



## **BESS SALE & PURCHASE AGREEMENT (USA)**

This **Battery Energy Storage System (“BESS”) Sale and Purchase Agreement** (this “Agreement”) is entered into as of August 1, 2021 (the “Effective Date”) between Tesla and Buyer (each as defined below, together the “Parties”). This Agreement comprises (i) the Key Terms set out below (the “Key Terms”), and (ii) all exhibits and schedules referenced in the “Attachments” sections of the Key Terms.

<b><u>Key Terms</u></b>									
These Key Terms set out the scope of this Agreement and certain key terms.									
<b><u>Parties:</u></b>									
<b>Tesla:</b>	Tesla, Inc., a corporation organized under the laws of Delaware, whose principal place of business is at 3500 Deer Creek Road, Palo Alto, CA 94304.								
<b>Buyer:</b>	City of Santa Clara, through its electric utility, Silicon Valley Power (“SVP”). The City of Santa Clara is a chartered California municipal corporation, and is the Local Regulatory Authority for its municipal electric utility, SVP. SVP is a municipal electric utility organized under the laws of California whose registered office is at 1500 Warburton Avenue Santa Clara, CA 95050.								
<b><u>System:</u></b>									
<b>Nameplate Maximum Power and Energy Capacity:</b>	<b>Standard (energy) mode:</b>								
	<b>Power:</b> 2,560kW								
	<b>Energy:</b> 5,120kWh								
<b>System:</b>	Megapack energy storage system with the above nameplate maximum power and energy capacities.								
<b>System Specifications:</b>	Attached as <u>Schedule 2</u> .								
<b>Microgrid:</b>	N/A.								
<b>System Applications:</b>	<table border="1"><thead><tr><th><b><u>Description:</u></b></th><th><b><u>Check one or more:</u></b></th></tr></thead><tbody><tr><td>Standard applications and controls of the BESS in accordance with the BESS Communication Interface Manual.</td><td>X</td></tr><tr><td>Back-up.</td><td>X</td></tr><tr><td>Fast Back-up.</td><td></td></tr></tbody></table>	<b><u>Description:</u></b>	<b><u>Check one or more:</u></b>	Standard applications and controls of the BESS in accordance with the BESS Communication Interface Manual.	X	Back-up.	X	Fast Back-up.	
<b><u>Description:</u></b>	<b><u>Check one or more:</u></b>								
Standard applications and controls of the BESS in accordance with the BESS Communication Interface Manual.	X								
Back-up.	X								
Fast Back-up.									
<b><u>Delivery:</u></b>									

<b>Incoterm (2020):</b>	DDP (Incoterms 2020) (Delivery Point).	
<b>Delivery Point:</b>	500 El Camino Real, Santa Clara, CA 95053 (Santa Clara University). Tesla has agreed to deliver the System to a concrete pad at the Delivery Point. Including craned and anchored into place on concrete pad.	
<b>Estimated Delivery Date:</b>	July 15th, 2022.	
<b>Sunset Date:</b>	October 1st, 2022.	
<b>Installation Location:</b>	500 El Camino Real, Santa Clara, CA 95053.	
<b>End-User Statement Required:</b>	<b>Description:</b>	<b>Check one:</b>
	Required from Buyer, in the form attached as <u>Schedule 4</u> .	
	None.	X
<b>Included Technical Support and Training:</b>		
<b>Included Technical Support:</b>	<b>Description:</b>	<b>Check one or more:</b>
	The Commissioning Support described in <u>Exhibit A</u> .	X
	The Additional Technical Support (if any) described in <u>Exhibit B</u> .	
<b>False Call-Out LDs:</b>	US\$2,500 per visit.	
<b>Installation &amp; Maintenance Training:</b>	<b>Description:</b>	<b>Check one:</b>
	Level 1 training as described in <u>Exhibit C</u> .	
	Level 2(a) training as described in <u>Exhibit C</u> .	
	Level 2(b) training as described in <u>Exhibit C</u> .	
	None.	X
<b>Price and Payment:</b>		
<b>Contract Price:</b>	System price:	US\$1,647,874.50
	Logistics:	US\$10,000
	Additional Technical Support (if applicable):	N/A
	Installation & Maintenance Training:	N/A
	<b>Total:</b>	<b>US\$1,657,874.50</b>

<b>Invoice Schedule:</b>	Tesla shall invoice as follows:	
	<b>Milestone:</b>	<b>% of Contract Price:</b>
	Upon execution of this Agreement.	30%
	Upon delivery of the System to the Delivery Point in accordance with the Incoterm specified in the Key Terms.	30%
	Upon the first to occur of (a) completion of the commissioning of the System in accordance with this Agreement; or (b) the date falling 30 days after the System is delivered by Tesla.	40%
<b>Purchase Money Security Interest:</b>	<b>Description:</b>	<b>Check one:</b>
	Buyer grants Tesla a purchase money security interest.	
	None.	X
<b>Buyer Invoice Address:</b>	SVP_AP@santaclaraca.gov	
<b>Payment Terms:</b>	Net-30 days from the date of invoice.	
<b>Buyer Credit Support:</b>	None.	
<b>Notices:</b>		
<b>Tesla Notice Address:</b>	3500 Deer Creek Road, Palo Alto, CA 94304, USA. Attn: General Counsel / Legal. Phone: +1. 650.681.5000. Fax: +1.650.681.5203. Email: legal@tesla.com.	
<b>Buyer Notice Address:</b>	All notices: City of Santa Clara/Silicon Valley Power Attn: Erica van Dyck & Eric Shum Phone: 408-615-6648 Email: manager@santaclaraca.gov and svpcontracts@santaclaraca.gov  Notice regarding delivery of Megapack to delivery point: Attn Santa Clara University Logistics Contact: John Veargason Phone: (408) 554-4747 Email: jveargason@scu.edu	
<b>NDA:</b>		
<b>NDA:</b>	The Tesla Mutual Non-Disclosure Agreement dated July 17 <sup>th</sup> , 2018 between Tesla (or its Affiliate) and Buyer (or its Affiliate).	

<b>Attachments:</b>		
The attachments below are incorporated by reference into this Agreement. Attachments that are not checked below may be omitted from this Agreement without affecting its validity. In the event of any conflict between these Key Terms and any Exhibit or Schedule, the order of precedence shall be (i) these Key Terms and (ii) the Exhibits and Schedules, in order of appearance.		
Exhibit A:	Commissioning Support	X
Exhibit B:	Additional Technical Support	
Exhibit C:	Installation & Maintenance Training	
Exhibit D:	Labor Compliance Addendum	X
Schedule 1:	Standard Terms & Conditions	X
Schedule 2:	System Specifications	X
Schedule 3:	Manufacturer's Limited Warranty	X
<b>Special Terms &amp; Conditions:</b>		
None.		

**EXECUTED** by the Parties on the Effective Date.

<b>CITY OF SANTA CLARA</b>	<b>TESLA, INC.</b>
_____ (SIGNATURE)	_____ (SIGNATURE)
_____ (PRINT NAME)	_____ (PRINT NAME)
_____ (PRINT TITLE)	_____ (PRINT TITLE)

**Exhibit A**  
**Commissioning Support**

**This Exhibit only applies if the Key Terms indicate that Tesla is providing Commissioning Support.**

Tesla shall provide the following Commissioning Support in accordance with this Agreement. The “Standard Commissioning Support” listed below covers the System only, and not the remainder of any microgrid or power generating or conditioning facility of which the System forms part. Tesla may perform this Commissioning Support remotely or at the System Installation Location, in Tesla’s discretion. Tesla may charge an additional fee if Buyer requests Tesla to perform Commissioning Support on a day that is not a Business Day, or outside normal business hours. Tesla and Buyer shall comply with the BESS System Commissioning Protocol.

Buyer shall notify Tesla when the System has been properly and completely installed in accordance with the BESS Installation Manual. Such notice shall include a completed BESS System Internal Commissioning Checklist. If, after receiving that notice, Tesla attends the System Installation Location to perform the Commissioning Support but is unable to do so because the System has not been properly and completely installed, then Buyer shall pay to Tesla the False Call-Out LDs set out in the Key Terms, as liquidated damages for the time, costs and expenses incurred by Tesla in connection with the visit. These liquidated damages have been agreed to by the Parties because the actual damages arising in these circumstances are difficult to predict. They represent a reasonable pre-estimate of the damages that Tesla would incur, and do not constitute a penalty. Payment of these liquidated damages shall be Tesla’s exclusive remedy and Buyer’s exclusive liability in the situation described above.

<b>Standard Commissioning Support:</b>	
<ul style="list-style-type: none"><li>• BESS start-up</li></ul>	
<ul style="list-style-type: none"><li>• BESS Controller start-up</li></ul>	
<ul style="list-style-type: none"><li>• System start-up sequence checklist</li></ul>	
<b>Microgrid-related Commissioning Support:</b>	<b>Check if applicable:</b>
<ul style="list-style-type: none"><li>• Configuration of Microgrid Controller to manage the PV inverter and genset controller forming part of the Microgrid and configuration of site-specific parameters in Microgrid Controller.</li></ul>	

The Commissioning Support does not include reprogramming or debugging third-party controller interface, or debugging customer wiring. If Tesla is required to reprogram or debug a third-party controller interface or debug customer wiring in order to successfully commission the System, Tesla may perform such support for an additional USD150/hour. Tesla shall inform Buyer in advance if it expects such support to take more than 20 hours. Tesla shall invoice for any such fees following performance of the associated support and Buyer shall pay the invoice within 30 days of receipt.

**Exhibit B**

**Intentionally Omitted**

**Exhibit C**

**Intentionally Omitted**

## Exhibit D

### **Labor Compliance Addendum**

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

#### A. Prevailing Wage Requirements

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at [www.dir.ca.gov](http://www.dir.ca.gov), which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at [www.dir.ca.gov](http://www.dir.ca.gov).
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll records and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where



the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.

