

1. Terms and Conditions; Agreement.
  - 1.1 These terms and conditions (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") and services ("**Services**") by Synexis<sup>®</sup>, LLC ("**Synexis**") to the buyer ("**Buyer**") set forth on the accompanying quotation, confirmation of sale or invoice (the "**Sales Confirmation**").
  - 1.2 The Sales Confirmation and these Terms (collectively, this "**Agreement**") comprise the entire agreement between Synexis and Buyer, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its own purchase order or any such terms. Fulfillment of Buyer's order does not constitute Synexis' acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
  - 1.3 Notwithstanding anything to the contrary contained in this Agreement, Synexis may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.
2. Taxes. Buyer shall purchase the Goods and Services from Synexis at the prices ("**Prices**") set forth in the Sales Confirmation. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority. Applicable taxes will be added to the Prices and included on the invoice unless Buyer has a valid tax-exempt certificate on file with Synexis. Buyer shall be responsible for all such charges, costs and taxes; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Synexis' income, revenues, gross receipts, personal or real property, or other assets.
3. Payment. Buyer shall pay all invoiced amounts due to Synexis within thirty (30) days of such invoice date or in accordance with the applicable payment terms set forth in the Sales Confirmation in United States currency. All disputes with respect to any invoice shall be made within thirty (30) days of such invoice date and if are not made within such time frame are deemed waived. Buyer shall pay interest on all late payments at the rate of 1.5% per month, calculated daily and compounded monthly. Buyer shall reimburse Synexis for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. A service charge of \$25.00 will be paid by Buyer for each check returned for any reason. Without Synexis' prior written approval, Buyer has no right to return any Goods to Synexis that were purchased under this Agreement, and any such permitted returns will be subject to a 35% restocking charge to be determined at the time such items are inspected at Synexis' place of business and restocked as saleable merchandise. If at any time Synexis 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.
4. Delivery. Synexis shall deliver Goods to Buyer FCA Synexis Shipping Point. Buyer shall pay all delivery costs or charges or pay Synexis' standard shipping prices, which shall be added to the invoice in accordance with the Sales Confirmation at cost + 20% markup. Synexis shall not be liable for loss, damage, detention, or delay from causes beyond its reasonable control. Actual receipt of the Goods by Buyer shall constitute a waiver of all claims for delay. Shipping dates are approximate and are based on prompt receipt of all necessary information from Buyer. The Goods covered by this Agreement shall be deemed to be finally inspected and accepted by Buyer upon signature and acceptance by Buyer's representative, and in no event later than five (5) business days after the delivery thereof. Acceptance of Services shall be deemed to occur upon performance of Services. Acceptance as aforesaid shall constitute acknowledgement of full performance Synexis of all its obligations hereunder except as otherwise expressly provided herein.
5. Title; Risk of Loss. Title and risk of loss to the Goods shall pass to Buyer upon delivery to carrier. As security for the payment of the purchase price of the Goods, Buyer hereby grants to Synexis a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Kansas Uniform Commercial Code.
6. Events of Default; Remedies.
  - 6.1 Each of the following events is an "**Event of Default**" under this Agreement: (a) if Buyer fails to pay when due any installment of the purchase price or any other amount under this Agreement; (b) if Buyer defaults in the observance or performance of any other term, covenant, or condition of Buyer under this Agreement and Buyer shall fail to remedy such default within 10 days after notice by Synexis to Buyer of such default; (c) if Buyer's interest or any portion thereof in this Agreement devolve on or pass to any person(s) or entity(ies), whether by operation of law or otherwise; (d) if Buyer: (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 as 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 Buyer which appointment is not vacated or stayed within 30 days; (f) if Buyer 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 Buyer.

