

1. AGREEMENT.

The terms and conditions as set forth herein as well as any additional terms and conditions that may appear on the Customer Order shall constitute the entire agreement between Innovative Technologies Traxlogix, Ltd. ("Seller") and Buyer. Seller will not be bound by any terms of Buyer's order that are inconsistent with the terms herein. Acceptance by Buyer of these terms may be made either (a) by written acceptance or (b) by receipt by Buyer of delivery of any products purchased by Buyer ("Products") and failure by Buyer to return the Products within five (5) days following such delivery. The Agreement shall not be modified except in writing, signed by the parties hereto.

2. PRICE.

(a) The price of all Products unless otherwise specifically stated in this Agreement is F.O.B. carrier, at the place of manufacture or warehouse location, exclusive of insurance cost. The cost of packaging for normal domestic shipment is included in the invoiced price. Where special domestic or export packaging is specified, involving greater expense, a charge will be made to cover such extra expense.
(b) Prices and orders do not include Federal, State or local excise, sales, use or other taxes now or hereinafter enacted, which are applicable to the Products sold hereunder or this transaction (excluding only taxes based on Seller's income), which tax or taxes will be added by Seller to the sales price when Seller has the legal obligation to collect the same and will be invoiced to and paid by Buyer, unless Buyer provides Seller with a proper tax exemption certificate. In the event Seller is required to pay any such tax, fee or charge at the time of sale or thereafter, the Buyer shall reimburse Seller therefor.
(c) Prices quoted are for the Products and services subject of this Agreement, proprietary rights of any kind, patent rights, qualification, environmental or other than Seller's standard tests unless expressly agreed to in writing by Seller.
(d) Unless otherwise stated by Seller in writing, all quotations are firm for, and expire, sixty (60) days after date thereof and constitute offers.

3. PAYMENT TERMS.

(a) Unless otherwise stated as part of this Agreement, the terms of the sale are net 30 from date of invoice. Seller reserves the right to require alternative payment terms, including, without limitation, sight draft, letter of credit or payment in advance. All payments shall be made to seller at its office in Alberta, Canada, or such other office as may be from time to time designated. Interest accrues on overdue invoices at the rate of one and one-half percent (1 1/2%) per month, but not more than the amount allowed by law, on the unpaid balance from the original due date of the invoice.

(b) All orders are subject to, and the obligation of Seller to make deliveries is subject to, the right of the Seller as provided in paragraph 11, to require of the Buyer payment of all or any part of the purchase price in advance of delivery or to make shipment C.O.D. If the Buyer fails to make advance payment when requested by Seller, or if the Buyer is or becomes delinquent in the payment of any sum due Seller (whether or not arising out of this order) or refuses to accept C.O.D. shipment, then Seller shall have the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel the sales order, refuse to make further deliveries, and declare immediately due and payable all unpaid amounts for goods previously delivered to the Buyer. Partial shipments made under any order shall be treated as a separate transaction and payment thereof shall be made accordingly. However, in the event of any default by Buyer, Seller may decline to make further shipments without in any way affecting its rights under such order.

4. TRANSPORTATION AND RISK OF LOSS.

Unless otherwise agreed to in writing by Seller, all shipping shall be at the expense of Buyer, Seller reserving the right to ship Products freight collect and to select the means of shipping and routing. Unless otherwise advised, Seller may insure to full value of the Products or declare full value thereof to the transportation company at the time of delivery and all such freight and insurance costs shall be for Buyer's account. Risk of loss or damage shall pass to Buyer upon delivery of the Products to the transportation company at the FOB point. Seller may at its option obtain insurance for its Products covering their delivery to Buyer and Buyer agrees to reimburse Seller for the cost of providing such insurance. If Buyer has not been notified of the existence of insurance coverage and provides its own insurance for such shipment Seller will waive its insurance charge. Confiscation or destruction of, or damage to Products shall not release, reduce or in any way affect the liability of Buyer. Notwithstanding any defect or nonconformity, or any other matter, such risk of loss shall remain in Buyer until the Products are returned at Buyer's expense to such place as Seller may designate in writing. Buyer, at its expense, shall fully insure Products against all loss or damage until Seller has been paid in full, or the Products have been returned, for whatever reason, to Seller.

5. SHIPMENT.

Seller will attempt to meet shipment schedules. However, any shipment quotation or forecast on an order acknowledgment is only an estimate of the time required to make shipment and Seller will not assume liability, consequential or otherwise, because of any delay or failure to deliver all or any part of any order for any reason, including its active or passive negligence. Seller reserves the right to allocate inventories and current production in any way it deems desirable.