9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those who fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

#### B. Audit Rights

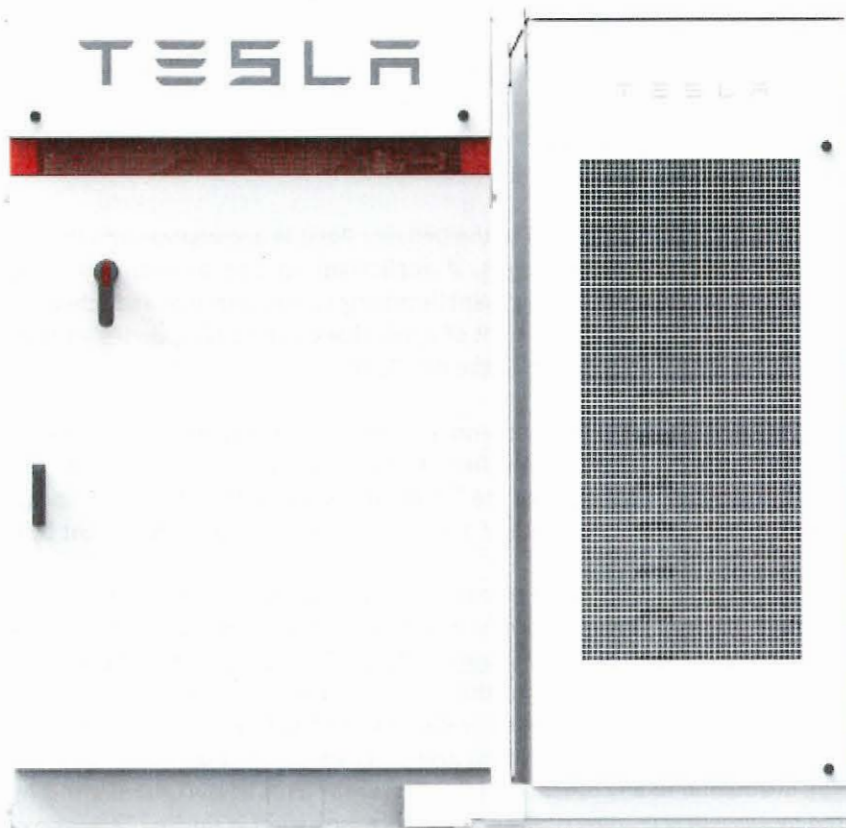
All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

#### C. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
  2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
  3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.
  4. City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
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SCHEDULES TO BESS SALE AND PURCHASE AGREEMENT  
US PROJECTS/CALIFORNIA LAW (190506)



**Schedule 1**  
**BESS Sale & Purchase Agreement - Standard Terms & Conditions**

These standard terms conditions govern the sale and purchase of the System and any Included Technical Support under this Agreement. Depending on the elections made by Buyer and Tesla in the Key Terms, some sections do not apply, or to only apply to a limited extent.

1. Purchase and Sale.
  - (a) Buyer shall purchase the System and any Included Technical Support from Tesla, and Tesla shall sell the System and any Included Technical Support to Buyer, in accordance with this Agreement. No separate purchase order is required. If Buyer elects to submit a separate purchase order, and it is inconsistent with this Agreement, the terms of this Agreement shall prevail.
  - (b) The System shall comply with the System Specifications and shall be configured for the Included Applications on the date the System is delivered.
  - (c) Tesla is only responsible for supplying, and providing the Included Technical Support for, the equipment specifically identified in the description of the "System" in the Key Terms. If the System forms part of a microgrid, Tesla is not responsible for delivering any other microgrid equipment or providing any other support required for the microgrid's operation.
2. Delivery. Tesla shall deliver the System to the Delivery Point in accordance with the Incoterm specified in the Key Terms (modified as set out in Section 3, if applicable), in one or more shipments. Responsibility for the arrangement of and payment for the shipment (including carrier selection and scheduling), insurance and customs clearance of the System (including payment of applicable customs fees, duties and taxes) shall be determined in accordance with the Incoterm specified in the Key Terms.
3. Incoterm Modification; Export. If the Incoterm and Delivery Point specified in the Key Terms is EXW, the common meaning of EXW (Incoterms 2010) is modified so that delivery is complete and all risk of loss or damage to the System (or part) transfers to Buyer when the System (or part) has been loaded onto Buyer's carrier by Tesla at the Delivery Point, as evidenced by signature of a bill of lading or equivalent document by Buyer or its representative.
4. Delivery Timing: Delays. Tesla shall make commercially reasonable efforts to deliver the System on or prior to the Estimated Delivery Date. Tesla will notify Buyer when the System is ready for the first shipment from the applicable Gigafactory (the "Ready for Shipment Notice"). Tesla shall give Buyer at least 10 days prior written notice of the scheduled delivery date for the System and each part thereof. If Buyer fails or refuses to accept delivery of a shipment once it has left the Gigafactory, such failure or refusal shall constitute a default under this Agreement and Tesla shall be entitled to recover its costs incurred by reason of the default in accordance with Section 16(a), in addition to any other remedies Tesla may have at law or under this Agreement. If the System is not delivered by Tesla in accordance with the Incoterm specified in the Key Terms on or prior to the Sunset Date, Buyer may, as its sole remedy for such delay, cancel the delivery of the System and terminate this Agreement, without liability to Tesla.
5. System Maintenance.
  - (a) In order to maintain the validity of the Manufacturer's Warranty, maintenance of the System must be performed by Tesla, a Tesla Affiliate or subcontractor, or a Tesla Certified Maintenance Provider.
  - (b) If the Key Terms indicate that Tesla shall perform any Installation and Maintenance Training, Tesla shall provide that Installation and Maintenance Training in accordance with Exhibit C and the Key Terms, subject to the relevant Buyer employees meeting the pre-qualification requirements set out in Exhibit C.

- (c) Tesla shall not be liable, under the Manufacturer's Warranty or otherwise, for any System defects or underperformance resulting from improper installation or maintenance of the System by a person other than Tesla or its Affiliate or subcontractor, including in circumstances where such person received Installation or Maintenance Training from Tesla.
6. Inspection and Rejection. Tesla shall grant the representative of Buyer who takes delivery of the System in accordance with the Incoterm specified in the Key Terms the right to visually inspect the external packaging of each part comprising the System. Buyer may reject any part of the System if, after such visual inspection, Buyer reasonably believes that such part is likely to be damaged or to not conform to the System Specifications. Upon execution of the bill of lading or equivalent for the System (or part thereof) by or on behalf of Buyer, Buyer shall be deemed to have accepted the System or part. Thereafter, Buyer shall have no right to reject the System (or part), except in accordance with the Manufacturer's Limited Warranty (as defined in Section 14).
7. Title; Risk of Loss. Risk of loss of the System (or part thereof) passes to Buyer at the Delivery Point in accordance with the Incoterm specified in the Key Terms (modified as set out in Section 3, if applicable). Title to the System shall transfer from Tesla to Buyer concurrently with the transfer of risk of loss.
8. Security Interest.
- (a) This Section 8(a) applies if the Key Terms indicate that Buyer grants Tesla a purchase money security interest. If title to the System transfers from Tesla to Buyer prior to Buyer's payment in full for the System, Tesla shall retain, and Buyer hereby grants, a first priority security interest in and to all of the right, title and interest of Buyer in, to and under the System, as well as any insurance proceeds covering the System, until Tesla is paid in full for the System. Buyer authorizes Tesla to file financing statements in this regard and will take such action as is requested by Tesla to protect such interest.
- (b) Whether or not Section 8(a) applies, until the Contract Price has been paid in full, Tesla may exercise its rights under applicable mechanics' and suppliers' lien laws or any common law liens such as a common carrier's lien and other similar liens arising by operation of law or statute.
9. Included Technical Support.
- (a) Tesla shall provide the Commissioning Support in accordance with Exhibit A and the Key Terms ("Commissioning Support").
- (b) If the Key Terms indicate that Tesla shall perform any additional Technical Support, Tesla shall provide that Technical Support in accordance with Exhibit B and the Key Terms ("Additional Technical Support").
- (c) Tesla shall perform the Commissioning Support and any Additional Technical Support (together, the "Included Technical Support") in accordance with Prudent Industry Practices, the BESS Installation & Operation Manual published by Tesla or its Affiliate, this Agreement and the Manufacturer's Limited Warranty. "Prudent Industry Practices" means the methods approved by a significant portion of the electrical services industry operating in the Installation Location that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable law, reliability, safety, environmental protection, economy and expedition. Prudent Industry Practices are not limited to optimum methods, but rather include a spectrum of reasonable and prudent methods that take the conditions specific to the System into account.
10. Price; Invoicing; Payment; Late Payments.
- (a) The price payable for the System and any Included Technical Support shall be the Contract Price stated in the Key Terms.

