



Terms & Conditions

ENCORP ENERGY EFFICIENCY BUSINESS

Standard Terms and Conditions of Sale. These Terms and Conditions of Sale are between the buyer ("Buyer") and ENCORP CANADA INC. ("Seller") selling Energy Efficiency products ("Product(s)") or services ("Service(s)"). These Terms and Conditions of Sale are subject to change, as notified by Seller posting revised Terms and Conditions of Sale on its website at:

www.encorpcanada.com/terms/encorpcanada_tc.pdf

1. Quotations and Price Lists

1.1. **Quotation:** Written quotations by Seller ("Quotations") unless otherwise indicated therein, shall expire automatically sixty (60) days after the date appearing on the Quotations unless Seller receives and accepts Buyer's order within that period. Prior to the expiration date any Quotation is subject to change by Seller at any time upon written notice to Buyer.

1.2. **Price Lists:** Price List means the list of prices applicable for the Seller's Products and as published by the Seller. Different Price Lists may apply for each of Seller's Product category. Each Price List is valid from its effective date as indicated on such Price List until its revision by the Seller. The Price List is subject to these Terms and Conditions of Sale.

2. Acceptance of Purchase Orders

Notwithstanding any contrary language in Buyer's purchase order, each purchase order shall be subject to acceptance by an authorized employee of Seller and each purchase order upon acceptance ("Contract") shall be governed exclusively by these Terms and Conditions of Sale, except if any specific terms have been expressly and mutually agreed by the parties and confirmed in Seller's sale order acknowledgment of each purchase order. Such acceptance is expressly limited to these Terms and Conditions of Sale, and any additional or different terms proposed by Buyer are automatically rejected unless expressly and specifically agreed to in writing by an authorized employee of Seller. Seller's acceptance of a purchase order is expressly conditioned upon the Buyer's assent to the Seller's Terms and Conditions of Sale contained herein. All purchase orders accepted by Seller are deemed to be sales for commercial Buyers and shall not, unless plainly and prominently stated on the face of the purchase order, be considered a sale to any federal, state, provincial or municipal governmental entity either domestic or foreign. No contract shall exist except as herein above provided. No contingency contained on any purchase order shall be binding upon the Seller and such additional or conflicting terms are deemed expressly rejected by the Seller.

3. Price Changes

Prices, provided by way of a Quotation, or in its silence a Price List, are subject to change in accordance with prices prevailing at the time of delivery for shipment. Seller reserves the right to make any corrections to prices quoted due to clerical errors or errors of omission. In the event of any specific requirements (including without limitation any design, specification, ordered quantity, or shipment changes) representing a price increase, Buyer will be notified about the change and afforded an opportunity to confirm.

4. Payment Terms

Unless different credit terms have been extended to Buyer in writing by Seller, payment terms are 50% deposit with order and outstanding balance due within 7 days after installation of the product at the designated Client's site(s). Seller reserves the right to modify or withdraw credit terms at any time without notice. If Buyer fails to fulfill the terms of payment, Seller may defer further shipments to Buyer or, at its option, cancel the unshipped portions of Buyer's orders. Buyer agrees to pay interest on all past due



invoices at the lesser of 12% per annum, compounded monthly, or the highest contractual rate allowable under the law.

5. Title of Goods

Until full payment of all obligations of the Buyer for an order, Seller reserves the title (but not the risk of loss) to all Products furnished under that order. If the Buyer defaults in payment or performance or becomes subject to insolvency, receivership or bankruptcy proceedings or makes an assignment for the benefit of creditors, or without the consent of Seller voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the Products, Seller may treat all amounts then or thereafter owing by Buyer to be immediately due and payable and Seller at its election may repossess Products for which Buyer has not paid in full. In the event of repossession of Products under this section, Buyer agrees that Seller may enter the premises where the Products may be located and remove them without notice and without being liable to Buyer for such repossession. Buyer will not set off invoiced amounts or any portion thereof against sums that are due or may become due from Seller, its parents, affiliates, or subsidiaries. Buyer grants Seller a security interest in all Products for which title has passed (including all after-acquired Products) that Seller sells Buyer and all proceeds of Products (including but not limited to all products in which Products are incorporated and any funds and products that Buyer receives in exchange for Products). Buyer consents to Seller's execution of any documents to evidence and perfect this security interest, and agrees to execute the same if requested by Seller.

6. Delivery and Risk of Loss

6.1 Delivery: Unless otherwise agreed in writing, all deliveries of Products will be FIS. Products will be packed in Seller's standard commercial shipping crates and packages.

6.2 Risk of Loss: Delivery and shipping dates are approximate and represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transactions covered by these terms and conditions, except with respect to Buyer's obligation to make all related payments. Seller's obligations under these terms and conditions will be dependent upon Seller's ability to obtain necessary raw materials and components.

