

O'CONNOR LAW GROUP, P.C.

Mark O'Connor, Esq. (SBN 157680)
Larry S. Castruita, Esq. (SBN 279263)
384 Forest Ave., Suite 17
Laguna Beach, CA 92651
Tel: (949) 494-9090 | Email: hello@teamolg.com

WIRTZ LAW APC

Richard M. Wirtz, Esq. (SBN 137812)
4370 La Jolla Village Dr., Suite 800
San Diego, CA 92122
Tel: (858) 259-5009 | Email: rwirtz@wirtzlaw.com

REALLAW APC

Michael J. Hassen, Esq. (SBN 124823)
1981 N. Broadway, Suite 280
Walnut Creek, CA 94596
Tel: (956) 359-7500 | Email: mjhassen@reallaw.us

Attorneys for Plaintiff: DANIEL AARON HOROWITZ

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DANIEL AARON HOROWITZ,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

TESLA MOTORS, INC., a Delaware
Corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- 1. BREACH OF CONTRACT;**
- 2. VIOLATION OF THE UNFAIR COMPETITION LAW (California Business & Professions Code §17200);**
- 3. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
- 4. VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT (California Civil Code §1760, et seq.) (Injunctive Relief)**

DEMAND FOR JURY TRIAL

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CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff DANIEL AARON HOROWITZ brings this Class Action Complaint and Demand for Jury Trial and alleges as follows against Defendant TESLA MOTORS, INC., a Delaware Corporation. Plaintiff, for this Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and as to all other matters upon information and belief, including investigation conducted by his counsel.

DEMAND FOR JURY TRIAL

1. Plaintiff on behalf of himself and other similarly situated, hereby demands trial by jury in this action pursuant to Rule 38 of the Federal Rules of Civil Procedure.

THE PARTIES

2. Plaintiff DANIEL AARON HOROWITZ (hereinafter "[Mr.] Horowitz" or "Plaintiff") is an individual residing in Lafayette, County of Contra Costa, and State of California.

3. Defendant TESLA MOTORS, INC. (hereinafter "Tesla" or "Defendant") is and at all relevant times was, a Delaware Corporation registered to do business in the State of California with its registered office in the City of Fremont, County of Alameda, and State of California.

4. Additionally, TESLA engages in the marketing, supplying, distribution and retail sales of automobiles to the public at large through both its website a broad network of sales facilities across the United States.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction of this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), codified in pertinent part at 28 U.S.C. §1332(d)(2), which provides for original jurisdiction in the federal courts over any class action in which a member of the plaintiff class is a citizen of a State different from the State citizenship of any defendant, and the amount in controversy exceeds the sum of \$5,000,000.00 exclusive of interests and costs. Here, there is an aggregate amount in controversy exceeding \$5,000,000.00 exclusive of interest and

1 costs and there is minimal diversity between Plaintiff and Defendant. Additionally, this Court also
2 has supplemental jurisdiction over the set forth state law claims pursuant to 28 U.S.C. §1367.

3 6. This Court has personal jurisdiction over Tesla because Tesla conducts substantial
4 business in this judicial district, thereby purposely and intentionally availing itself of the benefits
5 and protections of this district when placing motor vehicles into the stream of commerce within
6 California and the United States. Personal jurisdiction over Tesla is foreseeable, fair, and proper.

7 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391. Tesla transacts
8 substantial business in this district with regularity and it is subject to personal jurisdiction in this
9 district. Additionally, Tesla advertises and markets its products in this district, and has received
10 substantial revenue and profits from its sales and leasing of motor vehicles in this district. Thus, a
11 substantial part of the events and/or omissions giving rise to the present claims occurred in within
12 this district. Therefore, venue is proper.

13 8. All acts of corporate employees as alleged were authorized or ratified by an officer,
14 director, or managing agent of the corporate employer.

15
16 **COMMON FACTUAL ALLEGATIONS**

17 9. Tesla is manufacturer and direct to consumer retail seller of electric vehicles
18 throughout the country. Tesla is "vertically integrated"; meaning it, unlike traditional
19 manufacturers of motor vehicles does not sell through separate entities (dealerships) but rather acts
20 as its own distributor and retail sales arm. It has only 4 base model vehicles; the S, 3, X and Y.
21 Each has various options or configurations of features such as interior colors, trim and so forth.

22 10. Tesla, by virtue of being "vertically integrated" knows exactly how many vehicles
23 are being ordered by consumers and the exact composition of each individual vehicle as ordered
24 by each consumer. Thus, Tesla can plan its manufacturing, the features of each individual vehicle
25 and when and if certain features or "options" will be available to each individual who orders their
26 car. In this way Tesla will always know and be capable to inform consumers when any particular
27 feature, option or characteristic of one of its 4 base models (The S, 3, X and Y) will either be
28 discontinued or not available.

1 11. In order to purchase one of its vehicles, a consumer must visit Tesla's website to
2 begin their order of a desired vehicle.

3 12. On the website a customer will select the model (e.g., Model S, Model 3, Model X,
4 Model Y) and will select various options including items such as the base vehicle (typically
5 delineated by the size of the battery and range capability) exterior color, wheels, interior décor,
6 number of seats, Autopilot, Self-Driving Capability, and charging options.

7 13. Once the order is complete, and a customer has paid an order fee of one hundred
8 dollars (\$100.00), Tesla will send a Motor Vehicle Order Agreement ("MVOA") which states that
9 the order was "placed electronically with accepted terms" and contains a total price not including
10 taxes and governmental fees.

11 14. Consumers reasonably rely on the stated price in Tesla's online order form and that
12 the terms of the agreement, specifically the features ordered for the vehicle and the price, will not
13 change.

14 15. Despite promising to sell cars to consumers at certain prices Tesla has rather
15 engaged in the practice of unilaterally sending modified Motor Vehicle Order Agreement contracts
16 to customers, such as Plaintiff, who have already entered into a contract with Tesla for a model of
17 vehicle with certain features and options. These "modified" orders, which appear and are sent to
18 consumers fully executed, contain different terms, most notably increased prices for the same base
19 model vehicle (or a lesser base model) and increased process for the same features (such as auto
20 pilot). Tesla engaged in exactly this conduct with Plaintiff Horowitz and, further, informed
21 Plaintiff that the changes were necessary because the model he ordered was no longer available;
22 in essence Tesla stated as a fact that the vehicle the customer ordered was no longer available even
23 though Tesla knew, when Horowitz ordered the vehicle, what options were available. However,
24 the truth is that Tesla changed nothing other than the price, increasing it unilaterally and
25 fraudulently. And Tesla strong-armed consumers into changing their orders by simply telling them
26 the originally ordered vehicle would not be available or would not be produced. In essence, Tesla
27 determined a way to force consumers to alter their orders on the pretext of non-available options
28 and enforce a price increase on other features that remained the same (such as the base vehicle or

1 auto pilot). Tesla simply refused to actually manufacture the vehicle the consumer ordered, and
2 for which Tesla took the order, in order to increase the price on already ordered vehicles.

3 16. Plaintiff, and other similarly situated persons, do not sign, click, or execute in
4 anyway the modified contracts. Tesla merely enforces the new terms on its existing customers with
5 existing contracts.

6 17. Not only do the new contracts contain configurations not agreed to by the customer,
7 but they also contain a higher price.

8 18. Tesla gave only two options: pay the higher price for a different model or cancel
9 the contract.

10 19. Tesla knows and understands that it lacks any real competition and that its
11 customers lack any alternatives to complete their vehicle orders in hopes that consumers will give
12 in to the changed configurations and price increases.

13 20. Plaintiff and all classes set forth herein now seek to enforce their contracts with
14 Tesla for the originally agreed-upon configuration and price.

