

## Megapack Order Agreement

Thanks for ordering Tesla's Megapack. This Agreement describes (1) the equipment you are agreeing to purchase through your order (and its purchase price) and (2) the terms you are agreeing to as part of this purchase.

1. Your Order and Order Deposit. By placing your order and submitting a deposit with your order, you have agreed to purchase the selected number of Tesla Megapack battery storage systems at the price described in Section 2. The Megapack system you have agreed to purchase is described in your order ("Your Megapack System"). The deposit you submitted with your order (the "Order Deposit") is not refundable except under the specific circumstances described in Sections 6 and 15 below.
2. Your Price. The price for the purchase and installation of Your Megapack System (not including taxes) is listed in your order as the "Price".
3. Order Payment. You agree to pay the Price plus applicable taxes within 30 days after you receive Tesla's invoice. We will apply your Order Deposit toward your Price. You can cancel this Agreement by notifying us in writing before you pay the full Price and in return we can keep whatever payment(s) you have made towards the Price.
4. Scope of Work. Tesla will design Your Megapack System and install it at the Site Location listed in your order (the "Site"), and then test it to make sure it's working properly. The work required for Tesla to perform the design, installation and testing is called the "Scope of Work" and is attached as Exhibit 1. You agree to cooperate with us as we design, install and test Your Megapack System.
5. Diligence Period. Tesla will work with you for 60 days following your order (the "Diligence Period") to provide a site-specific preliminary design, delivery schedule, identify any interconnection requirements and update the Scope of Work (if needed), as described in Section 6.
6. Changes. During the Diligence Period and as we do the work described in the Scope of Work, we might discover conditions that we could not have anticipated and that affect our ability to design, install and test Your Megapack System. If that happens, we might adjust the Scope of Work, the Price, and/or our work schedule. You agree that we are allowed to make these changes if they are reasonable; but we agree to give you the chance to review and accept or reject any changes beforehand. Specifically, we will send you a description of the changes in a "Change Order". You will have 10 days to review the Change Order after you receive it. You can either approve the Change Order in that time or reject it. (If you do not send us a rejection in writing within 10 days of receiving it, you agree that we can assume you have approved it.) If you reject a Change Order, we can terminate this Agreement. In addition, if we can't design or install Your Megapack System in a way that complies with applicable laws and regulations, or if conditions at Site don't support installation of Your Megapack System, we can terminate this Agreement and will refund amounts paid by you. Approved Change Orders are part of this Agreement.
7. Installation. We will contact you to schedule installation of Your Megapack System. Tesla will install Your Megapack System ourselves or through a subcontractor according to our standard practices. You agree to give Tesla and our subcontractors access to the Site so we can install Your Megapack System.
8. Failure to Perform. If you think Tesla isn't satisfying its obligations under this Agreement, then you have to notify us in writing about it. Similarly, Tesla will notify you in writing if we think you aren't satisfying your obligations. Whoever is notified of not meeting its obligations will have 30 days after receiving that notice to correct the issue. If not, whoever gave the notice can terminate this Agreement.
  - In addition, if Tesla notifies you that you have failed to pay the Price, Tesla can suspend our work.
  - If you terminate this Agreement for Tesla's failure to perform, we will return any payment(s) you've made toward the Price.
  - If we terminate this Agreement for your failure to perform, we can keep any payment(s) that you have made towards the Price and may take back all components of Your Megapack System delivered to you through termination.
9. Limited Warranties. Tesla agrees to cover Your Megapack System with limited warranties for the equipment and for Tesla's workmanship. The equipment warranty is described in a separate document called the "Megapack Manufacturer's Limited Warranty". (Even though it is a separate document, it is considered part of this agreement.) In addition, we agree to provide a warranty for Tesla's workmanship that promises (1) our installation workmanship will be free from defects for 2 years from the date Your Megapack System is installed; and (2) we will not damage the Site. If you notify us that we have broken any of these promises, we will repair the defective work or damage (or have someone repair it) at our cost, which will be your only remedy. Tesla's equipment and workmanship warranties are limited, and do not cover any defect or damage caused by events beyond our reasonable control or by your misuse or negligence. Our warranties also do not cover any material or equipment connected to Your Megapack System that we did not install. You understand and agree that Tesla is not providing any other warranties in connection with this Agreement even if those other warranties are express or implied by any law. The Megapack Manufacturer's Limited Warranty and other

Tesla manuals for Your Megapack System are available upon request and will be sent to you after you place your order.

