

## HELIOX WARRANTY TERMS AND CONDITIONS FOR CHARGER SYSTEMS AND MOBILE CHARGERS SOLD BY HELIOX AUTOMOTIVE

**B.V.** a private company with limited liability duly incorporated and validly existing under the laws of the Netherlands, with its registered office in Best, the Netherlands, and its offices at (5684 PH) Best at De Waal 24, the Netherlands, registered with the Commercial Trade Register under file number 60956224 and its Affiliates ("**Heliox**"), **TO CUSTOMERS** ("**WTC**").

### 1. APPLICABILITY

1.1 These WTC applies to:

i) all stationary charger systems (opportunity chargers ("**OC**") and depot chargers ("**DC**") (together: the "**Chargers**"), specific components, materials and equipment required for the integration and/or connection of the Chargers to the existing and/or available infrastructure and/or utilities on site (the "**System Parts**") (the Chargers and System Parts hereinafter together referred to as "**Charger Systems**"); ii) all mobile chargers ("**Mobile Chargers**"); (Charger Systems and Mobile Chargers together hereinafter referred to as the "**Goods**"); and iii) Heliox owned software incorporated in such Goods ("**Software**") sold, delivered and licensed (Software) by Heliox under a sales agreement with a customer (the "**Customer**") (a "**Sales Agreement**").

1.2 For the purpose of this WTC with respect to Heliox, "**Affiliate**" means a (legal) entity that is affiliated with, or that directly or indirectly controls, is controlled by or is under common control with, Heliox. 'Control' meaning ownership of 50% (fifty percent) or more of the share capital or the right to exercise 50% (fifty percent) or more of the voting rights in the appointment of the directors of such company, firm, partnership or other legal entity, but any such legal entity shall be deemed to be an Affiliate only as long as such liaison exists, "**Charging Session**" means the charging transaction with a Good that starts upon initiation of an electric vehicle and ends upon the termination request for such charging and "**Electric Vehicle**" means a vehicle that uses one or more electric motors or traction motors for propulsion, which uses the Goods solely for charging.

1.3 If there is a contradiction between the provisions as stated in these WTC and the provisions of the Sales Agreement, the provisions of the Sales Agreement shall prevail.

### 2. WARRANTY AND WARRANTY PERIOD

2.1 Subject to the exclusions and limitations described in **article 4**, Heliox warrants that Goods shall be delivered free of defects in materials and workmanship (the "**Warranty**"). For the avoidance of doubt: Software is excluded from this Warranty and is warranted as specified in **article 6**, **article 7** and **article 8**.

2.2 The Warranty shall end:

- **For Charger Systems:** after expiration of a period of twenty six (26) months as of the date of delivery of the Charger Systems in accordance with the Sales Agreement or twenty four (24) months following the site acceptance test of the Charger System as agreed upon in the Sales Agreement ("**SAT**"), whichever occurs first, or, in the event of an OC: any earlier on the date that the OC has performed 15.000 (fifteen thousand) Charging Sessions, or, in the event of a DC: any earlier on the date that the DC has performed 3.000 (three thousand) Charging Sessions (the "**Charger System Warranty Period**").
- **For Mobile Chargers:** after expiration of twelve (12) months as of the date of delivery of the Mobile Charger in accordance with the Sales Agreement or any earlier on the date that the Mobile Charger has performed 1.000 (thousand) Charging Sessions (the "**Mobile Charger Warranty Period**").

The Charger System Warranty Period and the Mobile Charger Warranty Period together hereinafter referred to as the "**Warranty Period**".

### 3. WARRANTY PROCEDURE AND CONDITIONS

3.1 To obtain Warranty Services (as defined in **article 3.5**) pursuant to these WTC, Customer must strictly adhere to the following procedure. If Customer fails to comply with the terms of this procedure the Warranty shall become null and void.

3.2 If a nonconformity to the Warranty is discovered during the Warranty Period, Customer shall promptly (ultimately within ten (10) days after such discovery) notify Heliox in writing of the alleged non-conformity (a "**Warranty Claim**"). Each Warranty Claim shall include:

- Proof of purchase;
- Name and contract information;
- Description of the Goods;

- Description of the non-conformity; and
- Possible attempts made to resolve the problem.

The Warranty Claim shall be sent to the following address: [support@heliox-energy.com](mailto:support@heliox-energy.com).