15
16 **ALLEGATIONS SPECIFIC TO PLAINTIFF**

17 21. Plaintiff brings this action individually for himself and on behalf of all persons who
18 entered into a contract for the purchase of a Tesla Vehicle where the Tesla unilaterally changed
19 their configurations and increased the purchase price after the execution of the contract.

20 22. On or around October 7, 2020, Plaintiff entered into a binding contract with
21 Defendant whereby Defendant provided a "Motor Vehicle Order Agreement" ("MVOA") (the
22 "October Agreement") with "electronically accepted terms" setting forth the price for the purchase
23 of a 2020 model year Tesla Model X (hereinafter "[the] vehicle"). Tesla assigned an order number
24 "RN113924080" to the contract. Said contract is attached hereto as Exhibit "A".

25 23. The delivery date was to be December 28, 2020, which coincided with the
26 expiration of Plaintiff's previous lease of a different Tesla vehicle.

27 24. The particular configuration of the vehicle on the October contract contained,
28 among other things, a selection of a "Model X Long Range Plus", Midnight Silver Metallic

1 Exterior color, 20" Silver Wheels, All Black premium Interior with Figured Ash Wood Décor, Six
2 Seat Interior, Auto Pilot, Full Self Driving Capability, and Pay-as-you-go Supercharging.

3 25. The total price of the vehicle selected by Plaintiff was \$97,290.00.

4 26. As of the date of the October Agreement, there was no Vehicle Identification
5 Number ("VIN") attached to the Vehicle.

6 27. The first page of the October Agreement sets forth an order fee of \$100.00 which
7 was paid by Plaintiff on that date.

8 28. Plaintiff's contract contains the words "Order Placed with electronically accepted
9 terms."

10 29. Beginning in or about December of 2020 Plaintiff made multiple documented
11 attempts to contact Tesla to inquire about the delivery of his new vehicle as he was receiving
12 emails from Tesla regarding the expiration of his previous lease on December 28, 2020. These
13 attempts were ignored by Tesla.

14 30. Disregarding all communications from Plaintiff, Tesla sent Plaintiff notice that his
15 lease would "mature"¹ on December 28, 2020; a fact already known to Plaintiff having pointed
16 this out to Tesla. Tesla then gave Plaintiff only one viable option; to extend the lease. But Tesla
17 demanded a lease payment that was the same as the original lease despite the fact that Plaintiff
18 was, at that point, then leasing a vehicle with over 37,000 miles. Essentially Tesla demanded a
19 "New" vehicle lease amount for a used vehicle having failed to provide the new vehicle Plaintiff
20 ordered. With no other options and no one from Tesla contacting Plaintiff regarding his new
21 vehicle, Plaintiff was forced to pay to extend his existing lease.

22 31. On February 23, 2021, Plaintiff sent a letter detailing the issues set forth herein to
23 Tesla's General Counsel. Tesla ignored this communication.

24 32. On May 19, Plaintiff sent a follow up letter to Tesla's General Counsel detailing the
25 issues set forth herein, with a request to preserve certain evidence.

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¹ Tesla uses the word "mature" in the place of "expire" when referring to the end date of its leases.

1 37. Plaintiff brings this lawsuit as a class action on behalf of himself and similarly
2 situated individuals pursuant to Rule 23 of the Federal Rules of Civil Procedure.

3 38. Plaintiff brings this class action on behalf of himself and all other similarly situated
4 members of a proposed Nationwide Class, defined as follows:

5 **All individuals in the United States Who Entered into a Motor**
6 **Vehicle Order Agreement (either a sale or a lease) and Later**
7 **Received a New Agreement Containing a Higher Price and/or**
8 **different configuration of options for essentially the same or**
9 **lesser vehicle or for an altered vehicle configurations when the**
10 **original configuration was available.**

11
12 *California Subclass*

13 39. Plaintiff brings this class action on behalf of himself and on behalf of the Class
14 Members of the California Subclass. Plaintiff is informed and believes that all members of the
15 California Subclass are California residents who entered into a MVOA with Tesla for a specific
16 configuration and price of a new eclectic vehicle and that each received a unilateral second contract
17 with a higher price and possible changes to their selected configurations.

18 40. Plaintiff brings this lawsuit as a class action on behalf of himself and similarly
19 situated individuals pursuant to Rule 23 of the Federal Rules of Civil Procedure.

20 41. Plaintiff brings this class action on behalf of himself and all other similarly situated
21 members of a proposed California Subclass, defined as follows:

22 **All individuals in the California Who Entered into a Motor**
23 **Vehicle Order Agreement (either a sale or a lease) and Later**
24 **Received a New Agreement Containing a Higher Price and/or**
25 **different configuration of options for essentially the same or**
26 **lesser vehicle or for an altered vehicle configurations when the**
27 **original configuration was available.**

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1 could not have had possession of a VIN in order to satisfy the preceding condition. The arbitration
2 provision is designed to frustrate any consumes ability to exercise the opt out provision. However,
3 Plaintiff has sent a letter requesting to opt out of the arbitration provision without a VIN.

4 48. **Typicality:** The claims of the representative Plaintiff are typical of the claims of
5 the Class in that the representative Plaintiff, like all Class Members, entered into a binding
6 agreement with Tesla for a specific configuration of vehicle at a specific Price only to have Tesla
7 later unilaterally and without class members agreement altered the material terms of their
8 agreement including the configuration of the vehicle and the price. In each case all Plaintiff and
9 all class members deposited monetary funds in consideration of their binding agreements with
10 Tesla. Some class members actually paid the higher price for a car they did not select, and others
11 were prevented from purchasing the vehicles at the higher price and were not given refunds of
12 their deposits. The representative Plaintiff, like all potential Class Members, has been damaged by
13 Defendant's misconduct monetarily and that they did not receive the benefit of the contract entered
14 into with Tesla. Furthermore, the factual bases of Defendant's misconduct are common to all
15 potential Class Members and represent a common thread of fraudulent, deliberate, and negligent
16 misconduct resulting in injury to all potential Class Members, including Plaintiff.

17 49. No violations alleged in this complaint are contingent on any individualized
18 interaction of any kind between potential Class Members and Tesla. Rather, all claims in this
19 matter arise from the identical acts, omissions, concealments, and representations of Tesla.

20 50. **Existence and Predominance of Common Questions of Fact and Law:** There
21 are common questions of law and fact as to the potential Class Members that predominate over
22 questions affecting only individual members, including, but not limited to:

- 23 a. whether Tesla engaged in unlawful, unfair, or deceptive business practices in
24 contracting for the sale or the sale of Class Vehicles to Plaintiff and other
25 potential Class Members;
- 26 b. whether Tesla made false misrepresentations or omitted and concealed material
27 facts with respect to the Class Vehicles it sold to potential Class Members;

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- 1 c. whether the Tesla's increase in price benefitted Tesla to the detriment of the
2 Class Members;
- 3 d. whether Tesla breached its initial contract with Class Members by unilaterally
4 altering the material terms before performing on any obligations therein and
5 without mutual agreement;
- 6 e. whether Tesla violated California Business and Professions code Section
7 17200, *et seq.* with respect to the California Subclass;
- 8 f. whether Tesla's unlaw, unfair and/or deceptive practices harmed Plaintiff and
9 potential Class Members; and,
- 10 g. Whether Tesla violated California's Consumer's Legal Remedies Act with
11 respect to the California Subclass.

12 51. Plaintiff's claims are not only typical of all potential Nationwide and California
13 Class Members, but they are also essentially identical.

14 52. All of Plaintiff's claims and all potential Nationwide and California Class Members'
15 claims are based on the exact same legal theories. Plaintiff's damages and payer for relief also
16 mirror the damages suffered by all potential Nationwide and California Class Members - viz., an
17 injunction for specific performance on the original contracts, and monetary damages in the form
18 of a refund of deposits, and/or a refund of the difference of the original contracts and the
19 unilaterally altered contracts. Further, Plaintiff has no interest antagonistic to, or in conflict with,
20 those of the Class.

