

ECOGATE TERMS AND CONDITIONS OF SALE

1. Terms

All sales by Ecogate, Inc. (“Seller”) are subject to all of the terms and conditions contained herein (the “Terms”) and, unless agreed in writing by Buyer and Seller (each, an “Agreement”), upon no other terms and conditions. These Terms apply to all **product sales and associated services**, including but not limited to system installations and maintenance. Seller’s acceptance of Buyer’s purchase order is expressly made conditional upon Buyer’s assent to all of Seller’s terms, and Seller objects to any terms or conditions at variance with, different from, or additional to the terms set forth herein unless such terms are set forth in a writing signed by a corporate officer of Seller. Any amendment to, waiver, modification, or deletion of any of Seller’s terms shall be ineffective unless accepted in writing by a corporate officer of Seller.

2. Buyer’s Acceptance of Seller’s Terms

Buyer’s acceptance of these Terms shall be conclusively presumed by:

- (a) Buyer’s submission of a credit application to Seller;
- (b) Buyer’s execution of any other document containing these terms and conditions of sale;
- (c) Buyer’s acceptance of delivery of any products or services ordered from Seller; or
- (d) Buyer’s placement of a purchase order online, through email, or by other written agreement.

3. Ecogate Recommendations

The recommendations provided by Ecogate are based on an analysis of conditions observed at the time of the survey, information provided by the CUSTOMER, and costs based upon Ecogate’s experience on similar projects. Estimated savings are computed based on research by government agencies, Ecogate system principles of operation, and engineering associations' best practices. Actual savings will depend on many factors, including:

- Utilization of workstations
- Operating hours
- Proper workstation activity sensors installation
- Conservation measures implemented
- Seasonal weather variations
- Your utility electricity price plans
- Specific energy use practices of the facility’s workers

Performance guidelines provided in the report are for informational purposes only and are not to be construed as a design document.

4. Ecogate Project Responsibilities – Installation & Commissioning

Ecogate Will:

1. Provide project management services to ensure that all parts and services are delivered in a timely and coordinated manner in accordance with Ecogate standards.
2. Communicate project status on a regular basis.
3. Provide mechanical installation services for Ecogates per the Ecogate Best Practices Guide.
4. In cooperation with Customer, determine sensor type & plan for each workstation.
5. Install greenBOX where convenient for Customer and for system monitoring.
6. Connect the greenBOX to LAN/Wi-Fi/Internet.
7. Install Ecogate Power Master VFDs in approved locations.
8. Install activity sensors at each workstation.
9. Install and connect low voltage cables from workstation activity sensors to gates.
10. Install and connect low voltage cables from the greenBOX to the gates.
11. Install and connect low voltage cables to the VFDs.
12. Run plastic tubing to fan inlet & outlet, filter inlet & outlet, and Averaging Air Velocity and Sensors.
13. Connect Start/Stop/Enable signals between Power Master VFD and dust collector PLC.
14. Setup, test, and calibrate the system according to the system User Guide.
15. Provide an Ecogate engineer on site for the first day of production to fine-tune the system and train Customer's team.
16. Prepare a written report after the system is commissioned.

The Customer Will:

1. Ensure all solutions quoted are approved by the Customer's Authority Having Jurisdiction (AHJ).
2. Be responsible for any and all permits required to be obtained through the city or AHJ for this project.

3. Provide a Purchase Order and timely progress payments to Ecogate in accordance with Ecogate payment terms stated on the final project quote.
4. Identify a location with sufficient wall space within ten feet of the motor control panels to install the VFDs.
5. Provide the Wi-Fi/Internet connection to the greenBOX. Firewall settings per Protocols And Ports Used For Internet Communication must be available.
6. Provide a factory contact that is familiar with all workstations who will, in cooperation with the Ecogate team, determine a sensor type & location for each workstation. The agreed-upon sensor type/location should optimize energy savings and best answer the question, "Does this machine need ventilation?"
7. Provide reasonable access to workstations for the following items:
 - a. Mechanical installation of Ecogates (1-4 hours per gate depending on accessibility, gate diameter, if reducers are required, etc.).
 - b. Electrical installation of:
 - i. Workstation activity sensors (15-30 minutes per workstation).
 - ii. Low voltage cabling from workstation activity sensors to Ecogates (1-2 hours per gate depending on accessibility).
 - iii. Low voltage cable from greenBOX to gates (1-2 hours per gate) and to VFDs (1-2 hours per VFD).
 - c. Installation of plastic tubing from VFDs to collection fans & filters (2-4 hours per system depending on accessibility).
8. Provide access to Customer's lift equipment to Ecogate installers, if applicable and necessary.
9. Ensure that all workstations are powered up and connected to the ducting.
10. Ensure that the dust collection system is installed, operational, connected to the Ecogate system, and to each workstation before system commissioning can begin.
11. Provide a factory contact that is familiar with all workstations, can turn them on/off for testing, and who will participate in the commissioning & training process.
12. Ensure that the person(s) who will be responsible for the Ecogate system after we leave participates in the installation, commissioning, and training process.

