

1. DEFINITIONS AND INTERPRETATION.

In addition to other terms defined in these Conditions of Sale and any other applicable software license terms (collectively, these "Conditions"), unless the context otherwise requires, the following capitalized terms have the following meanings:

"Buyer" means the body, corporation, firm, or person by which the goods are purchased/the purchase order is received.

"Customer" means the entity from which Seller accepts the Purchase Order. "Customer Designs" means designs, drawings and instructions provided by Customer, and/or information acquired from Seller's authorized access to facilities that house equipment which manufactures Customer's products.

"Customer Directed Supplier" means a third-party supplier of equipment, materials, parts, components, services and/or software from whom Customer has directed Seller to purchase to incorporate into or otherwise in relation to the Equipment.

"Design Review" means the design, functional, performance, and other technical specifications relating to the Equipment, mutually agreed upon between the parties in a written document signed by both parties. In the event that the design, functional, performance, and/or other technical specifications are provided by or on behalf of the Customer ("Customer's Specifications"), then to the extent of any exceptions taken, or clarifications, assumptions or conditions made in the Design Review in relation to the Customer's Specifications, the Design Review shall take priority. In such case, the Customer's Specifications as modified by the Design Review are hereinafter referred to in these Conditions as the "Design Review".

"Documentation" means the specific documentation identified in the Quote to be provided by Seller to Customer, forming part of the Equipment, and expressly excludes any Seller Proprietary Technology.

"Equipment" means the Product, Retrofits, Spare Parts, Services, Documentation and/or other items that are to be provided by Seller to Customer pursuant to the terms of the Quote.

"Installation Site" means the site(s) identified in the Quote as the location where the Equipment will be provided and/or where the Equipment will be installed for intended operation by, or on behalf of, Customer.

"Quote" means the proposal issued by Seller with respect to the sale of the Equipment, including, without limitation, these Conditions, and all attachments to such proposal.

"Retrofit(s)" means one or more restorations, incremental increases in, or modifications to, functionality of Customer's existing equipment, pursuant to the terms of the Quote.

"Seller" means Southport Thermal Components Inc. or the Affiliate of Southport Thermal Components Inc. which accepts in writing Customer's Purchase Order.

"Services" refers to the services that are to be performed by Seller and/or its subcontractors as set out in the Quote, and may include, without limitation, training, consulting, systems integration, Equipment installation, equipment relocation, maintenance, and on-site or remote support or monitoring services.

"Software" means Seller Software and Application Software.

"Spare Parts" means contingency parts identified by Seller that are materially equivalent in form, fit and function to parts used in the Equipment, Services, or Retrofit.

"Tariff" means a tax, duty and/or fee(s) that is to be paid on a particular class of imports or exports.

"Test Cuts" means production quality components of the Customer's end product that are within the tolerances and technical specifications upon which the Quote was prepared.

References such as "the Agreement", "hereof", "herein", "hereto" and like references refer to the Agreement as defined in Section 2 (Contract Formation and Entire Agreement), and not to any particular section, subsection, paragraph, or other subdivision of the Agreement. A "Section" means a Section of these Conditions unless otherwise stated. The division of these Conditions and/or the Agreement into sections, subsections and paragraphs and any insertion of headings are for convenience of reference only and shall not affect the construction or interpretation thereof. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders.

2. FORMATION OF CONTRACT.

These terms and conditions of sale (the "Conditions") are effective on all orders accepted by Southport Thermal Components Inc. In these Conditions "Seller" means Southport Thermal Components Inc. and "Buyer" means the body, corporation, firm, or person by which the goods are purchased. Any term or conditions in Buyer's purchase order or other documentation which is inconsistent with these Conditions shall be of no effect. The Buyer's standard terms of business shall not apply even where they are transmitted to Seller in any way and Seller does not object to them.

In these Conditions, "Contract Documents" means, in relation to each contract for the sale of goods by Seller to Buyer:

- (i) These Conditions;
- (ii) Any quotation, order, acknowledgement, advice, Design Review, FAT, SAT, or other delivery documentation or

invoice given by Seller to Buyer in respect of the contract;
and

- (iii) The Design Review will constitute the requirements of the Equipment and will supersede all prior agreements, proposals, quotes and documents of the same subject matter, including without limitation, the Buyer's RFQ, purchase order or the Buyers terms and conditions.
- (iv) Any other document expressly accepted in writing by Seller as forming part of the contract.

