

ECOTEC LTD., LLC
GENERAL TERMS AND CONDITIONS
FOR THE SALE OF GOODS AND SERVICES

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) and services (“**Services**”) by ECOTEC LTD., LLC (“**Ecotec**”) to the buyer named on the Sales Confirmation (“**Buyer**”) (Ecotec and Buyer referred to herein individually as a “**Party**” and collectively as the “**Parties**”). ECOTEC’S ACCEPTANCE OF ANY PURCHASE ORDER IS EXPRESSLY LIMITED TO, AND EXPLICITLY MADE CONDITIONAL ON, BUYER’S ACCEPTANCE OF THESE TERMS AND CONDITIONS.

(b) The accompanying quotation, Acknowledgement of sale, or invoice (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery of Goods and Performance of Services.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Ecotec shall not be liable for any delays, loss or damage in transit. Ecotec shall deliver the Goods from its place of business or Ecotec’s supplier’s facility when Goods are shipped directly from the manufacturer unless otherwise provided under the Sales Acknowledgement (the “**Delivery Point**”) using Ecotec's standard methods for packaging and shipping such Goods. Ecotec may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(b) Ecotec shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Acknowledgement, and any such dates shall be estimates only. With respect to the Services, Buyer shall (i) cooperate with Ecotec in all matters relating to the Services and provide such access to Buyer’s premises, and such office accommodation and other facilities as may reasonably be requested by Ecotec, for the purposes of performing the Services; (ii) respond promptly to any Ecotec request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Ecotec to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Ecotec may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Non-Delivery. The quantity of any installment of Goods as recorded by Ecotec on dispatch from Ecotec's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Ecotec shall not be liable for any non-delivery of Goods (even if caused by Ecotec's negligence) unless Buyer gives written notice to Ecotec of the non-delivery within two (2) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Ecotec for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 3(c), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Ecotec.

4. Shipping Terms. Delivery of the Goods shall be made FOB Ecotec's place of business or Ecotec's supplier's facility when Goods are shipped directly from the manufacturer or as otherwise provided in accordance with the terms on the face of the Sales Acknowledgement.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon departure of the Goods from the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Ecotec a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time.

6. Buyer's Acts or Omissions. If Ecotec's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Ecotec shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods upon receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Ecotec in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Ecotec. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Ecotec of any Nonconforming Goods, Ecotec shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Ecotec's facility. If Ecotec exercises its option to replace Nonconforming Goods, Ecotec shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods.

8. Price.

(a) Buyer shall purchase the Goods and Services from Ecotec at the prices (the "Prices") set forth in Ecotec's Sales Acknowledgement. Goods and Services not specifically set forth in the Sales Acknowledgement shall be billed by Ecotec to Buyer on a time and materials basis, based on those prices and rates as in effect as of the date of the Sales Acknowledgement.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Ecotec's income, revenues, gross receipts, personnel or real or personal property or other assets.

9. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Ecotec within thirty (30) days from the date of Ecotec's invoice.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Ecotec for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Ecotec does not waive by the exercise of any rights hereunder), Ecotec shall be entitled to suspend the delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder and such failure continues for ninety (90) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Ecotec, whether relating to Ecotec's breach, bankruptcy or otherwise.

10. Limited Warranty.

(a) Ecotec warrants the Goods to Buyer as provide under the attached Warranty for the applicable Goods delivered to Buyer.

(b) Ecotec warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

(c) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 10(A) AND (B), ECOTEC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF

TITLE; (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) Ecotec shall not be liable for a breach of the warranties set forth in Section 10(a) and Section 10(b) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Ecotec within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Ecotec is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 10(a) to examine such Goods and Buyer (if requested to do so by Ecotec) returns such Goods to Ecotec's place of business at Ecotec's cost for the examination to take place there; and (iii) Ecotec reasonably verifies Buyer's claim that the Goods or Services are defective.]

(e) Ecotec shall not be liable for a breach of the warranty set forth in Section 10(a) or Section 10(b) if: (i) Buyer makes any further use of such Goods or Services after giving such notice; (ii) the defect arises because Buyer failed to follow Ecotec's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Ecotec.

(f) Subject to Section 10(d) and Section 10(e) above, with respect to any such Goods during the warranty period, Ecotec shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Ecotec so requests, Buyer shall, at Ecotec's expense, return such Goods to Ecotec.

(g) Subject to Section 10(d) and Section 10(e) above, with respect to any Services subject to a claim under the warranty set forth in Section 10(b), Ecotec shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

(h) THE REMEDIES SET FORTH IN SECTION 10(F) AND (G) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND ECOTEC'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 10(A) AND (B), RESPECTIVELY.

11. Limitation of Liability.

IN NO EVENT SHALL ECOTEC BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ECOTEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. Compliance with Law. The Parties shall comply with all applicable laws, regulations, and ordinances. The Parties shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Ecotec may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.]

13. Termination. In addition to any remedies that may be provided under these Terms, Ecotec may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

14. Waiver. No waiver by Ecotec of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Ecotec. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Force Majeure. Ecotec shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Ecotec including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), pandemic, terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

16. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Ecotec. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

17. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any

choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.

19. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in the City of Troy and County of Miami, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

21. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Compliance with Laws, Governing Law, Submission to Jurisdiction and Survival.

22. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

01106332