5. Prices

All prices shall be adjusted to conform to Seller's prices in effect as of the date of shipment. All prices proposed by Seller to Buyer are confidential information of Seller, and Buyer shall take all reasonable actions to keep such prices confidential. Disclosure of Seller's prices to any third party for any reason whatsoever (other than as required by law) is expressly prohibited. All Prices are subject to adjustment for any unilateral price increases or surcharges imposed on Seller by its suppliers and to any increases in, or impositions of any import or export duties, tariffs, taxes, or similar charges. **Pricing is based on project-specific estimates, and any changes to the scope of a project may result in additional charges.**

6. Pricing Exclusive

All prices do not include, and are exclusive of any and all taxes, import, export duties, tariffs and other charges, freight and insurance, and all such taxes, duties, tariffs, other charges, freight and insurance shall be promptly paid by Buyer.

7. Payment

Buyer agrees to pay for all products and services purchased from Seller (and all other amounts Seller invoices) 'Net Thirty Days,' in US dollars, in full, in cash, and without deduction, withholding, counterclaim, or set-off of any nature, in accordance with Seller's written payment instructions. Past-due balances are, at Seller's discretion, subject to a service charge at the rate of 1 ½% per month (18% per annum) or the maximum lawful rate, whichever is less. **Payment disputes must be raised in writing within ten (10) days of invoice issuance. Acceptable payment methods include wire transfer, ACH, or check, unless otherwise agreed.**

8. Shipping and Risk of Loss

Unless otherwise agreed in writing, all sales are made on either **EXW (Ex-Works)** terms for shipments coordinated by Buyer or **DDP (Delivered Duty Paid)** terms for direct shipments coordinated by Seller (Incoterms, 2020). Risk of loss, damage, or otherwise in the product shall pass to Buyer:

- For **EXW**, at Seller's warehouse when made available for pickup.
- For **DDP**, upon delivery to Buyer's specified location.

Any deviation after placement of the order, including but not limited to changes in quantity or partial releases, will be subject to a price increase and/or additional freight charges. All labor or equipment required to load/unload shall be provided by Buyer without any cost to Seller.

9. Delivery

Any and all delivery dates given by Seller constitute estimates only. Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and Seller will not accept any backcharge for losses or damages due to delay or inability to deliver.

10. Variation In Goods

All products sold by Seller are subject to normal variations in weight, color, size, quantities, etc., as are standard in the trade.

11. Storage Fees

Buyer shall promptly take delivery as tendered. If Buyer postpones or delays delivery for more than thirty (30) days, Buyer agrees to pay Seller reasonable storage fees.

12. Shortages, Defective or Damaged Products

Buyer has twenty (20) days from delivery of product to inspect the product. Any claim for alleged shortages, non-conformity, defects or damage (together, "Non-Conformity") in, or to products delivered must be reported to Seller in writing within that twenty (20) day period. After the twenty (20) day period, Buyer is deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall not have any right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such twenty (20) day period is a reasonable amount of time for such inspection. Buyer will bear the costs of inspection in all circumstances.

13. Cancellation and Returns

Other than as provided in Paragraphs 13 or 14 below, Buyer may not vary, cancel, or terminate any purchase order or return any products without Seller's express written consent. **For custom-made hardware or software solutions, returns are permitted but subject to costs incurred by Seller.** The amount of credit, if any, allowed to Buyer for returned products shall be at Seller's sole discretion. Buyer or Seller may terminate a purchase order solely in respect of any un-delivered product subject to that purchase order on written notice to the other in the event of the other's material breach of the purchase order, which breach the other has failed to cure within ten (10) business days of its receipt of notice from the non-breaching party calling upon the breaching party to so remedy the breach.