3. PAYMENT TERMS.

Payment shall be made as set forth in the Contract Documents; however, Seller reserves the right to require payment in advance. Payment shall be made in the currency as specified on the invoice. All milestone invoices to the Buyer are due upon receipt as noted in the Sales Order, unless otherwise noted by the Seller. Interest on any sums not paid when due shall accrue and be payable at eighteen percent (18%) per annum. Any unnecessary delays or withholding of payments shall be deemed to, at the discretion of Seller, void any part thereof the warranty on the equipment.

Buyer shall not be entitled to withhold payment because of any disputed claim of Buyer in respect of defective goods or any other alleged breach of the Contract Documents, nor shall Buyer be entitled to set off against any amount payable for the supply of goods or otherwise under the Contract Documents to Seller any monies which are not then presently payable by Seller or for which Seller disputes liability.

4. TAXES.

The amount of all sales, use, or similar taxes and other governmental charges imposed on the sale or delivery of the goods or on the transaction are not included in the price; such taxes shall be shown separately on applicable invoices and paid for by Buyer. If applicable, Seller will accept a valid exemption certificate from Buyer; however, if an exemption certificate previously accepted is not recognized by the government taxing authority and Seller is required to pay the taxes covered by such exemption certificate, Buyer agrees to promptly reimburse Seller for the taxes paid on Buyer's behalf.

5. DUTIES & TARIFFS.

All extra costs applied to the goods and services provided that are derived from tariffs, duties, fees, customs brokerage and/or cost escalation will be the Buyers responsibility to pay. The Seller may charge these costs, or unexpected costs at a later date using a change order, if they are unknown at the time of invoicing, which will be due upon receipt.

6. TRANSPORTATION AND RISK OF LOSS.

Except as otherwise noted in the Contract Documents, all sales are Ex Works Seller's plant. Seller reserves the right to select a carrier. Prior to delivery of goods to the carrier at the Ex Works-point, the risk of loss or damage thereto shall be borne by Seller. At and after the delivery of goods to the carrier at the Ex Works-point, the risk of loss or damage thereto shall be borne by Buyer. Where Seller

provides any information or advice to Buyer in connection with the delivery of any goods other than as specifically required under the Contract Documents, Seller does not accept any responsibility for providing inaccurate, misleading, or incomplete information or advice. Buyer acknowledges that before relying on any information or advice which Seller may supply, Buyer should satisfy itself of the accuracy and appropriateness of that information or advice.

7. PROPERTY/MATERIAL FURNISHED BY BUYER.

Property or material forwarded to Seller for fabrication while in Seller's custody or control shall be held at Buyer's risk, shall be kept insured by Buyer at Buyer's expense and shall be subject to removal at Seller's written request. Buyer relinquishes any right to inspection while on our premises, but Seller is obligated to provide a written inventory at reasonable time intervals to Buyer upon such request.

Buyer shall be responsible for all shipping costs for the delivery of the Testing Materials to the Sellers location, and for all costs associated with the return and/or safe disposal of Testing Materials.

8. WARRANTY.

Seller warrants the goods, exclusive of consumable parts, to be free from defects in material and workmanship for a period of one year or four thousand hours, whichever is completed first. The warranty shall become effective upon either shipment from Seller's facility, where installation is not included, or completion of the installation at Buyer's facility.

If upon examination and determination by Seller the goods shall be found to be otherwise than as warranted, Seller's obligation under this warranty is limited, at its sole option, to:

- (i) Repairing the goods at Seller's expense;
- (ii) Replacing the goods as soon as may be reasonably practicable; or
- (iii) Giving credit for the invoice price of the goods (including freight). If requested by Seller, Buyer shall return allegedly defective goods to Seller and if they are replaced, Seller will pay transportation costs thereon.

