

**GENERAL TERMS AND CONDITIONS OF HELIOX AUTOMOTIVE B.V. (CoC nr: 60956224) AND ITS AFFILIATES FOR THE SALE OF CHARGER SYSTEMS, MOBILE CHARGERS AND RELATED GOODS AND SERVICES**

**I. GENERAL PROVISIONS**

**ARTICLE 1. DEFINITIONS AND INTERPRETATION**

1.1 For the purpose of these GTC and all related documents, the capitalized terms as defined below in alphabetical order shall have the following meanings whereby these terms may be used in the singular or the plural form and vice versa, as the context so requires:

**Affiliates:** with regard to a Party any company, firm, partnership or other legal entity which now or hereafter: (a) controls either directly or indirectly a party; or (b) is controlled directly or indirectly by a party; or (c) is directly or indirectly controlled by a company, firm, partnership or other legal entity which directly or indirectly controls a party. "Control" for the purpose of this definition meaning the ownership of 50% (fifty percent) or more of the nominal value of the issued share capital or 50% (fifty percent) or more of the voting power at the general meeting of shareholders or having the power to appoint a majority of the directors or otherwise direct the activities of such company, firm, partnership or other legal entity, but any such legal entity shall be deemed to be an Affiliated Company only as long as such liaison exists.

**Agreement Price:** the total amount of the prices, charges and fees as specified in the Sales Agreement payable by Customer to Heliox.

**Article:** means every article of this GTC.

**Charger:** Heliox's stationary charger system as further specified in the Sales Agreement.

**Charger System:** the Charger, including Software and/or System Parts to be Installed and/or licensed (Software) by Heliox, as set out in the Sales Agreement.

**Charger System Maintenance Manual:** the manual containing the instructions, requirements and conditions necessary for the maintenance of the Charger Systems.

**Charger System User Manual:** the manual containing the instructions necessary for the use of the Charger Systems.

**Confidential Information:** the Sales Agreement, its terms and execution, as well as all information and know-how (including but not limited to drawings, designs and other Intellectual Property Rights) furnished by a Party to the other Party in any form whatsoever or otherwise coming to a Party's knowledge in connection with the performance of the Sales Agreement and all data derived directly or indirectly from such information and all warranty claims, if any, which may arise under the Sales Agreement. Heliox Data should also be considered as Confidential Information.

**Customer:** the Party concluding a Sales Agreement with Heliox.

**Customer's Location:** the location where the Mobile Chargers shall be shipped to, inspected and taken into use by Customer, as described in the Sales Agreement and/or any Purchase Order.

**Customer Taxes:** has the meaning described to it in **Article 8.3**.

**Delivery or Deliver:** the delivery and transportation of the Mobile Chargers and/or services related to such delivery and transportation as set out in the Sales Agreement.

**FAT:** means the factory acceptance test for the Charger Systems as described in the FAT Specifications to be performed by Heliox at the Production Site in order to examine if a Charger System meets the FAT Specifications;

**FAT Specifications:** means the detailed specifications for the FAT;

**Force Majeure:** includes, but is not limited to, Acts of God, directives of Government or of persons purporting to act therefore, legislation, war, epidemics or pandemics, civil disturbance, fire, drought, failure of power supply, explosion, riot, disturbances or standstill of essential production equipment, flood, earthquake, lock-out, lockdown transportation issues, shortage of essential raw materials, strike or other action taken by employees in contemplation of or furtherance of a trade dispute or owing to any liability to procure materials or force majeure of any other nature, including non- or late delivery due to non- or late fulfilment of obligations of subcontractors of Heliox or transportation companies engaged by Heliox and/or solvency and/or liquidity issues and/or bankruptcy of third parties engaged by Heliox, in so far as any of these circumstances prevent Heliox's performance of the Sales Agreement.

**GTC:** these general terms and conditions of sale of Heliox Automotive B.V. (COC nr: 60956224) and its Affiliates for the sale of Charger Systems, Mobile Chargers and related goods and services.

**Heliox:** Heliox Automotive B.V. a private company with limited liability duly incorporated and validly existing under Dutch Law, with its registered office and in Best, the Netherlands, registered with the Chamber of Commerce under file number 60956224 and its Affiliated Companies.

**Heliox Data:** all information in any form about, or pertaining to, the business or operations of Heliox and its Affiliates, including but not limited to information regarding products, technology, IT operations, Intellectual Property Rights, know-how, financial information, customer data, Personal Data, results, data structures and documentation disclosed by Heliox to Customer in performing the Sales Agreement.

**Heliox Taxes:** has the meaning described to it in **Article 8.3**.

**Heliox Warranty Terms & Conditions:** the terms and conditions for Charger Systems and/or Mobile Chargers of Heliox which applies to the Sales Agreement.

**Installation Site Conditions of Use:** means the conditions required for the use of the Installation Site, as set out in the Sales Agreement.

**Installation Site Specifications:** the (infrastructural) facilities and conditions for the Installation Site, as set out in the Sales Agreement.

**Installation Site:** means the location where Installation of the Charger System takes place, as set out in the Sales Agreement.

**Installation or Install:** the delivery, assembly, transportation, installation (or installation support), supervision, testing and/or commissioning of the Charger Systems by Heliox on the Installation Site and related services, including the execution of the FAT and SAT, as agreed upon in the Sales Agreement. Unless explicitly agreed upon otherwise in the Sales Agreement, Installation shall not include the performance of any electrical works outside of a Charger Systems cabinet nor the routing of cables.

**Intellectual Property Rights:** registered and unregistered intellectual and industrial property rights and applications, including but not limited to patent rights, trademark rights, database rights, design rights, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, software (including all source codes) and related documentation, technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions), manufacturing, engineering and technical drawings, know-how, Software and information, copies and tangible embodiments of all the foregoing, in whatever form or medium and any moral rights and the like associated therewith.

**License:** has the meaning described to it in **Article 12.1**.

**Maintenance Services:** any and all preventive maintenance and corrective repair services, including but not limited to the provision of Spare Parts, to be provided in connection with the Charger Systems and/or Mobile Chargers under a separate Services Agreement.

**Mobile Chargers:** Heliox's mobile chargers, including Software to be Delivered and/or licensed (Software) by Heliox, as further specified in the Sales Agreement.

**Mobile Charger User Manual:** a manual containing the instructions necessary for the use of the Mobile Chargers.

**Mobile Chargers Maintenance Manual:** the manual containing the instructions, requirements and conditions necessary for the maintenance of the Mobile Chargers.

**Offer:** any offer relating to the sale and Installation of the Charger Systems and/or the sale and Delivery of Mobile Chargers made in writing by Heliox to Customer, based on which Heliox shall sell and Install the Charger Systems at Customers Installation Site and/or sell and Deliver the Mobile Chargers to Customer, including any appendix.

**Parties:** Heliox and Customer together.

**Party:** Heliox and Customer individually.

**Production Site:** the production site of Heliox or its subcontractor where the Charger Systems and/or Mobile Chargers will be manufactured and/or assembled, as set out in the Sales Agreement.

**Purchase Order:** a written purchase order from Customer for the sale and Installation of the Charger Systems and/or the sale and Delivery of Mobile Chargers, on the basis of which Customer confirms the Offer issued by Heliox, supplement or amendment thereto.

**Sales Agreement:** the written agreement between Heliox and Customer for the sale and Installation of the Charger Systems and/or the sale and Delivery of Mobile Chargers of which this GTC form an integral part, including all accompanying appendices, subsequent amendments and/or supplements, as agreed in writing between the Parties. In case there is no written agreement between the Parties, the Offer including these GTC shall constitute the Sales Agreement between the Parties.

**SAT:** means the site acceptance test for the Charger Systems as described in the SAT Specifications to be performed by Heliox and Customer's representatives at the Installation Site in order to examine if a Charger System meets the Specifications.

