



## INVENT ENVIRONMENTAL TECHNOLOGIES, INC.

### TERMS AND CONDITIONS OF PURCHASE

#### 1. **Parties.**

The term "Seller" refers to the addressee set forth on the face of **INVENT's** purchase order, and the term "**INVENT**" refers to Invent Environmental Technologies, Inc., a New Jersey corporation located in Cedar Grove, New Jersey.

#### 2. **Scope.**

The following terms and conditions apply to all **INVENT** purchase orders, in addition to any terms set forth on the face of an individual purchase order or in any plans, specifications or other documents incorporated by reference (each, collectively, an "Order"). Acceptance by **INVENT** of any offer from Seller is expressly limited to the terms and conditions of the Order, and **INVENT** hereby objects to and shall not be bound by any additional, different or conflicting terms, whether printed or otherwise, in any other communication between the parties (including on any of Seller's forms, letters or other communications), it being understood that the terms and conditions of the Order shall prevail notwithstanding any such additional, different or conflicting terms. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of an offer in Seller's acceptance, is hereby objected to and rejected, but such proposals shall not operate as a rejection of the offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and the offer shall be deemed accepted by Seller without said additional or different terms. If the Order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained in the Order. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of the Order shall be deemed material and are objected to and rejected, but the Order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

#### 3. **Acceptance and Limitations.**

The Order shall be deemed accepted by Seller on the earlier of (a) shipment of goods or rendering of services ordered, in total or in part, or (b) within 15 days of issuance by **INVENT**, absent written notification to **INVENT** of non-acceptance.

#### 4. **Changes.**

**INVENT** may make changes to the Order at any time and Seller shall accept such changes. If a change by **INVENT** causes an increase or decrease in the cost or time required for Seller's performance, as soon as practicable, the parties shall agree to an equitable adjustment of the purchase price and/or delivery schedule, as applicable, and incorporate such changes as a revision change to the Order. No other form of notification or oral agreement shall be binding on **INVENT**.

#### 5. **Termination for Convenience.**

**INVENT** may, by written notice to Seller, terminate the Order, or any part thereof, for any or no reason, for **INVENT's** convenience. Upon notice of termination, Seller shall immediately stop all work and cause its suppliers and/or subcontractors to stop all work in connection with the Order. If **INVENT** terminates for convenience, **INVENT** shall pay Seller for goods accepted as of the date of termination, and, subject to Section 8, for Seller's actual, reasonable, out of pocket costs incurred directly as a result of such termination. **INVENT** shall have no responsibility for work performed after Seller's receipt of notice of termination.

#### 6. **Termination for Cause.**

**INVENT** may, by written notice to Seller, terminate the Order, or any part thereof, if Seller breaches any of the terms and conditions of the Order, becomes insolvent or files for bankruptcy protection. By way of example, (a) failure by Seller to make timely, complete and conforming delivery of goods and services, or (b) breach of the representations or warranties set forth in the Order, shall entitle **INVENT** to terminate the Order for cause. If **INVENT** terminates for cause, **INVENT** shall have no payment obligations to Seller. Should a court of competent jurisdiction subsequently determine that **INVENT's** termination for cause was wrongful or unjustified, then such termination shall be automatically considered a termination for convenience under Section 5 and Seller shall have all rights under that provision, but no other rights or claims for damages.

## 7. Damages.

Without limiting **INVENT's** rights and remedies at law or in equity, **INVENT** reserves the right to charge Seller for any loss, expense (including reasonable attorneys' fees) or damage sustained as a result of Seller's failure to deliver conforming goods or services or other breach of the Order, including without limitation, expenses incurred in connection with **INVENT's** purchase of substitute goods, incidental damages and consequential damages resulting from Seller's failure or breach.

## 8. Limitation of Invent's Liability.

**INVENT** shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental damages (except to the extent expressly provided in Section 5) or consequential damages. Without limiting the foregoing, **INVENT's** liability for any claim arising directly or indirectly under or in connection with the Order shall in no event exceed the cost of the goods or services giving rise to the claim. **INVENT** shall have no liability for penalties of any kind.

## 9. Packing.

**INVENT's** purchase order number and specific delivery location must appear on the outside of each package and on all packing slips, invoices, and related documents. A packing slip must be included with each shipment. Except as expressly provided in the Order, Seller shall pack, mark and prepare all shipments properly and to meet the carrier's requirements, at Seller's expense. Seller shall comply with **INVENT's** routing and shipping instructions issued by **INVENT**. If such instructions have not been provided, they must be requested from **INVENT** immediately.

