



# vynckier

ENCLOSURE SYSTEMS INC.



## VYNCKIER ENCLOSURE SYSTEMS, INC. TERMS AND CONDITIONS OF SALE

**1. WARRANTIES:** Seller warrants to Buyer that products and any services furnished hereunder will be free from defects in material, workmanship and title and will be of the kind and quality specified in Seller's written quotation. The foregoing shall apply only to failures to meet said warranties (excluding any defects in title) which appear within one year from the date of shipment hereunder; provided, however, that if Buyer, in the course of its regular and usual business, transfers title to or leases such products (including equipment incorporating such products) to a third party, such period shall run until one year from such transfer or lease or eighteen months from shipment by Seller, whichever occurs first. The conditions of any tests shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made. The warranties and remedies set forth herein are conditioned upon (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Seller and (b) Buyer promptly notifying Seller of any defects and, if required, promptly making the product available for correction.

If any product of service fails to meet the foregoing warranties (except title), Seller shall thereupon correct any such failure either at its option, (i) by repairing any defective or damaged part or parts of the products, or (ii) by making available, F.O.B. Seller's plant or other point of shipment, any necessary repaired or replacement parts. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price.

The preceding paragraph sets forth the exclusive remedies for claims (except as to title) based on defect in or failure of products or services; whether the claim is in contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise and however instituted. Upon the expiration of the warranty period, all such liability shall terminate and Buyer shall have a reasonable time, within thirty days after the warranty period, to give written notice of any defects which appeared during the warranty period. Except as set forth in Article 2, "Patents," the foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. Seller does not warrant any products or services of others which Buyer has designated.

**2. PATENTS:** (a) Subject to the provisions of this Article, Seller warrants that products furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, and contingent upon Buyer not taking any position adverse to Seller in connection with such claim, Seller shall defend, or may settle, at its expense, any suit of proceeding against Buyer so far as based on a claimed infringement which would result in a breach of this warranty and Seller shall pay all damages and costs awarded therein against Buyer due to such breach. In case any product or part thereof is in such suit held to constitute such an infringement and the use for the purpose intended of said product or part is enjoined, Seller shall, at its expense and option, either procure for Buyer the right to continue using said product or part, or replace same with a non-infringing product or part, or modify same so it becomes non-infringing, or remove the product and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by Buyer. The foregoing states the entire liability of Seller for patent infringement by said products or any part thereof.

(b) The preceding paragraph shall not apply to any product or part specified by Buyer or manufactured to Buyer's design, or to the use of any product furnished hereunder in conjunction with any other product in a combination not furnished by Seller as a part of this product in a combination not furnished by Seller as a part of this transaction. As to any such product, part, or use in combination, Seller assumes no liability whatsoever for patent infringement and Buyer will hold Seller harmless against any infringement claims arising therefrom.

**3. DELIVERY, TITLE AND RISK OF LOSS:** Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller, delivery will be made and title will pass F.O.B. point of shipment to Buyer. Risks of loss or damage pass to Buyer on delivery.

**4. EXCUSABLE DELAYS:** Seller shall not be liable for delays in delivery or performance, or for failure to

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manufacture, deliver or perform, due to (i) a cause beyond its reasonable control, or (ii) an act of God, act of Buyer, act of civil or military authority, Governmental priority, strike or other labor disturbance, flood, epidemic, war, riot, delay in transportation or car shortage, or (iii) inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials, components, services or facilities. Seller will notify Buyer promptly of any material delay excused by this Article, and will specify the revised delivery date as soon as practicable. In the event of such delay, there will be no termination and the date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay. In the event of an unexcused and material delay, the parties will mutually agree to an equitable solution.

**5. PAYMENTS AND FINANCIAL CONDITION:** Except to the extent otherwise specified by the Seller in its quotation, pro rata payments shall become due without setoff as shipments are made. If Seller consents to delay shipments after completion of any product, payment shall become due on the date when Seller is prepared to make shipment. In the event of any such delay, title shall pass and products shall be held at Buyer's risk and expense. Any order for products by Buyer shall constitute a representation that Buyer is solvent. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to shipment.

