

ENERGY STRATEGY ASSOCIATES, INC. TERMS AND CONDITIONS

1. **Formation of Contract.** An order is deemed by Seller to be an offer to purchase, which Seller may accept or reject in its sole discretion. Seller's acceptance of an offer to purchase is binding on Seller only if made by written instrument or, if not by written instrument, by shipment of the products ordered (and acceptance by shipment shall only be binding as to the portion of the order actually shipped by Seller). Seller's acceptance of any offer by Buyer to purchase the Products is expressly conditional upon the Buyer's assent to all the terms and conditions herein, including any terms additional to or different from those contained in the Purchase Order.

2. **Delivery.** All Products purchased by Buyer under this Agreement will be suitably packaged for shipment in Seller's standard containers, marked for shipment to Buyer at the address specified in the Buyer's Purchase Order. Shipment of Products under this Agreement shall be F.O.B. Seller's warehouse. Title and risk of loss will pass F.O.B. Seller's warehouse. The prices for the Products exclude all transportation costs, including, but not limited to, freight, insurance and special handling and packaging. Buyer will be responsible for and pay all freight, shipment, and insurance charges associated with shipment of the Products to Buyer, even if the order is rejected upon delivery. Buyer shall also pay all sales, use, excise or similar taxes, or other charges, which Seller is required to pay, or to collect and remit, to any Government (national, state or local) and which are imposed on or measured by the sale. Seller shall use commercially reasonable efforts to ship Products to Buyer on or before the requested receipt date designated in a Purchase Order. Shipment of any Products ordered from Seller may be delayed for a period of time sufficient to allow Seller to manufacture and assemble or otherwise acquire the Products for Buyer, and Seller shall not be held liable to Buyer or any other party for any delay in shipment of any Purchase Order. Any expense for any special packaging or any special delivery requested by Buyer shall be borne solely by Buyer.

3. **Payment Terms.** All bills are dated the day of shipment and payable within 30 days. Seller reserves the right, in its sole discretion, to require partial or full cash payments before delivery or security satisfactory to Seller. Seller reserves the right to cancel any sale if Seller deems Buyer unable to pay for any products.

4. **No Set-Off.** Buyer shall have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Seller shall be made without Seller's prior, express written approval.

5. **DISCLAIMER OF WARRANTIES.** THE SELLER WARRANTS THAT THE PRODUCTS SOLD HEREUNDER WILL CONFORM WITH THE QUANTITY AND DESCRIPTION SPECIFICALLY SET FORTH BY THE SELLER IN ITS INVOICE. SELLER'S SOLE OBLIGATION FOR A REMEDY TO BUYER SHALL BE REPLACEMENT OF NON-CONFORMING PRODUCTS PROVIDED BUYER TIMELY NOTIFIES SELLER OF NON-CONFORMITY. THE WARRANTIES SET FORTH HEREIN WITH RESPECT TO THE PRODUCTS ARE THE ONLY WARRANTIES MADE BY SELLER IN CONNECTION WITH THE PRODUCTS AND THE TRANSACTIONS CONTEMPLATED AS A RESULT OF THIS SALE. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS TO BUYER OR ANY OTHER PERSON OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF PRODUCTS PURCHASED, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS OR SUBSTANCES

6. **Limitation of Liability.** No claim by Buyer of any kind including, but not limited to, claims for indemnification, whether as to quality or amount of product delivered or non-delivery, shall be greater in amount than the purchase price for the products in respect of which damages are claimed. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF THE PRODUCTS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

7. **Inspection.** Buyer shall inspect the products promptly upon receipt for non-conformity (including but not limited to non-conformity for quantity, quality, and/or defects). Failure by Buyer to provide Seller with written notice of a claim within 10 days from the date of delivery or, in the case of non-delivery, from the date fixed for delivery, shall constitute a waiver by Buyer of all claims with respect to such products.

8. **Excuses for Non-Performance.** If the manufacture, transfer or receipt by either party of any products covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference, and neither party shall be liable to the other for default or delay in performing, except with respect to Buyer's payment obligations.

9. **Seller's Rights.** If Buyer should fail in any manner to fulfill the Terms and Conditions hereof, Seller may defer further shipments until such default is cured. Remedies provided herein shall be in addition to, and not in lieu of, other remedies that may be available to Seller. If for any reason, the quantities of the products covered hereby or of any materials used in the production of the products reasonably available to Seller shall be less than Seller total needs for its own use and for sale, Seller may allocate its available supply of products among its existing or prospective Buyers and/or its own departments, divisions and affiliates in such manner Seller deems proper in Seller's sole discretion, without thereby incurring liability on account of the method of allocation determined or its implementation or for failure to perform this Agreement.

10. **Governing Law.** This Agreement shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of New York, without giving effect to its principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

11. **Dispute Resolution.** Any claims or legal actions by one party against the other arising under these Terms and Conditions of Sale Agreement and/or any sale and purchase of Product hereunder or any transaction contemplated hereby or concerning any rights under this Agreement shall be commenced and maintained in any state or federal court located in Columbia County in the state of New York. Both parties hereby submit to the jurisdiction and venue of any such court. THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF THIS AGREEMENT.

12. **No Assignment.** This contract between Buyer and Seller is not transferable by either party without the prior written consent of the other party, except that Seller may assign this Agreement without Buyer's consent if the assignment is to an affiliate or if the assignment is carried out as part of a merger, restructuring, or reorganization, or sale or transfer of all or substantially all of Seller's assets.

13. **Compliance with Laws; Export Laws.** Buyer and Seller shall comply with all applicable international, national, state, regional and local laws and regulations with respect to their performance of this Agreement. Buyer agrees to adhere to all applicable US Export laws and regulations with respect to the products.

14. **Miscellaneous.** These Seller's Terms and Conditions of Sale are the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by this sale, notwithstanding any other terms that might be contained in any purchase order or other document received from Buyer or submitted to Seller. These Terms and Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and can only be modified or changed in writing and signed by authorized representatives of both parties. No waiver by Seller of any of Seller's Terms and Conditions of Sale or any breach hereof shall constitute or be deemed to be a waiver of any such term or any such breach in any other case. No waiver shall be deemed to occur as a result of the failure to enforce any term or condition of these Seller's Terms and Conditions of Sale. If any clause or portion thereof shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses or portions shall remain in full force and effect. The paragraph headings are for convenience only and shall not be used in interpreting or construing these Seller's Terms and Conditions of Sale.