



NuEnergy Storage Technologies LLC Terms and Conditions of Sale

The following Terms and Conditions apply to any purchase of products ("Products") that you ("Customer") make from NuEnergy Storage Technologies LLC. ("NuEnergy").

- 1. Application of Terms.** The terms and conditions in this document exclusively govern and control, and entirely supersede, and are in lieu of the terms and conditions in the Customer's purchase order or any other document offered or proposed by Customer. All other terms or conditions of sale proposed or offered by Customer are hereby expressly rejected in the entirety. No other terms shall be valid unless specifically agreed to in writing and signed by NuEnergy. Failure of NuEnergy to object to the provisions in any document sent by Customer shall not be deemed a waiver of these terms or acceptance of any terms the Customer may have requested. NuEnergy's sale of Products covered by this document are governed only by these terms and conditions of sale. Customer shall be deemed to have expressly accepted these terms and conditions of sale if Customer requests or receives delivery of any Products. These terms supersede all other terms submitted or proposed by Customer, as well as all prior terms in any quotation, purchase order, or otherwise. In the event that NuEnergy consents to modify any of the following terms, such modification shall be in a signed writing between the parties which references the change to these terms or shall be expressly stated on the face of these terms and endorsed by NuEnergy. All requests for Product are subject to approval by NuEnergy, and NuEnergy reserves the right to restrict or allocate Product.
- 2. Order Placement.** From time to time, Customer shall place orders for products with NuEnergy. NuEnergy may acknowledge the order, but acknowledgement itself is not acceptance of the order. Once NuEnergy accepts an order, the order may not be cancelled or rescheduled without the consent of NuEnergy.
- 3. Limited Warranty.** NuEnergy warrants to Customer only, and not to Customer's affiliates or customers or any other third parties, that Products shall remain free from defects in NuEnergy's manufacturer's manufacturing workmanship and materials determined by NuEnergy's manufacturer it is distributing (for a period outlined each cell specification datasheet from the date manufactured) but not longer than a period of twelve (12) months from the date of shipment by NuEnergy. This warranty shall be conditioned upon receipt by NuEnergy of notice of any alleged covered manufacturing defect in material or workmanship within thirty (5) days after discovery, subject to the warranty period. This warranty will not apply if the Product fails due to improper application, use, modifications, handling, installation, removal, repairs, is subjected to abuse, improper use, used in a manner contrary to the specifications, the Products were not stored in the condition recommended by the manufacturer of the product or the Products were not used in the strict compliance with the NuEnergy Guidelines. Customer's sole remedy, and NuEnergy's sole duty, for any breach of this warranty will be for NuEnergy, at NuEnergy's option, to repair or replace the defective Product or to issue a credit to Customer in the amount of the purchase price paid for such Product. In no event shall NuEnergy be responsible for any costs associated with the removal (or re-installation) of Products from (or into) items into which such Products have been integrated by Customer (or other third parties), or costs associated with other products into which the Product may have been integrated or used. Customer will return defective Products to NuEnergy, with only NuEnergy's prior consent and according to NuEnergy's RMA policy, freight prepaid F.O.B. NuEnergy's designated return facility. These are the sole and exclusive remedies of Customer under this warranty. NuEnergy DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, COURSE OF DEALING, NON- INFRINGEMENT, OR USAGE OF TRADE.

