

## **INDUSTRIAL THERMAL SYSTEMS Terms and Conditions**

The following Terms and Conditions ("Terms") shall apply to all of the following situations where Industrial Thermal Systems, Inc. ("I.T.S.") is selling equipment or providing services: (i) the sale by I.T.S. of new equipment manufactured by I.T.S. ("New Equipment"); (ii) the sale by I.T.S. of new equipment supplied from the manufacturer and sold to Buyer (as defined below) by I.T.S. ("Supplied Equipment"); and (iii) all work done by I.T.S. pursuant to the Contract Documents (as defined below) (all such work referred to collectively as "Services"). Collectively, New Equipment and Supplied Equipment shall be referred to herein as "Equipment."

### **1. GENERAL:**

- a) These Terms are part of one or more of the following documents between I.T.S. and buyer ("Buyer") and shall govern and be incorporated into each of the applicable documents: (i) a quotation submitted by I.T.S. ("Quotation"); (ii) a purchase order submitted by Buyer ("Purchase Order"); or (iii) a purchase order acknowledgement and an information book containing detailed information regarding the Project (as defined below) (the "PO Acknowledgement"). The Quotation, Purchase Order, PO Acknowledgement and these Terms (including any invoice, change order, amendment or addition thereto) may be referred to as a "Contract Document" or, collectively, as the "Contract Documents." All work to be performed by I.T.S. pursuant to the Contract Documents shall be referred to as the "Project."
- b) EACH CONTRACT DOCUMENT BETWEEN I.T.S. AND BUYER IS MADE SUBJECT TO AND IS EXPRESSLY LIMITED TO THESE TERMS. THE ACCEPTANCE OF ANY PURCHASE ORDER BY I.T.S. IS MADE EXPRESSLY CONDITIONAL UPON BUYER'S ASSENT TO THESE TERMS. THE PARTIES INTEND THAT THESE TERMS SHALL EXCLUSIVELY CONTROL THE RELATIONSHIP OF THE PARTIES WITH RESPECT TO THE EQUIPMENT BEING PURCHASED AND ALL SERVICES PERFORMED PURSUANT TO THE CONTRACT DOCUMENTS, AND IN THE EVENT OF ANY INCONSISTENCY BETWEEN ANY QUOTATION, PURCHASE ORDER, PO ACKNOWLEDGEMENT, INVOICE OR ACCEPTANCE FORM AND THESE TERMS, THESE TERMS SHALL CONTROL AND SHALL BE BINDING ON THE PARTIES. UNDER NO CIRCUMSTANCES SHALL THE CONTRACT DOCUMENTS INCLUDE ANY TERMS AND CONDITIONS PROPOSED BY BUYER ("BUYER TERMS"), WHETHER INCLUDED ON BUYER'S PURCHASE ORDER, INVOICE OR WRITTEN ACCEPTANCE OF I.T.S.'S QUOTATION OR OTHERWISE, UNLESS SUCH BUYER TERMS ARE EXPRESSLY ACKNOWLEDGED, IN WRITING, AND EXECUTED BY AN AUTHORIZED PERSON ON BEHALF OF I.T.S. The parties hereto have agreed and it is their intent that the battle of the forms section of UCC § 2-207 (O.R.C. § 1302.10) shall not apply to these Terms or to any Quotation, Purchase Order, PO Acknowledgement, invoice or any other Contract Document.
- c) I.T.S. shall perform the Services as an independent contractor and not as an employee or agent of Buyer. Nothing in these Terms or the Contract Documents shall be construed to create any partnership or joint venture between the parties.

### **2. TITLE; RISK OF LOSS; SECURITY INTEREST:**

Title to the Equipment and all risk of loss of or damage to the Equipment shall pass to Buyer when the Equipment is made available to Buyer's carrier at I.T.S.'s facility in Cincinnati, Ohio. Notwithstanding the above, I.T.S. shall have, and Buyer hereby expressly grants to I.T.S., a purchase money security interest, pursuant to the provisions of the Uniform Commercial Code as adopted in the State of Ohio ("UCC"), in the Equipment until Buyer pays I.T.S. in full. Buyer agrees to execute and deliver all documents reasonably required in order for I.T.S. to attach and perfect its purchase money security interest in the Equipment. I.T.S. shall release its purchase money security interest when Buyer pays I.T.S. in full.

