

Terms and Conditions of Sale and Service

These Terms and Conditions of Sale and Service (these "**Terms**") are the only terms that govern the sale of Goods (defined below) and provision of Services (defined below) by West Coast Energy Systems, LLC d/b/a Energy Systems, a California limited liability company ("**Service Provider**") to the customer named in the applicable purchase order ("**Customer**").

1. **Certain Definitions.** As used in these Terms: (a) "Goods" shall mean the machinery, equipment, products (including fluids used in machinery and equipment), parts and other tangible property from time to time sold or offered for sale by Seller to Customer; (b) "Services" shall mean the shop and/or field labor to be provided by Seller's technicians or subcontractors at the Customer's designated location for the purpose of inspections, diagnostics, assessments, repairs, maintenance, training, installations and/or start-up activities on Goods and Equipment as well as delivery of Goods by or on behalf of Seller; and (c) "Equipment" shall mean Customer-owned or operated vehicles, vessels, machinery, prime or standby generators or other industrial machinery, apparatus or property on which Services are performed or for which Goods are provided.

2. **Related Documents.** Seller's performance hereunder is expressly conditioned upon Customer's agreement to be bound by these Terms. *Seller hereby specifically objects to any additional or contrary terms and conditions in any document used by Customer that conflicts with these Terms and none of Customer's terms and conditions shall apply to these Terms unless reasonably requested by Customer and expressly agreed to in writing by Seller.*

3. **Price.** All prices for Goods and the flat or hourly labor rates for Services are in U.S. Dollars. Labor rates for Services will be as quoted and, if applicable, subject to Federal and State laws which require the payment of the applicable prevailing wage rates for certain public works. Services will be performed during normal business hours unless otherwise agreed, and labor rates for Services at Customer's request that extend beyond normal business hours or are performed on Saturday, Sunday or holidays are subject to higher rates. Prices quoted and invoiced *do not* include taxes unless specifically stated. Customer shall pay Seller all taxes and fees imposed by applicable law in connection with the sale of Goods and Services, and Seller shall remit the same to the applicable taxing authority as required by law. If Customer is exempt from taxes, it must provide Seller with the appropriate exemption certificate prior to invoicing.

4. **Payment Terms.** All payments due from Customer shall be in U.S. Dollars, without offset, back charge, retention or withholding of any kind unless otherwise agreed to in writing by Seller. For certain Goods and Services, Seller may require a down payment from Customer prior to placing an order with the supplier/factory or the start of Services. Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of receipt of Seller's invoice unless Seller has agreed in writing to extend credit to Customer and provide other payment terms as agreed to separately. Subject to the good faith resolution of *bona fide* disputes between the parties within a

reasonable period of time that the dispute arises, the failure to pay any amounts due under these Terms will be construed as a default under these Terms. In the event of such a default in payment, Seller will be entitled to collect additional charges for interest on the unpaid balance at the rate of 1% per month or the highest non-usurious rate permitted by applicable law, whichever is lower, as well as reasonable collection fees. *In no event shall Seller's warranties under Section 5 and Appendix I become effective unless and until amounts due for the Goods and/or Services are fully paid or otherwise satisfied as reasonably determined by Seller.*

5. **Warranties of Seller.** Subject to additional provisions, including limitations, exclusions and remedies set forth below in Appendix I, Seller warrants that the Goods will be new (except in the case of remanufactured or used Goods and components requested and described in the purchase order) and suitable for the intended purposes. Services will be provided using adequate numbers of appropriately trained and qualified personnel under adequate remote or on-site supervision. Subject to the additional provisions of Appendix I, Seller warrants that it will perform the Services in a good, prompt, and workmanlike manner with reasonable care and in compliance with industry standards as well as applicable laws and regulations.

6. **Delivery, Acceptance and Storage.** Goods will be delivered EXW factory INCO 2020 International and Third Party for Domestic with freight allowed to the jobsite, on a truck, curbside. Customer shall be responsible for the offloading and placement of Goods upon delivery. All Services shall be inspected and accepted within ten (10) calendar days after they are performed. Failure of Customer to provide Seller with an itemized list of items that do not conform to the description or specifications shall be deemed acceptance of the Goods or Services. For non-conforming items identified by Customer, Seller shall have a reasonable opportunity to correct and/or replace, with allowance given due to supplier and manufacturer lead times for made-to-order Goods. Goods held and stored by Seller beyond the agreed delivery date for the convenience of Customer will be subject to additional charges for storage and preservation. Equipment held by Seller after Services are completed on Seller's premises also will be subject to additional charges for storage and preservation if left by Customer for more than thirty (30) days after Seller notifies Customer in writing that Services are completed.