- (b) Buyer shall pay the Contract Price in installments based on Tesla invoices. Tesla shall invoice Buyer in accordance with the Invoice Schedule. Tesla shall send invoices by electronic mail to the Buyer Invoice Address.
  - (c) Buyer shall pay invoices in accordance with the Payment Terms, in U.S. dollars, and by wire transfer or other electronic means approved by Tesla.
  - (d) Buyer shall notify Tesla of any invoice dispute and provide substantiating documentation within 20 days of Buyer's receipt of the disputed invoice. Notwithstanding any dispute, Buyer shall pay all undisputed amounts in accordance with the Payment Terms. Buyer shall pay interest on late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Tesla for all costs incurred in collecting any late payments, including attorneys' fees.
11. Taxes. The Contract Price is exclusive of, and Buyer is solely responsible for, all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Where required or allowed by law, unless Buyer furnishes to Tesla lawful evidence of exemption, Tesla will invoice Buyer for the amount of any such tax and remit such amount to the applicable taxing authority. If Buyer is required by law to deduct or withhold any amount of tax from a payment to Tesla, Buyer shall (a) promptly remit such amount to the applicable taxing authority and provide Tesla with a receipt for such remittance and (b) increase the amount of its payment to Tesla by the amount necessary to ensure Tesla receives the full amount which it would have received if no deduction or withholding had been made.
12. No Set-off Right. Any claim for money due or to become due from a Party under this Agreement shall not be subject to deduction or set-off by such Party against any amount due or to become due to such Party from the other Party or its Affiliates, whether relating to a claim under this Agreement or relating to any other transaction.
13. Resale. Buyer shall not transfer title to the System prior to its installation and commissioning (whether to resellers, distributors, installers or end users) without the prior written consent of Tesla. This Section 13 does not prohibit Buyer from entering into an agreement with an installer or end user prior to installation and commissioning of the System which provides that title to the System shall transfer to the installer or end user following installation and commissioning.
14. Manufacturer's Limited Warranty.
- (a) Tesla provides a manufacturer's limited warranty for the System as set out in the Manufacturer's Limited Warranty for the System that is attached as Schedule 3 (the "Manufacturer's Limited Warranty").
  - (b) EXCEPT AS SET OUT IN THE MANUFACTURER'S LIMITED WARRANTY, TESLA DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR USE, COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW.
  - (c) Without limiting any of the other "exclusions" or "items not covered" identified in the Manufacturer's Limited Warranty, Buyer acknowledges that it shall be solely responsible for all costs associated with repairing or replacing any components of the System (including but not limited to battery pods) that require repair or replacement as a result of (i) Buyer's failure to connect and begin use and operation of the System within 180 days of the date Buyer takes title to the System, or (ii) Buyer disconnecting the System at any time during the term of the Manufacturer's Limited Warranty for a period of 180 days or more.
  - (d) Buyer (or the end user, if applicable) is responsible for establishing and maintaining a remote internet
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connection to the System for purposes of Section 4(f) of the Limited Warranty. If Buyer sells or transfers the System to an end user it shall ensure that it contractually obligates the end user to comply with this remote internet connection obligation.

15. Remote Monitoring; Firmware Upgrades; etc.

- (a) As a condition to providing the Manufacturer's Limited Warranty, Tesla may perform remote monitoring of the System and provide such firmware and software upgrades to the System as Tesla reasonably deems appropriate.
- (b) "Buyer Data" consists of the data defined to be owned by Buyer in Section 4 of the Communications Manual. Buyer Data shall be owned by the System owner and shall be made available by Tesla to the System owner on request, in a reasonably accessible format. Tesla may use Buyer Data (i) to perform its obligations under the Manufacturer's Limited Warranty, (ii) to improve Tesla's products and services generally (including by performing analyses on such information); provided that Tesla shall not reverse engineer such data to expose Buyer's dispatch algorithms, and (iii) to aggregate with other data. Public disclosure of such information by Tesla is permitted if neither Buyer nor the owner or long-term occupant of the site where the System is located (the "Site Host") could reasonably be identified from the publicly disclosed information.
- (c) Any information obtained by Tesla through remote monitoring of the System that is not Buyer Data shall be owned by Tesla ("Tesla Data"), shall be Confidential Information of Tesla, and shall not be required to be made available by Tesla to any person.
- (d) Buyer confirms that, prior to the installation of the System, it will obtain the written consent of the subsequent owner and (if different) the Site Host with respect to the matters addressed in this Section 15. If the subsequent owner or Site Host is a natural person or otherwise benefits from the protection of applicable Privacy and Data Protection Laws, such consents shall include any consents required under such laws. Buyer shall deliver copies of all such consents to Tesla upon request.
- (e) "Communications Manual" means the Communication Manual for the System that is published by Tesla or otherwise made available by Tesla to Buyer. "Privacy and Data Protection Laws" means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality, security and protection of personal data.

16. Default, Suspension and Termination.

- (a) Tesla may suspend performance of any of its obligations under this Agreement, including its delivery obligations, if Buyer at any time is in default of any material Buyer obligation under this Agreement, and all reasonable costs incurred by Tesla by reason of such suspension (such as costs to warehouse the System until an overdue payment is received) shall be a debt due and owing from Buyer to Tesla within thirty (30) days of Buyer's receipt of a written invoice from Tesla at the Buyer Invoice Address.
- (b) In addition to any other remedies that may be provided under this Agreement, Tesla may terminate this Agreement by written notice to Buyer if (a) Buyer fails to pay any undisputed amount when due under this Agreement and the failure is not cured within 10 days after Buyer's receipt of written notice thereof from Tesla; (b) Buyer has breached any material provision of this Agreement and the breach is not cured within 30 days after Buyer's receipt of written notice thereof from Tesla; (c) Buyer fails to post any Buyer Credit Support by the date specified in the Key Terms, any Buyer Credit Support ceases to be in full force and effect or the party providing such Buyer Credit Support breaches the terms of such Buyer Credit Support; or (d) Buyer or the party providing any Buyer Credit Support becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy,

receivership, reorganization or assignment for the benefit of creditors (each an “Insolvency Event”). In addition to any other remedies that may be provided under this Agreement, Buyer may terminate this Agreement (i) if Tesla has breached any material provision of this Agreement and such breach, to the extent curable, is not cured within 10 days after Tesla’s receipt of written notice thereof; (ii) if an Insolvency Event occurs with respect to Tesla; or (iii) in the circumstances described in Section 4.

17. Confidentiality; Publicity.

- (a) The NDA sets out the Parties’ confidentiality obligations under this Agreement. It is incorporated by reference into this Agreement. The terms and conditions of the NDA will continue in force throughout the term of this Agreement and for 3 years following its expiration or early termination. The terms and conditions of this Agreement, and any information regarding the System shall be both Parties’ Confidential Information for purposes of the NDA.
- (b) Neither Party shall advertise or issue any public announcement regarding the execution of this Agreement or its contents, or use the other Party’s mark, name or logo in any marketing literature, web sites, articles, press releases (including interviews with representatives of media organizations of any form), or any other document or electronic communication, without the prior written consent of the other Party. The foregoing shall not prohibit a Party from making any public disclosure or filing that it determines in good faith is required by law or the rules of the stock exchange on which its shares, or the shares of its parent company, are listed.

18. Proprietary Rights. As between the Parties, Tesla shall remain the sole and exclusive owner of any and all patents, trademarks, copyrights, mask work rights, trade secrets and any other intellectual or proprietary rights (“Proprietary Rights”) associated with the System or any parts or derivations thereof. If the System includes any embedded software (i.e., firmware), Tesla hereby grants to Buyer a limited, non-exclusive, non-sublicensable, non-transferable (other than where Buyer resells the System in accordance with Section 13) license to use such software solely in the operation of the System. Except for the foregoing, no license or other right to Seller’s Proprietary Rights is granted or implied hereby.

19. Limitations of Liability.

- (a) NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
- (b) NEITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL EXCEED THE AGGREGATE CONTRACT PRICE PAID BY BUYER UNDER THIS AGREEMENT. THE LIMITATIONS OF LIABILITY UNDER THIS SECTION 19(B) AND SECTION 7 OF THE MANUFACTURER’S LIMITED WARRANTY ARE CUMULATIVE. NEITHER BUYER NOR ANY END USER SHALL BE ENTITLED TO MAKE A CLAIM ARISING OUT OF THE SAME DEFECT, EVENT OR CIRCUMSTANCES UNDER BOTH THIS AGREEMENT AND THE MANUFACTURER’S LIMITED WARRANTY.
- (c) THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION 19 SHALL NOT APPLY TO: (I) BUYER’S OBLIGATION TO MAKE PAYMENTS FOR THE SYSTEM UNDER THIS AGREEMENT; (II) DAMAGES ATTRIBUTABLE TO EITHER PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (III) ANY VIOLATION OF A PARTY’S INTELLECTUAL PROPERTY RIGHTS; (IV) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION UNDER THIS AGREEMENT; (V) DAMAGES ATTRIBUTABLE TO A PARTY’S INTENTIONAL TORTS, UNLAWFUL CONDUCT OR GROSS NEGLIGENCE; OR (VI) ACTS OR OMISSIONS FOR WHICH LIABILITY

CANNOT BE DISCLAIMED OR LIMITED UNDER APPLICABLE LAW.

20. General Indemnity. Each Party shall defend, indemnify and hold harmless the other Party, its Affiliates, and their respective directors, officers, partners, members, shareholders, agents, employees, subcontractors, successors and assigns (collectively, "Representatives") from and against any losses, damages and liabilities, including reasonable attorneys' fees (collectively, "Losses") arising from (a) any claim, action, suit, proceedings, demand, investigation or assessment made or brought by any third party (collectively, "Claims") alleging injury or death of persons, or damage to or loss of property, to the extent caused by or arising from the negligent acts or omissions or acts of willful misconduct of the indemnifying Party or its Representatives in connection with the System, its use, or the performance of this Agreement; or (b) any failure by the indemnifying Party or its Representatives to comply with applicable laws (including, without limitation, the FCPA (as defined in Section 24) and any applicable export control laws). In addition, if Buyer resells the System in breach of Section 13, Buyer shall defend, indemnify and hold harmless Tesla and its Representatives from and against all Losses resulting from any Claim whatsoever that arises in connection with such breach (including, any acts or omissions of the purchaser and any subsequent transferee of the System).
21. IP Indemnity. Tesla shall indemnify, defend and hold harmless Buyer and its Representatives from any Losses arising out of any Claim alleging that the System infringes the intellectual property rights of a third party. However, Tesla shall have no obligation to indemnify Buyer or any of its Representatives to the extent the Claim arises out of: (a) use of the System in combination with any other products, materials or equipment not expressly authorized by Tesla in circumstances where the infringement would have been avoided by the use of the System not so combined; or (b) any modifications or changes made to the System other than by Tesla in circumstances where the infringement would have been avoided without such modifications or changes. If a Claim for infringement or alleged infringement of any intellectual property rights is made, Tesla may, at its own expense, (i) modify any or all of the intellectual property rights so as to avoid the infringement or the alleged infringement; or (ii) take such other action as Tesla deems reasonable to avoid or settle such Claim in accordance with Section 22, and this shall be the sole and exclusive remedy available to Buyer in respect of such Claim.
22. Indemnification Procedures. The indemnified Party will give the indemnifying Party prompt written notice of any claim for which indemnification is sought under Section 20 or 21. Failure to give prompt notice will not diminish the indemnifying Party's obligations under this Section 22 to the extent such failure does not materially prejudice the indemnifying Party's ability to defend the claim. The indemnifying Party shall control the defense of the claim, and the indemnified Party may participate in the defense at its own expense with counsel of its choice. The indemnified Party shall make available information and assistance as the indemnifying Party may reasonably request, at the indemnifying Party's expense. The indemnifying Party may not, without the prior written consent of the indemnified Party, (a) consent to any judgment or settlement that (a) provides for injunctive or other non-monetary relief affecting the indemnified Party or its Representatives or (b) does not provide for an unconditional and full release of the indemnified Party and its Representatives. If the indemnifying Party, within a reasonable time after receipt of a request for indemnification, fails to take reasonable steps to defend indemnified Party or its Representative against a claim, the indemnified Party may undertake the defense of such claim without waiving its rights and remedies under this Agreement.
23. General Compliance with Laws; Approvals. Each Party shall comply with all laws applicable to the performance of this Agreement, including those laws applicable to each Party's use, sale and/or export of the goods and/or services purchased under this Agreement. Buyer shall obtain all approvals, certifications, licenses and permits required by any applicable law or governmental authority (collectively, "Approvals") in connection with the purchase, installation and use of the System. Tesla shall obtain all Approvals with respect to the System that are required on a nationwide basis in the USA as at the Effective Date.
24. Anti-Bribery Laws. Each Party shall comply with all national or international anti-bribery laws applicable to it, including without limitation the Foreign Corrupt Practices Act of 1977 (the "FCPA") and shall, at all times during the term of this Agreement, remain in compliance and maintain appropriate policies and procedures to ensure