**SAT Specifications:** means the detailed specifications for the SAT, as set out in the Sales Agreement.

**Service Level Agreement:** a services (level) agreement, which among others may cover the provision of maintenance services, back office services, services related to Software which may be concluded between the Parties or between Heliox and the end-user of the Charger System or Mobile Charger.

**Software:** the software related to or integrated in the Charger Systems and/or the Mobile Chargers belonging to or in the possession of Heliox and licensed to Customer (or to the end-user) under the License, as further described in **Article 12.1** and the respective Sales Agreement.

**Spare Parts:** the spare parts and replacement parts for the Charger Systems and/or Mobile Chargers.

**Specifications:** the detailed specifications, descriptions and drawings of the (Installation) of the Charger Systems and/or the Mobile Chargers as agreed between Parties and specified and defined as such in the Sales Agreement.

**System Parts Specifications:** the detailed specifications, descriptions and drawings of the System Parts as agreed between Parties and specified and defined as such in the Sales Agreement.

**System Parts:** specific components, materials and equipment required for the integration and/or connection of the Charger to the existing and/or available infrastructure and/or utilities on the Installation Site.

1.2 The headings of these GTC are for ease of reference only and are not intended to qualify the meaning of any article or section thereof.

1.3 Any undertaking by a Party to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another person.

1.4 References to the Parties include their respective successors in title and permitted assigns.

1.5 Terms and expressions of law and of legal concepts as used in this GTC have the meaning attributed to them under the laws of the Netherlands and should be read and interpreted accordingly.

1.6 In these GTC the term 'in writing' or 'written' includes by regular post, e-mail and any other electronic communication device customary in the market.

## ARTICLE 2. APPLICABILITY

2.1 These GTC apply to all Offers, Purchase Orders and Sales Agreements, as well as to all related legal acts of Parties.

2.2 Upon Customer's written acceptance of an Offer, with signing an Agreement, or with the start of performance thereof, Customer shall be legally bound to these GTC.

2.3 The applicability of Customer's general terms and conditions of purchase or other terms and conditions is expressly rejected.

2.4 Heliox shall have a right to amend these GTC and communicate the amended version on its website or by sending it to the Customer.

2.5 A failure by Heliox to exercise or a delay in exercising a right or remedy provided by these GTC or by law does not constitute a waiver of that right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these GTC or by law by Heliox prevents further exercise of that right or remedy or the exercise of another right or remedy.

2.6 If one or more provisions of these GTC shall be found, by a court with jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of these GTC. Heliox shall replace this illegal, invalid or unenforceable provision by a legal, valid or enforceable provision that achieves to the greatest extent possible the objectives of the illegal, invalid or unenforceable provision.

2.7 Any issues that are not arranged for in these GTC or any related Sales Agreement shall be further discussed and agreed upon between the Parties in good faith, observing the principles of reasonableness and fairness.

2.8 This GTC consists of several Chapters: Chapter I. General provisions, Chapter II. Additional provisions concerning Installation of Charger Systems, Chapter III. Additional provisions concerning the Delivery of Mobile Chargers. The provisions of Chapter I. always apply to the Offers, Purchase Orders and Sales Agreement. The provisions of one or more of the other Chapters apply, depending on the type of performance as agreed upon the respective Sales Agreement.

2.9 These GTC do not derogate from Heliox's statutory and common law rights, but are in addition thereto.

2.10 In the event of any contradiction between these GTC and the Sales Agreement, the provisions of the Sales Agreement shall prevail.

## ARTICLE 3. OFFERS, PURCHASE ORDERS, AGREEMENTS

3.1 All Offers of Heliox are non-binding and, unless otherwise declared by Heliox in writing, valid for a period of 30 (thirty) days after the date thereof. Heliox reserves the right to withdraw or change its Offers without compensation as long as Customer has not accepted the Offer yet by issuing a Purchase Order.

3.2 Each Offer of Heliox shall contain the Specifications and if applicable final approved drawings, quantity, delivery date and any other details essential for the proper execution of the Sales Agreement. If Customer agrees to the terms of the Offer, Customer shall confirm the Offer by returning a signed copy of the Offer to Heliox or issuing a separate Purchase Order which is in line with the provisions of the Offer, in its own format. A Purchase Order deviating from Heliox's Offer may be declined by Heliox.

3.3 No Purchase Order shall be binding on Heliox unless it has been confirmed by Heliox in writing. A confirmed Offer (by the Customer) or a confirmed Purchase Order (by Heliox) shall constitute a Sales Agreement. Heliox Offer shall always prevail over the Customer's Purchase Order.

3.4 When a Purchase Order is placed by Customer without a prior Offer and Heliox subsequently sells and Installs Charger Systems and/or sells and Delivers Mobile Chargers, this is a confirmation of the Purchase Order and constitutes a Sales Agreement to which these GTC and the Heliox Warranty Terms & Conditions apply. Additional arrangements shall require Heliox's written approval.

3.5 Customer cannot derive any rights from oral commitments of Heliox, unless and to the extent those are confirmed in writing by Heliox.

3.6 All notifications relating to the Sales Agreement shall be made in writing.

## ARTICLE 4. CHANGES

4.1 If on the instructions of, or in agreement with Customer, any change is made in the Installation of the Charger Systems and/or the Delivery of Mobile Chargers that is not included in the Sales Agreement, the extra costs thereby incurred shall be charged by Heliox to Customer as additional work at the then applicable charging rates. Heliox is not obliged to honour a change request and may require that a separate Sales Agreement will be concluded for this purpose.

4.2 Heliox reserves the right to make changes in design of or add any improvement to Charger Systems and/or Mobile Chargers at any time, without incurring any obligations to previously Installed Charger Systems and/or Delivered Mobile Chargers to Customer, in the same manner.

4.3 Heliox may, at its expense, make such changes in the (Installation of the) Charger Systems and/or the Mobile Chargers as it deems necessary, in its sole discretion, to conform the Charger Systems and/or Mobile Chargers to the applicable Specifications. If Customer objects to any such changes, Heliox shall be relieved of its obligation to conform to the applicable Specifications to the extent that conformance may be affected by such objection.

## ARTICLE 5. MANDATORY CHANGES

5.1 Heliox may terminate the Sales Agreement if the Charger Systems and/or the Mobile Chargers are affected by mandatory changes ordered by competent authorities. Such termination may take place with immediate effect and Heliox shall in no way be liable for any claim resulting from such termination.

5.2 The Customer shall furnish to Heliox any information required during the term of the Sales Agreement to enable Heliox to comply with the requirements of any federal, state, local, or foreign authority in its use, and Installation of the Charger System and/or Delivery Mobile Chargers.

## ARTICLE 6. DIMENSIONS, WEIGHTS, ILLUSTRATIONS AND DATA

6.1 The measurements, weights, dimensions, capacities, technical data and images set out in the catalogues, websites, stock lists and other advertising material are approximate only. These data shall not be binding except to the extent they are expressly guaranteed in the Sales Agreement.

6.2 Customer shall ensure that all data, which Heliox indicates are necessary for the sale and Installation of the Charger Systems and/or sale and Delivery of the Mobile Chargers, which the Customer should reasonably understand are necessary for this purpose, have been provided to Heliox correctly and in a timely manner. If the information required for the performance of the Sales Agreement has not been provided to Heliox correctly or in a timely manner, Heliox shall have the right to suspend the performance of the Sales Agreement and/or charge the costs arising from the delay to the Customer at Heliox's usual rates.

