

**ENERNET CORPORATION**  
**TERMS AND CONDITIONS OF SALE**

All orders placed with ENERNET Corporation ("Seller") are subject to these terms and condition and all additional terms and conditions presented on or accompanying a Seller Quotation, Order Acknowledgment or credit application. Seller specifically rejects all inconsistent or additional provisions in Buyer's printed forms.

1. **ORDERS.** 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 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 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 F.O.B point of manufacture or shipping point. Orders may be tendered in partial shipments.
5. **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.
6. **CANCELLATION.** If buyer cancels an order in whole or in part, Buyer agrees to pay for all services and work in process 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.
7. **INSPECTION.** Seller will inspect products prior to shipment in accordance with its normal practices.
8. **LICENSES AND PERMITS.** It is Buyer's responsibility to procure export licenses and comply with U.S. export regulations.
9. **PACKING.** Products will be packed or packaged for U.S. shipment in accordance with Seller's standard commercial practices.
10. **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, 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.
11. **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.
12. **WARRANTY.** Seller warrants to Buyer that the products or services are free from substantial defect in material and workmanship under normal use given prior installation and maintenance for the period of 12 months from date of shipment. Buyer will promptly notify Seller of any defect in the product or service. Seller or its agent will 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 or workmanship found to be defective; or (b) credit Buyer for the product or service 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.

**LIMITATION OF WARRANTY:**

**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.**

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.

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.

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.

13. **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.**

14. **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.**

15. **GENERAL PROVISIONS.**

- A. Should any part, term, or provision of this document be found illegal or in conflict with any valid controlling law, the validity of the remaining provisions shall not be affected thereby.
- B. 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.
- C. No waiver will be valid unless in writing and no waiver granted will release Buyer from subsequent strict compliance herewith.
- D. Seller reserves the right to subcontract any obligation hereunder.
- E. Seller is not liable for failure or delay in fulfilling its obligations under these Terms and Conditions due to causes beyond its reasonable control.
- F. The laws of the State of New York, U.S.A. will apply to all transactions hereunder. Any action hereunder will be brought in Onondaga County, in the State of New York, U.S.A. Any claim, except for nonpayment, will be brought within one year of product shipment or completion of services and Buyer will be liable for any collection costs or attorney fees.
- G. Claims for non-conforming orders must be submitted within 30 days from shipment date.
- H. These Terms & Conditions together with Seller's Order Acknowledgment constitute the entire agreement between the parties with respect to the subject matter hereof & supersede any prior or contemporaneous agreement or representation written or oral. Any amendment hereto must be written and signed by Seller.