

# ADAPTIVE ENERGY, LLC -- TERMS OF SALE

**1. Acceptance and Cancellation.** Adaptive Energy, LLC, a Michigan limited liability company ("AE") expressly limits acceptance of any quote (any such quote, the "Quote") or purchase order (any such purchase order, the "PO") between AE and its customers (any customer purchasing products or services from AE pursuant to these Terms, the "Customer(s)") pursuant to the terms of these Terms of Sale (the "Terms"). No inconsistent or additional terms contained in any acceptance, purchase order or other form from Customer shall be binding upon AE unless approved in writing by AE. All Quotes shall be accepted by customer by returning a signed copy of the face page of the Quote or a signed PO referencing any such Quote. Where work commences pursuant to any Quote by AE after receipt of customer's prepayment, if any, the parties agree such acts constitute acceptance of such Quote in lieu of customer's signature and AE shall have full rights to rely on such payment as acceptance of such Quote by AE. Once accepted, a Quote cannot be cancelled by Customer except on terms that will reimburse AE for all costs/expenses/damages incurred by it in the acceptance and performance of such Quote prior to its cancellation. AE reserves the right to reject any order, within (10) days after receipt of complete specifications, without liability. Acceptance by electronic signature, as well as electronic delivery, receipt and other electronic transmissions will be subject to the Michigan Uniform Electronic Transaction Act, MCL 450.831, et.seq.

**2. Entire Agreement.** These Terms constitute the entire agreement between the parties. There are no oral agreements between the parties affecting these Terms. These Terms supercede and cancel any and all previous negotiations, arrangements, letters of intent, proposals, agreements and understandings, whether written or oral, between the parties with respect to the Quote or PO to which these Terms are attached. Any conflict between these Terms and the Quote or PO to which it is attached, the provisions of these Terms shall control unless the Quote or PO specifically references a section or term that it amends or supercedes.

**3. Prices.** Except as noted, all prices are "FCA" (Free Carrier) at AE's Dock at the place of manufacture and are subject to sales, use or other taxes as may apply. All prices, specifications, and discounts now in effect, or hereinafter issued, are subject to change without notice. Subject to these Terms and all other written specifications of AE, proposal Quotes will be held open for sixty (60) days from presentation unless otherwise noted. Prices quoted are based on materials cost at the time of such Quote. Any increase in materials cost between the time of Quote and the time the order is placed will be passed on at cost. The sales price does not include applicable taxes or transportation charges, unless so specified, and Customer is solely liable for same. State and local tax will be charged on all orders unless a resale certificate is on file.

**4. Force Majeure.** Any delay or failure in the performance by either party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of these Terms, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, or labor strikes that prevent AE from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the party affected thereby, despite such party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a party's failure to perform its obligations under these Terms.

**5. Delivery.** Unless otherwise specified, the price included in the Quote or PO does not include shipping charges, but is for a single shipment, without storage and all costs or expenses incurred regarding any other shipment arrangements shall be the sole responsibility of Customer. Quotes are based on continuous and uninterrupted delivery of complete orders, unless specifications distinctly provide otherwise. Charges related to delivery from

Customer to AE, or from Customer's supplier to AE, are not included in any Quotes unless specified. Title for finished goods shall pass to the Customer upon shipment from AE's dock, which shipment shall be FCA (Free Carrier). AE's responsibility for the shipment ceases with shipment from its dock.

**6. Claims and Limitation of Remedies.** All claims for defects, damages or shortages must be made by Customer in writing and must be received by AE within thirty (30) days after delivery of all or any part of the order. Customer must receive a Return Material Authorization Number prior to returning any products to AE. Failure to make such claim within the stated period shall constitute irrevocable acceptance of the products and an admission that they fully comply with all terms, conditions and specifications. In the event AE acknowledges the claimed defects, damage or shortages, AE's liability shall be limited to the repair or correction of the defective products, replacement of the defective or damaged products, or credit for such damaged or defective products at the price charged to the Customer for such products. The selection of the applicable remedy shall be in the sole discretion of AE. Customer agrees not to allow any products supplied by AE to be examined, analyzed, or assessed by a third party without the express written consent of AE.

