

ENERGY CONTROL, INC.

TERMS AND CONDITIONS OF SALE – Rev0
- EQUIPMENT AND SERVICES -

ENERGY CONTROL, INC. ("Seller") agrees to perform the Services and/or sell the Equipment described hereon upon the following terms and conditions of sale which supersede any of Buyer's additional or inconsistent terms and conditions of purchase.

1. DELIVERY AND PERFORMANCE TERMS

In the absence of shipping instructions, any Equipment is to be shipped by whatever shipping method Seller deems appropriate, and in any event the Equipment is at the risk of Buyer from and after delivery to carrier, and Buyer assumes all responsibility for shortage, loss, delay, or damage in transit. All scheduled performance or delivery dates are approximate and Seller shall not be liable for loss, damage or delay resulting from causes beyond its reasonable control or caused by civil insurrection, war, fires, strikes or other labor disturbances. Acts of God, shortages of materials or failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, delay or failure by Buyer to perform its obligations under this Agreement, or any other factor or event beyond Seller's reasonable control. **UNDER NO CIRCUMSTANCE WILL SELLER BE RESPONSIBLE FOR OR BUYER BE ENTITLED TO DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR OWING TO ANY DELAYS IN DELIVERY OR PERFORMANCE WHATSOEVER.**

In the event Seller's performance is delayed or interrupted at jobsite by Buyer or others, resulting downtime of Seller's employees shall be paid by Buyer at Seller's normal billing rates, regardless of any other pricing terms of this contract with regard to any other aspect of this job. Seller shall use its best efforts to fill any such employee downtime with other necessary activities or other jobs and, to the extent such time is so utilized, will not invoice Buyer for such time.

2. IMPAIRMENT OF CREDIT

If Buyer is or becomes insolvent, or is unable to pay its debts as they mature, or files or has filed against it a bankruptcy, insolvency or similar petition, or if Seller in good faith doubts the ability or willingness of Buyer to pay, Seller may demand cash payment in advance before shipments are made.

3. TAXES

Sales, use, excise, or similar taxes, export license fees, duties, customs or similar charges, arising out of or relating to the sale, delivery, installation, or use of the Equipment or the performance of the Services described on the face hereof are not included in the price except as otherwise specified herein. All such taxes and/or charges are the responsibility of the Buyer and Seller shall have the right at any time to separately bill the Buyer for such taxes and/or charges which Seller may have been requested to pay, and the Buyer shall upon receipt of such invoice pay the Seller the amount stated thereon. Seller shall collect, and Buyer shall pay to Seller, all applicable taxes except only in the case where Buyer itself is exempt from such taxes and provides appropriate evidence of such exemption to Seller. Buyer shall not, for purpose of this provision, rely upon or attempt to utilize the tax exempt status of its customer or any other third person.

4. INSPECTION, ACCEPTANCE AND ACKNOWLEDGEMENT

Any Equipment covered hereby shall be deemed finally inspected and accepted by Buyer within ten (10) days after receipt thereof unless notice of a claim is given in writing to the Seller within such time period Seller provides the goods or services described on the other side hereof to Buyer only on the terms and conditions of sale appearing on both sides of this sales order. These terms and conditions shall replace all terms and conditions of Buyer's order and of any proposal or quotation to Buyer not accepted by Buyer prior to the date of this invoice. In the absence of a written acceptance by Buyer, an acceptance of any goods or services covered by Buyer's order shall constitute an acceptance of these terms and conditions. Any additional or different terms or conditions are expressly rejected by Seller unless agreed to by Seller in writing. Buyer's orders may be telephonically communicated and by signing this, or any previous invoice (sales order). Buyer expressly authorizes such order and agrees to the terms and conditions of sale appearing hereon.

5. LIMITED WARRANTY; EXCLUSIONS FROM WARRANTY; LIMITATION OF LIABILITY; WARRANTY ADJUSTMENT

(A) LIMITED WARRANTY

The Seller warrants that at the time of shipment or delivery any Equipment manufactured by the Cleaver-Brooks Division of Aqua-Chem, Inc. ("Cleaver-Brooks") and any spare and replacement parts manufactured by Cleaver-Brooks will be free from defects in materials, design and workmanship for a period of twelve (12) months from the date of shipment or delivery to the original user. Equipment, accessories and other parts and components not manufactured by Cleaver-Brooks are warranted only to the extent of and by the original manufacturer's warranty to the Seller; in no event shall such other manufacturer's warranty create any more extensive warranty obligations on the Seller than the warranty covering Equipment and parts manufactured by Cleaver-Brooks. Seller warrants that the Services it performs will be free from defects in workmanship for a period of ninety (90) days from the date of performance.

(B) EXCLUSIONS FROM WARRANTY

(i) THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, ORAL OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION OF THE EQUIPMENT OR THE PARTS OR THE SERVICES. THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE STATED ABOVE, AND TO THE EXTENT PERMITTED BY LAW, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PROVISIONS OF THIS LIMITED WARRANTY AS TO DURATION, WARRANTY ADJUSTMENT AND LIMITATION OF LIABILITY SHALL BE THE SAME FOR BOTH IMPLIED WARRANTIES (IF ANY) AND EXPRESS WARRANTIES.

(ii) Seller's warranty is solely as stated in (A) above and does not apply or extend, for example, to: expendable items, ordinary wear and tear; altered units; units repaired by persons not expressly approved by the Seller; materials not obtained from Seller; or damaged

caused by accident, the elements, abuse, misuse or overloading or by jobsite conditions.