14. Exclusion of Express and Implied Warranties

OTHER THAN ANY LIMITED WARRANTY IN RELATION TO THE PRODUCT SPECIFICALLY GIVEN BY SELLER TO BUYER IN AN AGREEMENT, (THE "LIMITED WARRANTY"), SELLER GIVES NO WARRANTIES OR REPRESENTATIONS IN RELATION TO THE PRODUCT AND ALL PRODUCTS BEING SOLD HEREUNDER ARE BEING SOLD "AS IS." IF GIVEN, THE LIMITED WARRANTY IS THE SOLE WARRANTY, REPRESENTATION, COVENANT AND OTHER UNDERTAKING GIVEN BY SELLER IN RELATION TO THE PRODUCTS BEING MANUFACTURED, SUPPLIED, SOLD OR DISTRIBUTED HEREUNDER OR PURSUANT TO ANY PURCHASE ORDER. ALL (OTHER THAN THE LIMITED WARRANTY, IF GIVEN) EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE AND KIND IN CONNECTION WITH THE MANUFACTURE, SUPPLY, SALE, DISTRIBUTION OR OTHERWISE IN RELATION TO ANY PRODUCT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED IN ALL RESPECTS AND FOR ALL PURPOSES. SELLER DOES NOT MAKE ANY REPRESENTATION AND DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY WITH REGARD TO THE CONTENT, ACCURACY, MANNER OR PREPARATION OF ANY GENERAL TRADE INFORMATION, THIRD PARTY CERTIFICATION OR REPORT OBTAINED BY BUYER. SELLER IS NOT THE MANUFACTURER OF THE RAW MATERIALS COMPRISING THE PRODUCTS AND HAS NOT MADE ANY INDEPENDENT CHEMICAL OR PHYSICAL ANALYSIS OR ANY OTHER TYPE OF TEST ON ANY OF SUCH RAW MATERIALS WHATSOEVER AND DOES NOT GIVE ANY WARRANTY OR UNDERTAKING, EXPRESS OR IMPLIED, REGARDING THE COMPOSITION OF THE RAW MATERIALS. WITHOUT LIMITING THE FOREGOING, SELLER DOES NOT GIVE ANY WARRANTY, REPRESENTATION, COVENANT OR ANY OTHER UNDERTAKING WHATSOEVER AND HEREBY DISCLAIMS ANY LIABILITY FOR ANY CLAIM OF INFRINGEMENT OF ANY INTELLECTUAL OR INDUSTRIAL PROPERTY RIGHTS OF ANY THIRD PARTY ARISING OUT OF, OR IN RELATION TO THE MANUFACTURE, SUPPLY, DISTRIBUTION OR USE OF THE PRODUCTS.

15. Liability Limitation for Non-Conformance

BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ABSOLUTE, AGGREGATE LIMIT OF LIABILITY IN CONNECTION WITH ANY CLAIM (AS DEFINED IN PARAGRAPH 14, BELOW) WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF ANY BREACH OF ANY SELLER REPRESENTATION, WARRANTY, OR UNDERTAKING IN RELATION TO, OR ANY NON-CONFORMANCE OF, OR DEFECT IN ANY PRODUCT PURCHASED IN THIS TRANSACTION, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER

LEGAL RECOVERY THEORY (INCLUDING, BUT NOT LIMITED TO ANY LIMITED WARRANTY), SHALL IN ALL CASES BE STRICTLY LIMITED, AT SELLER'S SOLE OPTION, TO EITHER:

- (a) REIMBURSING BUYER FOR BUYER'S ACTUAL DIRECT DAMAGE UP TO, AND NOT EXCEEDING, THE PURCHASE PRICE PAID FOR THE RELEVANT DEFECTIVE OR OTHER NON-CONFORMING PRODUCT PURCHASED; OR
- (b) REPLACING OR REPAIRING ANY (AND ONLY THE) NON-CONFORMING OR DEFECTIVE PRODUCT AT THE ORIGINAL POINT OF DELIVERY.

This limitation applies to all aspects of non-conformance, including hardware, software, and installation services.

16. Indemnity

To the fullest extent permitted by law, Buyer hereby agrees to, and shall release, protect, defend, indemnify, and hold harmless Seller, its affiliates, and their respective employees, officers, directors, managers, agents, other representatives and/or professional advisors (all together, the "Seller Indemnified Persons") from and against any and all causes of action, claims, damages, damage, demands, liabilities, losses, suits, penalties, fines, injuries, and actions, suits or other proceedings, costs and expenses (including reasonable attorneys' fees and court costs), of every type and character, (together, the "Claims") that in any way arise out of, result from or relate to:

- (i) any breach of any representation, warranty, covenant or undertaking of Buyer under or pursuant to any Agreement, or any purchase order;
- (ii) Buyer or any of its affiliates or sub-distributors or their respective officers, directors, managers, employees, agents or independent contractors' (together, "Personnel") negligence or willful misconduct;
- (iii) Buyer, any of its affiliates or any of their respective Personnel's actual or alleged violation of any applicable law;
- (iv) the alteration, fabrication or misuse of any product following delivery to Buyer;
- (v) Buyer, or any of its affiliates use, sale, marketing, rental, installation, assembly or other distribution or maintenance, service or support, or warranty, representation or other undertaking (not authorized by Seller) of, or for any product; and/or
- (vi) any employee-type Claim of Distributor or its Affiliates Personnel, including, but not limited to any workers compensation Claims, Claims for employee-type benefits or for payment of commissions, or compensation, or related damages or other amounts.

