

Modern Hydrogen, Inc. Purchase Order Terms & Conditions as of February 1, 2024

- 1) **Governing Terms.** This Purchase Order shall constitute the agreement (“Order”) for goods or components (“Goods”) to be purchased by Modern Hydrogen, Inc. (“Buyer”) from Seller. The Order is limited to the Terms and Conditions herein. No other terms and conditions shall be binding upon Buyer unless accepted by Buyer in writing in an Order Amendment signed by the Director of Supply Chain, Vice President of Operations, CFO, CTO or CEO only. Buyer objects to any different or additional terms made in acknowledgement or acceptance of this Order. Seller will be deemed to have assented to all terms and conditions contained herein upon any performance, including shipping of any part of the Goods or presenting an invoice for the Goods.
- 2) **Price.** Prices charged for Goods listed on this Order are quoted in US Dollars and are not subject to increase, including specifically, to increases based on changes in raw material or component pricing, labor or overhead, or transportation costs. Seller covenants that the prices will not be higher than Seller’s lowest prevailing price for corresponding Goods as of the date hereof, and any reduction in price in any Goods made subsequent to its receipt by the Seller shall be applicable to such Order.
- 3) **Extra Charges. Taxes.** No extra charges of any kind, including charges for packing, handling or storage, will be allowed unless specifically agreed to in writing by Buyer. Except as otherwise explicitly stated, the prices stated include all applicable federal, state and local taxes which cannot be excluded by action of the Seller or by operation of law. Any tax not included must be entered on invoice as a separate line item.
- 4) **Packing and Shipment.** Unless otherwise specified, all Goods shall be packed, packaged, marked and otherwise prepared for shipment in a manner which is in accordance with good commercial practice, acceptable to common carriers for shipment, and adequate to insure safe arrival of the Goods. Seller shall mark all containers with necessary lifting, handling and shipping information, purchase order numbers, date of shipment and the names of the consignee and consignor. An itemized packaging sheet must accompany each shipment. No partial or complete delivery shall be made hereunder prior to the date or dates shown unless Buyer has given prior written consent.
- 5) **Deliveries.** Deliveries shall be made as specified by Buyer. Time is of the essence with each Order. If at any time Seller has reason to believe that deliveries will not be made as scheduled, Seller must immediately give written notice to Buyer setting forth the cause and anticipated length of the delay. If, in order to meet a delivery date, Seller must ship by a more expensive method than specified in the order, Seller will pay the increased costs. Buyer may from time to time reschedule or temporarily suspend orders.
- 6) **Title.** Title and risk of loss to Goods passes to Buyer only upon delivery to the specified destination in the Order.
- 7) **Payment; Invoices.** Invoice payment terms will be calculated from the date the invoice is received by Buyer, but not earlier than receipt of the Goods. Buyer will pay invoices net 30 from receipt, subject to any set off or credits owed to Buyer. Each invoice issued shall be: rendered separately for each delivery, not cover more than one Order, and contain the Order number under which it is issued.
- 8) **Inspection.** Goods purchased hereunder are subject to inspection and acceptance by Buyer. With respect to any Goods which do not conform in any way, Buyer may, in Buyer’s sole discretion, without limiting its remedies, after notice to Seller, (i) replace or correct any nonconforming goods; charge Seller the cost of such replacement or correction, or (ii) cancel the order for default. Payment for any Goods shall not be deemed an acceptance thereof. Acceptance of Goods does not relieve Seller from responsibility under the warranty or these Order requirements.
- 9) **Nonconforming Goods:** Seller acknowledges that Buyer may not perform inspection of incoming goods, and waives any rights to require Buyer to conduct such inspections. To the extent Buyer rejects goods as nonconforming, the quantities under this order will automatically be reduced unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced without a new order or schedule from Buyer. Nonconforming goods will be held by Buyer for disposition in accordance with Seller’s instructions at Seller’s risk. Seller’s failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer’s option, to charge Seller for storage and handling, or to dispose of the goods without liability to Seller. Payment for nonconforming goods shall not constitute an acceptance thereof, limit or impair Buyer’s right to assert any legal or equitable remedy, or relieve Seller’s responsibility for latent defects.
- 10) **Force Majeure:** Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days. During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by Buyer and at the price set forth in this order. If requested by the Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Buyer may immediately cancel the order without liability.
- 11) **Overshipments, Installments.** Buyer will pay only for the quantities of Goods ordered. Buyer has the right to reject any over shipments or under shipments which shall be held at Seller’s risk and expense for a reasonable time awaiting return instructions. Return shipping charges for excess quantities will be at Seller’s expense. Any provision in an Order for delivery of

Goods by installment will not be construed as rendering the obligations of the Seller severable and Buyer will only be obliged to pay the price of the Goods included in such installment after installment is actually received by Buyer.

