



Terms and Conditions

Applicable to NextGen Balancing Technologies LLC

These terms and conditions supplement the Quotation provided by NGBT to the Customer and apply to all equipment, designs, and services provided by NextGen Balancing Technologies, LLC (NGBT) to the Customer. The Quotation is made a part of this agreement becomes effective upon the signature of these terms and conditions by both NGBT and the Customer.

1. Deliverables, Price, Payment Schedule:

The Quotation sets forth the equipment, engineering, designs, installation and other services, the delivery schedule, the price, and the payment schedule. The Quotation also sets forth the Customer's obligations, if any, with respect to cooperation, provision of information, and reviews. NGBT shall not be responsible for delivery delay caused by delay in receipt of any third party manufactured equipment to be provided to the Customer under the Quotation or by delays caused by the Customer's failure to provide information or perform tasks required under the Quotation. NGBT shall not be obligated to begin work until Customer's initial payment, if required under the payment schedule in the Quotation, is received by NGBT, and all delivery schedules shall be dated from the date of receipt of such payment. Prices do not include sales, use, excise, gross receipts or similar taxes, which shall be the responsibility of the Customer. Prices also do not include shipping and insurance costs, both of which shall be the responsibility of the Customer.

2. Acceptance:

Customer shall be responsible for verifying that the deliverables meet the specifications set forth in the Quotation, promptly upon receipt of the deliverables and before use in production by Customer. Unless a different acceptance procedure is specified in the Quotation, upon delivery of any deliverables to Customer, an acceptance period of ten (10) days shall commence (the "Acceptance Period"). Customer may reject if any deliverable fails to conform to the specifications set forth in the Quotation or to the warranty set forth in Section 3 below, by giving written notice to NGBT of such failure prior to the end of the Acceptance Period. In case of rejection, Customer shall return the deliverables to NGBT. Upon return of such deliverables to NGBT, NGBT shall test the deliverables. If NGBT confirms that the deliverables fail to conform to such specifications or warranties, NGBT shall cure such failure and re-deliver. If NGBT determines that the deliverables are in conformance with such specifications and warranties or NGBT cures the failure of the deliverables to conform to such specifications and warranties, NGBT shall re-ship the deliverables to Customer and Customer will remain fully liable for the price. Freight and insurance charges shall be borne by the Customer if NGBT has found the deliverables to conform to specifications and warranties; otherwise, freight and insurance charges shall be borne by NGBT. Failure of Customer to notify NGBT in writing of any failure of the deliverables to conform within the Acceptance Period shall constitute

Customer's irrevocable acceptance of the deliverables, and except for Customer's limited warranty rights, constitutes a waiver by Customer of all claims with respect to such deliverables.

3. Limited Warranty on NGBT Deliverables:

NGBT warrants, for one year, or for such other period as may be set forth in the Quotation, from the date the deliverables are delivered under this agreement (the "Warranty Period"), that the deliverables will be free from defects in materials and workmanship and will comply in all material respects with the specifications set forth in the Quotation. This warranty does not extend to any deliverables which have been subject to misuse, accident or improper installation, maintenance, or application nor does it extend to deliverables which have been repaired or altered outside NGBT's plant unless authorized in writing by NGBT beforehand, nor does this warranty extend to any labor charge for removal and or replacement of the non-conforming or defective deliverables or part thereof. This warranty is contingent upon Customer's written report, received during the Warranty Period detailing the nature and circumstances of any alleged breach of warranty. Customer's sole remedy and NGBT's liability under this warranty shall be limited to NGBT's repair or replacement of the component or parts of the deliverables found by NGBT to be other than as warranted. Customer shall be responsible for returning the deliverables to NGBT's facility, freight, and insurance pre-paid, for such warranty service.

4. Warranty on Third Party Equipment:

Customer acknowledges that the equipment identified in the Quotation as originating from a third party supplier is not manufactured by NGBT, and therefore NGBT makes no warranty as to such equipment.