**7. LIMITATION OF LIABILITY.** AE's LIABILITY FOR ALL BREACHES OF ANY TERMS, CONDITIONS, OR OBLIGATION(S) OF THESE TERMS SHALL BE LIMITED TO THE QUOTED PRICE AND SHALL IN NO EVENT INCLUDE INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST SALES OR PROFITS, COSTS OF REPAIR OR REPLACEMENT, INJURY TO BUSINESS REPUTATION AND LOSS OF MARKETING OPPORTUNITIES OR EXPENDITURES. THIS LIMITATION IS AN ESSENTIAL TERM OF THIS QUOTE, AND IS SEPARATE FROM AND IN ADDITION TO THE LIMITATION OF REMEDIES OF PARAGRAPH 6, ABOVE.

**8. Representations, Warranties, Covenants.** Each party represents, warrants, and covenants (as applicable) to the other party that (i) it has full right and authority to enter into these Terms and the transaction contemplated thereby, and (ii) such party's actions under these Terms or the transactions contemplated thereby will not violate the rights of any third-party and shall at all times be in compliance with all applicable law. AE further warrants that the products set forth on the Quote attached hereto shall be free of material and workmanship defects at the time of delivery. AE provides replacement or service warranty coverage for specific products based on elapsed time since delivery or performance criteria, as appropriate. The parameters of the warranty coverage are specified in each Quote as defined in the Quote. Customer further represents, warrants, and covenants (as applicable) to AE that it shall use the products and services solely for their intended use and only in accordance with the instructions or terms and conditions provided by AE to Customer. Customer specifically acknowledges and agrees that the use of any products or services not in accordance with their instructions or the terms of these Terms or any Quote or PO shall be a breach of these Terms and AE shall not be responsible for any damages resulting from such actions. Customer covenants that it shall not modify, self-help repair, tamper with or perform any similar operation on the products or use such products in any manner outside their intended purpose or tamper with or remove any seals applied to or attached to the products. **Customer acknowledges and agrees that any indication that Customer breached these representations, warranties or covenants gives AE the right, in its sole discretion, and without limiting its remedies, to invalidate the warranty. Any breach of any seal creates a presumption of a Customer breach of these representations, warranties, and covenants.**

**9. Indemnity.** Customer expressly agrees that it shall defend, indemnify and hold harmless AE from any and all loss, cost, expense and damages, including but not limited to court costs and reasonable attorney fees, on account of any and all manner of claims, demands, actions and proceedings that may be instituted against AE or others by reason of (1) any violation or infringement of any proprietary right, licenses for resale, royalty obligation or copyright, (2) customer's breach of any term, covenant,

representation, or warranty of these Terms (including without limitation, the improper use of AE's products and services), or (3) anything whatsoever that might prejudice the securing to AE or its assigns of the full benefit of the rights herein granted. AE expressly agrees that it shall defend, indemnify and hold harmless Customer from any and all loss, cost, expense and damages, including but not limited to court costs and reasonable attorney fees, on account of any and all manner of claims, demands, actions and proceedings that may be instituted against Customer by reason of any violation or infringement of any proprietary right, licenses for resale, royalty obligation or copyright by AE.

**10. DISCLAIMER OF WARRANTIES.** EXCEPT AS SPECIFIED IN THESE TERMS, AE GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PURPOSE SOLD, DESCRIPTION, QUALITY, OR ANY OTHER MATTER WHATSOEVER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE EXPRESS TERMS CONTAINED HEREIN.

**11. Payment Terms.** Payment shall be made in terms set forth in the Quote or invoice unless otherwise provided in writing. AE may elect to declare all unpaid balances immediately due and owing upon customers' failure to make payment as set forth therein. In the event non-payment, AE may commence collection proceedings against the customer without further notice. Customer agrees to reimburse AE for all costs incurred in collecting said sums, including but not limited to, reasonable attorney's fees and costs. All past due balances shall bear interest at the rate of 1 1/2% per month (18% per annum) whether or not demand has been made for payment. To the extent Customer believes any amounts are incorrect in an invoice, Customer shall notify AE in writing of such incorrect amount within forty-five (45) days of the invoice date and if such notice is not given, any claims regarding such disputed charges shall be considered waived by Customer.

