

## **CHARGE ONSITE ONLINE PRODUCT PURCHASE TERMS AND CONDITIONS**

These **ONLINE PRODUCT PURCHASE TERMS AND CONDITIONS** (these “*Product Purchase Terms*”) govern Customer’s purchase and use of Product(s) as set forth in these Product Purchase Terms. By accepting these Product Purchase Terms by (1) clicking a box indicating “acceptance” or (2) executing an Order Document that references these Product Purchase Terms, Customer agrees to the terms of these Product Purchase Terms. If the individual accepting these Product Purchase Terms is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such company or other legal entity to the terms and conditions set forth in these Product Purchase Terms, in which case the term “Customer” shall refer to such company or other legal entity. If the individual accepting these Product Purchase Terms does not have such authority, or does not agree with the terms and conditions set forth in these Product Purchase Terms, such individual must not accept these Product Purchase Terms and may not purchase or use the Product(s).

### **TERMS AND CONDITIONS**

- 1. Definitions.** Capitalized terms used in these Product Purchase Terms without definition shall have the meanings set forth below:
  - a. “**Additional Product Terms**” means those additional terms and conditions for Product(s) as located at <https://www.chargeonsite.com/additional-terms>.
  - b. “**Agreement**” means the Order Document and these Product Purchase Terms as incorporated into such Order Document (including any supplements, schedules, or other attachments to these Product Purchase Terms or the Order Document, such as the Additional Product Terms).
  - c. “**Charge Onsite**” means Charge OnSite, LLC, a Delaware limited liability company.
  - d. “**Customer**” means in the case of an individual accepting these Product Purchase Terms on his or her own behalf, such individual, or in the case of an individual accepting these Product Purchase Terms on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting these Product Purchase Terms.
  - e. “**Product**” means any hardware, software, or other product not manufactured or produced by Charge OnSite that is sold by Charge OnSite to Customer pursuant to the Agreement (which may include, but is not limited to, any electric vehicle charging station(s)).
  - f. “**OEM Manufacturer**” means the original equipment manufacturer or other original supplier for an applicable Product.
  - g. “**Order Document**” means the order document executed by the Parties that specifies the Product(s) being purchased by Customer pursuant to these Product Purchase Terms.
  - h. “**Party**” means either Customer or Charge OnSite, as the context requires.
  - i. “**Parties**” means Customer and Charge OnSite.
- 2. Purchase of Product(s) and Payment Terms.**
  - a. Charge OnSite will sell to Customer (and Customer will purchase from Charge OnSite) the Product(s) in the quantities and at the prices set forth in the Order Document.
  - b. Customer consents to the disclosure of Customer’s information (including, without limitation, name, address, and Product(s) purchased) to the OEM Manufacturer in connection with Customer’s purchase of any Product(s).
  - c. Customer shall pay Charge OnSite the fees, charges, and other expenses set forth in the Order Document (the “**Fees**”) without offset or deduction. Such Fees shall be paid on or before the due date set forth the applicable invoice provided by Charge OnSite for such Fees (but if no due date is specified, Customer must pay the Fees set forth in such invoice within thirty (30) days of the date of such invoice). In addition to any other rights or remedies that may be available to Charge OnSite (whether under the Agreement, in equity, or otherwise), if Customer fails to make any payment when due, Charge OnSite may (i) charge Customer interest on the past due amounts at a rate of one and one half percent (1.5%) per month or the maximum amount permitted by law, whichever is less, and (ii) terminate the Agreement by providing notice to Customer.
- 3. Additional Product Terms.**
  - a. Customer acknowledges and agrees that the Product(s) may be subject to additional terms and conditions as set forth in the Additional Product Terms. Customer will comply with all obligations, covenants, and other requirements set forth in the Additional Product Terms. Charge OnSite may unilaterally update or modify the Additional Product Terms from time to time, including, but not limited to, to reflect any update to such Additional Product Terms from an OEM Manufacturer for an applicable Product. If any update or modification to the Additional Product Terms is material, Charge OnSite will provide Customer with notice of such update or modification.
  - b. If any Product(s) involve any maintenance, support, or other services provided by the OEM Manufacturer for such Product(s), then Customer will look solely to the OEM Manufacturer for the provision and satisfaction of any such maintenance, support, or other services (including any claims relating to such maintenance, support, or other services). Customer agrees and acknowledges that Charge OnSite will not be a party to any such terms for any maintenance, support, or other services provided by the OEM Manufacturer to Customer.
  - c. If any Product(s) involve any licensing of software or software offerings provided by an OEM Manufacturer, then the license of such software or other software offerings will be governed by a license agreement between Customer and the OEM Manufacturer (or if no license agreement exists, the OEM Manufacturer’s standard terms and conditions for such software or software offerings). Customer will look solely to the OEM Manufacturer for the provision of such software or other software offerings and the satisfaction of all obligations relating to such software or other software offerings (including any claims relating to such software or other software offerings). Customer agrees and acknowledges that Charge OnSite will not be a party to any such terms for any software or software offerings provided by the OEM Manufacturer.
- 4. Shipment and Delivery.**
  - a. Charge OnSite will deliver the Product(s) according to the shipping and delivery terms set forth in the Order Document. If the Order Document does not contain any shipping or delivery terms, the default shipping and delivery terms will be FedEx