ongoing compliance with all such laws. As of the Effective Date, (a) neither Party has any employees who are foreign officials as defined under the FCPA, and (b) no foreign official as defined under the FCPA has any legal or beneficial interest in a Party (or, if a Party or its direct or indirect parent company is a publicly listed company, a more than 5% legal or beneficial interest in such Party). Each Party shall promptly notify the other Party in writing in the event any of the foregoing representations would be untrue if made by Buyer at any time during the Term. Each Party acknowledges that any violation of this Section 24 constitutes just cause for immediate termination of this Agreement by the other Party.

25. Economic Sanctions Laws; Export Control Laws; End-User Statement. Buyer shall not (a) directly or indirectly export, re-export or otherwise transfer the System or any part thereof or (b) broker, finance or otherwise facilitate any transaction involving the System, in violation of any economic sanctions laws administered by the Office of Foreign Assets Control of the U.S. Treasury Department or any other governmental authority imposing economic sanctions and trade embargoes against designated countries, entities or persons. Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release the System, any part thereof, or any software, documentation or related technical data included with or contained in the System, in violation of applicable export control laws. If the Key Terms indicate that an End-User Statement is required, then Buyer shall deliver the completed and signed End User Statement (in the form referenced in the Key Terms) to Tesla within 30 days of the Effective Date.
26. Governing Law; Dispute Resolution; Venue. This Agreement will be governed by and interpreted in accordance with California law. The Parties hereby agree that United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any dispute arising from or relating to this Agreement shall first be promptly referred to the Parties' senior level management for resolution. In the event they are unable to resolve any such dispute within 20 days after referral, then either Party may take such dispute to binding arbitration in accordance with the then-current Streamlined Arbitration Rules of the Judicial Arbitration and Mediation Services ("JAMS"). The existence, content and result of the arbitration shall be held in confidence by the Parties, their representatives, any other participants and the arbitrator. The arbitration will be conducted by a single arbitrator selected by agreement of the Parties or, failing such agreement, appointed in accordance with the JAMS rules. The arbitration shall be conducted in English and in Santa Clara, California. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in its discretion, award reasonable costs and fees to the prevailing Party. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief in connection with a breach by the other Party of its obligations in Section 17 or Section 18, and by doing so will not be deemed to have breached its agreement to arbitrate or to have impaired the powers reserved to the arbitrator.
27. Cumulative Remedies. Except as set out in Section 28 and Exhibit B (if applicable), all rights and remedies provided under this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.
28. Certain Exclusive Remedies. The Parties understand and agree that (a) Buyer's rights under the Manufacturer's Limited Warranty are Buyer's exclusive remedies for the events or circumstances specified therein; and (b) Buyer's sole recourse for Tesla's failure to provide any Additional Technical Support is withholding or reimbursement of the amount the Contract Price allocated to that Technical Support pursuant to the Key Terms.
29. Force Majeure. Neither Party shall be liable to the other Party, nor be deemed to have breached this Agreement, for any failure or delay in performing any non-monetary obligation under this Agreement if and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of such Party, including, without limitation, acts of God, flood, fire, earthquake, extreme weather, explosion, governmental actions, war, terrorist threats or acts or other civil unrest, lock-outs, strikes or other labor disputes, restraints or

delays affecting carriers or the inability or delay in obtaining supplies of adequate or suitable materials.

30. Entire Agreement; Severability. This Agreement will be deemed to have been written by both Parties, constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior agreements, representations and understandings, oral or written, between the Parties regarding its subject matter. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be interpreted so as to best accomplish the objectives of the original provision and the remaining provisions of this Agreement shall remain in full force and effect.
31. Amendment; Modification; Waiver. No amendment or modification of this Agreement is effective unless it is in writing and signed by each Party. No waiver by either Party of any provision of this Agreement is effective unless set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement operates as a waiver thereof. No single or partial exercise of any right or remedy hereunder precludes any other or further exercise of that right or remedy or the exercise of any other right or remedy.
32. Assignment. Neither Party may assign its right or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may, with prior written notice to Tesla, assign this Agreement as collateral in connection with its financing activities. Any purported assignment or delegation in violation of this Section 32 is null and void. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.
33. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns. Nothing herein is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
34. Notices. All notices under this Agreement shall be in writing and shall be deemed given (a) if sent by courier, on the date when left at the address of the recipient if such date is a Business Day or on the next Business Day if such date is not a Business Day and (b) if sent by email, upon receipt by the sender of an email confirming receipt of the notice by the recipient (in which case the email will be deemed received on the date it was actually received if such date is a Business Day, or on the next Business Day if such date is not a Business Day). In each case, notices shall be sent to the Notice Address given for Tesla and Buyer, or such other address as either Party may notify the other Party in writing from time to time.
35. Expiry; Survival. Unless terminated earlier in accordance with its terms, this Agreement shall expire when the System has been delivered, and Buyer has paid the Contract Price in full. Provisions of this Agreement which by their nature contemplate or govern performance or observance subsequent to the termination or expiration of this Agreement shall survive such termination or expiration.
36. Counterparts. This Agreement may be signed in duplicate originals, or in separate counterparts, which are effective as if the Parties signed a single original. A .pdf of an original signature or electronically signed version transmitted to the other Party is effective as if the original was sent to the other Party.
37. Representations. Each Party represents and warrants to the other Party that (a) it is a legal entity, duly organized and in good standing under the laws of jurisdiction of incorporation; (b) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms; and (c) the execution, delivery and performance of this Agreement (i) is within its powers, (ii) has been duly authorized by all requisite action and (iii) will not violate any agreement, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected. Buyer further represents and warrants to Tesla that all financial information that it has provided to Tesla is true and accurate and fairly represents Buyer's financial position as at the date it was provided.

38. Certain Defined Terms. For purposes of this Agreement, (a) "Affiliate" means, with respect to a Party, an entity that controls, is controlled by or is under common control with such Party; (b) "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise; and (c) "Business Day" means any day other than weekends and days when banks are not generally open for business in San Francisco, California.



**Schedule 2**  
**BESS Specifications**

[See attached]





## MEGAPACK 2 SPECIFICATION

PRE-PRODUCTION SPECIFICATION: SUBJECT TO CHANGE  
APPLICABLE TO MEGAPACK 2 SYSTEMS TO WHICH THIS SPECIFICATION IS  
EXPRESSED TO APPLY

**PRODUCT SPECIFICATIONS**

All specifications and descriptions contained in this document are verified to be accurate at the time of printing. However, because continuous improvement is a goal at Tesla, we reserve the right to make product or documentation modifications at any time, with or without notice.

The images provided in this document are for demonstration purposes only. Depending on product version and market region, details may appear slightly different.

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**ERRORS OR OMISSIONS**

To communicate any inaccuracies or omissions in this manual, please send an email to: [energy-pubs@tesla.com](mailto:energy-pubs@tesla.com).

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# 1 System Description

Tesla Megapack 2 (“Megapack”) is an all-in-one utility-scale energy storage system optimized for cost and performance. It scales to the space, power, and energy requirements of any site from 1 MWh to 1 GWh+. The product is a complete energy storage solution including batteries, bi-directional inverter, thermal system, and a Tesla Site Controller with intelligent software.

This turnkey system is designed to maximize savings and prolong battery life. Megapacks have the most advanced battery technology and dispatch optimization software to quickly learn and predict a facility’s energy patterns. Tesla’s proprietary storage dispatch software can charge and discharge autonomously to maximize customer value.

Megapack’s architecture consists of battery cells aggregated into modules, and power electronics modules. Both are thermally managed by an integrated liquid cooling and heating system for thermal safety, enhanced performance, and reliability. The architecture also includes sensors supporting embedded monitoring and controls as well as electrical interface equipment including an industry standard breaker for AC protection.

## 1.1 Application

Megapack is capable of various on-grid applications such as tariff optimization, peak load shaving, energy shifting, and demand response. In addition, the system can operate as a microgrid to support backup and islanded systems.

## 1.2 Capacity Maintenance

Megapack can be provided with a Capacity Maintenance Agreement (CMA), which guarantees power and energy capacity over the life of the product. A capacity-maintained system requires the addition of battery modules over time to maintain power and energy. The product is designed to accommodate these additions over time without impact to site design. This specification describes up to a 10-year capacity-maintained system operated up to one full cycle per day. Upon request, Tesla can also provide specifications for CMA lengths of 15 or 20 years. Technical details and characteristics differ between a product with Capacity Maintenance Agreement and a product without. These differences are highlighted in the relevant sections within this specification. Capacity maintenance is offered for projects with a minimum size of 10 MWh.

