



GENERAL TERMS & CONDITIONS FOR THE SALE OF GOODS AND SERVICES

EnerSys Ltd.

Last revised May 1, 2014

1. INTERPRETATION

1.1 In these Conditions (unless the context otherwise requires):

"**Buyer**" means the customer to whom the Seller supplies or is to supply Goods and/or Services pursuant to the Contract;

"**Conditions**" means these terms and conditions of sale;

"**Contract**" means the contract for the sale of Goods and/or Services between the Seller and the Buyer;

"**Goods**" means the goods which the Seller supplies pursuant to an Order;

"**Incoterms**" means the International Chamber of Commerce terms for international trade 2010;

"**Order**" means an order in writing for the Goods and/or Services received by the Seller from the Buyer;

"**Seller**" means EnerSys Ltd.;

"**Services**" means the installation and maintenance services, if any, to be provided by the Seller to the Buyer at the Site pursuant to the Contract;

"**Site**" means the Buyer's premises for the provision of the Services; and

"**Working Day**" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday in the United Kingdom.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 Any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

2. INCORPORATION

2.1 Subject to any variation under condition 2.3, these Conditions shall govern and be incorporated into every Contract, and shall prevail over any terms and conditions (whether inconsistent or not with these Conditions) contained or referred to in any correspondence, Order, documentation submitted by the Buyer or elsewhere or implied by customer, practice or course of dealing.

2.2 Each Order shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.3 The Seller reserves the right to not accept Orders with a value below £500 (or other such amounts as the Seller shall determine from time to time). Any Orders accepted below this amount must be paid for in advance.

2.4 Each Order is subject to the Seller carrying out a satisfactory credit check on the Buyer. The Seller reserves the right to alter or withdraw at any time any credit allowed to the Buyer.

2.5 Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Seller.

2.6 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.

2.7 Any quotation is given by the Seller on the basis that it shall not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time before acceptance of an Order by an acknowledgement of order form or otherwise in writing by an authorised representative of the Seller. . The Seller's quotations are valid for a period of 60 days only from their date (unless stated otherwise) provided the Seller has not previously withdrawn the quotation.

3. SPECIFICATION

- 3.1 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract.
- 3.2 The Seller may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory requirements and shall notify the Buyer of such changes.
- 3.3 No variation in the specification or design of any Goods which, in the Seller's reasonable opinion, does not adversely affect the suitability of the Goods for the particular purpose for which they are supplied by the Seller will constitute a breach of contract or impose any liability upon the Seller.

4. DELIVERY

- 4.1 Unless otherwise agreed delivery of the Goods shall be made ex-works (Incoterms 2010).
- 4.2 Any dates specified by the Seller for delivery of the Goods are approximate only and are not of the essence and may not be made of the essence by service of notice by the Buyer. If no delivery dates are specified, delivery will take place within a reasonable time.
- 4.3 The Seller accepts no liability for failure to deliver on or by a particular date or dates and the will not be liable for any loss (including (but not limited to) loss of profit) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence).
- 4.4 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Seller's fault) the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Seller may:
 - 4.4.1 Store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
 - 4.4.2 Sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.
- 4.5 Unless otherwise agreed the Buyer will provide at its expense at the point of delivery adequate and appropriate equipment and manual labour for loading or off-loading the Goods. The Buyer shall indemnify the Seller against any loss, liability and costs arising as a result of the Seller or its sub-contractors loading, unloading or removing the Goods from the point of delivery.
- 4.6 Unless otherwise expressly agreed, the Seller may effect delivery in one or more instalments. If delivery is effected by instalments each instalment shall be treated as a separate Contract.
- 4.7 Each delivery shall be considered a separate transaction and the failure of any one delivery shall not affect the performance of the Contract as regards other deliveries.
- 4.8 The Buyer shall dispose of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
- 4.9 If a licence or consent of any governmental or other authority is required for the supply, carriage or use of the Goods by the Buyer, the Buyer will obtain such licence or consent at its own expense and produce evidence of it to the Seller on demand. The Buyer is not entitled to withhold or delay payment of the price of the Goods if it fails to obtain any such licence or consent.

