



**POWERMAXX Terms And Conditions For The Purchase Of Services**

*EnerSys Delaware Inc.*

*Last revised August 1, 2012*

For the purposes hereof, the term "Customer" shall refer to the party purchasing services from EnerSys Delaware Inc. ("EnerSys").

**1. Relationship of Parties:** The parties are independent contractors, and not agents, partners, employees of each other.

**2. Payment:** (a) All payments are due upon receipt of invoice. Outstanding balances shall bear interest at the rate of one and one-half percent (1 1/2%) per month. Invoices shall be considered correct if not disputed in writing within fourteen (14) days of receipt. (b) Customer shall pay all EnerSys' collection costs, fees and expenses hereunder plus reasonable attorney's fees. (c) Customer agrees that the sums payable to EnerSys hereunder shall not be subject to any abatement, whatsoever, nor subject to any defense, set off, counterclaim or recoupment, by reason of any damage to or loss or destruction of the equipment, or by reason of any interruption from any cause whatsoever in the use, possession, or operation of the equipment.

**3. Suspension or Termination of Services:** EnerSys may, without liability, suspend or cancel any or all Services if Customer breaches this Agreement, fails to pay any amounts due pursuant to this Agreement or should EnerSys have other reasonable grounds to be insecure with respect to Customer's ability to perform.

**4. Safety; Accessibility:** When EnerSys, its employees or agents are providing Services at Customer's premises, Customer shall be responsible to make sure the premises is safe and accessible and that reasonable precautions have been taken to protect the safety of EnerSys' employees and agents.

**5. Standard of Services and Warranty:** (a) EnerSys will provide the Services in a professional and workmanlike manner. (b) ENERSYS DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. EnerSys' sole obligation under this warranty, shall be at its option to (i) correct or re-perform the services or (ii) refund any fees paid. EnerSys shall have no obligation to the extent that any nonconformity is caused by Customer.

**6. LIMITATION OF LIABILITY:** (a) ALL CLAIMS BY CUSTOMER OR ANY THIRD PARTIES AGAINST ENERSYS OR ITS EMPLOYEES ARE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THE AGREEMENT. ENERSYS AND ITS SHAREHOLDERS, AFFILIATES, DIRECTORS, OFFICERS AND EMPLOYEES SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, USE OF PROPERTY OR OTHER OPPORTUNITY, OR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES INCURRED BY ANY PERSON. (b) Any claim shall be deemed waived unless received by EnerSys in writing within six (6) months after the claim arose. To the extent permitted by law, any statutory or other remedies that are inconsistent with these terms are waived.

**7. Insurance Coverage:** EnerSys and Customer shall maintain workers' compensation and general commercial liability insurance with limits customary to their particular lines of business.

**8. Confidential Information:** Each party shall retain as confidential all information furnished to it (the "Recipient") by the other (the "Disclosing Party"), including but not limited to pricing and technical information, and not disclose such information to any third party for any purpose except to further the performance of the Agreement. Any information Customer intends to be covered by this paragraph will be clearly marked "Confidential." These restrictions will not apply to information that (i) the Recipient held prior to disclosure by the Disclosing Party; (ii) becomes public knowledge through no fault of the Recipient; (iii) is independently developed by the Recipient; (iv) is disclosed to a third party on obligation to keep such information confidential; or (v) must be disclosed or provided to any third party under applicable laws, regulations or other legal requirements.

**9. Property:** All of EnerSys' property which is used to provide the Services or disclosed to Customer, including but not limited to, any software, hardware, tools and equipment, shall remain the sole property of EnerSys.

**10. Assignment/Subcontracting:** Customer shall not assign this Agreement or any part thereof without EnerSys' prior written approval. EnerSys may, in its sole discretion, subcontract any portion of the Services. Subject to the foregoing, this Agreement shall benefit of and bind the parties' successors and permitted assigns.

**11. 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 attorney's fees, interest expenses and amounts paid in compromise or settlement), suits, actions, claims, penalties, liabilities or obligations (collectively, "Losses") related to, caused by, arising from or on account of (i) Customer's negligence, willful misconduct or violation of applicable law, or regulations; and (ii) the failure of Customer to comply with any covenant, provisions or agreement of the Customer contained herein.

**12. Governing Law:** This Agreement shall be governed by and interpreted pursuant to the laws of the Commonwealth of Pennsylvania, excluding its principles regarding conflict of laws. Disputes hereunder shall be subject to the exclusive jurisdiction and exclusive venue of the Courts of Berks County of the Commonwealth of Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. The parties waive any rights to jury trials.

**13. Force Majeure:** EnerSys will have no liability for any failure or delay due to any circumstance beyond its reasonable control, including, but not limited to, strikes, riots, wars, terrorism, flood, fire, explosion, acts of nature, delays due to tardy regulatory approval, acts of governments, acts or omissions of Customer or other parties, labor disturbances, delays in transportation or inability to obtain material or equipment. In the event of such delay in performance, the completion time will be extended as reasonably necessary.

**14. Severability:** If any provisions herein, or application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, such provision shall be modified to the extent necessary to permit its validity or enforceability, and the other terms shall be valid and enforced to the fullest extent.

**15. Waiver:** No delay or failure by either party in exercising any right under this contract and no partial or single exercise thereof shall constitute a waiver of such rights or any other rights hereunder.

**16. Entire Agreement:** This Agreement, together with each work order now or hereafter signed with respect to the Services, constitutes the entire understanding between the parties and supersedes any prior communications, oral or written of the parties, including Customer's terms and conditions that may be contained in any purchase order, service order or other document of the Customer.