- 6.2 If an Event of Default occurs, Synexis may, in its sole discretion, (a) with regard to a payment default, (i) suspend this Agreement without notice if payment is 30 days in arrears, or (ii) terminate this Agreement without notice if payment is 60 days in arrears, or (b) terminate in whole or in part this Agreement upon written notice to Buyer or exercise any other right or remedy available to Synexis at law or in equity.
7. **Indemnity.** Buyer shall indemnify, defend, and hold harmless Synexis and its affiliates and their respective representatives against any and all claims, costs and damages relating to, arising out of, or resulting from any claim of a third party or Synexis arising out of or relating to: (a) the possession, maintenance, use, condition, repair, return, disposition, or operation of the Goods or any parts or alterations thereto (including, without limitation, latent and other defects, whether or not discoverable by Synexis or Buyer); (b) any inaccuracy in or breach of any of the representations of Buyer contained in this Agreement; or (c) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Buyer pursuant to this Agreement.
8. **Confidentiality.** Buyer acknowledges and understands that the Goods and the contents thereof contain proprietary information of Synexis. Buyer agrees not to do anything to diminish the value of such proprietary information. Buyer understands and acknowledges that any pricing, discounts, or rebates quoted or provided by Synexis to Buyer hereunder is proprietary information of Synexis, and that if it disclosed to Synexis' competitors, would cause irreparable damage to Synexis. Accordingly, Buyer agrees to keep all information or documentation provided to Buyer regarding the Goods, the Prices and all other Terms contained within this Agreement confidential and not disclose them to any third party without the prior written consent of Synexis. Synexis shall be entitled to injunctive relief for any violation of this Section.
9. **Buyer Responsibilities.**
- 9.1 **Location.** If Buyer contracts Synexis to perform Services including but not limited to installation of the Goods, on or prior to the date the Goods are to be delivered, Buyer shall, at its expense, prepare a suitable site for the installation of the Goods (the "Location"). Buyer shall grant access to the Location to allow Synexis and/or its designated representative to install the Goods. Buyer shall bear all installation charges, including third-party installation charges.
- 9.2 **Care of the Goods.** The Buyer will be responsible for use, care, and maintenance service of the Goods in accordance with generally accepted practices and per Synexis general instructions.
- 9.3 **Additional Devices.** The Buyer agrees not to employ additional attachments, features, or devices to the Goods, make alterations to the Goods, or permit the maintenance service of the Goods other than by Synexis' personnel without the written consent of Synexis or unless otherwise outlined in the Sales Confirmation. Synexis will not be liable for loss or damage to the Buyer resulting from unauthorized additional attachments, alterations, or maintenance service and the Buyer will be liable to Synexis for any repair or damage costs incurred by Synexis as a result of the addition of unauthorized attachments, alterations, or maintenance service.
- 9.4 **Maintenance Services.**
- 9.4.1 **Preventive Maintenance.** Maintenance schedule frequency and who will be performing maintenance service will be outlined in the Sales Confirmation. When maintenance services are to be provided by Synexis as per the Sales Confirmation, Synexis will promptly notify the Buyer's point of contact. The Buyer will allow full access to the Goods and the Location for such maintenance services.
- 9.4.2 **Relocation of the Goods.** If Synexis is to provide maintenance services on the Goods, it will only be obligated to do so at the Location as noted in the Sales Confirmation. If the Buyer desires to relocate any Goods, the Buyer will give appropriate notice to Synexis of its intention to relocate the Goods and maintenance arrangements will be negotiated between the parties.
- 9.4.3 **Charges for Maintenance.** Maintenance charges under this Agreement, and any applicable exclusions, will be set forth in the Sales Confirmation. Synexis will not be liable for any damages caused by a delay in the furnishing of maintenance services under this Agreement.
10. **Term.** The term of this Agreement will commence on date of purchase as designated in the Sales Confirmation, and it will end on the date specified in the Sales Confirmation ("Term").
11. **Limited Warranty.**
- 11.1 **Limited Warranty.** Synexis warrants to Buyer that the Goods (with the exception of Consumables) shall be delivered free from defects in material and workmanship; provided, that the Goods are installed, maintained, and operated in accordance with Synexis' specifications, including, without limitation, that the Goods shall be serviced and maintained in accordance with all service requirements as outlined in the Product Manuals. Synexis warrants to the Buyer that Consumables (sails, MERV filters, and carbon filters, bulbs, collectively "Consumables") shall conform to their specifications. Synexis warrants that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications incorporated into the Sales Confirmation. The warranty for Goods (with the exception of Consumables) shall expire one (1) year following Buyer's date of purchase or as otherwise agreed upon by Synexis in writing. The warranty for Consumables shall expire upon the end of their applicable usable life after installation as per the Sales Confirmation, but in no event later than one (1) year after purchase. The warranty for Services shall expire one (1) year after performance of the Services.
- 11.2 **Normal Use.** Synexis warrants that under normal use and service, all Goods and Services will remain in satisfactory operating condition during their respective warranty periods as described in Section 12.1; provided, that the Goods are continuously maintained in accordance with all applicable service requirements and the Product Manuals from the date of delivery. Synexis shall not be liable for a breach of any warranty if: (i) Buyer makes