## 1.3 Constituent Parts

Each Megapack enclosure includes the following components provided by Tesla:

- Smart inverter
- AC main breaker
- Battery modules
- Thermal system
- Tesla Site Controller
- Low voltage interface panel

## 1.4 Definitions

**Battery Cell:** The smallest non-divisible energy component of the Megapack, assembled into a battery module in series and parallel arrays.

**Battery Module:** A field-replaceable unit that battery cells, fusing and battery management system functions. The Battery Module interfaces are output electrical connections, thermal interface, and communication connections.

**BOL:** Beginning of Life.

**CMA:** Capacity Maintenance Agreement, used to define a system that guarantees power and energy over the life of the system.

**Communication cable harness:** A pre-manufactured cable with locking connectors on both ends to connect Megapacks to the site level control interface of the Controller.

**Efficiency Degradation (%):** Represented with a stated efficiency value at the beginning of life and the minimum seen over 10 years and 365 cycles/year.

**EOL:** End of life. Defined to be 10 years for a capacity-maintained system or non-capacity-maintained system.

**Fully Operational:** The operating condition where the system is capable of discharging or charging at full power.

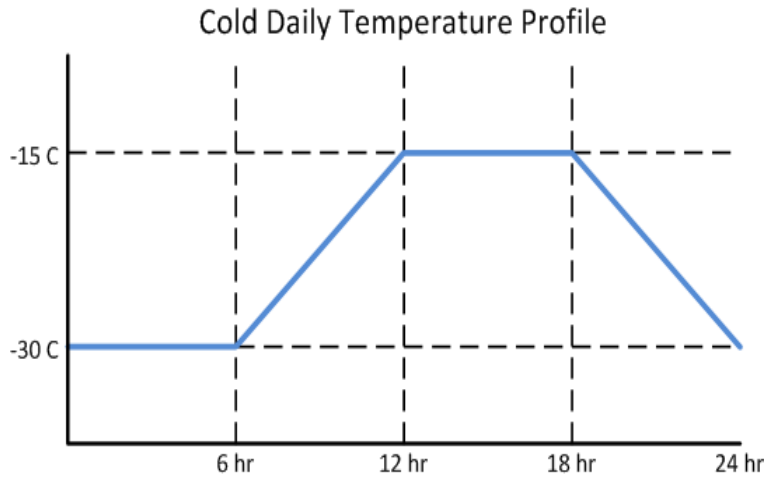
**kWp:** Nameplate AC power rating of the system, or kilowatt peak.

**PCS or Inverter:** Bi-directional power conversion system that couples each Megapack with the power grid (AC power).

**Megapack:** The complete AC coupled system, inclusive of battery modules, inverter, thermal system, and Controller.

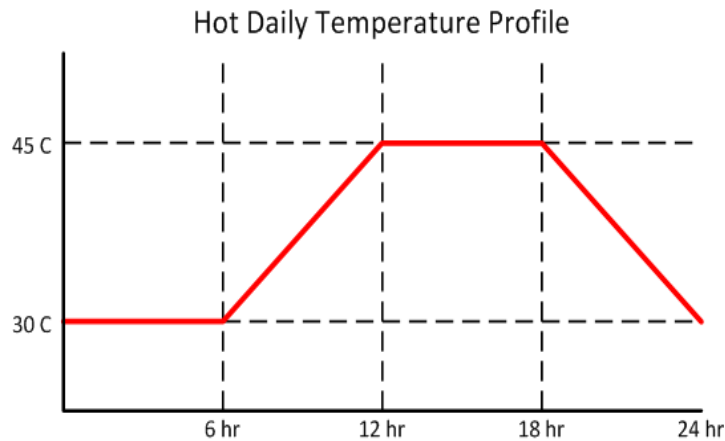
**PCC:** Point of Common Coupling.

**Profile<sub>COLD</sub>:** The ambient temperature daily profile for cold weather standby use, indicative of winter in Grand Forks, ND, is defined below:



**Figure 1: Cold Daily Temperature Profile**

**Profile<sub>HOT</sub>:** The ambient temperature daily profile for hot weather standby use, indicative of summer in Palm Springs, CA, is defined below:



**Figure 2: Hot Daily Temperature Profile**

**Roundtrip Efficiency (%):** Defined as discharge of the system from 100% SOE to 0% SOE at kWp immediately followed by charging the system from 0% SOE to 100% SOE at kWp. The roundtrip AC-AC energy efficiency shall be measured at the AC terminals of the inverter and shall include parasitic loads.

**SOE with CMA:** Battery State of Energy: Available energy / Rated energy (0-100%).

**SOE without CMA:** Battery State of Energy: Available energy / Full Megapack energy (0-100%).

**STC:** Standard Test Conditions, defined as the system soaked at 25°C and 1 atmosphere (101.3 kPa) of pressure.

**System Duration:** The amount of time the Megapack can continuously charge or discharge power at kWp when new.

**T<sub>AMBCOLD</sub>:** The ambient temperature for cold weather performance is defined as the system soaked at -20°C. This temperature definition is used to define the system performance in a nominally cold temperature climate. This temperature does not define the operating limitation or temperature rating of the system.

**T<sub>AMBHOT</sub>:** The ambient temperature for hot weather performance is defined as the system soaked at 45°C. This temperature definition is used to define the system performance in a nominally hot temperature climate. This temperature does not define the operating limitation or temperature rating of the system.

**Tesla Site Controller:** Site level control interface that is the single point of feedback and control for a physical installation. It is also responsible for collecting feedback data from each individual Megapack, running algorithms to optimize the system operation, and providing commands to inverters.

## 1.5 Standards and Regulations

The system and components are compliant with the standards and directives listed in the Megapack Compliance Packet, found on the Tesla Partner Portal website at <https://partners.tesla.com/>.

## 2 Technical Specifications

Megapack is rated in terms of net-delivered power and minimum energy at its AC output terminals. Loads and losses, including power conversion, thermal system losses, auxiliary loads, and chemical/ionic losses are considered internal to the system and ratings are net of these loads. Losses between the AC output terminals and the point of interconnection with the customer/utility are site-dependent and excluded from the rated power and energy.

### 2.1 Power and Energy

System ratings are defined in kWp and kWh as measured at the AC terminals of the Megapack. The given energy ratings (kWh) in this document are minimum initial energy ratings.

Megapack is capable of providing nameplate kWh energy at nameplate kW when discharged from 100% SOE at STC. Megapack is capable of charging or discharging at the rated power for the life of the system. The maximum duration of charge/discharge will decrease over the life of the system. The kW is net of thermal loads and can be achieved throughout life.

A fully populated Megapack has the following nominal ratings at 480 V AC:

**Table 1: Nominal Energy Ratings**

System Duration	AC Power (kVA)	AC Power (kWp)	AC Minimum Initial Energy (kWh)
2-hour	1,680	1,280	2,560
2-hour, CMA only	1,890	1,440	2,880
4-hour	997.5	761.9	3,047.6

#### 2.1.1 Scaling Power and Energy

Megapack can be requested with lower factory-configured inverter ratings. See Section 2.4.1.6 Inverter Configurations for more details.

Megapack can be requested with fewer battery modules. See section 2.4.1.7 for more details.

### 2.2 Roundtrip Efficiency and Energy Consumption

Roundtrip efficiency (RTE) is defined as the relative difference in energy charged to the system from 0% SOE to 100% SOE at kWp immediately followed by energy discharged the system from 100% SOE to 0% SOE at kWp. The quotient of energy discharged over energy charged is the RTE. This RTE includes all thermal system energy consumption and all internal Megapack control power consumption during the cycle.

The roundtrip efficiency and auxiliary energy consumption is specified in the table below:

**Table 2: Roundtrip Efficiency and Energy Consumption**

Parameter	2-Hour System	4-Hour System
Roundtrip Efficiency (BOL) inclusive of thermal management loads	STC: 92.0% TAMBHOT: 92.0% TAMBCOLD: 91.5%	STC: 94.0% TAMBHOT: 94.0% TAMBCOLD: 93.5%
Minimum Roundtrip Efficiency (non-CMA) over 15 years**	STC: 88.0% TAMBHOT: 88.0% TAMBCOLD: 87.5%	STC: 91.0% TAMBHOT: 91.0% TAMBCOLD: 90.5%

\*\* Indicative figures. Exact value will depend on battery utilization and climate over the 15 years.

### 2.3 Charge and Discharge Limitations

Megapack’s thermal management system is used to maintain the battery’s charge and discharge capabilities across the system’s rated temperature range. In cold ambient conditions, operating in this state results in lower overall efficiency due to increased parasitic loads.

By activating heat mode, the 2-hour or 4-hour Megapack can be preconditioned to allow rated charge/discharge power. Heating will be required if Megapack battery temperature drops below 20C.

## 2.4 Inverter Specifications

**Table 3: Inverter Specifications**

Nominal Voltage	480 V AC
Rated Output Power	Configurable (See 2.4.1.6 Inverter Configurations)
Output Voltage Range (steady state voltage)	408-555 V AC (480 V AC nominal)
Nominal Frequency (configurable)	50 or 60 Hz
Frequency Range	45-65 Hz
Phases	3
System configuration	3-wire, Wye <b>Note:</b> Grounded wye required at transformer secondary
Max Continuous Current	Configurable (See 2.4.1.6 Inverter Configurations)
Full Load Efficiency	98.3%
CEC Weighted Efficiency	98.5%
Power Factor at Full Load	> 99%
Adjustable Power Factor (Controller Feature)	-1 to +1
Total Current Harmonic Distortion (THD)	< 5%
Power Regulation Accuracy	< 2%
Overtoltage Category	Category III up to 3000 m
Maximum Short Circuit Current	85 kAIC

\*\* When followed and preceded by a minimum of 10 minutes at or lower than rated current.