### **3. PRICE; PAYMENT; TAXES:**

Prices set forth in the Quotation include the costs of materials and equipment required for the Project ("Costs"). Such Costs are based upon amounts quoted currently by I.T.S. suppliers. In the event the amounts charged by such suppliers increase, for reasons beyond I.T.S.'s control, the price quoted herein shall be increased to the extent of any such increase in costs. In the event of any increase in the price, upon the request by the Buyer, I.T.S. shall provide to the Buyer an itemized statement with clear and sufficient detail documenting the increases by the suppliers. At the option of the Buyer, all costs for material and equipment may be fixed, at any time upon payment by the Buyer of the cost of the material and equipment and upon confirmation by the supplier that the cost of the material or equipment has been purchased without any increase in the amounts included in the Quotation. All prices set forth in the Contract Documents are subject to change until I.T.S. receives full payment for all work done pursuant to the Contract Documents. All amounts shall be paid in United States Dollars unless expressly otherwise agreed between the parties.

All work is to be performed during our normal working hours of 7:30 a.m. – 4:30 p.m., Monday through Friday. Any work performed outside of these times will be billed on an overtime basis of time and a half, and such additional amounts will be added

to the amount in the Quotation. Any additional labor and material requested by Buyer and not included herein shall be invoiced on a time and materials basis outside of this proposal.

Payment is due from Buyer as set forth in the Quotation. I.T.S. will assess a 2% per month Service Charge on any amounts not paid in accordance with the terms set forth in the Quotation.

Prices set forth in the Contract Documents do not include any of the following: (i) permits and fees as required by local government agencies; (ii) Federal, state or local taxes; or (iii) the testing for the documentation of and/or removal of any hazardous materials. Buyer shall make payments as provided in the Quotation. All such additional charges or costs not specifically set forth in the PO Acknowledgement sent from I.T.S. shall be the sole and exclusive responsibility of the Buyer.

#### **4. SHIP DATE:**

The shipping date identified in the Purchase Order is an estimated shipping date only; I.T.S. reserves the right to vary such shipping date, within reason. I.T.S. shall not incur any additional costs or bear any liability associated with any such extension of the shipping date.

#### **5. FORCE MAJEURE:**

Except with respect to the payment of monies by Buyer to I.T.S. due hereunder and except as otherwise provided in Section 4, neither party shall be responsible for failure to perform under the Contract Documents or liable to the other party for any loss or damage due to causes beyond its reasonable control including, but not limited to, any of the following events: acts of God, fires, civil disobedience, war, acts of terrorism, riots, strikes, work stoppages, labor disputes, floods, unavailability of suitable transportation, changes in laws or other governmental requirements, unforeseeable local conditions, or shortages of labor or materials.

#### **6. CANCELLATION BY I.T.S.:**

- a) I.T.S. may, by written notice to Buyer, cancel Buyer's order if Buyer: (i) fails to perform any of the terms and conditions contained in the Contract Documents, and Buyer does not cure such failure to I.T.S.'s satisfaction within a period of ten (10) days after receipt of written notice from I.T.S.; (ii) becomes insolvent, makes an assignment in favor of creditors, or becomes subject to any bankruptcy, dissolution or similar proceeding; or (iii) is unable to comply with all applicable laws or regulations. As a nonexclusive alternative to cancellation, I.T.S. may, at its sole discretion, by written notice to Buyer, and without any liability of I.T.S. to Buyer whatsoever, suspend any of its obligations under the Contract Documents for any reason referenced in subsections (i) through (iii) above.
- b) In the event of cancellation or suspension by I.T.S. as set forth in this Section 6, Buyer shall pay to I.T.S., upon receipt of I.T.S.'s written notice, a pro-rata portion of the purchase price of the Project, based on the percentage of completion of the Project at the time of cancellation, plus a reasonable profit based on the cost as determined by I.T.S. in its sole discretion. Upon I.T.S.'s receipt of such cancellation payment, I.T.S.'s partially completed materials and/or fabrication, except for any Proprietary Information (as defined in Section 8, may become the property of Buyer.

