



EnSync Energy Systems

GENERAL TERMS AND CONDITIONS OF SALE

1. General. The terms and conditions contained herein, together with any additional or different terms contained in any proposal submitted by ZBB to the purchaser (the "Purchaser") (which proposal shall control over any conflicting terms), constitute the entire agreement (the "Agreement") between the parties with respect to the order and supersede all prior communications and agreements regarding the order. Acceptance by ZBB of the order, or Purchaser's acceptance of ZBB's proposal, if applicable, is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions, payment for or acceptance of any performance by ZBB constituting acceptance. These terms and conditions may not be changed or superseded by any different or additional terms and conditions proposed by Purchaser to which terms ZBB hereby objects. Unless the context otherwise requires, the term "Products" as used herein means all of the equipment, parts, accessories sold, and all software and software documentation, if any, licensed to Purchaser by ZBB ("Software") under the order. Unless the context otherwise requires, the term "Services" as used herein means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by ZBB under the order. As used herein, the term "Purchaser" shall include both the initial purchaser and the initial end-user of the Products and/or Services.

2. Prices.

(a) Unless otherwise specified in writing, all proposals, if any, expire thirty (30) days from the date thereof.

(b) Unless otherwise stated herein, Service prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; Sunday hours will be billed at two (2) times the hourly rate; and holiday hours will be billed at three (3) times the hourly rate. If a Service rate sheet is attached hereto, the applicable Service rates shall be those set forth in the rate sheet. Rates are subject to change without notice.

(c) The price does not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Purchaser agrees to pay or reimburse any such taxes which ZBB or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide ZBB a copy, acceptable to the relevant governmental authorities of any such certificate or



permit.

(d) The price excludes customs duties and other importation or exportation fees.

3. Payment.

(a) Unless specified to the contrary in writing by ZBB, payment terms are net cash, payable without offset, in United States Dollars, thirty (30) days from date of invoice.

(b) If in the judgment of ZBB the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, ZBB may require payment in advance, payment security satisfactory to ZBB, or ZBB may terminate the order, whereupon ZBB shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due thirty (30) days from the date ZBB is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.

(c) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus ZBB's attorneys' fees and court costs incurred in connection with collection.

4. Changes.

(a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by ZBB and resulting adjustments to affected provisions, including price, schedule, and guarantees must be mutually agreed upon in writing prior to implementation of the change.

(b) ZBB may, at its expense, make such changes in the Products or Services as it deems necessary, in its sole discretion, to conform the Products or Services to the applicable specifications. If Purchaser objects to any such changes, ZBB shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

5. Delivery.

(a) All Products manufactured, assembled or warehoused in the continental United States are delivered F.O.B. point of shipment. Products shipped from outside the continental United States are delivered F.O.B. United States port of entry. Purchaser shall be responsible for any and all demurrage or detention charges.

(b) If the scheduled delivery of Products is delayed by Purchaser or by Force Majeure (pursuant to Section 15, below), ZBB may move the Products to storage for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered.



(c) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for ZBB's performance hereunder.

(d) Claims for shortages or other errors in delivery must be made in writing to ZBB within ten (10) days of delivery. Products may not be returned except with the prior written consent of and subject to terms specified by ZBB. Claims for damage after delivery shall be made directly by Purchaser with the common carrier.

6. Title and Risk of Loss. Except with respect to Software (for which title shall not pass, use being licensed) title to Products shall pass to Purchaser at the time the Products are delivered by ZBB to the point of shipment. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery to the F.O.B. point.

7. Inspection, Testing and Acceptance.

(a) Any inspection by Purchaser of Products on ZBB's premises shall be scheduled in advance to be performed during normal working hours.

(b) If the order provides for factory acceptance testing, ZBB shall notify Purchaser when ZBB will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Products and its authorization for shipment.

8. Warranties and Remedies.

(a) Products and Services Warranty. ZBB warrants that Products (excluding Software, which is warranted as specified in paragraph (d) below) shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The warranty remedy period for Products (excluding Software, spare parts and refurbished or repaired parts) shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The warranty remedy period for new spare parts shall end twelve (12) months after the date of shipment. The warranty remedy period for refurbished or repaired parts shall end ninety (90) days after the date of shipment. The warranty remedy period for Services shall end ninety (90) days after the date of completion of Services. Each of the above warranty remedy periods shall be hereinafter referred to as a "Warranty Remedy Period."