### 2.4.1 AC Interface

#### 2.4.1.1 Medium Voltage Transformer Connection

If Megapack is connected to a medium-voltage transformer, the transformer must be a grounded wye transformer and the connection must be made via a 3-wire circuit (3 phases, ground) connection.

It is possible to parallel multiple Megapacks on the low-voltage side of a transformer without providing additional galvanic isolation.

#### 2.4.1.2 AC Breaker

Each Megapack includes an AC breaker with the following features:

- 85 kAIC interrupting capacity (2-hour and 4-hour Megapacks)
- GND fault detection
- Shunt trip
- Pad lockable

**2.4.1.3 Voltage Ride Through**

The table below represents the maximum per unit voltage value that can be set for a given nominal system voltage. For site specific ride-through requirements at the Point of Common Coupling are required, contact a Tesla Sales Engineer.

**Table 4: Megapack Maximum VRT Setting**

Nominal System Voltage	480 V AC
Maximum HVRT Allowed	130%

**Table 5: Setting Ranges**

Parameter	Setting Range	Resolution
Voltages	0.00-Maximum HVRT Allowed	0.01 per unit
Times	0.00-60.00 sec*	0.01 sec

\* Time allowed a specific per-unit voltage depends on the nominal voltage rating. Typically, default settings and acceptable ranges are tested as part of a specific certification. For deviations from certified settings in a region, please contact a Tesla Sales Engineer.

Megapack has four high voltage ride-through (HVRT) setpoints, with one instantaneous trip voltage setting, configurable to the following ranges:

**Table 6: IEEE 1547 Megapack HVRT Settings**

Parameter	Default Values for 480 V
HVRT Point 3	120% @ 0.13 sec
HVRT Point 2	120% @ 0.13 sec
HVRT Point 1	110% @ 1.00 sec
HVRT max trip	121%

Megapack has five voltage and time setpoints for low voltage ride-through (LVRT), configurable to the following ranges:

**Table 7: IEEE 1547 Megapack LVRT Settings**

Parameter	Default Values for 480 V
LVRT Point 5	88% @ 2.00 sec
LVRT Point 4	60% @ 1.00 sec
LVRT Point 3	45% @ 0.13 sec
LVRT Point 2	45% @ 0.13 sec
LVRT Point 1	45% @ 0.13 sec



**Table 8: Trip Accuracy**

Trip Setting	Accuracy
Voltage	+/- 2% of nominal voltage
Time	Longer of +/- 0.1 sec or 1% of set point
Frequency	+/- 0.01 Hz

**2.4.1.4 Frequency Ride Through**

The Megapack inverter is capable of staying connected to the distribution provider’s distribution or transmission system while the grid is within the frequency-time range indicated in the table below and will disconnect from the electric grid during a high or low frequency event that is outside that frequency-time range.

The Megapack inverter allows for a minimum of 3 under-frequency and 3 over-frequency trip points and times, as well as 1 under-frequency instantaneous trip and 1 over-frequency instantaneous trip.

**Table 9: Frequency Ride Through**

Trip Point	Frequency Range	Time (sec)	Notes
Instantaneous UF Trip	40 Hz-70 Hz	Instantaneous	0.1 Hz resolution, filtering as necessary
UF Trip Time 3	40 Hz-70 Hz	0-600	0.1 Hz and 0.01 second resolution
UF Trip Time 2	40 Hz-70 Hz	0-600	0.1 Hz and 0.01 second resolution
UF Trip Time 1	40 Hz-70 Hz	0-600	0.1 Hz and 0.01 second resolution
OF Trip Time 1	40 Hz-70 Hz	0-600	0.1 Hz and 0.01 second resolution
OF Trip Time 2	40 Hz-70 Hz	0-600	0.1 Hz and 0.01 second resolution
OF Trip Time 3	40 Hz-70 Hz	0-600	0.1 Hz and 0.01 second resolution
Instantaneous OF Trip	40 Hz-70 Hz	Instantaneous	0.1 Hz resolution, filtering as necessary

**2.4.1.5 Anti-Islanding Features**

The Megapack inverter includes these anti-islanding features:

- Reconnection delay timer
- Active anti-islanding: Sandia Frequency Shift implemented on all systems
- Passive anti-islanding: Configurable Rate of Change of Frequency (ROCOF) preferences

The reconnection delay timer is configurable with the following settings:

**Table 10: Reconnection Delay Timer Default Settings**

Feature Name	Effect	Setting Range	Default
Reconnect Time Delay	The amount of time the inverter waits before reconnection, after the grid returns within the frequency and voltage windows defined above	0-600 sec	300 sec
Reconnect Min. Voltage	The minimum voltage at which the inverter interprets the grid is within tolerable conditions	0-415.5 V	240.99 V
Reconnect Max. Voltage	The maximum voltage at which the inverter interprets the grid is within tolerable conditions	0-415.5 V	293.62 V
Reconnect Min. Frequency	The minimum frequency at which the inverter interprets the grid is within tolerable conditions	40-70 Hz	59.3 Hz
Reconnect Max. Frequency	The maximum frequency at which the inverter interprets the grid is within tolerable conditions	40-70 Hz	60.5 Hz

Sandia Frequency Shift is enabled by default, but can be disabled if required for the application. ROCOF is configurable with the following settings:

**Table 11: ROCOF Settings**

Feature Name	Effect	Setting Range	Default
ROCOF Enable	Turns ROCOF on or off	n/a	Off
ROCOF Fault Limit	Sets the rate of change required for a trip	0.1-100.0 Hz/sec	1 Hz/sec
ROCOF Time Delay	Sets how long the rate of change has to be present for the inverter to trip	0-1 seconds	1 second

**2.4.1.6 Inverter Configurations**

Table 12 lists standard inverter configurations of the Megapack. Additionally, Megapack can be requested to be factory-configured with any particular current limit lower than the maximum below to de-rate to meet particular project needs

The Megapack inverter should be configured with a kVA rating at least 40 kVA higher than the site requirement, to ensure the Megapack can supply enough AC current to simultaneously run the thermal system and discharge in accordance with commands.

Megapacks with fewer battery modules will have a lower absolute maximum, as indicated in Section 2.4.1.7.

**Table 12: Available Inverter Configurations**

<b>Configured Inverter Power Rating [kVA]</b>	<b>Maximum Continuous Output Current [A]</b>	<b>Applicable Megapack Type</b>
1,680	2,020.8	2-Hour Maximum
1,600	1,924.5	2-Hour
1,500	1,804.2	2-Hour
1,400	1,683.9	2-Hour
997.5	1,199.8	4-Hour Maximum
900	1,082.5	4-Hour
800	962.3	4-Hour
700	842.0	4-Hour

2.4.1.7 Battery Module Configuration

**Table 13: Available Battery Configurations**

Battery Module Count (Code)	2hr Megapack Rating kW/kWh	4hr Megapack Rating kW/kWh	Maximum allowable inverter configuration for 2hr/4hr
8 (EC08)	640 kW/1280 kWh	320.8 kW/1283.2 kWh	840 kVA (2hr), 420 kVA (4hr)
9 (EC09)	720 kW/1440 kWh	360.9 kW/1443.6 kWh	945 kVA (2hr), 472.5 kVA (4hr)
10 (EC10)	800 kW/1600 kWh	401 kW/1604 kWh	1050 kVA (2hr), 525 kVA (4hr)
11 (EC11)	880 kW/1760 kWh	441.1 kW/1764.4 kWh	1155 kVA (2hr), 577.5 kVA (4hr)
12 (EC12)	960 kW/1920 kWh	481.2 kW/1924.8 kWh	1260 kVA (2hr), 630 kVA (4hr)
13 (EC13)	1040 kW/2080 kWh	521.3 kW/2085.2 kWh	1365 kVA (2hr), 682.5 kVA (4hr)
14 (EC14)	1120 kW/2240 kWh	561.4 kW/2245.6 kWh	1470 kVA (2hr), 735 kVA (4hr)
15 (EC15)	1200 kW/2400 kWh	601.5 kW/2406 kWh	1575 kVA (2hr), 787.5 kVA (4hr)
16 (EC16)	1280 kW/2560 kWh	641.6 kW/2566.4 kWh	1680 kVA (2hr), 840 kVA (4hr)
17 (EC17)	<i>1360 kW/2720 kWh</i>	681.7 kW/2726.8 kWh	<i>1785 kVA (2hr), 892.5 kVA (4hr)</i>
18 (EC18)	<i>1440 kW/2880 kWh</i>	721.8 kW/2887.2 kWh	<i>1890 kVA (2hr), 945 kVA (4hr)</i>
19 (EC19)	N/A	761.9 kW/3047.6 kWh	N/A (2hr), 997.5 kVA (4hr)

*Italicized configurations are available only for CMA projects.*

## 2.5 Environmental Specification

### 2.5.1 Ambient Temperature

Megapack is capable of meeting rated power in ambient temperatures between -30°C and 50°C.

In high altitudes, at low air pressure, the cooling capability of Megapack may be reduced, but is no worse than standard altitude-temperature de-rate as specified by standard atmosphere conditions:

**Table 14: Ambient Temperature**

Altitude [m]	Maximum Ambient Temperature During Operation [°C]
0	50
1000	48.5
2000	42
3000	35.5

The storage temperature range shall be:

- -40°C to 60°C, <1 day\*
- -30°C to 60°C, <1 week
- -30°C to 45°C, <1 month, less than 95% humidity non-condensing
- -20°C to 30°C, <12 months<sup>†</sup>, less than 95% humidity non-condensing

\* At no time, including shipping, may storage temperatures exceed this range.

<sup>†</sup>The system must be at a specified level or charge prior to 12-month storage. Contact your Tesla representative for information on long-term storage.

Megapack is able to operate in relative humidity (RH) of up to 100% condensing.

### 2.5.2 Elevation

Megapack provides rated power up to 3000 m elevation above sea level in ambient temperature conditions per Section 2.5.1: Ambient Temperature.

### 2.5.3 Shock and Vibration

A fully populated Megapack passes the ASTM D4169-2016 “Table 2 Truck unit level shipping and vibration test”.