If Buyer's financial condition at any time does not justify a continuance of the work to be performed by Seller hereunder on the agreed terms of payments, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its proper cancellation charges. Seller's rights under this Article are in addition to all rights available to it at law or in equity.

**6. DISCLOSURE OF INFORMATION:** Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in writing signed by a duly authorized representative of Seller.

**7. TAXES:** In addition to any prices specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar taxes applicable to the price, sale or delivery of any products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

**8. LIMITATIONS OF LIABILITY AND INDEMNITIES:** (a) Subject to the other provisions of this Article, Seller agrees to indemnify and save harmless Buyer from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, arising out of the performance of this agreement, to the extent such damage or injury is attributable to the negligence of Seller; provided that Buyer gives Seller prompt notice of any such claim and all necessary information and assistance so that Seller, at its option, may defend or settle such claim and Buyer does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss, expense or claim shall be borne by Seller and Buyer in proportion to their negligence.

(b) Except as provided in Article 2, "Patents," in no event, whether as a result of breach of contract, indemnity warranty, tort (including Seller's negligence), strict liability or otherwise, shall Seller's liability to Buyer or its insures for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the products or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim, and except as to title, any such liability shall terminate upon the expiration of the warranty period specified in Article 1, "Warranties." Any such claim of liability must be timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations and/or of repose, but in no event later than one year from the termination of the warranty period.

(c) In no event, whether as a result of breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise, shall Seller be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of Buyer's customers for such damages.





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If the products or services being provided by Seller will be furnished by the Buyer to a third party by contract or otherwise or relate to a contract between the Buyer and a third party, the Buyer shall obtain from such third party a provision affording Seller the protection of this Article, except for paragraph (a).

(d) If Seller furnishes Buyer with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise. For the purposes of paragraphs (b), (c) and (d) of this Article, the term Seller includes the Seller's subcontractors and suppliers.

(e) Unless otherwise agreed in writing by a duly authorized representative of Seller, products sold hereunder are not intended for use in connection with any nuclear facility or activity. If so used, the provisions of the Rider for Nuclear Applications (below) will apply.

**9. SOFTWARE:** Software furnished pursuant to Seller's quotation shall be provided pursuant to Seller's standard software license agreement, the terms and conditions of which shall take precedence over these conditions of sale with respect to the provision of such software.

**10. GENERAL:** Any products delivered by Seller hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended and applicable. Seller will comply with applicable federal, state and local laws and regulations as of the date of any quotation which relate to (i) nonsegregated facilities and equal employment opportunity (including the seven paragraphs appearing in Section 202 of Executive Order 11246, as amended), (ii) workers' compensation, and (iii) the production in Seller's manufacturing facilities of products furnished hereunder, price and, if necessary, delivery will be equitably adjusted to compensate Seller for the cost of compliance with any other laws or regulations. The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void.

Any representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Seller. These Conditions of Sale contain the entire and only agreement between the Buyer and Seller respecting the terms and conditions and supersedes and cancels all previous negotiations, agreements, commitments, representations and writings in respect thereto. The Conditions of Sale may not be amended, supplemented, changed or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date, signed by a duly authorized representative of each party.

The validity, performance and all matters relating to the interpretation and effect of this agreement and any amendment hereto shall be governed by the law of the State of New York, excluding its conflict of law rules. The invalidity, in whole or in part, of any of the articles or paragraphs in the conditions of sale will not affect the remainder of such article or paragraph or any other article or paragraph.

The provisions of this agreement are for the benefit of the parties hereto and not for any other person except as specifically provided herein.