Ground billed to the Customer. Title and risk of loss for physical hardware, equipment, and other goods pass to Customer in accordance with the applicable shipping and delivery terms (and if the Order Document does not contain any shipping or delivery terms, shall pass upon receipt). If title to any Product(s) passes to Customer in accordance with this Section 4(a) prior to Charge OnSite's receipt of full payment for such Product(s), Customer shall remain liable for satisfaction of the payment obligations for such Product(s). As security for the payment of the purchase price of the Product(s), Customer hereby grants to Charge OnSite a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Product(s), wherever located, and whether now existing or hereafter arising or acquired from time to time, as well as all replacements and proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest.

- b. Charge OnSite will use commercially reasonable efforts to satisfy the delivery date set forth in the Order Document but Charge OnSite shall not be liable for any delays. Customer acknowledges and agrees that delivery of any Product(s) is subject to availability and performance by the OEM Manufacturer of such Product(s).
  - c. If for any reason Customer fails to accept delivery of any of the Product(s), or if Charge OnSite is unable to deliver the Product(s) because of Customer: (i) risk of loss to the Product(s) shall pass to Customer; (ii) the Product(s) shall be deemed to have been delivered; and (iii) Charge OnSite, at its option, may store the Product(s) until Customer picks the Product(s) up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5. Additional Customer Obligations.** Customer represents, warrants, and covenants that (a) Customer is in compliance with (and will continue to comply with) all laws, rules, and regulations in connection with the purchase and use of the Product(s) and (b) Customer has (and will continue to maintain) all licenses, permissions, authorizations, consents, and permits that Customer needs to carry out its obligations under the Agreement and to safely operate and use any Product(s). Customer will comply with all documentation, instructions, and warnings when using, repairing, storing, or otherwise dealing with any Product(s).
- 6. Term and Termination.**
- a. The term of the Agreement shall begin on the effective date of the Order Document and shall continue until terminated or, as applicable, upon the later of (i) expiration of the Order Document or (ii) the first (1<sup>st</sup>) anniversary of the effective date of the Order Document.
  - b. If the Order Document does not involve any Product(s) that have an ongoing subscription and the Order Document does not include a term for such Order Document, then the Agreement (including the Order Document) will expire upon delivery by Charge OnSite of the Product(s) and full satisfaction by Customer of all payment obligations for such Product(s) as set forth in such Order Document.
  - c. Charge OnSite may terminate the Agreement at any time in the event Customer breaches any material term (including, but not limited to, Customer's breach of the Additional Product Terms) and fails to cure such breach within thirty (30) days following notice; provided, however, that Customer shall only have five (5) days to cure any breach involving Customer's breach of any payment obligations under the Agreement.
  - d. If Charge OnSite breaches any material term of the Agreement and fails to cure such breach within thirty (30) days following receipt of written notice, then Customer may terminate the Agreement by providing Charge OnSite with written notice of such termination.
  - e. Upon termination or expiration of the Agreement, all remaining Fees for the Agreement must be immediately paid to Charge OnSite.
- 7. Warranties.**
- a. Charge OnSite warrants that Charge OnSite has the necessary

authorizations to sell to Customer the Product(s) as set forth in the Order Document in Charge OnSite's capacity as a reseller of such Product(s), not the OEM Manufacturer, and therefore Charge OnSite disclaims any and all warranties and responsibility regarding such Product(s).