7. **Services Performed at Customer Locations.**

(a) **Customer Obligations.** When performing Services at Customer's designated location(s), Seller's employees and subcontractors (if any) shall have free and unobstructed access to the site at which Services are to be performed. Customer is

responsible for the site where Services shall be performed and shall furnish safe and proper equipment, parts, tools (not otherwise provided by Seller), safe working conditions, safe storage of Seller's tools, supplies and equipment, and shall furnish or arrange to furnish by others all necessary lifting equipment, electricity, gas, oil, water and other utilities necessary to perform the Services as well as fuel necessary to operate the Equipment during the performance of Services. Operation of the Equipment is the responsibility of Customer and Seller has no responsibility or liability for any pre-existing conditions or maintenance performed by others. Customer shall obtain all licenses, registrations, and permits necessary for Seller to perform the Services on Customer designated location(s).

(b) Seller Obligations. When performing Services at Customer's designated location(s), Seller agrees at all times that its employees and subcontractors (if any): (i) shall work in a safe manner and comply with the site rules provided in writing by Customer that govern safety and conduct work on the premises; (ii) shall comply with the requirements of the licenses, registrations and permits obtained by Customer; and (iii) shall leave the premises after completion of the Services in a clean and orderly condition and as otherwise was found at the commencement of the Services.

8. **Insurance.** Seller agrees to maintain workers' compensation insurance coverages as required by the laws of the state where Services are performed, as well as commercial general liability and automobile liability insurance coverages consistent with industry practices and when performing Services at Customer's designated location(s) and, as reasonably requested by Customer, will provide Certificates of Insurance that name Customer and other appropriate parties designated by Customer as additional insureds. Upon request, when Seller provides Services at Customer's designated location(s), Customer will provide Seller with evidence of Customer's workers' compensation, automobile and commercial general liability insurance providing adequate coverages consistent with industry practices.

9. **Mutual Indemnity.** To the fullest extent permitted by law, each party shall indemnify, defend and hold harmless the other party and its affiliates and their respective agents, representatives, officers, directors, managers, members and employees from and against all damages, losses, liabilities, obligations, costs, fines, judgments, penalties and expenses (including, but not limited to reasonable fees and charges of attorneys) ("**Losses**") relating to arising out of or resulting from any claim, demand, suit or action of the other party or any third party (collectively, "**Claims**") to the extent such Claims arise out of or result from the indemnifying party's (or any of its affiliates or their respective agents, representative's, officer's, director's, manager's, member's or employee's): (i) breach of these Terms; (ii) negligent or wrongful acts or omissions; and (iii) failure to abide by applicable laws. The obligation to indemnify under this Section 9 shall be comparative and the indemnifying party shall not be obligated to indemnify the indemnified party to the extent that such Losses or Claims were caused by any breach of

these Terms by the indemnified party or the negligence or intentional misconduct of the indemnified party.

10. **Environmental and Health & Safety.** Seller shall indemnify, defend and hold harmless Customer and its affiliates and their respective agents, representatives, officers, directors, managers, members and employees from and against all Losses relating to or resulting from any Claims to the extent such Claims arise out of or result from the presence, discharge or release of petroleum, oil, or hazardous or toxic wastes, substances or materials (as those terms are defined in applicable federal, state and local environmental statutes, regulations and guidance documents) on the Customer's designated location(s) for the performance of Services, to the extent such substances or materials are brought to the Customer's location(s) by Seller's employees or subcontractors (if any) and such Loss or Claim is attributable to the negligence or intentional misconduct of Seller. Customer's responsibility to provide and maintain safe working conditions at the designated location(s) shall include, without limitation, implementing appropriate procedures regarding arsenic, asbestos, lead or any other waste material or hazardous substances as defined by any legislation or international convention ("**Hazardous Materials**") relevant or applicable to the Services as well as confined space entry affixing labels or signs containing warnings and safety and operation procedures and instructions as required by applicable laws and regulations. Customer shall timely advise Seller in writing of all health, safety, security and environmental requirements procedures and instructions applicable at the work site, and of the existence of any Hazardous Materials or other conditions that may affect Seller's work or personnel at the work site. Without limiting Customer's responsibilities under this Section 10, the Seller has the right, but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the work site. If, in Seller's reasonable opinion, the health, safety, or security of personnel or the work site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials or unsafe working conditions, Seller and its representatives have the same responsibility and authority as Customer to stop performance of the Services and leave the designated location(s).