### 2.5.4 Seismic

Megapack meets the high seismic performance levels per the following standards:

- Qualification Level - IEEE 693-2018 High PL:  $ZPA=1.0$  g 5% damping; IEEE 693-2005 High PL:  $ZPA=1.0$  g 2% damping
- Certification Level - ICC-ES AC 156-2018  $S_{DS}=2.50$  g  $z/h=0$   $I_p=1.5$

### 2.5.5 Wind

If installed as a standalone enclosure, Megapack is able to withstand Category 5 hurricane sustained wind speeds of up to 157 mph (252 km/h).

### 2.5.6 Precipitation Resistance

Megapack is able to withstand a snow load limit of no less than 150 pounds/sqft on its roof or other surface.

### 2.5.7 Solar Loading

Megapack provides full rated power in all ambient temperature conditions (Section 2.5.1: Ambient Temperature), and at maximum elevation (Section 2.5.2: Elevation) under up to 1000 W/m<sup>2</sup> solar loading, in any direction.

## 2.6 Mechanical Specification

### 2.6.1 Dimensions and Mass

**Table 15: Megapack Dimensions**

	Width	Depth	Height
mm	7,267	1,659	2,522
in	286 ¼	65 ¼	99 ¼

*Disclaimer: Dimension specification subject to change.*

**Table 16: Megapack Mass**

	Maximum Mass*
kg	30,500
lb	67,250

*\* Megapack can be configured for lighter shipping mass based on project-specific requirements.*

*\*This is a maximum mass. The final product mass as-configured may be lower.*

### 2.6.2 Transportation

Megapack is a non-divisible structure. No disassembly for transport is required.

Megapack fits into an ISO-668, 40 ft high-cube dry container for shipping.

Megapack's maximum spread load is up to 4 tons per running meter in lengths, which requires the use of steel-floor containers for transportation.

## 2.6.3 Enclosure

### 2.6.3.1 Ingress Protection

Megapack has an IP rating of IP66.

The thermal system shall have a rating of IP20.

Megapack (main enclosure) is classified as NEMA 3R certification including rain and sprinkler test immunity.

### 2.6.3.2 Impact Protection

Megapack (main enclosure) has a minimum IK rating of IK09 for impact protection.

### 2.6.3.3 Salt and Fog

Megapack (main enclosure) is able to withstand over 1,000 hours of salt fog application per a C5M system.

### 2.6.3.4 Corrosion Resistance and Paint

The paint system of the Megapack enclosure is compliant with ISO 12944: C5I (industrial) and C5M (coastal) standards.

## 2.6.4 Audible Noise

The audible noise of Megapack is less than 75 dBA SPL at a 10-meter distance from any side surface of the enclosure for all variants, at full thermal system performance.

## 3 Communication and Control

The Tesla Site Controller is the main data concentrator for a Megapack site and is the single node through which the system can communicate with Tesla servers and other third-party interfaces. When connected to an external network (either over GSM or Internet), the Tesla Site Controller can be used for monitoring and controlling the system.

The Tesla Site Controller is capable of collecting data from all equipment installed onsite, including the AC meters. The Tesla Site Controller communicates to external interfaces via Modbus TCP, DNP3, or REST API.

The Tesla Site Controller has the following interfaces:

- (1) 10/100/1000 Ethernet port for third-party interface connection
- (4) 10/100/1000 Ethernet ports for meters

Refer to the *Tesla Energy Controls and Communications Manual* for details.

## Revision History

Revision	Date	Description	Initials
1.0	09-14-2020	<ul style="list-style-type: none"><li>Initial release candidate for external version of next-generation Megapack specification</li></ul>	JA
1.1	09-30-2020	<ul style="list-style-type: none"><li>First version of specification for limited external release</li></ul>	JA
1.1.1	10-02-2020	<ul style="list-style-type: none"><li>Fixed a broken cross-reference link</li></ul>	JA
1.2	11-25-2020	<ul style="list-style-type: none"><li>Rating update</li></ul>	JA
1.3	02-02-2021	<ul style="list-style-type: none"><li>Rating update</li></ul>	JA
1.4	02-23-2021	<ul style="list-style-type: none"><li>Updated product mass projection</li><li>Updated product RTE</li></ul>	JA
1.4.1	03-05-2021	<ul style="list-style-type: none"><li>Updated product long-term RTE</li></ul>	JA
1.5	03-30-2021	<ul style="list-style-type: none"><li>Slightly increased unit width</li><li>2hr and 4hr ratings update</li></ul>	JA
1.51	04-06-2021	<ul style="list-style-type: none"><li>Product name is now officially Megapack 2</li></ul>	JA
1.6	04-16-2021	<ul style="list-style-type: none"><li>Ratings update</li><li>Mass update</li></ul>	JA
1.6.1	05-04-2021	<ul style="list-style-type: none"><li>Ratings update</li><li>New language in inverter section</li><li>Battery module depopulation</li></ul>	JA



**Schedule 3**  
**Manufacturer's Limited Warranty**

[See attached]





## MEGAPACK 2 SYSTEM MANUFACTURER'S LIMITED WARRANTY (USA)

Effective Date: April 30, 2021

Applies to: Any Tesla Megapack 2 battery energy storage system that is supplied by Tesla, Inc. ("Tesla") or its affiliate Tesla Energy Operations, Inc., installed in the United States of America and to which this Limited Warranty is expressed to apply in the original sales contract (the "System Purchase Agreement" and such Megapack system, the "System"), for the benefit of the original buyer or any subsequent owner (in each case, the "Buyer").

1. For purposes of this Manufacturer's Limited Warranty:

"**Aggregate Discharge Throughput**" has the meaning set forth in Exhibit 1.

"**Claim**" means a claim meeting the requirements described in Section 4(a).

"**Commissioning Date**" means the earlier of (a) the date the System is commissioned or (b) the date falling 90 days after the Original Sale Date.

"**Maximum Throughput**" means, in the first table in Exhibit 1, the Aggregate Discharge Throughput Limitation indicated for Warranty Year 15.

"**Original Sale Date**" means the date that risk of loss of the System transferred to the original buyer under the System Purchase Agreement.

"**Specifications**" means the "Megapack System Specifications" referenced in the System Purchase Agreement.

"**System Price**" means the purchase price paid to Tesla for the System, as shown in the System Purchase Agreement. If you did not purchase the System direct from Tesla, you should contact Tesla to confirm the System Price.

"**Warranty Year**" means each consecutive 365 day period commencing on the Commissioning Date and each anniversary of the Commissioning Date.

2. Limited Warranty. Tesla warrants that:

- (a) as of the Original Sale Date, the System will conform to the Specifications, and
- (b) during the Limited Warranty Period that the System (and any System components repaired or replaced by Tesla, its affiliates, subcontractors (when acting on behalf of Tesla) or a Tesla-approved technician or service provider acting within the scope of such approval ("**Tesla Subcontractor**"), shall:
  - (i) be free from Defects, where "**Defect**" means that any aspect of the design, engineering, fabrication, manufacture or workmanship of the System or component thereof is not in accordance with the Specifications; and
  - (ii) retain energy capacity in an amount equal to or greater than the "**Minimum Energy Retention Percentage**" as further set forth in Exhibit 1 (such energy capacity warranty, the "**Energy Retention Warranty**").

The "**Limited Warranty Period**" commences on the Original Sale Date and expires fifteen (15) Warranty Years after the Commissioning Date; provided that notwithstanding anything to the contrary, if the Aggregate Discharge Throughput exceeds the Maximum Throughput at any time, the Limited Warranty Period shall expire at such time.

3. No Extensions. Under no circumstance shall the Limited Warranty Period be extended, including with respect to any System components repaired or replaced by Tesla pursuant to Section 4 of this Limited Warranty.

4. Claims Process.

- (a) A "**Claim**" under this Limited Warranty must:
  - (i) be submitted by Buyer to Tesla at the email address identified below;
  - (ii) be accompanied by proof of the original purchase of the System and any subsequent

transfers of ownership of the System; and

- (iii) include a description of any alleged defect or energy capacity shortfall, as well as the relevant System's serial number, Original Sale Date and Commissioning Date.
- (b) If Buyer makes a Claim pursuant to the Energy Retention Warranty, Tesla shall be permitted to perform one or more capacity tests in accordance with Tesla's standard practices upon twenty-four (24) hours' prior written notice, to determine if the applicable Minimum Energy Retention Percentage set forth in Exhibit 1 has been achieved.
- (c) Tesla shall notify the Buyer as soon as reasonably practical if it disputes or denies a Claim and shall provide its reasons for such dispute or denial.
- (d) Prior to returning any System or component to Tesla, Buyer must obtain from Tesla a return merchandise authorization number, through the Claim process set forth in this Section 4.

5. Remedies.

- (a) If a valid Claim is submitted in accordance with Section 4 of this Limited Warranty, and is not disputed by Tesla, Tesla shall in its sole discretion:
  - (i) repair or replace the defective System or component within a reasonable period after Tesla's validation of the claim; and be responsible for the costs of disassembly, transportation, re-assembly and re-installation of the System or defective component, as applicable; or
  - (ii) where permitted in Exhibit 2, pay Energy Shortfall Damages as defined in Exhibit 2. Tesla shall inform the System owner of its remedy election in writing within ten (10) days after Tesla's validation of the Claim.
- (b) For the avoidance of doubt, every Defect that occurs, including any recurring Defect during the Limited Warranty Period, shall be eligible for the remedies contained in this Section 5, in each case subject to and in accordance with this Limited Warranty.

