

TERMS AND CONDITIONS OF INDUCTOHEAT INC. (SELLER)

EXCLUSIVE AND ENTIRE: The Following Standard Conditions are intended by the parties to govern all the purchases of equipment, parts or service from Seller, and together with the specifications provided or embodied herewith, represent the entire understanding of the parties without exception. All other terms and conditions are specifically rejected, and by proceeding with the transaction in any manner, both Seller and Purchaser agree that these Terms and Conditions shall control. The price charged by Seller is based on these Terms and Conditions.

TERMS: Unless otherwise stated, net 30 days. A "late payment" in the form of interest at the rate of 2% per month or a service charge of like amount will be levied on all late payments (the type of charge being consistent with the applicable local law). Invoices will be submitted when the equipment, part, service is supplied. Attention to these terms will eliminate delays in starting up any equipment or providing further service or parts.

NOTE: Terms pending credit approval.

TAXES: The quoted prices do not include state or local sales, duties, use, excise or similar taxes. To avoid any inconvenience, please supply us with one of the following documents:

1. A tax exemption certificate from your state or
2. A statement on your order or letterhead that your firm will pay the appropriate state use tax in accordance with the current tax laws of your state.

Unless we are provided with one of these documents, any such taxes imposed upon Seller will be added to our invoice by a separate item.

TERMINATION: In the event that this purchase is terminated for any reason, including Purchaser's failure to make partial payments as specified, Seller will make a reasonable effort to minimize the damages payable by Purchaser. However, Purchaser shall be liable for all expenses, overheads and allowance of a reasonable profit on work performed up to the date of termination. Purchaser agrees to pay Seller's invoice in accordance with invoice terms.

WARRANTY: Seller warrants that the equipment supplied shall conform to the description in the quotation. In the event that any parts, excepting expendable items such as, but not limited to, coils, part touch tooling, coil liners, thermocouples, refractories and other similar consumable items, that fail due to defects in material or workmanship within the first twelve (12) months of startup of equipment or eighteen (18) months after shipment, whichever occurs first, or in the case of field service, repairs, or replacement parts, within ninety (90) days of supplying such field service, repair or part, Seller shall at its option, repair or replace EXW (Ex works), such defective part or parts. If the equipment, service, repair or replacement part included software, Seller warrants, for a period of twelve (12) months of startup or eighteen (18) months after shipment, whichever occurs first, that the software supplied or serviced will meet its published functional specifications. Should software fail to meet the specifications, or be otherwise defective, Seller shall promptly correct errors or non-conformities. If correction is not possible, Seller shall replace defective software, or, at Seller's option, refund the purchase price paid for such software. The warranty obligations of Seller with respect to equipment not manufactured by Seller shall conform to and be limited to the warranty actually extended to Seller by its suppliers. Notice of a claim for alleged defective equipment must be given within fifteen (15) days after Purchaser learns of the defect. The defective part or parts shall be returned to seller, freight prepaid, unless otherwise directed by seller. This warranty shall be exclusive and in lieu of any other warranties and seller makes no warranty of merchantability or warranties of any other kind express or implied, including any implied warranty of fitness for a particular purpose which extend beyond the warranty as set forth above. Seller's liability for any and all losses and damages to purchaser resulting from defective parts of equipment shall in no event exceed the cost of repair or replacement, EXW of defective parts or equipment. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER.

PATENTS: Seller agrees to indemnify Purchaser against any proven claim and assessed liability for infringement of any United States patent arising from the manufacture or sale of any apparatus furnished by Seller to Purchaser. THE FOREGOING STATES SELLER'S ENTIRE LIABILITY FOR CLAIMS OR PATENT INFRINGEMENT. Seller shall have no liability whatsoever if the claim of infringement arises out of Seller's compliance with Purchaser's specifications. Seller shall have no liability whatsoever if a claim of infringement is based upon the Purchaser's use of the equipment as part of a patented combination where the other elements of the combination are not supplied by Seller, or in the practice of a patented process. Where the specifications, process, design are supplied by Purchaser, then Purchaser agrees to indemnify Seller in like manner.

