



EQUIPMENT SALES TERMS & CONDITIONS OF SALE

The following Terms and Conditions of Sale shall govern all orders and take precedence when Terms and Conditions between S.T. Johnson Company, LLC, and the Customer differ in substance and/or are in conflict.

1. Pricing

Unless otherwise stated, all prices quoted are firm for acceptance within 30 days of the date of quotation, provided shipment may be made within a normal 60 day period following order placement. Should Customer require that shipment be made at a date past the normal period or should S.T. Johnson be unable for any reason beyond its control to ship within the normal period, S.T. Johnson reserves the right to invoice at prices in effect at the time of shipment. S.T. Johnson reserves the right to correct any proven clerical errors. Purchase orders are subject to review and acceptance by S.T. Johnson.

2. Terms of Payment

For orders within the United States, payment terms will be cash, net 30 days from invoice date, upon credit approval. Lacking such approval, payment terms will be cash in advance or COD. Progress payments, including a deposit with order, may be required and such payments will be due upon receipt of invoice. A finance charge of 1% (12% APR) per month will be assessed on past due balances.

For orders placed by Customers outside the United States, payment terms will be 100% prior to shipment by wire transfer for the total amount. An alternative to the above is an acceptable, negotiable, irrevocable letter of credit for the total amount, drawn in U.S. dollars, payable on sight, issued by an acceptable bank using an advising U.S. bank located in Northern California, with an expiration date no earlier than 6 weeks after the scheduled ship date.

3. Cancellation

Following order acceptance, orders may be cancelled only on condition that the Customer agrees to pay for every loss, cost, or damage incurred by S.T. Johnson as a result. The Customer will be advised of the amount of cancellation charges at the time S.T. Johnson acknowledges the notification of cancellation.

4. Shipment Dates

Every reasonable effort will be made to meet stated shipment dates. S.T. Johnson shall not be responsible for any delay due to causes beyond its control, including but not limited to accidents, casualty, strikes or other labor disputes, acts of God, delays in transportation, government regulations and shortages. When material is ready for shipment, if any act, omission or request of the Buyer, for any reason whatsoever, results in a delay in shipment of the material, the date of shipment shall be regarded as the date when ready for shipment and payments shall be made accordingly.

5. Shipment Terms

For shipments either within or outside the United States, prices are for delivery Ex-Works as defined by Incoterms 2000, unless otherwise noted. Transportation costs are to be paid by the Customer and Customer assumes risk of damage or loss during transit.

6. Taxes

Customer shall pay all present or future federal, national, provincial, state, or local tax applicable, including but not limited to any sales, use, import or value-added tax.

7. Returns

No credit will be given for returns of used components. No credit will be given for returns of assemblies, fabricated, or non-standard components. No burner nozzle, burner block, or other parts directly exposed to flame may be returned after use for any period whatsoever. Buyout components, unused and in the original packaging, may be returned with prior approval of S. T. Johnson, subject to a restocking charge of 50% of the original sales price. Such credit will be issued only after receipt, inspection, and acceptance of the returned component. S.T. Johnson reserves the right to refuse return of any material or equipment at its sole discretion.

8. Warranty

For a period of 18 months from the date of shipment or 12 months from startup, whichever comes first, S.T. Johnson warrants to the Customer the goods manufactured by S.T. Johnson to be free from defects in material and workmanship and to conform to the specifications in S.T. Johnson's current published technical data, provided said equipment has been properly installed, commissioned, operated, and maintained. If within one year of shipment, any of the goods fail to so conform, or is found after due inquiry to have been defective in material or workmanship when shipped, and within said period S.T. Johnson receives written notice thereof, such defective goods shall, at S.T.

Johnson's option, either be repaired or replaced by S.T. Johnson. In any and all events, the Customer's remedies shall consist solely and exclusively of those stated above. S.T. Johnson disclaims all other warranties, expressed or implied, including but not limited to any warranty of merchantability or of fitness for use by the Customer or its clients.

Stated warranty may be voided by any of the following: Improper installation or application of goods; their use with improper wiring, piping or ventilation; improper system design; inadequate inspection or testing; lack of regular maintenance; use of insufficient or unqualified personnel to install, commission, operate or maintain equipment; exposure of the goods to excessive heat, moisture, dust, dirt, corrosion, or any other deleterious condition.

9. Limitation of Liability

S.T. Johnson shall not be responsible for the acts and workmanship of the employees, contractors, sub-contractors or agents of the Customer. Specifically, S.T. Johnson will not be responsible for the acts and workmanship of Customers who purchase equipment from S.T. Johnson for the purpose of re-selling to and/or installing, commissioning, operating, or maintaining said equipment for a third party and said Customers expressly agree to accept full responsibility for any loss or injury to persons or property caused by their acts. S.T. Johnson shall not be liable to the Customer for any loss or injury to persons or property caused by the negligence of the Customer, its employees, contractors, suppliers, agents or sub-contractors. In no event shall S.T. Johnson be liable, whether arising under contract, tort (including strict liability and negligence) or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service and erection, or for any special, indirect, incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

10. Indemnification

S.T. Johnson will defend and indemnify the Customer against all damages, liabilities, claims, losses and expenses (including attorneys' fees) for injury or death to persons or damage to property of others arising out of, or resulting in any way from any defect in the goods purchased hereunder or from any negligent act or omission of S.T. Johnson, its agents, employees or subcontractors, provided a claim is made within 90 days after the damage or loss occurs. In no event, shall S.T. Johnson have any liability for bodily injury or property damage in excess of \$1,000,000 per occurrence or \$2,000,000 in the aggregate.

11. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the state of California without application of conflict of law principles. The parties irrevocably consent to the jurisdiction of the state and federal courts located in San Mateo County, California, in any action arising out of or relating to this Agreement, and waive any other venue to which either party might be entitled by domicile or otherwise.

12. Export Controls

S.T. Johnson's products, technology and software are subject to all U.S. export control laws and regulations. Diversion contrary to U.S. law is prohibited. Purchaser understands and acknowledges that that it is unlawful under U.S. law to export, re-export or transfer, or to attempt to export, re-export or transfer these items to embargoed countries and to individuals or entities on the Specially Designated Nationals List.

13. Arbitration

In the event any dispute arises out of or relating to this Agreement, the parties shall attempt to resolve their differences by negotiation failing which either party may submit the matter to arbitration. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association and judgment on the award may be entered in any court having jurisdiction. There shall be one arbitrator, to be selected by mutual agreement of the parties. If the parties cannot agree on such arbitrator within thirty (30) days after commencement of discussions regarding such arbitrator, then either party, on behalf of both, may request appointment of the arbitrator by the then presiding judge of the Federal District Court for the Northern District of California. Each party shall pay the fees of its own attorneys, and the expenses of its witnesses and all other expenses connected with presenting its case. Other costs of the arbitration, including the costs of any record or transcription of the arbitration, administrative fees and the fee of the arbitrator shall be borne equally by the parties.

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S.T. Johnson Company

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