



Esys The Energy Control Company Terms and Conditions October 1, 2008

1) Billing terms are Net 30 days on approval of credit. Any other arrangements must be made in advance in writing. Invoices may be presented on partial shipment. Esys reserves the right to require payment in advance on C.O.D. terms. Buyer agrees to pay any charges incurred by Esys in the collection of past due accounts, including, but not limited to legal fees. A service charge of 1.5% shall be charged to any account over thirty days past due. Accounts shall be charged additional interest at a rate of 1.5% per month for every month past the due date.

2) Prices will be firm for products whose quoted shipment is less than 3 months and for which the customer will accept the shipment within 3 months from date to order.

3) Unless otherwise stated in writing, the price does not include any Federal, State or Local property, license, privilege sales, use, excise, gross receipt, value added or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the property, or its sales, in connection therein. Buyer agrees to pay or reimburse any such taxes which Esys or Esys contractors or suppliers are required to pay.

4) All prices shall be F.O.B. Esys facilities in Bakersfield, California, unless specifically defined and quoted otherwise.

5) Each quotation furnished by Esys is valid for 30 days from the date issued by Esys unless otherwise stated in the quotation.

6) All prices quoted assume a Buyer purchase order is issued with a minimum of \$50.00 per line item and \$250.00 in total per purchase order, unless expressed otherwise in writing by Esys. Prices may be adjusted and a Buyer purchase order accepted for an order placed below the above listed threshold value(s) upon written acceptance of order by Esys.

7) Esys warrants that the equipment manufactured and sold by it will, upon shipment, be free of defects in workmanship or material. Should any failure to conform to this warranty become apparent during a period of one year after the date of shipment, Esys shall, upon prompt written notice from the purchaser, correct such non-conformity by repair or replacement, F.O.B. factory of the defective part or parts. Esys shall not be responsible for product sold unless the products were stored, installed, operated and maintained in accordance with Esys instructions and recommendations and standard industry practice. Costs for return of products to the factory for warranty work repair shall be borne by the Buyer.

THE FORGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY, EXPRESSED, OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, SAMPLE, DESCRIPTION OR USAGE OR TRADE, EXCEPT OF TITLE AND AGAINST PATENT SHALL BE BUYER'S INFRINGEMENT. The remedies provided above shall be buyer's sole remedies for any failure of Esys to comply with its objections whether claims by the Purchaser are based in contract or in tort (including negligence or strict liability). Correction of any non-conformity in the manner and for the period of time specified above shall constitute complete fulfillment of all the liabilities of Esys whether the claims of buyer are based on contract, in tort (including negligence or strict liability) or otherwise with respect to or arising out of the equipment furnished hereunder. Esys does not warrant equipment against normal deterioration due to environment. Corrosive gases and solid particulate can damage or destroy the

equipment or create the need for repair or replacement as part of normal wear and tear during the warranty period, and is specifically excluded from the warranty. Equipment supplied, but not manufactured by Esys will be subject to the same warranty, exclusion, and limitations as the manufacturer extends to Esys. Esys, its contractors or supplies of any tier, shall not be liable in contract or in tort (including negligence or strict liability) for damages or loss of other property or equipment, special, indirect, incidental or consequential damages or loss of other property or equipment, special, indirect, incidental or consequential damages, such as, but not limited to, loss of profits or revenue, loss of use of power system, cost of capital, cost of purchased or replacement power, or claims of customers of Purchaser for service denied customers of Purchaser or for service Interruptions, or claims or penalties of Purchaser or its customers for environmental damages. The remedies of the Buyer set forth herein are exclusive, and the liability of Esys with the respect to any contract or anything done in connection therewith such as the performance or breach thereof or from the manufacture, sale thereof or from the manufacture, sale, delivery resale, installation, or technical direction of installation, repair or use of any equipment covered by or furnished under this contract whether in contract or in tort or claims or penalties of the Purchase or its customers or otherwise shall not exceed the price of the equipment part on which such liability is based. Purchaser or its Customer must provide Esys with working access to the equipment containing the product or the product itself, and will disassemble, remove, replace or reinstall any equipment, fixtures, or structures required to gain access to the equipment. Esys warrants installation work performed to be free of defects in workmanship for a period of one year from the date the work is performed.

