

Engenesys Terms and Conditions of Sale

Form 229-001

THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO THE SALE BY ENGENESYS OF EQUIPMENT, PARTS, COMPONENTS AND SERVICES (HEREINAFTER "EQUIPMENT") PROVIDED BY ENGENESYS. THESE TERMS AND CONDITIONS ALSO DEFINE THE COMMERCIAL RISK ENGENESYS IS WILLING TO ASSUME FOR THE PRICES QUOTED IN A PROPOSAL, BID QUOTATION OR SIMILAR DOCUMENT FOR THE EQUIPMENT, SUBMITTED TO ANY PROSPECTIVE PURCHASER ("BUYER").

1. TITLE/RISK OF LOSS

The price quoted for the Equipment is net F.O.B. origin, with shipping and insurance charges billed separately to Buyer. Title to the Equipment and all risk of loss or damage shall pass to Buyer upon delivery to the carrier.

Notwithstanding the above, Engenesys shall, pursuant to the provisions of the Uniform Commercial Code, retain the right to require Buyer to execute all documents necessary to allow Engenesys to obtain a purchase money security interest in the Equipment sold to Buyer unless, or until, Equipment selling price has been paid in full.

2. PRICES/TAXES

The prices quoted do not include any sales, use, excise or other taxes, duties, or other fees that may be owed by Buyer as a result of the purchase of the Equipment.

3. SHIP DATE/DELIVERY

a. The shipping date identified in Engenesys purchase order acknowledgment is only an estimate. Engenesys shall use its best efforts to ship the Equipment by the estimated date, but reserves the right to vary such date, within reason, without any liability to Buyer.

b. If the scheduled shipment of the Equipment is delayed by Buyer for convenience or by reason of any contingency referred to in the Force Majeure terms, Engenesys may deliver the Equipment by moving it to storage and invoice Buyer for the amount due at time of shipment. In such a case, Buyer shall be liable for any storage and insurance charges incurred through the date of shipment to Buyer.

c. If Buyer designates a carrier for shipment of the Equipment and such carrier fails to pick up the Equipment within two (2) days after being given notice, Engenesys reserves the right to select and make shipment by an alternate carrier and charge Buyer for all costs and expenses incurred as a result.

4. FORCE MAJEURE

Except with respect to the payment of monies by Buyer to Engenesys due hereunder, neither party shall be responsible for failure to perform under Buyer's purchase order or for any loss or damage due to causes beyond its reasonable control including, but not limited to: acts of God, fires, civil disobedience, war, acts of terrorism, riots, strikes, work stoppages, floods, unavailability of suitable transport, changes in laws or other governmental requirements, unforeseeable local conditions, or shortages of materials.

5. CANCELLATION BY ENGENESYS

Engenesys may, by written notice to Buyer, and without any liability to Buyer whatsoever, cancel Buyer's order if Buyer: (1) fails to perform any of the Terms and Conditions contained herein or in Buyer's purchase order, and Buyer does not cure such failure to Engenesys satisfaction within a period of ten (10) days after receipt of written notice of same from Engenesys; (2) becomes insolvent, makes an assignment in favor of creditors, or becomes subject to any bankruptcy, dissolution or similar proceeding; or (3) is merged into, or all or a substantial part of its assets are sold to, another company. As a nonexclusive alternative to cancellation, Engenesys may, by written notice to Buyer, and without any liability to Buyer whatsoever, suspend any of its obligations hereunder (or under Buyer's purchase order) for any reason referenced in subsections (1) through (3) above.

6. CANCELLATION BY BUYER

Buyer's purchase order, when accepted by Engenesys, shall not, for any reason, be cancelled by Buyer without Engenesys prior written consent. If Engenesys consents to such a cancellation, Buyer shall pay Engenesys a portion of the purchase price based on the percentage of completion of the Equipment at the time of cancellation. Upon making such cancellation payment, Engenesys partially completed components and/or assemblies shall become the property of Buyer.

7. PROPRIETARY INFORMATION

All proposals and all technical information relating to patents and other intellectual property, processes, sources of supply, devices, machines, systems, techniques, know-how, designs, drawings and specifications, or special purpose manufactured prototypes or samples ("Proprietary Information") supplied to Buyer by Engenesys are, and shall remain, the sole and exclusive property of Engenesys. Buyer agrees not to disclose or use for any purpose, either directly or indirectly, any Proprietary Information without Engenesys prior written consent. Engenesys grants no rights to Buyer under any Proprietary Information except as may be necessary to fulfill Engenesys obligations under Buyer's purchase order. Engenesys will at all times protect and maintain the confidentiality of Buyer's Proprietary Information that is provided to Engenesys and identified as such. Buyer agrees to allow reasonable use of pictures, and/or descriptions of the Equipment for Engenesys advertising purposes, except where such disclosure would violate any confidentiality agreements between Engenesys and Buyer regarding the Equipment.