5. SERVICES

- 5.1 Where the Services are to be provided by the Seller at the Site, the Buyer shall allow the Seller to have unhindered access to the Site.
- 5.2 The Contract will specify the arrangements regarding materials, labour, tools and other facilities necessary for the Seller to complete the Services.
- 5.3 If in the reasonable opinion of the Seller, the Site is unsuitable for the provision of the Services the Seller may, at its discretion, terminate the Contract or carry out such works as are necessary to render the Site suitable for the provision of the Services.
- 5.4 The Buyer will reimburse the Seller in respect of all works carried out in accordance with condition 5.3
- 5.5 The Buyer shall indemnify the Seller against all actions, claims, costs, demands, charges and expenses arising as a result of the provision of the Services in accordance with this condition 5, except where the same is caused wholly by the Seller's negligence.

6. **FORCE MAJEURE**

- 6.1 The Seller shall not be liable to the Buyer in any manner or be deemed to be in breach of this Contract because of any delay in performing or any failure to perform any of the Seller's obligations under this Contract if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 6.2 Without prejudice to the generality of condition 6.1 the following shall be included as causes beyond the Seller's reasonable control:
 - 6.2.1 Governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage, terrorism or requisition;
 - 6.2.2 Act of God, fire, explosion, adverse weather conditions, flood, earthquake, epidemic or accident;
 - 6.2.3 Import or export regulations or embargoes;
 - 6.2.4 Labour disputes not including disputes involving the Seller's work-force;
 - 6.2.5 Inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour; or
 - 6.2.6 Any of the above affecting the Seller's agents or sub-contractors.
- 6.3 If the Seller's performance is delayed by more than three months by any cause referred to above, either party may terminate the contract by giving 30 days notice in writing to the other. Within 14 days of issue of such notice the Buyer will pay to the Seller any outstanding balance in relation to Goods and Services delivered prior to service of such notice.

7. **RISK/OWNERSHIP**

- 7.1 Risk or damage to or loss of Goods shall pass to the Buyer upon delivery.
- 7.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of;
 - 7.2.1 The Goods and Services; and
 - 7.2.2 All other sums which are or which become due to the Seller from the Buyer on any account.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
 - 7.3.1 Hold the Goods on a fiduciary basis as the Seller's bailee and clearly identify them as belonging to the Seller;

- 7.3.2 Maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
- 7.3.3 Hold the proceeds of the insurance referred to in condition 7.3.2 on trust for the Seller and not mix them with any other money, nor pay the proceeds into the Buyer's own bank account.
- 7.4 The Buyer may re-sell the Goods before ownership has passed to it solely on the following conditions:
 - 7.4.1 Any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Seller accordingly; and
 - 7.4.2 Any such sale shall be a sale of the Seller's property on the Buyer's behalf and the Buyer shall deal as principal when making such a sale.
- 7.5 Goods delivered to and accepted by the Buyer are not returnable (except under the terms of any applicable warranty in existence at the time of delivery). No credit will be given for Goods returned without the written consent of the Seller.
- 7.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.7 The Buyer grants the Seller, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

8. **PRICE**

- 8.1 The price for the Goods and/or Services shall be the price set out in the Seller's published price list current at the date of delivery.
- 8.2 The price for the Goods and Services is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods and Services.
- 8.3 The price for the Goods is given on an ex-works basis and where delivery takes place other than at the Seller's premises the Buyer shall pay the Seller's charges for transport, packaging, loading, unloading and insurance and any other costs arising from the transportation of the Goods from the Seller's premises, unless otherwise agreed.
- 8.4 The Seller reserves the right to alter the price to reflect any change in any law or regulation which comes into force after the date of the Seller's quotation or price list or to reflect changes in the price of raw materials, labour, transport, taxes or duties.

9. **PAYMENT**

- 9.1 Unless otherwise agreed in the Contract, the Seller may invoice the Buyer for the Goods and Services at any time after delivery.
- 9.2 Time for payment shall be of the essence. Payment of the price for the Goods and Services is due on the 21st of the month following the month of invoice.
- 9.3 Unless otherwise agreed, payment shall be made in pounds sterling to the designated account of the Seller. Payments from sources outside the UK shall, unless otherwise agreed, be made by telegraphic transfer to such account.
- 9.4 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 9.5 All payments payable to the Seller under this Contract shall become due immediately upon termination of this Contract despite any other provision.