7. Limitation of Liability

THE REMEDIES OF THE BUYER SET FORTH IN THESE TERMS AND CONDITIONS OF SALE ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS HEREUNDER. NOTWITHSTANDING ANY PROVISION IN THESE TERMS AND CONDITIONS OF SALE TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE IN CONTRACT, WARRANTY, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), EXTRA-CONTRACTUALLY, OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD OR SERVICED HEREUNDER, OR ANY ASSOCIATED EQUIPMENT, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, COST OF CAPITAL, CLAIMS OF CUSTOMERS OF THE BUYER OR OTHER THIRD PARTIES OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF WHETHER SUCH POTENTIAL DAMAGES ARE FORESEEABLE OR IF SELLER OR BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF SELLER ARISING FROM, CONNECTED WITH, RESULTING FROM OR RELATED TO THESE TERMS AND CONDITIONS OF SALE WHETHER THE CLAIMS ARE BASED IN CONTRACT, WARRANTY, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), EXTRA-CONTRACTUAL, OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCT OR SERVICE ON WHICH SUCH LIABILITY IS BASED. UNDER NO CIRCUMSTANCE SHALL SELLER HAVE ANY LIABILITIES OR CONSEQUENTIAL DAMAGES OF ANY KIND RESULTING IN WHOLE OR IN PART FROM SELLER'S DELAY IN DELIVERING, OR FAILURE TO DELIVER ANY PRODUCTS TO BUYER AS AGREED.



8. Cancellation and Return of Products

Orders shall not be subject to cancellation or modification either in whole or in part without Seller's written consent and then only with terms that will reimburse Seller for all applicable costs incurred by virtue of the sale, including costs of purchased materials, engineering costs and a reasonable allowance for profit. Seller's written consent must be given in advance of Buyer's return of Products for credit.

9. Design and Technical Information

Seller claims proprietary rights in the items and information associated with this order including the Products and Services. Drawings and technical information are issued in confidence for engineering information and mutual assistance only and may not be publicly disseminated, reproduced or used by Buyer without Seller's prior written consent, and shall be returned immediately when its purpose has been served or upon Seller's request whichever is earlier.

10. Limited Warranty; Defects Notification

10.1 Limited Warranty: All Products and Services manufactured by Seller are warranted against defects in material and workmanship under normal use and service for which such Products and Services were designed for a period of two (2) years after shipment. Seller's sole obligation under this Limited Warranty is, at its option, to repair, replace, or refund any Product or any part or parts thereof found to be defective. This Limited Warranty does not cover reimbursement for labor, gaining access, removal, installation, temporary power, or any other expenses, which may be incurred in connection with repair or replacement. Seller's obligation under this Limited Warranty is conditioned upon receipt of all payments due from Buyer and prompt written notice of Buyer's warranty claim. THIS LIMITED WARRANTY IS THE BUYER'S EXCLUSIVE REMEDY AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Seller's maximum liability shall not in any event exceed the contract price paid for the defective Product or parts. This Limited Warranty shall not apply to any Product or component repaired or altered by anyone other than Seller's authorized personnel; to any Products assembled, installed, or used in a manner contrary to Seller's instructions; or claims due to failure to follow Seller's instructions for operation and maintenance. This Limited Warranty shall not apply to Product samples or prototypes. Those are provided "AS IS" with Seller having no liability or responsibility for any defects, errors, or omissions in, or any uses or decisions made by the Buyer with or in reliance upon samples or prototypes.

10.2 Defects Notification: The Buyer shall notify the Seller of alleged defects in or related to the Products or Services (including, but not limited to, incorrect or insufficient deliveries) in writing and without delay. Such notice shall no longer be deemed "without delay" when it is not given within ten (10) business days; this deadline shall be deemed to have been met if the notice is posted within this period.

11. Changes and Cancellation

11.1. Changes: Changes to existing schedules or orders are subject to Seller's acceptance and may result in an increase in per piece price due to any reschedule and/or order changes. Upon Buyer's written request, Seller may accept temporary holds on orders for rescheduling purposes for a cumulative period not to exceed thirty (30) days. Upon the expiration of this 30-day period, if Buyer has not communicated its rescheduled date, Seller reserves the right to recommence shipments in accordance with the original schedule or cancel the order without prejudice to Seller's rights to its cost reimbursement set forth hereunder.

11.2. Cancellations: Cancellations to existing schedules or orders are subject to Seller's prior

written acceptance and payment of reasonable termination charges, including all progress billings and reimbursement by Buyer of Seller's incurred direct manufacturing costs, including but not limited to all labor costs and expenses and costs of materials that are not usable by Seller and other non-recoverable costs incurred. Such incurred costs will be determined by Seller and communicated in writing to Buyer.

12. Remedies

To the extent permitted by applicable law, any lawsuit or legal claim for breach of this Contract must be brought within one (1) year after the breach occurs. This does not affect Buyer's obligation to inspect the condition of the purchased object as soon as feasible in the normal course of business and, if Buyer discovers defects for which Seller is liable under Warranty, to notify Seller without delay.

13. Currency

All payments are to be made in \$CDN unless otherwise indicated by Seller on the invoice.

