

Terms and Conditions

1. **Sale.** In consideration of the purchase price set forth in the pricing section above, Seller agrees to sell, transfer and convey to Purchaser, and Purchaser agrees to purchase and accept from Seller, the Equipment described more fully in project description and service and deliverables section.
2. **Purchase Order.** All prices on Seller's quotations are for immediate acceptance and are subject to change without notice, unless otherwise specified in writing. All quotations and sales shall be subject to Seller's standard terms and conditions and Buyer is conclusively presumed to have accepted such terms and conditions unless otherwise agreed in writing. All information inserted on the face of an invoice which is not correct must be brought to the attention of Seller in writing within 15 days after receipt of the invoices by Buyer, otherwise all information shall be conclusively presumed to be correct. Clerical errors of Seller are subject to correction. In the event Buyer's purchase order states terms additional to or different from these terms and conditions of sale, then Seller's acknowledgment in accordance with the terms herein shall be deemed a notification of objection to such additional or different terms, or in the event such purchase order expressly limits acceptance to its terms, Seller's acknowledgment in accordance with the terms herein shall be deemed a rejection of Buyer's offer to purchase, and in either event Seller's acknowledgment shall constitute an offer to sell which may be accepted only in accordance with its terms and conditions of sale within a reasonable time. A contract shall be formed only upon such terms and conditions of sale.
3. **Delivery.** Seller shall not be liable for loss, damage, detention or delay from causes beyond its reasonable control, such as acts of God, acts of the Purchaser, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, car shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities. Actual receipt of the Equipment by Purchaser shall constitute a waiver of all claims for delay. Shipping dates are approximate and are based on prompt receipt of all necessary information from Purchaser. The Equipment covered by this Agreement shall be deemed finally inspected and accepted within 5 days after the delivery thereof, unless notice of rejection or notice of any claim is given in writing to Seller within said period. Acceptance as aforesaid shall constitute acknowledgement of full performance Seller of all its obligations hereunder except as otherwise expressly provided herein.
4. **Payment.** Invoices will be issued as of the date Equipment is shipped by Seller to Buyer. Payment on invoices is due according to the payment terms set forth above and shall be payable in lawful money of the United States of America. The undersigned agrees that in consideration for the extension of credit applied for herewith, Buyer hereby grants Seller a security interest in the Equipment until all amounts owed by Buyer to Seller are paid in full and that any amounts not paid by 30 days after the date of the invoice shall bear a service charge at the rate of one and one-half percent (1½%) per month, eighteen percent (18%) per annum, until paid in full. (Not to exceed the maximum legal limit in this state.) A service charge of \$25.00 will be charged and paid by Buyer for each check returned for any reason. Buyer will be rebilled for any discounts taken after the discount date or obtained by check payment, which checks are later returned for any reason. Authorized returns of regular saleable stock items will be subject to a handling charge to be determined at time such items are inspected at Seller's place of business and restocked as saleable merchandise. If at any time Seller deems the financial responsibility of Buyer unsatisfactory, it reserves the right to require payment in advance or other security or guarantee that the invoice will be paid promptly when due.
5. **Taxes.** Prices do not include state or local taxes, if any, based on or measured by the sales price, which tax or taxes will be added to the prices where applicable. Any taxes which Seller may be required to pay or collect, upon or with respect to the sale, purchase, delivery, storage, processing, use or transportation of the Equipment purchased hereunder, shall be for Buyer's account; and for lien or bond claim purposes, although separately referred to on Seller's invoices, such taxes shall be considered part of the purchase price for the Equipment to

be paid promptly by Buyer to Seller upon demand.

