

# CLEAN ENERGY

## TERMS AND CONDITIONS FOR SALE OF SERVICES AND/OR PRODUCTS

**IN THE EVENT THE BUYER (AS DEFINED BELOW) DOES NOT HAVE A VALID AGREEMENT CURRENTLY IN PLACE WITH CE (AS DEFINED BELOW) UNDER WHICH CE IS PROVIDING THE SERVICES AND/OR PRODUCTS DESCRIBED IN THE CONTRACT (AS DEFINED BELOW), THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO THE PERFORMANCE OF THE SERVICES AND/OR SALE OF THE PRODUCT(S) BY CE TO BUYER UNDER THE CONTRACT.**

THE SALE OF ANY PRODUCTS AND/OR SERVICES BY CE TO BUYER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. ANY ACCEPTANCE OF CE'S OFFER TO BUYER IS EXPRESSLY LIMITED TO ACCEPTANCE OF THESE TERMS AND CONDITIONS AND CE EXPRESSLY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER. ANY ORDER TO PERFORM THE WORK (AS DEFINED BELOW) AND CE'S PERFORMANCE OF ANY WORK SHALL CONSTITUTE BUYER'S ASSENT TO THESE TERMS AND CONDITIONS.

1. Definitions. The following terms, as used herein, shall have the following meanings:

- a. "Buyer" means the entity or individual to which CE is providing products and/or services under the Contract.
- b. "CE" means Clean Energy, a California Corporation, or any of its affiliates who are performing the Work.
- c. "Contract" means the: (i) Customer Quote issued by CE for the sale of Products and/or Services by CE, together with these Terms and Conditions; or (ii) Sales Order issued by CE for the sale of Products and/or Services by CE, together with these Terms and Conditions.
- d. "Facility Inspection and Testing Work" means Services performed whereby: (i) the methane detectors at Buyer's Premises are calibrated, and (ii) a functional test on the methane detection system is performed at Buyer's Premises.
- e. "Premises" means the Buyer site where the Work is to be performed.
- f. "Products" means the equipment, parts, materials, supplies or other goods CE has agreed to supply to Buyer under the Contract.
- g. "Services" means the services CE has agreed to perform for Buyer under the Contract.
- h. "Terms and Conditions" means these "Clean Energy Terms and Conditions for Sale of Services and/or Products"
- i. "Work" means the Products and/or Services, as applicable, to be provided by CE to Buyer under the Contract.

2. Payment. Buyer shall pay CE the full purchase price as set forth in the Contract. In the event the Contract includes the performance of Services, Buyer understands and acknowledges that the number of hours for performance of the Services described in the Contract is only an estimate and Buyer will be invoiced for, and responsible for paying CE for, the total number of hours CE expends performing the Services, including all time spent by CE's employees, agents or contractors traveling to and from the Premises. Further, CE and Buyer agree that the price of any Products described in the Contract is only an estimate and CE may reasonably increase the price for such Products and Buyer shall be responsible for paying CE the amount for the Products described in CE's invoice to Buyer. Unless the Contract provides otherwise, freight, storage, insurance and all taxes, duties or other governmental charges relating to the Work, including without limitation, taxes which are measured based on the selling price of the Work, shall be paid by Buyer. If CE is required to pay any such charges, Buyer shall immediately reimburse CE. All payments are due within 15 days after Buyer's receipt of CE's invoice which shall be deemed to occur 3 days after CE transmits the invoice to Buyer. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of CE's reasonable costs (including attorneys' fees) for collecting amounts due but unpaid. All orders are subject to credit approval. Title shall only transfer to Buyer when Buyer has paid CE in full for the Work. This Section shall survive termination of the Contract.