14. Compliance with Laws

14.1 Seller shall comply with all laws and regulations to which Seller is subject pertaining to the manufacture of the Products. For the avoidance of doubt, "laws and regulations" do not include recommendations of standard-setting organizations. Seller shall not be responsible for noncompliance with laws arising out of combination, operation or use of the Products with products not supplied by Seller where use of the Products without such combination, operation or use would be in compliance with such laws.

14.2 Buyer shall obtain all licenses, permits and approvals required by any government or applicable authority, including any recycling or take-back programs applicable to packaging of Products, and shall comply with all applicable laws, statutes, rules, regulations, orders, policies and procedures and any requirements applicable to the importation, exportation, use, sale, loan, purchase, destruction, and distribution of Products of any government or other competent authority where the Products are to be used or deployed or performance under these Terms and Conditions is carried out including those referenced in this Clause and Clause 21 below (collectively, "Applicable Laws"). In the event of any third-party claim against Seller relating to the foregoing, Buyer shall provide all necessary information and assistance in the resolution of the claim and Buyer shall indemnify and hold Seller harmless against any such third-party's claim. Buyer warrants that it shall comply with and not take any action or permit or authorize any action that will render Seller liable for a violation of the U.S. Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials Act (CFPOA), and any applicable local law, which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist it or Seller in obtaining or retaining business. Seller strives to maintain the highest standards of business integrity. If Buyer has any cause for concern regarding any business practices these should be reported to Seller. Buyer acknowledges that the failure to comply with all such Applicable Laws and/or Seller's policies will be deemed a material breach of this Contract and shall entitle Seller to terminate this Contract (in addition to any other remedies Seller may have at law or equity). Buyer agrees to indemnify, defend and hold Seller harmless from any breach of Buyer's obligation under this clause.

15. Termination

15.1. If a party breaches any of the provisions of this Contract, the non-breaching party may terminate this Contract as follows:

- (a) immediately upon providing written notice to the breaching party if the breach is not capable of being cured, or

(b) thirty (30) days after providing written notice to the breaching party if the breaching party fails to cure such breach within such thirty 30-day period or as otherwise agreed to by the parties in writing.

15.2. The termination of the Contract in any way whatsoever will be without prejudice to the rights, obligations, and liabilities of either party accrued prior to termination.

16. Bankruptcy

If bankruptcy proceedings are instituted against any contracting party or an application for bankruptcy proceedings against that party is not granted for insufficiency of assets, the other party may terminate the Contract immediately with written notice subject to any applicable mandatory law. Notwithstanding the foregoing, the Seller's title to the delivered goods shall not be affected by the bankruptcy and/or insolvency proceedings. At its discretion and at any time, Seller shall be entitled to enter the Buyer's premises and re-take possession of any Products and Services that have been delivered but remained unpaid by the Buyer.

17. Assignment

Seller shall be entitled to delegate, transfer or assign its rights and obligations arising from the Contract, in whole or in part, to any affiliate company which is owned, directly or indirectly, by Encorp Technologies Inc. Seller may, without Buyer's consent, assign the right to receive any amount due.

18. Personal Data Processing

In performing the Contract as defined, the parties may have access to one or more databases, applications, reports, documents and/or other information in hardcopy or electronic form that contain or process data relating to identified or identifiable individuals ("Personal Data"). Such individuals may include employees, temporary workers, contractors, consultants, students, customers, end-users or other business partners and associates. Each party acknowledges that Personal Data, in whichever form, is of a very sensitive nature, and hereby undertake to treat Personal Data strictly confidential and to use them only within the limits authorized by Seller. If necessary and upon request of Seller, Buyer shall procure from its employees, agents or sub-contractor that they sign Seller standard individual forms regarding the protection of Personal Data. To the extent permitted by applicable law, the parties consent to the processing of their respective Personal Data. In particular each party agrees expressly that the other party communicates the received Personal Data to any service provider in and outside the EU for performing this Contract, including for accounting, financing and contract management purposes.

19. Force Majeure

Seller shall have no liability to Buyer for Seller's delay or default in delivery due to strikes, secondary boycotts, riots, wars, accidents, fires, floods, earthquakes, hurricanes, similar storms, or other actions of the elements, acts of God or the public enemy, actions or failures to act by governmental agencies, explosions, vandalism, government embargoes, priorities or regulations, transportation delays, shortages of labor, fuel, materials, supplies, power, transportation facilities or tooling capacity or other similar or dissimilar causes beyond Seller's reasonable control whether or not foreseeable. Under no circumstances shall Seller have any liability for penalties or other consequential damages of any kind resulting in whole or in part from Seller's delay in delivering, or failure to deliver, any Products to Buyer as agreed.

20. Governing Law

The Terms and Conditions of this Contract shall be exclusively governed by and construed in accordance with the substantive and procedural laws of Ontario Canada, excluding its conflict of laws principles and excluding the UN Convention on Contracts for the International Sales of Goods. Any dispute, controversy or claim arising out of or in connection with any Contract as defined or related thereto, including governing law, validity, invalidity, breach or termination, that cannot be settled amicably within sixty (60) days shall fall within the exclusive jurisdiction of the competent court in the Province of Ontario, Canada.