

INVINITY ENERGY SYSTEMS (CANADA) CORPORATION
TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

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SCHEDULE

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1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in the province of British Columbia, Canada, when banks are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4.

Contract: has the meaning set out in clause 2.1 and is the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

Customer: Invinity Energy Systems (Canada) Corporation (registered in British Columbia, Canada).

Customer Materials: has the meaning set out in clause 8.

Delivery Date: the date specified in the Purchase Order (usually by reference to Incoterms 2020).

Delivery Location: the address for delivery of Goods as set out in the Purchase Order.

Goods: the goods (or any part of them) set out in the Purchase Order.

Mandatory Policies: the Customer's business policies listed in Schedule 1, as amended by notification to the Supplier from time to time.

Schedule of Amendments: the conditions which are particular to the Contract, including specific amendments (if any) to the Conditions.

Purchase Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier and/or attached to the Purchase Order.

Supplier: the person or firm from whom the Customer purchases the Goods.

1.2 Interpretation:

- (a) A **person** has the meaning given to it in the *Interpretation Act*, RSBC 1996, C.238, and includes, without limitation, a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes emails.

2. Basis of contract

2.1 The "Contract" means the following documents (listed in order of precedence in the event of any conflict as between their terms):

- (a) the Purchase Order (excluding the Specification);
- (b) the Schedule of Amendments;
- (c) these Conditions; and
- (d) the Specification.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing regardless of whether received or required to be accepted as a condition of processing any Purchase Order.

2.3 The Purchase Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.

2.4 The Purchase Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing a written acceptance of the Purchase Order; and
- (b) the Supplier doing any act consistent with fulfilling the Purchase Order,

at which point the Contract shall come into existence.

3. The goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Specification;
- (b) be of satisfactory and merchantable quality and condition and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 24 months after delivery, including any latent defects; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and related provision of labour thereto.

- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations or liabilities under the Contract.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance with the Contract.
- 3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition, and in accordance with applicable law;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code or part number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the Delivery Date;
- (b) at the Delivery Location; and
- (c) during the Customer's normal business hours, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location unless otherwise stated in the Purchase Order.

4.4 If the Supplier:

- (a) Delivers, as of the Delivery Date, less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or

- (b) Delivers, as of the Delivery Date, more than 105% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense.

If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

- 4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.

5. Customer remedies

- 5.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following rights and remedies:

- (a) to terminate the Contract;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- (f) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

- 5.2 If the Goods are not delivered on the Delivery Date the Customer may, at its option by providing notice to the Supplier, claim or deduct by way of liquidated damages (and not as a penalty) for the diminution of value to the Customer 2% of the price of the Goods for each week's delay in delivery [until the earlier of delivery or termination or abandonment of the Contract by the Customer], up to a maximum of 20% of the total price of the Goods. If the Customer exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

- 5.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

- 5.4 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies available to the Customer by statute or common law.

6. Title and risk

Title and risk in the Goods shall pass to the Customer in accordance with Incoterms 2020 as stated in the Purchase Order.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Purchase Order.

7.2 The price of the Goods:

- (a) excludes amounts in respect of value added tax or any such equivalent sales tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) includes such costs of packaging, insurance and carriage of the Goods as is stated in the Purchase Order by reference to Incoterms 2020 stated therein.

7.3 No extra charges beyond the price in the Purchase Order shall be effective or payable unless agreed in writing with the Customer.

7.4 The Supplier may invoice the Customer for the price of the Goods strictly as stated in the Purchase Order, plus VAT at the prevailing rate (if applicable), on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Purchase Order, the invoice number, the Customer's Purchase Order number, the Supplier's VAT registration number and any supporting documents that the Customer may reasonably require. In the event that the Supplier's invoice fails to comply with the requirements of this clause 7.4, or is in an amount that differs from that stated in the Purchase Order, the Customer shall be entitled, at its sole discretion, to reject the invoice or to pay the amount stated in the Purchase Order.

7.5 The Customer shall pay invoices correctly rendered in accordance with clause 7.4 within 45 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Canadian Bank prime rate from time to time, but at 4% a year for any period when the base rate is below 0%.

7.7 The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract, at law, equity or otherwise.

8. Customer materials

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain the exclusive property and confidential information of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

9. Indemnity

9.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect, consequential or special damages, losses, and for any loss of business, loss of customers, loss of revenue or profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10. Insurance

During the term of the Contract and for a period of four years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional errors and omissions insurance, product liability insurance and public liability insurance as necessary to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. Confidentiality

- 11.1 The parties shall comply with the terms of any non-disclosure agreement in place between them and covering the scope of this Contract. In the absence of any such applicable non-disclosure agreement, the remaining provisions of this clause 11 shall apply.
- 11.2 The Supplier undertakes that it shall not at any time during the Contract and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Customer, except as permitted by clause 11.3.
- 11.3 The Supplier may disclose the Customer's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Supplier's rights or carrying out its obligations under the Contract. The Supplier shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Customer's confidential information comply with this clause 11; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.4 The Supplier shall not use the Customer's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12. Compliance with relevant laws and policies

- 12.1 In performing its obligations under the Contract, the Supplier shall:
- (a) comply with all applicable laws, statutes, regulations and codes from time to time in force; and
 - (b) comply with the Mandatory Policies.
- 12.2 Notwithstanding clause 13, the Customer may, in addition to any other right or remedy, immediately terminate the Contract for any breach of clause 12.

13. Termination

- 13.1 The Customer may terminate the Contract in whole or in part at any time before delivery of the Goods with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated revenue, business, profits or any consequential loss.
- 13.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of Supplier being notified in writing to do so;
- (b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, having a receiver appointed to any of its assets, or ceasing to carry on business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Supplier's financial position deteriorates so far as to reasonably justify the reasonable opinion that its ability to perform or otherwise give effect to the terms of this Contract is in jeopardy.

13.3 On termination or expiry of the Contract, the Supplier shall immediately return all Customer Materials and not retain any copies. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.4 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party. A lack of money, credit or financing is deemed not to be an event beyond a party's reasonable control.

15. General

15.1 Assignment and other dealings

- (a) The Customer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.

15.2 Subcontracting. The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier is and shall remain fully and primarily responsible for all the acts and omissions of its subcontractors as if they were its own.

15.3 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.4 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

15.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. Without limiting the application of the foregoing, a waiver must be in writing signed by the waiving party to be effective.

15.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. If any provision of the Contract is deemed deleted under this clause 15.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- (ii) sent by email to the address specified in the Purchase Order.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.8 Third party rights. The Contract does not give rise to any rights for any third party to enforce any term of the Contract or as a third-party beneficiary.

15.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of the Province of British Columbia, Canada, and the laws of Canada applicable therein, without regard to its conflict of laws principles. The parties hereby agree that United Nations Convention on Contracts for the International Sale of Goods does not apply.

15.10 Jurisdiction. Each party irrevocably agrees that the courts of in the City of Vancouver, in the Province of British Columbia, Canada shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. The foregoing will not limit the Customer from seeking injunctive or similar relief in any jurisdiction relevant to the enforcement or interpretation of this Contract.

Schedule 1 CUSTOMER'S MANDATORY POLICIES

The Mandatory Policies are:

- Anti-Slavery and Human Trafficking Policy.
- Anti-Corruption and Anti-Bribery Policy.
- Privacy Notice.