## ARTICLE 7. DELIVERY, INSTALLATION AND PACKAGING

7.1 If a Delivery Date for the Installation of (parts of) the Charger Systems and/or for the Delivery of Mobile Chargers is given or agreed upon this is always indicative and therefore never includes a term on penalty of forfeiture of rights. However, Heliox shall make all reasonable efforts to Install the Charger Systems and/or Deliver the Mobile Chargers on the date of Delivery or within the delivery period respectively. If Heliox expects that an agreed Delivery Date shall be exceeded, it shall immediately inform Customer thereof in writing. In such case, Heliox shall make all reasonable efforts to Install the Charger Systems and/or Deliver the Mobile Chargers

to Customer as soon as possible and keep Customer informed of the situation.

7.2 Failure to Install the Charger Systems and/or Deliver the Mobile Chargers on the agreed Date of Delivery or within a delivery period does not entitle Customer to fail to comply with or suspend its obligations under the Sales Agreement.

7.3 The delivery period starts at the moment Heliox is in possession of all information required for a specific delivery and Customer has fulfilled all other necessary conditions for the execution of the Sales Agreement.

7.4 Unless agreed otherwise in writing, Heliox is entitled to Install the Charger Systems and/or Deliver the Mobile Chargers in partial deliveries. Heliox is entitled to invoice separately for partial deliveries. Delay in any partial delivery shall not release Customer from its obligation to accept the remaining Installation of the Charger Systems and/or the Delivery of the Mobile Chargers.

7.5 All Charger Systems and Mobile Chargers will be delivered in standard re-useable packaging and at standard pack levels. Any special packaging, labelling or special marking of the Charger Systems and/or Mobile Chargers may be, at Heliox's option, subject to additional charges.

#### **ARTICLE 8. AGREEMENT PRICE AND TAXES**

8.1 As consideration for the sale and Installation of the Charger Systems and/or the sale and Delivery of Mobile Chargers under the Sales Agreement, the Customer shall pay Heliox the Agreement Price, which is calculated as specified in the Sales Agreement.

8.2 Prices are valid 30 (thirty) days from date of the Offer by Heliox. Price adjustment clauses, if any, will have to be explicitly agreed and confirmed by Heliox in writing.

8.3 Heliox shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under the Sales Agreement ("**Heliox Taxes**"). Customer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Customer or Heliox or its subcontractors) in relation to the Sales Agreement or the performance of or payment for work under the Sales Agreement other than Heliox Taxes ("**Customer Taxes**"). The Agreement Price does not include the amount of any Customer Taxes. Customer shall provide to Heliox, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

8.4 If Customer is exempted from the payment of any taxes or holds a direct payment permit, Customer shall, upon the constitution of a Sales Agreement, provide Heliox with a copy, acceptable to the relevant governmental authorities, of any such certificate or permit.

8.5 In cases where the Agreement Price does include taxes, charges, levies and duties, any changes in such taxes, charges, levies or duties, imposed under any federal, state, provincial municipal or local legislation or authority after the date of submitting of Heliox's Offer applicable to the sale and Installation of the Charger Systems and/or sale and Delivery of the Mobile Chargers, the Agreement Price shall be adjusted to reflect such changes. Any penalty or interest charge levied against Heliox due to the Customer's late payment shall be to Customer's account.

8.6 Price information published by Heliox in catalogues, bulletins or price lists is not a definite quotation or offer to sell.

8.7 Heliox reserves the right to accept/decline and/or adjust prices as set out in the Sales Agreement for any alterations or changes authorized or made by the Customer.

#### **ARTICLE 9. PAYMENT TERMS**

9.1 Customer shall pay the Agreement Price in accordance with the payment schedule as set out in the Sales Agreement.

9.2 Unless expressly agreed otherwise between Parties in writing, Customer shall pay Heliox's invoices in full and without any discount, deduction, set-off or counterclaim within 30 (thirty) days after the invoice date by means of transfer to Heliox's bank account, in accordance with the conditions stated in the Sales Agreement. All costs of payment shall be borne by Customer. Payments will be made in Euros, unless otherwise specified. Contestation of the invoices by Customer does not suspend Customer's payment obligations and Customer is not entitled to postpone them.

9.3 In the event that Customer fails to timely fulfil its payment obligations, Customer shall be in default by operation of law and the entire Agreement Price and any note or security given on account therefore shall forthwith become due and payable. Customer shall pay to Heliox interest on sums due hereunder from the due date at the higher of either 1,5 % (one and a half percent) per month and 18% (eighteen percent) per annum, or the maximum rate then permitted by applicable law. Such interest shall be

calculated from the original due date until the date of full payment. Any late payment shall bear interest at the rate set by Heliox being as of the date of issue, calculated and due on a monthly basis. The foregoing shall be in addition to and not in lieu of any other rights and remedies Heliox may have at law or in equity for such default.

9.4 All judicial and extrajudicial costs related to the enforcement and collection of payments due by Customer to Heliox and not received in time, shall be borne by Customer.

9.5 In the event that: a) Customer's company is wound up; b) Customer's company is attached; c) Customer's company is declared bankrupt; and/or d) suspension of payment is granted to Customer, Heliox's payment claims against Customer shall become immediately due and payable.

9.6 Customer's failure to make payment in accordance with the terms hereof shall give Heliox the right to suspend any of its outstanding obligations towards Customer or to dissolve the Sales Agreement.

9.7 If Customer does not properly fulfil its payment obligations, as well as in the event that Heliox for any reason whatsoever deems that Customer will not properly fulfil its payment obligations, Heliox may at all time require adequate security from Customer such as a bank or performance guarantee for the proper fulfilment of the Customer's payment obligations and suspend Installation of the Charger Systems and/or Delivery of the Mobile Chargers until such adequate security has been received. Customer shall provide Heliox with any such requested adequate security at Heliox's first request. If the suspension lasts for more than 30 (thirty) days and Customer does not provide Heliox with such adequate security within this term, Heliox shall be entitled to terminate the Sales Agreement.

#### **ARTICLE 10. SUSPENSION AND DISSOLUTION**

10.1 Heliox shall at all times be entitled to suspend the fulfilment of its obligations under the Sales Agreement or to dissolve the Sales Agreement, in the event that:

(i) Customer does not timely and/or fully fulfil its obligations under the Sales Agreement;

(ii) Heliox learns of circumstances giving good ground to fear that Customer will not timely and/or fully fulfil its obligations under the Sales Agreement. In such event suspension of the Sales Agreement by Heliox shall only be allowed in so far the shortcoming justifies such action;

(iii) Customer has been requested to furnish sufficient security for the fulfilment of its obligations under the Sales Agreement pursuant to **Article 9.7** and such security is not (sufficiently) provided.

10.2 All orders are subject to Heliox approval of Customers creditworthiness. Heliox reserves the right to refuse the sale and the Installation of any Charger Systems and/or the sale and Delivery of Mobile Chargers as specified in the Sales Agreement and/or to change the terms of payment as set out in **Article 9**.

10.3 Heliox shall furthermore be entitled to dissolve the Sales Agreement if circumstances arise of such nature that fulfilment of Heliox's obligations becomes impossible or can no longer be expected in accordance with the requirements of reasonableness and fairness.

10.4 If the Sales Agreement is dissolved pursuant to **Article 10.3**, Heliox's claims against Customer shall become immediately due and payable. If Heliox suspends the fulfilment of its obligations, it will retain its rights under the applicable law and the Sales Agreement.

10.5 Notwithstanding the previous paragraphs of this **Article 10**, Heliox shall always retain the right to claim damages in case of suspension or dissolution.

#### **ARTICLE 11. MANUALS**

11.1 Insofar as a manual for the Charger Systems and/or Mobile Chargers is delivered to Customer (only applicable if such a manual is produced for the Charger Systems and/or Mobile Chargers), Heliox reserves the right to determine a fee per manual for each additional manual requested by Customer. Each manual produced by Heliox is to be regarded as Heliox's Intellectual Property Rights and is therefore subject to the provisions of **Article 15**.