- 12) **Warranty.** The Seller warrants that the Goods will (a) be free from defects in material and workmanship; (b) comply with all specifications, drawings, descriptions or samples furnished by or specified by Buyer; and (c) be of merchantable quality and fit for the purpose intended by Buyer. Seller further warrants that upon delivery to Buyer the Goods will be (x) free from any actual or claimed patent, copyright, trade secret, mask work right or trademark infringement, and (y) free and clear of all liens, charges, encumbrances and security interests. These warranties are in effect for a period of 36 months from delivery and survive acceptance and payment by Buyer. If any Goods delivered hereunder does not meet the warranties specified herein or otherwise applicable, Buyer may, at its option: (i) require the Seller to repair or replace the Goods at no cost; or (ii) return the Goods at the Seller's expense and recover from the Seller the Order price thereof; or (iii) correct the defective or non-conforming Goods itself and charge Seller with the cost of such correction. (iv) purchase the Goods from other sources and recover the difference in price from Seller. The foregoing remedies are in addition to all other remedies at law or in equity under this Order.
- 13) **Replacement Parts.** Seller shall make available Goods for a period of not less than 7 years, or upon notice to Buyer, should Seller decide to discontinue manufacture of the Goods purchased by Buyer under the Order, Seller (i) shall provide written notice of the intended discontinuance; and ii) shall provide Buyer a minimum of 12 months from the written notification date to allow Buyer to place the "lifetime buy" of the Goods at a unit price to be negotiated, but in no event higher than the unit price provided in this Order.
- 14) **Volume Projections.** From time to time, Buyer may provide Seller with estimates, forecasts or projections of its future volume, quantity or duration requirements ("Projections") for planning purposes only. Such Projections are not binding on Buyer and are not evidence of a requirements contract. Buyer makes no representation, warranty, guaranty or commitment of any kind, express or implied, with respect to any such Projections.
- 15) **Changes.** Buyer reserves the right at any time to change any one or more portions of this Order. The Seller will not unreasonably deny any request by Buyer for changes. If the Seller agrees to make such changes, and such changes cause an increase or decrease in the cost or the time required for the delivery of the Goods ordered, an equitable adjustment will be made in the price or delivery schedule, or both. Any claim for adjustment by the Seller will be deemed waived unless asserted in writing within 30 days after receipt by the Seller of the requested change. Nothing in this section will relieve the Seller from proceeding without delay in the performance of its obligations under an Order as changed.
- 16) **Cancellation.** Buyer may require the Seller to cease work under an Order at any time by notice in writing, whereupon the Seller will immediately stop work on such Order, or the terminated portion thereof. Except for such termination as is caused by a default or delay of the Seller, the Seller will be entitled to actual costs incurred by it as a result of and up to such termination as determined in accordance with generally accepted accounting principles, provided that, the Seller will be bound to mitigate its damages. IN NO EVENT SHALL BUYER'S TOTAL LIABILITY FOR SUCH CANCELLATION EVER EXCEED THE UNPAID BALANCE OF THE CANCELLED ORDER.
- 17) **Cancellation for Default.** Buyer may also cancel all or any part of the Order, without any liability or amounts owed to Seller, if there is a Seller default. It shall be Seller's default under this Order if the Seller fails (i) to make delivery of the Goods within the time specified therefor, or (ii) to replace or correct defective Goods, or (iii) to perform any other provision of the Order, or (iv) fails to make progress so as to endanger performance of its obligations under an Order, (v) Seller commences, or there is commenced against Seller, any proceeding relating to bankruptcy, insolvency, reorganization or the like, or Seller does not, or is unable to, pay its debts as they become due. If an Order or any part thereof is terminated by reason of the Seller's default, Buyer may procure from other sources, upon such terms and in such manner as Buyer may deem appropriate, the Goods (or similar goods) and the Seller will be liable to Buyer for any additional costs incurred by Buyer thereby. The rights and remedies of Buyer under an Order will not be exclusive and are in addition to any other rights and remedies available to Buyer.
- 18) **No termination by Seller.** Because Buyer's commitments to its Customers are made in reliance upon Seller's commitments under this Order, Seller has no right to terminate any Order.
- 19) **Buyer's Property.** Any tooling, molds, equipment and tangible materials furnished to the Seller by Buyer or paid for by Buyer shall be the property of Buyer. Such property shall be plainly marked or identified as the Buyer's property and shall be safely stored separately from the Seller's property. Such property while in the Seller's custody or control shall be held at the Seller's expense and risk and must be insured by Seller in an amount equal to the replacement cost. Such property may not be impaired in any way and must be returned to Seller promptly upon request.
- 20) **Technology.** Any designs, drawings, specifications, blueprints or other materials furnished by Buyer ("**Buyer Materials**"), shall belong solely to Buyer. Seller gains no rights, title or interest to the Buyer Materials by virtue of this Order. The Seller shall treat all Buyer Materials confidentially.
- 21) **REMEDIES:** The rights and remedies reserved to Buyer in this order shall be cumulative, and additional to all other or further remedies provided in law or equity. Without limiting the foregoing, should any goods fail to conform to the warranties set forth above or if the materials contained within the goods are alleged to or are determined to cause injury to third parties, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for any incidental and consequential damages caused by such nonconforming goods, including, but not limited to, costs (including all attorney's or other professional fees), expenses and losses incurred by Buyer (a) in inspecting, sorting, containing repairing or replacing such nonconforming goods; (b) resulting from production interruptions, (c) conducting recall campaigns or other corrective service actions, and (d) claims or litigation arising from personal injury (including death) or property damage caused by such nonconforming goods. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of chargebacks for nonconforming goods. In