6. Items Not Covered. This Limited Warranty does not cover claims to the extent arising from

- (a) normal wear and tear, oxidation, deterioration, or superficial imperfections, dents or marks that do not impact System performance;
- (b) vibration that does not impact System performance;
- (c) damage that occurs during shipping or transportation (other than shipping or transportation by or on behalf of Tesla);
- (d) any damage or failures caused by operating the System in contravention of the Specifications;
- (e) any other damage or failures not caused by Tesla or a Tesla Subcontractor or arising out of the manufacture of the System or component by Tesla or a Tesla Subcontractor, including damage or failures resulting from
  - (i) the operation, maintenance or repair of the System by the user or any third party other than a Tesla Subcontractor;
  - (ii) a failure to perform (or cause to be performed) maintenance of the System required under the applicable Tesla preventative maintenance manual; or
  - (iii) Buyer's failure to connect and begin use and operation of the System within the time period specified in the Transportation and Storage Guidelines, or Buyer's disconnection of the System for a period of 180 days or more.

7. Remote Monitoring. Tesla's obligation to remedy Defects under Section 5 shall be at the Buyer's cost to the extent that Tesla was unable to detect, prevent or limit the impact of such Defect because Tesla was unable to remotely access or monitor the System or data generated by the System, due to (a) the Buyer's failure or refusal to establish or maintain such remote connection; or (b) security measures established by Buyer that restrict Tesla's access to the System or data generated by the System.

8. Exclusive Remedies. This Limited Warranty is provided voluntarily and does not constitute an independent guarantee. **TO THE FULLEST EXTENT PERMITTED BY LAW, THIS LIMITED WARRANTY AND THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE OF ANY OTHER WARRANTIES OR REMEDIES WITH RESPECT TO THE SYSTEM, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES AGAINST LATENT OR HIDDEN DEFECTS), ALL OF WHICH ARE EXPRESSLY DISCLAIMED. TO THE EXTENT THAT SUCH WARRANTIES CANNOT BE DISCLAIMED, TESLA LIMITS THE DURATION OF AND REMEDIES FOR SUCH WARRANTIES TO THE DURATIONS AND REMEDIES DESCRIBED HEREIN. THIS LIMITED WARRANTY DOES NOT FORECLOSE BUYER FROM PURSUING ANY RIGHTS AND REMEDIES THAT MAY BE AVAILABLE TO IT UNDER THE SYSTEM PURCHASE AGREEMENT AND ANY SERVICES AGREEMENT IN WHICH TESLA IS THE SYSTEM'S MAINTENANCE SERVICES PROVIDER WITH RESPECT TO MATTERS NOT COVERED BY THIS LIMITED WARRANTY.**

9. Limitation of Liability. **TESLA WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS LIMITED WARRANTY, REGARDLESS OF THE FORM OF ACTION AND REGARDLESS OF WHETHER TESLA HAS BEEN INFORMED OF, OR MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL TESLA'S LIABILITY ARISING OUT OF OR RELATED TO WARRANTY CLAIMS WITH RESPECT TO AN INDIVIDUAL SYSTEM EXCEED THE SYSTEM PRICE, AND TESLA AGREES THAT SUCH LIABILITY AMOUNT IS IN ADDITION TO ITS LIABILITY EXPOSURE UNDER THE SYSTEM PURCHASE AGREEMENT.**

10. Limitation on Use. **THE SYSTEM IS NOT INTENDED FOR USE AS A PRIMARY OR BACK-UP POWER SOURCE FOR LIFE-SUPPORT SYSTEMS OR OTHER MEDICAL EQUIPMENT. TESLA DISCLAIMS ANY LIABILITY ARISING OUT OF ANY SUCH USE OF THE SYSTEM, RESERVES THE RIGHT TO REFUSE TO SERVICE THE SYSTEM IF USED FOR THESE PURPOSES AND DISCLAIMS ANY LIABILITY ARISING OUT OF TESLA'S SERVICE OF, OR REFUSAL TO SERVICE, ANY SUCH SYSTEM.**

11. Governing Law; Dispute Resolution; Venue. This Limited Warranty will be governed by and interpreted in accordance with the laws of the State of California. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Limited Warranty. Any dispute arising from or relating to this Limited Warranty shall first be promptly referred to the Parties' senior level management for resolution. If the dispute is not resolved within 20 days after referral, then either party may take such dispute to binding arbitration in accordance with the then-current Streamlined Arbitration Rules of the Judicial Arbitration and Mediation Services ("JAMS"). The existence, content and result of the arbitration shall be held in confidence by the Parties, their representatives, any other participants and the arbitrator. The arbitration will be conducted by a single arbitrator selected by agreement of the Parties or, failing such agreement, appointed in accordance with the JAMS Rules. The arbitration shall be conducted in English and in San Francisco, California. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in its discretion, award reasonable costs and fees to the prevailing party. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.

## Exhibit 1

### Energy Retention Warranty

#### Years 1 through 15 following Commissioning Date

Per Section 2(b)(ii) of the Manufacturer's Limited Warranty, Tesla warrants that during the Warranty Year specified below, as applicable, the Actual Energy Retention Percentage shall be equal to or greater than the applicable "Minimum Energy Retention Percentage" below, until the below periods have expired or (if earlier) the Aggregate Discharge Throughput exceeds the below "Aggregate Discharge Throughput Limitation".

For purposes of this Exhibit 1:

**Actual Energy Retention Percentage** means the energy discharged by the System as a whole (as measured at the AC output of the inverter(s)) at Standard Test Conditions, expressed as a percentage of the Nameplate Energy Capacity;

**Nameplate Energy Capacity** means the kWh energy capacity of the System set out in the System Purchase Agreement; and

**Aggregate Discharge Throughput** means the aggregate discharge throughput of the System (at the inverter AC output(s)) in kWh per kWh of Nameplate Energy Capacity.

<b>Period (Warranty Years following Commissioning Date)</b>	<b>Aggregate Discharge Throughput Limitation (2 Hour Systems)</b>	<b>Minimum Energy Retention Percentage (2 Hour Systems)</b>	<b>Aggregate Discharge Throughput Limitation (4 Hour Systems)</b>	<b>Minimum Energy Retention Percentage (4 Hour Systems)</b>
1	349	93.0%	351	94.0%
2	678	88.0%	686	90.0%
3	990	84.0%	1,008	87.0%
4	1,290	81.0%	1,319	84.0%
5	1,584	80.0%	1,622	82.5%
6	1,873	79.0%	1,922	82.0%
7	2,160	78.0%	2,220	81.5%
8	2,442	77.0%	2,517	81.0%
9	2,721	76.0%	2,811	80.5%
10	2,996	75.0%	3,104	80.0%
11	3,267	73.5%	3,391	78.0%
12	3,532	72.0%	3,672	76.0%
13	3,791	70.5%	3,945	74.0%
14	4,045	69.0%	4,211	72.0%
15	4,294	67.5%	4,449	70.0%

#### Standard Test Conditions

When measuring the Actual Energy Retention Percentage, (i) the System shall be fully charged to 100% state of energy and then fully and continuously discharged at Nominal Power (as defined in the Specifications) to 0% state of energy, (ii) the ambient temperature at the System location and the initial temperature of all battery pods is 25°C ±5°C, and (iii) the initial temperature of all battery pods when the System starts both charging and discharging shall be 25°C ±5°C.

## Exhibit 2

### Energy Shortfall Damages

#### Circumstances where Payment of Energy Shortfall Damages is Permitted

At Tesla's option, Tesla may remedy any claims under Section 2(b) of the Limited Warranty by paying Energy Shortfall Damages, unless (a) the Minimum Energy Retention Percentage for the Warranty Year when the claim is made (as set out in Exhibit 1) exceeds the Actual Energy Retention Percentage at the time of the claim by more than five (5) percentage points<sup>1</sup>; or (b) the cumulative Energy Shortfall Damages paid by Tesla under the Limited Warranty, equals or exceeds five percent (5%) of the System Price. If section (a) or (b) above applies, Tesla must repair or replace the System or component under Section 5(a)(i) of the Limited Warranty.

#### Calculation of Energy Shortfall Damages

1. The "Energy Shortfall Damages" payable in respect of a claim shall be calculated as follows:

$$\left[ \frac{[MERP (Warranty Year n) - AERP (Warranty Year n)] \times 365}{\sum_1^n MERP (Warranty Year i) \times 365 \text{ days}} \right] \times \text{System Price}$$

where:

- n* = Number of Warranty Years elapsed since the Commissioning Date, rounded up to the nearest Warranty Year.
- MERP* = For any Warranty Year, the Minimum Energy Retention Percentage set out in Exhibit 1 for that Warranty Year.
- AERP* = For any Warranty Year, the Actual Energy Retention Percentage, as defined in Exhibit 1, for that Warranty Year.

**Example:** The System Price was US\$1,000,000. In Warranty Year 4, the MERP for a 4-hour System is 84%, the AERP is 81%, and Tesla has not previously paid any Energy Shortfall Damages. Tesla may elect to pay Energy Shortfall Damages, and the amount of those Energy Shortfall Damages would be calculated as follows:

$$\frac{[84\% - 81\%] \times 365}{[94\% + 90\% + 87\% + 84\%] \times 365} \times \$1,000,000 = \$8,451$$

If the System was 2MWh, this \$8,451 amount is equivalent to \$0.42 for each kWh of throughput that was "lost" in Contract Year 4 as a result of the AERP declining below the MERP.

2. If Tesla elects to pay Energy Shortfall Damages in respect of more than one claim in the same Warranty Year, then the Energy Shortfall Damages payable by Tesla in respect of the second (and each subsequent) claim in such year shall be calculated as [the Energy Shortfall Damages payable by Tesla in respect of the second (or subsequent) claim] minus [the sum of all Energy Shortfall Damages already paid by Tesla in the same Warranty Year].

#### Payment of Energy Shortfall Damages

Tesla shall pay any Energy Shortfall Damages within thirty (30) days of its election to do so under Section 5(a)(ii) of the Limited Warranty, in the same currency as the System Purchase Agreement.

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<sup>1</sup> This sentence refers to absolute values. For example, if the Minimum Energy Retention Percentage is 73%, then Tesla would not have the option to pay Energy Shortfall Damages if the Actual Energy Retention Percentage is below 68%.

Schedule 4  
**Buyer End User Statement**

Intentionally Omitted

**Schedule 5**  
**Microgrid Functional Specification**

Intentionally Omitted





Schedule 6  
**Microgrid Scope of Work**

Intentionally Omitted

