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Terms and Conditions of CUSTOM EQUIPMENTAND/OR SERVICES

The following are the terms and conditions of custom equipment and/or services ordered through a purchase order by buyer ("Buyer"), and to be manufactured and/or performed by GH INDUCTION ATMOSPHERES LLC (the "Company"):

1. Quotations And Acceptance

- 1.1. Quotations: The quotation shall expire 60 days after the date issued unless otherwise stated, and is subject to change without notice and supersedes any quotations of prior dates ("Quotation"). The equipment or services on this Quotation may be ordered at any time up to expiration date of the proposal. Any changes to the equipment, services, or terms of sale are not binding unless accepted in writing by the Company.
- 1.2. Acceptance: These terms and conditions may be accepted by Buyer either in writing or by any conduct which recognizes the existence of a contract. Any such acceptance is limited to the express terms hereof. The Company hereby objects to and rejects any proposal for additional or different terms or any attempt by Buyer to vary any of these terms including additional or different terms in Buyer's purchase order, and any such additional or different terms or variances shall be deemed material. Any such proposal or attempt by Buyer that would materially change the description, quantity, price, rights to use or delivery schedule of the items or services specified in the Quotation shall constitute a rejection of this offer. In the event of such rejection, the Company shall have no obligation whatsoever towards the Buyer. Any other such proposal or attempt shall not operate as a rejection, but this offer shall be deemed accepted by Buyer without regard thereto.
- 2. Modification of Terms: Paragraph Headings: Nothing contained in this Quotation shall modify any of the printed terms and conditions unless specific reference is made to the "terms and conditions" sought to be changed. The paragraph headings set forth herein are for convenience only and shall be disregarded in the interpretation of this sales offer.
- 3. Excusable Delays: The Company shall not be liable for delays or defaults in furnishing goods or services hereunder if such delays or defaults on the part of the Company are due to acts of God or of a public enemy, acts of Government of the United States or any state or political subdivision thereof, fires, floods, explosions, or other catastrophes, epidemics and quarantine restrictions, strikes, slowdowns or labor stoppages of any kind, freight embargoes, unusually severe weather, inability to obtain necessary supplies or materials, delay of supplier due to such causes or due to any other causes whether or not similar to the foregoing beyond the control of the Company, nor in any event shall the Company be liable for consequential damages. Without limiting the foregoing, the Company will not be liable for any delays by Buyer in providing reasonable assistance in connection with the design or manufacture of custom items, and/or services, if any. Receipt and acceptance of the equipment and/or services ordered by the Buyer upon delivery shall constitute a waiver of all claims for loss or damage due to delay.

4. Testing Finished Product:

- **4.1.Testing:** The equipment shall be tested in the Company's plant by the Company using its standard test procedures. Prices and delivery dates are based upon the Company receiving an adequate supply of test material or parts from Buyer at such time as same is needed. It is understood that the expense to the Company resulting from such material or parts being unavailable when needed, or of improper quality, shall be evaluated by the Company and paid by the Buyer. Buyer shall have no right to test or inspect any of the equipment ordered hereunder at the plant of the Company unless prior permission in writing is first obtained from the Company.
- **4.2. Finished Product:** The Buyer understands and acknowledges that the Company at its discretion, due to the inherent characteristics of the parts as submitted by the buyer, may determine said parts as ultimately unusable in the requested equipment and/or service, employing induction procedures ("Scrapped Parts"). Further the Buyer understands and acknowledges that the Company will not be responsible to either reimburse the Buyer for or to pay shipping costs of the Scrapped Parts back to the Buyer.
- 5. Installation Service: The prices quoted for the Company heating equipment do not include the services of an installation engineer unless stated otherwise.
- 6. Specifications: Prices are based upon the itemized specifications included in the Quotation. General specifications not included shall be in accordance with the engineering, judgment, design, and manufacturing practices of the Company. Buyer acknowledges and agrees that the Company may at its discretion, make reasonable changes in any itemized and/or general specifications of custom items, in accordance with the engineering judgment and design and manufacturing practices of the Company, and that such changes will not provide a basis for Buyer to claim non-conformance or refuse to accept the items. Any variations requested by Buyer shall not be made unless and until Buyer has agreed in writing to pay the price quoted by the Company.
- 7. Weights: All weights given are estimated weights of the total materials required for the manufacture of the equipment.
- 8. DRAWINGS: All drawings, blueprints, dies, patterns, tools, printing plate, designs, specifications, etc., prepared or constructed by Buyer



and delivered to the Company in connection with this sale, shall belong to Buyer and shall be returned by the Company to Buyer as soon as practicable after delivery of the equipment covered in this Quotation. Nothing herein contained shall be interpreted as an understanding or agreement that details of shop working drawings or patterns will be furnished by any part of equipment ordered. All drawings, blueprints, dies, patterns, tools, printing plates, designs, specifications, etc., prepared by the Company shall belong to the Company.

