

TERMS AND CONDITIONS

Seller, by accepting this Purchase Order, agrees to the following Terms and Conditions:

- 1. Terms and Conditions:** Energy Recovery, Inc. ("Purchaser") recognizes that the Seller may, for operating convenience, desire to utilize its own form of acknowledgement, contract or other document in connection with this transaction. Acceptance of this Purchase Order, however, is expressly made subject to and conditional on Seller's assent to the Terms and Conditions contained herein; and any shipment by Seller of the goods or work subject to this Purchase Order, notwithstanding accompaniment by Seller's own form of acknowledgment, shall be deemed as acceptance by Seller of each of these Terms and Conditions and shall not modify, alter, or contradict in any manner the provisions herein. THIS PURCHASE ORDER IS LIMITED TO THE TERMS AND CONDITIONS SPECIFIED ON THE ON THE FACE AND REVERSE SIDE OF THIS PURCHASE ORDER AND ANY ATTACHMENTS. PURCHASER DOES NOT AGREE TO ANY PROPOSED ADDITION, ALTERATION, OR DELETION BY SELLER. THESE TERMS AND CONDITIONS CAN BE MODIFIED ONLY IN WRITING BY THE PURCHASER. ANY FAILURE TO RETURN THE ACKNOWLEDGMENT COPY OF THIS PURCHASE ORDER OR ANY OTHER STATEMENT OR WRITING OF SELLER SHALL NOT MODIFY, ALTER, ADD TO, OR OTHERWISE AFFECT THESE TERMS AND CONDITIONS.
- 2. Entire Agreement.** This Purchase Order and these Terms and Conditions contain the entire agreement between Purchaser and Seller and there are no prior contemporaneous, oral, or written understandings binding on Purchaser affecting the subject matter of this Purchase Order other than those expressly referred to herein. No agreement or other understanding in any way modifying these Terms and Conditions resulting from the acceptance of this Purchase Order will be binding upon Purchaser unless made in writing and signed by an "Authorized Agent," which means either (a) an authorized purchasing agent of Purchaser, or (b) an agent expressly authorized by such purchasing agent to modify these terms and Conditions.
- 3. Prices.** Pricing is inclusive of applicable taxes, freight, packaging, and handling and all other charges, whether similar or dissimilar, unless otherwise indicated on the face of this purchase order. Time is of the essence as to delivery and any other performance required of Seller.
- 4. Warranties.** Seller represents and warrants that all goods and services subject to this Purchase Order shall conform to approved samples or specifications, if any, shall be merchantable and fit for intended purpose, shall be new, not refurbished or reconditioned (unless otherwise indicated on the face of this purchase order) shall be free from defects in workmanship and materials, and are fit and safe for seller's intended use. All such goods and services shall be subject to inspection and to rejection for breach of warranty by Purchaser within a reasonable time after receipt or completion, as the case may be, and without regard to whether payment has been made. Seller shall not be entitled to cure any nonconforming tender without the prior written consent of an Authorized Agent. The performance of all warranties shall survive and extend beyond delivery as to each item or service for a period of two (2) years from the delivery of such items. All goods are sold by Seller with good title warranted and free and clear of any lien or encumbrance of any nature whatsoever.
- 5. IP Indemnification.** Seller shall indemnify, defend, protect, and hold harmless Purchaser, its direct and indirect partners, officers, and agents and employees (collectively, the "Parties") from liability of any nature or kind, arising from or by reason of any actual or claimed violation, infringement, or misuse (including reasonable attorneys' fees and costs and expenses of discovery and litigation) of any patent or intellectual property rights, for or on account of any invention embodied in the goods supplied hereunder or used in the performance hereof, including the use or disposal of such goods by or on behalf of Purchaser; provided that such indemnity shall not encompass (a) violations, infringements, or misuse of any patent or other intellectual property rights resulting from Seller's compliance with specific written instructions furnished by the Purchaser, (b) where infringement is occasioned by the use of an apparatus patent due to the fabrication, installation or operation of apparatus in accordance with plans and specifications furnished by Purchaser, or (c) infringement by reason of use of the goods supplied hereunder in combination with other goods furnished by Seller or others, or in operation of any process other than such process as may be inherent in the use of the goods supplied hereunder. Purchaser shall promptly notify Seller in writing of any and all such claims of infringement that may be brought to Purchaser's attention. In case of litigation on account thereof, Purchaser shall assist Seller at Seller's expense, except for the services of Purchaser's employees, in furnishing such evidence regarding the use of the patent or other intellectual property rights and other matters of fact that may be required by Seller in such litigation.
- 6. Waiver.** The failure or indulgence of Purchaser to insist on strict performance or observance by Seller of this Purchase Order or these Terms and Conditions or of Purchaser's rights in any one or more instances shall not constitute a modification of these Terms and Conditions or a waiver of performance by Purchaser of such

performance, conditions, or rights. Acceptance of any portion of this Purchase Order shall not in any way bind Purchaser to accept defective tender of any remaining portions thereof.

