

## Terms and Conditions

### 1. Governing Terms

All product(s) and services offered for sale by EnerFest, Inc. ("EnerFest") are sold subject to the terms and conditions stated herein. These terms and conditions shall apply to the sale of the product(s) and/or services described in the EnerFest Quotation, Sales Order, Invoice, or other contract documentation to which these terms and conditions are attached or incorporated by reference. Except as expressly agreed by an authorized representative of EnerFest in writing, no other terms and conditions, including any terms and conditions attached to, or contained within, the Buyer's request for quotation, acknowledgment, purchase order or other contract documentation shall apply. The Buyer's acceptance of the product(s) or services delivered by EnerFest shall constitute an affirmation by the Buyer that the terms and conditions set forth herein govern the purchase and sale of the goods or services. **THE TERMS OF THIS CONTRACT SHALL SUPERSEDE ANY ADDITIONAL, DIFFERENT OR CONFLICTING TERMS PROPOSED BY THE BUYER OR CONTAINED ON THE BUYER'S PURCHASE ORDER OR ANY DOCUMENT OR INSTRUMENT SUBMITTED BY BUYER.**

### 2. Prices, Taxes and Payment

All prices are firm unless otherwise agreed to in writing. EnerFest reserves the right to change the prices and specifications of its product(s) at any time without notice. Any tax, duty, custom or other fee of any nature imposed upon this transaction by any federal, provincial, local or foreign governmental authority shall be paid by the Buyer in addition to the price quoted or invoiced. In the event EnerFest is required to prepay any such tax, the Buyer will reimburse EnerFest. EnerFest standard payment terms shall be net 30 days after shipment by EnerFest. Enerfest reserves the right to impose different payment terms at any given time and will provide there terms during the quotation stage and prior to accepting the order from the buyer. An interest charge equal to 1.5% per month (18% per year) will be added to invoices outstanding beyond 30 days after shipment. In addition EnerFest reserves the right to require pre-paid payment terms from any Buyer whose account is overdue for a period of more than 60 days or who has an unsatisfactory credit or payment record. EnerFest may also refuse to sell to any person until overdue accounts are paid in full.

### 3. Quotation

Unless otherwise state, EnerFest quotations are valid for a period of thirty (30) days. Pricing is subject to correction for error. The Purchaser shall pay or reimburse EnerFest for all sales, use, excise, personal property, value-added, or other applicable federal, provincial or local taxes, duties, or any similar

assessments. Without limitation, orders for special or custom Goods, as designated or determined by EnerFest, may not be returned or cancelled and may require payment in full at time of order placement.

### 4. Delivery and Shipment

EnerFest will make every effort to ship the product(s) or provide the services hereunder in accordance with the requested delivery date, provided that EnerFest accepts no liability for any losses or for general, special or consequential damages arising out of delays in delivery. All shipment costs shall be paid by the Buyer, and if prepaid by EnerFest, the amount thereof shall be reimbursed to EnerFest.

### 5. Documentation

EnerFest shall provide the Buyer with that documentation which is specifically identified in the quotation. If additional copies of documentation or non-standard documentation are to be provided by EnerFest, they shall be provided to the Buyer at EnerFest's price then in effect. Documentation marked as confidential or proprietary may not be reproduced or used for any purpose other than the purpose for which it was provided and may not be disclosed to third parties without the prior written permission of EnerFest.

### 6. Installation

The Buyer shall be responsible for transporting, receiving, storing, installing, starting up and maintaining all Product(s). If requested, EnerFest may, at its option, provide Services to assist the Buyer in the installation of the Product(s) at a price to be agreed to between the Buyer and EnerFest or at the rates set out in EnerFest's published rate schedule in effect at the time the Services are actually rendered.

### 7. Title

Title to the product(s) shall remain with EnerFest until the Buyer makes full payment of the product(s) or on the product(s) being delivered to the Buyer, whichever occurs later.

### 8. Risk of Loss

The risk of loss or damage to the product(s) while in transit shall be assumed by the Buyer.

### 9. Excuse of Performance

EnerFest shall not be liable for delays in performance or for non-performance due to failure or interruption of computer or telecommunication systems, acts of God, war, riot, fire, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws,

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regulations, orders or actions, or other unforeseen circumstances or causes beyond EnerFest's reasonable control. In the event of such delay, the time for performance or delivery shall be extended by a period of time reasonably necessary to overcome the effect of the delay.

### 10. Inspection

The Buyer shall be responsible for inspecting all product(s) shipped hereunder prior to acceptance, provided, that if, the Buyer shall not have given EnerFest written notice of rejection within 30 days following shipment to the Buyer, the product(s) shall be deemed to have been accepted by the Buyer.

### 11. Warranties

Subject to the limitations of liability and remedies set out in Section 12, EnerFest warrants its Product(s) and/or Services as follows:

The Product(s) manufactured by any third party (including the EnerFest's principals and their affiliated companies) provided by EnerFest to the Buyer as the manufacturer's distributor shall be subject to the manufacturer's standard warranty. The Buyer agrees that EnerFest shall have no liability for correcting any defect in the materials and workmanship in any re-sale Product(s) and that EnerFest's only obligation is to make a reasonable commercial effort to assist the Buyer in making a warranty claim as against the manufacturer's standard warranty

EnerFest will, at its option, repair or replace any defects in materials or workmanship in any Product(s) manufactured by EnerFest which appear within the earlier of twelve (12) months from the date of the initial installation of the EnerFest's Product(s) by the Buyer or eighteen (18) months from the date of shipment of the Seller's Product(s).

