



## FIELD SERVICE TERMS & CONDITIONS

The following Terms and Conditions of Sale shall govern all orders and take precedence when Terms and Conditions between Innovative Combustion Technologies, Inc. (d.b.a. S.T. Johnson Company) and the Customer differ in substance and/or are in conflict.

### 1. Pricing

Purchase orders are subject to review and acceptance by S.T. Johnson.

### 2. Terms of Payment

For service within the United States and Canada, invoices are to be in cash, net 30 days from invoice date, upon credit approval. If credit is not approved and for service outside the United States and Canada, payment terms will be cash in advance based on estimate provided by S.T. Johnson, with differences settled no more than 15 days following completion of service.

### 3. Cancellation/Rescheduling

Orders can be cancelled in advance of scheduled service start date on condition that the Customer agrees to pay for any non-recoverable expenses, such as airline tickets, incurred by S.T. Johnson. Orders cancelled less than 72 hours in advance are subject to a cancellation charge of 25% of the purchase order value, plus any non-recoverable expenses incurred by S.T. Johnson.

Every reasonable effort will be made to accommodate requests to reschedule service, but any non-recoverable additional expenses incurred by S.T. Johnson as a direct result of the schedule change will be added to the Customer's invoice.

S.T. Johnson shall not be responsible for any delay or failure to provide service 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.

### 4. 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. 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 or their employees, 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.

### 5. 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 services 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 services are rendered. 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.

### 6. 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.

### 7. 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.

**T&C (FS) 4-15-08 –  
rev.A**

**S.T. Johnson Company**

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