#### **ARTICLE 12. SOFTWARE**

12.1 Heliox owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Customer under the Sales Agreement. As part of sale and the Installation of the Charger Systems and/or the sale and Delivery of Mobile Chargers, Customer hereby obtains a limited license (the "**License**") to use the Software, subject to the following: (i) the Software may be used only in conjunction with the Charger Systems and/or Mobile Chargers; (ii) the Software shall be kept strictly confidential; (iii) the Software shall not be copied, reverse engineered, or modified; (iv) the Customer's right to use the Software shall terminate immediately when the Charger Systems and/or the Mobile Chargers are no longer used by the Customer or when otherwise terminated, e.g. for breach of any of the

provisions of the Sales Agreement or these GTC; and (v) the rights to use the Software are non-exclusive and non-transferable, with the right to sublicense solely to an end-user of the Charger Systems and/or Mobile Chargers, but only with Heliox's prior written consent and subject to entering to an End-Customer License Agreement (EULA).

12.2 Nothing in these GTC and/or the Sales Agreement shall be deemed to convey to Customer any title to or ownership in the Software or the Intellectual Property Rights contained therein in whole or in part, nor to confer upon any third party any right or remedy under or by reason of these GTC and/or the Sales Agreement. In the event of termination of the License, Customer shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to Heliox the Software and all copies thereof and shall remove all machine readable Software from all of Customer's storage media.

12.3 The maintenance and updates of any Software shall only be provided by Heliox as part of a Service Level Agreement as further set out in **Article 33** (Charger Systems) and **Article 38** (Mobile Chargers).

#### **ARTICLE 13. TITLE**

13.1 Title to the Charger Systems and/or Mobile Chargers (except for the Software) shall transfer from Heliox to Customer upon Heliox's receipt of all instalments of the Agreement Price. Heliox remains the owner of the Software as stated in **Article 12**. In addition, Heliox will remain the owner of the Charger Systems and/or the Mobile Chargers for as long as the Customer has not paid any claims arising from non-payment of the Agreement Price, such as damages, penalties, interest and costs.

13.2 As long as the ownership of the Charger Systems and/or Mobile Chargers has not been transferred to Customer, Customer may not pledge the Charger Systems and/or Mobile Chargers, transfer ownership as security or grant any other right to third parties in relation to the Charger Systems and/or Mobile Chargers, and Customer will cooperate, at Heliox's first request, in the establishment of a right of superficies by Heliox for the Charger Systems on the Installation Site until the moment of transfer of ownership to Customer. Customer shall, at its own expense, insure the Charger Systems and/or Mobile Chargers delivered under retention of title and keep it insured against all types of damage, such as, but not limited to, damage caused by fire, explosion and water, as well as against theft, with a financially reliable insurance company. At Heliox's request, Customer will provide the relevant insurance policy for inspection as well as proof of payment of the insurance premiums.

13.3 As long as the ownership of the Charger Systems and/or Mobile Chargers belongs to Heliox and if Customer has been declared bankrupt, has been granted a suspension of payments, has been declared subject to the debt rescheduling of natural persons in respect, or if any attachment of its assets has been levied, the Customer undertakes to immediately notify Heliox of this and, furthermore, to inform the liquidator or the bailiff levying the Charger Systems and/or Mobile Chargers that they are the property of Heliox.

13.4 If, due to refusal, negligence or a cause within Customer's sphere of risk, it proves impossible to perform any of the obligations under the Sales Agreement, Heliox shall be entitled to store the goods purchased for the performance of the Sales Agreement at the Customer's expense and risk. If, after having been warned to do so, the Customer fails to fulfil its obligations, it shall be in default with immediate effect. Heliox will then be entitled to dissolve the Sales Agreement in whole or in part with immediate effect by means of a written statement, without Heliox being under any obligation to pay compensation for damages, costs and interest.

13.5 Heliox will be entitled unhindered access to the Charger Systems and/or Mobile Chargers, if applicable. Customer shall cooperate fully with Heliox to enable Heliox to exercise the retention of title set forth in this **Article 13** by repossessing the Charger Systems and/or Mobile Chargers, including any necessary disassembly. Disassembly shall take place at the Customer's expense. In the event of disassembly, Heliox shall not be obliged to undo any (structural) provisions made for the Charger Systems and/or Mobile Chargers.

#### **ARTICLE 14. CONFIDENTIALITY AND PUBLICITY**

14.1 Parties shall be bound to secrecy of all of each other's Confidential Information and shall use the same solely for the purposes of performing the Sales Agreement. The Customer is explicitly forbidden to reverse engineer, decompile, modify, disassemble or otherwise attempt to discover or make derivative works of the Charger Systems and/or Mobile Chargers or underlying ideas, by any means whatsoever, directly or indirectly, or disclose any of the foregoing.

14.2 Parties shall cause their officers, directors, employees, agents and Affiliates to abide by the terms of this **Article 14**. Each Party shall be responsible for any breach by its officers, directors, employees, agents and Affiliates of this **Article 14**.

14.3 Information shall not be regarded as confidential if it: i) is already in possession of the public or becomes available to the public other than through breach of this **Article 14** by the receiving Party; ii) is required to be disclosed under any applicable law, court order or direction, or governmental or regulatory authority regulation, rule or requirement; iii) is acquired lawfully from a third party which is not subject to any confidentiality obligation towards the disclosing Party; iv) was independently developed by the receiving Party without use of or reference to the Confidential Information of the other Party.

14.4 In the event that the receiving Party becomes aware that **Article 14.3 ii)** may or does apply, it will give the disclosing Party prompt notice of that fact – to the extent lawful to do so – in order for the disclosing Party to seek an appropriate remedy to prevent such disclosure. Furthermore, the receiving Party shall take such measures as the disclosing Party reasonably requires for any such prevention and shall keep the disclosing Party promptly and fully informed of all developments relating to any potential disclosure, one and another to the extent this is lawful to do so. The receiving Party shall at all times bear the burden of proof relating to the above exceptions.

14.5 Upon acceptance by Customer of the Charger Systems and/or the Mobile Chargers or upon termination or dissolution of the Sales Agreement whichever is earlier, Customer shall, on demand and as soon as is reasonably possible return all Confidential Information to Heliox.

14.6 Immediately after the termination of the Sales Agreement, the receiving Party will return to the disclosing Party all of the disclosing Party's Confidential Information, and all derivatives thereof, communicated in connection therewith or, if so requested by the disclosing Party, certify in writing that all copies of such Confidential Information have been destroyed.

14.7 Customer shall not issue a news release, public announcement, advertisement or any other form of publicity concerning any Sales Agreement without obtaining the prior written consent to such publicity from Heliox.

#### **ARTICLE 15. INTELLECTUAL PROPERTY**

15.1 All right, title and interest in and to Intellectual Property Rights of any kind associated with the Charger Systems, the Mobile Chargers and/or the Software, including, without limitation, Heliox Data, any plans, simulation models, Specifications, test models, images, schedules, designs, sketches, drawings, films and other material or (electronic) files is reserved to and belongs to Heliox. Customer shall have no rights of exploitation thereof, irrespective of the fact whether they have been handed over to Customer or via Customer to third parties and irrespective of whether Heliox charged Customer for the production of such materials.

15.2 Customer shall not directly or indirectly disassemble, decode, peel components, decompile, modify, append, translate, copy, distribute, publicly display, disclose, sell, lease, loan, rent, transfer, assign, sub-license or otherwise reverse engineer or attempt to reverse engineer or derive source code from, or do so, or provide to third parties, the Charger Systems, the Mobile Chargers, the Software and/or any portion thereof, or permit or encourage any third party to do, or use or acquire any materials from any third party who does so.