4. **Particular Uses.** Customer acknowledges that all Products purchased are in accordance with the battery specification and testing guidelines provided the battery cell manufacturer and NuEnergy. Products are not designed for, and NuEnergy has no desire to make Products available for, including without limitation, life support, critical care, medical (class III), safety equipment, e-cigarette/vaporizer, hoverboard, or similar applications where Product failure could result in loss of life or personal or physical harm, or any military or defense application, or any governmental procurement to which special terms or provisions may apply (e.g. FARS, DFARS, etc.) unless otherwise explicitly approved by NuEnergy. Accordingly, NuEnergy disclaims all liability, and Customer assumes all risks arising from any such or similar application of the Products.
5. **Resale of 18650/21700 Battery Cells.** Customer acknowledges it will not resale or distribute any LG Chem or Samsung SDI battery cells through any online or e-commerce market place (including but limited to Amazon, E-Bay, Naver, Alibaba, etc.) or to any other individual or company that sells through any online or e-commerce market place.
6. **Scrap/Excess Battery Cells.** Customer acknowledges it has a formal scrapping process. In the event of excess battery cells, failed battery cells or failed battery packs, Customer agrees to scrap any and all excess. NuEnergy must be notified of any scrap of excess cells and customer must provide count of such scrap material.
7. **CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL NuEnergy BE LIABLE FOR ANY COSTS OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
8. **Limitations.** NuEnergy's liability under the sales hereunder from any cause whatsoever shall in no event exceed a refund of the purchase price paid by Customer to NuEnergy for such Product giving rise to such liability. The above disclaimers and exclusions include any liability that may arise out of third-party claims against Customer. This allocation of risk is reflected in the price of the Products.
9. **Prices and Payment.** Customer shall pay the prices quoted in writing by NuEnergy. Prices quoted are F.O.B. NuEnergy's designated manufacturing site or warehouse or other place specified by NuEnergy. Price quotes are firm for a period not to exceed forty eight (48) hours following issuance unless otherwise indicated by NuEnergy. Payment is due net thirty (30) days from date of invoice, unless NuEnergy designates cash in advance or cash on delivery terms. Overdue amounts are subject to a late charge at the lesser of 1.5% of amount outstanding per month or the maximum rate permitted by law. Customer shall pay all reasonable collection costs (including attorneys' fees incurred in obtaining and enforcing any judgment). Acceptance of partial payment of any invoice will not constitute waiver of the balance. Creditworthiness is inherently subjective, and NuEnergy reserves the right to alter, suspend, or withdraw credit at any time. In addition to the price, Customer shall pay any sales tax, tax, duty, fee, or other charge imposed by a government authority on the sale of the Products at or after the F.O.B. point.
10. **Shipment.** All Product is sold, and prices quoted, F.O.B. NuEnergy's designated manufacturing site or warehouse, unless another location is specifically designated in writing by NuEnergy. Title and risk of loss pass to Customer at the F.O.B. point. Customer shall be responsible for all costs associated with shipping and insurance as well as any necessary customs clearances and duties (at or after the F.O.B. point). Delivery dates acknowledged or confirmed by NuEnergy are estimates only, and NuEnergy shall not be responsible for delays in shipment or delivery or any resulting claims or damages.

11. **Rescheduling and Cancellations.** Orders cannot be cancelled or rescheduled without the prior consent of NuEnergy. All custom packs are NCNR and cannot be rescheduled or cancelled at any time unless acknowledge by NuEnergy. Customer is also responsible for all work-in-process materials that is ordered by NuEnergy to fulfill a valid customer's purchase order.

12. **Intellectual Property Indemnity and Proprietary Rights.** Subject to the conditions below, NuEnergy will at its expense defend or settle (at its option) any third party claim against Customer arising from the infringement of any patent, copyright, mask work right, trade secret, or other intellectual property right by Product in the jurisdiction where title passes from NuEnergy to Customer, and will pay any final judgment entered against Customer in such claim, provided Customer notifies NuEnergy in writing of such claim immediately after knowing of it and cooperates in its defense as requested by NuEnergy. To limit its liability and in full satisfaction of its obligations hereunder (including defense obligations), NuEnergy may at any time modify or replace the affected Products to avoid an infringement, obtain a license to cure an infringement, or give Customer a full refund of the subject Product's purchase price (subject to return of the subject Product). NuEnergy's duty to defend and indemnify will not apply if the alleged infringement arises from: the combination of the Products with any other goods or products; the modification of any Products by a party other than NuEnergy; or any specifications or directives of Customer used by NuEnergy in making the Products; and will not apply to any settlement made by Customer without NuEnergy's consent. THE FOREGOING STATES THE ENTIRE RESPONSIBILITY OF NuEnergy, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ALLEGED INTELLECTUAL PROPERTY RIGHT INFRINGEMENT OR TRADE SECRET VIOLATION BY THE PRODUCTS. NuEnergy retains ownership of all rights to designs, technical data, and any other intellectual property relating to the Products, and to any models, drawings, patterns, composites, molds, masks, fixtures, and tools used in making them, and nothing in this sale conveys any license, expressly or by implication or estoppel, under any such rights to Customer.

13. **Modifications/Jurisdiction.** All approvals, consents, notices, and other communications required or permitted hereunder shall be in writing, even if not specifically designated herein. These terms may only be modified in a signed writing by an authorized employee of NuEnergy. The parties agree to the laws of the State of TEXAS, consent to personal jurisdiction with the courts located in Travis County, Texas, and agree to exclusive venue with such courts located in Travis County, Texas.