1. APPLICABLE TERMS & CONDITIONS. These Terms & Conditions of Sale are contained directly and/or by reference in Also Energy’s (“AE”) estimate, order acknowledgment, and invoice documents for AE Technology (hardware, software and services provided to Customer as listed on the documents). The first of the following acts constitutes an acceptance of Customer’s offer to purchase (“purchaser”) to the conditions of sale contained hereunder: (i) Customer’s issuance of a purchase order document against AE’s offer; or (ii) receipt and acknowledgement of Customer’s purchase order by AE; or (iii) commencement of any performance by AE pursuant to Customer’s order. Provisions contained in Customer’s purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not part of the Contract.

2. CANCELLATION. Customer may cancel orders subject to fair charges for AE’s expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Customer returns such goods to AE at Customer’s expense within 30 days of delivery and in the same condition as received. Customer may cancel service orders on ninety (90) day’s prior written notice and refunds will be prorated based on the duration of the service plan. Inspections and re-instatement fees may apply after cancellation or expiration. AE may charge a late fee of 1.5% per month or the maximum rate permitted by law, whichever is lower, for any part of the account that is delinquent. AE also reserves the right to deliver without liability if the order includes any Products that AE determines may not comply with export, safety, local certification, or other applicable compliance requirements.

3. DELIVERY. Delivery will be accomplished CPT Named Place (Incoterms 2010). Also Energy must be notified of any discrepancies between the packing list and actual shipment contents within 60 days following the receipt of shipment. Also Energy will not be responsible for replacement parts or shipping costs after the 60-day inspection period has expired. Legal title and risk of loss or damage pass to Customer upon transfer to the first carrier. AE will use commercially reasonable efforts to deliver the AE Technology ordered herein within thirty (30) days of confirmation by AE to the Purchaser as stated in the Purchase Order. Software Technology sold hereunder is licensed and not sold. Upon prior agreement with Customer and for an additional charge, AE will deliver the AE Technology on an expedited basis. Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

4. PRICES & ORDER SIZES. All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of AE Technology unless otherwise stated. Customer will either pay any and all such charges or provide AE with acceptable exemption certificates which obligation survives performance under this Contract. AE reserves the right to establish minimum order sizes and will advise Customer accordingly.

5. PAYMENTS. All payments must be made in U.S. dollars. Invoices for all other orders are due and payable NET 30 DAYS from date of the invoice without regard to delays for installation or transportation, or whether payment has been made. AE reserves the right to make adjustments to the invoice price for any changes in the cost of labor, materials, or components, or service fees that become applicable after the date of the invoice. AE invoices may be paid at any time up to midnight of the last day for which the Service was paid for as stated in the Purchase Order, unless so otherwise agreed to in writing.

6. SOFTWARE LICENSE. If a software component is included in Customer’s purchase document, AE hereby grants to Customer a limited, non-exclusive, transferable (upon prior written consent), non-sublicensable, non-assignable, revocable license to use the Software solely for the purposes of the Purchased Services and utilizing the Content, (ii) to use and display the Content for internal analysis and power plant optimization and commissioning only. AE hereby grants to Customer an irrevocable, non-exclusive right to sublicense the Software to its Users for internal business purposes. AE shall retain all title to, and ownership of, the Software.

7. INTELLECTUAL PROPERTY OWNERSHIP. Except for the express rights licensed or granted under this Agreement, AE alone shall own all right, title and interest, including all related Intellectual Property Rights, in and to the AE Technology and to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the AE Technology. This Agreement is not a sale of and does not convey to Customer any rights of ownership in or related to the AE Technology or any Intellectual Property Rights owned by AE. Customer hereby assigns, transfers and passes to AE all Intellectual Property Rights to the AE Technology or as a result of the services performed by AE; (ii) the misuse of the AE Technology by any of the Users or Customer itself; (iii) the use of any other hardware or software of Customer with the AE Technology; (iv) breach of this agreement by Customer or any of its Users; or (v) any breach or failure to materially perform any of the terms and conditions hereof.

8. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND OR INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR ANY OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM AND AGAINST Whose Claims are Alphabeticized under this provision is alleged to have been negligent, committed fraud, misrepresentation or willful misconduct. IN NO EVENT SHALL ANY OF THE PARTIES BE LIABLE TO ANYONE, AS A RESULT OF ANY BREACH OR INFRINGEMENT OR THREATENED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OF THE OTHER PARTY, INCLUDING ANY TRADE SECRETS OR PATENTS.

