

## **EXHIBIT 4**

# **NEXTEC TERMS AND CONDITIONS OF SALE**

### **1. CONTRACT AND ACCEPTANCE**

Any written purchase order received from Buyer by Nextec Energy, L.P., ("Nextec" or "Seller") shall be construed as a written acceptance of Seller's offer to sell and shall be filed in accordance with the terms and conditions of sale set forth herein. Seller's acceptance of this order is expressly conditioned on Buyer's assent to the terms contained herein. The terms and conditions of Seller's proposal (if any) and acknowledgment shall prevail over any conflicting or different terms in Buyer's order unless Buyer notifies Seller in writing of its objections thereto within five (5) days from receipt of Seller's acknowledgment of sale. The failure of Seller to object to any provision in conflict herewith, whether contained on Buyer's purchase order or otherwise, shall not be construed as a waiver of the provisions hereof nor as an acceptance thereof. The conditions of sale as specified herein supercede any prior oral or written agreement.

### **2. QUOTATIONS AND PRICES**

All quotations are made for prompt acceptance and any terms quoted therein are subject to change without notice after thirty (30) days from the date quoted unless specifically stated otherwise on the quotation. Any product, service capability or manufacturing capability, which may be available at the time a quotation is made, is subject to prior sale. Prices quoted are valid for thirty (30) days unless specifically stated otherwise on the quotation and are subject to change without notice. The price in effect at time of shipment including any escalation formula will apply, unless a valid quotation or written agreement to the contract exists between Buyer and Seller. All prices are shown in U.S. dollars and are F.O.B. Seller's shipping point. Seller reserves the right to place a service charge on past due accounts at the highest rate permitted by law. Any documentation pertaining to traceability requirements for raw materials or products or documentation required for any routine or special processes must be identified by the Buyer at the time of quotation (if any) or at the time of order placement.

### **3. TAXES**

Any tax or other charge imposed by law on the sale or production of goods or the performance of services shall be paid by the Buyer, if a law specifically provides that such payment must be paid by the Seller. Buyer shall reimburse Seller for such payment as part of the purchase price. Custom duties, consular fees, insurance and other comparable charges will be borne by the Buyer.

### **4. SHIPPING SCHEDULES AND DELIVERY**

Shipment schedules are given as accurately as conditions permit and every effort will be made to make shipments as scheduled. Seller will not be responsible for deviations in meeting shipping schedules nor for any losses or damages to Buyer (or any third party) occasioned by deviations in the shipping schedule, whether due to Acts of God, differences with workmen, local labor shortages, fire, flood, shortages or failure of raw materials, supplies, fuel, power or transportation, breakdown of equipment or any other causes beyond Seller's reasonable control. Seller shall have additional time within which to perform as may be necessary under the circumstances and shall have the right to apportion its production among its customers in such a manner as it may consider to be equitable. In no event shall Seller be liable for any consequential damages resulting from failure or delay in shipment (see paragraph 8) If Buyer requires drawings, procedures, standards or similar material for approval, shipping schedules will be calculated from the time such approvals are received by Seller. Any hold points, witness points or the need for inspection by Buyer's representatives must be identified by Buyer at the time of quotation (if any) and/or order placement in order that the effect on the prices or shipment schedules can be taken into account. Additional inspection or testing required by Buyer, which affects normal production sequence, will be considered as extending shipping dates accordingly.

### **5. MINIMUM BILLING**

Seller reserves the right to impose a minimum billing charge on all sales, change orders or order supplements.

### **6. TERMS OF PAYMENT**

The following sums are due from Buyer to Seller- 1) at the time of placement of an order the sum of a) 50% of the invoiced amount of products manufactured by Nextec, plus, b) 100% of the invoiced amount of other products not produced by Nextec (e.g. batteries, transformers, shelters, air conditioning or heating units), and 2) the balance of the remanding total invoice amount shall be due upon sending the product for shipping and acceptance by Buyer. A charge of 1-1/2% per month, or pro rata part thereof, or the maximum rate allowed at law, whichever is less, will be charged on past due accounts. Buyer shall be responsible for and pay reasonable attorney's fees and other collection costs incurred to collect any past due account. Seller reserves the right to sell on a cash basis at any time.

