



TERMS AND CONDITIONS OF SALE

1. CONTRACT TERMS. Exergy, LLC ("Exergy") agrees to sell to the Customer the services, parts or products (collectively referred to as the "Products") as set forth on a purchase order ("Order") between the parties. All such sales shall be subject to these Terms and Conditions of Sale (the "Terms and Conditions"), which may not be changed without written consent of an Officer of Exergy. Any counter offers with terms and/or conditions different from the Exergy Terms and Conditions are expressly rejected.

2. PAYMENT TERMS

A. Terms of Payment. Unless otherwise agreed by the parties, payments terms are net 30 (with approval of credit) after shipment of Standard Products. For Custom Products, Exergy requires fifty percent (50%) payment at time of order and fifty percent (50%) net 30 (with approval of credit) after shipment of Products. Exergy reserves the right to alter or revoke credit terms to Customer at any time and withhold shipment of Products to Customer or ship on a C.O.D. basis. All payments shall be made in U.S. currency. Customer shall be responsible for all bank fees charged to Exergy in the event of a returned or dishonored check together with a Fifty (\$50.00) Dollar handling fee.

B. Late Payment Fee. Any amounts not paid when due will be subject to a service charge of one and one-half percent (1.5%) of the amount due per month or the highest rate permitted under applicable law, whichever is less.

C. Delivery Terms. Unless otherwise agreed to in writing by the parties, all shipments are F.O.B. point of origin. The risk of loss of Products, in the event of a breach or otherwise, passes to the Customer upon Exergy's delivery of Products to the carrier for shipment. Transportation charges when made freight prepaid by Exergy will be charged on the invoice as freight and handling. Transportation charges in all other cases will be paid by the Customer directly to the carrier.

D. Sales and Similar Taxes. Unless otherwise agreed to in writing by the parties, Customer shall pay all sales, use, excise or similar taxes. In lieu of certain tax payments, Customer may provide Exergy with a tax exemption certificate acceptable to the taxing authorities.

E. Cancellation. Customer may not cancel orders or any part thereof unless by written agreement. If cancellation is approved, in whole or part, Customer will be liable to pay Exergy the full price for all finished Products and also pay for any costs and expenses incurred by Exergy (e.g., raw materials, work in progress, finished goods inventory, un-amortized tooling, labor, handling and overhead), as reasonably determined by Exergy, plus a cancellation fee of fifteen percent (15%) of the canceled Order.

3. MODIFICATIONS AND CHANGES. Exergy reserves the option to make improvements or modifications to Products which do not affect form, fit, or function, and shall deliver Products to the latest configuration part number at the time of delivery.

4. CUSTOMER INDEMNIFICATION. Customer shall indemnify, defend and hold Exergy and its respective officers, directors, employees and agents harmless from and against all damages arising out of, in connection with or resulting from any claim or allegations with respect to the: (i) damaging or tampering with the Product by anyone other than Exergy, its employees, agents, contractors, licensees, or invitees; (ii) any material breach of these Terms and Conditions by Customer; (iii) specifications or designs forwarded to Exergy by Customer whether for infringement or otherwise; and (iv) the negligence or willful misconduct of Customer or its agents or employees.

5. WARRANTY. Exergy warrants all Products be free of defects in materials and workmanship for a period of one (1) year from shipment date. Should a Product failure occur within that period, as a result of normal use and service and when properly installed per Exergy's installations instructions, due to defective material or improper workmanship, Exergy will repair or replace the Product at no charge to the Customer. Repair or replacement, at Exergy's option, of defective parts shall be the sole and exclusive remedy. This warranty does not cover the effects of normal wear and tear, improper installation, unauthorized modification or combination with other products, abuse, accident, alteration, misuse, corrosion, neglect, or operation outside specified operating parameters are excluded from this warranty. Effectiveness of corrosion resistant coatings is not guaranteed. Products returned must be accompanied by a Return Material Authorization (RMA) number obtained from Exergy and be clean, dry, free from chemicals, and shipping costs prepaid. Exergy is not responsible for any damage incurred in the return shipment.

THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE, OR APPLICATION.