- 9. SUBSTITUTES, CHANGES, AND IMPROVEMENTS: The Company at its discretion may, furnish suitable substitute for materials unobtainable because of priorities or regulations established by government authority or unavailability of materials from suppliers. Details of design and construction as stated in the proposal may be only approximate and are therefore subject to revision by the Company if changes in the layout or arrangement are desired or required by conditions of which the Company was unaware of which were unforeseen at the time the proposal was submitted, the price is subject to revision.
- 10. Storage: If the equipment is not shipped within five (5) days after notification has been made to the Buyer of its readiness for shipment, for any reason beyond the Company's' reasonable control, including the Buyer's failure to give shipping instructions, the Company may store machinery at the Buyer's risk in a warehouse or upon the Company's premises, and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefore.

11. Warranty and Guarantee:

- **11.1.** The Company warrants equipment and parts manufactured by it and supplied hereunder to be free from defects in materials and workmanship for one year after shipment from the Company.
- 11.2. If within such periods, any such equipment parts shall be proved to the Company's satisfaction to be defective, such equipment or parts shall be repaired or replaced F.O.B. from the Company, for installation at the Buyer's expense, at the Company's discretion. The company's obligation hereunder shall be limited to such repair and replacement, F.O.B. the Company premises, and shall be conditioned upon the Company receiving written notice of any alleged defect within ten (10) days after its discovery and at the Company's discretion, return of such equipment or parts prepaid to it. This warranty shall not apply to equipment or parts not manufactured by the Company or to equipment or parts which shall have been repaired or altered by than the Company.
- **11.3.** Equipment supplied but not manufactured by the Company shall be covered by the original manufacturer's warranty. This includes but is not limited to heat exchangers, temperature controllers, and pyrometers.
- 11.4. Items of expendable nature such as work coils and fuses are not covered once they are put into service.
- 11.5. Any defective equipment or parts returned to the Company must be returned with a Return Material Authorizations ("RMA") number. A RMA number is obtained from the Company's Service Department. Credit will be issued for parts returned with valid warranty claims after receipt and inspection by the Company.
- 11.6. Except as specified herein, no other warranties, whether expressed or implied, including without limitation the implied warranties of merchantability and fitness for a particular PURPOSE are made by the Company.
- **11.7.** Buyer represents and warrants that the use of the drawings, photographs, blueprints, dies, patterns, tools, printing plates, designs, specifications, etc. provided by Buyer to the Company, in connection with the purchase, do not and will not infringe upon, violate, or constitute a misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary right of any third party.
- 11.8. Each party shall promptly notify the other party of any claims or assertions of any third party that, if true, would result in a breach of the representations made by Buyer in part 11.7. above.

12. Claims:

- **12.1.** Any and all claims by Buyer shall be made in writing within 30 days from the date of delivery of the equipment except where made under provision hereof for which a longer period is provided hereunder. Failure to present any such claim within the time fixed herein shall constitute a waiver of every such claim or claims.
- 12.2. Equipment shall not be returned without authorization and instruction from the Company, nor will returned equipment be accepted unless sent in accordance with such authorization and instructions.
- 13. Cancellation: Orders accepted by the Company can be cancelled by Buyer only with the written consent of the Company, and if such consent is granted, then only upon payment of reasonable cancellation charges which shall include expenses already incurred, including commitments made by the Company, charges for work already done, and reasonable profits thereon.
- **14. Responsibility:** The Company's delivery to a carrier of the equipment sold hereunder to Buyer shall constitute a transfer of full responsibility for said equipment to the Buyer and the risk of any loss or damage to said equipment from whatever cause arising shall, from and after the time of said delivery to the carrier, be borne by the Buyer.
- 15. Taxes: To the extent legally permissible, all present and future taxes imposed by any Federal, State, foreign or local authority which the Company may be required to pay or collect upon or with reference to the sale, purchase, transportation, storage or use of the equipment and/or services purchased from it shall be for the account of Buyer, and it shall be added to the purchase price and paid by Buyer. Buyer shall indemnify and hold harmless the Company against such taxes together with interest thereon not paid by Buyer at time of payment of purchase price.



