

## **PERFORMANCE WARRANTY**

### **PERFORMANCE LEVELS GUARANTY OF EQUIPMENT WHEN TESTED FOR ACCEPTANCE, AND THE TESTS AND PROCEDURES FOR FINAL ACCEPTANCE**

GUARANTY: SUBJECT TO THE GENERAL CONDITIONS AND LIMITATIONS SET FORTH IN THE CONTRACT DOCUMENTS. VERANTIS ("VERANTIS") GUARANTEES THAT THE RESPECTIVE ITEMS OF EQUIPMENT DESCRIBED IN THIS PROPOSAL AND QUOTATION WILL PERFORM AT THE APPLICABLE PERFORMANCE LEVELS SPECIFIED IN SECTION C BELOW WHEN TESTED FOR FINAL ACCEPTANCE BY A MUTUALLY SATISFACTORY INDEPENDENT TESTING LABORATORY IN ACCORDANCE WITH THE ACCEPTANCE TESTS AND PROCEDURES SPECIFIED IN SECTION D BELOW; AND FINAL ACCEPTANCE OF THE EQUIPMENT, AS WELL AS PAYMENT OF THE FINAL INSTALLMENT OF THE SALE PRICE BY THE BUYER (AS SPECIFIED IN THE COMMERCIAL SECTION OF THE CONTRACT), ARE EXPRESSLY CONDITIONED UPON THE EQUIPMENT MEETING SUCH PERFORMANCE LEVELS WHEN SO TESTED. NOTE THAT ANY CLIENT REQUESTED FIELD SERVICE PRESENCE DURING / SUPPORTING TESTING ACTIVITIES IS CURRENTLY QUOTED ON A PER DIEM BASIS PER OUR ATTACHED RATE SHEET.

#### **A. GENERAL CONDITIONS**

1. Buyer shall give Verantis at least thirty (30) days prior written notice of the date when the Equipment will be ready for final acceptance testing and of the location for such testing. If the Equipment is not tested for acceptance within the shorter of the following periods of time through no fault of Verantis, then the portion of the sale price of the Equipment or Services which is otherwise due upon completion of acceptance testing will immediately become due and payable, notwithstanding the fact that the Equipment has not been tested: (i) within 45 days after the date that the Equipment is ready for commencement of initial operation by Buyer or (ii) within 90 days after the date of delivery or tender of the Equipment to Buyer. Although payment of the balance of the sale price becomes due as a result of the failure to test Equipment for acceptance within the foregoing time periods, Verantis guarantees that, subject to the conditions and limitations hereinafter set forth, when the Equipment is ultimately tested in accordance with the Acceptance Tests and Procedures set forth in Section D below, the Equipment will perform at the applicable Performance Levels specified in Section C below.
2. Prior to the commencement of acceptance testing, Verantis may inspect the Equipment at any reasonable time. If the Equipment has been damaged after the transfer and passage of the risk of loss and damage from Verantis to Buyer at the designated F.O.B. place of delivery (as specified in the Contract), or misinstalled by Buyer or by its employees, agents or contractors, then Buyer shall, at its expense, restore the Equipment to operating condition satisfactory to Verantis prior to beginning acceptance testing. Similarly, if the Equipment has been operated by Buyer prior to the commencement of acceptance testing, then Buyer shall, at its expense, restore the Equipment to operating condition satisfactory to Verantis prior to beginning acceptance testing.
3. Final acceptance testing will be conducted by an independent testing laboratory, mutually acceptable to Buyer and Verantis. The initial battery of tests will be conducted at Buyer's expense; including, but not limited to, all fees and charges of the independent testing laboratory, as well as payment for the services, if requested, of Verantis's engineers at Verantis's then current per diem rate for such personnel, plus all reasonable travel expenses, together with all reasonable living expenses while away from the base location. If the Equipment performs at the applicable Performance Levels, as measured by such initial battery of tests, then Buyer will be deemed to have finally accepted the Equipment, and within ten (10) days after official test results are made available by the independent testing laboratory Buyer shall pay to Verantis the entire balance of the sale price of the Equipment then owing. If the Equipment fails to meet the applicable Performance Levels for reasons which are not the fault of Buyer, Verantis shall make whatever changes are required to the Equipment and then, at its expense, cause the independent laboratory to conduct additional tests to determine if the Equipment is acceptable as meeting the applicable Performance Levels. However, if the failure of the Equipment to perform at the applicable Performance Levels occurs in whole or in part by reason of the fault of Buyer, or its employees, agents or contractors, Buyer shall bear the expense of such additional tests.
4. Prior to the independent testing laboratory's commencement of acceptance testing, Buyer shall fully cooperate with Verantis in conducting such preliminary tests as Verantis's engineers deem appropriate. Verantis and its engineers are to have access at all times to all records, reports, results and other information relative to all preliminary tests conducted, as well as to all acceptance tests conducted by the independent testing laboratory. Immediately after completion of the acceptance tests conducted by the independent testing laboratory, the Buyer shall cause the independent testing laboratory to transmit a certified, unedited copy of the test reports and results to Verantis.
5. No later than ten (10) days after the results of the acceptance tests are reported to Buyer by the independent testing laboratory, Buyer shall notify Verantis in writing if Buyer refuses finally to accept any of the Equipment because of its failure to meet the

