

Energist North America (“ENERGIST NORTH AMERICA”)

Terms and Conditions

Unless otherwise expressly stated in writing with respect to a particular sale, all quotations and sales are made in accordance with, and subject to the following terms and conditions:

- Pricing.** All prices quoted or published by ENERGIST NORTH AMERICA or our representative may be changed at any time without notice. All prices shall be specified by ENERGIST NORTH AMERICA or, if no price has been specified, the price shall be ENERGIST NORTH AMERICA’s list price in effect at the time of delivery. Written quotations expire automatically thirty (30) days from the date issued. All prices are quoted and payable in U.S. dollars.
- Taxes and Fees.** Prices are exclusive of all excise, sales, use, and other taxes and fees imposed by any federal, state, municipal, or other governmental authority (including governments of countries other than the USA), all of which shall be paid by the Buyer; and Buyer shall reimburse ENERGIST NORTH AMERICA for same whether or not such taxes and fees are separately stated on the invoice. The Buyer is responsible for obtaining and providing to ENERGIST NORTH AMERICA any certificate of exemption or similar document required exempting any sale from sales, use, or similar tax liability.
- Shipping.** All shipments are FOB shipping point and title to and risk of loss for products shall pass to the Buyer upon the earlier of delivery to the Buyer or to a carrier for shipment to the Buyer. Methods and routes of shipment will be selected by ENERGIST NORTH AMERICA, but ENERGIST NORTH AMERICA will not assume any liability in connection with shipment, nor constitute any carrier including, but not limited to, freight, duty, and handling charges. All shipments will be insured at the Buyer’s expense and made at the Buyer’s risk, and the Buyer shall be responsible for making all claims with carriers, insurers, warehouses and others for mis-delivery, non-delivery, loss, damage or delay.
- Delivery.** ENERGIST NORTH AMERICA shall not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond our contract, including, without limitation, acts of nature, unavailability of supplies or sources of energy, riots, wars, acts of terrorism, fires, floods, epidemics, lockouts, strikes and slowdowns, delays in delivery by our suppliers, or acts or omissions of the Buyer. In this event of delay due to any such cause, time for delivery shall be extended for a period equal to the duration of the delay and the Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of thirty (30) days, we may, at our option, by written notice to the Buyer, cancel that and all future deliveries without further liability or obligation of any kind. Products on which delivery is delayed due to any cause within the Buyer’s control may be placed in storage by ENERGIST NORTH AMERICA at the Buyer’s risk and for its account. The Buyer shall be liable for all costs and expenses incurred by ENERGIST NORTH AMERICA in holding or storing products for the Buyer or at the Buyer’s request.
- Security Interest.** ENERGIST NORTH AMERICA reserves and the Buyer grants to ENERGIST NORTH AMERICA a purchase money security interest in all products sold and all proceeds to secure the full payment and performance by the Buyer of its liabilities and obligations to ENERGIST NORTH AMERICA. The Buyer acknowledges that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agree to execute and deliver such other documents as we may require in order to perfect our security interest.
- Installation.** Installation of each product is included in the purchase price. Installation services are arranged and scheduled at a mutually convenient time for both the Buyer and ENERGIST NORTH AMERICA.
- Terms of Payment.** Buyer is responsible for payment of the entire balance for all goods and services rendered by ENERGIST NORTH AMERICA to the Buyer. Payment of all amounts due ENERGIST NORTH AMERICA by the Buyer shall be made prior to shipment of goods. In the event terms are otherwise extended in writing, Buyer shall pay a late fee on the unpaid purchase price for the goods at a rate of 8.5% each month calculated on a daily basis, or the legal limit, beginning the first day following the payment due date. ENERGIST NORTH AMERICA reserves the right at any time to revoke and credit previously extended. If, in ENERGIST NORTH AMERICA’s sole judgment, the Buyer’s financial condition does not warrant proceeding on the terms specified, ENERGIST NORTH AMERICA may require at any time assurances satisfactory to ENERGIST NORTH AMERICA of Buyer’s ability to pay the purchase price for the goods when due. Amounts owed by the Buyer with respect to which there is no dispute shall be paid without set-off for any amounts which the Buyer may claim are owed by ENERGIST NORTH AMERICA and regardless of any other controversies which may exist.
- Cancellations and Returned Goods.** In the event the Buyer (i) cancels any order or portion thereof, or (ii) fails to meet any obligation hereunder, causing cancellation or charge, said charges having been agreed upon, not as a penalty, but as a result of the difficulty of computing actual damages. A cancellation fee of \$250 will be charged by ENERGIST NORTH AMERICA for a cancellation notice received in writing during the scheduled delivery month. The Buyer may not return any product without prior written approval from ENERGIST NORTH AMERICA. All returned goods are subject to a 25% restocking fee.