6. **Title.** Unless a conditional sale is noted on this Agreement, title to the Equipment covered by this Agreement shall pass to Purchaser upon delivery to carrier.
7. **Representation of Purchaser.** Purchaser is duly organized, validly existing and in good standing under the laws of the state of its formation and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as currently conducted. Purchaser is duly licensed or qualified to do business and is in good standing in each jurisdiction in which such licensing or qualification is necessary. The execution and delivery by Purchaser of this Agreement, the performance by Purchaser of its obligations hereunder and thereunder and the consummation by Purchaser of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Purchaser, and this Agreement constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.
8. **Operation.** Purchaser shall operate the Equipment exclusively in connection with its business and in accordance with the manufacturer's maintenance requirements, including, without limitation, (a) changing the sail (catalyst); (b) using and routinely replacing MERV 10 or higher HVAC filters for particulate filtration; and (c) using activated charcoal or zeolite filtration for Volatile Organic Hydrocarbons.
9. **Risk of Loss.** Commencing at the time of delivery, Purchaser shall bear all risk of loss, damage, destruction, theft and condemnation to or of the Equipment from any cause whatsoever.
10. **Events of Default.** Each of the following events is an "Event of Default" under this Agreement: (a) if Purchaser fails to pay when due any installment of the purchase price or any other amount under this Agreement; (b) if Purchaser defaults in the observance or performance of any other term, covenant or condition of Purchaser under this Agreement and Purchaser shall fail to remedy such default within 10 days after notice by Seller to Purchaser of such default; (c) if Purchaser's interest or any portion

thereof in this Agreement devolve on or pass to any person, whether by operation of law or otherwise; (d) if Purchaser: (i) does not, or is unable to, or admits in writing its inability to, pay its debts as they become due; (ii) commences or institutes any case, proceeding or other action seeking relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors; (iii) commences or institutes any case, proceeding or other action seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or (iv) makes a general assignment for the benefit of creditors; (e) if a receiver, trustee, custodian or other similar official is appointed for any substantial part of the assets of Purchaser which appointment is not vacated or stayed within 30 days; (f) if Purchaser sells, transfers or disposes of all or substantially all of its assets, or merges or consolidates with any other entity; or (g) a breach of any representation or warranty of Purchaser.

11. **Remedies.** If an Event of Default occurs, Seller may, in its sole discretion, terminate in whole or in part this Agreement upon written notice to Purchaser or exercise any other right or remedy available to Seller at law or in equity.
12. **Indemnity.** Purchaser shall indemnify, defend and hold harmless Seller and its affiliates and their respective representatives (collectively, "Indemnitees") against any and all claims, costs and damages relating to, arising out of or resulting from any claim of a third party or Seller arising out of or relating to: (a) the possession, maintenance, use, condition, repair, return, disposition or operation of the Equipment or any parts or alterations thereto (including, without limitation, latent and other defects, whether or not discoverable by Seller or Purchaser); (b) any inaccuracy in or breach of any of the representations of Purchaser contained in this Agreement; or (c) any breach or non- fulfillment of any covenant, agreement or obligation to be performed by Purchaser pursuant to this Agreement.
13. **Confidentiality.** Buyer acknowledges and understands that the Equipment and the

contents thereof contain proprietary information of Seller. Buyer agrees not to do anything to diminish the value of such proprietary information. Buyer understands and acknowledges that the price quoted by Seller to Buyer hereunder is proprietary information of Seller, and that if it disclosed to Seller's competitors, would cause irreparable damage to Seller. Accordingly, Buyer agrees to keep the price and all other terms and conditions contained within this Agreement confidential and not disclose them to any third party without the prior written consent of Seller.

14. **Equipment Maintenance Services**

14.1 **Preventive Maintenance.** When maintenance services are required, Synexis, will promptly notify the Client's point of contact. Maintenance schedule frequency and who will be performing maintenance service is outlined in the Service and Deliverables section of this agreement.

14.2 **Remedial Maintenance.** Synexis, LLC will provide remedial maintenance, as required, during the days of the week and hours of the days identified in the Equipment Schedule. If additional machines are added to the Equipment listed in the Equipment Schedule after the date hereof and are to be maintained, such additions will be accepted by Synexis, LLC at the then current per machine maintenance rates.

14.3 **Other Hours.** If remedial maintenance is requested by the Client outside the remedial maintenance hours, Synexis, LLC will provide such remedial maintenance subject to the availability of its personnel and at its hourly rates then in effect. Travel time to and from the Client's premises will be included in those charges.

14.4 **Parts.** Synexis, LLC will furnish parts necessary to insure the proper functioning of the Equipment at no additional cost. [Parts replaced under preventive or remedial maintenance will become the property of Synexis, LLC.]

14.5 **Relocation of Equipment.** Synexis, LLC will be obligated to provide maintenance service only at the specified site. If the Client desires to relocate any Equipment, the Client will give appropriate notice to Synexis, LLC of its intention to relocate the

equipment and maintenance arrangements will be negotiated between the parties.