### **7. CANCELLATION AND RETURNS**

All purchase orders will be considered to be final and binding if not cancelled or modified within 72 hours of its receipt by Seller. Cancellations thereafter may be subject to a cancellation charge (minimum 10% of order). All returns will be accepted at the discretion of Seller and will be subject to a restocking charge of at least 20% of the actual purchase price. All special orders will be

considered non-returnable. No goods may be returned for credit or adjustment without prior written permission from Seller's office authorized to issue such permission.

### **8. WARRANTIES**

Nextec warrants all items of equipment manufactured by it (the "Product") and only items manufactured by it and not other items, regardless of whether such other items were furnished by Nextec, as follows:

#### **Coverage**

For a period of one (1) year (the "Term") commencing on the date of the completion of the delivery of the Product: 1) Nextec will replace, at no charge, any component, part or sub-component that fails during the Term; provided that, unless otherwise authorized in writing by Nextec, any such replacement shall only be undertaken by authorized personnel of Nextec. 2) For the first ninety (90) days of the Term, Nextec will, at no charge, provide any and all maintenance and repair work deemed necessary by Nextec, in its sole discretion, provided that, with respect to any such maintenance and repair work outside the borders of the United States of America, customer shall pay the travel and housing expenses related to sending authorized Nextec personnel from its headquarters in Houston, Texas, U.S.A. to customer's installation site. 3) For the period commencing on the ninety first (91<sup>st</sup>) day of the Term until its termination, Nextec will provide any and all maintenance and repair work deemed necessary by Nextec, in its sole discretion, at a cost of fifty dollars (\$50) per hour plus travel expenses related to sending Nextec personnel from its headquarters in Houston, Texas, U.S.A. to customer's installation site.

#### **Exclusions**

Notwithstanding anything elsewhere in this Warranty, this Warranty shall not cover the following: 1) Any Product or part, component or subcomponent thereof if any part of the Product has been tampered with or altered after the completion of installation, 2) Any damage caused by lighting or other electric discharges, 3) Any improper usage of the Product or usage in a manner other than intended and 4) Any floods, natural catastrophes and other acts of God.

#### **Disclaimer of Consequential Damages**

**THE SELLER IS NOT LIABLE TO BUYER, AND BUYER HEREBY WAIVES FOR ITSELF, ITS AFFILIATES AND ASSIGNS ALL LIABILITY FOR CONSEQUENTIAL DAMAGES WHETHER CLAIMED BY ANY PERSON OR ENTITY ON THE BASIS OF SELLERS ALLEGED BREACH OF ANY LEGAL DUTY, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, PRODUCTS LIABILITY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHATSOEVER, INCLUDING, WITHOUT LIMITATION DAMAGES TO OR LOSS OF THE USE OF PROPERTY OR EQUIPMENT NOT PART OF THE PRODUCT, CLAIMS FOR INJURY OR DEATH TO ANY PERSON ARISING FROM SELLER'S ALLEGED BREACH OF A LEGAL DUTY, CLAIMS FOR DELAY OR DELAY DAMAGES, LOSS OF USE FINES, PENALTIES, LIQUIDATED DAMAGES, LOSS OF BUSINESS OPPORTUNITY, LOSS OF PRODUCT, LOSS OF PROFITS OR REVENUE, COST OF REPAIRS OR MITIGATION, CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES ARISING THEREFROM AND ALL COST, AND ATTORNEY FEES OF DEFENDING ANY OF THE FORGOING.**

**THE EXCLUSIVE REMEDY FOR THE CUSTOMER UNDER THIS WARRANTY SHALL BE REPLACEMENT OF THE PRODUCT OR COMPONENTS THEREOF AND REPAIR AS SET FORTH HEREIN ABOVE. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THIS PRODUCT IS LIMITED IN DURATION TO THE DURATION SET FORTH HEREIN.** Seller's warranty liability, including defects caused by Seller's negligence, shall be limited to such repair, replacement or refund, and shall not include claims for labor costs, expenses of Buyer resulting from such defects, recovery under general tort law or strict liability or from damages resulting from delays, loss of use, or other direct, indirect, incidental or consequential damages of any kind. Seller will not be responsible for failures of products which have been in any way tampered with or altered by anyone other than an authorized representative of Seller, failures due to lack of compliance with recommended maintenance procedures, or products which have been repaired or altered in such a way (in Seller's sole judgment) as to affect the products adversely. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, WHICH EXCEEDED THE FORGOING WARRANTY.**