15.3 Customer may brand the Charger Systems and/or the Mobile Chargers by applying graphics to the Charger Systems and/or the Mobile Chargers for the purpose of promoting the name and business of Customer, or for advertising a specific product according to local city and municipality codes and regulations. In the event of any applications of graphics to the Charger Systems and/or the Mobile Chargers, the Heliox logo must be included in the overall graphics plan and placed on the front of the Charger Systems and/or the Mobile Chargers. Heliox reserves the right to request copy and mock-up details of the branding or advertising graphics for final approval.

15.4 Customer shall not attempt to seek or claim any interest in Heliox's Intellectual Property Rights, or assist any other party to assert any interest in Heliox's Intellectual Property Rights. Customer acknowledges that any improvement or enhancement of Heliox Intellectual Property Rights which may result from work performed by Customer shall remain the exclusive property of Heliox and Customer irrevocably assigns to Heliox all right, title and interest Customer may have in any improvements or enhancements, to Heliox's Intellectual Property Rights. Customer shall not hinder Heliox in any application or other measure taken by Heliox to protect or exploit improvements to Heliox's Intellectual Property Rights. Heliox shall have the exclusive right to file patent applications, in its own name or in the name of a third party designated by Heliox, for inventions made as part of carrying out of the Sales Agreement and Customer shall give its full cooperation with respect to such patent applications.

15.5 Heliox reserves the right to use the knowledge gained by the execution of the Sales Agreement for other purposes, in so far no Confidential Information of Customer shall be disclosed to third parties.

**ARTICLE 16. PATENT INFRINGEMENT**

16.1 Heliox will, at Heliox's expense, defend any suit which may be brought against Customer based on a claim that any Charger System and/or Mobile Charger or part furnished under a Sales Agreement constitutes an infringement of any letter patent (provided Heliox is notified promptly of such suit and copies of all papers therein are promptly delivered to Heliox). Heliox agrees to pay all judgments and costs recovered for any reasonable costs or expenses incurred in the defence of any such claim or suits. In case said Charger System and/or Mobile Charger or any part is held to constitute infringement and the use of the Charger Systems, Mobile Charger or part is enjoined, Heliox shall, at its own expense, either procure for Customer the right to continue using the Charger System and/or Mobile Charger or part; or replace with non-infringing products; or modify it so that it becomes non-infringing; or remove the Charger System and/or Mobile Charger and refund the part of the Agreement Price paid for the respective Charger System and/or Mobile Charger and the transportation and installation costs thereof. The foregoing states the entire liability of Heliox for patent infringement by the Charger Systems, Mobile Chargers and/or any part thereof. This provision shall not apply to any Charger System, Mobile Charger and/or part which is manufactured by Heliox or third parties to Customer's design or specifications. Heliox assumes no liability for any such infringement and Customer agrees to defend any suit against Heliox for alleged infringement arising through the manufacture and sale of Charger Systems and/or Mobile Chargers made to Customer's design or specifications and to indemnify and hold Heliox harmless from any liability arising from any such infringement.

**ARTICLE 17. LIMITATION OF LIABILITY**

17.1 The operation of the Charger Systems and/or Mobile Chargers is within the exclusive control of Customer. Neither Heliox nor its representative(s) shall be deemed to have any responsibility for the operation of the Charger Systems and/or Mobile Chargers. Customer shall indemnify and hold Heliox harmless from any and all expense and liability (including attorneys' fees) incurred by or imposed upon Heliox based upon injury to persons (including death) or damage to property (including the charger systems) resulting from Customer's tests, cleaning, operation, or maintenance of the Charger Systems and/or Mobile Chargers or from modifications to the Charger Systems and/or Mobile Chargers by Customer, its end-user or by other third parties.

17.2 To the fullest extent permitted by applicable law, Heliox, its agents, directors, officers, subcontractors and suppliers shall in no way be liable for consequential, incidental, indirect, special or punitive damages, loss of profits or revenue of any kind, delays, loss of use, loss of data, loss of production, costs of capital or costs of replacement power, personal injury, wrongful death, property damage, loss by reason of plant shutdown, non-operation or increased expense of operation sustained by Customer, or by any person dealing with Customer, in connection with the Charger Systems and/or Mobile Chargers, including, without limitation, resulting from Installation or use of the Charger Systems and/or Delivery or use of the Mobile Chargers, even if Heliox or its authorized representative was advised of the possibility of such damages.

17.3 In no event shall Heliox be liable to Customer for any damages, claims, judgements, costs or expenses exceeding the Agreement Price. Where Heliox performs services, the liability of Heliox, its agents, directors, officers, employees, subcontractors, suppliers for all claims, actions, judgment, expenses related to or resulting from any loss or damage arising out of performance or non-performance of such services, shall in no case exceed in the aggregate the amount paid by Customer to Heliox for these specific services under the applicable Sales Agreement.

17.4 No claim shall be asserted against Heliox, its agents, directors, officers, employees, subcontractors, suppliers, unless the damage giving rise to such claim was sustained prior to the expiration of the warranty period as set out in the respective Heliox Warranty Terms & Conditions and no suit or action shall be instituted or maintained unless filed in a court of competent jurisdiction within 1 (one) year after the date of the cause of action originated.

17.5 The limitations of liability as set forth in this **Article 17** shall apply and be effective with respect to any claim, cause of action, or legal theory whatsoever against Heliox, including, but not limited to, contract or warranty (including performance guarantees) or breach thereof, indemnity, tort (including negligence), strict liability.

17.6 Nothing in this **Article 17** shall limit or exclude Heliox's liability for death or personal injury resulting from negligence, fraud or any other liability excluded under applicable law.

**ARTICLE 18. FORCE MAJEURE**

18.1 Heliox shall not be liable for any failure to fulfil any terms of the Sales Agreement to the extent that such fulfillment has been delayed, hindered, interfered with or prevented by any circumstance whatsoever which is not within its reasonable control and which amounts to an act of Force Majeure.

18.2 Heliox shall inform Customer of all circumstances and particulars which prevent Heliox from performing its obligations under the Sales Agreement. Heliox shall consult Customer about the measures to be taken in order to limit the consequences of the situation of Force Majeure to a minimum and to safeguard the execution of the Sales Agreement.

18.3 Heliox shall exert its reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so and may at its option suspend performance of the obligation affected by the Force Majeure during the period such Force Majeure continues, without incurring any liability on account hereof.

18.4 If the Force Majeure continues for a period of more than 3 (three) consecutive months, then Heliox shall be entitled to terminate the Sales Agreement, with immediate effect and without liability, by written notice to the other Party.

**ARTICLE 19. ASSIGNMENT AND SUBCONTRACTING**

19.1 Heliox is at all times entitled to assign all or part of its rights and/or obligations under a Sales Agreement to an Affiliate or third party.

19.2 Customer is not entitled to assign all or part of its rights and/or obligations under a Sales Agreement to an Affiliate or a third party without the Heliox's prior written consent, which shall not unreasonably be withheld. In the event of a proper assignment, the Sales Agreement shall be binding upon and inure to the benefit of Customer's successors and assignees.

19.3 Heliox is at all times entitled to enter into any agreement with subcontractors with respect to the execution of the Agreement after sending prior written notice thereof to the Customer.

**ARTICLE 20. NON-EMPLOYMENT OF HELIOX'S PERSONNEL**

20.1 During the term of the Sales Agreement and for 12 (twelve) months after the termination or expiration thereof, Customer may not, without the prior written consent of Heliox, directly and/or indirectly, enter into a business relationship with the employee(s) of Heliox involved in the performance of the Sales Agreement.

