

## Ground Energy Support, LLC Terms and Conditions of Sale

These terms and conditions (these “Terms and Conditions”) are part of a sales order (this “Sales Order”) submitted to Ground Energy Support, LLC (“GES”) by the company (“Purchaser”) identified (i) on the invoice for this Sales Order (an “Invoice”), and/or (ii) as the purchaser for this Sales Order through an on-line order utilizing GES’s web-site, to purchase the goods and/or services described or referred to in the Sales Order (collectively, the “Products”) and are an integral part of this Sales Order.

**1. Sales Orders:** All Sales Orders must be in a form acceptable to GES. GES may require Sales Orders to be in writing and signed by Purchaser’s authorized representative. Purchaser’s offer to purchase the Products from GES is expressly made conditional on Purchaser’s agreement that these Terms and Conditions shall apply to the Sales Order, any terms and conditions provided by Purchaser shall be null and void and of no effect, and performance of services which comprise the Products or shipping of the goods that comprise the Products, as the case may be, shall constitute acceptance of the terms hereof. This Sales Order, along with another agreement between GES and Purchaser (the “Purchase Agreement”), if any, and any specifications or designs submitted to GES regarding this Sales Order with respect to the Products (or referred to in this Sales Order) contain the final, complete, and exclusive statement of the terms and conditions of any agreement relative to the purchase and sale of the Products, and no other understandings or agreements shall be binding on GES unless reduced to writing and signed by a duly authorized representative of GES. If there is any inconsistency or conflict between these Terms and Conditions and any terms and conditions set forth in the Purchase Agreement, if any, then the provisions of these Terms and Conditions shall govern and control to the extent of such inconsistency or conflict. If these Terms and Conditions are placed on the back side of or accompany an Invoice and there is any inconsistency or conflict between these Terms and Conditions and any of the provisions on the front side of such Invoice, if any, then the provisions on the front side of such Invoice shall govern and control to the extent of such inconsistency or conflict. Stenographic and clerical errors are subject to correction

**2. Payment Terms; Delivery; Export; Taxes:** All payments under any Sales Order shall be made in U.S. dollars by check, money order, bank check or other means acceptable to GES. Payments by check, money order, or bank check shall be sent to:

Ground Energy Support, LLC  
9 Madbury Rd Suite 402  
Durham NH 03824  
United States of America

For payment by wire transfer, contact GES for wiring instructions. GES may at any time require payment in advance. Unless otherwise specified on the front side of an Invoice for a particular Sales Order, all prices quoted are F.O.B. shipping point, terms of Net 30 days from date of such Invoice. Purchaser is responsible for any and all shipping costs and expenses. GES shall deliver the Products F.O.B. carrier, at GES’ facility. Partial shipments shall be permitted. This Sales Order is subject to all applicable import/export laws and any applicable export approval. Except as expressly agreed to in writing by GES, any and all customs, duties, taxes, or other fees in any form which may be charged or assessed with respect to the importation into any foreign country of any Products, documentation, or information furnished or sold under any Order shall be for the account of and paid for by Purchaser. Purchaser agrees to furnish GES with an exempt purchase or resale certificate or, in the absence of same, to assume and pay all foreign and U.S. Federal, State, and local taxes, duties, and other governmental charges, except for taxes based on GES’ net income.

**3. Finance and Collection Charges:** Purchaser agrees to pay a finance charge, at a monthly rate of 1.5%, on past due invoices. Purchaser agrees to pay GES all costs of collection, including, but not limited to, reasonable attorneys’ fees and court costs incurred by GES to collect properly due payments. Purchaser will be assessed a charge of \$50.00 for any checks returned for insufficient funds or any other reason.

**4. Credit Limits:** Credit limits shall be determined and modified at the sole discretion of GES. In the event that Purchaser is delinquent in payment, GES may suspend any shipment or delivery until all past due amounts, including finance charges, have been paid in full.

**5. Title and Risk of Loss:** Title to and risk of loss and damage to the Products shall pass to Purchaser immediately upon delivery of the Products to a common carrier, or to an employee or other agent of Purchaser, at GES’ facility

**6. Inspection:** Purchaser or its designated representative shall inspect all Products within seven (7) calendar days after delivery of Products (“Inspection Period”), and Purchaser shall notify GES of any defects, damages, shortages, or over-shipments, in any of the Products. Any Products not rejected by Purchaser within the Inspection Period shall be deemed to have been accepted by Purchaser.