Any Services and consumables supplied by EnerFest, including component integration, device configuration and the repair of Product(s) are warranted against defects in workmanship for a period of the earlier of ninety (90) days from the date of the installation of the Product(s) or completion of the Services, or one hundred and twenty (120) days from the date of shipment of the Product(s) to the Buyer. Any interpretative services provided by Enerfest are not warranted either as to the accuracy or correctness of any such interpretations or any recommendations made by EnerFest based upon these interpretations.

All costs of dismantling, reinstallation and freight and the time and expenses of Enerfest's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by the Buyer unless accepted in writing by EnerFest.

### 12. Limitation of Remedy and Liability

EnerFest shall not be liable for damages caused by delay in performance. The remedies of the Buyer set forth in this agreement are exclusive. In no event, regardless of the form of the claim or cause of the action (whether based in the contract, infringement, negligence, strict liability, other tort or otherwise), shall EnerFest's liability to the Buyer and/or its customers exceed the price to the Buyer of the specific goods manufactured or services provided by EnerFest giving rise to the claim or cause of action. The Buyer agrees that in no event shall Enerfest's liability to the Buyer and/or its customers extend to include incidental, consequential or punitive damages. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, revenue or use and costs incurred including without limitation for capital, fuel and power, and claims of the Buyer's customers.

### 13. Force Majeure

If the performance of any part of the Agreement is prevented, hindered or delayed by reason or any cause or causes beyond the reasonable control of EnerFest including, without limitation: acts of God or nature; labour disputes; sovereign acts of any federal, provincial or foreign government; or shortage of materials), EnerFest shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby during the continuance of any such happening or event, and the Agreement shall be deemed suspended as long as and to the extent that any such cause prevents or delays its performance.

### 14. Indemnity

The Purchaser shall indemnify and hold EnerFest harmless from and against any and all claims, demands, causes of action, loss, cost, damage and expense (herein referred to as "Claims") arising out of, or in connection with, the performance or non-performance of the services or the provision of the Goods provided hereunder including, without limitation, Claims arising from injuries (including death) to any person and loss of or damage to property, in any way sustained, or alleged to have been sustained, in connection with or arising out of the performance or non-performance of the services or the provision of the Goods by EnerFest, its agents, employees or subcontractors.

### 15. Returns

Goods may only be returned for credit upon prior approval by EnerFest and subject to a re-stocking charge to be determined by EnerFest. The amount of credit shall be subject to further reduction in an amount to be determined by EnerFest depending upon the condition of the goods when returned to

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EnerFest. All returned goods must be returned freight prepaid by the Buyer.

### 16. Governing Law

This Contract shall be governed by and construed in accordance with the laws (other than those relating to conflict of laws questions) of the Province of Alberta.

### 17. Assignment

The Buyer shall not assign its rights or its obligations under this Contract without the written consent of EnerFest.

### 18. Cancellation Prior to Shipment

In the event the Buyer requests that an order for product(s) or services which it has placed with EnerFest be cancelled prior to shipment, and EnerFest agrees to this cancellation request, the Buyer shall be liable to EnerFest for all costs incurred by EnerFest as a result of such cancellation, including but not limited to, cancellation costs to suppliers and un-reimbursed advances on goods, if any, together with any specifically identifiable incidental and consequential expenses.

### 19. Priority

In the event of any conflict between these general terms and conditions and any other provision of this Agreement, the provision of these general terms and conditions shall govern to the extent of such conflict unless otherwise expressly set out herein. In the event of conflict or inconsistency between the express provisions set out in any quotation prepared by EnerFest, the provision of such quotation shall govern to the extent of such conflict except in respect of Sections 12, 13 and 14 hereof.

### 20. General Provisions

The failure of EnerFest to enforce at any time any of the provisions of this Contract, to exercise any election or option provided herein, or to require at any time performance by the Buyer of any of the provisions herewith shall in no way be construed to be a waiver of any such provisions, or the right of EnerFest thereafter to enforce each and every such provision. This Contract contains the complete and exclusive statement of the agreement between the parties in connection with the subject product(s) and/or services and supercedes any previous understandings, communications, commitments, or agreements, oral or written. The Buyer warrants that it has not offered or given and will not offer or give to any employee, agent or representative of EnerFest any gratuity with a view toward influencing such person with respect to the terms, conditions or performance of this Contract or any contracts with EnerFest. EnerFest and the Buyer

are independent contractors; neither is an agent or employee of the other or has any authority to assume or create any obligation or liability of any kind on behalf of the other. Any provision of this Contract that is invalid or unenforceable under applicable laws with respect to a particular party or circumstance will be severed from this Contract with respect to such party or circumstance without invalidating the remainder of this Contract or the application of such provision to other persons or circumstances. The headings used in this Contract have no legal effect.