This warranty is expressly in lieu of any and all other warranties, expressed or implied, (including specifically, without limiting the generality of the foregoing, any and all warranties of merchantability and fitness), and all other obligation and liability on the part of Seller. Seller shall not be liable for consequential or special damages under any circumstances or for more than replacement or refund of the purchase price on defective goods.

The terms of this warranty shall apply to a defect in the quality of the goods or the goods otherwise not complying with the Contract Documents, whether or not such defect or non-compliance was apparent upon careful inspection or reasonable testing of the goods (or whether same would have been apparent had a careful inspection or reasonable test been carried out).

The warranty shall be void if:

- (i) The product is not stored or handled appropriately;
- (ii) A defect resulted from damages occurring after delivery of the product;
- (iii) A defect was caused by the acts(s), omission or negligence of the Buyer or third-party;
- (iv) The product was incorrectly installed, misused, altered, or was not maintained properly; or
- (v) The product was used or exported outside of the county in which they were delivered without notice to and written consent from the Seller.

9. CANCELLATION / RESCHEDULING OF TRAINING CLASSES.

If the Buyer cancels the training 1 week prior to the training, they will be able to reschedule at a later date. If it is cancelled with less than one (1) week, a fee equal to ten percent (10%) of the training will be due upon receipt and must be paid prior to rescheduling the training.

The Seller reserves the right to cancel or modify the training dates at any time.

If the training is at the Buyer's location, they will be responsible for Training charges, plus travel and per diem expenses.

All training invoices are due upon receipt, or immediately following the completion of the training with no exception. Any unnecessary delays or withholding of payments shall be deemed to, at the discretion of Seller, void any part thereof of the relevant warranty.

10. LIMITATION OF LIABILITY.

The warranty in Section 6 is expressly in lieu of any other legal remedy Buyer may have (whether in contract, tort, or otherwise) and all other warranties and conditions, expressed or implied, by statute, custom or usage of trade or otherwise (including specifically, without limiting the generality of the foregoing, any and all warranties and conditions of merchantability and fitness or suitability for a particular purpose), and all other obligations and liability on the part of Seller. Any technical advice provided by Seller with respect to the use of goods sold hereunder shall be for informational purposes only, and Seller makes no representation or warranty, nor assumes any obligation or liability for any such advice.

Seller shall not be liable to Buyer or any other person claiming through Buyer, for loss of profits, revenue or goodwill or any incidental, indirect, special, consequential or other similar damages arising out of or in any way connected with the Contract Documents, the rights granted hereby or thereby, any services performed hereunder or thereunder, or any other matter related hereto or thereto, even if Seller has been advised, is aware or should be aware, of the possibility of such damages. The limitations of liability in this section 7 apply no matter how such loss, damage or expense may have been caused, including, but without

limitation, any breach of contract, negligence, or breach of any duty of Seller whatsoever.

Nothing in these Conditions shall exclude or restrict the liability of Seller for death or personal injury caused by Seller's negligence or as otherwise prohibited by law.

11. INDEMNIFICATION.

Buyer agrees to indemnify and hold Seller harmless from any and all claims, demands, proceedings and actions which may be made or brought against Seller by Buyer or any other person, including (but not limited to) any purchaser of the goods or any product made therefrom, arising from:

- (i) Damage to property or material forwarded by Buyer to Seller for fabrication.
- (ii) The use of the goods or any products in which such goods are used; and/or
- (iii) From any latent or hidden defects in the quality of said goods or resulting products, or from the dangerous condition thereof, and Buyer shall pay any and all costs, fees (including reasonable lawyers' fees) and expenses, judgments, awards, and fines for and on behalf of Seller as incurred or as they become due.

12. TIME OF DELIVERY.

Dates or periods for delivery are approximate and are given for information only and shall under no circumstances be essential terms. A delay in delivery shall not constitute a breach of contract and shall not entitle Buyer to void the contract or to any other remedy, unless Seller has guaranteed the date of delivery in a warranty set out in the Contract Documents that expressly modifies the provisions of this section 9.