- b. Customer acknowledges and agrees that certain OEM Manufacturers may not offer any end user warranties for Product(s). If an OEM Manufacturer offers an end user warranty for Product(s), then such end user warranty shall be set forth in the Additional Product Terms. If an OEM Manufacturer grants to Charge OnSite any warranties with respect to the Product(s) that are permitted to be passed through to Customer, then Charge OnSite will notify Customer of any such additional warranties and Customer will be a beneficiary of such additional warranties. Charge OnSite will not be a party to any warranty terms between Customer and any OEM Manufacturer and Customer agrees to look solely to the applicable OEM Manufacturer for satisfaction of any and all warranty claims related to the Product(s).
  - c. **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 7 (WARRANTIES), THE PRODUCTS ARE PROVIDED "AS IS" AND CHARGE ONSITE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. CHARGE ONSITE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CHARGE ONSITE MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS (OR ANY RESULTS OF THE USE OR RECEIPT THEREOF) WILL MEET CUSTOMER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE OR ERROR FREE. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY WARRANTY PROVIDED TO CUSTOMER BY AN OEM MANUFACTURER (IF ANY).**
- 8. Indemnification.** Customer shall indemnify, hold harmless, and, at Charge OnSite's option, defend Charge OnSite from and against any and all claims, suits, causes of action, proceedings, losses, damages, liabilities, fines, fees, penalties, and costs (including attorneys' fees) incurred or sustained by Charge OnSite that relate to or otherwise result from (a) Customer's breach of the Agreement (including, but not limited to, any breach by Customer of the Additional Product Terms), (b) the Product(s), (c) any claim of an OEM Manufacturer relating to Customer's use (or misuse) of any Product(s), (d) any claim of a customer, client, or user of Customer (or potential customer, client, or user of Customer) relating to any Product, (e) any personal injury (including death) or property damage (including any personal injury or property damage resulting from use of any Product), or (f) any negligence, fraud, or willful misconduct of Customer. Customer will not enter into any settlement or otherwise compromise any claim, suit, cause of action, or proceeding where indemnification could be sought under this Section 8 (Indemnification) without Charge OnSite's prior written consent. Where Charge OnSite is entitled to indemnification but there is no third party claim, Customer shall indemnify Charge OnSite and pay all losses, damages, liabilities, fines, fees, penalties, and costs (including attorneys' fees) promptly after receipt of a written demand from Charge OnSite.
- 9. Limitation of Liability.**
- A. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CHARGE ONSITE BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES, LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF GOODWILL, LOSS OF DATA, COST OF PROCURING A SUBSTITUTE PRODUCT OR SERVICE, OR SPECIAL, INDIRECT, INCIDENTAL,**

**PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THE AGREEMENT (INCLUDING, BUT NOT LIMITED TO, THE PRODUCT(S)), REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT THE PARTIES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.**

**B. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LIABILITY OF CHARGE ONSITE, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT (INCLUDING, BUT NOT LIMITED TO, THE PRODUCT(S)) EXCEED THE TOTAL AMOUNT OF "FEES" ACTUALLY PAID BY CUSTOMER TO CHARGE ONSITE UNDER THE AGREEMENT FOR PRODUCT(S) DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.**

10. **Confidential Information.** All non-public, confidential or proprietary information of Charge OnSite, including, but not limited to, specifications, designs, plans, product details, drawings, documents, data, business operations, or pricing, disclosed by Charge OnSite to Customer, 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 Agreement is confidential, solely for use by Customer in performing its obligations under the Agreement, and will not be disclosed or copied by Customer unless previously authorized in writing by Charge OnSite in writing. For the avoidance of doubt, any non-public, confidential, or proprietary information of a third party (including any OEM Manufacturer) that is in the possession of Charge OnSite will also be deemed to be Charge OnSite's confidential information. Upon Charge OnSite's request, Customer shall promptly return all documents and other materials received from Charge OnSite. Charge OnSite shall be entitled to injunctive relief for any violation of this Section 10 (Confidential Information). This Section 10 (Confidential Information) shall not apply to information that is: (a) in the public domain through no fault of Customer; (b) known to the Customer at the time of disclosure and not subject to any obligation of confidence; or (c) rightfully obtained by the Customer on a non-confidential basis from a third party.

