

# Orengo Systems<sup>®</sup>, Inc. Terms and Conditions

## 1. Terms of Payment

Purchaser agrees to pay for the merchandise in accordance with the terms set forth in the invoice. Past due invoices shall bear a finance charge of one and one-half percent (1½%) per month. If Seller employs a collection agency to collect any amount not paid by Purchaser, Purchaser shall pay all of Seller's reasonable collection expenses. If any suit, action or proceeding is instituted by Seller to collect any amount not paid by Purchaser, Purchaser shall pay all of Seller's investigation and litigation costs, including reasonable attorneys' fees, whether incurred before, during, or after a trial or appeal.

## 2. Taxes

Prices on the merchandise are exclusive of all city, state and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use, and similar taxes. Whenever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the Purchaser. If any such taxes are due but are not added to the invoice, Purchaser shall pay such taxes and indemnify and hold Seller harmless from such taxes. Purchaser shall provide Seller with a tax exemption certificate acceptable to the taxing authority when applicable.

## 3. Delivery

All sales shall be delivered FOB Shipping at Seller's premises. Unless Purchaser arranges to pick up merchandise, or Seller has agreed to some other explicit shipping instructions provided by Purchaser in writing, Seller shall determine the method and route of said shipment at its discretion. Nevertheless, all shipments, whether arranged by Seller or Purchaser, shall be made and insured at Purchaser's risk and expense.

Unless Purchaser arranges pickup or agrees prior to shipping to pay for said shipment collect, Seller shall include a line item on the invoice for the purchased merchandise showing the shipping and handling charges (including freight and insurance fees) for each shipment. Purchaser shall reimburse and/or pay Seller for all such charges by making payment thereof to Seller according to the terms of said invoice.

## 4. Labeling and Literature

Purchaser agrees that it will provide to any subsequent owner of the merchandise purchased hereunder any and all labels and/or literature provided by Seller with said merchandise.

## 5. Limited Warranty

Subject to the exclusions, limitations, and conditions contained herein, Seller warrants that all merchandise will be free from defects in materials and workmanship for a period of time corresponding to the type of merchandise (the Warranty Period), as follows:

- If the merchandise is a Biotube<sup>®</sup> Effluent Filter used in a single-family residential wastewater system; for the life of the wastewater system.
- If the merchandise is a control panel; for three (3) years after delivery of the control panel to Purchaser.
- If the merchandise is an Orengo-assembled watertight Fiberglass Reinforced Polyester (FRP) Tank; for five (5) years after delivery of the FRP Tank to Purchaser.
- If the merchandise is an unassembled FRP Tank Half-Shell; for 5 years after delivery of the FRP Tank Half-Shell to Purchaser for assembly.
- If the merchandise is an Orengo-brand, multiple-stage, high-head, submersible turbine effluent pump; for 5 years from the date of manufacture of said pump.

- For all merchandise not specifically listed above; for one (1) year after delivery of such merchandise to Purchaser, except as may be otherwise provided in a separate written warranty instrument between Seller and Purchaser or from another manufacturer. If a separate written warranty instrument exists, the terms and conditions of said instrument will control.

**Obtaining Warranty Service.** To make a claim under this Limited Warranty, put your claim in writing and mail or deliver it to your authorized Orengo Dealer or Distributor, who will process your claim. If for some reason your Dealer or Distributor is unavailable, mail your claim to the following address:

*Warranty Claims Department  
Orengo Systems, Inc.  
814 Airway Avenue  
Sutherlin, Oregon 97479*

All warranty claims must be received by Seller no later than the expiration of the applicable Warranty Period.

If requested by Seller, potentially defective merchandise must be returned to Seller's Sutherlin, Oregon facility through your Dealer or Distributor, transportation prepaid.

**Exclusive Remedy.** The exclusive remedy for any claim under this Limited Warranty shall be the obligation of Seller to repair or replace defective merchandise, at its discretion. Labor is not covered under this Limited Warranty. Defects in materials or workmanship will be determined in good faith by Seller upon receipt and inspection of returned merchandise. Merchandise shall not be deemed to be defective if the failure, malfunction, or damage was caused by or resulted from: (a) the merchandise not being installed, operated, or maintained in accordance with the instructions provided; (b) abuse, misuse, accident, or negligence; (c) a lightning strike or other catastrophic event beyond the control of Seller; or (d) improper or incorrectly performed maintenance, repair, or modification of the merchandise.