#### **9. SELLER'S RIGHT TO MANUFACTURE**

Seller in its sole discretion shall have the right to manufacture the products hereunder as far in advance of its estimated shipping schedule as it deems appropriate. Seller expressly reserves the right to change or modify the design and construction of any product in due course of Seller's manufacturing

procedure, without incurring any obligation or liability to furnish or install such changes, modifications or improvements to products previously or subsequently sold.

**10. ENGINEERING AND SERVICE**

Upon request, Seller will provide engineering and/or technical information regarding its products and their uses and, if feasible, will provide personnel to assist Buyer in effecting field installations and/or field service. Any such information, service or assistance so provided, whether with or without charge, shall be advisory only. In that regard, Seller assumes its liability for the acts or omissions of their advisory services.

**11. LABOR STANDARDS**

Seller hereby certifies that these products were produced in accordance with all applicable requirements of the Fair Labor Standards Act.

**12. INSPECTION**

Unless otherwise agreed in writing, final inspection and acceptance of product must be made at Seller's plant or other shipping or receiving point designated by Seller and shall be conclusive. Buyer's representatives may inspect at the Seller's plant or shipping point during working hours prior to shipment in such a manner as will not interfere with operations.

**13. TITLE**

Title to the product sold hereunder passes to the Buyer upon payment of the full purchase price.

**14. PROPRIETARY INFORMATION / NONDISCLOSURE.**

Buyer acknowledges that the product sold to it by Seller is the proprietary technology of Nextec & Ortronic Technology, S.L. of Spain. Notwithstanding the transfer of title to the equipment being sold to Buyer as set forth hereunder, Buyer agrees to not provide any party access to the equipment for the purposes of reverse engineering or experimental testing of the equipment. Any attempt to reverse engineer all or any component of the equipment could cause irreparable harm to Seller and would entitle Seller to injunctive relief in addition to damages to prevent same. Buyer shall use its best efforts to protect the proprietary nature of the equipment and the technology involved therein and shall promptly notify Seller of any unauthorized attempts to test or reverse engineer any parts of the equipment.

**15. TRANSPORTATION CHARGES, ALLOWANCES, CLAIMS**

All prices are F.O.B. Seller's plant or other designated shipping point. No freight is allowed unless stated in Seller's quotation or a written contract states that all or a portion of freight is allowed. If the quoted or contractual price includes transportation, Seller reserves the right to designate the common carrier and to ship in the manner it deems most economical. Seller endeavors to pack or prepare all shipments so that they will not break, rust or deteriorate in transit, but does not guarantee against such damage.

Any claims for shipping loss, breakage or damage (obvious or concealed) are Buyer's responsibility and should be made to the carrier.

**16. CONSULAR NOTICES**

Consular fees for legalizing invoices, stamping bills of lading, or other documents required by the laws of any country or destination, are not included in quotations or selling prices. If instructed in writing, Seller will make arrangements for consular documents and declarations as agent of Buyer, but Seller assumes no liability whatsoever as a result of making such arrangements. Seller assumes no responsibility for any fines or other charges imposed due to errors or incorrect declarations.

**17. MODIFICATION, RECISSION & WAIVER**

The terms herein may not be modified or rescinded nor any of its provisions waived unless such modification, recession or waiver is in writing and signed by an authorized employee of seller at its office in Houston, Texas. Failure of Seller to insist in any one or more instance upon the performance of any of the terms and conditions of the contract or the failure of the Seller to exercise its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right hereunder and shall not effect Seller's right to insist upon strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.

**18. CHOICE OF LAW, JURISDICTION AND VENUE**

This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Texas, without giving effect to principles of conflicts of law. Any dispute arising from or relating to this Agreement shall be subject to the exclusive jurisdiction of the federal or state courts sitting in Harris County, State of Texas.