7. **Labor Law Compliance.** Seller represents and warrants that the goods hereby sold were produced in compliance with (a) all applicable requirements of the Fair Labor Standards Act of 1938 as amended, (b) the regulations and orders of the Department of Labor; and (c) all other applicable federal, state, and municipal laws, rules, ordinances, and regulations.
8. **Health and Safety Compliance.** Seller represents and warrants that all goods furnished under this Purchase Order comply, to the extent applicable, with the Occupational Health and Safety Act of 1970.
9. **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, without proper government licenses. For more information, you may go to: <http://www.treas.gov/ofac/> and www.bis.doc.gov/complianceandenforcement/ListsToCheck.htm
10. **INDEMNIFICATION.** SELLER SHALL DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE PARTIES FROM AND AGAINST ALL CLAIMS, ACTIONS, AND JUDGEMENTS RESULTING IN INJURY OR DAMAGE TO PERSONS OR PROPERTY (INCLUDING DEATH), LOSS OR DAMAGE, OR CLAIM OR LIABILITY THEREFOR (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSE OF DISCOVERY AND LITIGATION) ARISING FROM THE PERFORMANCE OF THIS PURCHASE ORDER AND THE EXECUTION OF THE WORK OR FURNISHING OF THE GOODS AND SERVICES HEREUNDER UNLESS IT SHALL BE ESTABLISHED THAT THE INJURY (OR DEATH) TO PERSON OR PROPERTY IS THE RESULT OF THE SOLE NEGLIGENCE OF PURCHASER. THIS INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF GOODS OR SERVICES.
11. **No Discrimination.** During the performance of this Purchase Order, Seller shall not discriminate against any employee or applicant for employment because of race, creed, color, gender, national origin, or any other form of discrimination proscribed by law.
12. **Insurance.** When labor of any kind is furnished pursuant to this Purchase Order, Seller shall provide evidence in the form of Certificate of Insurance or a policy containing such insurance coverage as may be reasonably required by Purchaser naming Purchaser as an additional insured.
13. **LIMITED LIABILITY.** NO OFFICER, DIRECTOR, SHAREHOLDER, OR EMPLOYEE OF PURCHASER SHALL BE PERSONALLY LIABLE FOR THE PERFORMANCE OF ANY OF PURCHASER'S OBLIGATIONS UNDER THIS PURCHASE ORDER. SELLER SHALL LOOK SOLELY TO PURCHASER FOR ANY LIABILITY OF PURCHASER AND NEITHER SELLER NOR ANYONE CLAIMING BY OR THROUGH SELLER SHALL LOOK TO ANY OTHER ASSETS IN SEEKING TO ENFORCE OBLIGATIONS UNDER THIS PURCHASE ORDER OR TO SATISFY A JUDGMENT OR AWARD FOR FAILURE TO PERFORM SUCH OBLIGATIONS. FURTHERMORE, IN NO EVENT SHALL PURCHASER HAVE ANY LIABILITY TO SELLER FOR PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF USE, EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **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 and the United Nations Convention on Contracts for the International Sale of Goods. Any dispute that cannot be resolved amicably shall be submitted to binding arbitration with the American Arbitration Association in San Francisco, California if the Buyer is located in North America, Australia or New Zealand; or with the International Centre for Dispute Resolution in Madrid, Spain if the Buyer is located in Africa, Europe or the Middle East, or in Singapore, if the Buyer is located in Asia.
15. **Force Majeure.** If Seller claims excuse from performance under this Purchase Order by the occurrence of an event of force majeure, including, but not limited to labor trouble, fire, accident, war, shortages of supplies, power, or fuel which are the result of an occurrence beyond control of the Seller, such excuse shall extend only to the time Seller is so prevented from performance, and, on removal of the cause of such interruption, performance shall be resumed at the specified rate

Seller's Signature: _____

Name and Title: _____

Company Name: _____