



QUICK PLUG

-THE EVOLUTION OF ROOTS-

GENERAL TERMS AND CONDITIONS OF SALE OF QUICK PLUG NA INC.

Article 1. Applicability

1.1 These general terms and conditions of sale (the “**Terms**”) apply to the purchase of products and ancillary services (collectively the “**Products**”) by Quick Plug NA Inc. and/or its affiliates (as defined in the *Business Corporations Act* (Maine) (the “**Seller**”) and the buyer identified in the accompanying quotation, credit application, proposal, order acknowledgement or invoice (the “**Sales Confirmation**”) (the “**Buyer**”).

1.2 These Terms and the Sales Confirmation comprise the entire agreement between the parties (collectively the “**Agreement**”).

1.3 The Buyer accepts these Terms by signing and returning the Seller’s quotation, by sending a purchase order in response to the quotation, or by the Buyer’s instructions to the Seller to ship the Product. No terms, conditions or warranties other than those identified in the Agreement, and no agreement or understanding, oral or written, in any way purporting to modify the Agreement whether contained in the Buyer’s purchase order or shipping release forms, or elsewhere, shall be binding on the Seller unless hereafter made in writing and signed by the Seller’s authorized representative. The Buyer is hereby notified of the Seller’s express rejection of any terms inconsistent with this Agreement or to any other terms proposed by the Buyer in accepting the Seller’s quotation. Neither the Seller’s subsequent lack of objection to any such terms, nor the delivery of the Products, shall constitute an agreement by the Seller to any such terms.

Article 2. Cancellation

2.1 Cancellation or modifications of all or part of any order are subject to the Seller’s prior written consent in each instance. If cancellation or modification is allowed, the Buyer agrees to pay to the Seller all expenses incurred and damage sustained by the Seller on account of the cancellation or modification, plus its reasonable profit.

Article 3. Price

3.1 Prices on accepted orders are firm for a period of 60 (sixty) calendar days from the date of acceptance.

3.2 All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively the “**Taxes**”).

3.3 Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of the Buyer (excluding taxes based on the Seller’s net income), unless the Buyer presents an exemption certificate acceptable to the Seller and the applicable taxing authorities.

3.4 If possible, the Seller will bill Taxes as a separate item on the invoice presented to the Buyer. If any exemption certificate presented by the Buyer is held to be invalid, then the Buyer will pay the Seller the amount of the Taxes and any penalties and interest related thereto.

Article 4. Payment

4.1 Unless other payment terms are set forth in the Sales Confirmation, the Buyer will pay all invoiced amounts within 30 (thirty) calendar days following the date of the Seller’s invoice.

4.2 Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus the Seller’s reasonable costs of collection.

4.3 The Seller reserves all other rights granted to a seller under the Uniform Commercial Code (the “**UCC**”) for the Buyer’s failure to pay for the Products or any other breach by the Buyer of these Terms.

4.4 In addition to all other remedies available to the Seller (which the Seller does not waive by the exercise of any rights hereunder), the Seller may suspend the delivery of any Products if the Buyer fails to pay any amounts when due and the failure continues for 5 (five) calendar days following the Buyer’s receipt of notice thereof.

4.5 The Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with the Seller, regardless of whether relating to the Seller’s breach, bankruptcy, or otherwise.

Article 5. Delivery and shipping

5.1 The Seller will deliver the Products within a reasonable time after receiving the Buyer’s purchase order, subject to their availability. The delivery date provided by the Seller for the Products is only an estimate and is based upon



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prompt receipt of all necessary information from the Buyer. If the Buyer causes the Seller to delay shipment or completion of the Products, the Seller will be entitled to any and all extra costs and expenses resulting from the delay. The Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on the Seller's part.

5.2 Unless otherwise agreed in writing by the parties, the Seller will deliver the Products, EXW (Incoterms® 2010) at the Seller's location (the "**Delivery Location**"), using the Seller's standard methods for packaging and shipping same. The Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to the Buyer. Each shipment will constitute a separate sale, and the Buyer will pay for the units shipped whether the shipment is in whole or partial fulfillment of the Buyer's purchase order. The Buyer is responsible for obtaining any import licenses and other consents required for a Product shipment at its own expense, and will provide the licenses and consents to the Seller before shipment.