8. INTELLECTUAL PROPERTY:

Any Intellectual Property related to new Equipment, methods, processes, mechanisms or software code arising out of work performed by Engenesys under Buyer's purchase order shall belong to & be assigned exclusively to Engenesys. Buyer agrees to cooperate with Engenesys in the execution and filing of any documents relating to such patent, trademark or copyright applications that Engenesys chooses to pursue. It is expressly understood that all software code developed under Buyer's purchase order shall be considered "Work for Hire" and shall be the exclusive property of Engenesys.

Except as otherwise expressly provided herein, Engenesys warrants that, to the best of its current knowledge, information and belief, the Equipment, its sale, possession and intended use does not infringe on any United States or foreign Letters Patent. This warranty extends only to infringement claims which pertain to the Equipment and to methods performed by the Equipment. This warranty does not extend to any charge of infringement which pertains to an article of manufacture, or which arises by reason of use of the Equipment in conjunction with other Equipment not manufactured by Engenesys. This warranty also does not extend to charges of infringement which arise from use of the Equipment in the practice of any process involving more than the inherent mode of operation of the Equipment.

9. SPECIFICATION/CODE COMPLIANCE

a. The Equipment provided will comply with applicable federal, state and local laws, rules, regulations, standards or codes reasonably known by Engenesys. However, such compliance is neither warranted nor guaranteed. It is Buyer's sole and exclusive responsibility to advise Engenesys of all specific laws, rules, regulations, standards or codes with which Buyer requests the Equipment to comply.

b. The Equipment provided will comply with Buyer's specifications as defined in Buyer's specification documents. Buyer assumes all risk of loss or failure relating to all or any part of the Equipment that complies with Buyer's specifications.

c. In the event that, after Equipment delivery, the Buyer interprets applicable laws, rules, regulations, standards or codes differently (or requires additional features on the Equipment for any other reason), Engenesys will undertake, at the Buyer's request and sole expense, to alter the Equipment so that it complies with the Buyer's requirements.

10. LIMITATION OF LIABILITY

a. Engenesys shall under no circumstances be liable to Buyer for any punitive, special, exemplary, indirect, incidental, or consequential damages including, but not limited to: lost profits, lost revenues, lost opportunities, or other similar indirect or consequential damage arising under or in connection with the sale or use of the Equipment or any purchase order regarding same.

b. Buyer agrees that the Equipment shall, at all times, be operated by Buyer's employees and agents utilizing all guards, warning signs, and other safety devices that are provided with or as part of the Equipment. Buyer further agrees that any mechanical or electrical disconnections, disassembly or non-use of any of the guards, warning signs, or other safety devices, and any software changes which negate the effect of same, shall constitute a substantial change in the Equipment. Buyer also agrees to release, fully indemnify, and hold Engenesys harmless from and against any liability for personal injury or property damage attributable to such substantially changed Equipment.

11. SERVICES

a. Seller Services shall mean Seller's technical service performed by Seller's mechanical/electrical service technicians or engineers.

b. Buyer shall pay for actual services rendered plus travel and living expenses incurred as outlined in the Seller's services rates schedule, 100% invoiced upon completion of Service.

12. MISCELLANEOUS

a. These Terms and Conditions are part of and govern any contract between Engenesys and the Buyer for the purchase of Equipment, and may be incorporated by reference in any Engenesys document. Unless otherwise agreed in writing, any additional, inconsistent or different terms and conditions contained in Buyer's Purchase Order or other documents submitted by Buyer to Engenesys, at any time before or after order placement and Engenesys purchase order acknowledgment, are hereby expressly rejected by Engenesys. All purchase orders are subject to acceptance in writing by Engenesys at its office.

b. These Terms and Conditions, together with Engenesys proposal and purchase order acknowledgment, constitute the entire contract between the parties and shall be governed by and interpreted in accordance with the substantive laws of the State of Kentucky, USA, without regard to its conflict of law rules. No agreement or understanding, oral or written, in any way purporting to modify these Terms and Conditions, whether contained in Buyer's purchase order or elsewhere, will be binding on Engenesys unless signed by a Engenesys authorized representative.