13. FORCE MAJEURE.

Should the manufacture or processing of any of the goods, or the delivery of any of the goods be prevented or hindered directly or indirectly by force majeure, such as by fire, the elements, war, civil commotion, strikes, lock-outs, industrial dispute, shortage of raw materials or fuel (notwithstanding that the Seller has taken all reasonable steps to procure such raw materials or fuel), shortage of labor breakdown or partial failure of plant or machinery, late receipt of Buyer's specification or other necessary information, acts, orders or regulations of governments, delay on the part of any agent, sub-contractor or supplier, or any cause whatsoever beyond the reasonable control of Seller, notwithstanding any warranty set out in the Contract Documents expressly modifying section 9, the time for delivery of the goods shall be extended for a reasonable period, and any such warranty shall be deemed to have been modified accordingly.

14. BUYER'S ACTIONS.

- (i) If, for any reason whatsoever, Buyer shall cancel or suspend the contract resulting from the Contract Documents or deliveries thereunder for more than forty-five (45) days, Buyer shall pay seller

- (ii) For goods, the production of which has been completed at the time of such cancellation or interruption, at the prices specified herein; or goods, the production of which has been started but not completed at the time of such cancellation or interruption, all costs incurred by Seller plus anticipated profits including administrative and overhead costs which would have been carried by such goods if Seller had finished producing them, all as determined by Seller; and
- (iii) For goods, the production of which had not been started at the time of such cancellation or interruption, all costs incurred by Seller in preparation for the production of such goods, plus anticipated profits including administrative and overhead costs which would have been carried by such goods if seller had produced them all as determined by Seller.

15. CHANGES, CANCELLATION OR RETURN.

Should Buyer find it necessary to change the specifications of the goods after they have been ordered by Buyer, Seller shall make every effort to make such changes but shall reserve the right to charge Buyer for all services including labor and material necessitated by such changes. Orders for the goods may not be cancelled, and materials may not be returned by Buyer except with the written consent of Seller and, where necessary, the consent of the Seller's suppliers. The Seller will issue an engineering change order (ECO) and provide to the Buyer the cost of such changes. If agreed upon, the Buyer will pay the cost of such changes per the terms of the ECO. The Seller reserves the right to charge the Buyer the original agreed upon price for the Equipment. Otherwise, if agreed in writing, the Seller will credit the Buyer any cost savings resulting from changes at the Seller's purchase price (including freight).

16. TERMINATION AND SUSPENSION BY SELLER.

Seller shall be entitled without prejudice to its other rights and remedies at law, equity or under these Conditions either to terminate wholly or in part any or every contract between itself and Buyer or to suspend any further deliveries under any or every contract in any of the following events:

- (i) Any debt is due and payable by Buyer to Seller but is unpaid.
- (ii) Buyer fails to perform its obligations under or otherwise breaches any provisions of these Conditions or any other contract between Buyer and Seller or any of Seller's affiliates.
- (iii) Buyer has failed to provide any security required by the Contract Documents provided that in such event Seller's rights of termination or suspension under this section shall apply only in regards to the particular contract in respect of which Buyer shall have so failed.
- (iv) Buyer has failed to take delivery of the goods under any contract between it and Seller, otherwise than in accordance with Buyer's contractual rights.
- (v) Buyer becomes insolvent or enters into any composition or arrangement (including a voluntary arrangement) with its creditors or, being a body corporate, has passed a

resolution for voluntary winding up or if a petition has been presented for an order for its winding up or for a receiver (including an administrative receiver) or administrator to be appointed or if any such order or appointment is made or if, being an individual or partnership, Buyer suspends payment of his or their debts in whole or in part or if an application has been made for an interim order or a petition has been presented for a bankruptcy order or if any such order is made or if Buyer, whether or not a body corporate, shall carry out or be subject to any analogous act or proceedings under any law; or

- (vi) Any new, additional, or increased tax, public charge, freight, tariff or duty is imposed which may after the date of the quotation or contract be levied on or imposed on the goods to be sold, or upon any sale, delivery, or other action taken under or in connection with any contract to which these Conditions apply, or upon the export or import of such goods or materials required to produce the goods.

Seller shall be entitled to exercise its rights of termination or suspension under this section at any time during which the event giving rise to such rights is continuing and has not been remedied and, in the event of a suspension, Seller shall be entitled, as a condition of resuming delivery under any contract between it and the Buyer, to require prepayment of, or such security as it may require for the payment of, the price of any further goods.