6. INSPECTION AND ACCEPTANCE.

The Buyer shall have the right to inspect the goods upon tender of delivery. Failure of the Buyer to inspect the goods and give written notice to the Seller of any alleged defect or nonconformity within thirty (30) days after tender of delivery shall constitute an irrevocable acceptance by Buyer of the goods delivered to him. Use of any such goods by Buyer, its agents, employees or licensees, for any purpose after delivery thereof, shall also constitute acceptance of the goods by Buyer.

7. RETURNS.

The Products may not be returned to Seller without first obtaining Seller's consent. The request for return and credit must be filed with Seller and shall include purchase order number, approximate date shipped and any and all other identifying numbers (such as invoice number, date of invoice, P.O. numbers, etc.). Each request for return of Products for credit should state the type and quantity of goods, the part numbers and the reasons for the return. If return authorization is granted, Products shall be returned in a clean, well packaged condition. No credit allowance on defectives will be made and no replacement for defectives will be shipped in any event, unless the alleged defectives are, among other things, established to Seller's satisfaction after suitable testing and inspection by Seller.

8. TERMINATIONS.

Any order for a standard Product with a published price accepted by Seller and terminated by Buyer at least thirty (30) days prior to shipment, shall be subject to a restocking charge of ten percent (10%) of the order value to cover costs of processing and order handlings. Termination of any order for a standard Product with a published price accepted by Seller within thirty (30) days before shipment shall be subject to a written acceptance by Seller and restocking charge of twenty percent (20%) of the order value. Orders for nonstandard products or products without a published price may not be terminated by Buyer except by mutual agreement in writing. Terminations by mutual agreement are subject to the following conditions: (a) Buyer will pay, at applicable contract prices, for all Products which are completely manufactured and allocable to Buyer at the time of Seller's receipt of notice of termination; (b) Buyer will pay all costs, direct and indirect, which have been incurred by Seller with regard to Products which have not been completely manufactured at the time of Seller's receipt of notice of termination, plus a pro rata portion of the normal profit on the contract; (c) Buyer will pay a termination charge on all other Products affected by the termination. Seller's normal accounting practices shall be used to determine costs and other charges. In the event of a termination, Buyer will have no rights in partially completed goods.

9. LIMITED WARRANTY—LIMITATION OF REMEDIES.

(a) Except as otherwise specified herein, Seller warrants the Products: to be free from defects in material and workmanship and to perform in the manner and under the conditions as specified by Seller for a period of six (6) months from delivery.
(b) This warranty is the only warranty made by Seller with respect to the Products and no representative or person is authorized to bind Seller for any obligations or liabilities beyond the warranty in connection with the sale of Seller's goods. This warranty is made to the original purchaser only at the original location and is nontransferable, and may only be modified or amended by a written instrument signed by a duly authorized officer of Seller. Goods or parts which are replaced or repaired under this warranty are warranted only for the remaining unexpired portion of the original warranty period applicable to the specific product.
(c) These remedies are available only if Seller is notified in writing by Buyer promptly upon discovery of the defect, and in any event within the warranty period for Product and Seller's examination of such goods discloses to Seller's satisfaction that such defects actually exist and the goods have not been (i) repaired, worked on, or altered by persons not authorized by Seller so as, in Seller's sole judgment, to injure the stability, reliability, or proper operation of such goods; (ii) subject to misuse, negligence or accident; or (iii) connected, installed, used or adjusted otherwise than in accordance with the instructions furnished by Seller.
(d) All Products which Buyer considers defective shall be returned to Seller's office as designated on the face hereof transportation costs prepaid and borne by Buyer, unless otherwise provided. The risk of loss of the goods shipped or delivered to Seller for repair or replacement will be borne by Buyer.
(e) If it is found that any Product has been returned without cause and is still serviceable, Buyer will be notified and the Product returned at Buyer's expense. In addition, a charge for testing and examination may, in Seller's sole discretion, be made on Products so returned.
(f) THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (EXCEPT FOR SPECIFIC WRITTEN PRODUCT PERFORMANCE GUARANTEES) WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SHALL BE THE BUYER'S SOLE REMEDY AND SELLER'S SOLE LIABILITY ON CONTRACT OR WARRANTY OR OTHERWISE FOR THE PRODUCT.

10. SELLER'S RIGHTS TO SUBCONTRACT.

Seller may subcontract any portion of the work on any item subject to this Agreement, but Seller's obligations and rights hereunder shall not be limited or affected thereby.