LIMITATION OF LIABILITY: SELLER'S TOTAL AGGREGATE LIABILITY (ARISING OUT OF OR IN CONNECTION WITH BUT NOT LIMITED TO ANY BREACH OF CONTRACT, NEGLIGENCE, TORT, LIQUIDATED DAMAGES, SPECIFIC PERFORMANCE, TERMINATION, CANCELLATION INCLUDING THE REPAYING OF THE CONTRACT PRICE OR PARTS THEREOF, FUNDAMENTAL BREACH, BREACH OF WARRANTIES, MISREPRESENTATION, NONPERFORMANCE, NONPAYMENT, OR ANY OTHER) WHETHER BASED IN CONTRACT, IN TORT, IN EQUITY, ON STATUTE, AT LAW OR ON ANY OTHER THEORY OF LAW, SHALL NOT EXCEED THE PAID CONTRACT PRICE. THE PURCHASER ACKNOWLEDGES THAT THE REMEDIES PROVIDED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AVAILABLE TO THE PURCHASER AT LAW, IN CONTRACT, IN TORT, IN STATUTE OR IN EQUITY OR IN ANY OTHER THEORY OF LAWS.

INSURANCE: Purchaser represents that they have a program of Insurance which adequately protects their interest, and that of their employees and agents, including damage to plant, property and equipment, personal injury of any kind, directly or indirectly related in any way to the equipment, service, repair or parts supplied by Seller. Accordingly, Purchaser waives any claim against Seller for the foregoing, and on behalf of its Insurance Company, any right of subrogation in connection therewith.

SEVERABLE AND INDEPENDENT PROVISION: WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH, FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED ITS ESSENTIAL PURPOSE, ALL OTHER LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT. ALL SUCH PROVISIONS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

LAW: This Agreement shall be governed by the laws of the State of Michigan, USA, with venue exclusively in the US District Court of Michigan or the Michigan State Courts in Oakland County, Michigan.

U.S. Export Controls: All items furnished by Seller to Purchaser in connection herewith shall at all times be subject to the export control laws and regulations of the U.S. including, but not limited to, 10 CFR Part 810 and U.S. Export Administration Regulations. Purchaser agrees and give assurance that no items, equipment, materials, service, technical data, technology, software or other technical information or assistance furnished by Seller, or any good or product resulting therefrom, shall be exported or re-exported by Purchaser or its authorized transferees, if any, directly or indirectly, unless in accordance with applicable U.S. export laws and regulations. The aforesaid obligations shall survive any satisfaction, expiration, termination or discharge of any other contract obligations.

ERRORS OR OMISSIONS: Inductoheat reserves the right to correct clerical or stenographic error or omissions.

DRAWINGS: Nothing herein shall be interpreted as an understanding or agreement that detail or shop working drawings will be furnished on the equipment or any part thereof.

PROPRIETARY RIGHTS: Unless otherwise stated herein all design, manufacturing processes, manufacturing information, vendor sources, know-how, equipment, tooling or other hardware, software, or information (collectively referred to as "resources") acquired or utilized by the Seller to produce the finished goods, and any intellectual property rights, including but not limited to patents, copyrights and trade secrets related in any way to the resources, are and shall hereinafter remain the exclusive property of the Seller, regardless of whether such resources are created solely by the Seller, or by the Purchaser's collaboration with the Seller, for example, where Seller utilized Purchaser's specifications to create resources, and the Purchaser shall acquire or receive no rights or title therein or thereto as a result of the purchase whether or not the order provides the Seller's delivery technical data, drawings or other information to the Purchaser in addition to the finished goods. Unless Seller's prior written consent is given, in no event shall the Purchaser permit such data, drawings or information to be: (1) disclosed to any third party other than the Purchaser's customer; (2) used by the Purchaser or the Purchaser's customer for manufacture of like or similar goods; (3) used for purposes of duplicating or reverse-engineering Seller's proprietary designs or processes; or (4) used by a party other than the Purchaser or the Purchaser's customer for any purpose.

FORCE MAJEURE: If the performance of any part of the contract by Seller is rendered commercially impractical by reason of any strike, fire, flood, accident, or any other contingency, the non-occurrence of which was a basic assumption of the contract including war, embargo, government regulation, USA Homeland Security or foreign country homeland type security regulations causing delays, or any unforeseen shutdown of major supply sources or other like causes beyond the control of Seller such as cannot be circumvented by reasonable diligence and without unusual expense. Seller shall be excused from such performance in whole or in part to the extent that it is prevented and for as long a period of time as these conditions render Seller's performance commercially impractical.