## 10. Freight Charges.

Except as expressly provided in the Order, packing, shipping and unloading are included in the purchase price set forth in the Order and **INVENT** shall not be charged any additional amounts for such services. All shipments on which freight charges are due must be prepaid. Collect shipments cannot be accepted.

## 11. Timely Delivery.

Time is of the essence in fulfillment of the Order. Shipment and delivery shall be made in accordance with the Order; provided, that if not addressed in the Order, delivery shall be made within [thirty (30)] days of **INVENT's** issuance of the Order. **INVENT** may, at its option, and without limitation of any of its other rights, cancel any unfilled part of the Order if complete, conforming delivery is not made within the times specified. **INVENT** is not required to accept partial or incomplete delivery. Acceptance of any part of the Order shall not bind **INVENT** to accept any future shipments.

## 12. Liquidated Damages.

Seller agrees that it would be impracticable and extremely difficult to ascertain the amount of actual damages caused if complete, conforming delivery is not made within the times specified in the Order. Therefore, the parties agree that, in the event that complete, conforming delivery is not made within the times specified in the Order, Seller shall pay to **INVENT**, as liquidated damages and not as a penalty, 1% of the invoiced amount for the Order for each business day of non-conformance, up to a maximum of 15% of the invoiced amount for the Order ("Liquidated Damages"). The parties agree that this liquidated damages provision represents reasonable compensation for the loss which would be incurred by **INVENT** due to any such non-conformance. The parties also agree that nothing in this Section 12 is intended to limit **INVENT's** right to seek specific performance and all other available remedies as set forth elsewhere in this Agreement or as otherwise available at law or in equity. Seller agrees that **INVENT** may offset the Liquidated Damages amount against any amounts owed by **INVENT** to Seller.

## 13. Inspection.

**INVENT** shall have the right to inspect and test all goods and/or services delivered under the Order. Neither receipt nor payment for goods and/or services shall constitute acceptance. **INVENT** may reject any or all items that are nonconforming, as determined in **INVENT's** sole reasonable judgment. **INVENT's** failure to inspect shall not relieve Seller of any of its responsibilities. Material shipped in quantities in excess of **INVENT's** stated requirements may be returned at Seller's expense. If goods are rejected, they will be held at Seller's risk and expense and Seller shall bear the risk of loss or damage to such goods until received by Seller.

## 14. Risk of Loss.

Seller shall bear the risk of loss of or damage to all goods purchased pursuant to the Order until they are received by **INVENT**.

## 15. Warranties.

Seller warrants that all material, work product, and merchandise supplied under the Order (a) shall strictly conform to all specifications, drawings, samples, or other descriptions furnished to and approved by **INVENT**, (b) shall be fit and serviceable for the purpose intended, as agreed to by **INVENT** and Seller (c) shall be of good quality and free from defects in materials and workmanship, (d) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by **INVENT**, and (e) shall not infringe any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party. In addition, Seller warrants that **INVENT** shall have good and marketable title to all goods (including all components thereof) purchased by **INVENT** pursuant to the Order, free of all liens and encumbrances and that no licenses are required for **INVENT** to use such goods. With respect to services, Seller warrants that all services shall be provided in a professional and workmanlike manner, with a degree of skill and care consistent with current, good and sound professional practices. Neither receipt of material, work product or merchandise nor payment therefore shall constitute a waiver of this provision. If a breach of warranty occurs, **INVENT** may, in its sole discretion, and without waiving any other rights, return for credit or require prompt correction or replacement of the nonconforming goods or services.

## 16. Indemnity.

Seller shall defend and indemnify **INVENT** and hold it harmless from and against any and all loss, cost, liability or expense, including reasonable attorneys' fees, arising out of or resulting in any way from any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, with respect to the goods or services provided under the Order.

Seller shall defend and indemnify **INVENT** and hold it harmless from and against any and all loss, cost, liability or expense, including reasonable attorneys' fees, arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification is in addition to the warranty obligations of Seller herein. In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on **INVENT's** property, or property of **INVENT's** customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of **INVENT**. Seller shall maintain all necessary insurance coverages, including Commercial General Liability and Worker's Compensation Insurance.

## 17. Use of Invent's Name.

Seller agrees not to use (a) **INVENT's** name, (b) the name of any employee or agent of **INVENT**, or (c) any trademarks, service marks or trade names owned or controlled by **INVENT**, in any sales, promotional, advertising or other publication, without the express prior written permission of **INVENT**. In no event shall Seller or its employees, agents or subcontractors represent themselves as employees or agents of **INVENT**.