21 53. **Adequate Representation**: Plaintiff is qualified to, and will, fairly and adequately
22 protect the interests of each Class Member. Plaintiff has retained attorneys experienced in the
23 prosecution of class actions and consumer claims similar to the present matter. Plaintiff intends to
24 prosecute this action vigorously.

25 54. **Predominance and Superiority**: Plaintiff and the potential Class Members have
26 all suffered and will continue to suffer harm. A class action is superior to other available methods
27 for the fair and efficient adjudication of the controversy. Absent a class action, most potential Class
28 Members would find the cost of litigating their claims prohibitively high and would therefore have

1 no effective remedy at law. Because of the relatively small size of the individual potential Class
2 Members' claims, it is likely that only a few potential Class Members could afford to seek legal
3 redress for Defendant's misconduct. Absent a class action, potential Class Members will continue
4 to incur damages, future consumers will enter into contracts with Tesla which Tesla has no
5 intention to perform on, and Defendant's misconduct will continue without remedy. Class
6 treatment of common questions of law and fact would also be a superior method to multiple
7 individual actions or piecemeal litigation in that class treatment will conserve the resources of the
8 courts and the litigants and will promote consistency and efficiency of adjudication.

9 55. In sum, Plaintiff will thoroughly and adequately protect the interests of the Class,
10 having retained qualified and competent legal counsel to represent himself and the lass, common
11 questions will predominate, and there will be no unusual manageability issues.

12
13 **FIRST CLAIM FOR RELIEF**

14 **Breach of Contract**

15 ***(On Behalf of Plaintiff and Members of the Nationwide Class and the California Subclass)***

16 56. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

17 57. Plaintiff and the Nationwide Class entered into a valid contract with Defendant for
18 the purchase of Tesla vehicles. Most importantly, Plaintiff and the Nationwide Class agreed to a
19 specific contract price for the purchase of specific configurations.

20 58. The contracts of adhesion drafted by Defendant states: "Order Placed with
21 electronically accepted terms."

22 59. Plaintiff and the Nationwide Class paid a deposit to purchase the vehicles and, in
23 reliance on Defendant honoring the contract price.

24 60. In further reliance, Plaintiff and the class members did not purchase vehicles from
25 other manufactures based on their reliance on the contracts.

26 61. Defendant breached its contract with Plaintiff and the Nationwide Class by
27 increasing the price of the vehicles in violation of the contract. Defendant also anticipatorily
28 breached the contract by indicating that if Plaintiff and all Nationwide class members did not pay

1 the higher price for the altered vehicles, they would simply not receive their benefit of the bargain
2 and would not receive their deposits back.

3 62. Plaintiff and the Nationwide Class are now damaged as a result of Defendant's
4 breach and anticipatory breach. In order to mitigate their losses, Plaintiff and the Nationwide Class
5 will be forced to pay for the price increase.

6 63. Because no comparable products to the Tesla vehicles which were selected by the
7 Class Members currently exist, there is no adequate remedy for Plaintiff and the Nationwide Class
8 under the law. As such, Plaintiff and the Nationwide Class seek specific performance under the
9 initial contracts that existed prior to the unilaterally changes contracts with higher prices and
10 different terms.

11
12 **SECOND CLAIM FOR RELIEF**

13 **Violation the Unfair Business Practices Act - Cal. Bus. & Prof. Code §§17200 *et seq.***

14 ***(On Behalf of Plaintiff and Members of the California Subclass)***

15 64. Plaintiff incorporates herein by reference each and every allegation contained in the
16 preceding and succeeding paragraphs as though herein fully restated and re-alleged.

17 65. Actions for relief under the unfair competition law may be based on any business
18 act or practice that is within the broad definition of the Unfair Business Practices Act - Cal. Bus.
19 & Prof. Code §§17200 *et seq.* ("UCL"). Such violations of the UCL occur as a result of unlawful,
20 unfair or fraudulent business acts and practices. A causal connection exists between Tesla's
21 business practices and the alleged harm in that Tesla's conduct caused or was likely to cause
22 substantial injury to Plaintiff and potential California Subclass Class Members.

23
24 **Tesla's Unfair Business Acts and Practices**

25 66. Tesla's acts, omissions, misrepresentations, and practices as alleged herein
26 constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct
27 is substantially injurious to consumers, offends public policy, and is immoral, unethical,
28 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits

1 attributable to such conduct. There were reasonably available alternatives to further Tesla's
2 legitimate business interests, other than the conduct described herein. Plaintiff reserves the right
3 to allege further conduct which constitutes other unfair business acts or practices. Such conduct is
4 ongoing and continues to this date.

5 67. Plaintiff's and potential California Subclass Members' injuries are: 1) substantial;
6 2) not outweighed by any countervailing benefits to consumers or competition; and, 3) not injuries
7 that consumers themselves could reasonably have avoided.

8 68. Here, Tesla's conduct has caused and continues to cause substantial injury to
9 Plaintiff and potential California Subclass Members. Plaintiff and potential California Subclass
10 Members have suffered injury in fact due to Tesla's decision to knowingly enter into contracts that
11 it states are binding, only to unilaterally alter the material terms of those contracts including
12 increasing the price. Tesla's conduct has caused substantial injury to Plaintiff and potential
13 California Subclass Members.

14 69. Tesla's conduct as alleged herein solely benefits Tesla while providing no benefit
15 of any kind to the Plaintiff or potential California Subclass Members. Such deception utilized by
16 Tesla convinced Plaintiff and potential California Subclass Members that the Class Vehicles were
17 of a certain value and price to induce them to pay deposits and rely on the contracts. Tesla has
18 unfairly profited from or intends to unfairly profit from the unilateral price increases to all
19 California Subclass Members. The injury suffered by Plaintiff and the members of California
20 Subclass is not outweighed by any countervailing benefits to consumers.

21 70. The injuries suffered by Plaintiff and California Subclass Members are not injuries
22 that they could reasonably have avoided. After Tesla falsely represented the configuration and
23 price of the vehicles, Plaintiff and potential California Subclass Members suffered injury in fact
24 due to their reliance and subsequent purchase and/or lease of the Class Vehicles. Tesla failed to
25 take reasonable steps to negotiate in good faith with Plaintiff and potential California Subclass
26 Members to mutually consent to the new terms. As such, Tesla leveraged its position of power and
27 its superior (and singular) knowledge to deceive Plaintiff and potential California Subclass
28 Members to enter into contract for and/or purchase the California Subclass Vehicles. The injury

1 suffered by Plaintiff and potential California Subclass Members are not injuries that they could
2 reasonably have avoided.

3 71. Tesla's conduct violated the "unfair" prong of §17200.
4

5 **Tesla's Fraudulent Business Acts and Practices**

6 72. Tesla's fraudulent business acts and practices were likely to and did deceive
7 members of the public.

8 73. Plaintiff and potential California Subclass Members were not only likely to be
9 deceived, but in fact were deceived by Tesla. Plaintiff and potential California Subclass Members
10 agreed to purchase or lease Class Vehicles and entered into enforceable contract that could only
11 have been altered by mutual consent. Tesla, then to its own benefit, knowingly violated those
12 contracts by unilaterally changing the terms and increasing the price. Plaintiff's and potential
13 California Subclass Members' reliance upon Tesla's deceptive statements is reasonable due to the
14 unequal bargaining power between Tesla and Plaintiff and potential Class Members as well as
15 Tesla's superior knowledge. Plaintiff and potential California Subclass Members could not have
16 known that Tesla would breach their contracts. It is likely that Tesla's fraudulent business practice
17 would deceive members of the public at large.