#### **7. CANCELLATION BY BUYER:**

Except as set forth in Section 6, Buyer's Purchase Order, when accepted by I.T.S., shall not, for any reason, be cancelled by Buyer without full payment of the Project except upon I.T.S.'s prior written consent. Upon I.T.S.'s receipt of such cancellation payment, I.T.S.'s partially completed materials and/or fabrication, except for any Proprietary Information (as defined in Section 8), may become the property of Buyer.

#### **8. PROPRIETARY INFORMATION:**

The term "Proprietary Information" shall mean (i) all information included in the Contract Documents submitted by I.T.S. and all technical information concerning patents, copyrights, trade secrets and other intellectual property related to the Equipment or the installation of the Equipment, regardless whether such disclosure is included in the Contract Documents or otherwise disclosed by I.T.S.; (ii) any processes, concepts, devices, machines, systems, techniques, know-how, designs, drawings, documents, records, data compilations, computerized records, CAD data, specifications, information, or special purpose manufacturing prototypes or

samples, photographs, videotapes, models, molds, prototypes or other items supplied to Buyer by I.T.S. and (iii) all information and intellectual property that is developed or acquired by I.T.S. outside the scope of this Agreement at any time. All Proprietary Information shall remain the sole and exclusive property of I.T.S. I.T.S. grants no Proprietary Information rights to Buyer except as may be necessary to fulfill I.T.S.'s obligations under the Contract Documents.

#### **9. CONFIDENTIAL INFORMATION:**

- a) The term "Confidential Information" shall mean (i) any Proprietary Information provided to Buyer by I.T.S.; and (ii) any other information derived by Buyer from the Proprietary Information or the Equipment. The term "Confidential Information" shall not include information that (x) is or becomes available in the public domain through no wrongful act of Buyer; (y) is independently developed by Buyer; or (z) is required to be disclosed pursuant to a final and unappealable order of a court or agency of competent jurisdiction served on Buyer, provided that Buyer gives I.T.S. written notice within two (2) days of receipt of such order and at least thirty (30) days prior to the production or disclosure of any such Confidential Information.
- b) Except as otherwise authorized in writing by I.T.S., or except as may be required by a final and unappealable order of a court or agency of competent jurisdiction, Buyer shall not, and shall not permit any related parties or any other person under the control of Buyer, to (i) communicate, disclose, describe, characterize, duplicate, imitate or otherwise make known any Confidential Information to any person or entity not bound by a confidentiality agreement protecting I.T.S.; or (ii) use any Confidential Information for Buyer's financial benefit or the financial benefit of any employee, officer, director or agent of Buyer or for any purpose which may adversely affect I.T.S. or any business or operation of I.T.S. Buyer shall (y) take all reasonable steps to keep the Confidential Information confidential; and (z) expressly require, through appropriate legal documents, each of Buyer's directors, officers, employees, independent contractors, subcontractors and agents exposed to any of the Confidential Information to keep all Confidential Information confidential. Buyer shall limit the use and circulation of the Confidential Information within Buyer's organization to the maximum extent possible. The obligations to maintain secrecy and confidentiality set forth herein shall continue indefinitely and shall survive termination of the Contract Documents.
- c) Buyer acknowledges that the restrictions contained in this Section 9 are necessary to protect the legitimate interests of I.T.S. and that any violation of said provisions would result in irreparable injury to I.T.S. In the event of a breach or threatened breach by Buyer of any provision of these Terms, Buyer agrees that I.T.S. will be entitled to injunctive relief restraining Buyer and I.T.S. directors, officers, employees, independent contractors, subcontractors and agents from such breach or threatened breach and to any other legal or equitable remedies available to I.T.S.