3. Delivery. Unless the Contract provides otherwise, delivery terms are Ex Work's CE's facility. Unless the Contract provides otherwise, Buyer shall pay all delivery costs and charges related to delivery of the Products. Risk of Loss shall transfer from CE to Buyer the moment when the Work leaves CE's facility. To enable CE to fulfill its obligations under the Contract, as applicable, Buyer hereby grants to CE the right of ingress to and egress from the Premises, on a non-exclusive basis, to CE and its employees, agents and contractors to enable CE to perform the Work. Buyer shall maintain safe working conditions on the Premises. If in CE's reasonable opinion, the health, safety or security of its personnel at the Premises is, or may be, harmed or in danger based on security risks, the presence or threat of exposure to hazardous materials, or unsafe working conditions, CE may, in addition to all other rights or remedies available to it, remove some or all of its personnel from the Premises, suspend performance of all or any part of the Contract, and/or remotely perform or supervise the Work. CE shall have no responsibility or liability for the pre-existing condition of Buyer's equipment or the Premises. Buyer shall provide documentation to CE that identifies the presence or condition of any hazardous materials existing in or about the Premises that CE may encounter while performing the Work. Buyer will indemnify and hold CE harmless from any and all claims, damages, losses and expenses arising out of or relating to any hazardous materials which are or were (1) present in or about the Premises, or (2) improperly handled or disposed of by Buyer or its employees, agents or contractors, or (3) brought, generated, produced or released on the Premises by a party other than CE.

4. Ownership of Materials. All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by CE, and all related intellectual property rights, shall remain CE's property. CE shall retain ownership of all intellectual property it had prior to the Contract. Buyer shall not disclose any such material to third parties without CE's prior

written consent. All new intellectual property conceived or created by CE in the performance of the Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by CE. Buyer agrees to deliver assignment documentation as necessary to CE. This Section shall survive termination of the Contract.

5. Changes and Returns. CE shall not implement any changes in the scope of work described in the Contract unless an authorized representative of Buyer and CE agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. Any part of the Work cannot be cancelled or returned except with the prior written consent of CE and upon terms that will indemnify CE against all losses resulting therefrom, including the profit on any part of the Work that is cancelled. When CE authorizes the return of equipment, Buyer shall prepay the shipping charges on such returned equipment, unless otherwise expressly stated by CE in its written return authorization.

## 6. WARRANTY.

a. With respect to Facility Inspection and Testing Work:

Buyer acknowledges and agree that CE is not the manufacturer of any of the equipment and Buyer understands, acknowledges and agrees to look exclusively to the manufacturer of the equipment for repairs. CE makes no express warranties as to any matter whatsoever, including without limitation with respect to Facility Inspection and Testing Work or the condition of any equipment inspected, repaired or replaced as part of such work or its merchantability or fitness for a particular purpose. CE does not represent or warrant that equipment may not be compromised or circumvented or that the equipment will prevent any damage or will in all cases provide the detection or protection for which it was installed.

b. With respect to all Services performed by CE pursuant to this Contract other than Facility Inspection and Testing Work, for a period of one (1) month from the date of performance of such Services (the "Warranty Period"), CE warrants to Buyer that the Services shall be free from defects in workmanship (the "Warranty").

If Buyer gives CE prompt written notice of breach of this Warranty during the Warranty Period, CE shall, at its sole option and as Buyer's sole remedy, either re-perform the Service (Buyer to provide CE with unencumbered access to the Premises and equipment) or refund the purchase price therefore. Buyer shall bear the costs of access for CE's remedial Warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, re-installation and transportation of the parts to CE and back to Buyer. If CE determines that any claimed breach is not, in fact, covered by this Warranty, Buyer shall pay CE its then customary charges for any re-performance completed by CE, or, in the event CE refunded Buyer the purchase price, Buyer shall return the purchase price to CE. CE's warranty is conditioned on Buyer (a) operating and maintaining the applicable work in accordance with CE's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to CE. CE's warranty does not cover damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by CE). Warranty repair or replacement shall not extend or renew the applicable Warranty Period.

c. With respect to Product(s) provided by CE to Buyer pursuant to this Contract, CE hereby assigns to Buyer, to the extent assignable, any warranties made to CE by the applicable manufacturer or supplier, and CE shall have no other liability to Buyer related to the supplied Product(s) under warranty, tort or any other legal theory.

d. THE WARRANTIES SET FORTH IN THIS SECTION ARE CE'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO SECTION 9 BELOW. CE MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THE CONTRACT.

7. Force Majeure. Neither CE nor Buyer shall have any liability for any breach (except for breach of payment obligations) caused by extreme weather or other acts of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, act of government or any other cause beyond such party's reasonable control. The time for delivery shall be extended during the continuance of such conditions. If the acts or omissions of Buyer or its contractors or suppliers cause the delay, CE shall also be entitled to an equitable price adjustment.

