



**Additional Terms And Conditions (Collectively the "Terms") For The EZSELECTiq Program**

***EnerSys Delaware Inc.***

***Last revised May 1, 2012***

These terms and conditions (the "Terms") apply to all services provided under the EZSelect™iq Program (the "Program") by EnerSys to the Customer. The term "Customer," as used herein, shall refer to the enrolled in the Program hereunder.

1. **Payment:** Unless otherwise agreed to in writing, payments are due within thirty (30) days from the invoice date. Past due amounts shall bear interest at one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Customer may not apply any adjustments to EnerSys' invoice without EnerSys' written authorization. Customer shall bear all collection costs including, without limitation, reasonable attorneys' fees and litigation costs. Any invoice disputes not raised in writing within ten (10) days from the invoice date are waived.
2. **Tax:** All government charges upon the production, shipment, or transfer of services provided, direct or indirect, including those required to be collected by EnerSys, shall be paid by Customer or, in lieu thereof, Customer shall cooperate fully with EnerSys, and furnish EnerSys with an exemption certificate or other applicable documents acceptable to the taxing authority.
3. **Limited Warranty:** THE PROGRAM IS PROVIDED "AS IS," AND ENERSYS MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING THE PROGRAM OR ITS COMPATIBILITY WITH ANY SYSTEMS OR HARDWARE. ALL OTHER WARRANTIES ARE EXCLUDED INCLUDING, WITHOUT LIMITATION, EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE, OR COURSE OF PERFORMANCE.
4. **Indemnification:** Customer shall indemnify, defend and hold harmless EnerSys and its directors, officers, employees, affiliates and assigns from and against any and all losses, damages (including incidental and consequential damages), expenses (including court costs, reasonable attorneys' fees, interest expenses and amounts paid in compromise or settlement), suits, actions, claims, penalties, liabilities or obligations related to, caused by, arising from or on account of (i) Customer's participation in the Program or any other act or omission of Customer; (ii) Customer's negligence, willful misconduct or violation of applicable laws; (iii) any third party's allegation that the Program or any services related to the Program infringes or misappropriates any copyright, patent, trade secret, trademark, trade name, or other property interest or proprietary rights of such third party; (iv) breach by Customer of any of these Terms; and (v) use of the Program in any nuclear facility or related applications or activities arising out of a "nuclear incident" as defined in the Atomic Energy Act.
5. **Limitation of Liability:** REGARDLESS OF THE FORM OF ACTION, ENERSYS' LIABILITY IN ANY WAY RELATING TO THESE SERVICES OR THE PROGRAM OR THESE TERMS SHALL NOT EXCEED THE PRICE PAID BY CUSTOMER. ENERSYS, ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE, DOWNTIME, LOSS OF GOODWILL, BUSINESS INTERRUPTION, DELAY IN PERFORMANCE, OR LOST OPPORTUNITIES, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE IN CONNECTION WITH THE PROGRAM, EVEN IF ENERSYS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **General:** Customer shall not assign its rights or delegate its obligations without EnerSys' prior written consent. Any provision found invalid or unenforceable under applicable law, shall to that extent be deemed omitted, and the rest of these Terms or the Agreement shall be in full force and effect. This Agreement may only be modified by a writing signed by an authorized EnerSys representative. EnerSys' waiver of any term or breach hereof shall not be construed as a waiver of any other term or existing or future breach. This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania without reference to conflicts of law principles. Any suit, action or other proceeding seeking to enforce, or in any way relating to, any provision of these Terms shall be brought only in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. Supplier irrevocably consents and submits to the jurisdiction and venue of such courts and irrevocably waives any objection which it may have to the laying of the venue of any suite, action or proceeding brought in some courts. The parties waive any right to jury trial. Clerical errors in quotations and specifications may be corrected at any time by EnerSys. This Request is binding on both parties and their successors and permitted assigns.