18 74. Tesla deceived Plaintiff and California Subclass Members by falsely representing
19 that (1) placing a vehicle order would secure the price of the vehicle, and/or (2) that vehicles
20 "configurations" need to be altered at which time Tesla used this canard to alter prices on the same
21 features, for example, as in Mr. Horowitz's matter, changing the base vehicle from a "Plus" to a
22 non-Plus (thereby decreasing the battery range and capability and, at the same time, increasing the
23 price of the base vehicle by an additional \$10,000. This conduct satisfies the "fraudulent" element
24 of UCL §17200.
25

26 **Tesla's Unlawful Business Acts and Practices**

27 75. Tesla deceived Plaintiff and potential California Subclass Members by representing
28 particular vehicles for sale at a particular price, entering contracts with Plaintiff and potential

1 California Subclass Members for a particular price only to later breach each of those contracts on
2 false pretenses.

3 76. Tesla used misrepresentations and concealments of material facts to induce Plaintiff
4 and potential Class Members to enter into contracts to purchase the Class Vehicles, in violation of
5 UCL §17200. Had Tesla not unilaterally increased the price and changed the configuration of Class
6 Vehicles, Plaintiff and potential California Subclass Members would not have incurred damages.
7 Tesla's conduct caused and continues to cause economic harm to Plaintiff and potential Class
8 Members.

9 77. The misrepresentations and concealments by Tesla were "unlawful" business
10 practices or acts under UCL §17200.

11 78. Tesla has engaged in unlawful, unfair, and fraudulent business acts entitling
12 Plaintiff and California Subclass Class Members to judgment and equitable relief against Tesla.
13 Pursuant to UCL §17203, Plaintiff and potential California Subclass Class Members seek an order
14 requiring Tesla to immediately cease its unlawful, unfair, and fraudulent business practices, and
15 requiring Tesla to correct its actions.

16
17 **THIRD CLAIM FOR RELIEF**

18 **Breach of the Covenant of Good Faith and Fair Dealing**

19 ***(On Behalf of Plaintiff and Members of Nationwide Class and the California Subclass)***

20 79. Plaintiff incorporates herein by reference each and every allegation contained in the
21 preceding and succeeding paragraphs as though herein fully restated and re-alleged.

22 80. Plaintiff brings this claim on behalf of himself and on behalf of potential Class
23 Members.

24 81. Every contract has an implied covenant of good faith and fair dealing. This implied
25 covenant is an independent duty and may be breached even when there is no breach of the
26 contract's express terms.

27 82. Plaintiff and potential Class Members have complied with and performed all
28 conditions of the contract.

1 83. Tesla breached the implied covenant of good faith and fair dealing by using
2 pretense and deception to alter the price of already ordered and contractually agreed upon vehicles.

3 84. Tesla acted in bad faith and/or with malicious motive in denying Plaintiff and
4 potential Class Members the full benefit of their bargain as originally intended by the parties,
5 thereby causing them injury in an amount to be determined at trial.

6
7 **FOURTH CLAIM FOR RELIEF**

8 **Violation of the Consumer Legal Remedies Act – Injunctive Relief and Damages**

9 ***(On Behalf of Plaintiff and Members of the California Subclass)***

10 85. Plaintiff incorporates herein by reference each and every allegation contained in the
11 preceding and succeeding paragraphs as though herein fully restated and re-alleged.

12 86. Plaintiff brings this cause of action on behalf of himself and on behalf of the
13 potential California Subclass Members.

14 87. Defendant Tesla is a "Person" pursuant to California Civil Code section 1761(c).

15 88. Plaintiff and potential California Subclass Members are "consumers pursuant to
16 California Civil Code section 1761(d).

17 89. The purchases and/or leases of Class Vehicles constitute transactions as defined
18 by California Civil Code section 1761(e).

19 90. The Class Vehicles constitute "goods" as defined by California Civil Code sections
20 1761(a) and (b).

21 91. Plaintiffs and potential California Subclass Members purchased or leased the Class
22 Vehicles primarily for personal, family, and household purposes as set forth in California Civil
23 Code section 1761(d).

24 92. Tesla's misrepresentations, active concealment, failure to disclose, and omissions
25 regarding the Class Vehicles violated the California Consumer Legal Remedies Act, codified at
26 California Civil Code section 1750 *et seq.*, as follows:

27 93. Tesla misrepresented the Class Vehicles had characteristics, benefits, or uses that
28 they did not have. (Cal. Civ Code §1770(a)(5)):

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- a. Tesla misrepresented the Class Vehicles were of a particular standard, quality, or grade when they were of another. (Cal. Civ Code §1770(a)(7));
- b. Tesla advertised and indeed entered into contracts with class members for the Class Vehicles with inability and intent not to sell or lease them as advertised. (Cal. Civ Code §1770(a)(9));
- c. Tesla advertised and indeed entered into contracts for the class vehicles with the intent not to supply reasonably expectable demand and without notifying California Subclass members or the public of its inability to meet that supply; (Cal Civ. Code §1770(a)(10));
- d. Tesla misrepresented the Motor Vehicle Orders conferred or involved rights, remedies, or obligations that the did not. (Cal. Civ Code §1770(a)(14)); and,
- e. Tesla inserted an unconscionable provision in each revised contract for a higher price knowing that nothing changed other than the price.

94. Tesla's unfair and deceptive acts or practices occurred repeatedly in the course of Tesla's course of trade and busines. These practices were material, capable of deceiving a substantial portion of the purchasing public, and as a result caused economic harm to purchasers and lessees of the Class Vehicles.

95. The facts concealed and not disclosed by Tesla to Plaintiff and potential California Subclass Members are material in that a reasonable consumer would have considered them to be important in deciding whether or not to purchase or lease a Class Vehicle. A reasonable consumer would consider that no real changes in the material properties of a vehicle should not lead to a substantial rise in price when said price and vehicle had been under contract.

96. Plaintiff and potential California Subclass Members are reasonable consumers. They did not expect to enter into a contract only to be told by Tesla that the contract is being unilaterally modified. Reasonable consumes would also not expect Tesla to fraudulently deceive consumers for the reasons for the price changes.

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1 97. As a result of Tesla's misconduct as described herein, Plaintiff and potential
2 California Subclass Members have been harmed and suffered actual damages in that orders for
3 class vehicles have been altered and prices increased.

4 98. As a direct and proximate result of Tesla's unfair and deceptive acts, omissions,
5 concealment, and practices, Plaintiff and potential California Subclass Members have suffered,
6 and will continue to suffer actual damages.

7 99. Plaintiff and potential California Subclass Members are entitled to equitable relief
8 and for enforcement of the terms of the original order and contract for sale or lease of a class
9 vehicle at the original price.

10 100. Pursuant to California Civil Code section 1780(a)(2), Plaintiff and potential
11 California Subclass Members seek an injunction prohibiting the acts set forth herein which violate
12 the Consumer Legal Remedies Act.

13 101. Plaintiff seeks an order prohibiting Defendant Tesla, from engaging in the acts
14 described in this Complaint and requiring Tesla to do the following:

- 15 a. Cease all unilateral changes to motor vehicle orders and/or sales of Class
16 Vehicles to any persons or entities;
- 17 b. Inform all class members or potential class members that the altered sales or
18 lease prices will not be in effect and that the original sales or lease prices will
19 be honored; and,
- 20 c. Refund all class members the difference between original order prices and
21 subsequent altered sales/lease prices.

22 102. Tesla acted with malice, oppression, and fraud toward Plaintiff and potential
23 California Subclass Members within the meaning of California Civil Code section 3294.

24 103. Pursuant to California Civil Code section 1780(d), Plaintiff may recover attorney
25 fees and costs according to proof at trial.

