

Terms & Conditions

Dated May 27, 2008

STANDARD TERMS AND CONDITIONS

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. Exergy hereby expressly rejects any terms or conditions different from or in addition to the terms and conditions contained herein.

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.

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. Sales and Similar Taxes; Shipping Costs; Insurance. Unless otherwise agreed to in writing by the parties, Customer shall pay all sales, use, excise or similar taxes and any shipping, delivery and related insurance costs applicable to the Products. In lieu of certain tax payments, Customer may provide Exergy with a tax exemption certificate acceptable to the taxing authorities. All Products are shipped FOB Exergy factory, Garden City, NY.

D. 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. BUYERS SPECIFICATIONS

If the Customer furnishes specifications or designs to Exergy, Customer shall defend, indemnify and hold Exergy harmless against any third-party claims for infringement that arise out of Exergy's use of specification or designs furnished by Customer.

5. WARRANTY

Exergy warrants all products be free of defects in materials and workmanship for a period of two (2) years following shipment. Should a product failure occur within that period, as a result of normal use and service and when properly installed, 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.

Failures induced by improper installation, 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 with a return merchandise 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.

Exergy may provide calculations to predict performance of Products purchased. Exergy in no way guarantees that the actual performance will meet the calculations.

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. RETURN POLICY

Customers may only return Standard Products within fifteen (15) days of purchase. The Products must be resalable and the return must be approved by Exergy in advance of shipment. Restocking charges of fifteen percent (15%) shall apply. Modified or Custom Products cannot be returned, unless written approval is obtained from Exergy. Returned products must be in original packaging and be accompanied with a return merchandise authorization (RMA) number obtained from Exergy. Exergy is not responsible for any damage incurred in the return shipment.

7. 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.

Jurisdiction of any dispute is limited to the courts of New York located in Nassau County, NY.

These terms and conditions are subject to change without notice. Please contact Exergy or visit our website for the current terms and conditions.