



## General Terms of Delivery and Warranty

EH Europe GmbH

Last Revised: January 1st, 2011

### **1 General**

These general terms of delivery and warranty (the "**Terms**") define the terms and conditions under which EH Europe GmbH ("**EnerSys**") accepts orders for goods from buyers (the "**Customer**") and delivers them to Customer. The purchase and sale of goods by EnerSys to Customer and the respective rights and obligations of the Parties shall exclusively be governed by the provisions of the Terms. Any oral agreements or terms and conditions of the Customer shall not bind EnerSys, even if EnerSys does not expressly reject them or the Customer declares that it only wants to contract based on its own terms and conditions.

### **2 Execution of Orders**

Any offer by EnerSys is non-binding. A contract between EnerSys and Customer comes into existence only upon EnerSys confirming in writing an order by Customer. Deliveries of goods will be carried out only on the basis of orders confirmed by EnerSys.

In case the Customer has unsettled accounts, the execution of the order will depend on the credit limit granted to such Customer by EnerSys, if such credit limit has been granted to the Customer. In particular, EnerSys may reassign goods to other customers and suspend deliveries in the event of credit limit issues or unsettled customer payments.

Cancellation or amendment of a confirmed order requires EnerSys' express consent. In case a cancellation or amendment of an order is accepted by EnerSys, it is the Customer's obligation to return the goods to EnerSys at Customer's own costs.

### **3 Packaging and Transport**

EnerSys will define the type and route of transport and packing according to the specific requirements of the order. The Packaging, including special packaging such as special boxes, are invoiced to Customer's account. Collection of the goods by the forwarder/hauler without any substantiated objection is a confirmation for the suitability of the packing used by EnerSys.

EnerSys is entitled, but in no case obligated, to take out transport insurance at Customer's cost.



#### **4 Deliveries**

Unless otherwise specified in a confirmed order, place of performance for deliveries is the location of the dispatching factory or its warehouse (Ex-works). The risk passes to the Customer upon EnerSys handing the goods over to the carrier at the place of delivery. As a rule, deliveries are made on the Customer's account.

Customer must accept partial deliveries.

If the Customer delays the delivery time, the Customer assumes the risk related to readiness of the goods for delivery, while EnerSys' costs are invoiced to Customer's account.

#### **5 Delivery period**

Unless expressly stated as binding in a confirmed order, delivery periods are non-binding.

The delivery period commences on the date of the confirmation of the order by EnerSys, however not before all details of the order have been clarified, in particular not before (i) the Customer has furnished all the documents, permits and releases required, and (ii) receipt of a down payment if agreed. The delivery period is met, if by the time at which it lapses, the goods have been shipped or notification has been given that they are ready for shipment at the place of delivery.

The Customer shall neither be entitled to claim damages nor to rescind the contract due to the exceeding of a delivery deadline. Even if the delivery period has been expressly stated to be binding, the Customer shall not be entitled to rescind the contract for delay.

EnerSys is in no case responsible for delayed delivery due to force majeure or other unforeseeable circumstances which make delivery unreasonably difficult or impossible for EnerSys and for which EnerSys is not responsible for, such as delays in delivery by suppliers, labor disputes, acts of authority, raw material or energy shortages, plant and transport interruptions of all kinds, etc. In such cases the delivery date will be extended automatically by the time of the event constituting force majeure, plus an appropriate start-up period. If these circumstances last more than four months, EnerSys has the right to rescind the contract. At the Customer's request, EnerSys will state whether it wishes to do the later or to deliver the goods within a reasonable period of time to be determined by EnerSys. The Customer shall not be entitled to claim damages.

#### **6 Prices**

The Customer must pay the price stated in the confirmed order without any discount, rebate or other deduction.

Value added tax and shipping costs, in particular freight, transport insurance, customs and customs clearance duties as well as packing charges will be invoiced separately and are to be borne by the Customer.

## **7 Payment**

Unless the contrary is agreed upon in writing, EnerSys' invoices are payable within 10 days from the invoice date. All payments must be effected free of charge for EnerSys. Bank charges, discount charges and collection charges shall be borne by the Customer.

If the payment date has expired without payment being made, the Customer is in delay without the necessity of EnerSys issuing a reminder to this effect. In case of delay EnerSys is entitled to charge interest as from the due date of the payment at a rate of ECB base rate +7%. EnerSys explicitly reserves the right to rescind the contract and to reclaim the delivered goods in case of delay by the Customer.

If the Customer's financial situation is materially impaired, EnerSys is entitled to request either advances or the grant of a proper security interest, whichever it wishes. If this request is not met, EnerSys has right to withhold deliveries.

## **8 Retention of title**

The goods delivered will remain EnerSys' property until the Customer has fully settled all claims which EnerSys has against the Customer.

The Customer may in the ordinary course of business process, assemble and sell the goods to which EnerSys retains title unless the Customer is in default with or has discontinued payments. The Customer may neither pledge nor create any other security interest in the goods. In case of further transferring of the goods to which title is retained by EnerSys, the Customer assigns to EnerSys all its claims and rights towards the respective buyer. On EnerSys' demand, the Customer will notify its buyers of the assignment of the Customer's rights to EnerSys and will transfer to EnerSys any documentation and information necessary for claiming rights. However, the Customer may collect the debts receivable assigned to EnerSys, unless it is in default with or has discontinued payments.

If at the place of the goods' destination special measures are required for the reservation of title (such as the registration in a public registry or the like) or the assignment to be effective, the Customer must give EnerSys notice thereof and must take said measures at its own cost. If, at the place in question, a reservation of title is not possible, the Customer must at its own expense make every effort to confer upon EnerSys equivalent security interests in the goods delivered.

## **9 Defects and warranty**

EnerSys warrants that the goods delivered conform to and are functioning in accordance to the assured specifications. The assured specifications are only those mentioned in the confirmed order and published technical specifications.

Any other representations and warranties in relation to the goods are hereby expressly excluded. Any warranties are further excluded in respect of defects resulting from normal wear and tear, wrong or violent treatment, excessive exposure, non-observance of installation-, operation- or maintenance-instructions, accidents or force majeure.

EnerSys is only liable for defects of goods if the Customer notifies EnerSys in writing thereof without delay, at the latest 10 days after receipt of the goods. Unless the defect is a hidden defect, EnerSys is not liable for defects that are not notified within the deadlines mentioned above.

In case of a defect for which EnerSys is liable pursuant to these Terms, it shall, at its own discretion, either repair or replace the defective goods free of charge or rescind the contract and repay the purchase price. Upon request, the defective goods or a sample thereof are to be sent to EnerSys for examination.

Any and all warranty claims of Customer are subject to the statutory limitation period of one year upon delivery.

## **10 Limitation of Liability**

Any liability of Seller in addition to the one under the warranty obligation set out in Section 9 for claims arising out of or in connection with the ordering, delivery and use of goods (including breach of warranty, delay, negligence, breach of contract, tort) shall be excluded to the extent possible under Swiss law.

## **11 Applicable law, legal venue**

The contractual relationship between the Customer and EnerSys is governed by Swiss law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 1980.

All disputes arising out of or in connection with the contractual relationship between the Customer and EnerSys, including disputes on its conclusion, binding effect, amendment and termination, shall be settled by the Court of Commerce of the Canton of Zurich (*Handelsgericht des Kantons Zürich*). EnerSys, however, reserves the right to take legal action against the Customer at its domicile, place of business or seat.