applicable Performance Levels. In such notice, Buyer shall identify the specific performance requirement which such Equipment has failed to meet. If Buyer does not give Verantis such written notice within such time period, all of the Equipment is to be deemed to have been finally accepted by Buyer, and within ten (10) days thereafter Buyer shall pay to Verantis the entire balance of the sale price of the Equipment then owing. If Buyer does timely give Verantis such written notice, then Verantis may operate the Equipment with personnel of its own choosing in order to determine the cause of such nonconformity and may proceed to correct any deficiencies in the Equipment or direct the supplier of the equipment to correct any deficiencies which may exist. Upon Verantis's request, Buyer shall promptly make such Equipment available for inspection, repair or modification by Verantis.

## **B. LIMITATIONS RESPECTING VERANTIS'S OBLIGATIONS**

1. The applicable Performance Levels are based upon information and data furnished to Verantis by Buyer concerning the operating conditions under which the Equipment is required to perform. If the actual operating conditions are materially different, then Verantis will not be responsible for the failure of the Equipment to perform at the applicable Performance Levels. In such event, Verantis will automatically be released and discharged from its performance guaranty obligations hereunder, and Buyer shall thereupon immediately pay to Verantis the entire balance of the sale price of the Equipment then owing.
2. After the transfer and passage of the risk of loss and damage respecting the Equipment from the Verantis to the Buyer at the designated F.O.B. place of delivery (as specified in the Contract), if the Equipment is lost or destroyed or so materially damaged that it cannot be restored to operating condition satisfactory to Verantis, then Verantis will not be responsible for the failure of the Equipment to perform at the applicable Performance Levels. In such event, Verantis will automatically be discharged and released from its performance guaranty obligations hereunder, and Buyer shall thereupon immediately pay to Verantis the entire balance of the sale price of the Equipment then owing.
3. IF ANY OF THE EQUIPMENT FAILS TO PERFORM AT THE APPLICABLE PERFORMANCE LEVELS WHEN TESTED FOR ACCEPTANCE BY THE INDEPENDENT TESTING LABORATORY IN ACCORDANCE WITH THE APPLICABLE ACCEPTANCE TESTS AND PROCEDURES, VERANTIS'S OBLIGATION HEREUNDER IS LIMITED AND WILL BE FULLY DISCHARGED BY VERANTIS'S MAKING ANY CHANGES OR ADDITIONS NECESSARY TO ENABLE THE EQUIPMENT TO MEET SUCH PERFORMANCE LEVELS OR, AT VERANTIS' OPTION, BY VERANTIS'S MAKING FAIR AND REASONABLE ADJUSTMENTS IN THE SALE PRICE OF THE EQUIPMENT OR THE COST OF THE SERVICES. VERANTIS WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE ARISING IN CONNECTION WITH THE EQUIPMENT, OR IN CONNECTION WITH VERANTIS'S PERFORMANCE OR BREACH OF ITS OBLIGATIONS HEREUNDER, REGARDLESS OF WHETHER BASED IN CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, PLANT DOWN-TIME, LOSS OF USE OF THE EQUIPMENT AND CLAIMS, SUITS AND DAMAGES OF THIRD PERSONS, EXCEPT FOR U.S. PATENT INFRINGEMENT CLAIMS. IN NO EVENT WILL VERANTIS'S LIABILITY FOR PERFORMANCE OR BREACH OF ANY OF ITS OBLIGATIONS HEREUNDER EXCEED THE AMOUNT OF THE SALE PRICE THERETOFORE PAID BY BUYER TO VERANTIS.

## **C. PERFORMANCE LEVELS**

The respective Performance Levels applicable to the Equipment when tested for acceptance by the independent testing laboratory are as follows:

- Contingent on feed gas conforming to the documented design conditions and operation pursuant to that described in the operation and maintenance manual, the proposed system is guaranteed to perform as required by specification.
- Achieve efficiency percentages and outlet H<sub>2</sub>S concentration as indicated in the Design Basis, Table II, and the indicated design loadings.

## **D. ACCEPTANCE TESTS**

The equipment is to be tested for acceptance by the independent testing laboratory in accordance with the following Acceptance Tests and Procedures:

- U.S. EPA standard methods for measurement of all noted contaminants.
- Testing is to be carried out in accordance with U.S. EPA testing protocols and shall include simultaneous measurement of inlet and discharge side gas streams.