



ENERGY RECOVERY, INC. STANDARD TERMS AND CONDITIONS

- 1. Terms and Conditions. These Terms and Conditions govern the sale of the Energy Recovery Inc. ("Seller") Products and Services stated in the Sales Order ("Order").
2. Prices. Product prices do not include fees for crating, insurance or shipping, unless stated otherwise in the Order.
3. Payment. Unless Seller is notified in writing of otherwise from Buyer, Seller's invoice is deemed accepted ten (10) business days from the date of invoice.
4. Shipping. Shipments will be made Ex-Works Seller's facility, unless the Order states otherwise.
5. Express Warranty. Seller warrants to the first user of the Products that: (i) the ceramic components of its PX brand Products will conform to their specifications and be free of defects in material and workmanship for 60 months after the shipment date;
6. Limited Remedy. Except where otherwise provided, Seller's sole obligation, and Buyer's sole and exclusive remedy, for any warranty or claim related to a Product or Service shall be for Seller, at its option, to repair or replace the Product or re-provide the Service;
7. Warranty Disclaimer. OTHER THAN AS SET FORTH IN SECTION 5 SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE PRODUCTS OR SERVICES AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
8. Warranty Returns. Warranty claims must be made in writing during the warranty period.
9. Service. For applicable fees and expenses set forth in the Order or otherwise specified by Seller to Buyer from time to time, Seller will supervise the installation and commissioning of the Products and/or repair of the Products, as well as provide startup and training services with respect to the Products (collectively, the "Services" and each day on which the Services are performed, a "Service Day").
10. U.S. Export Compliance. Buyer agrees not to export or re-export the Products to countries subject to embargoes or other U.S. trade sanctions, nor to prohibited or denied persons or entities in violation of applicable law.
11. Suspension. Buyer shall have the right to suspend the Order or otherwise delay delivery at any time between the date of placement of the Order and 30 days prior to the agreed delivery date provided delivery is delayed less than 60 days.
12. Cancellation. Cancellations of Orders by Buyer shall be subject to a cancellation fee, which shall be as follows and shall be paid as a condition to such cancellation:

Table with 2 columns: Time of Cancellation and Cancellation Fee (expressed as a percentage of Total Contract Amount). Rows include: Prior to Procurement (20%), During Procurement but prior to commencement of Machining and Assembly (30%), During Machining and Assembly but prior to Product Completion (60%), After Product Completion (100%).

- 13. Amendments/Changes to Purchase Order. Neither Buyer nor Seller may amend or otherwise change a purchase order unless it is in writing and signed or approved by both parties.
14. Limited Liability. EXCEPT FOR WILLFUL MISCONDUCT, FRAUD, PERSONAL INJURY OR DEATH, IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS OR SAVINGS, LOSS OF USE OF ANY PRODUCT OR SERVICE, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR RELATED TO THIS SALES CONTRACT.
15. Confidentiality. Each party agrees to hold in confidence Confidential Information disclosed to it by the other party and to use such information solely for the purpose of performing its obligations under these Terms and Conditions.
16. Force Majeure. See Addendum A, which is expressly incorporated herein by reference and agreed to by the parties.
17. Governing Law/Disputes. These Terms and Conditions and any dispute arising out of or related to this sale will be governed by the laws of the State of Delaware, U.S.A., excluding its conflict-of-law provisions.

Buyer's Signature: \_\_\_\_\_
Name & Capacity: \_\_\_\_\_
Company Name: \_\_\_\_\_

Seller's Signature: \_\_\_\_\_
Name & Capacity: Jordan Cruz, Program Manager, Water Operations
Company Name: Energy Recovery, Inc.

## ADDENDUM A

### 1. Force Majeure.

(a) If a Force Majeure Event prevents a party (the “**Impacted Party**”) from complying with one or more obligations under this Contract (other than an obligation to pay money), exercising discretion under this Contract, or satisfying any conditions under this Contract, that inability to comply will not constitute a breach or result in any liability to the other party, and any time limits on that performance stated in this Contract will be suspended for the duration of that Force Majeure Event, if (1) the Impacted Party uses reasonable efforts to perform those obligations, (2) the Impacted Party’s inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) the Impacted Party complies with its obligations under Section 1(c) below.

(b) For purposes of this Contract, “**Force Majeure Event**” means, with respect to a party, any event or circumstance, whether or not foreseeable, that was not caused by that party and any consequences of that event or circumstance. Without limiting the generality of the foregoing, the following events, if not caused by the Impacted Party, are Force Majeure Events: (1) floods, fires, earthquakes, tornadoes, tsunamis, storms, public health crises (including, without limitation, epidemics and pandemics), other acts of God, or explosions; (2) wars (whether or not declared), invasion, hostilities, terrorist threats or acts, riots or other civil unrest; (3) government order or law, actions, quarantines of any nature (including, without limitation, those imposed on vessels, jurisdictions, regions, communities, and other areas), travel restrictions, export or import restrictions, embargoes or blockades, in each case whether in effect on or after the date of this Contract; (4) action by any governmental authority, whether in effect on or after the date of this Contract; (5) national, regional, or local emergency as declared by a governmental authority with authority for the relevant jurisdiction, in each case whether in effect on or after the date of this Contract; (6) strikes, lockouts, labor stoppages or slowdowns or other industrial disturbances; and (7) failure of public utilities (including, without limitation, shortage of adequate power), common carriers or transportation facilities. In allocating the risk of delay or failure of performance of their respective obligations under this Contract, the parties have not taken into account the possible occurrence of any of the events listed above or any similar or dissimilar events beyond their control, irrespective of whether such listed, similar or dissimilar events were foreseeable as of the date of this Contract.

(c) If a Force Majeure Event occurs and prevents (or would reasonably be expected to prevent) the Impacted Party from complying with one or more obligations under this Contract, the Impacted Party shall promptly upon obtaining actual knowledge thereof notify the other party of occurrence of that Force Majeure Event, its effect (actual and reasonably expected) on performance, and how long the noncomplying party expects it to last. Thereafter, the Impacted Party shall update that information as reasonably necessary. During a Force Majeure Event, the Impacted Party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Contract.

(d) If the Impacted Party’s failure or delay remains uncured for a period of 180 consecutive days following written notice given by it under this Section 1, either party may thereafter terminate the Order upon written notice to the other party.

### 2. Additional Provisions. Notwithstanding anything else in this Contract to the contrary, the parties hereby agree as follows:

(a) Seller shall use commercially reasonable efforts to meet the delivery dates set forth in the Order, but shall not be subject to any penalties associating with late delivery for any reason, including, without limitation, the current COVID-19 pandemic or any circumstances arising therefrom.

(b) Each party acknowledges and agrees that Seller may be subject to directives, orders and recommendations by one or more governmental authorities to suspend, halt, shut down, or otherwise limit its operations because of the current COVID-19 pandemic or any circumstances arising therefrom, in each case whether in effect on or after the date of the Order. Buyer hereby agrees that Seller may at any time upon written notice to Buyer declare that the COVID-19 pandemic and/or other matters described in this Addendum A constitute one or more force majeure events under this Contract and that Buyer shall not challenge any such declaration.