



## **Terms & Conditions of Sale for orders placed to and shipped from the United States.**

These terms and conditions (the "Agreement") govern the sale of products ("Products") by GenPro Energy Solutions, LLC. ("GenPro Energy Solutions"), whether by phone, fax, mail, or other means. For orders placed using GenPro Energy Solutions' website, this Agreement is supplemented by GenPro Energy Solutions' Website Sales Terms and Conditions, which is incorporated herein by reference for website orders.

### **(1) Customers**

In order to become a GenPro Energy Solutions' ("Customer") that can place orders for Products, a person or business must first submit a Dealer Application that GenPro Energy Solutions will accept or reject in GenPro Energy Solutions' sole discretion. Dealer Applications are available from the GenPro Energy Solutions website or by contacting GenPro Energy Solutions' sales staff. GenPro Energy Solutions reserves the right to revoke a Customer's right to place further orders for any reason in GenPro Energy Solutions' discretion. By submitting a Dealer Application, the person or business represents and warrants that (a) they are authorized to do business in the state or country in which the GenPro Energy Solutions products will be ordered from and the state or country to which they will be shipped, and (b) that in the case of a business submitting a Dealer Application, that it is duly organized and validly existing pursuant to the laws in the state or country of incorporation or formation. By submitting an order to purchase Products from GenPro Energy Solutions, the individual placing the order represents and warrants that (a) Customer's Dealer Application was previously approved by GenPro Energy Solutions and the information submitted on the Dealer Application remains materially correct, and (b) if Customer is a business, that the individual submitting the order on Customer's behalf is an authorized representative of the business and able to enter into binding transactions on behalf of Customer.

### **(2) Orders**

Customer orders should include GenPro Energy Solutions item codes or complete descriptions of the Products, as well as quantities, delivery dates and locations. All orders placed by Customer will be binding on Customer even if GenPro Energy Solutions does not provide an express written order confirmation. Written order confirmations by GenPro Energy Solutions will be binding on GenPro Energy Solutions. GenPro Energy Solutions reserves the right in its sole discretion to charge a cancellation fee of up to twenty

percent (20%) for orders that (i) Customer changes more than 48 hours after placing the order with GenPro Energy Solutions, (ii) have already been shipped, or (iii) have already been placed with the manufacturer of the purchased Product(s).

### **(3) Minimum Order Size**

GenPro Energy Solutions reserves the right to charge a \$30 per-order small order fee to Customers who have more than 10 orders under \$150 (each) per month. Orders for GenPro Energy Solutions' catalog are not subject to this minimum-order fee.

### **(4) Prices**

All pricing quoted is in U.S. Dollars (and Canadian Dollars where explicitly specified). Prices that GenPro Energy Solutions quotes to Customer are valid for 14 days unless otherwise specified. Prices otherwise displayed by GenPro Energy Solutions (for example on its price list) are subject to change without notice. Typographical errors may occur from time to time. Price lists are available in several formats on GenPro Energy Solutions' website. Prices do not include any federal, state or local taxes, or other governmental charges, which, when applicable, will be invoiced in addition to the applicable price. Applicable sales taxes will be charged on all orders until a valid resale certificate is on file. Charges for sales taxes will not be refunded on any orders placed prior to receipt of Customer's resale certificate.

### **(5) Payment and Credit Policy**

Available payment terms are (a) pre-payment with order; (b) VISA or MasterCard, or (c) other payment arrangements as mutually agreed by the parties. GenPro Energy Solutions will consider granting credit to Customers in GenPro Energy Solutions' sole discretion. Contact GenPro Energy Solutions to request a credit application. GenPro Energy Solutions reserves the right to change credit and payment terms extended to Customers is GenPro Energy Solutions' sole discretion at any time. GenPro Energy Solutions reserves the right to require full payment in advance of shipping Products (including but not limited charging a Customer's credit card where that method of payment has been selected), for example in the event that a third party will be shipping the Products directly to Customer (a "drop shipment"). All late payments shall be charged interest computed on a daily basis from the due date until paid in full at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. On delinquent accounts, GenPro Energy Solutions shall not be obligated to continue performance under any agreement with Customer. Customer collection (including reasonable legal and



professional fees) incurred in collecting any overdue amounts. The acceptance and deposit by GenPro Energy Solutions of any payment from Customer or its affiliates, by check, wire transfer or any other means, which payment contains any reference to the effect that such payment constitutes 'payment in full' or 'in full satisfaction', shall not constitute an accord and satisfaction or a waiver by GenPro Energy Solutions of any right(s) it possesses, in law or equity, to collect payment in full from Customer.

