 days after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written Notice to Seller, to: (a) rescind the Purchase Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Purchase Order for cause pursuant to Section 25. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Purchase Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

11. Time is of the Essence. Seller hereby acknowledges and is put on Notice that Seller's breach of this Agreement may cause irreparable harm to Buyer because Buyer manufactures, installs and maintains equipment. Seller's breach will interfere with Buyer's ability to install, maintain, and manufacture equipment. Such a breach will disrupt the Buyer's supply chain. Buyer is a party to a variety of contracts and regularly enters into new contracts. Buyer relies on Seller's timely and satisfactory compliance with the Terms to satisfy its obligations with these other contracts, to enter into new contracts, and to manage its supply chain.

12. Price. The price of the Goods is the price stated in the Purchase Order (the "**Price**"). No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

13. Most Favored Customer. Seller represents and warrants that the price for the Goods is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods under the Purchase Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate the Purchase Order without liability pursuant to Section 25.

14. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller within 45 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars and made by wire or check. In the event of a payment dispute, the parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Purchase Order notwithstanding any such dispute.

15. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

16. Buyer Equipment. Seller hereby agrees that any equipment sent to seller by Buyer in connection with a specific Purchase Order shall only be used to fulfill such Purchase Order. Seller agrees and acknowledges that) such Buyer equipment remains the property of Buyer.

17. Warranties. Unless provided for in another written agreement between the two parties, Seller warrants to Buyer that for a period of two (2) years from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller Notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.]

18. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer's subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the

products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

19. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

20. INSURANCE. During the term of the Purchase Order and for a period of two (2) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000.00 with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in the Purchase Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide immediate Notice to Buyer upon cancellation of their insurance policy. Notice Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.

21. Duty to Advise. Seller shall promptly provide Notice to Buyer of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by seller to perform any of its obligations under this Agreement; (b) any delay in delivery of Goods or Services; (c) any defects or quality problems relating to Goods or Services; (d) any change in control of Seller; and/or (e) any deficiency in Buyer specifications, samples, prototypes or test results relating to this Agreement; The foregoing will apply even if the warranties for the Goods made under this Agreement or separate agreement signed by the parties have expired.

22. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Purchase Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under the Purchase Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance.

23. No Liability for Consequential or Indirect Damages. NEITHER BUYER NOR ITS REPRESENTATIVES IS LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED 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 BY SELLER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

24. Recalls. If Buyer, any of Buyer's customers, Seller or any governmental authority determines that any of the Goods sold to Buyer are defective and a recall campaign is necessary, either party may implement such recall campaign. Buyer must return the defective Goods to Seller at seller's sole cost and risk. Without prejudice to Buyer's rights under this Agreement, if a recall campaign is implemented, at Buyer's option and Seller's sole cost, Seller shall promptly either repair or replace, or credit or refund the Prices paid for all such returned Goods under the terms of this Agreement.

25. Termination. Buyer may terminate the Purchase Order, in whole or in part, at any time with or without cause for undelivered Goods on five (5) days' prior written Notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate the Purchase Order with immediate effect upon written Notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller 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, then the Buyer may terminate the Purchase Order upon written Notice to Seller. If Buyer terminates the Purchase Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

26. Effect of Termination. Upon the expiration or earlier termination of this Agreement, Seller shall promptly: (i) at Buyer's choosing, return or destroy all documentation and tangible materials (and any copies) containing, reflecting, incorporating or based on Buyer's Confidential Information; (ii) permanently erase all of Buyer's Confidential Information from its computer systems; (iii) return any unused portion of any deposits that Buyer made to Seller; and (iv) at Buyer's expense return any of Buyer's equipment that Seller is in possession of.

27. Limitation of Liability. Nothing in the Purchase Order shall exclude or limit (a) Seller's liability under Sections 17, 18, 19 and 29 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct. Each party's maximum liability to the other party shall not exceed the aggregate amount actually paid or payable under the Purchase Order.

28. Waiver. No waiver by any party of any of the provisions of the Purchase Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Purchase Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Purchase Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

29. Confidential Information. All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, 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 the Purchase Order is confidential, solely for the use of performing the Purchase Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

30. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Purchase Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Purchase Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Purchase Order for a continuous period of more than thirty (30) days, Buyer may terminate the Purchase Order immediately by giving written Notice to Seller.

31. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Purchase Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

32. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Purchase Order 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. No relationship of exclusivity shall be construed from the Purchase Order.

33. No Third-Party Beneficiaries. The Purchase Order 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.

34. Governing Law. All matters arising out of or relating to the Purchase Order shall be 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.

35. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to the Purchase Order shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Massachusetts in each case located in the City of Boston and County of Suffolk and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

36. Cumulative Remedies. The rights and remedies under the Purchase Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

37. Notices. All Notices, request, 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 Purchase Order 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 the Purchase Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

38. 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 the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

39. Survival. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force for a period of two (2) years after any termination or expiration of the Purchase Order including, but not limited to, the following provisions: Warranties, Indemnification, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.