

FilterWare EPA Reporting Software Warranty

GENERAL. This warranty is a supplement to FilterSense's standard terms and conditions of sale and pertains to FilterWare EPA Reporting Software.

FilterWare EPA Reporting provide reports compliant to the CFR (Code of Federal Regulations) for the process and the process variable monitoring that has been ordered as part of the FilterWare package. The FilterWare Reports summarize raw data into the required EPA format and schedule for printing or electronic file storage.

It is the customers' responsibility to ensure that all equipment including instruments, controls and sensors are always operating properly and that the PC and all required software applications are always running and functioning properly so the FilterWare software can data log the necessary data and can generate the reports properly. Warranty and support for FilterSense instruments, sensors and controls including onsite calibration and compliance testing support is independent and must be purchased separately with each such product.

EPA Reports are warranted to be compliant with the CFR for a period of 3 months from ship date after having received and reviewed the customers' regulation in writing. Federal site specific additions and updates or local regulatory modifications and updates are not including in the base price or warranty unless the additions were specified and purchased at order. In order for this warranty to be in effect on-site compliance reporting consultation and startup must also be purchased. This warranty includes reasonably unlimited telephone support including discussions with regulatory authorities and consultants.

At additional cost this warranty can be extended for an additional period of 9 months. The extended warranty includes basic reporting updates and revision as required by the regulation. General customer customization and update requests are not included. Updates due to major changes in EPA regulations are not included.

PRICES AND SPECIFICATIONS. Prices quoted are based upon design, development or manufacture of the quantity and type of goods ordered and are subject to revision when interruptions, or any changes are caused by Buyer. Clerical errors made by the Company are subject to correction. The Company may, without affecting the obligations of the parties, make changes in the specifications and catalog prices of goods without notice.

DELIVERY. The scheduled shipping or delivery date represents the best estimate by the Company of the time the order will be shipped. The Company assumes no liability for loss, EPA fines, damage, or incidental or consequential damages due to delays.

SHIPMENTS. All shipments are F.O.B. place of design, development or manufacture or warehouse. Goods will be packaged as the Company deems proper. The manner and carrier of shipment will be the Company's standard. All claims for damage must be initiated by the Buyer. After having made delivery in good order to the carrier, the Company is not responsible for delay or damage but will assist in dealing with the carrier for a claim.

TERMS OF PAYMENT. Terms of payment are NET 30 days from the date of shipment, unless otherwise agreed to the contrary in writing by an authorized employee of the Company. Payment is due with partial shipments. Where Buyer is responsible for any delay in shipment, the date of completion of goods may be treated as the date of shipment for the purpose of payment. Buyer agrees to pay interest on any past due amount at 18% per annum (or the maximum permitted by law) until paid in full. Buyer agrees to pay all Company costs, including attorney fees, to enforce any obligation of Buyer hereunder. Except with respect to the rights of the Company as set forth herein, each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly.

FREIGHT, INSURANCE AND TAXES. Federal, state or local excise, sales or use taxes shall be paid by Buyer or an exemption certificate must be provided. Shipping, handling and insurance are not included in the price and will be added. Additional charges for international shipments or special packaging/handling may also be added.

CANCELLATION AND DEFERRED DELIVERIES. FilterWare reports are custom. Orders may not be cancelled.

ENGINEERING SERVICES. Buyer is responsible for installation and start-up of the Goods, and shall pay all related expenses. Company at its option may provide on-site consultation in connection with or subsequent to the installation or start-up of the Goods if Buyer so desires, and Buyer shall pay all related expenses incurred by Company, including but not limited to traveling and living expenses of Company's personnel, as well as a fee for days on-site by Company's personnel in connection therewith, based on Company's normal daily rates. In the event Company furnishes any installation support services, Buyer shall timely comply with all applicable specifications for installation and wiring up to and throughout the entire installation until completion. Buyer shall be responsible to pay Company for all additional travel expenses and time spent waiting for Buyer to complete installation and wiring. Buyer shall pay Company overtime rates should Company personnel be required to work overtime or after normal hours as a result of delays caused by Buyer.

CONFIDENTIAL INFORMATION. Buyer acknowledges that Company has a proprietary interest in all information, data, designs, specifications and memoranda relating to the Goods and any processes and methods with respect to the operation and marketing thereof (collectively "Information"), that the Information is a unique and valuable business asset of Company, and that Company would be seriously and irreparably harmed by wrongful disclosure or other misuse. Buyer agrees not to use any of the Information for any purpose other than the operation of the Goods, not to copy any of the Information or disclose any part thereof to any person or entity other

than its employees (to the extent required), and to return all Information in its possession upon request. Buyer agrees to use care to insure that its employees, contractors and suppliers do not disclose Information to any other person or entity.

LIMITATION OF AUTHORITY OF SALES REPRESENTATIVES. Sales representatives are not employees or agents of the Company, and have no authority to enter into agreements on behalf of the Company. No agreement, contract, promise, affirmation, description or representation shall be binding upon the Company unless made in writing by an authorized employee of the Company.