3.3 Customer shall not return or dispose any Charger System(parts) with respect to which it intends to make a Warranty Claim, without Heliox's express prior written authorization.

3.4 Heliox will not accept the return of any Mobile Charger or parts unless it has given its prior written authorization to Customer in accordance with the RMA-Procedure set forth in **Article 5**. Customer shall properly package and label the Mobile Charger to be returned to Heliox by using the re-usable packaging provided by Heliox at delivery or other adequate packaging, or, if designated by Heliox, to the location where the works are made, in the manner indicated by Heliox.

3.5 Heliox shall, within a reasonable time, examine the Warranty Claim (either through remote access or through a visit to Customer's site where the Goods are located (the "**Site**") and inform Customer if Heliox accepts such Warranty Claim. If Heliox accepts such Warranty Claim Heliox shall as soon as reasonably possible at Heliox's option:

- **For Charger Systems:** either repair or replace the nonconforming portion of the Charger System.
- **For Mobile Chargers:** i) repair the defective Mobile Charger on Site; or ii) have the defective Mobile Charger or parts thereof returned for repair in accordance with the RMA-Procedure set forth in **article 5**; (iii) replace the defective Mobile Charger; or (iv) replace the defective parts of the Mobile Charger in order to enable Customer to carry out the necessary repairs at Heliox's expense and instructions; (v) credit the relevant portion of the Mobile Charger related invoice accordingly.

Repair or replacement services performed by Heliox after the acceptance of a Warranty Claim are hereinafter referred to as "**Warranty Services**".

3.6 Unless explicitly agreed upon in the Sales Agreement, Heliox shall not provide any warranty to Customer with respect to any Warranty Services to be provided by Heliox to Customer other than that the Warranty Services shall be provided with professional skill and workmanship. The warranty for any Warranty Services shall end ninety (90) days after the date of completion of such Warranty Services.

3.7 Any replacement parts ("**Replacement Parts**") delivered by Heliox in connection with the performed Warranty Services shall be delivered, DAP, to the respective Site, according to the Incoterms 2020, or any later version thereof.

3.8 The warranty for Replacement Parts shall end twelve (12) months after date of delivery in accordance with **article 3.7**.

3.9 The performance of Warranty Services by Heliox under this Warranty T&C shall not extend or renew the original Warranty Period, provided however that the warranty period for Warranty Services (as set out in **article 3.6**) and the warranty period for Replacement Parts (as set out in **article 3.7**) may survive the expiration of the original Warranty Period. Unless Heliox and Customer have explicitly agreed upon an extended warranty period for the in an extended warranty and/or service (level) agreement, the total Warranty Period shall not exceed a period of 36 (thirty-six) months.

3.10 Heliox shall only bear the costs of any Replacement Parts, the transportation costs hereof to Customer in accordance with **article 3.7** and all direct labor costs in accordance with the Warranty Services under an accepted and justified Warranty Claim. All other costs, expenses and charges in connection with the Warranty Services and the non-conforming Goods, such as but not limited to costs, expenses and chargers related to (de-)installation, decontamination, re-installation and transportation of nonconforming Goods or parts thereof to Heliox and back to Customer, removal and replacement of other systems, structures or other parts of the Site, temporary power, travelling and lodging expenses from Heliox's employees and/or sub-contractors and legal and remedial costs shall be for Customer's risk and expense, unless Heliox and Customer have agreed upon otherwise in a service level agreement.

3.11 Heliox's total warranty costs, charges and expenses with respect to the Warranty Services to be performed under these WTC shall be limited to a maximum of the original purchase price of the Goods as mentioned in the Sales Agreement. Any surplus shall be borne by Customer.

3.12 The costs in connection with an unaccepted and unjustified Warranty Claim by Customer shall be borne entirely by Customer.

3.13 If Customer transfers the ownership of the Goods to an end-user and Heliox approves in writing with the transfer of the related rights and obligations of Customer under these WTC to such end-user, Customer shall pass on to its end-user in full the terms and conditions of these WTC, including the exclusions and limitations set forth herein. In the event that Customer extends or otherwise represents to an end user that the warranties are more extensive or encompassing than those set forth herein, Customer shall indemnify Heliox for any warranty claims made by an end user based on Customer's representations.

