

data regarding System usage.

6. **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 AND IN LIEU OF ANY OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION, 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.**

7. **Limitation of Liability.** **IN NO EVENT WILL TESLA 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 A PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES. . IN NO EVENT WILL TESLA'S LIABILITY ARISING OUT OF OR RELATED TO LIMITED WARRANTY CLAIMS WITH RESPECT TO AN INDIVIDUAL SYSTEM EXCEED THE SYSTEM PRICE⁴. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY, OR MAY ONLY APPLY TO A LIMITED EXTENT.**

8. **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.**

9. **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 senior level management of Tesla and the System owner 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 Tesla and the System owner, their representatives, any other participants and the arbitrator. The arbitration will be conducted by a single arbitrator selected by agreement of Tesla and the System owner or, failing such agreement, appointed in accordance with the JAMS rules. The arbitration shall be conducted in English and in San Francisco, California. Tesla and the System owner will each 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.

10. **Claims Process.** Claims under this Limited Warranty must be made by notifying Tesla at the email address identified below. For a claim to be processed, proof of the original purchase of the System and any subsequent transfers of ownership of the System need to accompany the claim. The claim must 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. If the claim is contested by Tesla, it shall be the System owner's responsibility to show that the defect or energy capacity shortfall is covered by this Limited Warranty and that none of the exclusions in this Limited Warranty apply. In the case of energy capacity shortfall claims, Tesla shall be permitted to perform one or more Standard Capacity Tests upon 24 hours' prior written notice to determine if the applicable Minimum Energy Retention Percentage set forth in Exhibit 1 has been achieved. Prior to returning any System or component to Tesla, a Return Merchandise Authorization number is required. This may be obtained by contacting Tesla at the email address, address or telephone number identified below.

⁴ **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.

Exhibit 1

Limited Warranty Period

For Powerpack Systems containing Powerpack Units with Part No. 1490025-00-A

Years 1 through 10 following Commissioning Date

The System and any System components repaired or replaced by Tesla pursuant to Section 3 of the Limited Warranty shall be free from defects in design, workmanship and materials during years 1 through 10 following the Commissioning Date¹⁴ or (if earlier) until the Aggregate Discharge Throughput exceeds 3,104kWh per kWh of Nameplate Energy Capacity, and the Actual Energy Retention Percentage¹⁵ 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 Throughput¹⁶ exceeds the below “Aggregate Discharge Throughput Limitation”.

Period (Warranty Years¹⁷ following Commissioning Date)	Aggregate Discharge Throughput Limitation	Minimum Energy Retention Percentage
1	351	94.0%
2	686	90.0%
3	1,008	87.0%
4	1,319	84.0%
5	1,622	82.5%
6	1,922	82.0%
7	2,220	81.5%
8	2,517	81.0%
9	2,811	80.5%
10	3,104	80.0%

Extension to Years 11-15 following Commissioning Date, for low utilization scenario

This section only applies if the Aggregate Discharge Throughput during the first 10 years following the Commissioning Date is equal to or less than 3,104kWh per kWh of Nameplate Energy Capacity¹⁸. The System and any System components repaired or replaced by Tesla pursuant to Section 3 of the Limited Warranty shall be free from defects in design, workmanship during years 11 through 15 following the Commissioning Date or (if earlier) until the Aggregate Discharge Throughput exceeds 4,469kWh per kWh of Nameplate Energy Capacity. 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”.

Under no circumstances shall the Limited Warranty term for the System or any System components repaired or replaced by Tesla pursuant to the Limited Warranty exceed the Limited Warranty Periods stated in this Exhibit 1.

¹⁴ **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.

¹⁵ **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.

¹⁶ **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.

¹⁷ **Warranty Year** means each consecutive 365 day period commencing on the Commissioning Date and each anniversary of the Commissioning Date.

¹⁸ **Nameplate Energy Capacity** means the kWh energy capacity of the System set out in the System Purchase Agreement.

Period (Warranty Years following Commissioning Date)	Aggregate Discharge Throughput Limitation	Minimum Energy Retention Percentage
11	3,391	78.0%
12	3,672	76.0%
13	3,945	74.0%
14	4,211	72.0%
15	4,469	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

Tesla may remedy any claims under Section 1(b) of this Limited Warranty by paying Energy Shortfall Damages unless (a) the Minimum Energy Retention Percentage for the Warranty Year in which 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 5 percentage points¹⁹ or (b) the amount of the Energy Shortfall Damages, when aggregated with any previous Energy Shortfall Damages paid by Tesla under this Limited Warranty, exceeds 5% of the System Price. If paragraph (a) or (b) above applies to a claim, Tesla must repair or replace the System or component under Section 3(a) or 3(b) of the Limited Warranty.

Calculation of Energy Shortfall Damages

1. The “**Energy Shortfall Damages**” payable in respect of a Limited Warranty claim shall be calculated as follows:

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

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 for that Warranty Year, as set out in Exhibit 1.
- $AERP$ = For any Warranty Year, the Actual Energy Retention Percentage (as defined in Exhibit 1) for that Warranty Year.
- D = 365.

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 never 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 \$8451 amount is equivalent to \$0.42 for each kWh of throughput that was “lost” in Contract Year 4 as a result of the AERP being lower than the MERP.

2. If Tesla elects to pay Energy Shortfall Damages in respect of more than one claim made by System owner in the same Warranty Year, then the Energy Shortfall Damages payable by Tesla in respect of the second (and each subsequent) claim 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 paid by Tesla in respect of Limited Warranty claims made by System owner in the same Warranty Year*].

Payment of Energy Shortfall Damages

Tesla shall pay any Energy Shortfall Damages to System owner within 30 days of its election to do so under Section 3 of this Limited Warranty, in the same currency as the System Price was denominated in the System Purchase Agreement.

¹⁹ This subsection refers to absolute values. For example, if the Minimum Energy Retention Percentage is 73%, then the Actual Energy Retention Percentage would have to be less than 68% in order for this subsection to apply.