**7. Mode of Shipment:** In the event that Purchaser specifies for a Sales Order the shipping carrier, type of service, and payment method (collectively “Mode of Shipment”), freight costs shall be charged in a manner consistent with the Sales Order. In the event that Purchaser has not specified a Mode of Shipment for a Sales Order, at the sole discretion of GES, such charges may be prepaid by GES and added to GES’ Invoice to Purchaser for such Sales Order.

**8. Cancellation:** Any requests for cancellation or changes of Sales Orders must be submitted in writing by Purchaser prior to shipment of Products. In the event that Purchaser cancels or changes a Sales Order, Purchaser agrees to pay a restocking fee for standard Products in the amount of 20% of the dollar value of the Sales Order line item(s) cancelled. CUSTOM OR SPECIAL ORDER PRODUCTS MAY NOT BE CANCELED OR RETURNED.

### **9. Warranty and Returns:**

(a) GES warrants to Purchaser that, at time of shipment, the Products furnished by GES are free from defects in material and workmanship. GES’ obligation under this warranty is limited to repair or replacement of any defective Product within ninety (90) days from the date of shipment to Purchaser. GES shall have the sole discretion as to which of these remedies it shall provide.

(b) This limited warranty shall not apply to any Products which have been subjected to misuse, neglect, alteration, accidental damage, damage or defects resulting from improper shipment, storage or installation, or use for purposes other than the Product was intended, and any other defects out of the reasonable control of GES. GES MAKES NO WARRANTIES, GUARANTEES, COVENANTS OR REPRESENTATIONS OTHER THAN THE LIMITED WARRANTY EXPRESSLY SET OUT IN THIS SECTION. THE LIMITED WARRANTY AND REMEDIES PROVIDED HEREIN ARE PURCHASER’S SOLE AND EXCLUSIVE REMEDIES AND ARE PROVIDED EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(c) If any of the Products are defective, then Purchaser may submit a request for return of the defective Products. All requests by Purchaser to return the defective Products must be submitted in writing to GES. GES shall not consider return requests received later than 120 calendar days after shipment of Products.

(d) GES may, in its sole discretion, issue Purchaser written authorization to ship a Product back to GES (“Return Goods Authorization”). The issuance of a Return Goods Authorization is not acceptance of a returned Product, merely authorization to return a Product for inspection. In the event that GES deems that the request is not made in compliance with the terms of these Terms and Conditions, GES shall notify Purchaser in writing that the request for return has been denied. All Products for which a Return Goods Authorization has been issued must be received by GES within fifteen (15) calendar days of the date of the Return Goods Authorization, failing which, such Return Goods Authorization shall be null and void and of no further force or effect.

(e) Upon receipt of any returned Products, GES shall inspect the Products and, in its sole discretion, accept or deny the return of such Products. All returned Products must be in their original packaging with all accessories, if any, (such as software, cables, documentation, etc.) included, and no outside labels or writing on the packaging. In the event that GES accepts the returned Products

from Purchaser, GES shall issue a credit to Purchaser in the amount of the original invoice amount for the returned Products less a restocking fee. Purchaser acknowledges that restocking fees are 20% for standard Products. Custom or special order Products may not be returned. In the event that GES denies the return of Products from Purchaser, GES shall ship Products back to Purchaser at Purchaser's written request and sole expense. All shipping costs for the return of Products are the responsibility of the Purchaser. With respect to Products denied for return, Purchaser hereby acknowledges and agrees that, without any further obligation to Purchaser, GES may re-stock, re-sell or otherwise dispose of such Products after fifteen (15) days from the date GES notifies Purchaser verbally or in writing that such Products are denied for return.

**10. Liability Limitation:** Purchaser agrees that GES' liability hereunder, and under any Sales Order, shall never exceed the purchase price of the line item upon which liability is based. UNDER NO CIRCUMSTANCES SHALL GES BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, DIRECT OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, COST OF REPLACEMENT GOODS, LOSS OF REVENUE OR PROFITS, OR OTHER COSTS OF ANY NATURE AS A RESULT OF THE USE OF PRODUCTS SOLD BY GES.