5.3 The quantity of any installment of the Products, as recorded by the Seller on the dispatch from the Seller's place of business, is conclusive evidence of the quantity received by the Buyer.

Article 6. Title and risk

6.1 Except as provided in article 6.2, title and risk of loss or damage shall pass to the Buyer upon delivery to the carrier. If the Buyer fails to accept delivery of any of the Products or if the Seller is unable to deliver the Products to the carrier on the delivery date because the Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products will pass to the Buyer; (ii) the Products will be deemed to have been delivered to the Buyer; and (iii) the Seller, at its option, may store the Products until the Buyer takes possession of them, at which time the Buyer will be liable for all costs and expenses resulting from the failure (including but not limited to the cost of storage and any insurance).

6.2 All delivered and to be delivered Products remain the sole property of the Seller, until all claims that the Seller has or acquires vis-à-vis the Buyer have been paid in full.

6.3 As long as the ownership of the Products has not been transferred to the Buyer, the Buyer

may not pledge the Products or grant any other right to these Products to third parties, except within the context of his normal business operations. The Buyer undertakes upon the Seller's first request to cooperate in establishing a pledge right on the receivables that the Buyer acquires or shall acquire following the delivery of the products to his customers.

4. The Buyer is obliged to store the Products that have been delivered subject to retention of title with the necessary care and in such a manner that the Products can be identified by the Seller.

5. The Seller is entitled to repossess the products delivered subject to retention of title and that are still located at the Buyer if the Buyer is in default with regard to the fulfillment of his payment obligations or is experiencing payment difficulties or threatens to experience payment difficulties. The Buyer shall grant the Seller free access to his premises and/or buildings for the inspection of the products and/or in order to exercise the Seller's rights.

6. If there is any doubt in the mind of the Seller regarding the ability of the Buyer to pay, the Seller will be entitled to defer performances until the Buyer has provided surety for the payment. If the Buyer has not provided surety for the payment within 14 (fourteen) calendar days after being ordered to do so, the Seller is entitled to terminate the Agreement by cancellation. In this case, the Buyer will be liable for the expenses incurred by the Seller.

Article 7. Inspection / rejection of Products

7.1 As used in this article 7, "**Nonconforming Products**" means only the following: (i) the items shipped are different in kind or quantity from those identified in the Buyer's purchase order; or (ii) the labels or packaging of the items incorrectly identifies the Products. The Buyer will inspect the Products within 5 (five) calendar days following receipt thereof (the "**Inspection Period**"). The Products will be deemed accepted at the end of the Inspection Period unless the Buyer notifies the Seller in writing of any Nonconforming Products and furnishes the Seller with written evidence or other documentation reasonable required by the Seller.

7.2 If the Buyer timely and properly notifies the Seller of any Nonconforming Products, then the Seller will, in its sole discretion, (i) replace the Nonconforming Products with conforming Products or (ii) credit or refund the purchase



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price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by the Buyer. At the Seller's request, the Buyer will dispose of the Nonconforming Products or return the Nonconforming Products to the Seller at the Seller's expense. Upon receipt of the Nonconforming Products, the Seller will promptly refund the monies owed or ship the replacement Products to the Buyer's location at the Seller's expense, with the Seller retaining the risk of loss until delivery.

7.3 The Buyer acknowledges and agrees that the remedies set forth in this article 7 are the Buyer's exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this article 7, the Buyer has no right to return the Products to the Seller without the Seller's written authorization.

Article 8. Limited warranty

8.1 The Seller warrants to the Buyer that the Products will conform with the Seller's published Product specifications and be free from defects in workmanship for a period of 3 (three) months following the date of shipment (the "**Warranty Period**"). Notwithstanding the foregoing, the Warranty Period will in no event exceed the recommended replacement intervals set forth in the published specifications and instructions provided by the Seller or its suppliers' or subcontractors' instructions (the "**Instructions**"). If, prior to the expiration of the Warranty Period, the Buyer informs the Seller in writing of any breach of this limited warranty, then the Seller may repair or replace the Products that gave rise to the breach or, in the Seller's sole and exclusive discretion, refund the amounts that the Buyer paid for the Products.

8.2 The foregoing limited warranties do not apply to (i) any defect in Products not manufactured by the Seller; and (ii) any Products manufactured according to the Buyer's specifications.

