



## GENERAL SALES TERMS AND CONDITIONS

- 1. Definitions:** “Buyer” means the individual or entity purchasing Seller’s Products. “Seller” means NRG SYSTEMS, INC., a Vermont corporation, and its affiliated entities by or through which the Products are sold to Buyer. “Products” means all materials, goods, services and/or work to be provided to Buyer by Seller, regardless of type. “Contract” means the document or documents together constituting the agreement between Buyer and Seller for the purchase, sale and installation of the Products, and includes these Terms and Conditions.
- 2. Applicability:** These Terms and Conditions apply to all sales of Products by Seller. Buyer's order shall be deemed to incorporate, without exception, all the Terms and Conditions hereof notwithstanding any order form of Buyer containing additional or contrary terms or conditions. ALTHOUGH BUYER MAY SUBMIT PURCHASE ORDERS OR OTHER DOCUMENTS ON BUYER’S FORMS, BUYER EXPRESSLY AGREES THAT SELLER’S ACCEPTANCE OF SUCH FORMS IS SOLELY FOR BUYER’S CONVENIENCE AND THAT ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS SET FORTH ON ANY PURCHASE ORDER OR OTHER DOCUMENT SUBMITTED BY BUYER SHALL NOT APPLY AND SHALL BE VOID AND OF NO EFFECT. No acknowledgment by Seller of, or reference by Seller to, or performance by Seller under, any purchase order or other document of Buyer shall be deemed an acceptance by Seller of any term or condition which is additional to or different from these Terms and Conditions unless such additional or differing term or condition is set forth in a document generated by Seller or expressly confirmed in a document signed by Seller.
- 3. Quotations and Specifications:** Seller quotations are valid for thirty (30) days from the date submitted to Buyer after which the quotation expires. The Product specifications, owner’s manuals, literature, drawings, plans, notes, instructions, engineering notices, or technical data (collectively, the “Specifications”) of Seller contained in the quotation, on Seller’s website and/or furnished to Buyer by Seller shall be deemed to be incorporated herein by reference the same as if fully set forth. Buyer shall provide all direct users or purchasers of the Products with all Seller supplied product notices, warnings, instructions, recommendations, and similar materials.
- 4. Appendices:** Certain products and services provided by Seller may require terms and conditions in addition to those specified herein. In such case Seller may append those additional terms and conditions to these Terms and Conditions.
- 5. Currency and Taxes:** Stated prices are in U.S. Dollars and do not include any federal, state, or local sales, use, excise, gross receipts, import, export, transport, value-added or other taxes unless specifically stated in writing. Any applicable tax exemptions must be made available to Seller prior to invoicing or such taxes will be charged for the jurisdiction of delivery destination. Any exemption certificates must correlate with the jurisdiction of delivery destination. When Seller is required to collect taxes from Buyer, such taxes will be added to invoice prices. In the event Seller does not collect taxes from Buyer and Seller is later required to pay such to any taxing authority, Buyer will immediately remit to Seller reimbursement for the uncollected/unpaid but owed taxes; alternatively, if requested by Seller, Buyer shall remit



directly to the requesting tax authority payment for such previously uncollected/unpaid but owed taxes.

6. **Payment Terms:** Products shall be invoiced as of shipment date, and payment shall be due within 30 days of invoice date, unless other arrangements are made and negotiated between the parties. All international orders are to be paid in full before shipment via wire transfer or Letter of Credit unless otherwise agreed in writing by Seller. Notwithstanding the foregoing, Seller reserves the right to require payment in full in advance for any custom materials procured or produced by Seller specifically for the applicable order. Interest equal to the lesser of one and one-half percent (1.50%) per month or the maximum interest rate allowable under applicable law shall be charged by Seller to Buyer on invoice amounts not paid within 30 days of invoice date. Seller's right to payment upon tender of conforming Products is absolute and Buyer shall not set off against any payments any amounts Buyer might claim it is owed by Seller. In the event Buyer fails to pay timely and Seller implements collection efforts, Buyer shall be responsible and liable for all Seller's collection expenses incurred, including reasonable attorneys' fees. Notwithstanding stated payment terms, if Seller shall at any time doubt Buyer's financial stability, Seller may demand adequate assurance of due performance or decline to make any further shipments except upon receipt of security or cash payment in advance.
7. **Delivery Dates; Shipment Terms:** Delivery dates shall be as set forth in Seller's quotation. Shipping and delivery shall be Ex Works at Seller's facility in Hinesburg Vermont (Incoterms 2010) unless otherwise agreed in writing by Seller. Title and risk of loss including payment of all transportation and insurance cost pass to Buyer at Seller's door. Buyer will choose the freight forwarder, customs broker, carrier and means of delivery; provided, however that Seller, in its sole discretion, maintains the ability to reject Buyer's selection of freight forwarder, customs broker, carrier and means of delivery. If Seller rejects Buyer's selection of any of the above, Buyer will designate an alternative carrier, broker or means of delivery that is acceptable to Seller. Buyer is responsible for filing any claims with freight forwarders, customs brokers or carriers
8. **Export:** If the Products are to be exported, this order is subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Buyer will be responsible for all export and import charges and consular and customs declarations and will be responsible for penalties resulting from errors or omissions thereon. Buyer agrees that it shall not re-export the Products or any goods or items which incorporate the Products if the re-export would violate United States export laws or the laws of any other country from which they are re-exported.
9. **Changes:** In the event that a customized product is being designed by the Seller for the Buyer, Buyer may propose changes to any drawing, design or specification by submitting a written change order request. Seller will review the request and respond with a written change order proposal ("Change Order Proposal") showing the cost associated with the change, including without limitation, the additional material and/or labor costs and any increase in the amount of time required for Seller's performance due to the change. The parties will work together to reach mutual agreement on the scope and cost of the proposed change which will not be effective until Buyer issues a new purchase order reflecting the change and Seller issues a new