addition, Seller shall reimburse Buyer for all liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's breach or anticipatory repudiation of this order or any other contract between Seller and Buyer, a request or demand by Seller to modify or change the terms of this contract, or legal proceedings involving the Seller that in the reasonable judgment of Buyer, may impact upon Seller's continued or future performance under this contract, or if Seller is a party to a court case or proceedings in which Buyer appears, participates, monitors or becomes a party. In the event this contract is issued or renewed after Seller becomes a debtor in bankruptcy, Buyer shall be entitled to all of its attorney's or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

- 22) **INSURANCE:** Seller shall maintain insurance coverage in amounts not less than the following: (a) Workers' Compensation - Statutory Limits for the state or states in which this order is to be performed (or evidence of authority to self-insure); (b) Employer's Liability - \$250,000; (c) Comprehensive General Liability (including Products/Completed Operations and Blanket Contractual Liability) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury, and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit; and (d) Automobile Liability (including owned, non-owned and hired vehicles) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property damage combined single limit. At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.
- 23) **Indemnification.** Seller shall defend, indemnify and hold Buyer and its employees, distributors or dealers, and users, lessees or customers, harmless from and against any and all damages, claims, demands, loss, liability, suits, actions, judgments, costs and/or expenses (including, but not limited to, attorneys' fees) ("Loss") with respect to the Goods arising out of or relating to any (a) actual or alleged infringement of any patent, copyright, trademark, trade secret or other proprietary right, or (b) bodily injury to and/or death of any person, and for damage to and/or destruction of property, resulting from the Goods, and (c) non-compliance with any laws or requirements.
- 24) **Compliance with Law.** The Seller warrants and represents that it has complied with all laws and requirements applicable with respect to the supply of the Goods, including without limitation, those concerning the packaging, storage and shipment thereof, and will ensure that no chemical substance delivered to Buyer is on the list of prohibited substances described in applicable environmental laws. The Seller will obtain all federal, provincial, state, municipal and other government or regulatory licenses, permits or other documents or permissions that are required by Buyer or are incidental to the sale or shipment of the Goods to Buyer.
- 25) **Non-Publicity.** Without the prior written consent of Buyer, the Seller shall neither issue any news release, public announcement, denial or confirmation of any Purchase Order or in any manner advertise or publish the fact that Buyer has placed an Order with the Seller.
- 26) **Limitation of Liability.** BUYER'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES SHALL NOT EXCEED THE PRICE FOR THE GOODS IN THIS ORDER. IN NO EVENT SHALL Buyer BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS OR BUSINESS INTERRUPTION, OR LOSS OF INFORMATION), WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES
- 27) **Arbitration, Applicable Law.** This Order shall be construed in accordance with the laws of the State of Washington. Any dispute arising out of or relating to this Order will be settled by arbitration administered by JAMS in its Seattle office pursuant to its Streamlined Arbitration Rules and procedures. The parties agree that in making an award, and in granting either party relief, the arbitrator shall not, and it shall be deemed beyond the arbitrator's power and jurisdiction, to fail to do so other than in accordance with the terms of this Order. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration (or injunctive relief if needed) from a court of appropriate jurisdiction. The successful party prevailing in any such arbitration shall be entitled to recover from the unsuccessful party reasonable attorneys' fees, costs and necessary disbursements incurred in connection with said arbitration in addition to any other relief to which it may be entitled.
- 28) **General.** The rights and obligations of the parties shall be governed by these Terms and Conditions, and any proposals, specifications or other documents which are made a part of this Order by reference. These documents may be amended only by a writing signed by both parties. Neither Seller's rights nor its duties may be assigned or delegated, and any attempted assignment or delegation is void. Failure or delay on the part of Buyer to exercise any right shall not operate as a waiver thereof. Remedies set forth in this Order are cumulative and in addition to any other remedies available in law or equity. The Seller will, from time to time upon request by Buyer, do, execute, acknowledge, deliver, or cause to be done, executed, acknowledged and delivered, all and every such further acts, bill of sale, bills of lading, deeds, transfers and assurances as Buyer may reasonably request in connection with the Goods.