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PRAYER FOR RELIEF

WHEREFORE Plaintiff, on behalf of himself and all others similarly situated, prays as follows:

- 1. For an award of actual, general, special, incidental, statutory, compensatory, and consequential damages on claims brought under California's Unfair Competition Law, breach of express and implied warranties under all relevant statutes, and breach of the implied covenant of good faith and fair dealing and in an amount to be proven at trial;
- 2. For a Temporary Restraining Order and a Preliminary Injunction:
 - a. enjoining Tesla from continuing to sell Class Vehicles containing the battery system defect to its California Tesla dealerships;
 - b. directing Tesla to issue a "Stop Sale" order to its California dealerships prohibiting the sales of any Class Vehicle to any member of the public;
 - c. directing Tesla to take down advertisements for Class Vehicles or otherwise make abundantly clear to the general public on Tesla's website and other advertising that Class Vehicles are subject to a defect that is not yet repairable that makes the electric portion of the vehicle not only effectively functionless but dangerous;
 - d. directing Tesla to toll the express warranty period for all Class Vehicles to cover, at a minimum, the time period during which the Class Vehicles have been unable to operate with all functions consistent with *California Civil Code* §1795.6;
 - e. Directing Tesla to repair Class Vehicles within 30-days of presentation pursuant to *California Civil Code* §1793.4 or offer a repurchase of said vehicles pursuant to *California Civil Code* §1794.
- 3. For an order certifying this action as a class action;
- 4. For an order appointing Plaintiff as Class Representative and his counsel as Class Counsel;
- 5. For attorney's fees;
- 6. For prejudgment interest;
- 7. For costs of suit;

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- 8. For an order requiring Tesla to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate; and,
- 9. For any and all other relief the court may deem necessary and just.

Dated: December 14, 2021

O'CONNOR LAW GROUP, P.C.

/s/ Mark O'Connor
 Mark O'Connor, Esq. (SBN 157680)
 Larry S. Castruita, Esq. (SBN 279263)
 Attorneys for Plaintiff:
 DANIEL AARON HOROWITZ

Dated: December 14, 2021

WIRTZ LAW APC

/s/ Richard M. Wirtz
 Richard M. Wirtz, Esq. (SBN 137812)
 Attorneys for Plaintiff:
 DANIEL AARON HOROWITZ

Dated: December 14, 2021

REALLAW APC

/s/ Michael J. Hassen
 Michael J. Hassen, Esq. (SBN 124823)
 Attorneys for Plaintiff:
 DANIEL AARON HOROWITZ

EXHIBIT A



Motor Vehicle Order Agreement

Vehicle Configuration

Customer

Daniel Horowitz


Order Number RN113924080

Order Fee \$100

Order placed with electronically accepted terms 10/07/2020

Price indicated does not include taxes and governmental fees, which will be calculated as your delivery date nears. You will be responsible for these additional taxes and fees.

Description	Price (USD)
Model X Long Range Plus	\$79,990
Midnight Silver Metallic	\$1,500
20" Sport Wheels	included
Aluminum Back Premium Interior with Fugured Ash Wood Décor	included
Six Seat Interior	\$6,500
Autopilot	included
Full Self-Driving Capability	\$8,000
Pay-as-you-go Supercharging	included
Subtotal	\$95,990
Destination and Documentation Fee	\$1,200
Order Fee	\$100
Total	\$97,290



Motor Vehicle Order Agreement Terms & Conditions

Documentation You Motor Vehicle Order Agreement (the Agreement) is made up of the following documents:

- 1. Vehicle Configuration** The Vehicle Configuration describes the vehicle that you configured and ordered including pricing (excluding taxes and official government fees).
- 2. Final Price Sheet**: The Final Price Sheet will be provided to you as your delivery date nears. It will include final pricing based on your final Vehicle Configuration and will include taxes and official or governmental fees.
- 3. Terms & Conditions** These Terms & Conditions are effective as of the date you place your order and make your Order (the Order Date).

Agreement to Purchase. You agree to purchase the vehicle (the "Vehicle") described in your Vehicle Configuration from Tesla, Inc. or its affiliate ("we," "us" or "our"), pursuant to the terms and conditions of this Agreement. Your Vehicle is priced and configured based on features and options available at the time of order and you can confirm availability with a Tesla representative. Options, features or hardware released or changed after you place your order may not be included in or available for your Vehicle. If you are purchasing a used Vehicle, it may exhibit signs of normal wear and tear in line with its respective age and mileage.

Purchase Price, Taxes and Official Fees. The purchase price of the Vehicle is indicated in your Vehicle Configuration. This purchase price does not include taxes and official or government fees, which could amount to up to 10% or more of the Vehicle purchase price. Because these taxes and fees are constantly changing and will depend on many factors, such as where you register the Vehicle, they will be calculated closer to the time of delivery and indicated on your Final Price Sheet. You are responsible for paying these additional taxes and fees. If Tesla registers your Vehicle, these will be due when you pay the purchase price. If you are registering your Vehicle in a self-registration state, the sales tax and state-applicable registration fees may be due at time of registration. If you present a check for any payment, we may process the payment as a normal check transaction, or we may use information from your check to make a one-time electronic fund transfer from your account, in which case your bank account will reflect this transaction as an Electronic Fund Transfer. If you are purchasing a used Vehicle, your Order Deposit will be applied to your Purchase Price.

Order Process; Cancellation; Changes. After you submit your completed order, we will begin the process of preparing and coordinating your Vehicle delivery. At this point, you agree that any paid Order Fee, Order Deposit and Transportation fee have been earned. If you cancel your order or breach this Agreement and we cancel your order, you agree that we may retain as liquidated damages the Order Fee, Order Deposit and Transportation Fee, to the extent not otherwise prohibited by law. You acknowledge that the Order Fee, Order Deposit and Transportation Fee are a fair and reasonable estimate of the actual damages we have incurred or may incur in transporting, remarketing, and reselling the Vehicle, costs which are otherwise impracticable or extremely difficult to determine. If you make changes to your order, you may be subject to potential price increases for any pricing adjustments made since your original Order Date. Any changes made by you to your Vehicle Configuration, including changes to the delivery location or estimated delivery date, will be reflected in a subsequent Vehicle Configuration that will form part of this Agreement. The Order Fee, Order Deposit, Transportation Fee and this Agreement are not made or entered into in anticipation of or pending any conditional sale contract.

Model S Plaid Order Process; Cancellation; Changes. After you submit your completed order, and the options you selected become available in production, we will invite you to complete the configuration of your Vehicle. We will then issue you the Vehicle Configuration and Final Price Sheet based on your final configuration. Until you complete your Vehicle configuration, your order will be considered a pre-order and you may cancel at any time, in which case you will receive a full refund of any paid Order Deposit. If you cancel your order or you breach this Agreement and we cancel your order after you complete your Vehicle configuration, you agree that the Order Deposit has been earned and that we may retain the Order Deposit as liquidated damages, to the extent not otherwise prohibited by law. You acknowledge that the Order Deposit is a fair and reasonable estimate of the actual damages we have incurred or may incur in transporting, remarketing, and reselling the Vehicle, costs which are otherwise impracticable or extremely difficult to determine. If you make changes to your order, you may be subject to potential price increases for any pricing adjustments made since your original Order Date. Any changes made by you to your Vehicle Configuration, including changes to the delivery location or estimated delivery date, will be reflected in a subsequent Vehicle Configuration that will form part of this Agreement. The Order Deposit and this Agreement are not made or entered into in anticipation of or pending any conditional sale contract.

Delivery; Transfer of Title. If you are picking up your Vehicle in a state where we are licensed to sell the Vehicle, we will notify you of when we expect your Vehicle to be ready for delivery at your local Tesla Delivery Center, or other location as we may agree to. You agree to schedule and take delivery of your Vehicle within three (3) days of this date. If you do not respond to our notification or are unable to take delivery within the specified period, your Vehicle may be made available for sale to other customers. For new vehicles, if you do not take delivery within six (6) months of our first attempt to notify you, Tesla may cancel your order and keep your Order Fee.