This indemnity includes claims arising from improper system use or unauthorized modifications to Ecogate's systems.

17. Legal Action

ALL ACTIONS OR OTHER PROCEEDINGS BY BUYER OR ANY OF ITS AFFILIATES AGAINST SELLER OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE PERSONNEL ARISING OUT OF OR RELATED TO ANY AGREEMENT, ANY PURCHASE ORDER OR THE DESIGN, MANUFACTURE, SUPPLY, SALE, DELIVERY, INSTALLATION, ASSEMBLY, INSPECTION, TESTING, REPAIR, SERVICE, REPLACEMENT, OPERATION, MAINTENANCE, USE OF, OR OTHERWISE IN RELATION TO ANY PRODUCTS, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY OF RECOVERY, MUST BE COMMENCED WITHIN THE APPLICABLE STATUTORY PERIOD, BUT IN NO EVENT MORE THAN ONE (1) YEAR FROM THE DATE OF ACCRUAL OF THE RELEVANT CAUSE OF ACTION.

18. Credit Approval

The performance of any work and all shipments shall be subject to the approval of Seller's Credit Department. Seller, in its sole discretion, **reserves the right to determine which Buyers are subject to credit approval and which are not.** Seller may, at any time and for any reason, decline to perform any work, make any shipment, or deliver any product prior to the receipt of payment or other adequate assurances of payment.

19. Force Majeure

Seller shall not be liable to Buyer for any failure to perform, failure to deliver or for any delay in delivery or for failure to perform under any Agreement or otherwise due to:

- An Act of God,
- An act or omission of Buyer or its affiliates or their respective Personnel,
- Any actions, events, conditions, or causes beyond Seller's reasonable control, including but not limited to supply chain issues or labor shortages.

In the event of any such failure or delay, the date for performance or delivery shall be extended for a period equal to the time lost by reason of delay. Buyer or Seller may terminate any purchase order or Agreement materially affected by such delay or failure, on written notice to the other party, in the event of the delay lasting in excess of one hundred and eighty (180) days.

20. Non-waiver

Any waiver, of any kind of any breach or default under these terms or any Agreement must be in writing and signed by a duly authorized representative of the party making such waiver and shall be effective only to the extent specifically stated in such writing, and shall be limited to the instance of breach or default expressly referenced in the waiver.

21. Set Off

Seller is authorized to apply any sums now or hereafter owed to Buyer or any entity affiliated with Buyer toward the payment of any monies due Seller hereunder or otherwise.

22. Governing Law

This transaction shall be governed in all respects by the laws of the State of California, USA without reference to its conflicts of laws rules, provided that Incoterms, 2020 shall apply to delivery terms as expressly stated herein or in any Agreement. United Nations Convention on Contracts for the International Sale of Goods shall not apply.

23. Attorney's Fees

In the event that Buyer or Seller institutes legal proceedings (to include, litigation, arbitration or interlocutory proceedings) against the other, whether based in contract, tort or any another legal theory of recovery, then the prevailing party in those proceedings shall be entitled to recover its costs and expenses against the unsuccessful party, including its reasonable attorney's fees and court costs.

24. Severability

If any provision (or part thereof) of these Terms or any Agreement are held to be unenforceable under any applicable law, such provision shall be modified or excluded from these Terms or Agreement to the extent necessary to implement the purposes of these Terms or Agreement, and the balance of these Terms or Agreement shall be interpreted as if such provision were so modified or excluded and shall be enforceable in accordance with its terms. In particular, but without limiting the foregoing, any limitation of the liability as stated herein or in any Agreement shall be read as to apply to the maximum extent allowed under applicable law, being subject only to any non-waivable restriction on any such limitation, to the minimum extent of any such restriction allowed under applicable law.

25. Assignment

Buyer may not assign or otherwise transfer its rights or obligations under these Terms or any Agreement without Seller's prior written consent.

26. Entire Contract and Modification

These terms and conditions constitute the entire understanding between the parties with respect to the terms governing the subject transaction and supersede all prior negotiations, discussions and preliminary agreements, if any. These Terms may be amended, modified or supplemented, or consensually terminated only by written agreement duly executed by each of the parties.