**ARTICLE 21. COMPLIANCE WITH LAW & EXPORT CONTROLS**

21.1 Without limitation, each Party shall comply with all applicable laws. Customer shall be responsible for obtaining all governmental permits, licenses and approvals, and satisfying all formalities with respect to the purchase, advertisement, storage, use, transportation, resale, import and export of the Charger Systems and/or Mobile Chargers.

21.2 Customer represents and warrants that the Charger Systems and/or Mobile Chargers are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Customer agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by Heliox thereof as defined in the applicable Export Control Regulations, except in compliance with such Regulations.

21.3 If applicable, Heliox shall file for an export license, but only after appropriate documentation for the license application has been provided by Customer. Customer shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of the Sales Agreement by Heliox. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, the relevant Sales Agreement may be cancelled by Heliox without liability for damages of any kind resulting from such cancellation. At Heliox's request, Customer shall provide to Heliox a letter of assurance and end-user statement in a form reasonably satisfactory to Heliox.

**ARTICLE 22. ANTI-CORRUPTION AND ANTI-BRIBERY**

22.1 Customer represents and warrants that for the (5) five year period immediately preceding the constitution of a Sales Agreement, Customer has complied and shall comply with all applicable anti-corruption laws, rules, and regulations, including the laws of the country in which the goods are produced and/or delivered and/or services are to be performed pursuant to the Sales Agreement. The Customer will not, and nor will any of its Affiliates, directly or indirectly, make or offer any payment, gift or other advantage with respect to any matters which are the subject of the Sales Agreement which (i) would violate any anti-corruption laws or regulations applicable to Heliox; (ii) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (iii) is made to or for a public official with the intention of influencing them and obtaining or

retaining an advantage in the conduct of business; or (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper; in each case, for the purposes of these GTC. In addition, Customer represents and warrants that for the (5) five year period immediately preceding the constitution of the Sales Agreement, Customer has complied and shall comply with Heliox's Customer Code of Conduct as made available by Heliox to Customer at request of Customer.

#### **ARTICLE 23. DATA AND PRIVACY**

23.1 The Parties shall at all times comply with any obligations under the General Data Protection Regulation (GDPR) regarding personal data protection and any other relevant law and regulations while processing personal data. Both Parties shall (i) limit processing of personal data to strict necessary data processing, (ii) take appropriate security measures to protect the (personal) data provided by the other Party, (iii) inform the other Party, on such Party's request, about the security measures taken in respect to the foregoing, and (iii) notify the other Party of any breach of Personal Data at the latest within 48 hours after discovery. Customer shall inform Heliox of such Personal Data breach via legal@heliox-energy.com

#### **ARTICLE 24. GENERAL**

24.1 Except as specifically provided herein, the exercise of any remedy in these GTC shall not be a waiver of any other remedy provided by law. Except as otherwise expressly set forth in these GTC, no remedy conferred by any of the specific provisions of these GTC is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not, except as otherwise expressly provided herein, constitute a waiver of the right to pursue other available remedies.

24.2 No penalties or liquidated damages shall apply pursuant to the inexecution of Heliox's obligations under the Sales Agreement, unless accepted in writing by Heliox's authorized representative.

24.3 All sections and all other obligations which may be performed after the cancellation, expiration or termination of the Sales Agreement shall survive expiration or termination thereof.

24.4 The invalidity in whole or in part of any part of these GTC shall not affect the validity of the remainder of the GTC.

24.5 Either Party's failure to enforce any provisions hereof shall not be construed a waiver of that Party's right thereafter to enforce each and every such provision.

#### **ARTICLE 25. APPLICABLE LAW AND DISPUTE RESOLUTION**

25.1 These GTC are exclusively governed by Dutch law, with the exclusion of the Vienna Sales Convention.

25.2 Any dispute or claim arising from or in connection with these GTC or its subject matter (including any question regarding its existence, validity or termination) shall be submitted to the competent courts in the venue of Heliox's registered office. However in case Heliox is the plaintiff, Heliox may at its sole discretion submit any such dispute either to the competent courts in the venue of Customer's registered office. Customer hereby irrevocably waives any objection to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgement (including but not limited to a default judgment) of any such court in relation to the Agreement, to the maximum extent permitted by the law of any jurisdiction, the laws of which might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgement.

#### **II. ADDITIONAL PROVISIONS CONCERNING THE INSTALLATION OF CHARGER SYSTEMS**

The provisions of this Chapter II apply in addition to the provisions of Chapter I if Heliox sells and Installs Charger Systems, whether or not described in more detail in one of the other Chapters of these GTC. In the event of contradictions between the provisions of Chapter I and the provisions of this Chapter II, the latter shall prevail.

#### **ARTICLE 26. DELIVERY AND RISK OF THE CHARGER SYSTEMS**

26.1 Unless otherwise explicitly agreed upon in the Sales Agreement, Heliox shall deliver the Charger Systems "DAP" (Delivery at Place) Installation Site, according to the latest version of Incoterms (International Chamber of Commerce) on the date as set out in the Sales Agreement and/or the respective Purchase Order (the "Delivery Date"). Upon such delivery the risk of loss and damage to the Charger Systems shall transfer from Heliox to Customer.

26.2 Heliox shall provide or maintain adequate insurance with regard to the Charger Systems against damage and/or loss, during transport from Heliox's Production Location to the Installation Site.

#### **ARTICLE 27. ADDITIONAL COSTS FOR THE CHARGER SYSTEMS**

27.1 Unless otherwise explicitly agreed upon in the Sales Agreement, the costs of Installation, cables, travel and accommodation costs, back office integration services, Maintenance Services, Spare Parts and other services are not included in the prices of the Charger Systems and shall be set out and agreed upon separately in the Sales Agreement and added to the Agreement Price.

#### **ARTICLE 28. DESIGN SERVICES CHARGER SYSTEM PARTS**

28.1 If any Sales Agreement requires Heliox to perform services related to the further design and specifications of the Charger System Parts, required for the Installation of the Charger Systems at the Installation Site, use and/or maintenance of the Charger Systems, Heliox will perform such services based on the System Part Specifications and the related terms and conditions as set out in the Sales Agreement. Any change or alteration in such System Part Specifications shall be subject to Customer's approval. If and when such agreed change of System Parts Specifications results in an increase or a reduction of Heliox's costs and/or in a potential delay of delivery, Heliox shall forthwith inform Customer thereof and Parties shall agree on a reasonable adjustment of the Agreement Price and/or the agreed Delivery Date.

#### **ARTICLE 29. OBLIGATIONS AND GUARANTEES CUSTOMER**

29.1 Customer guarantees to Heliox that the Installation Site is suitable and ready for the Installation of the Charger Systems and the use of the Charger Systems and that during the period of Installation of the Charger Systems and the warranty period as set out in the Heliox Warranty Terms & Conditions, it complies with the Installation Site Specifications and that it will observe the Installation Site Conditions of Use at all times. In doing so, Customer (without being exhaustive) will in any case ensure that:

29.1.1 Heliox's (and/or Heliox's subcontractor(s) and/or personnel) has access to the Installation Site and can carry out the work during normal working hours and outside normal working hours, provided that Customer has been requested to do so in a timely manner;

29.1.2 the necessary and usual tools and materials (including gas, water, electricity, lighting, compressed air, heating, internet, etc.) are available in time and free of charge at the right place for the purposes of the Installation of the Charger Systems;

29.1.3 the access routes to the Installation Site are suitable for the necessary transport;

29.1.4 the necessary lockable storage places for materials, tools and other items are available;

29.1.5 all necessary safety and precautionary measures have been taken and are being maintained, as well as all other relevant measures in order to comply with the applicable government regulations in the context of the Installation;

29.1.6 there is no asbestos present at the Installation Site;

29.1.7 any permits, exemptions, consents necessary for the Installation of the Charger Systems have been obtained, unless Heliox has expressly assumed such responsibility;

29.1.8 work to be carried out by others and/or deliveries not forming part of the Installation by Heliox are carried out in such a manner and in a timely manner that the performance of the Installation is not delayed;

29.1.9 Heliox has timely access to adequate facilities in the immediate vicinity of the Installation Site for the supply, storage and/or removal of building materials and auxiliary materials;

29.1.10 Heliox has timely access to drawings of the location of cables and cables;

29.1.11 Customer takes care of the storage of not yet installed parts of the Charger Systems on the Installation Site.

29.2 Customer furthermore agrees to provide Heliox with safety practices, applicable laws and regulations at the Installation Site and identify any potential health hazards or other hazardous working conditions. Heliox agrees to comply with identified safety practices, applicable laws and regulations at such Installation Site. Customer shall be responsible for any influencing deficiencies at the Installation Site, including, but not limited to input signals of poor quality, soil contamination, environmental conditions, improper application engineering, process problems or difficulties and delays.