## 8. Term and Representations and Warranties of Buyer.

a. The term of this Contract shall automatically terminate upon completion of the Work.

b. Buyer represents and warrants that the information it has included in the Contract is true in all respects and will defend, indemnify and hold harmless CE and its officers, directors, employees, agents and contractors from and against any and all expenses, fines, penalties, interest charges, liabilities, damages, costs and/or obligations that may arise in the event the representations and warranties made by Buyer in the Contract are not true in all respects. Section 8(b) shall survive termination of the Contract.

## 9. LIMITATION OF LIABILITY.

a. With respect to Facility Inspection and Testing Work:

**TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, THE TOTAL LIABILITY, IN THE AGGREGATE, OF CE AND CE'S OFFICERS, DIRECTORS AND EMPLOYEES, TO BUYER AND ANYONE CLAIMING BY OR THROUGH BUYER, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES, INCLUDING ATTORNEYS' FEES AND COSTS OF ANY NATURE WHATSOEVER OR CLAIMS OR EXPENSES RESULTING FROM OR IN ANY WAY RELATED TO THE**

**SERVICES OR THE CONTRACT FROM ANY CAUSE OR CAUSES SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY CE UNDER THE CONTRACT. THIS LIMITATION APPLIES TO ANY AND ALL LIABILITY OR CAUSE OF ACTION HOWEVER ALLEGED OR ARISING, UNLESS OTHERWISE PROHIBITED BY LAW.**

**NOTWITHSTANDING ANYTHING IN THIS CONTRACT TO THE CONTRARY, CE SHALL NOT BE LIABLE FOR ANY DAMAGE OR LOSS SUSTAINED BY BUYER AS A RESULT OF (I) A DELAY IN PROVIDING ANY OF THE SERVICES OR INSTALLING, REPAIRING OR REPLACING ANY EQUIPMENT AS PART OF THE SERVICES, (II) DEFECTIVE EQUIPMENT, REGARDLESS OF WHETHER SUCH EQUIPMENT WAS INSPECTED, REPLACED OR REPAIRED BY CE OR (III) INTERRUPTIONS IN THE FUNCTIONALITY OR MALFUNCTIONS OF ANY EQUIPMENT INSPECTED, REPLACED OR REPAIRED BY CE FOR ANY REASON.**

b. With respect to all other Work:

**TO THE EXTENT PERMITTED BY LAW, CE SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION LOSSES AND/OR LOSS OF USE, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON WARRANTY, TORT, STRICT LIABILITY OR NEGLIGENCE. CE'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK SHALL NOT EXCEED THE PURCHASE PRICE PAID BY BUYER TO CE FOR THE WORK. THIS LIMITATION APPLIES WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY. THIS SECTION SHALL SURVIVE TERMINATION OF THE CONTRACT.**

10. Indemnification. With respect to Facility Inspection and Testing Work:

Buyer agrees to indemnify, defend and hold harmless CE and its officers, directors, contractors, agents and employees from and against all claims or lawsuits, whether brought by Buyer or any third party, liability, loss, cost, expense or obligation including without limitation reasonable attorneys' fees, court costs and other expenses, including without limitation, those of appeal, on account of or arising out of, injury to or death of any person or persons or damage to or loss of use of property, asserted against and alleged to be caused by (i) CE's performance of the Services, negligent performance of the Services or failure to perform any obligations under this Contract, (ii) the negligence or willful misconduct of Buyer or its employees or agents, or (iii) material breaches of this Contract by Buyer.

11. Miscellaneous. The Contract comprises the complete and exclusive statement of the agreement between the parties related to the Work and supersedes any terms contained in Buyer's documents. No part of the Contract may be changed or cancelled except by a written document signed by CE and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Contract. If any of these terms are unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. Neither Party shall have the right to assign its rights or obligations hereunder, in whole or in part, without obtaining the prior written consent of the other Party and any attempted assignment without such prior written consent shall be void. Permitted assigns shall have the benefit of, and shall be bound by, all terms and conditions of this Contract. The Contract shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions; however, notwithstanding the foregoing, in the event the Work is being performed in Canada, the Contract shall be governed by the laws of the Province of Ontario, Canada.