- Specifications.** All products are subject to our standard tolerances for specification. We reserve the right to make substitutions and modifications in the specifications of any products provided that such substitutions or modifications do not materially affect the performance of the products or the purposes for which they can be used. At our discretion, reconditioned components used shall in all respects be functionally equivalent to new components.
- Claims.** All claims for nonconforming or defective product must be made in writing within 10 days after delivery to the Buyer and any claims not made within that period shall be deemed waived and released. IN NO EVENT SHALL ENERGIST NORTH AMERICA BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES TO ANY CAUSE WHATSOEVER. No suit or action shall be brought against ENERGIST NORTH AMERICA more than one year after the related cause of action has accrued.
- Assignment.** The Buyer shall not delegate any duties nor assign any rights or claims under this agreement without our prior written consent, and any such attempted delegation or assignment shall be void. All consents for assignment granted by ENERGIST NORTH AMERICA shall be subject to the assumption by the assignee of all of the Buyer’s obligations and its express agreement to be bound by the terms and conditions set forth herein.
- Compliance with Laws.** The Buyer shall carry out the transactions contemplated by this sale and shall otherwise deal with the products sold in conformity with all applicable laws, rules, and regulations of all government authorities. Including without limitation, the Export Administration Regulations, and shall obtain all permits and licenses in connection with the purchase, installation, sale, shipment, or use of any of the products. This agreement is made in and shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of New York.
- Additional or Inconsistent Terms.** Terms and conditions which differ from, conflict with or are not included in the terms and conditions set forth in this document shall not become a part of any agreement between ENERGIST NORTH AMERICA and the Buyer unless such terms and conditions are specially accepted by ENERGIST NORTH AMERICA in writing. To the extent that this document may constitute an acceptance, such acceptance is expressly conditioned on the Buyer’s assent to any additional or inconsistent terms set forth in this document.
- Warranties, Remedies and Damages.** ENERGIST NORTH AMERICA warrants that all goods at the time of delivery to a carrier for shipment shall conform to any specifications relating to the goods furnished to Buyer in writing by ENERGIST NORTH AMERICA, including information contained in any certificate of analysis furnished with the goods. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY THAT ANY USE OF GOODS BY BUYER OR ANY OF ITS CUSTOMERS WILL NOT VIOLATE OR INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES; AND (C) ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF ENERGIST NORTH AMERICA. Buyer’s exclusive remedy for its timely rejection of non-conforming goods for any other failure of ENERGIST NORTH AMERICA to perform its obligations under this contract or with respect to the goods is either (a) replacement by ENERGIST NORTH AMERICA at no cost to Buyer of nonconforming goods within a reasonable time after their return by Buyer to ENERGIST NORTH AMERICA in the condition received by Buyer, or (b) if ENERGIST NORTH AMERICA is unable to replace such goods with conforming goods within sixty (60) days after their return to ENERGIST NORTH AMERICA, repayment by ENERGIST NORTH AMERICA of all amounts paid by Buyer to ENERGIST NORTH AMERICA on account of the purchase price of the goods and cancellation of any amounts due ENERGIST NORTH AMERICA for the purchase price of the goods. ENERGIST NORTH AMERICA SHALL NOT IN ANY CASE BE LIABLE TO ANYONE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR OTHER SIMILAR DAMAGES ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER LEGAL THEORY EVEN IF ENERGIST NORTH AMERICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Buyer acknowledges the limitation of Buyer’s measure of damages as set forth in this section and expressly agrees that this limitation of damages and remedies shall constitute the exclusive remedies and measure of damages available to Buyer and all other remedies and measure of damages which might otherwise be available under the law of any jurisdiction are hereby waived by Buyer.
- Arbitration.** The parties to any dispute or controversy arising out of, in connection with or relating to this contract, or the breach hereof, or the goods, shall submit the same to arbitration in Rockland County, New York before single arbitrator agreeable to such parties. If such parties cannot agree on an arbitrator within thirty (30) days after arbitration has been requested in writing an arbitrator shall be appointed pursuant to the rules of the American Arbitration Association. Any award shall be rendered in such form a judgment may be entered thereon in the highest court of any forum, State or, Federal, having jurisdiction, the arbitration shall take place under the then current rules of the American Arbitration Association. The cost of any such arbitration shall be borne equally by all parties thereto.