



1695 Cactus Road
San Diego, CA 92154
Tel: (619) 671-0100
www.energylabs.com

TERMS & CONDITIONS

1. Energy Labs, Inc. ("Energy Labs") is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Customer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods and licensing of Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods and/or license of Software by Seller to Customer. Seller's acceptance of Customer's purchase order is expressly conditional on Customer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Customer's purchase order. Customer's acceptance of the Goods and/or Software will manifest Customer's assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.
2. **Limited Warranty.** Subject to the limitations herein, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein. **THE WARRANTIES SET FORTH HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY ENERGY LABS WITH RESPECT TO THE GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO ENERGY LABS IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT ENERGY LABS' PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY ENERGY LABS FOR CUSTOMER'S USE OR PURPOSE. EXCEPT AS OTHERWISE SET FORTH HEREIN, THE GOODS ARE BEING SOLD AS-IS WITH NO OTHER WARRANTIES PROVIDED BY ENERGY LABS.**
3. **Limitation of Remedy and Liability.** Energy Labs' sole obligation under its Standard Warranty is to repair or furnish necessary replacement parts or a credit memorandum. Energy Labs will pay the cost of shipping the replacement part(s) to the location of the equipment, the disposition of the defective part will be at the discretion of Energy Labs, and return shipping will be at the expense of the customer. This is Customer's sole remedy in lieu of all statutory remedies.

ENERGY LABS SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF CUSTOMER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL ENERGY LABS' LIABILITY TO CUSTOMER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY CUSTOMER FOR THE SPECIFIC GOODS PROVIDED BY ENERGY LABS GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

CUSTOMER AGREES THAT ENERGY LABS' LIABILITY TO CUSTOMER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Energy Labs with respect to the use of the Goods is given without charge, and Energy Labs assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Customer's risk.

4. **Taxes.** Unless otherwise stated, the price does not include any taxes. Customer agrees to reimburse Energy Labs for any taxes required to be paid by Energy Labs upon the sale, transportation, or purchase of the Goods sold hereunder.
5. **Shipment and Delivery.** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Customer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Customer for any reason, Customer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods shall transfer to Customer immediately after the Goods have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Customer. All other shipments of Goods are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Customer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Customer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.
6. **Terms of Payment.** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements



1695 Cactus Road
San Diego, CA 92154
Tel: (619) 671-0100
www.energylabs.com

with Customer in the event Buyer fails to make any payment when due, which other agreements Customer and Seller hereby amend accordingly. Customer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Customer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries of Goods. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries. Customer hereby grants Seller a security interest in all Goods sold to Customer by Seller, which security interest shall continue until all such Goods are fully paid for, and Customer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

7. **General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon Energy Labs unless made in writing and signed on its behalf by a duly authorized representative of Energy Labs. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Energy Labs' receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Customer, such acceptance is expressly conditional upon Customer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Energy Labs in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Customer and Energy Labs agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

8. **Cancellation.** Customer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.
9. **Insurance.** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and aggregate. CGL includes Contractual Liability. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Customer expressly acknowledges and agrees that Energy Labs has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Energy Labs and Customer and form a basis of this bargain between the parties.**

If you have any questions, please contact your local Energy Labs representative or Energy Labs directly for further information.