If you wish to pick up or take delivery of your Vehicle in a state where we are not licensed to sell the Vehicle, or if you and Tesla otherwise agree, Tesla will, on your behalf, coordinate the shipment of your Vehicle to you, generally from our factory in California or another state where we are licensed to sell the Vehicle. In such a case, you agree that this is a shipment contract under which Tesla will coordinate the shipping of the Vehicle to you via a third-party common carrier or other mode of transport. You agree that delivery of the Vehicle, including the transfer of title and risk of loss to you, will occur at the time your Vehicle is loaded onto the transport (i.e., FOB shipping point). During such transport, your Vehicle will be insured at no cost to you, and you will be the beneficiary of any claims for damage to the Vehicle or losses occurring while the Vehicle is in transit. To secure your final payment and performance under the terms of this Agreement, we will retain a security interest in the Vehicle and all proceeds therefrom until your obligations have been fulfilled.

If you choose to pick up or take delivery of your Vehicle in a state in which we are not licensed to sell the Vehicle, the Vehicle may be delivered or shipped to you from a state in which Tesla is licensed to sell the Vehicle. In such a case, you agree that the sales transaction, and legal title to the Vehicle transfers to you, in the State of California, at the later of the time that () you make your final payment to Tesla in California or () Tesla approves your purchase from a sales or delivery location in California (if applicable).

The estimated delivery date of your Vehicle, if provided, is only an estimate as we do not guarantee when your Vehicle will actually be delivered. Your actual delivery date is dependent on many factors, including your Vehicle's configuration and manufacturing availability.



Premium Connectivity. A trial of Premium Connectivity will be included following delivery of the Vehicle. Once this trial expires as detailed at www.tesla.com/support/connectivity, you may subscribe to Premium Connectivity or your Vehicle will return to Standard Connectivity. Features included in Premium Connectivity are subject to change and may be limited or unavailable due to Obsolete Hardware. You understand and agree that the dealer or other network needed for any Connectivity services provided by your local telecommunications company and other external providers, and that we are not liable for any parts, software, upgrades or any other costs (including labor) needed to use or maintain network connectivity or compatibility with any features or services externally supported to the Vehicle. Any connectivity issues (including for quality, functionality or coverage) or gaps in service unrelated to a hardware fault or failure are not covered by Tesla warranties.

Obsolete Hardware and Future Firmware Updates. The Vehicle will regularly receive over-the-air software updates that add new features and enhance existing ones over W-F. Future software updates may not be provided for your Vehicle, or may not include an existing or new feature or functionality, due to your Vehicle's age, configuration, data storage capacity or parts, after the expiration of your Warranty. We are not liable for any parts or labor or any other cost needed to update or retrofit the Vehicle so that it may receive these updates, or any Vehicle issues occurring after the installation of any software updates due to obsolete, malfunctioning (except as covered by your Warranty) or damaged hardware.

Privacy Policy; Payment Terms for Services; Supercharger Fair Use Policy. Tesla's Customer Privacy Policy, Payment Terms for Services and Supercharger Fair Use Policy are incorporated into this Agreement and can be viewed at www.tesla.com/about/ega.

Warranty. You will receive the Tesla New Vehicle Limited Warranty or the Tesla Used Vehicle Limited Warranty, as applicable, at or prior to the time of Vehicle delivery or pickup. You may also obtain a written copy of your warranty from us upon request or from our [website](http://www.tesla.com).

Limitation of Liability. We are not liable for any incidental, special or consequential damages arising out of this Agreement. Your sole and exclusive remedy under this Agreement will be limited to reimbursement of your Order Fee, Order Deposit and Transportation Fee.

Agreement to Arbitrate. Please carefully read this provision, which applies to any dispute between you and Tesla, Inc. and its affiliates, (together "Tesla").

If you have a concern or dispute, please send a written notice describing it and your desired resolution to resolutions@tesla.com.

If not resolved within 60 days, you agree that any dispute arising out of or relating to any aspect of the relationship between you and Tesla will not be decided by a judge or jury but instead by a single arbitrator in an arbitration administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. This includes claims arising before this Agreement, such as claims related to statements about our products.

We will pay a AAA fees for any arbitration, which will be held in the city or county of your residence. To learn more about the Rules and how to begin an arbitration, you may contact any AAA office or go to www.adr.org.

The arbitrator may only resolve disputes between you and Tesla, and may not consolidate claims without the consent of all parties. The arbitrator cannot hear class or representative claims or requests for relief on behalf of others purchasing or leasing Tesla vehicles. In other words, you and Tesla may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any class or representative action. If a court or arbitrator decides that any part of this agreement to arbitrate cannot be enforced as to a particular claim for relief or remedy, then that claim or remedy (and only that claim or remedy) must be brought in court and any other claims must be arbitrated.

If you prefer, you may instead take an individual dispute to small claims court.

You may opt out of arbitration within 30 days after signing this Agreement by sending a letter to: Tesla, Inc. P.O. Box 15430 Fremont, CA 94539-7970, stating your name, Vehicle Identification Number, and intent to opt out of the arbitration provision. If you do not opt out, this agreement to arbitrate overrides any different arbitration agreement between us, including any arbitration agreement in a lease or finance contract.

No Resellers; Discontinuation; Cancellation. Tesla and its affiliates sell cars directly to end-consumers, and we may unilaterally cancel any order that we believe has been made with a view toward resale of the Vehicle or that has otherwise been made in bad faith. We may also cancel your order and refund your Order Fee, Order Deposit and Transportation Fee if we discontinue a product, feature or option after the time you place your order or if we determine that you are acting in bad faith.

Default and Remedies. You will be in default of this Agreement if you provide false or misleading information in your order, or do anything else the law says is a default. If you are in default, we may, after any legally required notice or waiting period: (1) do anything to protect our interest in the Vehicle, including repossessing the Vehicle using legally permitted means, (2) locate and disable the Vehicle electronically using our remote dynamic vehicle connection described in our Privacy Policy, (3) sue you for damages or to get the Vehicle back, and/or (4) charge you for amounts we spend taking these actions.

Governing Law; Integration; Assignment. Except as provided below, the terms of this Agreement are governed by, and to be interpreted according to, the laws of the State in which we are licensed to sell motor vehicles that is nearest to your address indicated on your Vehicle Configuration. Prior agreements, oral statements, negotiations, communications or representations about the Vehicle sold under this Agreement are superseded by this Agreement. Terms relating to the purchase not expressly contained herein are not binding. We may assign this Agreement at our discretion to one of our affiliated entities.

State-Specific Provisions. You acknowledge that you have read and understand the provisions applicable to you in the State-Specific Provisions attachment to this Agreement.

This Agreement is entered into and effective as of the date you accept this Agreement, by electronic means or otherwise. By confirming and accepting this Agreement, you agree to the terms and conditions of this Agreement.



State Specific Provisions

For **NEW YORK** residents: If the Vehicle is not delivered in accordance with the Agreement within 30 days following the estimated delivery date, you have the right to cancel the Agreement and receive a full refund, unless the delay in delivery is attributable to you.

For **MASSACHUSETTS** residents: **ATTENTION PURCHASER:** All vehicles are **WARRANTED** as a matter of state law. They must be fit to be driven safely on the roads and must remain in good running condition for a reasonable period of time. If you have significant problems with the Vehicle or if it will not pass a Massachusetts inspection, you should notify us immediately. We may be required to fix the car or refund your money. **THIS WARRANTY IS IN ADDITION TO ANY OTHER WARRANTY GIVEN BY US.**

For **MICHIGAN** residents and purchasers: The terms of this Agreement are governed by, and are to be interpreted according to, Michigan law. The sale of your vehicle will be transacted outside of Michigan, and in a state in which Tesla has a license to sell vehicles, as expanded in the body of the Agreement.

