

## TERMS AND CONDITIONS

This sales contract shall be governed by the following terms and conditions, except to the extent that any of such provisions are expressly waived or modified herein by [inTEST Thermal Solutions Corp and Temptronic Corporation](#).

**1. PRICE AND TERMS.** The terms of sale shall be as stated on the face of the invoice. Quoted prices do not include any taxes which are now or hereafter levied or imposed upon equipment covered hereby (see paragraph 7). Seller reserves the right to discontinue any product at any time without notice.

Where Seller has extended credit to Buyer, terms of payment shall be net (30) days from date of notice. **FAILURE BY BUYER TO PAY ANY AMOUNTS WHEN DUE SHALL OBLIGATE BUYER TO PAY AN ADDITIONAL AMOUNT EQUAL TO ONE AND ONE-HALF PERCENT (1.5%) PER MONTH (OR THE MAXIMUM RATE OF INTEREST PERMITTED BY LAW, WHICHEVER IS THE LESSER) OF THE OVERDUE AMOUNT FOR EACH MONTH OVERDUE, PLUS REASONABLE ATTORNEYS' FEES.** In addition, Seller reserves the right at any time to revoke any credit extended to Buyer and to ship equipment C.O.D. for any reason deemed good and sufficient by Seller.

**2. DELIVERY.** Delivery of equipment to common carrier or licensed trucker shall constitute delivery and passage of title to Buyer, and all risk of damage or loss following such delivery shall be borne by Buyer, notwithstanding any provisions for payment of freight or insurance by Seller or the form of any shipping documents. Any claims for loss or damage after passage of title, as herein provided, is a matter solely between Buyer and the carrier.

Claims for failure of equipment to conform to this contract, or for overage or shortage shall be valid only if made in writing and received by Seller within thirty (30) days after Buyer's receipt of such equipment.

Any delivery date specified herein is estimated and not guaranteed. Seller shall not be liable for any delays in delivery or shipment of equipment or for any consequential or other damages suffered by Buyer by reason of such delays.

**3. PRODUCTION STANDARDS.** Except in the particulars specified by Buyer and expressly agreed to in writing by Seller, the equipment furnished hereunder shall be produced in accordance with Seller's standard practices. All equipment shall be subject to trade practices and Sellers standard tolerances and variations.

Seller reserves the right to make changes in design at any time without incurring any obligation to install the same on units previously purchased by Buyer.

**4. PATENT INDEMNITY.** In lieu of any other warranty and to the extent the equipment covered hereby is manufactured pursuant to design of Seller, Seller shall defend, at Seller's expense, any suit, proceeding, any claim against Buyer, its agents any customers, which suit, proceeding, or claim is based upon the allegation that such equipment so manufactured infringing any United States patent, provided (a) that Seller is promptly notified in writing of such suit, proceeding, or claim and given complete authority, information, and assistance for the defense or settlement of same, and (b) that Seller shall have sole control of the defense of such suit, proceeding, or claim and of all negotiations for its settlement or compromise. If such equipment is, in such suit, held to constitute an infringement and its use is enjoined, Seller shall, at its election, either procure for Buyer the right to continue using such equipment, modify it so that it becomes non infringing or accept the return of such equipment and grant Buyer a credit for the infringing equipment as depreciated over the life of the equipment as determined by Seller. This warranty shall not apply to any infringement arising out of use of the equipment covered hereby in combination with other items or components not manufactured by Seller, and such infringement shall be treated as if manufactured to a design supplied by Buyer as hereafter detailed.

In lieu of any other warranty and to the extent the equipment covered hereby is manufactured to a design supplied by Buyer, Buyer shall defend at Buyer's expense, any suit, proceeding, or claim against Seller, its agents or servants, which suit, proceeding, or claim is based upon the allegation that such equipment so manufactured infringes any United State or foreign patent, and shall pay costs and damages finally awarded in any such suit, provided Buyer is notified in writing of the suit, proceeding, or claim and given authority, information and assistance (at Buyer's expense) for defense or settlement of same.

**5. COMPLIANCE WITH LAWS.** Seller represents that the equipment covered by this contract, if the contract is with an agency of the U.S. Government, will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and of the rules and regulations of the U.S. Department of Labor issued thereunder.

**6. CANCELLATION.** Buyer may not cancel its order to which Seller's acknowledgement applies without the prior written approval of Seller. If Buyer is permitted to cancel such order, in whole or in part, Buyer shall be liable for cancellation charges. This formula is available upon written request by Buyer. The formula includes provisions for all costs, direct or indirect, incurred and committed with respect to such order together with a reasonable allowance for prorated expenses and profits, and shall require no further justification or documentation. Seller shall have the right to cancel any order accepted by it, or to refuse, or to delay the shipment thereof for failure of Buyer to meet promptly payments due Seller, or any other reasonable requirement established by Seller, or for acts or omissions of Buyer that delay Seller's performance. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer, voluntarily or involuntarily, under any provisions of the Bankruptcy Act or any insolvency law, Seller shall be entitled to cancel any contract then outstanding, at any time during the period allowed for filing claim against the estate, and shall receive reimbursements for its reasonable and proper cancellation charges.