- 9.6 The Buyer shall make all payments due under this Contract without any deduction whether by way of set-off, or counterclaim.
- 9.7 If the Buyer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) the Seller may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 4% above HSBC Holdings plc's base rate from time to time until payment is made in full.
- 9.8 Where appropriate, if the Buyer fails to make payment on the due date, the Seller shall be entitled to suspend performance of the Contract until payment is made. Any costs (including (but not limited to) insurance and storage) incurred by the Seller as a result of the Buyer's failure to pay on time shall be reimbursed by the Buyer.
- 9.9 The Seller shall at its discretion and at any time have a right to set off any payments due from the Buyer against sums due from the Seller to the Buyer in circumstances when the parties have mutual trading arrangements.
- 9.10 If in the Seller's view, the Buyer's credit-worthiness deteriorates or otherwise causes concern to the Seller before delivery of the Goods or performance of the Services, the Seller may require payment in full or in part of the price of the Goods and Services prior to delivery or performance, or the provision of security for payment by the Buyer, in such form as is acceptable to the Seller.
- 9.11 Notwithstanding any appropriation by the Buyer to the contrary, all payments made by the Buyer to the Seller shall be appropriated first to Goods which have been resold by the Buyer and then to Goods which remain in the Buyer's possession or control.
- 9.12 The Seller shall have a general lien on all of the Buyer's property in the Seller's possession (although the Buyer may have paid for it in full) in satisfaction of any amount owed by the Buyer to the Seller under any Contract, and may deal with it as it sees fit.

10. **QUALITY**

- 10.1 Where the Seller is not the manufacturer of the Goods the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.
- 10.2 The Seller warrants that (subject to the other provisions of these Conditions), upon delivery, the Goods will, and for a period of 12 months from the date of delivery, comply with their specification and be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 10.3 The Seller shall not be liable for breach of the warranty in condition 10.2 unless:
- 10.3.1 The Buyer gives written notice of the defect to the Seller and, if the defect is as a result of damage in transit for which the Seller is responsible, to the carrier within 5 Working Days of:
- 10.3.1.1 The date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or
- 10.3.1.2 The date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and
- 10.3.2 The Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost for the examination to take place there.
- 10.4 The Seller shall not be liable for a breach of the warranty in condition 10.2 if:
- 10.4.1 The defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 10.4.2 The Buyer alters or repairs such Goods without the written consent of the Seller; or

- 10.4.3 The defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Buyer.
- 10.5 If the Buyer makes a valid claim against the Seller based on a defect in the quality of the Goods, the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro-rata price of the Goods.
- 10.6 If the Seller complies with condition 10.5 it shall have no further liability for breach of the warranty in condition 10.2 in respect of the quality of such Goods.
- 10.7 Any Goods replaced will belong to the Seller and any repaired or replacement Goods will be guaranteed on these Conditions for the unexpired portion of the 12 month period from the date of delivery of the original Goods.

11. **LIMITATION OF LIABILITY**

- 11.1 The following provisions and the provisions of condition 10 set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 11.1.1 Any breach of these Conditions; and
- 11.1.2 Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 11.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 11.4 AND 11.5

- 11.4 Subject to conditions 11.2 and 11.3:
- 11.4.1 The Seller's total liability in contract, tort, negligence, breach of statutory duty, misrepresentation or otherwise, arising in connection with the Contract shall be limited to £2,000,000; or the price of the Goods and Services for which payment has been received by the Seller, whichever is the lower.
- 11.4.2 The Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for any direct, indirect or consequential loss or damage (whether for loss of actual or anticipated profit, loss of business, loss of savings, injury to reputation, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether or not caused by the negligence of the Seller, its employees, agents or sub-contractors) which arise out of or in connection with the Contract.
- 11.5 If any Goods are to be used for tank, torpedo, submarine and/or aircraft applications, the warranty given in condition 10 above shall only apply if the Goods have been commissioned and maintained by a person or organisation approved to do so by a relevant regulatory authority and in accordance with the Seller's current maintenance manual. The Seller shall not be liable for any breach of warranty under condition 10 unless the Buyer has maintained records of the history and maintenance of the Goods and prepares a detailed written report of any alleged defect. The Goods must be returned to the Seller for inspection as soon as possible after the alleged defect is brought to the Seller's attention.
- 11.6 The Buyer shall indemnify the Seller against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with this Contract brought or threatened to be brought against the Seller by any third party, except to the extent the Seller is liable to the Buyer in accordance with these Conditions.