11. **Intellectual Property Indemnity.** Seller shall indemnify, defend and hold harmless Customer and its affiliates and their respective agents, representatives, officers, directors, managers, members and employees from and against all Losses relating to or resulting from any Claims to the extent such Claims arise out of any alleged or actual claim of violation or infringement of any patent or other intellectual property rights with respect to the Goods or Services; provided, however, Seller shall have no such obligation to the extent that such Claims are attributable to specifications, designs or instructions provided by Customer.

12. **Limitation of Liability.** Except for Losses or Claims covered by the indemnification obligations set forth in Sections 9, 10 and 11 or to the extent Losses or Claims arise out of or result

from the gross negligence or willful or illegal misconduct of either party, the liability of Seller and Customer for Losses or Claims shall be limited to the purchase price for the Goods and/or Services plus any additional amounts due under the applicable purchase order. Notwithstanding any other provision in these Terms, in no event shall either the Customer or the Seller be liable to the other for consequential, special, punitive or indirect damages, including, without limitation, damages or losses in the nature of business or service interruption, loss of reputation, loss of anticipated profits or anticipated revenue, or cost of capital.

13. **Installation, Start-up and Commissioning.** Installation, start-up and re-commissioning Services are only included if specifically included in the purchase order, or in a separate written agreement between Seller and Customer. In the event such Services are provided by Seller, Customer shall be responsible for securing all permits, licenses, certificates, inspections, registrations required by any Federal, state or local government agency and for the payment of all required fees.

14. **Timely Delivery and Excused Delays.** Seller agrees to use best efforts to deliver the Goods and Services covered under these Terms in accordance with the agreed schedule. Seller shall have no liability for any Losses to or Claims by Customer for any failure to deliver the Goods or perform Services to Customer in accordance with the agreed schedule if such failure arises from causes beyond the reasonable control of Seller, including but not limited to, delays attributable to the Customer or Customer's other vendors, delays of suppliers or carriers, government actions, shortages of materials, fuel or power, strikes or other labor disturbances, pandemics, epidemics, fires, floods, acts of God, war, acts of terrorism, and the effects of civil disobedience.

15. **Scope of Supply and Changes.** Details about the scope of supply of Goods or Services will accompany these Terms as part of the order, proposal or quotation or in a separate attachment. All designs and specifications with respect to Goods sold which may have been shown in catalogues or product descriptions are subject to change without notice. As a flow down provision from the manufacturers of Goods, Seller reserves the right to change the details of any Goods provided that such change shall not impair the performance or critical dimensions of such Goods. Changes in the scope of supply of Goods and/or Services as mutually agreed or as required by changes in applicable laws, codes, rules and regulations, may result in a change in the price and delivery schedule, but require the written agreement of both Seller and Customer by change order or other amendment to these Terms.

16. **Cancellation.** Confirmed and accepted orders for Goods and/or Services may not be cancelled by Customer after acceptance by Seller unless agreed to by Seller, in which case Seller will be entitled to reasonable cancellation charges

including, without limitation, payment for performance up to and through the date of termination and/or manufacturer-specific cancellation fees provided that Seller agrees to take reasonable steps to mitigate the costs of termination of the relevant purchase order by Seller.

17. **Choice of Law; Waiver.** All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule. No failure to exercise, or delay in exercising whether in part or full, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof.

18. **Severability; Assignment.** If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

19. **Survival.** Provisions of these Terms, which by their nature should apply beyond the completion or termination of any related purchase order, will remain in force after any such completion or termination.

20. **Force Majeure.** Any delay or failure of either party to perform its obligations under this Agreement (other than failure to pay in any amounts due) will be excused to the extent that the delay or failure was caused directly by an event beyond such party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, outbreaks of disease, pandemics, epidemics, local or national emergencies, supply chain disruptions, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities).

21. **Compliance with Applicable Laws.** Seller and Customer shall be in compliance with and shall comply with all applicable laws, regulations and ordinances, including without limitation export control and compliance laws, tax laws and anti-bribery & corruption laws. Each party shall have and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms.

22. **Entire Agreement.** These Terms, including *Appendix I* below, constitute the entire agreement of the parties and supersede all prior discussions, arrangements, negotiations, representations and warranties, if any, relating to the Goods or Services between Seller and Customer. These Terms may only be amended or modified in a writing signed by an authorized representative of each party.