8) All warranty repair work and start-up service shall be performed on a single shift straight time basis during standard working hours. Work performed on an overtime basis shall be charged to purchaser in accordance with Esys labor rates.

9) Standard Esys working hours are 7:30 A.M. to 4:30 P.M. Monday through Friday, excluding holidays.

10) Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Unless another method is specified, Esys will ship all products UPS prepaid, with the costs and applicable handling charges thereof added to the invoice.

11) Final inspection and acceptance of goods shall be made at point of delivery. Buyer shall be responsible for conducting the final acceptance test, if necessary. These tests shall be completed promptly and in no event later than 5 days after delivery, at which time Buyer must either accept or reject goods in accordance with paragraph 6. Any discrepancy in shipment must be reported within 5 working days of receipt.

12) Authorization and shipping instructions for the return of any equipment must be obtained by the Buyer from Esys before returning the equipment. Equipment must be returned with complete identification in accordance with Esys instruction or it will not be accepted. Returned material will be subject to a \$50.00 per item minimum restocking charge, except items authorized by Esys to be returned without charge, for placing the goods in salable condition and for any outgoing or incoming transportation charges paid by Esys. In no event will Esys be responsible for equipment returned without proper authorization and identification.

13) Orders accepted by Esys may be cancelled by Buyer only upon written consent of Esys. In the event of cancellation or other withdrawal of an order for any reason, reasonable cancellation and restocking charges, which shall include all expenses then, incurred, processing fees, and commitments made by Seller, shall be paid by Buyer to Esys.

14) Esys offers to sell the products and services described under these terms and conditions and hereby gives notice of its objection to any different terms or conditions to those outlined herein. These Terms and Conditions shall not be affected by any additional or different Terms and Conditions of any proposal(s), quotations(s), acceptance, or acknowledgement forms, whether or not signed by authorized representative of the parties. Additional or different terms or conditions will only be valid if expressly agreed to, in writing, by Esys' authorized representative.

15) Buyer's action in verbally ordering goods, or issuance of a purchase order shall constitute Buyer's unqualified acceptance of and agreement to be bound by the Terms and Conditions herein.

16) All proprietary information, patents, copyrights, and other intellectual property such as, but not limited to, computer/PLC programs and software, provide by Esys to the Buyer, shall remain the exclusive property of Esys unless expressed otherwise in writing by Esys.

17) Buyer is responsible for compliance with any legal, contractual, or obligator issues pertaining to proprietary information, patents, copyrights, and other intellectual property (i.e. – computer/PLC programs, software, etc.). Any and all costs associated with proprietary information, patents, copyrights, and other intellectual property will be borne by the Buyer unless otherwise agreed upon in writing by Esys. Buyer, Buyer affiliates, and Buyer customers shall indemnify and hold harmless Esys, Esys personnel, and Esys sub-contractors for any infringement(s) on proprietary information, patents, copyrights, or other intellectual property.

18) Prices are predicated upon Esys personnel and Esys sub-contractors having access to equipment and materials to be modified when work is scheduled. Any delays resulting from Buyer operations or Buyers costumers, union rules, force majeure, or governmental requirements will be billed on a time and material basis.

19) Field labor rates are "portal to portal" from Esys offices, or other facility designated by Esys, to the work site and back.

20) Rates and charges shown are applicable within California. Out of state, offshore, governmental, and foreign rates will be quoted on an individual job basis.

21) Subsistence expense will be charged at the rate of \$140.00 per day or actual expenses incurred whichever is greater.

22) Travel expenses (i.e. airfares, rental vehicles) will be charged to Buyer at cost incurred.

23) A contract shall exist only after Esys' formal acceptance of Buyer's purchase at Esys Headquarters.

24) Scrap materials shall become the property of Esys unless otherwise agreed upon in writing prior to the job commencement.

25) If, in the judgement of Esys, the financial condition of the Buyer, at any time during the agreement, does not justify the terms of payment in advance. Pro rata payment shall become due as shipments are made. If shipments are delayed by the Buyers, payments shall become due from when Esys is prepared to make shipment. If manufacture is delayed by the Buyer, payment shall be made based on the adjusted contract price and percent of completion including any additional cost resulting form such delay.