**11. Force Majeure:** GES shall not be liable for failure to perform any of its obligations to Purchaser to the extent such failure is caused by fire, flood, explosion, war, act of terrorism, riot, embargo, labor disputes, compliance with any laws, regulations, or orders, acts of God or the public enemy, or any act or event of any nature beyond GES' reasonable control.

**12. Governing Law:** All Sales Orders issued by Purchaser and the sale of Products to Purchaser shall be governed by and construed in accordance with the laws of the State of New Hampshire, United States of America without regard to conflicts of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply and are hereby disclaimed.

**13. Severability:** Each term, condition, and provision of these Terms and Conditions shall be valid and enforced to the fullest extent permitted by law. If any term, condition, or provision of these Terms and Conditions, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, then such term, condition, or provision shall be curtailed and limited to the extent necessary to bring it within the legal requirements and the remainder of these Terms and Conditions, and the application of such term, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

**14. Interpretation:** The section headings that appear throughout these Terms and Conditions are provided for convenience only and are not intended to define or limit the scope of these Terms and Conditions or the intent or subject matter of their provisions. No rule of construction shall cause these Terms and Conditions to be construed against GES as the party having originally drafted these Terms and Conditions.

**15. Termination:**

(a) In the event that either party defaults in any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the Purchase Agreement, if any, or any other terms for this Sales Order, the other party shall give the defaulting party written notice of such default. In the event the defaulting party does not remedy such default within fifteen (15) days following receipt of written notice thereof, the party giving notice may terminate this Sales Order by providing the defaulting party with a written notice of termination.

(b) In addition to the above, either party may terminate this Sales Order by providing written notice to the other party in the event such other party becomes insolvent, unable to meet its debts as they become due, files a petition for bankruptcy under any chapter of the U.S. bankruptcy laws or undergoes any comparable procedure under the laws of any competent jurisdiction, enters into liquidation (excluding voluntary liquidation for the sole purpose of reconstruction or amalgamation), is subject to the filing of a proceeding to

adjudge such other party as bankrupt in an involuntary proceeding or is subject to the appointment of a receiver or trustee or undergoes any comparable procedure under the laws of any competent jurisdiction, makes a general assignment for the benefit of creditors, or dissolves and assigns any right or delegates any obligations hereunder other than as expressly permitted herein.

(c) Termination of this Sales Order shall not relieve either party from its obligations hereunder regarding Products which have been shipped by GES prior to such termination. Cancellation by Purchaser of this Sales Order pursuant to this Section shall be Purchaser's sole and exclusive remedy for any breach of this Sales Order by GES.

**16. Dispute Resolution:**

(a) If any dispute arises between GES and Purchaser pertaining to this Sales Order (excepting only any cause of action giving rise to a claim for equitable relief) which GES and Purchaser are unable to resolve amicably, such dispute shall be submitted to arbitration before a single arbitrator (provided that if the parties cannot agree on an arbitrator, then each party shall select an arbitrator, the two (2) arbitrators shall select a third arbitrator, and all three (3) arbitrators shall serve on the panel) selected in accordance with the then-prevailing Rules of Commercial Arbitration of the American Arbitration Association. The arbitration proceeding shall take place in Manchester, New Hampshire, United States of America or such other location as GES and Purchaser may mutually agree.

(b) The arbitrator(s) shall not contravene or vary in any respect any of the terms or provisions of these Terms and Conditions, the Purchase Agreement, if any, and an Invoice, if any. The award of the arbitrator(s) shall be final and binding upon the parties, and judgment upon any award rendered therein may be entered and enforced in any court of competent jurisdiction, including the New Hampshire Superior Court.

(c) Neither this arbitration provision nor a pending arbitration shall prevent either party from obtaining injunctive relief for any matter at any time.

(d) In the event of any arbitration or litigation arising from this Sales Order, the prevailing party in such arbitration or litigation shall be entitled to be reimbursed by the other party for the reasonable costs and expenses (including reasonable attorneys' fees) incurred by the prevailing party in such arbitration or litigation.

**17. Waiver:** A waiver by GES of any of the terms and conditions of this Sales Order shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed.