

EXXIS ENTERPRISE INC TERMS & CONDITIONS

1. DEFINITIONS:

- i. "Agreement" means the Buyer's agreement to purchase the Product(s) and/or Services from the Seller (Exxis Enterprise Inc.).
- ii. "Buyer" means the company, partnership, person, or entity purchasing the Product(s) and/or Services from the Seller identified in the Purchase Documents.
- iii. "Product(s)" means the equipment parts and materials being purchased by the Buyer identified in the Purchase Documents.
- iv. "Purchase Documents" means the documents accompanying these Terms and Conditions which more fully describe the Products and/or Services being purchased from the Seller, including, as applicable, the Buyer's request for quotation, purchase orders, and the Seller's quotation.
- v. "Exxis" and "Seller" means Exxis Enterprise Inc.
- vi. "Services" means any and all engineering, technical, and mechanical services of any description or kind to be provided by the Seller in relation to the Products.

2. APPLICATION:

These terms and Conditions apply to every sale of Product(s) and every supply of Services by the Seller to the Buyer. The Buyer specifically agrees and acknowledges that unless the Seller agrees in writing to a modification of these Terms and Conditions, these Terms and Conditions apply and take precedence over any of the Buyer's Terms and Conditions whether set out in the Purchase Documents or otherwise.

3. ORDERS:

- a) No order between Exxis Enterprise Inc. (hereinafter described as "Exxis") and any person or entity wishing to purchase any Products and/or Services of Exxis (hereinafter described as the "Buyer") will be binding on Exxis unless and until it is accepted in writing by an authorized representative of Exxis.
- b) The Buyer sending an order to Exxis is presumed to have renounced to its general terms and conditions of purchase and to any special condition, which has not been agreed upon in a signed writing

by Exxis, including any stipulation to the same effects as the present subsection. Any acceptance of a Buyer's order by Exxis is made upon the assumption that such a renunciation has been given by the Buyer. Such renunciation will be irrevocably presumed to have been given by the Buyer if the latter does not advise Exxis in a signed writing of its refusal to renounce to its general terms and conditions of purchase within twenty-four (24) hours following the reception of Exxis's acceptance and in any event before Exxis has commenced to fill the Buyer's order.

c) Notwithstanding the above, Buyer may not cancel or reschedule an order without Exxis's prior written approval which shall be at Exxis's sole discretion. It is also understood that Products purchased may be custom designed to the Buyer requirements and therefore cannot be returned or refunded.

d) Exxis will use commercial reasonable efforts to respect any specified delivery date, however, Exxis will not in any way be responsible or liable in any way whatsoever for failure or delay in supplying Products or in performing Services, including without limitation, for any indemnity, penalty, damage, diminution of price nor will any invoice be susceptible to modification, revision or cancellation by the Buyer due to any delay in delivery.

e) For standard products, Exxis reserves the right to make engineering changes as well as changes to parts and material provided that such changes do not materially affect the form, fit or function of the Product. For custom Products, unless Buyer notifies Exxis of its non-acceptance prior to Exxis's commencement of work, Buyer is presumed to have accepted the specifications for modifications communicated by Exxis in previous discussions or written transmissions. If Buyer requests changes to previously confirmed designs, drawings or other aspects of the custom Product, Exxis reserves the right to refuse said changes and/or requote the Order. If work has already commenced on the original order, Buyer shall be responsible for all costs incurred up to the date of Exxis's requote and cancellation charges may apply. No change will be accepted unless approved in writing by Exxis.

f) Exxis will presume an order is standard, unless Buyer has specifically identified its order as customized (detailing the non-standard specifications) in writing and before the order has been accepted. Buyer is solely responsible for determining whether the Product(s) are suitable for Buyer's intended use, and for obtaining any necessary governmental registrations and approvals for Buyer's production, marketing, sale, use and/or transportation of finished goods using or incorporating the Product(s).

g) Buyer warrants that it has the right to provide to Exxis any designs, drawings, instructions or other material furnished or given by Buyer (the "Buyer's Material"), and that Exxis's use of such Buyer's Material in executing Buyer's order shall not cause Exxis to infringe on or otherwise contribute to any infringement of, any patents, trade secrets, trade names, copyrights, logos, service marks or trademarks or other intellectual property right of a third party. Buyer agrees to indemnify Exxis and its affiliates from and against any and all costs, damages or awards (including legal fees) resulting from any actual or claimed infringement of a third party's rights.

h) For large quantity orders, Exxis may deliver up to a maximum of 5% less (underage) or more (overage) than the quantity listed on the purchase order.