#### 4. WARRANTY EXCLUSIONS AND LIMITATIONS

4.1 The Warranty shall be null and void if a non-conformity to the Warranty is caused by:

4.1.1 Customer's failure to have the Goods properly stored, installed, used, operated, and maintained by a Qualified Person (as defined hereinafter), in compliance with Heliox's printed instructions or specifications, or, in the absence of this, any failure to follow accepted industrial practice by Customer. For the purpose of this Warranty, a "Qualified Person" is a person under Customer's supervision and control who is professionally qualified, after having received a training from Heliox to store, install, use, operate and maintain the Goods; or

4.1.2 normal wear and tear, abnormal or improper operation conditions, accident, abuse, damage, misuse, use by Customer of spare parts not supplied or approved by Heliox, or modifications repair, maintenance or alterations made to the Goods by Customer or a third party (including the end-user) without Heliox's prior written consent; or

4.1.3 any de-energisation of the grid connection (such as grid connection outage for a period of hours) or any other interruption to the supply of electricity from the local grid to the Goods, including any constraint imposed by the operator of the public electricity distribution system in the region of the Site, which results in a reduction in the amount of electricity which can be imported from the local grid via the grid connection;

4.1.4 any defect in respect of an Electric Vehicle (including its battery);

4.1.5 a failure by End-Customer to properly connect the Electric Vehicle to the Charger;

4.1.6 a defect in respect of the use of the Good in connection with Electric Vehicles which are not compatible/ interoperable with the Charger, unless Heliox confirmed such compatibility/ interoperability in writing to the Customer;

4.1.7 any loss of Wifi/data connection to the Site;

4.1.8 the provision of inaccurate information and documentation, including specifications, by Customer to Heliox.

4.2 Warranty Claims will furthermore not be accepted if Customer has not kept accurate and complete records of operation and maintenance of the Goods during the Warranty Period and/or refuses to permit Heliox to examine the Goods and operating data to determine the nature of the claimed defect.

4.3 The Warranty furthermore does not cover nonconformities caused by external influences while in the Customer's possession, including unusual physical or electrical stress such as power surges, uncontrolled voltages and currents, system harmonics, lightning, flood, fire, exposure to excessive hot or cold temperatures, or accidents. Also, general appearance or damage to paint, including chips, scratches, dents and cracks are not covered by this warranty.

#### 5. RMA-PROCEDURE FOR MOBILE CHARGERS

5.1 If, pursuant to **article 3.4**, Heliox has informed Customer that i) it accepts a Mobile Charger Warranty Claim; and the defective Mobile Charger or parts thereof have to be returned to Heliox, Customer shall comply with the following Return Materials Authorization ("RMA-Procedure"), Mobile Chargers or parts thereof (to be) returned under the RMA-Procedure hereinafter referred to as the "RMA Mobile Charger":

5.1.1 following Customer's notification, Heliox shall provide a RMA number to be used by Customer as identification for the Mobile Charger to be returned to Heliox;

5.1.2 Customer shall ensure that the RMA Mobile Charger are properly packaged and labelled with the RMA number by using the re-usable package provided by Heliox at delivery or other adequate packaging and

promptly shipped to Heliox with documentary evidence which sets forth with reasonable specificity the nature of the alleged non-conformity of the RMA Mobile Charger with the warranty conditions provided for herein;

5.1.3 as soon as the RMA Mobile Charger and the RMA report (which describes the non-conformity) are received by Heliox, the RMA Mobile Charger will be examined by Heliox. At the sole discretion of Heliox, the outcome of such examination may fall into the following categories:

5.1.4 if the Mobile Charger Warranty Claim is unaccepted and unjustified the respective Mobile Charger or parts will be returned to Customer at Customer's expense;

5.1.5 if the Mobile Charger Warranty Claim is accepted by Heliox, Heliox shall, as soon as reasonably possible and subject to the provisions set forth in **article 3.5 up to and including article 3.11**, at Customer's option either: a) repair or replace the defective Mobile Charger or parts at its own expense and the replacement Mobile Charger or Replacement Parts shall be forwarded as part of one of the next shipments as soon as is practicably possible; or b) credit the Mobile Charger related invoice accordingly.

5.2 The Mobile Charger or parts thereof returned to Heliox in accordance with the RMA-Procedure shall remain the property of the Customer until any examination has been completed and such Mobile Charger or parts thereof are replaced.