- 16. Complete Agreement; Modification; Exclusion of Parole Evidence: Acceptance by the Company of order for equipment and/or services covered by this Quotation and said order constitute the entire contract between Buyer and the Company with reference to the subject matter hereof and covers all of the convenants, conditions, stipulations and provisions agreed upon between the parties hereto. No statements or agreements, whether oral or written, made prior to or at the time of the acceptance of that order shall vary or modify the written terms of said order and acceptance, and neither part is or shall be bound by any inducements, statements, representation, promise or agreement not in conformity herewith. Neither party shall claim any amendment, modification or release from any provision of said order and acceptance by mutual agreement or otherwise unless same is in writing signed by the party to be charged and specifically states that same is an amendment to the contract.
- 17. Non-assignability; Binding Effect: The agreement between the Buyer and the Company, shall not be assigned in whole or in part by the Buyer without the prior written consent of the Company. The agreement shall be binding upon the successors and, subject to the limitation hereinafter set forth, the assigns of the parties thereto.
- **18. Rights of The Company:** Buyer shall reimburse the Company for all costs and expenses including reasonable attorney's fees incurred by it to enforce collection of any moneys due it under this contract or under the sale of the equipment and or services covered herein. Rights and remedies herein expressly provided, shall be in addition to any other rights and remedies given by law.

19. Shipment:

- **19.1.** If Buyer shall fail to designate carrier prior to date specified for shipment, the Company may ship equipment by such carrier as the Company may designate F.O.B. the company, and Buyer shall pay all charges for said shipment.
- **19.2.** Shipping dates are approximate and date from acceptance of order and complete manufacturing information at the home office of the Company. If the Purchaser fails to furnish needed information, dates of shipment may be extended.
- 20. Termination in Event of Insolvency, etc.: If Buyer ceases to conduct its operation in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding under the bankruptcy or insolvency laws is brought by Buyer, or if any such proceedings is brought against Buyer or a receiver for Buyer is appointed and such proceeding or receivership is not terminated within 30 days from the commencement thereof, or if Buyer shall make an assignment for the benefit of creditors, the Company may terminate this agreement without liability on the part of the Company, and Buyer shall nevertheless, be liable for cancellation charges to the extent set forth in Paragraph 13 above. In addition, if the Company has received notice of a claim, or reasonably believes that a third party may have standing to assert a claim, for which the Company may be entitled to indemnification under Paragraph 27 below, then the Company may temporarily cease performing under this agreement, and/or terminate this agreement, without liability on the part of the Company, and in the event of termination Buyer shall nevertheless be liable for cancellation charges to the extent set forth in Paragraph 13.
- 21. Corrections: All proposals are subject to subsequent correction in case of any errors including typographical and clerical errors and errors in engineering.
- 22. Notices: Any notice, demand or communication in connection with the contract between Buyer and the Company may be transmitted in any manner reasonable under the circumstances, and any notice, demand or communication shall be deemed to have been adequately transmitted and to have been given, made or served when mailed by United States certified or registered mail, postage prepaid, to the appropriate party directed to the attention of its president at the address set forth on the reverse side hereof or at such other address most recently specified by such person by notice in writing to the party giving such notice, demand or communication.
- 23. Governing Law; Arbitration: the interpretation and performance of this contract shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of law provisions thereof or the U.N. Convention on the International Sale of Goods. Any controversy or claim arising under, out of, or in connection with the contract for the sale of the equipment and/or service covered by this Quotation or any breach or claimed breach of the same shall be settled solely and exclusively by binding arbitration in the City of Rochester, State of New York, in accordance with the then current rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.
- 24. Agent's Authority: No representative, agent, or dealer has any authority to obligate the Company, by any terms, stipulations or conditions not herein expressed.
- 25. Limited Liability: The Company shall in no event be liable for consequential, or direct, special or punitive damages. Without limiting the foregoing, in no event shall the Company be liable for direct damages that exceed, in the aggregate of the amount paid by Buyer to the Company.
- 26. Payments: Accounts not paid within agreed payment terms will be charged interest at a rate of 1.5% per month.
- **27. INDEMNIFICATION:** Buyer will at all times hereafter indemnify and hold harmless the Company and its officers, directors, employees, agents and other representatives from and against any and all claims, damages, liabilities, costs and expenses, including but not limited to reasonable attorneys fees, court costs and reasonable settlement or compromise payments, which may be brought against, made or incurred by the Company, or paid to any third party from any breach of any representation or warranty made by Buyer in Paragraph 11.7. above. Buyer's obligations under this Paragraph 27 shall survive the expiration or termination of these terms and conditions.