4. PRICES:

a) Unless otherwise specified by the Seller, the Seller's price for the sale of the Product(s) will remain in effect for Thirty (30) days from the date provided.

b) Listed and quoted prices do not include any charges for installation, freight, handling, insurance, transportation, warehousing and storage of any Product. Any applicable tax, levy or duty (including sales and use tax, custom duties, licenses and fees if applicable).

5. TERMS OF PAYMENT:

Subject to approval of the Seller's accounting department, the Buyer shall pay the Seller the price of the Product(s) and/or Services provided within thirty (30) days from the date of the Seller's invoice. Invoices shall be payable by the Buyer upon demand. Prices are subject to change without advance notice. Exxis reserves the right to require payment in advance as a condition of shipment and/or performance of Services. In the event that the Seller and the Buyer have agreed to a milestone payment schedule, the payment specified in the milestone payment schedule shall be paid on the dates that each milestone is achieved. All overdue payments bear interest commencing on the day on which the amount became payable, calculated at the rate of 1.2% per month compounded monthly (15.3895% per annum).

6. DELIVERY AND TRANSFER OF TITLE AND RISK:

a) All delivery dates of the Product(s) and/or Services to be provided by the Seller are approximate only and are based on the Seller having received from the Buyer all information required by the Seller to provide the Product(s) and/or Services. Seller shall in good faith attempt to effect delivery by the date specified but shall not be responsible or liable for delays due to unexpected circumstances or manufacturing supply restrictions. In no event will Seller be liable for incidental or consequential damages resulting from failure to meet the specified or amended delivery dates. All Product(s) shall be delivered to the Buyer at the location indicated in the Purchase Documents, EX WORKS at the point of the manufacture of the Product(s). All risk of loss or damage to the Products while in transit shall be borne by the Buyer. Title to the Product(s) shall pass to the Buyer on the Buyer

making payment in full for the Product(s) or on the Product(s) being delivered to the Buyer, whichever occurs later.

b) In case of any loss, damage, destruction or theft of any Product, in whole or in part, occurring after the moment mentioned in the preceding paragraph, Exxis will have no obligation to credit, replace or repair any such lost, damaged, destroyed or stolen Product or part thereof.

7. DOCUMENTATION:

The Seller shall supply the Buyer with the documentation specified in the Seller's quotation.

Any additional copies of the documentation or the supply of documentation on alternative media will be provided by the Seller to the Buyer at the Seller's price in effect at the time of the request.

8. INSTALLATION:

The Buyer shall be responsible for transporting, receiving, storing, installing, starting up, and maintaining all Product(s). If requested, the Seller may, at its option, provide Services to assist the Buyer in the installation of the Product(s) at a price agreed upon between the Buyer and the Seller or at the rates set out in the Seller's published rate schedule at the time the Services are actually rendered.

9. EXCUSE OF PERFORMANCE:

The Seller shall be excused from the performance of any term or condition of this sale or the provision of Services when and to the extent that the performance is delayed beyond its reasonable control including, without limitation to, acts of God, wars, riots, labour unrest, inability to obtain materials or components, explosions, accidents, governmental requests, laws, regulations, orders or actions. If such an event occurs, the delivery date and the price of the Product(s) and/or Services to be provided by the Seller may be revised by agreement made between the Buyer and the Seller or the Seller may at its option cancel the sale of the Product(s) or agreement to provide Services in which case the Buyer will pay the Seller any and all losses, damages, dismantling, restocking fees, and any other costs or expense incurred by the Seller arising from such a termination.

10. TERMINATION AND SUSPENSION:

The Buyer may terminate or suspend its purchase of any and all of the Product(s) and/or Services provided that it pays the Seller for any costs incurred and all losses, dismantling, restocking fees and any other costs or expenses arising from such termination or suspension. The Seller shall have the right, in addition to any other any other remedy deemed necessary, to either terminate its agreement to sell the Product(s) or provide the Services or suspend further deliveries of the Product(s) or provision of the Services to the Buyer in the event the Buyer fails to make any payment required to be made to the Seller when due.

11. WARRANTY:

Subject to the limitations of liability and remedies set out in Section 12, the Seller warrants its Product(s) and/or Services as follow: Seller's Products: The Seller will, at its option, repair or replace any defects in material or workmanship in any Product(s) manufactured by the Seller which appear within the earlier of twelve (12) months from the date the Seller's Products were delivered to the Buyer.

