



## **ENDERA TERMS AND CONDITIONS OF SALE**

These terms and condition of sale together with Endera's sales order form ("Sales Agreement") and warranty documentation ("Express Warranty") (collectively "the Terms"), apply to all purchases of Endera vehicles and products ("Goods") notwithstanding any terms advanced by Customer in another document or format.

**1. TERMS OF PAYMENT.** Unless otherwise agreed, net payment shall be due prior to Delivery (as defined below). Late payments shall bear interest at the greater of 1.5% per month and the maximum rate permitted by law, plus reasonable attorney's fees and collection costs. If acceptance of Delivery is delayed by Customer, payment shall remain due upon completion of Goods. If Endera reasonably believes Customer may be unable to perform its obligations under these Terms, Endera may suspend work, or postpone delivery, and require such assurances of Customer's performance as Endera deems adequate, including payment in advance. If not satisfied with Customer's assurances, Endera may cancel the Sales Agreement and, subject to any offset available from finding an alternative buyer, receive reimbursement from Customer for its reasonable and proper expenses incurred in the performance of the Sales Agreement.

**2. CANCELLATION.** Customer agrees that all sales are final and non-cancellable, unless otherwise stated herein.

**3. SALES AND OTHER TAXES.** Endera's price does not include federal excise, sales, use, or other taxes. Consequently, in addition to the price quoted in the Sales Agreement, the amount of any other excise, sales, use, or other tax applicable to the sale or use of Goods purchased hereunder shall be paid by Customer, or in lieu thereof, Customer shall provide Endera with a tax exemption certificate acceptable to the taxing authorities. Customer agrees that all taxes related to this transaction, whether arising at the time of the transaction or in the future, are Customer's responsibility and further agrees to promptly pay any such taxes.

**4. DELIVERY.** All Goods furnished hereunder shall be delivered to Customer or made available for collection at the location and on the date confirmed by Endera in its Sales Agreement ("Delivery"). Risk of loss in Goods passes to Customer upon Delivery. If Customer delays Delivery by more than seven (7) days or does not inspect and notify Endera in writing of any non-conformant Goods within seven (7) days of the Goods being made available for delivery, Delivery shall be deemed completed and the Goods accepted as conformant with the Sales Agreement ("Acceptance"). Endera reserves the right to charge its then-current storage fees for each day Goods remain on its premises following Acceptance, and/or to have Goods delivered to a third-party storage facility at Customer's sole expense. Unless otherwise agreed in writing, Delivery will be made via carriers and routes designated by Endera and/or Endera's Dealer, representative or affiliate with freight charges to be included in the purchase price. Delivery dates are approximate and are based upon receipt of all necessary information from Customer. Endera shall not be liable for delays in delivery or manufacturing of third-party chassis or other causes beyond Endera's control.

**5. REQUIRED EQUIPMENT AND TECHNICAL CHANGES.** Customer is responsible for ensuring vehicle specifications comply with all applicable local laws and regulations. Endera as manufacturer, will ensure that applicable Goods include the equipment and/or accessories required by the National Highway Traffic Safety Act and other applicable Federal regulations in effect at receipt of the Sales Agreement. The cost of complying with any changes in law applicable to the Goods subsequent to the Sales Agreement shall be invoiced to Customer. Customer further acknowledges that Endera has the right to change the specifications of Goods at any time and without obligation to make such changes in other Goods previously purchased by Customer. In addition, Endera reserves the right to make design changes and substitution of materials subsequent to receipt of the Sales Agreement which it determines are necessary to improve the Goods. Customer agrees to accept any such changes as fulfillment of Endera's obligations under the Sales Agreement. Should Customer request additional equipment or other technical changes after acceptance of the Sales Agreement ("Changes"), Endera will provide a written quote as to the feasibility and cost of such Changes.

**6. TITLE AND REMEDIES.** Until full payment is made by Customer of all amounts due hereunder, inclusive of any storage expenses incurred under Section 4 above, Endera reserves the title to Goods furnished hereunder. If Customer defaults in payment or performance hereunder or becomes subject to insolvency, receivership, or bankruptcy proceedings, or makes an assignment for the benefit of creditors, or without the consent of Endera, voluntarily or involuntarily sells, transfers, leases, or permits any lien or attachment on Goods delivered hereunder, Endera may treat all amounts then or thereafter owing hereunder by Customer as immediately due and payable (subject only to credits required by law) and Endera may repossess said Goods by any lawful means and shall enjoy any and all other remedies of a secured creditor under the Uniform Commercial Code. Customer shall execute and deliver to Endera such financing statements and other documents, as Endera requires to evidence, perfect, and protect the priority of its security interest in any Goods provided on credit.