#### 6. SOFTWARE WARRANTY

6.1 Subject to the exclusions and limitations described in **article 8**, Heliox warrants that the Software shall substantially conform with Heliox's published software product description applicable to the specific software version as delivered by Heliox to Customer (the "Software Warranty").

6.2 The warranty for Software shall end ninety (90) days from the delivery date of the Software in accordance with the Sales Agreement (the "Software Warranty Period").

#### 7. SOFTWARE WARRANTY PROCEDURE AND CONDITIONS

7.1 To obtain Correction of Software (as defined in **article 7.3** pursuant to these WTC, Customer must strictly adhere to the following procedure. If Customer fails to comply with the terms of this procedure the Software Warranty shall become null and void.

7.2 If a nonconformity to the Software Warranty is discovered during the Software Warranty Period, Customer shall promptly (ultimately within ten (10) days after such discovery notify Heliox in writing of the alleged non-conformity (a "Software Warranty Claim"). If Customer fails to comply with the terms of this procedure the Software Warranty shall become null and void. Each Software Warranty Claim shall include:

- Proof of purchase
- Name and contract information;
- Description of the Software;
- Description of the non-conformity;
- Complete information on the manner of its discovery.

The Software Warranty Claim shall be sent to the following address: [support@heliox-energy.com](mailto:support@heliox-energy.com).

7.3 Heliox shall, within a reasonable time, examine the Software Warranty Claim and inform Customer if Heliox accepts such Software Warranty Claim. If Heliox accepts such Software Warranty Claim, Heliox shall correct the nonconforming Software by, at its option by either (i) modifying or making available to the Customer instructions for modifying the Software; or (ii) making available at Heliox's facility necessary corrected or replacement programs (the "Correction of Software").

7.4 The Correction of Software does not extend the Software Warranty Period.

7.5 Heliox's total warranty costs, charges and expenses with respect to the Correction of Software to be performed under these WTC Policy shall be limited to a maximum of the original purchase price of the related Goods as mentioned in the Sales Agreement. Any surplus shall be borne by Customer.

#### 8. SOFTWARE WARRANTY: EXCLUSIONS AND LIMITATIONS

8.1 The Software Warranty does not apply to any nonconformities in the Software resulting from:

- 8.1.1 unauthorized modifications or improper installation of use of the Software by Customer; or
- 8.1.2 Customer supplied Software.
- 8.1.3 the integration of Software with third party software;
- 8.1.4 Third party software;

8.2 Heliox does not warrant that: i) the Software will meet Customer's requirements; ii) the Software will operate in the combinations that

Customer may select or use; iii) the operation of the Software will be uninterrupted or error-free; or iv) all Software errors will be corrected.

8.3 Subject to **article 3.13**, the Software Warranty may only be transferred from Customer to an end user of the Goods.

## **9. FORCE MAJEURE**

Claims made under the Warranty and/or Software Warranty shall only be accepted if the cause of the defect of the Goods and/or Software was not due to an event attributable to Act of God, directive of Government or of persons purporting to act therefore, legislation, pandemic, epidemic, lock down, war, civil disturbance, fire, drought, failure of power supply, explosion, riot, disturbances or standstill of essential production equipment, flood, earthquake, lock-out, 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 its warranty obligations.

## **10. DISCLAIMER**

The warranties as set out in these WTC are exclusive and in lieu of any other warranties, whether statutory, oral, written, express or implied, including, but not limited to, merchantability or fitness for a particular purpose, durability, or those arising by a course of dealing or usage of trade, to the fullest extent allowed by applicable law. Customer's exclusive remedies and Heliox's only obligation arising out of or in connection with defective Goods, whether based on warranty, contract, tort (including negligence) or otherwise, shall be those stated herein.

## **11. GOVERNING LAW AND DISPUTES**

With the explicit exclusion of the 1980 UN Convention on the International Sale of Goods (CISG), the provisions regarding applicable law and dispute resolution as set out in the Sales Agreement shall apply to (all disputes arising out of) these WTC. In the absence of such provision in the Sales Agreement, these WTC shall be governed by the laws of The Netherlands and any dispute or claim arising from or in connection with these WTC or its subject matter (including any question regarding its existence, validity or termination) shall be submitted to the competent courts of the court of Oost-Brabant (location 's-Hertogenbosch), The Netherlands provided always that, 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 the Customer's registered office. The 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 these WTC, 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 judgment.