8.3 The Buyer will bear the costs of access, de-installation, re-installation and transportation of the Products to the Seller and back to the Buyer. Any repair or replacement pursuant to this limited warranty will not extend the Warranty Period. The Seller does not warrant the Products, or any repaired or replacement parts, against normal wear and tear or corrosion. This limited warranty and remedy are expressly conditioned upon: (i) the Buyer's payment of the purchase price in full, (ii) the Buyer giving written notice of the defect, reasonably described, to the

Seller within 10 (ten) calendar days of the time when the Buyer discovers or ought to have discovered the defect, (iii) the storage, installation, operation, use, and maintenance of the Products in compliance with the Instructions, (iv) the existence of proper records of the Buyer's storage, use and maintenance of the Products during the Warranty Period, (v) the Buyer providing the Seller with a reasonable opportunity to examine the Products and the aforementioned records, and (vi) the absence of any unauthorized modification or repair of the Products, including without limitation the removal or alternation of any serial numbers or warranty date decals.

8.4 Before any test may be used to evaluate the Products, the Buyer will: (i) provide the Seller with reasonable written notification of the test, (ii) allow the Seller to be present during the test, and (iii) receive the Seller's consent to the conditions of the test, which consent will not be unreasonably withheld. If a test is performed on the Products, and the Seller has not consented to the conditions of the test, then this limited warranty will be void.

8.5 THE REMEDIES SET FORTH IN THIS ARTICLE 8 ARE THE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY BY THE SELLER. THE SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND THE SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Article 9. Indemnification

9.1 The Buyer will defend, indemnify, and hold harmless the Seller and its parent company, their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), 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) (the "**Claims**") arising out of or occurring in connection with the negligence or willful misconduct of the Buyer or its employees or agents, including but not limited to: (i) any



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misuse or modification of the Products by the Buyer or its employees or agents, (ii) any act (or failure to act) by the Buyer or its employees or agents in contravention of any safety procedures or instructions that the Seller provides to the Buyer or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the Instructions.

9.2 The Seller will defend, indemnify, and hold harmless the Buyer and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any Claims arising out of or occurring in connection with the negligence or willful misconduct of the Seller or its employees or agents.

Article 10. Infringement

10.1 The Seller will defend, at its own expense, any action against the Buyer brought by a third party to the extent that the action is based upon a claim that the Products infringe any U.S., E.U., or other international patents or copyrights, or misappropriate any trade secrets, of a third party (an “**Infringement Claim**”). The Seller will pay those costs and damages finally awarded against the Buyer in the action, or reasonably agreed to in a monetary settlement, that are specifically attributable to such Infringement Claim.

10.2 The foregoing obligations are conditioned on the Buyer (i) notifying the Seller promptly in writing of the action, (ii) making no admission of liability and giving the Seller sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and, at the Seller’s request and expense, assisting in the defense.

10.3 If the Products become, or in the Seller’s opinion are likely to become, the subject of an Infringement Claim, the Seller may, at its option and expense, either (i) procure for the Buyer the right to continue using the Products, (ii) replace or modify the Products so that they become non-infringing, or (iii) accept return of the Products and refund the Buyer the amounts actually paid by the Buyer to the Seller for the Products.

10.4 Notwithstanding the foregoing, the Seller will have no obligation under this article 10 or otherwise with respect to any Infringement Claim based upon any: (i) misuse or modification of the Products by the Buyer or its employees or agents, (ii) use of the Products in combination with other materials, goods, products, or services, (iii) failure of the Buyer to implement

any update provided by the Seller that would have prevented the claim, (iv) Products that the Seller made to the Buyer’s specifications or designs.

10.5 THIS ARTICLE 10 STATES THE SELLER’S ENTIRE LIABILITY AND THE BUYER’S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

Article 11. Limitations of liability

11.1 IN NO EVENT WILL THE SELLER BE LIABLE TO THE BUYER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.

11.2 EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM THE SELLER’S NEGLIGENCE OR WILLFUL MISCONDUCT, THE SELLER’S TOTAL LIABILITY TO THE BUYER FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE PRODUCTS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE BUYER’S TOTAL PURCHASE PRICE FOR THE PRODUCTS GIVING RISE TO THE CLAIM.