9. TERMINATION AND CANCELLATION. The term of each Contract shall commence on the earlier of the date of first data receipt, or 60 days after delivery of associated monitoring hardware, and shall expire on midnight of the last day for which the Service was paid for as stated in the Purchase Order, unless sooner terminated in accordance therewith or herewith.

10. LATE PAYMENTS. In addition to any other rights granted to AE herein, AE shall have the right to suspend or terminate this Agreement and Customer and Customer’s Users’ access to the Service if Customer’s account becomes delinquent (falls into arrears). Delinquent invoices (account becomes delinquent until delinquent payments are made); (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) recover all costs of collection including reasonable attorneys’ fees and all expenses of collection; and (f) determine whether it is reasonable to continue the business relationship and all decisions in this regard shall be final and binding upon the Customer. In addition, if any of the Customer’s obligations under this Agreement are compromised, AE determines may not comply with export, safety, local certification, or other applicable compliance requirements.

11. LIMITATION OF LIABILITY. AE’S TOTAL LIABILITY FOR ANY AND ALL LEGAL CLAIMS ARISING FROM THE INDEMNIFICATION PROVISIONS OR ANY OTHER PROVISION OF THE AGREEMENT OR ANY OTHER AGREEMENT WITH THE CUSTOMER WITHOUT LIMITATION AND EXCEPT IN REGARD TO INDEMNIFICATION, AE’S CUMULATIVE LIABILITY FOR ANY AND ALL LEGAL CLAIMS ARISING FROM THE AGREEMENT OR ANY OTHER AGREEMENT WITH THE CUSTOMER INCLUDING WITHOUT LIMITATION THE LIMITS OF LIABILITY SET FORTH ABOVE (TO THE EXTENT SUCH LIMITS OF LIABILITY APPLY), WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY, AND REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF MONEY PAID TO AE BY CUSTOMER (THE “AE Indemnities”), harmless from and against any claim, demand, lawsuit, cause of action or losses of any nature whatsoever, suffered or incurred by Customer or any of Customer’s Users, or any third party, as a result of or in any way connected with, this Agreement, the breach of this Agreement by Customer or any of Customer’s Users, or any act or omission of Customer or any of Customer’s Users.

12. INDEMNIFICATION. Customer shall indemnify, defend and hold AE and its officers, directors, employees, shareholders, agents, successors and assigns (each the “AE Indemnities”) harmless from and against any and all claims, damages, liabilities, expenses (including reasonable attorneys’ fees), losses, causes of action arising out of, or in connection with, (i) the improper or illegal use of any data obtained by, or procured from the AE Technology or as a result of the services performed by AE; (ii) the misuse of the AE Technology by any of the Users or Customer itself; (iii) the use of any other hardware or software of Customer with the AE Technology; (iv) breach of this agreement by Customer or any of its Users; or (v) any failure to materially perform any of the terms and conditions hereof.

13. LAW CONFLICTS AND EXPORT CONTROLS. AE Technology and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the United Kingdom, Switzerland and the European Union. Customer is responsible for ensuring that the software and technology sold hereunder is not for resale to any such country, except to the extent that such sales are specifically authorized in writing by the U.S. Department of Commerce. AE reserves the right to establish minimum order sizes and will advise Customer accordingly.

14. ASSIGNMENT; CHANGE IN CONTROL. A party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. However, in the event of a sale of all or substantially all of the assets to which this Agreement pertains (except for software licenses), then assignment to the purchaser is allowed with notice. No software license shall transfer without execution of a Master Services Agreement by the assignee/transferee.

15. APPLICABLE LAW AND DISPUTE RESOLUTION. The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Colorado, without regard to conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically provided herein, Customer and AE agree to submit any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of Colorado, U.S.A. if Customer has minimum contacts with Colorado and the U.S. (ii) elsewhere in the U.S. if Customer has minimum contacts with the U.S. but not Colorado, or (iii) in a neutral location if Customer does not have minimum contacts with the United States.

16. ENTIRE AGREEMENT & MODIFICATION. These Terms & Conditions of Sale constitute the entire agreement between the parties and supersedes any prior agreements or representations of any kind, whether oral or written. No change to or modification of these Terms & Conditions shall be binding upon AE unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of AE. AE rejects any additional or inconsistent Terms & Conditions of Sale offered by Customer at any time, and in no case shall Customer alter or modify these Terms & Conditions herein to change or modify AE’s acceptance of Customer’s order for the described goods and services.