10. Confidentiality. You agree to keep this Agreement confidential, as well as any non-public, confidential or proprietary information or documentation provided to you by Tesla in connection with this agreement, including Tesla specifications, manuals, and similar documents. You also agree not to advertise or issue any public announcement about this Agreement or use our 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 Tesla's written consent. You also cannot add any branding to Your Megapack System.
11. Remote Monitoring and Firmware Upgrades. You agree that Tesla can access Your Megapack System remotely to monitor its performance, perform diagnostics and upgrade firmware. This monitoring requires a high speed internet line, which you agree to provide at your own cost. We are not responsible for any issues arising from your failure to provide an internet connection. The Tesla Energy Communications and Controls Manual, which will be provided to you before we complete installation, governs who owns what data that is produced by Your Megapack System. (Even though the Tesla Energy Communications and Controls Manual is a separate document, it is considered part of this Agreement.)
12. Buyer Data. You grant to Tesla an irrevocable, perpetual, worldwide, royalty-free license to use any data owned by you and obtained by Tesla via the remote monitoring of Your Megapack System or otherwise provided by you to Tesla in connection with this Agreement, for Tesla (i) to exercise its rights and perform its obligations under this Agreement, the Megapack Manufacturer's Limited Warranty, and any maintenance services agreement between the parties regarding Your Megapack System, (ii) to improve Tesla's products and services, and (iii) to aggregate with other data. We can disclose data relating to Your Megapack System publicly if neither you nor the owner or long-term occupant at the Site could reasonably be identified from the publicly disclosed information.
13. Tesla Intellectual Property. Tesla will remain the exclusive owner of any and all patents, trademarks, copyrights, trade secrets and any other intellectual or proprietary rights ("Intellectual Property Rights") associated with Your Megapack System (including any embedded software, the Megapack Manufacturer's Limited Warranty, and any Tesla deliverables and manuals).
  - Tesla agrees to give you a limited, non-exclusive, license to use any Tesla materials provided to you (such as manuals, design documents, software embedded in Your Megapack System, protocols, etc.), solely in connection with the use, ownership, maintenance, repair and operation of Your Megapack System.
  - You cannot sublicense this license to anyone else except someone you've hired to work with Your Megapack System.
  - You also cannot transfer this license to anyone else except to a new owner of Your Megapack System.
  - Except for what is said in this Section, you agree that no license or other right to Tesla's Intellectual Property Rights is granted or implied in any way.
14. Limitation of Liability. You agree that each of your and Tesla's total liability for all damages of any kind arising out of this Agreement will not exceed the Price. You also agree that neither you or Tesla is liable for any incidental, special or consequential damages arising out of this Agreement.
15. Discontinuation. You understand and agree that Tesla can choose at any time to discontinue a product, feature or option related to Your Megapack System and that, if we do so, we can provide a comparable product, feature or option, or terminate this Agreement before installation of Your Megapack System and refund amounts paid by you.
16. Compliance with Law; Governing Law; Arbitration. We both agree to comply with all applicable laws and regulations in connection with this Agreement. This Agreement is governed by the laws of the State of California. Neither of us is bound by any terms relating to Your Megapack System that are not contained in this Agreement. We both also agree to promptly notify the other's senior level management if there is any dispute relating to this Agreement and to try to resolve the dispute in good faith. If we are unable to resolve a dispute within 20 days after that notice is given, then either of us can take the dispute to arbitration through Judicial Arbitration and Mediation Services ("JAMS") according to JAMS Streamlined Arbitration Rules. The existence, content and result of the arbitration will be confidential. The arbitration will be conducted by a single arbitrator in English and in San Francisco, California, unless otherwise agreed by Tesla. We will each bear our own expenses in the arbitration and will share equally the costs of the arbitration, unless the arbitrator assigns costs to one of us. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.
17. Notices. All notices under this Agreement must be in writing and must be sent via email, or express and/or certified mail, to the contacts identified in the Scope of Work.
18. Relationship of Parties; Assignment. This Agreement does not create a joint venture, partnership or agency relationship between us. Each of us can assign this Agreement as collateral in connection with our financing activities.
19. Authority. By submitting your order, you're representing that you have the authority to bind the person or company identified in the order as being the buyer and you agree that Tesla may rely on that representation.