#### **10. CODE COMPLIANCE:**

It is Buyer's sole and exclusive responsibility to advise I.T.S. of all local laws, rules, regulations, standards or codes with which Buyer requests the Equipment or work performed under the Project comply. I.T.S. shall not have any liability for any design specifications supplied by Buyer or changes made by I.T.S. at Buyer's request.

#### **11. WARRANTIES ON NEW EQUIPMENT:**

New Equipment installed by I.T.S. is guaranteed against defective workmanship and material, and is guaranteed to perform in accordance with the specifications set forth in the Quotation, for a period of twelve (12) months from the date of shipment ("New Equipment Warranty Period"); provided, that such New Equipment is carefully operated and maintained in accordance with the recommended procedures. If, during the New Equipment Warranty Period, Buyer notifies I.T.S. in writing that the New Equipment fails to perform in accordance with the specifications set forth in the Quotation due to defective material or workmanship, I.T.S. shall, at its option, either repair the New Equipment or refund the purchase price to Buyer. This warranty does not extend in any way to consumable components, which, under normal usage, have an inherent life shorter than twelve (12) months. In any and all events, Buyer's remedies with regard to New Equipment shall consist exclusively and solely of those in this Section 11.

This warranty shall not apply to any part of the New Equipment that has been subjected to misuse, abuse, neglect, improper storage or handling, or modifications by Buyer or parties other than I.T.S. Unless otherwise agreed in writing prior to the commencement of work, I.T.S. shall not be liable for any labor charges by Buyer or any third party for modifications or repairs.

**12. WARRANTIES ON SUPPLIED EQUIPMENT:**

With regard to the equipment, parts, or accessories purchased by I.T.S. from the manufacturer for re-sale, the original manufacturer's warranties shall, to the extent permitted by law, extend and inure to the benefit of the Buyer. I.T.S. DOES NOT WARRANT AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY FOR ANY EQUIPMENT, PARTS, OR ACCESSORIES PURCHASED BY I.T.S. FOR RESALE.

**13. WARRANTIES ON SERVICES:**

I.T.S. warrants that all Services provided by I.T.S. shall be rendered in a good and workmanlike manner by skilled personnel. I.T.S.'s warranty for Services shall extend for a period of ninety (90) days from the date on which such Services were performed by I.T.S. personnel.

**13A. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER:**

Buyer makes the following representations and warranties, as applicable: (1) Buyer is a company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has the full power and authority to execute and deliver the Contract Documents and to perform its obligations under this Contract Documents; (2) Neither the execution, delivery and performance of this Contract Documents nor the consummation by Buyer of the transactions contemplated in this Contract Documents will conflict with, violate or result in a breach of (a) any applicable law, regulation, order, writ, injunction, decree, determination or award of any governmental authority, (b) any of the terms, conditions or provisions of the certificate of organization, bylaws or other governing documents of Buyer, or (c) any material agreement or instrument to which Buyer is or may be bound or to which any of its material properties, assets or businesses is subject; (3) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened against or affecting Buyer or any of its properties, assets or businesses in, before or by any governmental authority which could, if adversely determined, reasonably be expected to have a material adverse effect on Buyer's ability to perform its obligations under this Contract Documents and that Buyer has not received any currently effective notice of any default; (4) Buyer will give I.T.S. clear briefings and ensure that all the facts, information, intellectual property, materials, and documents provided by Buyer are accurate, timely, non-infringing and in good condition.

**14. DISCLAIMER OF WARRANTIES:**

EXCEPT AS OTHERWISE EXPRESSLY STATED IN SECTIONS 11, 12 AND 13, I.T.S. MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES. THE WARRANTIES CONTAINED IN SECTIONS 11, 12 AND 13 ARE EXCLUSIVE AND GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES PROVIDED IN THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE OF OHIO AND INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF QUALITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

**15. LIMITATION OF DAMAGES:**

UNDER NO CIRCUMSTANCE SHALL I.T.S. BE LIABLE TO BUYER FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES, OR LOST OPPORTUNITIES ARISING UNDER OR IN CONNECTION WITH THE PROJECT, EVEN IF THE POSSIBILITY OF ANY SUCH DAMAGE OR LOSS IS KNOWN OR APPARENT TO I.T.S. ALL SUCH DAMAGES, LOSSES, AND CLAIMS ARE SPECIFICALLY DISCLAIMED.