12. TERMINATION

- 12.1 The Contract will terminate immediately upon the happening of any one or more of the following events: the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any laws for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administrative order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.
- 12.2 The Seller's rights contained in condition 7 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and the Seller's primary obligations under the Contract consequent upon its termination.
- 12.3 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Seller accrued prior to termination.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 All patents, copyright, trademark, design rights and any other intellectual property rights relating to the Goods shall remain the property of the Seller. No right or licence is granted to the Buyer in relation to intellectual property rights except in so far as necessary to allow the Buyer to use or re-sell the Goods.
- 13.2 The Seller's designs, drawings or Goods shall not be reproduced, disclosed or copied without the prior written consent of the Seller.
- 13.3 The Buyer shall indemnify the Seller against all actions brought against the Seller in relation to intellectual property rights resulting from any specification or instruction given by the Buyer in relation to the Goods.
- 13.4 If at any time it is alleged that any Goods (which are manufactured to the Seller's specification) infringe the rights of any third party or if in the Seller's reasonable opinion such an allegation is likely to be made, the Seller may at its option and at its own cost:
- 13.4.1 Modify or replace the Goods;
 - 13.4.2 Procure for the Buyer the right to continue using the Goods; or
 - 13.4.3 Repurchase the Goods at the price paid by the Buyer less depreciation at the rate the Seller applies to its own equipment.
- 13.5 If any claim is made or action brought or threatened which alleges infringement of the rights of any third party:
- 13.5.1 The Buyer shall notify the Seller as soon as it becomes aware of any such claim;
 - 13.5.2 The Seller shall have control over and shall conduct any proceedings in such a manner as it shall determine; and
 - 13.5.3 The Buyer shall provide all such reasonable assistance as the Seller may request.
- 13.6 If the Seller or its employees or agents design the Goods or Services pursuant to a commission from the Buyer (whether to fulfil an Order or otherwise), any intellectual property rights created in relation to such Goods shall vest in the Seller and the Buyer shall do or procure the doing of such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this condition.

14. NOTICES

- 14.1 All notices must be in writing to the Seller's registered office by recorded delivery. Notices so served will be deemed to have been delivered 2 Working Days after posting (exclusive of the day of posting).

15. CANCELLATION

- 15.1 The Seller reserves the right (without prejudice to any other remedy) to cancel any incomplete Contract, stop any Goods in transit or suspend delivery or performance of the Contract in the event that any of the Buyer's obligations to the Seller are not met or if, in the Seller's opinion, such commitments would not be met by the Buyer.
- 15.2 If the Buyer cancels or purports to cancel the Contract or any part thereof or refuses to accept receipt of any Goods or Services at the time agreed (if any), Buyer shall be liable (without prejudice to any other rights of the Seller) to indemnify the Seller against any loss, damage or claim resulting from such cancellation or purported cancellation including (but not limited to) payment of license or other fees, the costs of any materials, plant or tools used or intended to be used and the cost of labour and other overheads.
- 15.3 In the event the Seller cancels the Contract by reason of any breach on the part of the Buyer then the Buyer shall remain liable to the Seller in respect of the full purchase price of the Goods and Services, save that the Seller will make due allowance in respect of any materials saved or salvaged or labour not expended.

16. GENERAL

- 16.1 Time for performance of all obligations of the Buyer is of the essence.
- 16.2 Each right or remedy of the Seller under this Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 16.3 Any provision of this Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 16.4 Failure by the Seller to enforce or partially enforce any provision of this Contract will not be construed as a waiver of any of its rights under the Contract.
- 16.5 The Seller may assign, license or sub-contract all or any part of its rights or obligations under this Contract without the Buyer's consent.
- 16.6 This Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under the Contract without the Seller's prior written consent.
- 16.7 The Buyer will not disclose the existence of the Contract or any of its terms to any employee or third party without the prior written consent of the Seller.
- 16.8 A person who is not party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 16.9 The formation, construction, performance, validity and all aspects of these Conditions and the Contract are governed by English law and, in relation to sales within the EU, the parties submit to the exclusive jurisdiction of the English court. In relation to sales outside of the EU, the Seller shall be entitled to refer the dispute to the English courts or to arbitration in the United Kingdom in accordance with the rules of arbitration of the International Chamber of Commerce.