

FURNACES, OVENS & BATHS, INC. (SELLER)
TERMS AND CONDITIONS

1. **Governing Terms.** All goods and/or services provided to Buyer by Seller shall be deemed to be only upon the terms and conditions contained herein, except as they may be added to, modified, superceded, or otherwise altered by Seller.

2. **Warranty.** **BUYER MAY RETURN ANY EQUIPMENT WITHIN 30 DAYS OF THE DATE THE ORDER IS PLACED WITH THE FREIGHT BEING PREPAID BY BUYER (UNLESS SAID 30 DAY PERIOD IS REMOVED BY SELLER AND NOTED ON THE FRONT OF THIS INVOICE). THE RETURNED EQUIPMENT MUST BE IN THE SAME CONDITION AS WHEN SHIPPED TO BUYER. UPON RECEIPT BY SELLER, THE FULL PURCHASE PRICE WILL BE REFUNDED TO BUYER.**

ANY SPECIFICATIONS CONTAINED IN THE PURCHASE ORDER PROVIDED BY SELLER, OR ANY INVOICE PROVIDED BY SELLER, OR ANY SPECIFICATIONS PROVIDED TO BUYER BY SELLER ARE CAREFULLY TAKEN BUT ARE NOT CERTIFIED AS ACCURATE BY AN INDEPENDENT THIRD PARTY. BUYER UNDERSTANDS AND AGREES THAT BUYER MUST DO ITS OWN INSPECTION IN ORDER TO OBTAIN ACCURATE SPECIFICATIONS.

IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY WHETHER IN CONTRACT, IN TORT, OR UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE EQUIPMENT OR THE SERVICES IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTION UNDER THIS INVOICE SHALL BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

THIS WARRANTY DOES NOT COVER NORMAL WEAR AND TEAR, IMPROPER OR NEGLIGENT USE AND OPERATION OF THE EQUIPMENT OR SOFTWARE PROGRAMS.

EXCEPT AS PROVIDED IN THIS SECTION 2, SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, AS TO ANY EQUIPMENT, SOFTWARE PROGRAMS OR SERVICES PROVIDED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. **Quotes.** Requests for a proposal, or any of the purchase orders provided by Seller are for immediate acceptance, subject to prior sale of the equipment in question, change or withdrawal by Seller without notice. Any shipping dates contained in the quote are approximate and are contingent upon delays beyond Seller's control. Once Buyer accepts a quote, that acceptance cannot be cancelled by Buyer but can only be cancelled by the agreement of both Seller and Buyer.

4. **Indemnification.** Buyer agrees to indemnify, hold harmless and defend Seller from and against any claims, demands, liabilities, costs or lawsuits arising out of or in any way involving injury or accident occasioned by said equipment purchased by Buyer from Seller or said services provided by Seller to Buyer. Said indemnification includes, but is not limited to, the duty to indemnify, hold harmless and defend Seller in any of the following situations: Claims involving or alleging improper or negligent design, maintenance, construction, reconstruction, repair, alteration or modification of the equipment by Seller, its agents or employees; claims involving allegations of failure, negligence or otherwise, on the part of Seller to equip said equipment with safety devices or equipment as required by federal, state or local government statutes, rules or regulations, or as is customary in the trade; and claims involving or alleging negligence by Seller, either alone or jointly with Buyer or any other person, firm or organization. Buyer specifically agrees to indemnify, hold harmless and defend Seller from any claims alleging negligence on the part of Seller and waives benefit of any law, rules or regulations contrary to, or in the limitations of this agreement. If Seller, in the enforcement of any part of this indemnity agreement, shall incur necessary expenses or become obligated for its attorneys fees or court costs, Buyer agrees to reimburse Seller for such expenses. The covenants

expressed herein shall be severable and the invalidity, now or in the future, of any of the covenants recited herein, shall not affect the validity of the remaining covenants.

5. **Shipment and Acceptance.** If this invoice involves service to be provided by Seller, and Buyer delays in the furnishing of information and/or any federal, state or local approvals necessary for starting and/or completing the work described in the invoice, the time for completion shall be extended by such delay. If such delays cause increased costs, Buyer agrees to pay said costs. Buyer shall have 10 days after completion of installation to inspect and accept the equipment or the services performed. If Buyer fails to reject the equipment or the services performed within said 10-day period, the equipment or services performed shall be deemed to be accepted. Provided, however, this Section 5 will not supercede the provisions of Section 2 with respect to the 30-day period for rebuilt equipment. If there are services performed, the sole basis for rejection of the services performed shall be a conformity of the work to the specifications set forth in this invoice. If shipment of material and equipment is delayed for reasons by the Buyer, Seller shall have the right to impose escalation and/or storage charges for the full term of the delay. If Buyer terminates this agreement without the consent of Seller, Seller shall be entitled to the full price of the invoice.

6. **Supervision.** Seller shall supply qualified technicians to supervise the installation and/or start up of equipment in Buyer's plant or location for the period set forth in this invoice. If Buyer requires Seller's representatives for a period beyond that set forth in the invoice, such services shall be available at Seller's then prevailing rates per day per person, plus all travel and living expenses. Any travel and living expenses will be charged from the time Seller's representative leaves Seller's plant to the time he returns to Seller's plant.

7. **Waiver.** Any waiver by Seller of any breach of the terms and conditions of this invoice shall not be construed as a waiver of any other breach. These terms and conditions, together with the provisions on the front of the invoice, constitute the entire agreement between the parties hereto and such agreement shall not be modified or amended except by a writing executed after the date hereof by an authorized officer of Seller.

8. **Taxes.** Buyer will be liable for all sales, use and other taxes, permits or other government charges that may be imposed by any governmental agency in connection with the sale, shipping, installation, operation or maintenance of the equipment or other items supplied hereunder by Seller. Buyer agrees to indemnify Seller and reimburse Seller for all liabilities for such taxes or duties and legal fees or costs incurred by Seller in connection therewith.

9. **Scope.** If, during the providing of services by Seller to Buyer, Buyer changes the scope of work to be performed, Seller will promptly submit an itemized cost of the additional changes to Buyer. If Buyer does not agree to the additional itemized cost, then Seller shall either proceed to complete the service or equipment installation as originally agreed to, or Seller may terminate this contract and receive payment for work performed to date of a service, and/or for the equipment to be purchased by Buyer. Seller reserves the right to change the details of construction to Seller's fabricated equipment, as specified in Seller's proposal if, in its judgment, such changes or substitutions shall be in the best interest of both Buyer and Seller.

10. **Waiver of Right to Jury Trial.** In any action brought by Buyer or any successor or assignee of Buyer, arising out of or related to this invoice or the terms or provisions, or the equipment or services sold hereunder to Buyer by Seller, Buyer hereby waives its right to a trial before a jury. The parties agree that the laws of the state of Michigan shall control in construing this contract and in any such dispute and that all such actions brought arising out of or related to this contract shall be brought in a court of competent jurisdiction located in Oakland County, Michigan.

11. **Acts of God.** Seller shall not be responsible for any loss, damage, delay in shipment or nondelivery of the items set forth in the invoice due to acts beyond the Seller's control (such as fires, theft, acts of war, insurrection or riot, strikes and lock outs or any other cause beyond Seller's control) which might occur during the process of rebuilding the equipment or in the course of loading or transporting the equipment or providing the services. Seller shall advise Buyer immediately of any occurrence mentioned above. Under such circumstances, Seller, however, is still under the obligation to use its best efforts to deliver the equipment sold in the invoice or to provide the services contracted for in the invoice.