For **WASHINGTON, D.C.** residents:

NOTICE TO PURCHASER

IF, AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER IS UNABLE TO REPAIR OR CORRECT ANY NON-CONFORMITY, DEFECT, OR CONDITION WHICH RESULTS IN SIGNIFICANT IMPAIRMENT OF THE MOTOR VEHICLE, THE MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE MOTOR VEHICLE WITH A COMPARABLE MOTOR VEHICLE, OR ACCEPT RETURN OF THE MOTOR VEHICLE FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE, INCLUDING ALL SALES TAX, LICENSE FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENT CHARGES. IF YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHTS, YOU MAY CONTACT THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Seller certifies that the information contained in the itemization of the purchase price, including the Vehicle Configuration, and required by Chapter 3 (Buying, Selling and Financing Motor Vehicles) of Title 16 of the Code of D.C. Municipal Regulations, is true to the best of our knowledge.

For **RHODE ISLAND** residents: Rhode Island law requires that a motor vehicle sold at retail must be in such condition as to pass a State safety inspection at the time of sale so as to protect consumers.

EXHIBIT B



Motor Vehicle Order Agreement

Vehicle Configuration

Customer

Daniel Horowitz



Order Number RN113924080

Order Payment \$100

Order placed with electronically accepted terms 05/14/2021

Price indicated does not include taxes and governmental fees, which will be calculated as your delivery date nears. You will be responsible for these additional taxes and fees.

Description	Price (USD)
Model X Long Range	\$89,990
Midnight Silver Metallic	\$1,500
20" Cyberstream Wheels	included
Aluminum Premium Interior with Ebony Décor	included
6x Seat Interior	\$6,500
Yoke Steering Wheel	included
Autopilot	included
Full Self-Driving Capability	\$10,000
Pay-as-you-go Supercharging	included
Subtotal	\$107,990
Destination and Documentation Fee	\$1,200
Total	\$109,190



Motor Vehicle Order Agreement Terms & Conditions

Documentation Your Motor Vehicle Order Agreement (the Agreement) is made up of the following documents:

1. **Vehicle Configuration**: The Vehicle Configuration describes the vehicle that you configured and ordered including pricing (excluding taxes and official government fees).
2. **Final Price Sheet**: The Final Price Sheet will be provided to you as your delivery date nears. It will include final pricing based on your final Vehicle Configuration and will include taxes and official government fees.
3. **Terms & Conditions**: These Terms & Conditions are effective as of the date you place your order and make your Order (the Order Date).

Agreement to Purchase. You agree to purchase the vehicle (the "Vehicle") described in your Vehicle Configuration from Tesla, Inc. or its affiliate ("we," "us" or "our"), pursuant to the terms and conditions of this Agreement. Your Vehicle is priced and configured based on features and options available at the time of order and you can confirm availability with a Tesla representative. Options, features or hardware released or changed after you place your order may not be included in or available for your Vehicle. If you are purchasing a used Vehicle, it may exhibit signs of normal wear and tear in line with its respective age and mileage.

Purchase Price, Taxes and Official Fees. The purchase price of the Vehicle is indicated in your Vehicle Configuration. This purchase price does not include taxes and official government fees, which could amount to up to 10% or more of the Vehicle purchase price. Because these taxes and fees are constantly changing and will depend on many factors, such as where you register the Vehicle, they will be calculated closer to the time of delivery and indicated on your Final Price Sheet. You are responsible for paying these additional taxes and fees. If Tesla registers your Vehicle, this will be due when you pay the purchase price. If you are registering your Vehicle in a self-registration state, the sales tax and state-applicable registration fees may be due at time of registration. If you present a check for any payment, we may process the payment as a normal check transaction, or we may use information from your check to make a one-time electronic fund transfer from your account, in which case your bank account will reflect this transaction as an Electronic Fund Transfer. If you are purchasing a used Vehicle, your Order Deposit will be applied to your Purchase Price.

Order Process; Cancellation; Changes. After you submit your completed order, we will begin the process of preparing and coordinating your Vehicle delivery. At this point, you agree that any paid Order Fee, Order Deposit and Transportation fee have been earned. If you cancel your order or breach this Agreement and we cancel your order, you agree that we may retain as liquidated damages the Order Fee, Order Deposit and Transportation Fee, to the extent not otherwise prohibited by law. You acknowledge that the Order Fee, Order Deposit and Transportation Fee are a fair and reasonable estimate of the actual damages we have incurred or may incur in transporting, remarketing, and reselling the Vehicle, costs which are otherwise impracticable or extremely difficult to determine. If you make changes to your order, you may be subject to potential price increases for any pricing adjustments made since your original Order Date. Any changes made by you to your Vehicle Configuration, including changes to the delivery location or estimated delivery date, will be reflected in a subsequent Vehicle Configuration that will form part of this Agreement. The Order Fee, Order Deposit, Transportation Fee and this Agreement are not made or entered into in anticipation of or pending any conditional sale contract.

Model S Plaid+ Order Process; Cancellation; Changes. After you submit your completed order, and the options you selected become available in production, we will invite you to complete the configuration of your Vehicle. We will then issue you the Vehicle Configuration and Final Price Sheet based on your final configuration. Until you complete your Vehicle configuration, your order will be considered a pre-order and you may cancel at any time, in which case you will receive a full refund of any paid Order Deposit. If you cancel your order or you breach this Agreement and we cancel your order after you complete your Vehicle configuration, you agree that the Order Deposit has been earned and that we may retain the Order Deposit as liquidated damages, to the extent not otherwise prohibited by law. You acknowledge that the Order Deposit is a fair and reasonable estimate of the actual damages we have incurred or may incur in transporting, remarketing, and reselling the Vehicle, costs which are otherwise impracticable or extremely difficult to determine. If you make changes to your order, you may be subject to potential price increases for any pricing adjustments made since your original Order Date. Any changes made by you to your Vehicle Configuration, including changes to the delivery location or estimated delivery date, will be reflected in a subsequent Vehicle Configuration that will form part of this Agreement. The Order Deposit and this Agreement are not made or entered into in anticipation of or pending any conditional sale contract.



Delivery; Transfer of Title. If you are picking up your Vehicle in a state where we are licensed to sell the Vehicle, we will notify you of when we expect your Vehicle to be ready for delivery at your local Tesla Delivery Center, or other location as we may agree to. You agree to schedule and take delivery of your Vehicle within three (3) days of this date. If you do not respond to our notification or are unable to take delivery within the specified period, your Vehicle may be made available for sale to other customers. For new vehicles, if you do not take delivery within three (3) months of our first attempt to notify you, Tesla may cancel your order and keep your Order Fee.

If you wish to pick up or take delivery of your Vehicle in a state where we are not licensed to sell the Vehicle, or if you and Tesla otherwise agree, Tesla will, on your behalf and at your cost, coordinate the shipment of your Vehicle to you, generally from our factory in California or another state where we are licensed to sell the Vehicle. In such a case, you agree that this is a shipment contract under which Tesla will coordinate the shipping of the Vehicle to you via a third-party common carrier or other mode of transport. You agree that delivery of the Vehicle, including the transfer of title and risk of loss to you, will occur at the time your Vehicle is loaded onto the transport (i.e., FOB shipping point). During such transit, your Vehicle will be insured at no cost to you, and you will be the beneficiary of any claims for damage to the Vehicle or losses occurring while the Vehicle is in transit. To secure your final payment and performance under the terms of this Agreement, we will retain a security interest in the Vehicle and all proceeds therefrom until your obligations have been fulfilled.

If you choose to pick up or take delivery of your Vehicle in a state in which we are not licensed to sell the Vehicles, the Vehicle may be delivered or shipped to you from a state in which Tesla likewise does not have a license to sell the Vehicles. In such a case, you agree that the sales transaction, and legal title to the Vehicle transfers to you, in the State of California, at the later of the time that () you make your final payment to Tesla in California or () Tesla approves your purchase from a sales or delivery location in California (if applicable).