11. BANKRUPTCY OR INSOLVENCY OF BUYER.

If the financial conditions of the Buyer at any time is such as to give Seller, in its judgment, reasonable grounds for insecurity concerning Buyer's ability to perform its obligations under this agreement. Seller may (a) by notice in writing to Buyer, cancel this agreement, without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Seller, (b) require full or partial payment in advance and suspend any further deliveries for continuance of the work to be performed by Seller until such payment has been received or (c) make shipments C.O.D.

12. PATENT PROTECTION.

(a) Seller will defend Buyer at its own expense, as set forth herein, against any claim that the design or manufacture of any standard Product furnished hereunder constitutes an infringement of any Canadian patents or other industrial property rights. Buyer shall notify Seller promptly in writing of any such claim of infringement and shall give Seller full authority, information and assistance in settling or defending such claim. Seller shall have no liability whatsoever with respect to any claims settled by Buyer without Seller's prior written consent. Seller shall not have any liability to the Buyer under any provision of this clause if any patent infringement or claim thereof, is based upon the use of the goods as modified by any person other than the Seller or in combination with equipment or devices act made by Seller, or in a manner for which the goods were not designed.
(b) In case the Products furnished by Seller are held in and of themselves to constitute infringement and their use is enjoined, Seller, within a reasonable time, shall, at its option, either (i) secure for Buyer the right to continue using the Products by suspension of the injunction, by procuring for the Buyer a license or by some other means, or (ii) at Seller's own expense, replace the Products with non-infringing goods, or (iii) remove the enjoined Products and refund the sums paid. The foregoing states the entire liability of Seller with respect to infringement of intellectual property rights by the goods or any part thereof or by their operation. THE FOREGOING STATES SELLER'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR CLAIMS THEREFORE.

13. PROPRIETARY RIGHTS.

The sale of the Products hereunder to Buyer shall in no way be deemed to confer upon Buyer any right, interest or license in any patents or patent applications or design copyrights the Seller may have covering the Products. Seller retains for itself all proprietary rights in and to all designs, engineering details, and other data and materials pertaining to any Products supplied by Seller and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Seller in connection with the Products or with any and all Products developed by Seller as a result thereof, including the sole right to manufacture any and all such Products. Buyer warrants that it will not divulge, disclose, or in any way distribute or make use of such information, and that it will not manufacture or engage to have manufactured such Products.

14. ERRORS.

Stenographic and clerical errors are subject to correction.

15. APPLICABLE LAW; JURISDICTION AND VENUE.

This agreement will be governed by the Laws of Canada, Alberta. The state courts of Alberta County, Canada or if there is exclusive federal jurisdiction, will have exclusive jurisdiction and venue over any dispute arising out of this agreement, and Buyer hereby consents to the jurisdiction of such courts.

16. LIMITATION OF LIABILITY.

(a) Seller will not be liable for any loss, damages or penalty resulting from delay in delivery of the Products when such delay is due to causes beyond the reasonable control of Seller, including without limitation, supplier delay, force majeure, act of God, labor unrest, fire, explosion or earthquake. In any such event, the delivery date will be deemed extended for a period equal to the delay.
(b) SELLER'S LIABILITY UNDER, FOR BREACH OF, OR ARISING OUT OF THIS AGREEMENT AND/OR SALE WILL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCTS OR A REFUND OF THE PURCHASE PRICE OF THE PRODUCTS, AT SELLER'S SOLE OPTION, AS SET FORTH IN PARAGRAPH 9 ABOVE. IN NO EVENT WILL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTED PRODUCTS BY BUYER, NOR WILL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES INCLUDING WITHOUT LIMITATION LOSS OF PROFIT WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF SELLER ARISING OUT OF THIS AGREEMENT AND/OR SALE.

17. SUBSTITUTIONS AND MODIFICATIONS.

Seller will have the right to make substitutions and modifications of the specifications of Products sold by Seller, provided that such substitutions or modifications will not materially affect overall Product performance.

18. ATTORNEY'S FEES AND COSTS.

Reasonable attorney's fees and costs will be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this agreement.

19. WAIVER.

Any concession or indulgence made by the Seller or Seller's failure to insist on performance of any of the terms and conditions hereto shall not be considered a waiver of any other term, whether the same or similar. No waiver by Seller of any default or provision hereof shall be deemed a waiver of any subsequent default or provision.

20. INDEMNIFICATION. Buyer shall defend, indemnify and hold Innovative Technologies Traxlogix, Ltd., its subsidiaries and affiliates, their officers, directors, employees, and agents harmless from and against any claims, actions or demands, liabilities and settlements, including, without limitation, reasonable attorney and accounting fees, resulting from, or alleged to result from Buyer's use of the Product