17. RETENTION OF TITLE.

Seller and Buyer expressly agree that until Seller has been paid in full for the goods, the following provisions shall apply:

- (i) Legal and beneficial ownership of such goods remain with Seller, and Seller shall have a Security Interest therein; "Security Interest" has the meaning provided under the *Personal Property Securities Act* (Ontario), as amended, replaced, or superseded from time to time.
- (ii) Buyer holds the goods as bailee for Seller and that a fiduciary relationship exists between Buyer and Seller.
- (iii) Buyer shall keep the goods separate and in good condition as a fiduciary of Seller, clearly showing Seller's ownership of the goods.
- (iv) Seller shall be entitled to inspect the goods and may recover all or any part of such goods at any time from Buyer if they are in Buyer's possession and any of the events in section 13 has occurred and for that purpose Seller, its servants and agents may enter upon any land or building upon or in which such goods are situated; and
- (v) Under no circumstances shall Seller be liable to Buyer for any expenses or any damage that Buyer may incur or suffer while acting as the bailee of Seller.

Buyer hereby appoints Seller to execute all documents and do all things on its behalf in order to perfect and give full effect to the reservation of ownership rights or security interests of Seller pursuant to this section and to maintain such rights or interest

enforceable against third parties in all jurisdictions where the goods may be situated.

18. NO WAIVER.

The rights of Seller or Buyer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach. Any variation in the terms of the contract must be agreed between the parties in a Contract Document.

19. SEVERABILITY.

In the event that, for any reason, any provision in these Conditions is held to be void, unenforceable or otherwise invalid, all the other provisions of these Conditions, and the remainder of any provision where the effect of some part of it is held to be void, unenforceable or otherwise invalid, shall remain fully effective.

20. GOVERNING LAW AND JURISDICTION.

The contract and the Contract Documents shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, exclusive of its conflicts of laws rules and of any principles therein that would require the application of the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). This jurisdiction agreement is for the benefit of Seller. Seller therefore retains the right to bring any proceeding, suit, action, claim or demand for damages, loss or injury arising out of or in connection with the contract and/or the Contract Documents ("Proceedings") in any court which has jurisdiction other than by virtue of this jurisdiction agreement. The Buyer has the right to bring Proceedings only in the courts of the Province of Ontario, Canada.

- (i) Meeting. The parties will attempt in good faith to settle any claims with such efforts to include first-hand involvement by both parties at the VP level or higher.
- (ii) Arbitration. Subject to the exception discussed in Section 22(e) below, any claim that is not resolved by the parties under Section 22(b) may, at our sole option, be resolved by arbitration administered by JAMS under its commercial arbitration rules and judgment on the awarded rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties agree to forego any right to appeal they might otherwise have under JAMS "Optional Arbitration Appeal Procedure" or any similar appeal process that JAMS may in the future adopt. All arbitration hearings shall be conducted in Hamilton, Ontario or the closest available JAMS location to Hamilton, Ontario. Each party shall bear its own costs, fees, and expenses associated with any arbitration except as otherwise provided in the Agreement.
- (iii) Venue. In the event that we do not choose to submit a dispute to Arbitration pursuant to Section 22(c) of this Agreement, the parties agree that a civil action to decide such dispute shall be brought in either the state or federal court situated in Hamilton, Ontario.
- (iv) Confidentiality. The existence and content of the arbitral proceedings (including the pleadings) and any rulings or

award shall be kept confidential by the parties, the members of the arbitral tribunal except

- a. to the extent that disclosure may be required of a party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority;
- b. with the consent of all parties;
- c. where needed for the preparation or presentation of a claim or defense in this arbitration;
- d. where such information is already in the public domain other than as a result of a breach of this clause; or
- e. by order of the arbitral tribunal upon application of a party or by order of a court of competent jurisdiction.

21. ENTIRE AGREEMENT.

The Contract Documents constitute the whole and only agreement between the parties relating to the subject matter of the contract. Buyer acknowledges that in entering into the contract it is not relying upon any pre-contractual statement, including any draft agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of the contract made or given by any person at any time prior to the date of this agreement, which is not set out in the Contract Documents.