



Standard Terms & Conditions for Sale of Goods

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I. DEFINITIONS

In this document the following words shall have the following meanings:

1. "Buyer" means the person or organisation buying the goods.
2. "Goods" means burner components and systems;
3. "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
4. "Seller" ~~means the entity providing Products or performing Services under the Contract, means Innovative Thermal Systems, 396 Henry Street, Brantford, Ontario, N3S 7W1, Canada~~

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II. GENERAL

1. These Terms and Conditions shall apply to sales of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
2. Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by both parties.

III. PRICE AND PAYMENT

1. The price shall be the Quoted Price, unless otherwise agreed in writing between the parties. The price is exclusive of taxes or any other applicable costs.
2. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller.
3. Where credit is offered payment of the price and taxes and any other applicable costs shall be due within 30 days of the date of the invoice supplied by the Seller, unless otherwise agreed in writing. In cases where credit is not offered, payment will be required before release of goods by the Seller.
4. ~~Buyer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within thirty (30) days from the invoice date. For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less. The Seller shall be entitled to charge~~

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~~interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2 per cent per annum above the base rate of the National Bank of Canada~~

5. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
 1. require payment in advance of delivery in relation to any Goods not previously delivered;
 2. refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

IV. SAMPLE

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

V. DELIVERY

1. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Terms are FOB Brantford, Ontario ~~or FOB Warren, Michigan, at Seller's discretion.~~
2. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
3. Any damages, shortages, over deliveries and duplicated orders should be reported to the Seller within 14 days of signed receipt.
4. Blanket order based on quantity agreed to must be completed within one year of order date.

VI. CANCELLATION, MODIFICATION OR ALTERATION

1. Due to the costs associated with the raw materials used in these products, and that these are custom made products a cancellation charge of 100% of the sale contract will be issued to the Buyer.
2. Modifications or alterations must be authorized by a representative of the Seller before the change can take place.

VII. RISK

Risk in the Goods shall pass to the Buyer upon receipt of the goods. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

VIII. TITLE

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

IX. RETURN OF GOODS

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1. All goods are sold on a firm sale basis, i.e. the Seller will not take back any goods not required or sold by the Buyer, unless otherwise agreed, in which case the following terms apply.
2. Any returns must be authorised by a representative of the Seller before any consideration for credit.
3. Buyer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. The Seller will not be obliged to accept any goods that are damaged in any way.
4. Credit of amounts due must meet Seller's Warranty Policy.....see Warranty Agreement Policy iID-002.

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XI.X. LIMITATION OF LIABILITY

1. Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

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XII.XI. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

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XIII.XII. FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

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XIV.XIII. RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

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XV.XIV. ASSIGNMENT AND SUB-CONTRACTING

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

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XVI.XV. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

~~XVII~~.XVI. SEVERABILITY

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

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~~XVIII~~.XVII. GOVERNING LAW AND JURISDICTION

~~This Contract shall be governed by and construed in accordance with the laws of (i) the State of Michigan if Buyer's place of business is in the U.S. or (ii) Canada if the Buyer's place of business is outside the U.S., in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction (the "Governing Law"). If the Contract includes the sale of Products and the Buyer is outside the Seller's country, the United Nations Convention on Contracts for the International Sale of Goods shall apply. This Agreement shall be governed by and construed in accordance with the laws of Ontario and the parties hereby submit to the exclusive jurisdiction of the Canadian courts.~~

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