**16. WARNINGS:**

The misuse, neglect or improper installation and care of the Equipment constitutes a hazard, which can result in loss of life, serious personal injury, heavy property or business damage, examples of which include, but are not limited to, the following: (i) the improper installation or application of the goods; their use with improper wiring, piping, or ventilation; improper system design or engineering; inadequate inspection or testing; (ii) the lack of regular careful maintenance of both the goods and any equipment in connection with which the goods are used; (iii) the employment of insufficient or unqualified personnel; (iv) the lack of careful supervision, proper warnings, operating instructions, and safety precautions; and (v) the exposure of the goods to excessive heat,

moisture, dust, dirt, corrosion, or any other deleterious condition. Such constitutes a hazard, which can result in loss of life, serious personal injury, heavy property, or business damage, and Buyer agrees with I.T.S. to itself take and require others to take all reasonable measures to avoid each such hazards. Buyer acknowledges the risks of the misuse, neglect, and improper installation and care of the Equipment.

**16A. BUYER'S COVENANT OF NON-CIRCUMVENTION:**

Buyer hereby acknowledges that I.T.S. has dedicated a significant amount of time and energy in developing relationships with its employees, resellers, contractors, vendors, customers, developers, programmers, manufacturers and inventors ("Contacts"). The protection of such relationships is essential to the success of I.T.S.' business. Buyer hereby acknowledges that, during the term of the Project, Buyer may be introduced to such Contacts and may have an opportunity to develop a relationship with such Contacts. Accordingly, Buyer hereby agrees that during the term of the Project and for a period of three (3) years thereafter, whether terminated by I.T.S. and/or Buyer, Buyer will not enter into an agreement that circumvents I.T.S. with respect to any Contacts.

For purposes of the Contract Documents, the term "Circumvent" shall mean (i) soliciting, inducing or influencing or attempting to solicit, induce or influence any Contacts to terminate, reduce the extent of, discourage the development of or otherwise harm its, his or her relationship with I.T.S., (ii) directly or indirectly soliciting business from any Contacts or (iii) in any fashion directing business or opportunities with a Contact away from I.T.S. It is the intention of the parties that this paragraph shall preserve and protect all business and opportunities I.T.S. has with such Contacts. Buyer agrees that it shall in no way interfere with, damage or deal directly in any fashion and for any purpose with such Contacts other than as directed by and with the express written approval and permission of I.T.S.

**16B. BUYER'S COVENANT OF NON-SOLICITATION:**

During the term of the Project and continuing for a period of three (3) years after the date of termination or expiration thereof, whether terminated by Buyer or I.T.S. and whether voluntary or involuntary, Buyer shall not: (a) solicit, induce, or influence or attempt to solicit, induce or influence any employee, contractor, agent, or consultant of I.T.S. to terminate, reduce the extent of, discourage the development of, or otherwise harm his or her contract or other relationship with I.T.S.; (b) assist any other party in such solicitation; or (c) directly or indirectly hire or contract with or attempt to hire or contract with any such employee, contractor, agent, or consultant of I.T.S..