6. FAILURE TO NOTIFY VOIDS WARRANTY. Customer's failure to promptly notify Exergy within ten (10) days of receipt of the Products of unsatisfactory operation, defects or any improper or unauthorized installation, maintenance, use, repair, or adjustments, shall terminate the one-year warranty and shall relieve Exergy from any further responsibility thereunder.

7. DISCLAIMER. EXERGY EXPRESSLY DISCLAIMS ANY OBLIGATION OR LIABILITY OR FOR ANY OTHER EXPENSE, INJURY, LOSS OR DAMAGE TO PERSONS (INCLUDING DEATH) OR TO PROPERTY OR THINGS OF WHATSOEVER KIND OR NATURE, WHETHER DIRECT, INCIDENTAL OR CONSEQUENTIAL, INCLUDING, BUT NOT LIMITED TO, THOSE ARISING FROM LOSS OF PROFITS, PRODUCTION, INCREASED COST OF OPERATION, OR SPOILAGE OF MATERIAL ARISING IN CONNECTION WITH THE SALE OR USE OF, OR INABILITY TO USE THE PRODUCT OR PRODUCTS FOR ANY PURPOSE, EXCEPT AS HEREIN PROVIDED.

8. RETURN POLICY. Exergy will accept returned Products only if Exergy shipped them in error or under special circumstance expressly acknowledged by Exergy in writing. All return requests, other than requests pursuant to the warranty must be made within 10 days of receipt of shipment and must be approved by Exergy in writing. All written returns will include the issuance of a Returned Material Authorization (RMA) number. This number must be clearly marked on the outside of all cartons containing returned goods. All approved returns not caused by Exergy shipping error will be subject to fifteen percent (15%) handling and restocking charges and must be in clean, resalable condition with freight prepaid. Exergy will deduct the amount of all proper approved returns from the invoice, less any transportation, restocking and/or handling charges. Exergy will refuse any Products returned to Exergy without prior written approval and a return authorization number clearly marked on the carton. The refused returns will be returned to the Customer. Products returned to the Customer for failure to observe this policy shall remain the Customer's responsibility.



9. CONFIDENTIALITY. All information, including the terms of the Order, these Terms and Conditions, pricing, programs, brochures, marketing materials, reports, technical information, mailing lists, and other such information of any nature made available by Exergy to the Customer, by virtue of the association hereunder, including the Products and the ideas, technology, techniques, processes and procedures constituting or related to the use of the Products, and any information disclosed by Exergy, in whatever form, that relates to the Products (the "Confidential Information") shall be held in strict confidence by the Customer, and the Customer shall not disclose any such Confidential Information to any other third parties without the written consent of Exergy. The Customer shall take reasonable measures to maintain the confidentiality of the Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of a similar nature. The Customer may disclose the Confidential Information to its employees or consultants with a need to know for use of the (subject to disclosure restrictions comparable to those set forth herein) and shall remain responsible for all use of the Confidential Information by such employees or consultants. Furthermore, the Customer may disclose the Confidential Information (i) to the extent required by law or pursuant to the order or requirement of, or in connection with proceedings before, a court, administrative agency or other governmental body, provided that before such disclosure is made, the Customer has, to the extent permissible by law, made reasonable efforts to notify Exergy of the intended disclosure to allow the Exergy an opportunity to object to the disclosure; and (ii) to the extent required and on a confidential basis to its legal and/or financial advisors. Confidential Information shall not include information that (i) is or becomes generally known to the public through no breach of any confidentiality obligation; (ii) is rightfully known to the Customer at the time of disclosure by the Customer without violation of any confidentiality restriction and without any restriction on the Customer's further use or disclosure; or (iii) is independently developed by the Customer without any use of or reference to the Confidential Information. The Customer acknowledges that in the event of a breach of this Section 9, substantial injury could result to Exergy and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Customer engages in, or threatens to engage in any act which violates any provision of these Terms and Conditions, the Customer agrees that Exergy will have no adequate remedy in money or damages, and, accordingly, shall be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the Terms and Conditions. Exergy shall not be required to post a bond or other security in connection with the granting of any such relief.