29.3 Unless agreed otherwise, the following damages and costs caused by Customer are at the expense and risk of Customer:

29.3.1 improper storage of not yet installed parts of the Charger Systems on the Installation Site;

29.3.2 inaccuracies in the information provided by or on behalf of Customer for the purposes of carrying out the Installation of the Charger Systems;

29.3.3 defects in the movable or immovable property in which the Installation of the Charger Systems is carried out;

29.3.4 unsuitability of the movable or immovable property for the Installation of the Charger Systems, for example due to insufficient load-bearing capacity;  
 29.3.5 defects in goods, building materials or auxiliary materials made available by Customer or prescribed by Customer in connection with the Installation of the Charger Systems;  
 29.3.6 constructions and working methods prescribed by Customer, as well as for the orders, directions and instructions given by or on behalf of Customer;  
 29.3.7 failure to comply, or to comply on time, with the conditions laid down in this **Article 29**.

**ARTICLE 30. FAT AND SHIPMENT OF THE CHARGER SYSTEMS**

30.1 If Heliox is of the opinion that the Charger System is ready for the FAT, Heliox shall inform Customer that the Charger System is ready for the FAT by written notice.

30.2 Unless otherwise agreed in the Sales Agreement, Heliox shall carry out the FAT at the Production Site to demonstrate that the Charger System is present, complete and capable of functioning according to the FAT Specifications and is ready for transport to the agreed Installation Site. The FAT will take place for the entire Charger System, at the Production Site and, if so desired by Customer, in the presence of a representative of the Customer. All expenses in relation to the FAT will be borne by Heliox, however Customer will assume its own traveling and lodging expenses.

30.3 If the Charger System succeeds in passing the FAT, a FAT certificate in the format provided by Heliox (the "**FAT Certificate**"), will be signed by the Parties. The issuance and signing of the FAT Certificate shall not be construed as the acceptance by Customer of any deficiencies and/or defects in the Charger System.

30.4 If the FAT for reasons attributable to Customer is not carried out within (2) two weeks after the date of written notice set out in **Article 30.1**, the FAT is considered as performed successfully and the Parties shall sign the FAT Certificate.

30.5 If so agreed upon by the Parties, irrespective of the method of transport used, the Charger Systems will be dispatched by Heliox packaged in containers built to ensure the contents arrive in perfect condition. Such packaging shall be non-refundable and the costs thereof shall be charged to Customer in addition to the relevant agreed Agreement Price.

30.6 If so agreed upon by the Parties, the Charger Systems shall be packed, and prepared for shipment in accordance with the agreed Specifications or otherwise in a manner which follows good commercial practice, is acceptable by common carriers for shipment at the lowest rate, and is adequate to ensure safe arrival. Heliox shall label all containers in accordance with the Specifications or otherwise with product identification, and all necessary lifting, handling, unpacking and shipping information, and Customer and Heliox's names and addresses. Heliox, or the transporter, on Heliox's behalf, shall provide Customer, in a timely manner, with all necessary documentation (i.e., bill of lading, invoice, certificate of origin) required in the process of exporting/importing the Charger Systems. The Charger Systems shall be accompanied by a Charger System User Manual and also with any and all permissions and certificates that may be necessary for the use of the Charger Systems.

30.7 The Charger Systems shall be shipped to the Installation Site within (8) eight weeks from the signing date of the FAT Certificate in accordance with the agreed Incoterm. If the Charger Systems are not timely shipped for reasons attributable to Customer, Heliox at its option is entitled to store or ship the Charger Systems for the account and risk of Customer or ultimately sell the Charger Systems to third parties without refunding any instalments already paid to Heliox by Customer under the Sales Agreement. All costs of transportation and handling charges of the Charger Systems shall be added to the Agreement Price and the related invoice.

**ARTICLE 31. INSTALLATION & SAT OF THE CHARGER SYSTEMS**

31.1 After FAT, Customer will arrange for and supervise the transport of the Charger Systems to the Installation Site.

31.2 Heliox shall perform the Installation and SAT of the Charger Systems in accordance with the framework as set out in this **Article 31**. In the event that there are special and/or other acceptance conditions required by Customer, Customer shall inform Heliox hereof timely and the Parties agree to engage related discussions to find and agree on the most appropriate conditions to be applied for the respective SAT.

31.3 Heliox shall Install the Charger Systems at the Installation Site, meaning that Heliox will connect the Charger Systems with the assistance of Customer to the required utilities at the Installation Site.

31.4 The SAT shall be performed by Heliox in the presence of a representative of Customer at the Installation Site within a reasonable time agreed after installation of the Charger Systems in accordance with **Article**

**31.3**. Heliox shall immediately after the SAT send to Customer a written test report for validation.

31.5 If the Charger System succeeds in passing the SAT, a SAT certificate in the format provided by Heliox ("**SAT Certificate**"), will be signed by the Parties.

31.6 In the event that the Charger System fails to pass the SAT, Customer shall immediately on the basis of the written test report, confirm in writing to Heliox the alleged defects. In such case Heliox shall remedy the reported defects within a reasonable period, which is to be determined at Heliox's sole discretion, but which shall not exceed (30) thirty days from the written notification by Customer. However, in the event Customer requires a shorter remedy period, Customer shall inform Heliox hereof timely and the Parties agree to engage related discussions to meet the requirements of Customer, provided such requirements are reasonable. The following SAT shall be limited to an examination with respect to the reported defects provided such defects do not result in a Charger Systems, which is unusable from a technical point of view in which case the SAT will be re-performed entirely.

31.7 If the SAT, for reasons not attributable to Heliox, is not carried out within (8) eight weeks after the Delivery Date, the SAT is considered as performed successfully and the Parties shall sign the SAT Certificate. In the event that there are special and/or other acceptance conditions required by Customer, Customer shall inform Heliox hereof timely and the Parties agree to engage related discussions to find and agree on the most appropriate conditions to be applied for the respective SAT.

31.8 Customer may only use the Charger Systems for its intended use upon execution of the SAT Certificate and full payment of the Agreement Price. Any use of the Charger Systems for commercial (external) purposes prior to the execution of the SAT Certificate shall constitute acceptance of the Charger System by Customer in the actual state the Charger System is at the time of commencement of such use. Heliox shall be entitled to prevent the use of the Charger System for commercial (external) purposes until receipt of full payment by Heliox of all payment instalments which are due under the terms of the respective Sales Agreement.

**ARTICLE 32. COMPLETION**

32.1 The Charger Systems shall be deemed to have been delivered by Heliox and accepted by Customer as soon as the SAT Certificate has been signed by the Parties.

32.2 If the SAT has been carried out successfully, but the SAT Certificate is not signed by the Customer within 2 (two) weeks, the SAT Certificate is considered as signed.