RETURNS. No returns for design modification, software update, calibration, checkout or repair will be accepted without a return authorization number provided by an authorized employee. Transportation and insurance charges must be prepaid and the Company's established return procedures must be followed. Authorization to return goods in no way implies warranty coverage. Charges for design modification, software update, repair or calibration, restocking and return freight may apply.

WARRANTY PERIOD. The Warranty Period shall commence on the date of shipment. This warranty shall apply only if (i) Buyer discovers the claimed defect within the Warranty Period; (ii) Buyer notifies the Company in writing of the claimed defect within 20 days of discovery; and (iii) Buyer provides the option for the Company to inspect the installation of the Goods claimed to be defective. This warranty shall not apply to Goods that have not been operated and maintained in accordance with operating instructions and specifications or that have been neglected, accidentally damaged, or to Goods with defects attributable in any way to installation, modification or repair made by any party other than Company; nor shall this warranty apply if (i) Buyer or a third party modifies or repairs the Goods without Company's prior written approval; or (ii) after discovery of a defect, Buyer fails to take prompt and reasonable steps to prevent the defect from becoming more serious. Further, this warranty shall not apply to Goods manufactured by a party other than Company and resold by Company except to the extent that any such third party has warranted such to Company and is liable to Company under such warranty. In the event Buyer complies in full with all of its obligations under this Order, including but not limited to payment in full in respect of the Goods, and the conditions of this paragraph are satisfied, Company shall correct any material defect either by (i) supplying F.O.B. Company's plant a replacement or (ii) repairing any defect. If in Company's judgment repair or replacement would be commercially impracticable, Company may issue Buyer a refund or credit in the amount of the purchase price of the defective Goods. The foregoing warranty is exclusive and made only to Buyer. DETERMINATION OF WARRANTY IS AT THE SOLE DISCRETION OF THE COMPANY. COMPANY MAKES NO OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED. No person is authorized to give any additional warranties on Company's behalf or to assume for Company any other liability in connection herewith, except in writing signed by an authorized officer of Company. For purposes of this paragraph, "Goods" shall specifically include any and all parts thereof.

WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY, THE COMPANY MAKES NO EXPRESS, IMPLIED OR STATUTORY WARRANTIES (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION) WITH RESPECT TO ANY GOODS OR SERVICES SOLD BY COMPANY. COMPANY DISCLAIMS ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR TRADE USAGE, AND ANY BUYER OF GOODS OR SERVICES FROM COMPANY ACKNOWLEDGES THAT THERE ARE NO WARRANTIES IMPLIED BY CUSTOM OR USAGE IN THE TRADES OF THE BUYER AND OF THE COMPANY, AND THAT PRIOR DEALINGS OF BUYER WITH THE COMPANY DO NOT IMPLY COMPANY WARRANTS THE GOODS OR SERVICES IN ANY WAY.

ANY BUYER OF GOODS OR SERVICES FROM THE COMPANY AGREES WITH THE COMPANY THAT THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY WARRANTY CONCERNING THE GOODS OR SERVICES WHETHER BASED UPON CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, AND WHETHER FOR COMMERCIAL LOSS, EPA FINES, PERSONAL INJURY OR OTHER MONETARY LOSS, SHALL BE AT COMPANY'S OPTION, TO REPAIR OR REPLACE THE GOODS OR SERVICES OR REFUND THE PURCHASE PRICE. **THE COMPANY SHALL IN NO EVENT BE LIABLE FOR EXPENSE FOR EPA FINES, LOST OPERATING PROFITS, REMOVAL, REINSTALLATION OR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES EVEN IF THE COMPANY FAILS IN ANY ATTEMPT TO REMEDY DEFECTS IN THE GOODS AND SERVICES, BUT IN SUCH CASE THE BUYER SHALL BE ENTITLED TO NO MORE THAN A REFUND OF ALL MONIES PAID TO THE COMPANY BY THE BUYER FOR PURCHASE OF ALL GOODS OR SERVICES.** ANY CAUSE OF ACTION FOR BREACH OF ANY WARRANTY BY THE COMPANY SHALL BE BARRED UNLESS THE COMPANY RECEIVES FROM THE BUYER A WRITTEN NOTICE OF THE ALLEGED DEFECT OR BREACH WITHIN 20 DAYS FROM THE EARLIEST DATE ON WHICH THE BUYER COULD REASONABLY HAVE DISCOVERED THE ALLEGED DEFECT OR BREACH, AND NO ACTION FOR THE BREACH OF ANY WARRANTY SHALL BE COMMENCED BY THE BUYER LATER THAN TWELVE MONTHS FROM THE EARLIEST DATE ON WHICH THE BUYER COULD REASONABLY HAVE DISCOVERED THE ALLEGED DEFECT OR BREACH. For purposes of this paragraph, "Goods" shall specifically include any and all parts thereof.

GOVERNING LAW. Any agreement between the Company and Buyer shall be deemed to be made and entered into the State of Massachusetts and shall be interpreted in accordance with the laws of that state. The Company and Buyer consent to the jurisdiction of the courts of Essex County Massachusetts for adjudication of any dispute relating to or arising out of the sale or the agreement of the parties, and agree that said courts shall be the exclusive forum for adjudication of any such dispute.