(b) Products and Services Remedy. If a nonconformity to the foregoing warranty is discovered in the Products or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Product has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to ZBB promptly after such discovery and within the applicable Warranty Remedy Period, ZBB shall, at its option, either (i) repair or replace



the nonconforming portion of the Products or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Products or Services. If any portion of the Products or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to ZBB promptly after discovery and within the original Warranty Remedy



Period applicable to such Products or Services or thirty (30) days from completion of such repair, replacement or re-performance, whichever is later, ZBB will repair or replace such nonconforming Products or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

(c) Exceptions. ZBB shall not be responsible for providing working access to any of the nonconforming Products, including disassembly and re-assembly of non-ZBB supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at Purchaser's risk and expense. ZBB shall have no obligation hereunder with respect to any Product which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to ZBB's instructions; (iv) is comprised of materials provided by or a design specified by Purchaser; or (v) has failed as a result of ordinary wear and tear. Products supplied by ZBB but manufactured by others are warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

(d) Software Warranty and Remedies. ZBB warrants that, except as specified below, the Software will, when properly installed, execute in accordance with ZBB's published specification. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment and written notice of such nonconformity is provided to ZBB promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, ZBB shall correct the nonconformity by, at its option, either (i) modifying or making available to the Purchaser instructions for modifying the Software; or (ii) making available at ZBB's facility necessary corrected or replacement programs. ZBB shall have no obligation with respect to any nonconformities resulting from (1) unauthorized modification of the Software or (2) Purchaser-supplied software or interfacing. ZBB does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Purchaser, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs."

(e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND ZBB'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

9. Patent Indemnity.

(a) ZBB shall defend at its own expense any action brought against Purchaser



alleging that the Products or the use of the Products to practice any process for which such Products are specified by ZBB (a "Process") directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in any



such action, provided that the Purchaser has given ZBB prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action on behalf of Purchaser.

(b) ZBB shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Products or Processes which have been modified or combined with other equipment or process not supplied by ZBB; (ii) any Products or Process supplied according to a design, other than a ZBB design, required by Purchaser; (iii) any products manufactured by the Products or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of ZBB.

(c) If, in any such action, a Product is held to constitute an infringement, or the practice of any Process using the Product is finally enjoined, ZBB shall, at its option and its own expense, procure for Purchaser the right to continue using said Product; or modify or replace it with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Product. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF ZBB AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.

(d) To the extent that any Product or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that ZBB is a contributory infringer) or said Product or any part thereof is used by Purchaser to perform a process not furnished hereunder by ZBB or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against ZBB, Purchaser shall defend and indemnify ZBB in the same manner and to the same extent that ZBB would be obligated to indemnify Purchaser under this Section 9.

10. Limitation of Liability.

(a) In no event shall ZBB, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Products or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser or other third parties for any damages. ZBB's liability for any claim whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation



or use of any equipment covered by or furnished under this Agreement, or from any services rendered in connection therewith, shall in no case (except as provided in Section 9, above) exceed one-half (1/2) of the purchase price allocable to the Products or part thereof or Services which gives rise to the claim.



(b) All causes of action against ZBB arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one (1) year of the time of accrual thereof.

(c) In no event, regardless of cause, shall ZBB be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Products and/or Services.

11. Laws and Regulations. ZBB does not assume any responsibility for compliance with federal, state or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Products or Software is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the proposal date. In the event of any subsequent revisions or changes thereto, ZBB assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change pursuant to Section 4, above. Nothing contained herein shall be construed as imposing responsibility or liability upon ZBB for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Products. This Agreement shall be governed by the laws of the State of Wisconsin, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding Wisconsin law with respect to conflicts of law. Purchaser agrees that all causes of action against ZBB under this Agreement shall be brought in the State Courts of the State of Wisconsin. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

12. OSHA. ZBB warrants that the Products will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of the proposal. Upon prompt written notice from the Purchaser of a breach of this warranty, ZBB will replace the affected part or modify it so that it conforms to such standard or regulation. ZBB's obligation shall be limited to such replacement or modification. In no event shall ZBB be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Purchaser's design, location, operation, or maintenance of the Products, its use in association with other equipment of Purchaser, or the alteration of the Products by any party other than ZBB.