10. PROPRIETARY RIGHTS AND RESTRICTIONS. The Customer agrees that Exergy shall retain and own all proprietary rights in and to: (i) its business; (ii) the Products; (iii) its trademarks, marketing materials, name, logos and any and all other intellectual property rights, trade secrets and/or other rights in the Products. Notwithstanding anything contained in this Section 10, unless and otherwise expressly agreed to in writing, all suggestions, solutions, improvements, corrections and other contributions provided by the Customer to Exergy regarding the Products shall be owned by Exergy and the Customer agrees to assign any and all such rights to Exergy and the Customer shall execute any documents necessary to make such assignment effective. Nothing in these Terms and Conditions shall preclude Exergy from using in any manner or for any purpose it deems necessary, the know-how, techniques or procedures acquired or used by Exergy in its performance hereunder. Customer shall not: a) copy, modify or create derivative works or improvements of the Products; b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Products to any person; c) reverse engineer, disassemble, or decompile the Products.

11. FORCE MAJEURE. Exergy's failure to deliver Product by reason of any of the following and such event shall not constitute an event of default or breach of any terms, strikes, picket lines, boycott efforts, fires, floods, freeze, accidents, war (whether or not declared), revolution, riots, insurrections, acts of God, acts of government (including, without limitation, any agency or department of the United States of America or any other country), viruses, pandemics, epidemics, governmental lockdowns/shutdowns, acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other causes which are reasonably beyond the control of Exergy, Exergy shall promptly notify the Customer of any such delay and its cause.

12. DAMAGES AND LIABILITY. IN NO EVENT SHALL EXERGY BE LIABLE TO ANY PERSON FOR PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR OTHER SPECIAL DAMAGES OF ANY DESCRIPTION INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY AND PROPERTY DAMAGE, EQUIPMENT DAMAGE, LOSS OF PROFITS OR REVENUES OR BUSINESS, COST OF CAPITAL, COST OF PURCHASE, COST OF RECALL, OR COST OF REPLACEMENT GOODS, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE. FURTHER, IN NO EVENT SHALL EXERGY BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE OF PARTICULAR PRODUCT SPECIFIED ON AN ORDER THAT IS THE SUBJECT MATTER OF A DISPUTE. CUSTOMER EXPRESSLY WAIVES ANY SECURITY INTEREST IN OR OTHER LIEN ON REJECTED PRODUCTS.

13. GOVERNING LAW; VENUE; JURISDICTION; ATTORNEYS' FEES. Jurisdiction of any dispute is limited to the courts of New York located in Nassau County, NY. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of laws principles. For all matters arising under this Agreement, the parties irrevocably submit to the exclusive jurisdiction of the state and federal courts located in the County of Nassau, State of New York, and waive any jurisdictional, venue or inconvenient forum objections to such courts. The prevailing party in any litigation shall be entitled to recovery of its reasonable attorneys' fees from the other party in addition to any other award of damages from the court.

14. ACCEPTANCE OF TERMS AND CONDITIONS OF SALE. Exergy's performance is conditioned upon Customer's assent to the Exergy Terms and Conditions. Exergy hereby gives notice of its objection to any additional or different terms and conditions contained in any Customer acceptance, purchase order, acknowledgement, or other document.

15. GENERAL. If any part hereof is contrary to, prohibited by, or deemed invalid under applicable laws or regulations, such provisions shall be deemed inapplicable and omitted to the extent contrary, prohibited, or invalid, but the remainder shall not be less invalid and shall be given effect so far as possible. The entire understanding between the parties hereto is set forth herein and any promises, reputations, warranties or guarantees not herein contained shall have no force and effect unless in writing signed by Exergy and Customer.

16. EXPORT REGULATION AND COMPLIANCE WITH UNITED STATES EXPORT CONTROL LAWS. The products may be subject to United States control laws, including the Export Control Reform Act and its associated regulations including, but not limited to The Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). Customers shall not directly or indirectly export, re-export, or release the Products to, or make the Products accessible from any jurisdiction or country to which export, re-export or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Products available outside the United States.