any further use of such Goods after giving written notice of a defect; (ii) the defect arises because Buyer failed to follow Synexis' written instructions as to the storage, installation, commissioning, environmental conditions, use or maintenance of the Goods; or (iii) Buyer or any third party alters or repairs such Goods without the prior written consent of Synexis.

11.3 Claims. If Goods and/or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the applicable warranty period. Synexis' sole obligation under this warranty will be to repair any item of the Goods that is repairable or, at its option, refurbish, overhaul, rebuild, or replace any item of the Goods that has been promptly reported as defective in material or workmanship by Buyer to Synexis within the applicable warranty period and which has been determined by Synexis to have been defective. Except as provided as part of the original Sales Confirmation scope, Buyer shall bear the costs of access for Synexis remedial warranty efforts including de-installation, re-installation and transportation of defective Goods to Synexis and back to Buyer.

11.4 Disclaimer.

11.4.1 THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES MADE BY SYNEXIS WITH RESPECT TO THE EQUIPMENT. SYNEXIS MAKES, AND THE BUYER RECEIVES, NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (C) 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.

11.4.2 THE REMEDIES SET FORTH IN SECTION 11.3 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SYNEXIS' ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 11.1.

12. General.

12.1 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by e-mail or by certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

12.2 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 or subsequent right hereunder. No waiver by Synexis of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Synexis. No partial exercise, failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof.

12.3 Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Choice of Law, Venue and Survival.

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

12.5 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.

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

12.7 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.

12.8 Assignment. Buyer may not assign any of its rights under this Agreement without the prior written consent of Synexis and provided that such assignment shall not relieve Buyer of its obligations under this Agreement. Any purported assignment in violation of this Section is null and void.

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

12.10 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.

12.11 Choice of Law; Venue & Dispute Resolution. The laws of the state of Kansas shall govern all matters arising out of or relating to this Agreement, without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the state of Kansas in each case located in Johnson County, Kansas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

- 12.12 Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS DECIDED TO ENTER INTO THIS AGREEMENT IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.
- 12.13 Limitation of Liability.
- 12.13.1 IN NO EVENT SHALL SYNEXIS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SYNEXIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 12.13.2 IN NO EVENT SHALL SYNEXIS' AGGREGATE LIABILITY TO BUYER OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SYNEXIS FOR THE GOODS AND SERVICES SOLD HEREUNDER.
- 12.14 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.
- 12.15 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.
- 12.16 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.
- 12.17 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.
- 12.18 Intellectual Property. Each party shall retain ownership of all confidential information and intellectual property it has prior to the Agreement. All new intellectual property conceived or created by Synexis in the performance of this Agreement, whether alone or with any contribution from Buyer, shall be owned exclusively by Synexis.

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