**11. Miscellaneous.**

a. The provisions set forth in the following sections of these Product Purchase Terms, and any other right, obligation or provision under the Agreement that, by its nature, should survive termination or expiration of the Agreement, will survive any expiration or termination of the Agreement: Section 1 (Definitions), Section 3 (Additional Product Terms), Section 5 (Additional Customer Obligations), Section 7(c) (Warranty Disclaimers), Section 8 (Indemnification), Section 9 (Limitation of Liability), Section 10 (Confidential Information), and this Section 11 (Miscellaneous).

b. The Parties are independent contractors, and no agency, partnership, joint venture, or employer-employee relationship is intended or created by the Agreement. Neither Party shall have the power to obligate or bind the other Party.

c. All notices required under the Agreement shall be given in writing and delivered to the receiving Party at: (i) with respect to Customer as the receiving Party, to the billing address for such Customer and (ii) with respect to Charge OnSite, to 1015 East Blvd., Charlotte, NC 28203 Attn: Legal Department. Such notices shall be delivered by: (i) personal delivery; (ii) certified or registered mail (return receipt requested), or (iii) by a recognized courier service. All such notices shall be effective upon receipt or refused delivery. Either Party may change its notice address by written notice to the other Party in accordance with these terms.

d. The Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter of the Agreement and

supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

e. Except with respect to Customer's payment obligations herein, neither Party shall be liable under the Agreement by reason of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, insurrections, fires, floods, storms, explosions, pandemics, epidemics, acts of God, acts of terrorism, war, governmental action, earthquakes, or any other cause that is beyond the reasonable control of such Party (each, a "**Force Majeure Event**").

f. Except as expressly set forth in the Agreement, the exercise by either Party of any of its remedies will be without prejudice to any other remedies under the Agreement or otherwise.

g. The Agreement is governed by and construed in accordance with the laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. Any legal suit, action, or proceeding arising out of or related to the Agreement or the rights or obligations hereunder will be instituted exclusively in the state or federal courts located in North Carolina, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

h. Customer shall not assign or transfer the Agreement (or any of its rights or obligations related to the Agreement) without the prior written consent of Charge OnSite. Any attempt by Customer to assign or transfer the Agreement (except as permitted under this Section 11(h)) shall be null and of no effect. For purposes of the Agreement, a change of control transaction will be deemed to be an assignment. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

i. During the term of the Agreement and for a period of three (3) years thereafter, Charge OnSite shall have the right, at its expense, either directly or through a representative, to access the facilities, systems, records and personnel of Customer in order to audit Customer's compliance with the Agreement (including any Additional Product Terms). Audits shall take place during the normal business hours of Customer and shall be conducted in a manner that does not unreasonably interfere with the normal business operations of Customer.

j. The failure by either Party to enforce any provision of the Agreement will not constitute a waiver of future enforcement of that or any other provision. Except with respect to unilateral amendments or modifications made by Charge OnSite to the Additional Product Terms as set forth in Section 3(a) of these Product Purchase Terms, any waiver or amendment of any provision of the Agreement will be effective only if in writing and signed by authorized representatives of both Parties. If any provision of the Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

k. The Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Except as otherwise expressly set out herein, the Parties agree that any conflict among (i) the terms and conditions contained in the body of these Product Purchase Terms and the Order Document, the terms and conditions contained in the body of these Product Purchase Terms shall control and govern and (ii) the terms and conditions for a Product contained in the Additional Product Terms and these Product Purchase Terms or the Order Document, the terms and conditions contained in the Additional Product Terms shall control and govern. The Parties agree that any term or condition stated in a Customer purchase order or in any other Customer order document (excluding an Order Document) is void and of no effect.

l. The 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 any legal or equitable right, benefit, or remedy of

any nature whatsoever under or by reason of the Agreement.