15. **Term.** The term of this Agreement will commence on the date that the Equipment is installed at the Client's premises (the "Commencement Date"). This maintenance agreement will be in accordance to the contract terms set forth above for each unit of Equipment. Thereafter, the term of this maintenance agreement will continue until terminated by either party upon 60 days' prior written notice.

16. **Client Responsibilities Preparation of Location.**

16.1 **Location.** On or prior to the delivery date, Purchaser shall, at its expense, prepare a suitable site for the installation of the Equipment (the "Location"). Purchaser shall grant access to the Location to allow Seller and/or its designated representative to install the Equipment. Purchaser shall bear all installation charges, including third-party installation charges.

16.2 **Field Space.** The Client will provide adequate working space within a reasonable distance of the Equipment for use by Synexis, LLC personnel during maintenance.

16.3 **Care of Equipment.** The Client will be responsible for use, care and cleaning of the Equipment in accordance with instructions provided by Synexis, LLC, including:

16.4 **Additional Devices.** The Client agrees not to employ additional attachments, features, or devices to the Equipment, make alterations to the Equipment, or permit the maintenance of the Equipment by other than Synexis, LLC's personnel without the written consent of Synexis, LLC. Synexis, LLC will not be liable for loss or damage to the Client resulting from unauthorized additional attachments, alterations or maintenance and the Client will be liable to Synexis, LLC for any repair or damage costs incurred by Synexis, LLC as a result of the addition of unauthorized attachments, alterations or maintenance.

16.5 **Notification.** When maintenance services are required, Synexis, LLC will promptly notify the Client's point of contact. The

Client will allow full access to the Equipment for maintenance services.

immediately prior to the commencement date of maintenance.

17. Charges for maintenance.

17.1 Invoices. Unless otherwise agreed to by the parties, the Client agrees to pay the maintenance charges upon submission of Synexis, LLC's invoice and in no event more than 30 days after the date of the invoice. Invoices will be submitted annual on the first day of each month in advance. The initial annual maintenance charges are set forth on the Equipment Schedule. The Client agrees that in consideration for the extension of credit applied for herewith, that any amounts not paid by the 30th day from the date of the invoice shall bear a service charge at the rate of one and one-half percent (1½%) per month, eighteen percent (18%) per annum, until paid in full. (Not to exceed the maximum legal limit in this state.) A service charge of \$25.00 will be charged and paid by the Client for each check returned for any reason. The Client will be rebilled for any discounts taken after the discount date or obtained by check payment, which checks are later returned for any reason. If at any time Synexis, LLC deems the financial responsibility of the Client unsatisfactory, it reserves the right to require further payment in advance or other security or guarantee that the invoice will be paid promptly when due.

17.2 Commencement. The annual maintenance charge for each unit of Equipment will commence on the date each such unit is installed and certified ready for use by Synexis, LLC.

17.3 Exclusion. The annual maintenance charges under this Agreement do not include, and the Client specifically assumes the cost of the following:

- 17.3.1 Refinishing or painting of the Equipment.
- 17.3.2 Installation or moving of any unit of Equipment.
- 17.3.3 Repair of Equipment damage attributable to the fault or negligence of the Client; and
- 17.3.4 Repair of Equipment which was not under an equipment maintenance contract from Synexis, LLC

17.4 Suspension. This Agreement may be suspended by Synexis, LLC without notice if payment is 30 days in arrears or it may be terminated by Synexis, LLC without notice if payment is 60 days in arrears.

17.5 Taxes. Any applicable local, state, or federal taxes will be added to any of the charges specified.

18. Changes in maintenance charges. The annual maintenance charges hereunder are subject to change by Synexis, LLC on 30 days' prior written notice to the Client after the expiration of the first-year anniversary of the Commencement Date.

19. Warranty.

19.1 Equipment Warranty. Seller warrants and represents that the equipment shall be free from defects in workmanship, manufacture, design and material defects for a period of 1 year from the date of installation; provided, that the equipment is installed, maintained and operated in accordance with seller's specifications, including, without limitation, those set for in Section 11 hereof. This warranty is inclusive of parts, labor, and travel to the location (defined below). If seller makes 3 trips for the same warranty item during any 90-day period, seller will replace the defective parts or components of such equipment as determined by seller in seller's sole discretion.