**ARTICLE 33. SERVICE LEVEL AGREEMENT AND PERIODICAL PREVENTIVE MAINTENANCE**

33.1 Heliox may offer to Customer or an end-user of the Charger Systems to conclude a Service Level Agreement.

33.2 The Charger Systems require periodical (preventive) maintenance. If Customer or the respective end-user has not concluded a Services Agreement with Heliox in connection with such Charger Systems Installed by Heliox under a Sales Agreement, then Customer or the respective end-user shall maintain the Charger Systems in accordance with the Charger System User Manual. Customer agrees and acknowledges that in the event such Charger Systems are not properly maintained by the Customer the warranty on the Charger Systems as set out in **Article 34** shall be null and void.

**ARTICLE 34. WARRANTY CONDITIONS FOR CHARGER SYSTEMS AND RELATED SERVICES**

34.1 The warranty on the Charger Systems is provided by and is subject to Heliox Warranty Terms & Conditions as in effect on the effective date of the Sales Agreement.

34.2 Unless otherwise agreed in writing in the Sales Agreement, the signed Sales Agreement and/or any Offer shall serve as conclusive evidence that Customer has been able to consult the Heliox Warranty Terms & Conditions and agrees to be bound by this Heliox Warranty Terms & Conditions.

34.3 Where Heliox is to perform services for Customer in connection with or as part of the Installation of the Charger Systems, Heliox warrants that such services shall be provided with professional skill and workmanship. The warranty for any such services shall end 90 (ninety) days following the date of completion of such services.

34.4 THE WARRANTY AS DESCRIBED IN THE HELIOX WARRANTY TERMS & CONDITIONS AND THE AFOREMENTIONED SERVICES WARRANTY REPRESENT THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY HELIOX TO THE CUSTOMER WITH RESPECT TO THE (INSTALLATION OF THE) CHARGER SYSTEMS AND/OR ANY SERVICES PROVIDED BY HELIOX IN CONNECTION THERETO AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CHARGER SYSTEMS AND/OR THE RELATED SERVICES.

### **III. ADDITIONAL PROVISIONS CONCERNING THE DELIVERY OF MOBILE CHARGERS**

The provisions of this Chapter III apply in addition to the provisions of Chapter I if Heliox Delivers Mobile Chargers, whether or not described in more detail in one of the other Chapters of these GTC. In the event of contradictions between the provisions of Chapter I and the provisions of this Chapter III, the latter shall prevail.

#### **ARTICLE 35. DELIVERY AND RISK OF THE MOBILE CHARGERS**

35.1 Unless otherwise explicitly agreed upon in the Sales Agreement, Heliox shall Deliver the Mobile Chargers "Ex Works", Heliox's Production Site, according to the latest version of Incoterms (International Chamber of Commerce) (the "**Delivery Date**"). Upon such Delivery the risk of loss and damage to the Mobile Chargers shall transfer from Heliox to Customer.

35.2 Unless otherwise agreed between the Parties, Customer shall be responsible to pay the actual freight charges and other costs, fees and charges related to the transport of the Mobile Chargers and shall have the sole responsibility of choosing the carrier and routing from Heliox's Production Site to Customer's Location.

35.3 Customer shall provide or maintain adequate insurance with regard to the Mobile Chargers against damage and/or loss, during transport from Heliox's Production Site to the Customer's Location. Upon request of Heliox, Customer shall produce to Heliox satisfactory evidence thereof.

35.4 The Mobile Chargers shall be accompanied by a Mobile Charger User Manual and also with any and all permissions and certificates that may be necessary for the use of the Mobile Chargers.

#### **ARTICLE 36. ADDITIONAL COSTS FOR THE MOBILE CHARGERS**

36.1 All transportation costs, customs and duties, stamps or any other costs arising from the Delivery of the Mobile Chargers to the Customer's Location shall be added to the Agreement Price.

#### **ARTICLE 37. INSPECTION, DELIVERY AND ACCEPTANCE OF THE MOBILE CHARGERS**

37.1 Upon the arrival of a Mobile Charger at the designated Customer's Location, Customer shall have the opportunity to inspect each Mobile Charger delivered. Customer shall provide Heliox a notice of acceptance or rejection for the Mobile Chargers delivered within (7) seven business days after Delivery. Mobile Chargers that are not rejected within (7) seven business days of Delivery shall be deemed accepted.

37.2 If Customer determines the delivered Mobile Chargers are not in conformity with the Sales Agreement, Customer shall (i) provide Heliox a notice of noncompliance and allow Heliox a reasonable opportunity of at least 30 (thirty) days to cure the nonconformity; and, (ii) if Heliox has not cured the nonconformity within such reasonable period, provide Heliox with a notice of rejection, and the respective Mobile Charger shall be returned to Heliox at Heliox's sole cost.

37.3 In the event a party discovers, whether or not through the execution of an acceptance test to be performed by Customer in accordance with Heliox's acceptance test procedure for Mobile Chargers, before a Mobile Charger is placed into productive use, a failure of the Mobile Charger to perform in accordance with, and otherwise comply with the Specifications or to comply with applicable laws, Heliox will be responsible for all costs related to repair or other remedy of any non-conformity.

37.4 The Customer may only use the Mobile Chargers for commercial purpose, but only for its intended use, upon the provision of a notice of acceptance to Heliox and full payment by the Customer to Heliox of the payments which are due to Heliox under the terms of the respective Sales Agreement. Any use of the Mobile Charger for commercial (external) purposes prior to the provision of the notice of acceptance shall constitute acceptance of the Mobile Charger by the Customer in the actual state the Mobile Charger is at the time of commencement of such use. Heliox shall be entitled to prevent the use of the Mobile Charger for commercial (external) purposes until receipt of full payment by Heliox of all payment instalments which are due under the terms of the respective Purchase Order.

#### **ARTICLE 38. SERVICE LEVEL AGREEMENT AND PERIODICAL PREVENTIVE MAINTENANCE**

38.1 Heliox may offer to Customer or an end-user of the Mobile Chargers to conclude a Service Level Agreement.

38.2 The Mobile Chargers require periodical (preventive) maintenance. If Customer or the respective end-user has not concluded a Services Agreement with Heliox in connection with such Mobile Chargers delivered by Heliox under a Sales Agreement with Customer, then Customer or the

respective end-user shall maintain the Mobile Chargers in accordance with the Mobile Charger Maintenance Manual. Customer agrees and acknowledges that in the event such Mobile Chargers are not properly maintained by the Customer the warranty on the Mobile Chargers as set out in **Article 39** shall be null and void

#### **ARTICLE 39. WARRANTY CONDITIONS FOR MOBILE CHARGERS AND RELATED SERVICES**

39.1 The warranty on the Mobile Chargers is provided by and is subject to the Heliox Warranty Terms & Conditions as in effect on the effective date of the Sales Agreement.

39.2 Unless otherwise agreed in writing in the Sales Agreement, the signed Sales Agreement and/or any Offer shall serve as conclusive evidence that Customer has been able to consult the Heliox Warranty Terms & Conditions and agrees to be bound by this Heliox Warranty Terms & Conditions.

39.3 Where Heliox is to perform services for Customer in connection with the sale and Delivery of the Mobile Chargers, Heliox warrants that such services shall be provided with professional skill and workmanship. The warranty for any such services shall end 90 (ninety) days months following the date of completion of such services.

39.4 THE WARRANTY AS DESCRIBED IN THE HELIOX WARRANTY TERMS & CONDITIONS AND THE AFOREMENTIONED SERVICES WARRANTY REPRESENT THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY HELIOX TO THE CUSTOMER WITH RESPECT TO THE MOBILE CHARGERS AND/OR ANY SERVICES PROVIDED BY HELIOX IN CONNECTION THERETO AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE MOBILE CHARGERS AND/OR ANY SERVICES PROVIDED BY HELIOX IN CONNECTION THERETO.