Re-Sale Products:

The Product(s) manufactured by any third party (including the Seller's principals and their affiliated companies) provided by the Seller to the Buyer as the manufacturer's distributor shall be subject to the manufacturer's standard warranty. The Buyer agree that the Seller shall have no liability for correcting any defect in the materials and workmanship in any re-sale Product(s) and that the Seller's only obligation is to make a reasonable commercial effort to assist the Buyer in making a warranty claim as against the manufacturer's standard warranty.

Services:

Any Services supplied by the Seller, including component integration, device configuration, and

the repair of Product(s) are warranted against defects in workmanship for a period of twelve (12) months from the date of the installation or from the date of the delivery of the Product(s) to the Buyer. Any interpretative services provided by the Seller are not warranted wither as to the accuracy or correctness of any such interpretations or any recommendations made by the Seller based upon these interpretations.

On-Site Warranty Support:

If the Buyer requires the Seller to provide any Services relating to any defect in the Product(s) and/or Services rendered or any warranty claim made by the Buyer in respect of the Product(s) and/or Services, including diagnosis, dismantling, and reinstallation of Product(s), at the Buyer's site, all costs of travel to and from the Buyer's site and of these Services shall be paid by the Buyer at the rates set out in the Seller's published rate schedule in effect at the time the Services are actually provided.

12. WARRANTY EXCLUSIONS:

a. The Seller does not warrant the performance of any Product(s) and/or services provided by it to the extent that the actual operating or other conditions differ from the specifications or other data supplied by the Buyer for the purpose of selection of design of the Product(s) and/or Services to be provided by the Seller.

b. This limited warranty shall not apply to any repair or replacement of Product(s) caused by abuse, accidental damage, misuse, improper installation, and improper application, corrosion or inadequate or improper preventative maintenance of the Product(s).

c. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCT (S) OR SERVICES.

13. LIMITATION OF REMEDY AND LIABILITY:

The Seller shall not be liable for any kind of consequential damages including loss of anticipated profits, loss of use of equipment or any associated equipment, the loss of product from the Buyer's facility(s) or the loss of capital however caused. The Buyer agrees that the Seller's sole and exclusive liability for any and all losses and damages arising out of or connected in any way with the Product(s) and/or Services provided by the Seller shall be limited to the repair, correction, or replacement of the Product(s) and/or Services in accordance with the terms of limited warranty set out in Section 10 herein. The Buyer further agrees that the Seller's total liability arising out or connected in any way with the provision of the Product(s) and/or Services is limited to the value of the Product(s) and/or Services provided by the Seller under this Agreement.

14. INDEMNITY:

The Seller agrees to protect, defend, and indemnify the Buyer, its respective officers, directors, employees, and consultants from and against any and all claims, demands, losses, causes of action, liability and costs (including all legal costs and attorney fees) of every kind and nature arising out of or connected in any way with damage to property, person injury, or death of the Buyer's employees, or third parties alleged to have been caused by any act or omission of the Seller connected with the Product(s) and/or Services provided by the Seller. The Buyer agrees to protect, defend, and indemnify the Seller, its respective officers, directors, employees, and consultants from and against all claims, demands, losses, causes of action, liability and costs (including all legal costs and attorney fees) of every kind and nature arising out of or connected in any with damage to property, personal injury, or death of the Seller's employees, or third parties alleged to have been caused by any act or omission of the Buyer.

15. INSURANCE:

The Buyer shall provide at its expense property damage insurance or "all risk" builder's risk insurance covering all of its property on the basis of full replacement cost value without depreciation which will name the Seller and any manufacturer of the Product(s) as additional

insured with a waiver of subrogation against all insured parties thereunder.

16. GENERAL PROVISIONS:

a. Buyer shall not assign its rights or obligations under this Agreement without Seller's prior written consent.

b. There are no understandings, agreements, or representations, express or implied, not specified in this Agreement.

c. No action, regardless of form, arising out of transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action arose.

d. This Agreement is formed and shall be construed, performed and enforced under the laws of the Province of Alberta. Any suit, action, or proceeding arising out of or connected in any way with this agreement shall be brought in a Court of the Province of Alberta which the parties shall have exclusive jurisdiction to hear and resolve such disputes, subject only to the parties agreeing to resolve such disputes through arbitration.