#### **(6) Shipping and Handling Fees**

Products are shipped F.O.B. shipping point of origin with shipping costs and handling fees charged to Customer. GenPro Energy Solutions' Shipping Policy in effect at the time of order placement shall govern specific shipping methods, costs, and handling fees, and is incorporated herein by reference. GenPro Energy Solutions' Shipping Policy is available by contacting GenPro Energy Solutions sales.

#### **(7) International Orders**

Orders below \$3,500 shipped to outside of the U.S. and Canada will be charged an additional \$35 processing fee. GenPro Energy Solutions must receive prepayment in U.S. funds before shipping. Please refer to GenPro Energy Solutions' current Shipping Policy for other shipping and handling charges.

#### **(8) Canadian Orders**

A GST of 5% and a \$150 brokerage fee will be charged on all orders shipping within and into Canada that use GenPro Energy Solutions' customs broker, regardless of whether shipped to Customer or otherwise (e.g. a "blind order" where GenPro is not identified as the shipper). Customers that use their own customs broker will not be charged the 5% GST or the \$150 brokerage fee.

#### **(9) Order Receipt and Acceptance**

Customer shall each inspect and accept or reject each shipment upon receipt. Such acceptance or rejection shall only apply to (a) the completeness of the shipment and (b) reasonably apparent visible damage to the Products (or the packaging for such Products). Customer must notify the shipping carrier as soon as possible of any reasonably apparent problems with the shipment or Products, and notify GenPro Energy Solutions in writing of nonconforming shipments or Products within 72 hours of receipt. Customer's written notice to the shipper carrier should be on the proof of delivery form at the time of receipt if one is presented by the shipping carrier. FAILURE TO NOTIFY BOTH THE SHIPPER AND GENPRO ENERGY SOLUTIONS SHALL BE DEEMED AN UNQUALIFIED ACCEPTANCE AS TO THE CONTENTS OF THE SHIPMENT. THEREAFTER,

CUSTOMER'S SOLE RECOURSE FOR REASONABLY APPARENT VISIBLE DAMAGE CONSTITUTING NONCONFORMING PRODUCTS SHALL BE UNDER THE WARRANTY PROVISIONS SET FORTH BELOW IN SECTION 11.

#### **(10) Returns Policy**

No merchandise may be returned without prior authorization from GenPro Energy Solutions. If a return is authorized, Customer will be issued a return authorization (RA/RMA) number, which must be clearly marked on the package. Only the original Customer may return Products to GenPro Energy Solutions. All subsequent purchasers must return Products through the Customer from whom they directly or indirectly purchased Products. GenPro Energy Solutions will credit the purchase price of all normally-stocked merchandise returned with a RA number and in new condition, in original packaging; provided that GenPro Energy Solutions reserves the right, in its sole discretion, to charge a restocking charge on merchandise returned of up to twenty percent (20%) absent a verifiable warranty issue. All items must be returned with shipping prepaid and insured to the address specified by GenPro Energy Solutions (which may be the address of the manufacturer). Items that (a) Customer seeks to return more than 30 days after purchase, (b) are not in salable condition, (c) are not normally stocked, or (d) are special-order items, such as appliances, trackers and other custom electronics, may not be returned for credit. Products returned to GenPro Energy Solutions that have been damaged by Customer or another recipient will not be eligible for return credit, and will be held by GenPro Energy Solutions only for 30 days. Customer will be notified that they will not receive credit due to the damaged Product, and must make arrangements for Product pickup. After 30 days, all such Products will be disposed of without further liability to GenPro Energy Solutions. Customer agrees that any credit balances issued will be applied within one (1) year of issuance. IF NOT APPLIED OR REQUESTED WITHIN ONE (1) YEAR, ANY BALANCE REMAINING WILL BE SUBJECT TO CANCELLATION, AND GENPRO ENERGY SOLUTIONS SHALL HAVE NO FURTHER LIABILITY.

#### **(11) Warranty & Repairs**

All Products covered by this Agreement will be warranted per the terms of the applicable manufacturer's standard warranty (if any) provided with the Products, and will be subject to the manufacturer's installation instructions. The warranty (if any) may be to the end user and not to Customer. Warranty repairs must be performed by the manufacturer. Contact GenPro Energy Solutions for instructions. GenPro Energy Solutions makes no warranties or



representations as to the accuracy or completeness of system drawings. Customer assumes all risk and liability with regards to systems installed according to such drawings. UNLESS GENPRO ENERGY SOLUTIONS HAS MANUFACTURED A SPECIFIC PRODUCT, GENPRO ENERGY SOLUTIONS MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING PRODUCTS. TO THE FULLEST EXTENT PERMITTED BY LAW, GENPRO ENERGY SOLUTIONS DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Many states and localities have codes and regulations governing sales, construction, installation, and/or use of products for certain purposes, which may vary from those in neighboring areas. GenPro Energy Solutions cannot guarantee compliance, and cannot be responsible for how the product is installed or used. Before purchase and use of a product, please review the product application, and national and local codes and regulations, to be sure that the product, installation, and use will comply with them.