Sales Order Acknowledgement accepting the new purchase order. Seller will have no obligation to implement any change unless and until this process is complete.

10. **Warranty:** Seller's warranties for Products ("Seller Standard Warranties") are set forth in Attachment A hereto and is incorporated into these Terms and Conditions. Any Products supplied by Seller but manufactured by others are warranted only to the extent of the manufacturer's warranty.

SELLER'S STANDARD WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR ANY WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SELLER'S STANDARD WARRANTIES DO NOT EXTEND TO ANY PRODUCTS WHICH HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE, ABUSE, OR AS A RESULT OF MODIFICATION BY ANYONE OTHER THAN SELLER OR AN AUTHORIZED SELLER REPRESENTATIVE.

11. **Claims:** Upon Product delivery, Buyer shall promptly inspect all Products. No claims for shortages will be allowed unless shortages are reported to Seller in writing within 10 days after delivery. No other claims against Seller will be allowed unless asserted in writing within 60 days after delivery (or assembly, if the Products are to be assembled by Seller) or, in the case of an alleged breach of warranty, within the warranty period as defined in Seller's applicable Standard Warranty Policy. Any action based upon breach of this Agreement or upon any other claim arising out of this transaction (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within one year from the date of shipment of the Products, or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the Warranty Period on which the defect was or should have been discovered by Buyer.

12. **LIMITATION OF LIABILITY:** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR (i) ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (ii) LOSS OF OPPORTUNITY, REVENUE, PROFIT OR ANTICIPATED PROFIT, GOODWILL, BUSINESS, CONTRACTS OR BUSINESS INTERRUPTION ARISING OUT OF, OR AS A RESULT OF, THE SALE, SERVICING, ASSEMBLY, USE, LOSS OF USE OR FAILURE OF THE PRODUCTS OR ANY PART THEREOF. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCTS WHICH BUYER ALLEGES GIVE RISE TO DAMAGE CLAIMS.

13. **Force Majeure:** Seller shall not be liable for any default or delay in performance caused by acts of God, war, terrorism, fire, flood, strikes, labor disputes, delay or unavailability of labor, material or equipment used in the manufacture of the Products, or from any other cause which is beyond Seller's control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.



14. **Buyer's Property:** Infringement Claims: Buyer shall be responsible for providing insurance for damage or loss to any Buyer goods or materials which are provided to Seller for use in connection with this order. Where any Product is manufactured from patterns, plans, drawings, or specifications furnished by Buyer ("Buyer Specifications"), Buyer shall defend and indemnify and hold Seller harmless against all loss, damage, and expense arising out of any infringement claim based on Seller's use of such Buyer Specifications. Upon Seller's request, Buyer shall, at Buyer's sole cost and expense, retain counsel reasonably acceptable to Seller to appear on Seller's behalf and assume the defense of any litigation arising out of any such claim.
15. **Site Conditions:** If in connection with the sale of the Products, Seller is required to perform any work in Buyer's premises, Buyer shall be solely responsible for the structural integrity and the clean, asbestos-free and safe status of the work area and structure in which Seller will perform any service and deliver or install any Products. Buyer shall provide at its sole expense, temporary lighting and power for the operation of hand tools and an accessible, appropriate method for the disposal of debris. Seller shall clean up any materials, debris or obstructions created by Seller. Installation of the Products by Seller is based upon Seller's access close to the site and the perimeter of the project site, together with an adequate amount of weather-tight storage space on the site. Buyer will be responsible for the supervision, control, health and safety of Buyer's personnel and will ensure that its personnel comply with and are properly trained and licensed under all laws and regulations relating to health, safety and/or the environment that are applicable in the Buyer's country and jurisdiction including federal, state, and local laws (or international equivalent) and any revisions to such laws or successor legislation.
16. **Cancellations:** All Buyer purchase orders are firm and not subject to cancellation.
17. **Limitation on Assignment:** Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other except that Seller shall have the right without Buyer's consent to (a) subcontract any portion of its obligations to any party, or (b) assign all its rights and obligations to any entity with which it is affiliated, into which it shall be merged, with which it shall be consolidated, or by which it, or all or substantially all of its assets, shall be acquired.
18. **Ownership:** All end Products purchased and paid for by Buyer are property of Buyer. All intermediate materials originated and/or provided by Seller and used in the production of the Products including without limitation electronic data or media, drawings, tools, etc. (collectively, "Intermediate Materials") are property of Seller. All Intermediate Materials originated and/or provided by Buyer and used in the production of the Products are property of Buyer. Buyer is prohibited from using any Seller Intermediate Materials or any ideas obtained therefrom without Seller's written consent.
19. **Use of Seller's Trademarks/Tradenames:** Buyer shall not have any ownership right, title or interest, express or implied, in the intellectual property, trademarks, trade names, service marks, logotype, advertising and/or designs, markings or other commercial symbols of Seller associated with the Products, including without limitation, the names "NRG", "NRG Systems",



