

ENERNET CORPORATION
TERMS AND CONDITIONS OF SALE

All orders placed with ENERNET Corporation ("Seller") are subject to these terms and condition ("Terms and Conditions") and all additional terms and conditions presented on or accompanying a Seller Quotation, Order Acknowledgment or credit application. Any time there is a conflict between these Terms and Conditions and any terms and conditions or additional provisions proposed by Buyer or contained in Buyer's printed forms, these Terms and Conditions shall supersede and control. These Terms and Conditions represent the entire agreement of the parties as to an order placed by Buyer and accepted by Seller ("Accepted Order"), except where Seller has agree to other or additional terms and conditions in writing by an authorized agent.

1. **ACCEPTANCE.** All orders are subject to written acceptance by Seller at Seller's home office, in its sole discretion, even if taken elsewhere by a salesperson, selling agent or representative.
2. **PRICE.** Unless otherwise stated, the price is for Product only and does not include Services. Errors or omissions in price are subject to correction. Prices quoted are in US dollars (USD) and will remain open for 30 days from Quotation date. Freight, customs fees, duties, freight forwarder fees, consular fees, taxes, however designated and all other costs after shipment are for Buyer's account. Seller will bill Buyer for applicable taxes, unless Buyer provides an exemption certificate.
3. **PAYMENT.** Payment must be made in US dollars. Terms are as stated on quotation documents and Seller's credit application. Invoices will be rendered as shipments are made. 1.5% late charges or the maximum permitted by law, per month will be added to outstanding balances.
4. **SHIPMENT/SERVICE.** Shipment and service dates are estimated in good faith but are not guaranteed by Seller. After an order is accepted, Buyer may not change shipment and services dates without Seller's written consent. Seller will not be held liable for any late delivery charges. Shipments will be made D.A.P. point of manufacture or stated shipping point. Accepted Orders may be tendered in partial shipments.
5. **FORCE MAJEURE/DELAYS IN DELIVERY.** Seller shall not be liable for a failure to perform that arises from causes or events beyond its reasonable control and without its fault or negligence, and may terminate an Accepted Order in whole or in part upon such a cause or event.
6. **TITLE, RISK OF LOSS AND INSURANCE.** Title, risk of loss and insurance responsibilities pass to Buyer upon delivery of products by Seller to a shipping agent or carrier.
7. **CANCELLATION.** If buyer cancels an Accepted Order in whole or in part, Buyer agrees to pay for all services and work in progress for the portion canceled including a cancellation fee. Seller reserves the right to cancel an Accepted Order in whole or in part if, in Seller's judgment, Buyer's financial condition does not justify the terms of payment specified.
8. **INSPECTION.** Seller will inspect products prior to shipment in accordance with its normal practices.
9. **EXPORT LICENSES AND PERMITS.** It is Buyer's responsibility to procure export licenses and comply with U.S. export regulations.
10. **PACKING.** Products will be packed or packaged for U.S. shipment in accordance with Seller's standard commercial practices.
11. **TECHNICAL DATA.** All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, computer software and all parts thereof, and all other information, technical or otherwise which was developed, made or supplied by Seller in the production of any product or the performance of any service sold, rendered or licensed hereunder will be and remain the sole property of Seller. Buyer agrees that Seller software and firmware products, or software or firmware in Seller's products is hereby licensed (not sold) subject to the terms set forth in this Article 10 and contains information and trade secrets proprietary to or licensed to Seller. NO change, modification, defacement, reverse engineering or reproduction of such product or disclosure of programming content of Seller is permitted. Software and firmware are unpublished and any copyright notices placed thereon will not be deemed to constitute publication. Buyer agrees to pass on all terms of Seller's software and firmware licenses to the ultimate user.
12. **ASSIGNMENT.** Buyer shall not delegate any duties, nor assign any rights or claims under an Accepted Order, or for breach thereof, without Seller's prior written consent, any such attempted delegation or assignment shall be void.
13. **CONTINUOUS PERFORMANCE.** Buyer shall not stop, suspend or slow performance or payment under an Accepted Order because of any disputes between Seller and Buyer.
14. **PRODUCT RETURNS.** Products may not be returned without prior authorization. Authorized returns are subject to a 25% restocking charge with transportation charges paid by Buyer. Returns must be unused and in original factory anti-static bags, boxes, containers, etc.
15. **NON-CONFORMING ORDERS.** Claims for non-conforming orders must be submitted within 30 days from shipment date.
16. **SETOFFS.** Buyer shall have no right of setoff and shall no right to self-help deductions against amounts due to Seller.
17. **BUYER DEFAULT OR INSOLVENCY.** In the event of a breach by Buyer of any of these Terms and Conditions that is either not fully cured within seven (7) days after issuance to Buyer of written notice by Seller, or where Seller judges in good faith that due to an emergency or other circumstances that a cure cannot be accomplished or cannot be fully accomplished within seven (7) days, or in the event of any proceedings by or against Buyer in bankruptcy or insolvency, or for appointment of any receiver or trustee, or any general assignment for the benefit of creditors, then Seller, in addition to any other remedy provided it by applicable law or in equity, or other right reserved to it elsewhere in these Terms and Conditions, and without any liability to Buyer on account thereof, and with or without terminating this Accepted Order, may (a) withhold any further shipment Buyer, or (b) procure a substitute Buyer on such terms and under such conditions as are expedient in the discretion of Seller; and Buyer shall be liable to pay to Seller any damages incurred by Seller as a result thereof. Buyer agrees that a breach by Buyer of any other agreement between Buyer and Seller, whether or not related to this Accepted Order or the goods sold hereunder, constitutes a material breach under this Accepted Order, thereby entitling Seller to assert all its rights and remedies hereunder.
18. **WARRANTY.** Seller warrants to Buyer that products are free from substantial defect in material and workmanship under normal use for the period of 12 months from date of shipment. Buyer must promptly notify Seller of any defect in the product or service. This warranty shall be null and void if Buyer does not notify Seller of any defect in the product or services within 12 months from the date of shipment. Seller or its agent shall have the right to inspect the product or workmanship on Buyer's premises if Seller so desires. Seller has the option to: (a) repair, replace or service at its factory or on Buyer's premises the product found to be defective; or (b) credit Buyer for the product in accordance with Seller's depreciation policy. Refurbished material may be used to repair or replace the product. Products returned to Seller for repair, replacement or credit will be shipped prepaid by Buyer. Products returned for warranty service must be adequately packed to protect product(s) from electro static and physical damage.
19. **LIMITATION OF WARRANTY:**
 - (a) CORRECTION OF DEFECTS BY REPAIR, REPLACEMENT, SERVICE OR CREDIT WILL BE AT SELLER'S OPTION AND CONSTITUTE FULFILLMENT OF ALL OBLIGATIONS TO BUYER FOR BREACH OF WARRANTY.
 - (b) Seller assumes no warranty liability with respect to defects in the product caused by: (a) modification, repair, installation, operation or maintenance of the product by anyone other than Seller or its agent, except as described in Seller's documentation; or (b) the negligent or other improper use of the product.
 - (c) Other manufacturers' equipment purchased by Seller and resold to Buyer will be limited to that manufacturers' warranty. Seller assumes no warranty liability for other manufacturers' equipment furnished by Buyer.
 - (d) No agent, distributor, or representative is authorized to make any warranties on behalf of Seller or to assume for Seller any other liability in connection with any Seller product or service.
20. **DISCLAIMER OF WARRANTY.** Buyer understands and agrees as follows:
THE ABOVE WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED & ALL OTHER OBLIGATIONS OR LIABILITIES OF SELLER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER. THE FOREGOING WILL BE THE SOLE AND EXCLUSIVE REMEDY WHETHER IN CONTRACT, TORT, OR OTHERWISE, & SELLER WILL NOT BE LIABLE FOR INJURIES OR DAMAGES CAUSED BY ANY NEGLIGENCE OF BUYER. THIS LIMITATION