**(12) Security Interest**

GenPro Energy Solutions retains a security interest in the Products delivered to Customer, and in their accessories, replacements, accessions, proceeds and products, including accounts receivable (collectively, the "Collateral") to secure payment of all amounts due under this Agreement. If Customer fails to pay any amount when due, GenPro Energy Solutions shall have the right to repossess and remove all or any part of the Collateral from Customer, but not from Customer's customers. Any repossession or removal shall be without prejudice to any other remedy of GenPro Energy Solutions hereunder, at law or in equity. Customer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by GenPro Energy Solutions to transfer, create, perfect, preserve, protect and enforce this security interest.

**(13) Statute of Limitations**

No action by Customer may be brought at any time more than twelve (12) months after the facts occurred upon which the cause of action arose.

**(14) Limitations of Liability**

THE LIABILITY OF GENPRO ENERGY SOLUTIONS HEREUNDER FOR ANY AND ALL CLAIMS SHALL NOT EXCEED THE SUM OF CUSTOMER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE DISPUTE. GENPRO ENERGY SOLUTIONS SHALL NOT BE LIABLE FOR

CONSEQUENTIAL DAMAGES, ANTICIPATED OR LOST PROFITS, INCIDENTAL DAMAGES, LOSS OF TIME, OR OTHER LOSSES INCURRED BY CUSTOMER OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR PRODUCTS SOLD HEREUNDER.

**(15) Governing Law; Venue**

The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of South Dakota. GenPro Energy Solutions and Customer specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this agreement. The parties hereto agree that any suits, actions or proceedings arising out of this Agreement that may be instituted by any party hereto shall be instituted only in the state or federal courts in the city of Sturgis, South Dakota, and the parties hereto do hereby consent to the jurisdiction of those courts and waive any objection which they may now or hereafter have to venue of those suits, actions or proceedings.

**(16) Force Majeure**

Except for the payment of amounts due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by circumstances beyond its control (a "Force Majeure"), including, but not limited to, fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes. If any Force Majeure occurs, the party delayed or unable to perform (the "Delayed Party") shall give immediate notice to the other party (the "Affected Party"), and the Affected Party, upon giving prompt notice to the Delayed Party, shall be excused from performance under this Agreement for the duration of the Force Majeure; provided, however, that the Affected Party shall take all reasonable steps and cooperate with the Delayed Party to avoid or remove the cause of non-performance and shall promptly resume performance hereunder when the Delayed Party resumes performance. If the Delayed Party cannot remove the cause of non-performance within sixty (60) days, the Affected Party may terminate this Agreement.

**(17) Non-Waiver**

No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition.

**(18) Order of Precedence**



This Agreement supersedes any additional or different terms and conditions asserted or provided by Customer, including but not limited to different terms and conditions in Customer's form of purchase order. GenPro's acceptance of purchase orders is conditioned upon Customer's acceptance of these terms and conditions, irrespective of whether Customer accepts these terms and conditions by a written acknowledgment, by implication, or acceptance and payment of goods ordered hereunder. GenPro's failure to object to provisions contained in any communication from Customer varying the terms herein shall not be deemed a waiver of the provisions herein. Neither GenPro Energy Solutions' commencement of performance nor delivery shall be deemed or constituted as acceptance of any additional or different terms and conditions of Customer. GenPro Energy Solutions reserves the right to modify any aspect of this Agreement in its sole discretion, provided that orders placed with GenPro Energy Solutions will be governed by the Agreement as it existed at the time that such order was placed.

**(19) Entire Agreement**

This Agreement, including the GenPro Energy Solutions documents and policies incorporated herein by reference, shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall not be modified or rescinded. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement.

Company Name: \_\_\_\_\_

GenPro Manager: \_\_\_\_\_

By: \_\_\_\_\_

GenPro Rep: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Dated: \_\_\_\_\_ 2010

Dated: \_\_\_\_\_ 2010

**PLEASE SIGN AND FAX TO: 605.341.9918**