“Symphonie PRO” (collectively, “Seller’s Trademarks”) and expressly acknowledges Seller’s exclusive right, title and interest in Seller’s Trademarks.

20. **Confidentiality:** In the course of supplying the Products to Buyer, the parties or their respective representatives may share certain proprietary, sensitive and confidential business information (“Confidential Information”) with one another. This Confidential Information shall include, but not be limited to, designs, processes and proposed pricing. Each party agrees to hold the other party’s Confidential Information in strictest confidence and to use it only in connection with the purpose of this Agreement. Neither party will release any of the other party’s Confidential Information to any third party without the express written consent of the party owning the Confidential Information. Buyer represents and warrants that it will cause each of its employees, agents and representative to maintain and protect the confidentiality of Seller’s Confidential Information.
21. **Indemnification:** The Buyer shall fully defend, indemnify and hold harmless the Seller from any and all loss, costs, expenses or damages including but not limited to attorneys’ fees, court costs and consequential damages arising from any claim, demand, action or proceeding that may be instituted against Seller on grounds alleging that Seller’s use of Intermediate Materials supplied by Buyer violates or infringes any patent, trademark, copyright, registration, use or other proprietary right of any person or entity. The Seller shall fully defend, indemnify and hold harmless the Buyer from any and all loss, costs, expenses or damages including but not limited to attorneys’ fees, court costs and consequential damages arising from any claim, demand, action or proceeding that may be instituted against Buyer on grounds alleging that the sale and intended use of the Products and any processes or methods relating to the manufacture of the Products infringes any patent, trademark, copyright, registration, use or other proprietary right of any person or entity, provided, however, that any infringement claims arising from or in connection with Seller’s use of Buyer’s Intermediate Materials will be excluded from Seller’s indemnity obligations. Upon the request of the party seeking indemnification, the party responsible for the indemnity shall, at its sole cost and expense, retain counsel reasonably acceptable to the other party, to appear on such party’s behalf and assume the defense of any litigation arising out of any such claim.
22. **Severability:** In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.
23. **Compliance with Law:** In the performance of the Agreement, Seller and Buyer agree to comply with all applicable local, state and federal laws and executive orders and regulations. Each Party further agrees to indemnify the other Party against any loss, cost, damage or liability by reason of such Party’s violation of this section.



24. **Governing Law:** Arbitration; Venue: The rights and remedies of the parties under these Terms and Conditions or otherwise with respect to the Contract or the Products shall be governed by and construed in accordance with the laws of the State of Vermont (without regard to principles of conflicts of laws). Any dispute arising under these Terms and Conditions or otherwise with respect to the Contract or the Products shall be settled in Chittenden County, Vermont by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the Arbitrator may be entered in either the District Courts for Chittenden County, Vermont or the United States District Court for the District of Vermont. The parties hereby agree that the sole proper jurisdiction and venue for any disputes not subject to arbitration hereunder shall be either the District Courts for Chittenden County, Vermont or the United States District Court for the District of Vermont. Buyer hereby consents to such venue and to the personal jurisdiction of such courts and hereby waives the right to demand a jury trial in any such action. For such purpose, Buyer, if not located in the State of Vermont, irrevocably appoints the Secretary of State of Vermont as its agent for receipt of service of process or notices. Any arbitration or other action based upon breach of the Contract or upon any other claim arising out of this sale (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within one year from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within the period of time specified in the applicable Limited Product Warranty.
25. **Waiver:** Waiver by Seller of any default or breach of these Terms and Conditions or the other Contract documents shall not be construed as a waiver of any other or continuing breach; and failure to exercise any right arising from any default or breach shall not be deemed a waiver of such right, which may be exercised at any subsequent time.