[See Next Page for Appendix I – Seller Warranties: Limitations, Exclusions and Remedies]

APPENDIX I
SELLER WARRANTIES: LIMITATIONS, EXCLUSIONS AND REMEDIES

The following limited warranties are applicable to the Goods and Services provided under these Terms:

(a) Manufacturers' Limited Warranties on Goods. For Goods sold directly to Customer that are covered by a manufacturer's limited warranty, the terms, conditions and limitations of the manufacturer's warranty only shall apply including the applicable period of such warranty. For Goods which are fluids (such as engine lubrication oil, gear box oil, transmission fluid, coolant or urea/emissions fluids), Seller warrants that such Goods will meet the published chemical specifications of the fluid manufacturer or producer at the time of delivery and after normal usage and or storage. Seller hereby assigns to Customer all transferable rights applicable to such Goods. A copy of the manufacturer's warranty applicable to such Goods or specifications shall be provided by Seller upon request to the extent available. To the extent so authorized, Seller agrees to provide manufacturer's warranty services to Customer upon request in accordance with Seller's standard commercial practices and procedures. Unless otherwise agreed by Seller, Customer shall be responsible for the cost of repairs or replacements on such Goods to the extent that the manufacturer denies the claim or does not cover all of Seller's costs under such warranty.

(b) Seller's Limited Warranty on Services. Seller warrants that Services shall be performed in a good, workmanlike manner and be free from defects in materials and workmanship at the time of delivery for a period of 180 days from the date Services are completed. For new, remanufactured or used parts and components supplied in connection with Services, the manufacturer's limited warranty on Goods shall also apply.

(c) Remedies. In the event of a defect in material or workmanship or other failure to conform to the foregoing warranties during the applicable warranty period with respect to the Goods, Services or related materials, Seller shall correct any malfunction or deficiencies in workmanship or other nonconformity by repairs, replacements or other corrective actions free of charge to Customer in accordance with Seller's standard commercial practices and procedures. Corrective actions will be performed during Seller's normal business hours as soon as manpower and necessary parts, tools or repair equipment are reasonably available. If at Customer request warranty or other repair work is performed outside normal business hours, Customer is responsible for the difference between regular time labor rates and the applicable overtime rate. Corrective actions for Services are warranted for the remainder of the original warranty period.

(d) Exclusions. The limited warranties of Seller *exclude and do not cover* and do not provide remedies for the correction of defects, malfunctions or conditions to the Goods or Equipment (on which Services are provided) arising from: (i) Customer or third-party misuse, negligence, alteration, or accident with respect to the Goods or Equipment; or (ii) the consequences of normal wear and tear in use or operation; (iii) the consequences of failure of Customer or owner to perform or have performed normal maintenance services on the Goods or Equipment to the extent required and in accordance with the manufacturer's requirements; or (iv) the replacement of maintenance items used in connection with normal maintenance services on the Goods or Equipment (on which Services are provided); or (v) the costs of removal or reinstallation of Goods or Equipment to effectuate warranty repairs; or (vi) the consequences of substandard or incomplete repairs made at Customer's request and direction, or repairs made with Goods furnished by Customer and installed by Seller at Customer's request.

(e) Disclaimer of Incidental or Consequential Damages. The foregoing limited warranties do not cover any incidental or consequential damages, costs or expenses to Customer or any third parties that may result due to a defect, malfunction or non-conformity covered by Seller's limited warranties, including without limitation, loss of time, inconvenience, lost profits, loss of use of the Goods or Equipment, loss of time, or any other indirect, punitive or special damages.

(f) No Duplication/Assignment. To the extent any Goods, Services or materials delivered with Services are covered by a manufacturer's limited warranty, such warranty shall take precedence before the application of the express warranties of Seller, but in no event shall Customer be entitled to duplication of remedies. The foregoing warranties shall not inure to the benefit of any person or entity other than Customer or the end user or owner of the Goods or Services in privity of contract with Customer and are non-assignable without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed.

DISCLAIMER ON WARRANTIES: THE MANUFACTURERS' AND SELLER'S EXPRESS WARRANTIES DESCRIBED OR INCORPORATED BY REFERENCE IN THESE TERMS ARE THE ONLY WARRANTIES APPLICABLE TO THE GOODS AND SERVICES PROVIDED BY SELLER. SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS, IMPLIED OR STATUTORY, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.