**17. INDEMNIFICATION:**

- a) In the event that any person or entity asserts any claim against I.T.S. arising out of any act or omission of Buyer, or arising due to Buyer's failure to notify of warnings or deliver warnings as set forth above, and provided that any such claim is not proximately caused by I.T.S.'s gross negligence, willful misconduct or intentional misconduct, then Buyer agrees to indemnify and save I.T.S., its directors, officers, employees, insurers and representatives, harmless from and against all liability, loss, cost and expense (including attorneys' fees) arising out of or in connection with any such claim.
- b) In the event of any loss, injury or damage, Buyer shall not itself, nor permit others to, dismantle, test or examine any of the goods without giving I.T.S. sufficient advance written notice to be present and allowing such presence.
- c) Buyer agrees that the Equipment shall, at all times, be operated by Buyer's employees and agents utilizing all guards, warning signs, and other safety devices that are provided with or as part of the Equipment. Buyer further agrees that any mechanical or electrical disconnections, disassembly or non-use of any of the guards, warning signs, or other safety devices, and any software changes which negate the effect of the same, shall constitute a substantial change in the Equipment. Buyer also agrees to release, fully indemnify, and hold I.T.S. harmless from and against any liability for bodily injury, death, or property damage attributable to such failure to use guards, warning signs and other safety devices or from such substantially changed Equipment.
- d) Liability of I.T.S. with respect to this transaction or anything done in connection therewith, whether in contract, in tort, under any warranty, or otherwise, shall not exceed the amount paid to I.T.S. for the Project.

**18. ENTIRE CONTRACT:**

These Terms govern the Contract Documents and any other documents or contracts between I.T.S. and the Buyer related to the Project, and may be incorporated by reference in any I.T.S. document. Unless otherwise agreed in writing, any additional, inconsistent or different terms and conditions contained in Buyer's Purchase Order or other documents submitted by Buyer to

I.T.S., at any time before or after order placement and I.T.S.'s Purchase Order Acknowledgement, are hereby expressly rejected by I.T.S. No Purchase Order shall be accepted unless such Purchase Order is accepted in writing by I.T.S. at its office at 3914 Virginia Avenue, Cincinnati, Ohio 45227 or is expressly accepted by I.T.S. in its PO Acknowledgement that is entered into by I.T.S. at its office at 3914 Virginia Avenue, Cincinnati, Ohio 45227.

**19. GOVERNING LAW; VENUE:**

These Terms shall be governed by and interpreted in accordance with the substantive laws of the State of Ohio, USA, without regard to its conflict of law rules. Notwithstanding the agreement of the parties to submit any dispute hereunder to binding arbitration, the parties also hereby agree that the exclusive jurisdiction for any legal action or proceeding under or with respect to the Contract Documents shall be limited to the state courts located in Hamilton County, Ohio or the Federal District Court for the Southern District of Ohio. Seller hereby agrees not to raise, and hereby waives, any objection it may have to or any defense it may have based upon, the venue of such courts or based upon an inconvenient forum. The parties also agree that a final judgment in any such action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

I.T.S. AND BUYER EXPRESSLY AGREE THAT PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("CISG"), THE CISG SHALL NOT APPLY TO THE PERFORMANCE OR INTERPRETATION OF THE CONTRACT DOCUMENTS.

**20. DISPUTE RESOLUTION:**

In the event of a dispute concerning contractual causes arising from the Purchase Orders or the parties' obligations hereunder, I.T.S. and Buyer shall endeavor in good faith to settle the dispute through negotiations for a period of, at least, thirty (30) days following written notice of such dispute. If the dispute cannot be resolved through good faith negotiations, or another mutually agreeable dispute resolution mechanism, either of the parties has the right to request non-binding mediation. If mediation fails to resolve the dispute, the claim or controversy shall then be finally and exclusively settled by arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be held in Cincinnati, Ohio in accordance with CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration, or if the parties so agree, the relevant rules of another arbitration organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitrations. The United States Arbitration Act, 9 U.S.C. §§ 1-16, shall govern the arbitration and judgment upon any award rendered in such arbitration may be entered by any court having jurisdiction. If any action or proceeding is commenced which arises out of or relates to these Terms or any other Contract Documents, or the transactions between I.T.S. and Buyer covered hereby, the prevailing party in such action or proceeding shall be entitled to recover from the other party the reasonable attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding and in enforcing any award or judgment thereby obtained. Pending final resolution of a claim, unless otherwise agreed to in writing, I.T.S. and Buyer shall proceed diligently with performance of their respective obligations under any Contract Documents.

**21. NOTICES:**

All notifications to I.T.S. shall be made in writing, by certified mail/return receipt requested, addressed to Industrial Thermal Systems, Inc. 3914 Virginia Avenue, Cincinnati, Ohio 45227.