In the event Seller determines that returned merchandise is defective in materials or workmanship and covered by this Limited Warranty, Seller will credit or reimburse Purchaser for all reasonable transportation charges incurred in returning the merchandise, and will be responsible for all transportation charges to return repaired or replacement merchandise to Purchaser. Such repaired or replacement merchandise shall continue to be warranted under the Limited Warranty of the original purchase. In the event Seller determines that returned merchandise is not defective in materials or workmanship, or is not covered by this Limited Warranty, Seller may charge Purchaser a testing fee and all reasonable transportation charges required to return the merchandise to the Purchaser.

**SELLER SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM FAILURE OF, OR ANY DEFECT IN, THE MERCHANDISE, OR FOR ANY TECHNICAL ASSISTANCE OR INFORMATION THAT SELLER MAY HAVE PROVIDED TO PURCHASER. NOR SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, PLANT DOWNTIME, FINES OR PENALTIES, OR LAWSUITS BY THIRD PARTIES AGAINST PURCHASER. IN NO EVENT SHALL THE LIABILITY OF SELLER UNDER THIS LIMITED WARRANTY EXCEED THE TOTAL INVOICED PRICE, EXCLUDING INSTALLATION AND/OR START-UP COSTS, OF THE MERCHANDISE.**

**Disclaimer.** EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OF INFORMATIONAL CONTENT, OR THOSE ARISING FROM A COURSE OF DEALINGS, LAW, USAGE, OR TRADE PRACTICE, MAY ONLY BE CLAIMED DURING

THE APPLICABLE WARRANTY PERIOD, AND ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED TO THE EXTENT ALLOWED BY LAW THEREAFTER.

## 6. Return of Merchandise

Merchandise may not be returned by the Purchaser without the prior approval and acceptance by the Seller. Merchandise accepted for return is subject to a restocking fee and all transportation charges. Merchandise must be securely packed to reach Seller without damage. The amount of the credit or refund, if any, to be given to Purchaser for a return shall be determined by Seller.

## 7. Special Orders

If any merchandise is manufactured and/or sold by Seller to meet Purchaser's particular specifications or requirements and is not part of Seller's Product Catalog, Purchaser agrees to defend, indemnify, and hold harmless Seller against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any United States or foreign patent, and to defend any suit or action which may be brought against Seller for any alleged infringement because of the manufacture and/or sale of the merchandise covered thereby. In addition, Purchaser assumes all responsibility for the compatibility and adequacy of performance of the merchandise, and for the adequacy of the engineering, design or specifications furnished by Purchaser to Seller.

## 8. Technical Assistance

Seller makes no representation or warranty concerning the accuracy of any technical assistance or information furnished to Purchaser with respect to merchandise sold hereunder. Purchaser waives and releases any claim against Seller arising out of any technical assistance or information provided by Seller.

## 9. Entire Agreement

This document contains all of the terms and conditions with respect to the sale and purchase of the merchandise sold hereunder. These Terms and Conditions supersede any of previous date and shall be binding on Purchaser unless a separate written contract agreed to by a duly authorized representative of Seller explicitly supersedes these Terms and Conditions.

## 10. Acceptance; Waiver

This is not a firm offer and may be changed or revoked at any time by Seller. Acceptance of this offer by Purchaser is expressly limited to the exact terms contained herein, and any attempt by Purchaser to alter or omit any such terms shall be deemed a rejection and a counteroffer. No modification shall be effected by the acknowledgment of acceptance or purchase order forms stipulating different conditions. Unless Purchaser notifies Seller in writing to the contrary as soon as practicable after receipt of this document by Purchaser, acceptance of the terms and conditions hereof by Purchaser shall be indicated and, in the absence of such notification, the Purchaser's acceptance of the merchandise shall be equivalent to Purchaser's assent to the terms and conditions hereof.

The failure of either Party on any occasion to exercise a right granted hereunder shall not operate as a waiver of such right as to subsequent occasions, and shall not effect a modification of these Terms and Conditions.

## 11. Governing Law

The laws of the state of Oregon shall govern these Terms and Conditions, together with all rights, obligations, and disputes arising out of or related thereto. Any dispute or legal action arising out of or relating to these Terms and Conditions shall be brought in and decided by state courts of Oregon. In any such dispute or action, Purchaser consents to the jurisdiction and venue of the Circuit Court of the State of Oregon for Douglas County.