5. Exclusion of Warranties:

THE WARRANTIES PROVIDED BY NGBT AND BY THE APPLICABLE MANUFACTURERS, AS THE CASE MAY BE, ARE IN LIEU OF ALL OTHER WARRANTIES FROM NGBT, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR USAGE FOR A PARTICULAR PURPOSE. CUSTOMER FURTHER AGREES THAT NGBT HAS MADE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SUITABILITY OR DURABILITY OF THE DELIVERABLES FOR THE PURPOSES AND USES OF CUSTOMER.

6. Maintenance Agreements:

Maintenance agreements may be available for equipment sourced from third-party manufacturers. It is the Customer's sole responsibility to set up and maintain its maintenance agreements.

7. Limitation of Liability; Actions:

IN NO CASE SHALL NGBT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, LOSS OR INJURY TO CUSTOMER, OR ANY OTHER LEGAL THEORY. IN NO EVENT WILL NGBT BE LIABLE TO CUSTOMER FOR ANY

INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOST SAVINGS. IN ANY EVENT, NGBT'S MAXIMUM LIABILITY HEREUNDER, REGARDLESS OF THE LEGAL THEORY, SHALL NOT EXCEED THE CONTRACT PRICE. ANY LEGAL ACTION AGAINST NGBT MUST BE INSTITUTED WITHIN ONE YEAR AFTER THE DATE OF DELIVERY.

8. Customer's Use:

Customer assumes all responsibility and liability for injury or damages resulting from its handling, possession or use of deliverables supplied hereunder, including but not limited to any injury or damage resulting from the use of equipment in Customer's manufacturing operations or in combination with other equipment or materials.

9. Intellectual Property:

NGBT has provided no warranties with respect to intellectual property, and shall not be liable to Customer for any damages resulting from infringement of any third party's US or foreign patent, trade secret, trademark, copyright, or other intellectual property rights in connection with the deliverables or Customer's use of the deliverables. Customer will defend, indemnify and hold NGBT harmless against and from any and all liability, claims, suits, judgments, damages or costs (including reasonable attorneys fees and expenses) arising out of the ownership or use of the deliverables, except to the extent caused by the gross negligence or willful misconduct of NGBT, its employees, agents or independent contractors.

10. Use of Designs:

Nothing in this agreement shall prohibit NGBT from using the same or similar engineering, designs, equipment, or services and/or providing the same to other customers, provided the NGBT does not violate any confidentiality agreement it may have with the Customer.

11. Security Interest:

NGBT reserves a security interest in each item of deliverables and shall have all the rights of the secured creditor under the Vermont Uniform Commercial Code (Title 9A of the Vermont Statutes). Such security interest shall be retained and may be enforced until Customer has made all required payments for the deliverables.

12. Force Majeure:

Neither NGBT nor Customer shall be liable for delays or suspension of performance caused by acts of God or governmental authority, strikes, labor disputes, loss of manufacturing facilities, lack of adequate fuel, raw materials, labor, or transportation facilities, breach by suppliers of supply agreements, or any other cause, whether similar or dissimilar, beyond the reasonable control of the party involved.

13. Cancellation:

If the quotation includes equipment to be supplied by a third party, NGBT may terminate this agreement by giving written notice to Customer within sixty (60) days of the date of this agreement if NGBT determines that such equipment is not available on reasonable commercial terms, or on the schedule required by the Quotation. In case of termination,

NGBT will refund all payments made by Customer, and Customer will return to NGBT at NGBT expense all deliveries made to Customer.

14. Miscellaneous:

These terms and conditions, including the referenced documents incorporated herein, and including any nondisclosure agreement signed by both parties, (i) constitute the entire agreement of the parties with respect to their subject matter, superseding all prior oral or written representations, communications or agreements between the parties; (ii) may be modified, and any right hereunder may be waived, only by a written document signed by both parties and (iii) shall be construed under the laws of the State of Vermont. Any other terms of Customer in any request for Quotation, bid or quote, purchase order, contract or another document will be null and void and of no force or effect, even if an acknowledgment copy is signed by NGBT. In the event any court determines that any provision contained herein is unenforceable, illegal or invalid, no other provision shall be affected and these terms and conditions shall be enforced as if such offending provision had never been contained herein.