The estimated delivery date of your Vehicle, if provided, is only an estimate as we do not guarantee when your Vehicle will actually be delivered. Your actual delivery date is dependent on many factors, including your Vehicle's configuration and manufacturing availability.

Incentives. Tesla makes no promises, warranties or guarantees regarding your eligibility for any incentives, rebates and tax credits (the "incentives") related to the Vehicle. If Tesla has credited your Purchase Price for the amount of an incentive, but you do not qualify for the incentive at no fault of Tesla's, you shall reimburse Tesla for the amount of the credit.

Premium Connectivity. A trial of Premium Connectivity will be included following delivery of the Vehicle. Once this trial is over as detailed at www.tesla.com/support/connectivity, you may subscribe to Premium Connectivity or your Vehicle will return to Standard Connectivity. Features included in Premium Connectivity are subject to change and may be limited or unavailable due to Obsolete Hardware. You understand and agree that the cellular or other network needed for any Connectivity is provided by your local telecommunications company and other external providers, and that we are not liable for any parts, software, upgrades or any other costs (including labor) needed to use or maintain network connectivity or compatibility with any features or services externally supplied to the Vehicle. Any connectivity issues (including for quality, functionality or coverage) or gaps in service unrelated to a hardware fault or failure are not covered by Tesla warranties.

Obsolete Hardware and Future Firmware Updates. The Vehicle will regularly receive over-the-air software updates that add new features and enhance existing ones over W-F. Future software updates may not be provided for your Vehicle, or may not include an existing or new features or functionality, due to your Vehicle's age, configuration, data storage capacity or parts, after the expiration of your Warranty. We are not liable for any parts or labor or any other cost needed to update or retrofit the Vehicle so that it may receive these updates, or any Vehicle issues occurring after the installation of any software updates due to obsolete, malfunctioning (except as covered by your Warranty) or damaged hardware.

Privacy Policy; Payment Terms for Services; Supercharger Fair Use Policy. Tesla's Customer Privacy Policy, Payment Terms for Services and Supercharger Fair Use Policy are incorporated into this Agreement and can be viewed at www.tesla.com/about/ega.

Warranty. You will receive the Tesla New Vehicle Limited Warranty or the Tesla Used Vehicle Limited Warranty, as applicable, at or prior to the time of Vehicle delivery or pickup. You may also obtain a written copy of your warranty from us upon request or from our [website](http://www.tesla.com).

Limitation of Liability. We are not liable for any incidental, special or consequential damages arising out of this Agreement. Your sole and exclusive remedy under this Agreement will be limited to reimbursement of your Order Fee, Order Deposit and Transportation Fee.



Agreement to Arbitrate. Please carefully read this provision, which applies to any dispute between you and Tesla, Inc. and its affiliates, (together "Tesla").

If you have a concern or dispute, please send a written notice describing it and your desired resolution to resolutions@tesla.com.

If not resolved within 60 days, you agree that any dispute arising out of or relating to any aspect of the relationship between you and Tesla will not be decided by a judge or jury but instead by a single arbitrator in an arbitration administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. This includes claims arising before this Agreement, such as claims related to statements about our products.

We will pay a AAA fees for any arbitration, which will be held in the city or county of your residence. To learn more about the Rules and how to begin an arbitration, you may contact any AAA office or go to www.adr.org.

The arbitrator may only resolve disputes between you and Tesla, and may not consolidate claims without the consent of all parties. The arbitrator cannot hear class or representative claims or requests for relief on behalf of others purchasing or leasing Tesla vehicles. In other words, you and Tesla may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any class or representative action. If a court or arbitrator decides that any part of this agreement to arbitrate cannot be enforced as to a particular claim for relief or remedy, then that claim or remedy (and only that claim or remedy) must be brought in court and any other claims must be arbitrated.

If you prefer, you may instead take an individual dispute to small claims court.

You may opt out of arbitration within 30 days after signing this Agreement by sending a letter to: Tesla, Inc. P.O. Box 15430 Fremont, CA 94539-7970, stating your name, Vehicle Identification Number, and intent to opt out of the arbitration provision. If you do not opt out, this agreement to arbitrate overrides any different arbitration agreement between us, including any arbitration agreement in a lease or finance contract.

No Resellers; Discontinuation; Cancellation. Tesla and its affiliates sell cars directly to end-consumers, and we may unilaterally cancel any order that we believe has been made with a view toward resale of the Vehicle or that has otherwise been made in bad faith. We may also cancel your order and refund your Order Fee, Order Deposit and Transportation Fee if we discontinue a product, feature or option after the time you place your order or if we determine that you are acting in bad faith.

Default and Remedies. You will be in default of this Agreement if you provide false or misleading information in your order, or do anything else the law says is a default. If you are in default, we may, after any legally required notice or waiting period: (i) do anything to protect our interest in the Vehicle, including repossessing the Vehicle using legally permitted means, (ii) locate and disable the Vehicle electronically using our remote dynamic vehicle connection described in our Privacy Policy, (iii) sue you for damages or to get the Vehicle back, and/or (iv) charge you for amounts we spend taking these actions.

Governing Law; Integration; Assignment. Except as provided below, the terms of this Agreement are governed by, and to be interpreted according to, the laws of the State in which we are licensed to sell motor vehicles that is nearest to your address indicated on your Vehicle Configuration. Prior agreements, oral statements, negotiations, communications or representations about the Vehicle sold under this Agreement are superseded by this Agreement. Terms relating to the purchase not expressly contained herein are not binding. We may assign this Agreement at our discretion to one of our affiliated entities.

State-Specific Provisions. You acknowledge that you have read and understand the provisions applicable to you in the State-Specific Provisions attachment to this Agreement.

This Agreement is entered into and effective as of the date you accept this Agreement, by electronic means or otherwise. By confirming and accepting this Agreement, you agree to the terms and conditions of this Agreement.



State Specific Provisions

For **NEW YORK** residents: If the Vehicle is not delivered in accordance with the Agreement within 30 days following the estimated delivery date, you have the right to cancel the Agreement and receive a full refund, unless the delay in delivery is attributable to you.

For **MASSACHUSETTS** residents: **ATTENTION PURCHASER:** All vehicles are **WARRANTED** as a matter of state law. They must be fit to be driven safely on the roads and must remain in good running condition for a reasonable period of time. If you have significant problems with the Vehicle or if it will not pass a Massachusetts inspection, you should notify us immediately. We may be required to fix the car or refund your money. **THIS WARRANTY IS IN ADDITION TO ANY OTHER WARRANTY GIVEN BY US.**

For **MICHIGAN** residents and purchasers: The terms of this Agreement are governed by, and are to be interpreted according to, Michigan law. The sale of your vehicle will be transacted outside of Michigan, and in a state in which Tesla has a license to sell vehicles, as expanded in the body of the Agreement.

For **WASHINGTON, D.C.** residents:

NOTICE TO PURCHASER

IF, AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER IS UNABLE TO REPAIR OR CORRECT ANY NON-CONFORMITY, DEFECT, OR CONDITION WHICH RESULTS IN SIGNIFICANT IMPAIRMENT OF THE MOTOR VEHICLE, THE MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE MOTOR VEHICLE WITH A COMPARABLE MOTOR VEHICLE, OR ACCEPT RETURN OF THE MOTOR VEHICLE FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE, INCLUDING ALL SALES TAX, LICENSE FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENT CHARGES. IF YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHTS, YOU MAY CONTACT THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Seller certifies that the information contained in the itemization of the purchase price, including the Vehicle Configuration, and required by Chapter 3 (Buying, Selling and Financing Motor Vehicles) of Title 16 of the Code of D.C. Municipal Regulations, is true to the best of our knowledge.

For **RHODE ISLAND** residents: Rhode Island law requires that a motor vehicle sold at retail must be in such condition as to pass a State safety inspection at the time of sale so as to protect consumers.