**12. Security.** As security for payment of any sum due or to become due for any past or present work by AE under any agreement between the parties, AE shall have the right to retain possession of and shall have a lien on all Customer property in AE's possession, including work in process, finished work and customer furnished materials. The lien right shall include all rights to resell finished work or raw materials at the election of AE and to recover the difference between the resell price and the contract price consistent with applicable law. The extension of credit or the acceptance of notes, trade acceptances or guarantee of payment shall not affect such security interest and liens.

**13. Confidentiality.** Each party agrees at all times during the term of its relationship with the other party and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the other party to the extent necessary to perform its obligations to such party under these Terms, or to disclose to any person, firm, corporation or other entity without written authorization of the disclosing party, any "Confidential Information" of such disclosing party which the recipient party receives or obtains. The recipient party further agrees not to make copies of such Confidential Information except as authorized by the disclosing party. The recipient party understands that "Confidential Information" means any disclosing party proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, suppliers, customer lists and customers, prices and costs, markets, software, developments, inventions, laboratory notebooks, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets or other business information disclosed to recipient party by the disclosing party either directly or indirectly in writing, orally or by drawings or observation of parts or equipment or created by a party during the period of the relationship

contemplated by these Terms. Each party understands that Confidential Information includes, but is not limited to, information pertaining to any aspect of the other party's business which is either information not known by actual or potential competitors of the other party or other third parties not under confidentiality obligations to such party, or is otherwise proprietary information of the other party or its customers or suppliers, whether of a technical nature or otherwise. Each party further understands that Confidential Information does not include any of the foregoing items which has become publicly and widely known and made generally available through no wrongful act of the other party or of others who were under confidentiality obligations as to the item or items involved. All obligations and restrictions of confidentiality and ownership of intellectual property under these Terms are to survive the termination of these Terms.

**14. AE Intellectual Property.** Unless specifically provided otherwise in a Quote or PO, AE retains all of its right, title and interest in all of AE's now known or hereafter known or developed tangible and intangible intellectual property. Customer covenants not to prejudice or impair the interest of AE in any of its intellectual property. At no time shall Customer challenge or assist others to challenge any of AE's intellectual property or the registration thereof. Furthermore Customer shall not do any acts to reverse engineer or use any intellectual property of AE that is not in accordance with these Terms.

**15. Data.** Customer acknowledges and agrees that AE may collect and retain aggregate non-identifiable data derived from performance of AE's products and services in accordance with AE's privacy policy and terms of use.

**16. Remedies.** The parties acknowledge that an adequate remedy at law may not be available and that each party shall be entitled to such equitable and injunctive relief as may be available to restrain the other party from violating the provisions of these Terms. No action on these Terms, except for payment owed by Customer to AE, may be brought more than one (1) year after the incident occurs.

**17. Assignment.** No assignment or transfer by Customer of these Terms, or of any rights or obligations of Customer hereunder, shall be valid without the prior written consent of AE.

**18. Governing Law and Jurisdiction.** Customer understands that AE is a Michigan corporation with its principal place of business in Michigan and manufacturing facilities in Michigan. Customer further understands that the customer's order will be manufactured in Michigan. Customer agrees that by entering into this agreement it is doing business in Michigan and agrees that such state is a reasonably convenient place for resolution of any suit which may be filed as a result of any controversy or claim arising under the terms of this agreement. Customer waives any claim of inconvenient forum, and any right to claim action between the parties should be litigated other than in a Michigan venue. Customer further consents to the jurisdiction of any court of competent jurisdiction sitting in Michigan for resolution of any dispute. This agreement shall be interpreted, and the rights and liabilities of the parties shall be determined in accordance with, the laws of the State of Michigan.

**19. Severability.** The terms and conditions contained herein are independent and severable. The invalidating of any term or condition found herein shall not affect the validity of the entire agreement nor any other term or condition contained herein.

**20. Modifications of Terms.** Customer acknowledges and agrees that it understands these Terms are available at <https://www.adaptiveenergyllc.com/terms-and-conditions/> (the "Website") and such Terms may be amended or supplemented by AE from time to time. Any change to these Terms shall be binding upon Customer so long as such amendments or changes are provided in the Website.