13. Software License.

(a) ZBB owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Purchaser under this Agreement. As part of the sale made hereunder Purchaser hereby obtains a limited license to use the Software, subject to the following: (i) the Software may be used only in conjunction with equipment specified by ZBB; (ii) the Software shall be kept strictly confidential; (iii) the Software shall not be



copied, reverse engineered, or modified; (iv) the Purchaser's right to use the Software shall terminate immediately when the specified Product is no longer used by the Purchaser or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to



use the Software are non-exclusive and non-transferable, except with ZBB's prior written consent.

(b) Nothing in this Agreement shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software as a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this license, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to ZBB the Software and all copies thereof and shall remove all machine readable Software from all of Purchaser's storage media.

14. Inventions and Information. Unless otherwise agreed in writing by ZBB and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Products and Services shall remain with ZBB. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of ZBB. Purchaser shall not, without ZBB's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Products and not for any other purpose, including the duplication thereof in whole or in part.

15. Confidentiality. Purchaser shall, unless otherwise agreed in writing, keep in strict confidence all technical or commercial information, specifications, inventions, processes or initiatives of ZBB which have been disclosed to Purchaser by ZBB or its agents and any other information concerning ZBB's business or its products and/or its technologies, and which Purchaser obtains in connection with the Goods (whether before or after acceptance of the Order). Purchaser shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of the provision of the Goods. Purchaser shall ensure that such employees, agents, sub-contractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to Purchaser and shall be liable for any unauthorized disclosures.

Purchaser shall apply reasonable safeguards against the unauthorized disclosure of ZBB's confidential and proprietary information and protect confidential information in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information - whichever standard is the higher. Purchaser may disclose confidential information to "Permitted Additional Recipients" (which means Purchaser's authorized representatives, including auditors, counsels, consultants and advisors) provided always that such Permitted Additional Recipients are approved by ZBB in writing and sign with Purchaser a confidentiality agreement with terminology substantially similar hereto or where applicable,



are required to comply with codes of professional conduct ensuring confidentiality of such information;

Purchaser shall take all necessary steps to ensure that ZBB's data or information which come into its possession or control in the course of delivering the Goods are protected. In particular Purchaser shall not (i) use ZBB's data or information for any other purposes than for purpose of order, or (ii) reproduce the data or information in whole or in part in any form except as may be required by the respective contractual documents, or (iii) disclose ZBB's data or information to any third party not authorized by ZBB to receive it, except with the prior written consent of ZBB.

16. Force Majeure. ZBB shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by a period equal to the delay plus a reasonable time to resume production.

17. Cancellation. Any order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified in the order incurred prior to the effective date of notice of termination and all expenses incurred by ZBB attributable to the termination, plus a fixed sum of ten percent (10%) of the final total price to compensate for disruption in scheduling, planned production and other indirect costs.

18. Termination. No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by ZBB of Purchaser's written notice specifying such default, ZBB shall have failed to initiate and pursue with due diligence correction of such specified default.

19. Export Control. (a) Purchaser represents and warrants that the Products and Services provided hereunder and the "direct product" thereof is intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by ZBB or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

(b) If applicable, ZBB shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall



furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of this Agreement by ZBB. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by ZBB without liability for damages of any kind resulting from such cancellation. At ZBB's request, Purchaser shall provide to ZBB a Letter of Assurance and End-User Statement in a form reasonably satisfactory to ZBB.

20. Assignment. Any assignment of this Agreement or of any rights or obligations under the Agreement without prior written consent of ZBB shall be void.

21. Resale. If Purchaser resells any of the Products, the sale terms shall limit ZBB's liability to the buyer to the same extent that ZBB's liability to Purchaser is limited hereunder.

22. Entire Agreement. This Agreement constitutes the entire agreement between ZBB and Purchaser. There are no agreements, understandings, restrictions, warranties, or representations between ZBB and Purchaser other than those set forth herein and in any corresponding proposal submitted by ZBB.