APPLIES TO ALL SERVICES AND PRODUCTS DURING AND AFTER THE WARRANTY PERIOD.

21. LIMITATION OF REMEDIES.

IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSSES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

22. INTERPRETATION, SEVERABILITY. These Terms and Conditions shall be construed and interpreted as if drafted jointly by Buyer and Seller. In the event any portion of these Terms and Conditions is found to be unenforceable, all other portions shall remain enforceable to the fullest extent allowable by law. Any omitted provision legally required for enforceability hereof shall be deemed inserted where required or in place of any conflicting provision.

23. WAIVER. Failure of Seller to insist upon strict performance of any terms or conditions in this document shall not be deemed a waiver of any subsequent breach or default of these terms and conditions. No waiver will be valid unless in writing and no waiver granted will release Buyer from subsequent strict compliance herewith.

24. SELLER'S RIGHT TO SUBCONTRACT. Seller reserves the right to subcontract any obligation hereunder.

25. GOVERNING LAW. All Accepted Orders shall be a contract made in the State of New York. Accepted Orders shall be construed and enforced in accordance with the laws of the State of New York without giving effect to its conflict of laws provisions. Any dispute regarding an Accepted Order shall be resolved in a court of competent jurisdiction in the County of Onondaga, in the State of New York. Any claim, except for nonpayment, will be brought within one year of product shipment or completion of services.

26. ATTORNEY'S FEES. If any litigation is commenced arising from an Accepted Order, the prevailing party shall be entitled to its costs and reasonable attorney's fees.