**7. CARB DISCLOSURE FOR CALIFORNIA VEHICLE SALES.** Where the Goods delivered are Endera vehicles ("Vehicle"), pursuant to the disclosure requirements of the California Air Resources Board ("CARB") Zero-Emission Bus Voucher Incentive Project ("HVIP") voucher program, Customer must comply with the requirements: (i) Customer agrees to all provisions within the HVIP and Low NOx Engine Incentives administered through the HVIP Implementation Manual; (ii) Customer agrees to register the Vehicle in California with the Department of Motor Vehicles ("DMV")(military vehicles are not subject to this requirement); (iii) Customer agrees to allow CARB, CALSTART, or their designee to verify Vehicle registration with the DMV; (iv) Customer agrees to maintain vehicle insurance as required by law; (v) Customer agrees to never modify the Vehicle's control system, engine, or engine software calibrations; (vi) Customer agrees to ensure plug-in Vehicles purchased with an HVIP voucher, including plug-in hybrid vehicles, plug-in electric vehicles, and aerial boom vehicles with zero emission power take-off, will be plugged in regularly as recommended by Endera to ensure battery durability, efficiency, and reliability; (vii) Customer understands that Customer must be in compliance and remain in compliance with all applicable federal, state, and local air quality rules and regulations; (viii) Customer agrees to operate the Vehicle 100 percent in California for a minimum of three years from date of first registration unless: a) the Vehicle is an emergency response vehicle which may be deployed out of state, or b) the Vehicle address identified in this form is in a county which borders Arizona, Nevada, Oregon or Mexico. In these two cases only, the Vehicle may operate outside of California for up to 25 percent of its mileage if a written request to do so is included with the voucher request form and the request is approved by CARB, CALSTART, or their designee. Military vehicles are not subject to this requirement. (ix) Vehicle is considered a zero-emission vehicle and may qualify for a voucher per Vehicle subject to the HVIP voucher program and CARB's sole approval. (x) Customer agrees to provide all documentation requested by Endera and/or CARB to facilitate voucher redemption approval and to comply with all requirements of the HVIP voucher program. Customer understands that voucher requests are approved in CARB's sole discretion. Endera makes no warranty or guarantee that the Vehicles will qualify for CARB vouchers. Customer understands and agrees that Vehicle price may be subject to increase in the event a voucher is not approved under the HVIP voucher program or in the event of voucher cancellation by CARB; (xi) Customer agrees to keep written records of the Vehicle for minimum three years after the first registration date and provide Endera, CARB or CARB's designee with such records within ten (10) days of their request. These records include but are not limited to the Vehicle invoice, proof of Purchase, DMV records, Vehicle payment information and related bank records, and Customer fleet information; (xii) Customer agrees that the Vehicle and emission reductions it generates shall not be used as marketable emission reduction credits, to offset any emission reduction obligation of any person or entity; (xiii) Customer agrees to complete the annual usage survey and questionnaire for three years, as requested by CARB (compliance services by Endera included); (xiv) Customer agrees to Endera's terms and conditions for usage of the Vehicle's telematics device. Additionally, Customer agrees to allow Endera to have access to the Vehicle's location and on/off data, so Endera can report to CARB, CALSTART, or their designee the aggregated vehicle operation within disadvantaged communities and zip codes containing disadvantaged communities. Military Vehicles are exempt from this requirement; (xiv) Customer agrees to be available for a follow-up inspection by CARB, CALSTART, or their designee, if requested; the information provided in this application is true and all supporting documentation is true and correct and meet the minimum requirements of HVIP; (xv) Customer agrees that failure to comply with the terms set forth in this Section 7 may result in repayment to CARB of voucher funds received and an increase of the Vehicle price pursuant to the Sales Agreement; and (xvi) Customer understands that CARB reserves all rights and remedies available under the law to enforce compliance with the HVIP voucher program.

**8. WARRANTY & LIMITATION OF LIABILITY.** GOODS ARE DELIVERED WITH A LIMITED EXPRESS WARRANTY. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, ENDERA SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, LOST USE, OR FOR

CLAIMS OF A THIRD PARTY; ARISING OUT OF THE SUPPLY OF GOODS UNDER THESE TERMS, EVEN IF ENDERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ("CLAIM") ARISING OUT OF THESE TERMS, CUSTOMER SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE AMOUNT PAID BY CUSTOMER FOR THE GOODS THE SUBJECT OF THE CLAIM.

**9. FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any term (except for any obligations of Customer to make payments to Endera hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of Sales Agreement receipt; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

**10. DISPUTES.** Any controversy or claim arising out of or relating to these Terms, or the breach thereof, shall be determined by arbitration administered by JAMS Worldwide in accordance with its Streamlined Arbitration Rules and Procedures. The place of arbitration shall be Los Angeles, California, USA, and the language of the arbitration shall be English. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties agree that any party may also petition the court for injunctive relief where either party alleges or claims a violation regarding intellectual property or confidential information. In the event either party seeks injunctive relief, the prevailing party shall be entitled to recover reasonable costs and attorney fees. These Terms and all matters arising out of or relating to the Goods (other than for Section 7 above) are governed by and construed in accordance with the laws of the State of Ohio, without regard to the conflict of laws provisions thereof. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to these Terms, or the transactions contemplated hereby.

**11. MAINTENANCE OF CONFIDENTIALITY.** Each party will take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the other party's confidential information which may be provided in connection with the party's performance of this Agreement. Without limiting the foregoing, each party will take at least those measures that it takes to protect its own most highly confidential information. Neither party will make any copies of the other party's confidential information unless approved in writing by the other party. Each party will reproduce the other party's proprietary rights notices on any approved copies.

**12. GENERAL.** (a) Customer may not assign a Sales Agreement without the prior written consent of Endera, not be unreasonably withheld. Endera or its affiliates may perform the obligations under these Terms; (b) these Terms are binding on each party's successors and assigns and can only be modified in a writing signed by authorized representatives of both parties; (c) Endera and Customer are independent contractors and agree that these Terms do not establish a joint venture or partnership; (d) any failure by Endera to object to any document, communication or act of Customer will not be deemed a waiver of any of these Terms; (e) the unenforceability of any of these Terms will not affect the remainder of the Terms; (f) Goods, including software or other intellectual property, are made available subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses; (g) customer and Endera will comply with applicable laws and regulations.

UNLESS MODIFIED IN WRITING AND SIGNED BY BOTH PARTIES, THESE TERMS ARE AGREED TO BE THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE PURCHASE OF GOODS.