**Exhibit 1**  
**Scope of Work**

**1. Scope of Work**

Tesla's Scope of Work includes the supply and installation of Your Megapack System at the Site, the low voltage connection from the Megapack to the medium voltage transformers and installation of the Tesla site controller and field network enclosures. Tesla's Scope of Work ends at the medium voltage transformer (or existing building electrical system, as appropriate). Once we have completed design of Your Megapack System, we will review it with you. Tesla will also perform testing, startup and commissioning of Your Megapack System utilizing fully trained startup personnel and/or qualified supplier personnel.

**2. What we provide**

Tesla will supply the following with respect to Your Megapack System:

- the quantity of Megapacks identified in your order,
- the Tesla site controller,
- structural and electrical engineering design packages for Your Megapack System at 60% and 90% design completion and when the design is issued for construction,
- field communication enclosures, if Tesla believes they are required,
- the Megapack meter,
- low voltage raceways and conductors, including terminations (which can be aluminum or copper, at Tesla's discretion),
- medium voltage transformers, as applicable,
- Megapack area lighting (2 foot-candles average at Your Megapack System's transformer area),
- grounding system as required by local code,
- ministerial permitting for the performance of Tesla's scope of work,
- stamping and registration of construction design documents for Your Megapack System by registered professional engineers per applicable state laws, and
- copies of the "as-builts" design documents and with other customary documentation as required for Your Megapack System to be capable of operating safely.

**3. Price Assumptions**

The Price assumes the following are true with respect to the installation of Your Megapack System:

- You have control of the Site where Your Megapack System will be installed and where Tesla will perform its scope of work,
- secondary containment is not required for any transformers,
- Tesla can spread excess dirt from excavation on-Site, and
- Tesla can use native dirt for construction purposes (backfill, etc.), will not need to import or use engineered fill, and unused excavated dirt can be spread or stockpiled at the Site.

**4. What you provide**

You will provide the following in connection with Tesla's performance:

- a final American Land Title Association survey, signed and sealed, certifying Tesla to use for our design process,
- any utility upgrades required to interconnect Your Megapack System to your local utility's electric power grid,
- temporary/construction power feed and water in support of Tesla's installation of Your Megapack System,
- discretionary permitting and associated fees associated with the installation of Your Megapack System,
- environmental and discretionary permits and payment of any accompanying permitting fees,
- biological and environmental surveys and/or studies,
- land acquisitions, entitlements, plat preparation and approvals,
- excavation/compaction of dirt outside of the installation area,
- any improvements to the Site required for Tesla to access the Site and install Your Megapack System,
- administration of independent system operator (or similar) certification processes for ancillary services/market

participation,

- removal/demolition of existing facilities and underground services clearing,
- reroute of existing underground services,
- management or remediation of hazardous soils or other hazardous materials,
- walls and/or other sound attenuation measures required by law, and
- landscaping and irrigation.

## **5. Exclusions from Tesla's Scope of Work**

Tesla's Scope of Work does not include the following:

- noise studies, conditional use permits, and Subdivision/Replat approval and encroachment permits. Excludes all yet-unknown conditional use permit conditions of approvals that would apply to Your Megapack System as a result of the authority having jurisdiction's discretionary approval,
- biological, cultural, archaeological, and tribal construction monitoring. If such monitoring introduces costs due to stop-work orders, design changes, resulting delays, need to demobilize and remobilize, and/or other unforeseen circumstances, Tesla shall be entitled to be compensated for resulting additional costs,
- fire suppression system,
- lightning protection system design and installation,
- unforeseen underground conditions,
- permanent security systems, and
- operations and maintenance building or other similar structures.

## **6. Installation of Your Megapack System**

While Tesla is installing Your Megapack System, Tesla will provide safety training for any authorized personnel that come onto that portion of the Site. Safety is of the utmost importance to Tesla and a high level of safety vigilance with proactive documented preventative processes such as job safety assessments and safety walks will be implemented.

Tesla's installation-related Scope of Work generally occurs in the following order:

1. mobilization, survey and site stakeout, including opaque fencing and security at the Site,
2. civil works for grading, drainage, temporary construction stormwater pollution prevention,
3. civil work for installation of Your Megapack System,
4. installation of Megapack(s),
5. installation of transformer(s), as applicable,
6. installation of site control system,
7. cable pulling and terminations for electrical and communications/control systems within the Megapack area, and
8. startup and testing of Your Megapack System.