## 18. Invoice Payments.

Unless otherwise specified in the purchase order, Seller agrees that **INVENT** shall pay the invoiced amount 3/21 NET forty-five (45) days after **INVENT's** receipt of a correct and proper invoice. All quotes and amounts paid under the Order shall be in U.S. Dollars. Seller shall bear the risk of fluctuation in foreign exchange rate. **INVENT** shall have no obligation to pay any amount prior to **INVENT's** receipt of a correct and proper invoice for such amount prepared in accordance with the Order. Except as expressly provided in the Order, payment shall not be due until final acceptance by **INVENT**. **INVENT** shall have the right to reduce and set off against amounts payable under the Order any indebtedness or other claim which **INVENT** may have against Seller, however and whenever arising.

## 19. Discount Terms.

If cash discounts are offered and identified, such discount periods will be computed from the date of delivery of the goods or services ordered; or the date of **INVENT's** receipt of a correct and proper invoice, whichever is later. Payment or other terms identified on the Seller's invoice which are contrary to those of the Order shall have no force and effect unless acted upon or approved in writing by **INVENT**. **INVENT** will make every effort to pay invoices within the terms prescribed in the Order, however, in no event will **INVENT** be obligated to pay late fees or penalties for invoices paid outside the Order terms.

## **20. Insurance.**

Seller shall maintain commercial general liability insurance, with a company rated A or better by A.M. Best, with a minimum coverage of \$2,000,000 per occurrence, which can be met through an umbrella or standard policy or any combination thereof. The insurance shall be evidenced by a Certificate of Insurance naming **INVENT** as an "Additional Insured" and Seller shall provide a copy of such Certificate of Insurance to **INVENT** prior to the delivery of any goods to **INVENT**.

## **21. Compliance with Laws.**

Seller represents and warrants that, in the production and sale of goods to be delivered pursuant hereto, and in the provision of services hereunder, Seller has complied with all applicable federal, state, and municipal laws and regulations, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of such goods, and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity, including without limitation, the requirements of the Fair Labor Standards Act of 1938, as amended.

## **22. Taxes.**

Unless prohibited by law, Seller shall pay all federal, state or local tax, transportation tax, or other tax which is required to be imposed upon the goods to be sold and delivered pursuant hereto. The purchase price set forth in the Order shall be deemed to include any and all taxes.

## **23. Confidentiality.**

Seller shall preserve in strict confidence all confidential, sensitive or proprietary information of **INVENT** received from **INVENT** ("Confidential Information"), whether or not marked "Proprietary" or "Confidential," and whether oral or written, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care.) Confidential Information shall not include information that Seller can demonstrate by written evidence was publicly available at the time of disclosure or was independently developed by Seller without reference to Confidential Information. Seller will not (i) disclose or cause to be disclosed at any time any Confidential Information obtained from **INVENT**, or (ii) use or cause to be used any of such Confidential Information for any purpose, except as required in the performance of the services required by the Order. Seller represents, warrants and covenants that it shall maintain physical, electronic and procedural safeguards designed to (1) insure the security, integrity and confidentiality of all Confidential Information, (2) protect against any anticipated threats or hazards to the security, integrity or confidentiality of Confidential Information, and (3) protect against unauthorized access to or use or disclosure of Confidential Information.

## **24. Entire Agreement.**

The Order represents the entire agreement between Seller and **INVENT** with respect to the goods and services described in the Order.

## **25. No Assignment.**

Seller may not assign, transfer or subcontract any part of the Order without the prior written consent of **INVENT**, and any assignment in violation of this provision shall be null and void.

## **26. Severability.**

If any provision of the Order is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

## **27. Waiver.**

No waiver by **INVENT** of any provision of the Order or any breach hereunder shall be deemed a waiver of any other provision or subsequent breach, nor shall any such waiver constitute a continuing waiver. Delay or failure of **INVENT** to insist on strict performance of any provision of the Order or to exercise any rights or remedies hereunder shall not be deemed a waiver.

## **28. Governing Law.**

All matters arising under or related to the Order shall be construed and enforced in accordance with the laws of the State of New Jersey, without regard to conflicts of law rules. Seller irrevocably consents to the personal jurisdiction of the state courts in Essex County, New Jersey, or of the United States District Court for New Jersey in



Newark, New Jersey, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

**29. Notice.**

Any communications required by the Order shall be in writing and shall be delivered by hand, by fax (receipt confirmed), by email, by express mail services, or by registered or certified mail, postage prepaid, at or to: if to **INVENT** at: 216 Little Falls Rd., Unit 8, Cedar Grove, NJ 07009, Attention: President; if to Seller, then to the address set forth on the purchase order, or to such other address or to such other person as any party shall have last designated by written notice to the other party. All communications so delivered shall be deemed given upon receipt.