Article 12. Changes

12.1 The Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to the Buyer.

Article 13. No license

13.1 The sale of the Products will not confer upon the Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by the Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to the Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, the Buyer will not, without the Seller’s prior written consent, use any trademark or trade name of the Seller in connection with any of the Products, other than with respect to the resale of the Products pre-



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marked or packaged by or on behalf of the Seller.

13.2 The Buyer commits himself to the Seller to sell Products exclusively under the trademark(s) of sign(s) stated in the order otherwise specified by the Seller, without any modification or addition.

13.3 The Buyer will immediately inform the Seller in case any (alleged) infringement is found of the intellectual property rights (such as trademarks, utility patents, patent rights and copyrights) of the Seller or any legal entities/natural persons associated with it. The Buyer will leave the handling of infringement, including any court proceedings or settlement of the matter, fully to the Seller. Furthermore, at the first request of the Seller, the Buyer will cooperate fully, in reasonableness, in the handling of the case.

13.4 In case of refusal, expiry, invalidation or revocation of any intellectual property right (including trademarks, utility patents, patent rights and copyrights) regarding any Product, the Buyer is not entitled to refund of any sums or royalties already paid to the Seller, or to any other form of damages.

13.5 As long as an Agreement is effective between the parties, the Buyer will not bring any case against the validity of any intellectual property right of the Seller or any legal entities/natural persons associated with it, in respect of any Product or packaging, nor will he give any support to any other person to do so, neither directly or indirectly.

Article 14. Termination

14.1 In addition to any other remedies that the Seller may have, the Seller may terminate the Agreement with immediate effect upon written notice to the Buyer, if the Buyer: (i) fails to pay any amount when due under this Agreement and the failure continues for 5 (five) calendar days after the Buyer's receipt of written notice of nonpayment; (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.

Article 15. Confidentiality

15.1 All non-public, confidential, or proprietary information of the Seller, including but not limited to specifications, samples, patterns, designs,

plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that the Seller discloses to the Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by the Seller in writing. Upon the Seller's request, the Buyer will promptly return all documents and other materials received from the Seller. The Seller will be entitled to injunctive relief for any violation of this article 15, without having to post bond or establish the insufficiency of a remedy at law. This article 15 does not apply to information that is: (i) in the public domain; (ii) known to the Buyer at the time of disclosure; or (iii) rightfully obtained by the Seller on a non-confidential basis from a third party.

Article 16. Force majeure

16.1 The Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of the Seller, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, the Seller will not be obligated to seek or obtain any settlement that, in the Seller's sole judgment, is not in the Seller's best interest.

Article 17. Compliance

17.1 Each party will comply with all applicable laws, regulations, and ordinances, and the Buyer will comply with the export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement.

Article 18. Governing law, venue and dispute resolution

18.1 All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Maine without giving effect to any choice or conflict of law provision or rule (whether of the State of Maine or any other jurisdiction) that



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would cause the application of the laws of any jurisdiction other than those of the State of Maine. Any legal suit, action or proceeding arising out of or relating to these Terms will be instituted in the federal or State courts located in the state of Maine. Each party irrevocably submits to the exclusive jurisdiction of the federal or state courts in Maine in any the suit, action or proceeding.

18.2 The Seller will have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, will be submitted to a court of law or arbitrated. The venue for any the arbitration will be in the state of Maine. The arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. In the event the matter is submitted to a court, the Seller and the Buyer hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any litigation arising from or related to the Agreement.

Article 19. Choice of language

19.1 It is by the express intention of the parties hereto that the present Agreement and all its related documents be drafted in English.

Article 20. Survival

20.1 In addition to any other term whose context may so require, the terms contained in the articles 1, 4, 6, 7, 8, 9, 10, 11, 13, 15, 18, 19, 20, and 21 will survive any cancellation of the Agreement or any purchase order.

Article 21. Miscellaneous

21.1 The Buyer acknowledges that is has not been induced to purchase any the Products from the Seller by any representation or warranty not expressly set forth in the Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter.

21.2 None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of the Seller that specifically references these Terms and states that it modifies them.

21.3 If there is a conflict between the provisions

of the Sales Confirmation and these Terms, then the terms of the most recent Sales Confirmation will govern.

21.4 No waiver by the Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by the Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms 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.

21.5 The headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of the Agreement is held to be prohibited or unenforceable, the provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

21.6 The Buyer will not assign any quotation or accepted order for the Products, in whole or in part, without the Seller's prior written consent.

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