(C) LIMITATION

The Warranty Adjustment in (D) below sets forth the exclusive remedy against Seller and the extent of the Seller's liability for breach of implied (if any) and express warranties, representations, instructions or defects from any cause in connection with the sale or use of the Equipment or of any spare or replacement parts or in connection with any Services

performed. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR LOSS, DAMAGE, OR EXPENSE, DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF THE EQUIPMENT OR ANY SPARE OR REPLACEMENT PART OR ANY SERVICES OR FROM ANY OTHER CAUSE WHETHER BASED ON WARRANTY (EXPRESS OR IMPLIED) OR TORT OR CONTRACT, AND REGARDLESS OF ANY ADVICE OR RECOMMENDATIONS THAT MAY HAVE BEEN RENDERED CONCERNING THE PURCHASE, INSTALLATION OR USE OF THE EQUIPMENT OR ANY SPARE OR REPLACEMENT PART OR ANY SERVICES.

(D) WARRANTY ADJUSTMENT

Claim of any breach of any warranty must be made by written notice to the Seller's home office within then (10) days of the discovery of any defect. The Seller agrees at its option to repair or replace, BUT NOT INSTALL, F.O.B. Seller's factory, any part or parts of the Equipment or any spare or replacement part which within the period stated above shall be proven to the Seller's satisfaction (including return to the Seller's plant, transportation prepaid, for inspection, if required by the Seller) to be defective within the above warranty. Expenses incurred thereafter by Buyer or user in replacing, repairing or returning the Equipment or any part or parts will not be paid or reimbursed by the Seller. The Seller agrees to repair or replace, at its option, any Services which within the period stated above shall have been proven to the Seller's satisfaction to be defective within the above warranty.

(E) PRIOR CONDITION OF EQUIPMENT

In no event shall Seller have any liability whatsoever for any failure, loss, damage or destruction of equipment which is due to the condition or state of the equipment, known or unknown, as it existed prior to the commencement of Seller's work.

6. SECURITY INTEREST

The Buyer hereby grants to Seller a security interest in any Equipment and all attachments, replacements and proceeds thereof, to secure Buyer's performance of this Agreement and payment of the purchase price, interest thereon at the maximum legal rate until the same is paid and the costs of collection, including reasonable attorneys' fees. Seller shall have, upon a default in payment or performance, or upon the bankruptcy or insolvency of the Buyer, all of the rights and remedies of a secured creditor under the Uniform Commercial Code, including the right for immediate possession of the Equipment. Such rights and remedies shall be in addition to any other rights and remedies under this Agreement. The Buyer agrees to execute and deliver upon Seller's request financing statements to perfect Seller's security interest, and it is understood that the Equipment shall remain personal property, regardless of the manner in which it may be affixed to real estate.

7. CANCELLATION

No order is subject to cancellation or change by Buyer in any respect without Seller's express prior written consent. In the event the Buyer defaults or refuses to accept delivery of any Equipment, Seller shall be entitled, in addition to any of its other rights under this Agreement or as provided by law to recover from the Buyer an amount equal to all of Seller's damages (including reasonable overhead charges) for such nonacceptance, default or repudiation, and seller shall have the right to retain, in partial or complete payment of such amount, the total of all payments made hereunder less only that portion, if any, in excess of such amount.

8. CLAIMS

No claims for shortages or errors will be valid unless such claims are made in writing to Seller within ten (10) days from receipt of any Equipment. Buyer's acceptance or use of the Equipment shall constitute Buyer's waiver of any and all such claims and any claims for losses or damages resulting from delays in delivery or shipment regardless of the cause.

9. ACCESSORY AND SAFETY DEVICES

Only accessory and safety devices specified in the contract will be furnished by the Seller. It is the responsibility of the Buyer to furnish such accessory and safety devices as may be desired by it and/or required by OSHA standards or other law respecting Buyer's use of any Equipment. Buyer shall be responsible for ascertaining that the Equipment is properly operated in accordance with all code requirements and all other applicable laws, rules, regulations and ordinances.

10. OPERATING INSTRUCTIONS

The Buyer agrees it will cause the Equipment to be maintained and operated in strict accordance with the manufacturer's written instructions. The Buyer further agrees to defend, indemnify and save Seller harmless against any and all damages, demands, suits, causes of actions and claims arising directly or indirectly out of Buyer's failure to cause the Equipment to be so maintained and operated.

11. PAYMENT

Checks or remittances marked to indicate payment in full will be deposited by Seller notwithstanding such markings, and such deposit shall not constitute acceptance of the check or remittance as payment in full unless the remittance actually constitutes payment of all sums owed. In the event Seller must institute legal action to enforce payment of any amount due, Buyer shall be liable to Seller for reasonable attorneys' fees and legal costs.

12. GENERAL

(A) Interest at maximum legal rate shall be charged on all past-due payments under the terms of sale.

(B) Any action for breach of any term of this agreement must be commenced within one year after the cause of action arises. This transaction will be governed by the laws of the State of Ohio. Buyer consents to venue and jurisdiction for any court actions involving this transaction in the courts of Lucas County, Ohio.

(C) This Agreement represents the entire agreement between the parties, superseding all prior agreements and understandings, whether written or oral. In no event shall this Agreement or any provision hereof be deemed to be amended, modified or changed in any manner whatsoever (including by reason of trade usage or course of dealing) except and unless such amendment, modification or change is set forth in a writing executed by the Buyer and an officer of Seller in a document making specific reference to this Agreement.

(D) This Agreement may not be transferred or assigned in whole or in part without Seller's prior written consent.

(E) Paragraph and other headings used herein are for convenience or reference only and shall not affect the meaning or interpretation of this Agreement.