



## TERMS AND CONDITIONS

These terms and conditions (“Terms”) apply to quotes for Insultherm, Inc., to perform work or services (“Services”) and procure and provide goods (“Goods”). These Terms apply unless (i) they are superseded by a master services agreement between Customer and Insultherm that is executed prior to Customer’s acceptance of Insultherm’s offer or (ii) they are as otherwise stated in a written quote. Acceptance of the Services or Goods, in whole or part, which includes issuance of a purchase order number, constitutes acceptance by Customer of the Terms herein.

1. Payment. Payment is due within thirty (30) calendar days from the date of an invoice or Customer’s acceptance of the Goods or Services, whichever occurs first. Unpaid principal will accrue interest at six percent (6%) per annum beginning on the 31st calendar day. Payment must be made in good funds.

2. Delivery. Delivery of the Goods is FOB La Porte, Texas, unless otherwise agreed in writing. As soon as the Goods are shipped off, Seller will send immediate notification to Customer as to that fact and inform Customer as to the dates and times at which Customer may take delivery. The risk of loss of the Goods will pass to Customer at the time that the Goods are properly loaded on the carrier for delivery, or if delivery occurs at Insultherm, then the risk of loss of the goods will pass at the time Insultherm sends Customer notification that Insultherm is ready for delivery.

*a. Inspection.* Customer has the right to inspect all Services and Goods following receipt. This inspection may occur only at the place for delivery of the Goods or at the place where Services were rendered. The expenses of inspection will be borne by Customer.

*b. Acceptance/Rejection.* Because time is of the essence to the performance of this contract, Customer agrees to notify Seller in writing of Customer’s acceptance, non-conformity, or Customer’s rejection of the Goods or Services within 120 hours (i.e., five (5) calendar days) after delivery from the carrier. If Customer does not provide timely written notice of non-conformity or rejection within 120 hours, then the Customer shall be conclusively deemed to have accepted the Goods or Services “AS IS” and “WITH ALL FAULTS.” After Insultherm receives notice of non-conformity or rejection of Goods or Services, Insultherm will have a reasonable period of time to cure. Insultherm may elect to cure within 120 hours or 5 days from receipt of the notice of non-conformity or rejection, or Insultherm may cancel its obligations to provide the Goods and/or Services. Insultherm shall not be liable for, even if caused by Insultherm’s sole negligence, (i) damages to Customer during the cure period for any losses caused by the non-conforming Goods or Services or (ii) for cancelling its obligations. If Insultherm cancels its obligations, then Insultherm shall have a reasonable period of time to dispose of or retrieve the non-conforming or rejected Goods and/or Services.

*c. Time for Delivery of Goods and Services.* Insultherm shall not be liable for delays in delivery or installation of the Goods and Services, even if it is the result of Insultherm’s sole negligence, or any loss related to the same, whether direct or indirect.

*d. Storage by Insultherm.* Insultherm is not in the business of storing goods. However, if delivery is to occur at Insultherm, and any Goods are not timely removed by Customer, then Insultherm may charge Customer up to ten percent (10%) of the cost of the Goods



as an inconvenience fee and, additionally, a daily storage fee in an amount determined by Insultherm. Further, if such Goods are not paid for or removed within ninety (90) days of delivery, then Insultherm may sell the Goods using an independent auctioneer. Any proceeds received by Insultherm from such auction shall offset the amount due by Customer, including storage fees due through the date of the auction, less expenses incurred by Insultherm related to the auction.

3. Warranties. Insultherm disclaims any and all warranties, including those for fitness of purpose and merchantability. See Limited Warranty Agreement for additional warranty information. The Warranty given herein is limited by Section 8.

4. Control of Customer Facility. Should any Services be provided by Insultherm at a facility owned or operated by the Customer ("Customer Facility"), or any Goods be delivered or installed by Insultherm at a Customer Facility, the Customer shall at all times have the superior right to direct and control the Customer Facility and to enforce any environmental or safety rules and procedures. This includes designating and controlling work areas, storage areas, disposal areas and containers, hours, access routes, ingress and egress, parking, and delivery; and providing authorizations and credentials required by Insultherm to perform the Services and deliver and install the Goods. Insultherm will not have breached this contract if such control of the customer's facility interferes with Insultherm's ability to timely complete its work, including, but not limited to, access and safety issues.

5. Control of Customer Employees and Agents. Customer is solely responsible for the performance and operations of its employees, agents, and independent contractors; and for all equipment on site at a Customer Facility.

6. Safety. Insultherm shall not provide Goods or Services that pose an unreasonable risk of physical harm to its employees, agents, or subcontractors.

7. Reliance on Instructions. Insultherm is (i) authorized to rely upon the instructions of Customer and its employees, agents, and independent contractors in performing the Services and providing or installing the Goods and (ii) not liable to Customer, its employees, agents or independent contractors for following such instructions, even if the same was negligent in whole or part.

8. Limitation of Liability. Insultherm shall not be liable for any act, omission, or occurrence caused in whole or part by the negligence of Customer and its employees, agents, or independent contractors, even if the same is mixed (in whole or part) with the negligence of Insultherm or its employees, agents, or independent contractors. In the event of a claim, the limit of liability for Insultherm for the Services and the Goods shall be the aggregate of the principal due under the applicable invoice(s).

INSULTHERM'S LIABILITY FOR DAMAGES, REGARDLESS OF THE FORM OF THE ACTION OR THE NEGLIGENCE OF INSULTHERM AND ITS AGENTS, IS LIMITED TO THE FEES RECEIVED HEREUNDER. UNDER NO CIRCUMSTANCES SHALL INSULTHERM BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOST BUSINESS INFORMATION, LOST GOODWILL, OR WORK STOPPAGE), REGARDLESS OF THE THEORY OF RECOVERY AND



REGARDLESS OF WHETHER CUSTOMER HAS BEEN ADVISED OF THAT POSSIBILITY, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

9. Indemnity. Customer must indemnify and hold Insultherm harmless from all cost, loss, expense, attorney's fees, court costs, and expert witness fees arising from or related to (i) a breach by Customer of these Terms; (ii) any claim for which Insultherm is expressly not liable under these Terms; (iii) the instructions, acts, omissions, or occurrences of Customer and its employees, agents, and independent contractors; and, (iv) any claim related to or arising from the condition, status, or use of the Customer Facility, including but not limited to any claims for violations of environmental laws or regulations.

10. Complete Agreement. These Terms control over any additional or contrary terms listed in a purchase order from Customer related to the Services and the Goods, and any part thereof which has the effect of modifying them. The additional, contrary, and modified terms are rejected without the need for additional written notice from Insultherm. Insultherm will not provide the Services or Goods except solely under these Terms, unless such Terms are

superseded by a master services agreement or otherwise stated in the written quote as stated herein.

11. Law/Venue/Jurisdiction/No Jury. Texas law, without regard to conflicts of law, governs the construction and enforcement of these Terms.

12. Construction. No method of construction of the language in these Terms shall construe ambiguities against the drafter. This contract shall be reformed in the event that it contains any illegal or unenforceable clause, and, if reformation is not lawful, then this Invoice shall be construed as if it did not contain the illegal or unenforceable clause.

13. Arbitration. Any controversy or claim arising out of or relating to this contract, or the breach thereof, except payments due under these Terms, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.