**7. TAXES.** Seller does not report, pay, or collect any use tax, sales tax or similar tax which may be imposed upon Buyer under the laws of the state to which shipment is to be made, unless such charge shall be separately stated on Seller's acknowledgement and invoice for such goods. Buyer shall report and pay any use taxes or similar taxes which may be imposed upon Buyer by reason of such order and shall hold the Seller harmless therefrom. If Seller should subsequently be judged liable for such taxes, Buyer will remit to Seller, upon receipt of invoice from Seller, either documentation that Buyer had previously remitted such taxes or cash payment in full.

**8. TOOLING.** Any jigs, dies, tools, or other items used in connection with the fabrication process which are purchased or manufactured for Buyer shall remain the property of Seller unless otherwise specifically agreed in writing, notwithstanding any charges therefore.

**9. WARRANTY, DISCLAIMER, AND DAMAGES.** Seller warrants its equipment to be free from defects in material and workmanship for a period of one (1) year from date of shipment to Buyer and will repair, replace, or credit to Buyer's account, at Seller's option, any such equipment which is found to be defective in such respects by Seller and which is returned to it, transportation prepaid, within one (1) year from the date of its shipment to Buyer, provided, however, that such return has been authorized by Seller.

This warranty shall not apply to any equipment of Seller which has been subjected to electrical, mechanical, or other misuse, improper installation, alteration, neglect, accident, abnormal conditions of operation, use in any manner contrary to instructions, or to any equipment which has been disassembled or repaired, or attempted to be, other than by Seller. The sole exception to the foregoing disclaimer is for equipment which has been disassembled or repaired, or attempted to be, after Buyer has received specific written authorization from Seller. Buyer shall not return any equipment without the prior authorization of Seller, and Buyer shall afford Seller prompt and reasonable opportunity to inspect any such equipment. Seller shall have the right to final determination of the cause and existence of any defect under this warranty.

This warranty shall not apply to any product if Buyer is responsible for a past due account with Seller or Seller's reselling representatives. Lapses in warranty coverage for past due accounts do not extend the period of warranty coverage.

Equipment delivered by Seller shall not be considered as defective or not in compliance with the order therefore even though not in exact accordance with specifications if it satisfactorily fulfills Buyer's performance requirements or has been furnished by written or verbal agreement.

This warranty excludes normal wear/service items including (but not limited to) door seals, filters, and cryogenic coolant metering valves. Cryogenic coolant metering valves must be periodically serviced to maintain proper operation. The service interval for these valves is determined by use patterns and the quality and constancy of coolant delivery. Seller will review any valve failures that occur during the warranty period and will cover under this warranty any failures that Seller determines are a result of defects in the valve.

The foregoing warranty is null and void with respect to any product of Seller resold by Buyer, or moved by Buyer out of the country where Buyer originally took delivery, unless Buyer has prior written Acknowledgement by Seller that the warranty continues.

THE FOREGOING WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. SELLER'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER IN TORT, CONTRACT OR OTHERWISE, SHALL BE LIMITED TO THE COST OF REPAIR, REPLACEMENT, OR CREDIT TO BUYER'S ACCOUNT AT THE OPTION OF SELLER, FOR ANY SUCH DEFECTIVE EQUIPMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR BUYER'S MANUFACTURING COSTS, LOST PROFITS, LOSS OF GOODWILL, OR ANY OTHER SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

**10. ASSIGNMENT.** This contract shall be binding upon and inure to the benefit of the parties and the successors and assigns of the entire business, and good will of either Seller or Buyer, or of that part of the business of either used in the performance of this contract, but shall not be otherwise assignable.

**11. MODIFICATIONS.** This contract constitutes the entire agreement between the parties relating to the sale of equipment described on the face hereof, and no addition to or modification of any provision hereof shall be binding upon Seller unless made in writing and received at the Seller's address, stated on the face hereof, and agreed to in writing by a Corporate officer of the Seller prior to the shipment of any goods subject to this contract.

**12. UNIQUENESS OF CONDITIONS.** ANY PROVISION OR CONDITION OF BUYER'S ORDER WHICH IS IN ANY WAY INCONSISTENT WITH OR IN ADDITION TO THESE TERMS AND CONDITIONS SHALL NOT BE APPLICABLE HERETO OR BINDING UPON SELLER. INDEED, THIS INSTRUMENT IS SELLER'S WRITTEN OBJECTION TO ALL TERMS AND CONDITIONS OTHER THAN THESE CONTAINED HEREIN. RETENTION BY BUYER OF ANY GOODS SHIPPED BY SELLER HEREUNDER SHALL BE CONCLUSIVELY DEEMED ACCEPTANCE OF THE TERMS AND CONDITIONS HEREIN STATED.

**13. APPLICABLE LAW.** The construction of this contract shall be governed by the laws of the Commonwealth of Massachusetts.