**RIDER FOR NUCLEAR APPLICATIONS:** If any products sold hereunder are used in connection with any nuclear facility or activity, Seller and its suppliers shall have no liability to Buyer or its insurers for any nuclear damage or contamination, and Buyer shall indemnify Seller against any such liability, whether as a result of breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise. The indemnity in Article 8 (a) above shall not apply to any damages or bodily injury, or both, arising out of a "nuclear incident," as that term is defined in the Atomic Energy Act of 1954, as amended (the "Act"). In addition, Buyer shall furnish financial protection as required by Section 170 of the Act, including an agreement of indemnification and/or nuclear liability insurance from ANI and MAELU, or both, pursuant to Section 170 of the Act, as applicable. Buyer shall not remove any items of equipment from the plant site or otherwise transfer any interest therein without first providing Seller with written assurance of limitation of and protection against liability (both nuclear and non-nuclear) following the proposed removal or transfer at least equivalent to that afforded to Seller and its suppliers under Article 8 above. Removal or transfer contrary to this provision shall, in addition to any other legal or equitable rights of Seller, make Buyer the indemnitor of Seller and its suppliers to the same extent that they would have been protected had no such removal or transfer taken place. Any Seller's material or equipment which becomes radioactive at the work site, shall, at Seller's option, be purchased by

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Buyer. Any nuclear decontamination necessary for Seller's performance (including warranty) shall be performed by Buyer without cost to Seller.

**11. PRICE:** List price as provided in the most recent edition of the Vynckier price catalog.

**12. PAYMENT TERMS:** Net 30 days.

**13. MINIMUM BILLING CHARGE:** \$75.00 net plus transportation charges.

**14. TRANSPORTATION:** F.O.B. point of shipment, transportation allowed on individual order releases where total price equals or exceeds \$1850.00 net. On orders less than \$1850.00 net, transportation will be prepaid and charged.

**15. ADDITION TO ORDERS:** After original order is entered any additions will be treated as a new order.

**16. CANCELLATIONS:** The purchaser, subject to a cancellation charge which Vynckier deems reasonable to cover expenses incurred and commitments made by Vynckier, may cancel orders in writing. Special factory orders and modified products are subject to 100% cancellation charge.

**17. RETURNS:** Written authorization and shipping instructions for the return of any product must be obtained by the purchaser from Vynckier prior to returning. In cases where purchaser requests return authorization for reasons of his own, and Vynckier agrees to such returns, purchaser will be credited for 80% of the net value of the goods involved upon receipt by seller of goods in original cartons, of current design and in sellable condition (service code A). Purchaser will also be liable for any transportation charges paid by Vynckier. Goods may not be returned after ninety (90) days.

**18. STOCK ROTATION:** Stock rotation is permitted by recognized VES stocking distributors only, once per calendar year with prior written permission by a VES official or representative. Must be accompanied by an offsetting order of equal value, and prepaid freight is required. The returned material must be of current design of stock products (service code A), no more than 12 months old, and in complete resalable condition to avoid additional charges. A copy of the original invoice(s) must be provided for stock rotation approval. Maximum amount of stock rotation is 10% of annual enclosure purchases. Stock rotation policy excludes all non-standard product.

**19. QUOTATIONS:** Stock items shipped to distributor location will be billed at standard pricing and rebated to discounted pricing after shipment to quoted OEM, unless otherwise specified in written quotation. All quotations must be written and provided with a valid VES quotation number. Quotations are conditioned upon acceptance by purchaser within thirty (30) days from date issued.

Prices, discounts, terms and conditions subject to change without notice.

Unless otherwise specifically provided in writing, all sales are made F.O.B. point of shipment. On individual order releases where total price equals or exceeds \$1500.00, net transportation will be allowed to the common carrier free delivery point nearest to the first destination specified by purchaser within the Continental United States (excluding Alaska, Hawaii, Canal Zone and insular possessions) or to the port of export, as the case may be, provided the company is allowed to select the point of origin of shipment, routing and method of transportation. Purchaser may specify other means of transportation, in which case purchaser shall pay any cost thereof in excess of the company's estimate of the expense it would have incurred had the company specified the means of transportation. In no event will any transportation allowance be made if purchaser arranges transportation from point of shipment, nor will any transportation allowed include the cost of water freight, heavy lift charges, marine insurance or stevedoring.

**NOTICE:** Sale of any product and/or service is expressly conditioned on the buyer's assent to the additional or different terms contained in the Conditions of Sale, including any other terms in the seller's quotation. Any additional or different terms proposed by buyer are expressly objected to and will not be binding upon seller unless specifically assented to in writing by seller's authorized representative. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work and seller's performance of work, shall constitute assent to seller's terms and conditions.