19.2 Normal Use. Synexis, LLC warrants that under normal use and service, all Equipment which is continuously maintained in accordance with this Agreement from the date of its installation will remain in satisfactory operating condition. The Synexis, LLC's sole obligation under this warranty will be to repair any item of equipment that is repairable or at its option, refurbish, overhaul, rebuild, or replace any item of Equipment that has been promptly reported as defective in material or workmanship by the Client to Synexis, LLC within the warranty period and which has been determined by Synexis, LLC to have been defective.

19.3 **Disclaimer.** The above warranties in Sections 19.1 and 19.2 are the only warranties made by Synexis, LLC. Synexis, LLC makes, and the client receives no warranty express or implied and there are expressly excluded all warranties of merchantability, fitness for a particular purpose or warranty against infringement of any patent, copyright, trademark, trade secret or other proprietary rights of a third party, whether arising by law, course of dealing, course of performance, usage of trade or otherwise. Synexis, LLC will have no liability with respect to its obligations under this agreement for consequential, exemplary, special, punitive or incidental damages or for loss of profits or for any other similar damages even if it has been advised of the possibility of such damages. Synexis, LLC.

20. General

20.1 Will not be liable for any damages caused by a delay in the furnishing of maintenance services under this agreement.

20.2 **Force Majeure.** Synexis, LLC will not be liable for any delay in performance under the agreement covered by an Act of God or any other cause beyond its reasonable control.

20.3 **No Waiver.** The waiver or failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further right hereunder.

20.4 **Survival.** Subject to the limitations and other provisions of this Agreement, the representations and covenants of Purchaser survive indefinitely.

20.5 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

20.6 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

20.7 **Entire Agreement.** This Agreement, including any exhibits and schedules, constitutes the sole and entire agreement of

the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

20.8 **Amendment and Modification.** No amendment to this Agreement is effective unless it is in writing and signed by each party to this Agreement.

20.9 **Waiver.** The waiver by either party hereto of a breach or violation of any term or provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach or violation.

20.10 **Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

20.11 **Assignment.** Purchaser may not assign any of its rights under this Agreement without the prior written consent of Seller and provided that such assignment shall not relieve Purchaser of its obligations under this Agreement, and Purchaser shall remain primarily liable under this Agreement. Any purported assignment in violation of this Section is null and void.

20.12 **Successors and Assigns.** This Agreement is binding on and insures to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

20.13 **No Third-party Beneficiaries.** This Agreement benefits solely the parties to this Agreement and their respective successors and permitted assigns and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

20.14 **Choice of Law; Venue.** The laws of the state of Kansas shall govern the interpretation, validity, and performance of the terms, regardless of the law that might

be applied under principles of conflicts of law. The parties agree to exclusive jurisdiction and venue relating to this agreement and any actions in connection therewith shall be in the state district courts for Johnson County, Kansas and hereby waive any right to object to such jurisdiction and venue.

20.15 Waiver of Jury Trial. Each party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits attached to this Agreement, or the transactions contemplated hereby.

20.16 Limitation of Liability. The liability of Seller for any loss or damage arising out of the purchase, or the use or resale, of any Equipment or the purchase of services sold hereunder is expressly limited to an amount equal to the purchase price of such Equipment or services. Buyer assumes all risk of loss, damage, or delay incident to the furnishing of the Equipment by Seller hereunder, or the utilization thereof, except to the extent expressly above provided.

20.17 Drafting. No provision of this Agreement shall be interpreted for or against any party hereto on the basis that such party was the draftsman of such provision, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

20.18 Attorneys' Fees. If either party commences or is made a party to any litigation, arbitration or other proceeding to enforce, interpret or obtain a declaration of rights under this Agreement, the prevailing party in any such proceeding shall be entitled to recover from the other party reasonable attorneys' fees and costs incurred in connection with such proceedings, any appeal of such proceeding and the enforcement of any judgment obtained in such proceeding.

20.19 Relationship of Parties. Nothing herein creates a joint venture or partnership between the parties to this Agreement or an employee/employer relationship. Neither party to this Agreement has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

20.20 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.