

Heatlay Ltd. Quotation/Sales Order Terms and Conditions

- ORDER TERMS:** The Quotation/Sales Order may be accepted in writing within thirty (30) days from its date or within the period of time specified in the Quotation/Sales Order, whichever is less. If such authorization is not received by Heatlay Ltd. within such thirty (30) day period, Heatlay Ltd. shall have the right to change the price for the Goods to Heatlay Ltd.'s price for the Goods at the time of shipment. The Quotation and any ensuing Sales Order arising is subject to credit approval of the purchaser by Heatlay Ltd.. The Quotation/Sales Order is an offer for the purchaser to buy. Acceptance of the Quotation/Sales Order is subject to the terms and conditions listed herein. In the event the purchaser's purchase order, acceptance or other written communication states terms additional to or different from those set out in the Quotation/Sales Order, the terms and conditions of this document shall prevail, and the terms and conditions of the purchaser's purchase order shall be of no force or effect. Such agreement shall be conclusively and irrevocably evidenced by Purchaser accepting delivery of shipment under such order or by Purchaser's payment of the invoice covering such payment.
- CANCELLATION:** The Quotation/Sales Order, once accepted by the purchaser, may only be cancelled or altered with Heatlay Ltd.'s written consent and subject to cancellation charges and upon terms which will indemnify Heatlay Ltd. against all loss. No alteration, variation, modification or waiver of any of these terms and conditions shall be binding on Heatlay Ltd. unless made in writing and signed by an authorized officer of Heatlay Ltd.. The Quotation/Sales Order may not be assigned or transferred by purchaser in whole or in part without Heatlay Ltd.'s consent.
- PRICING:** Quotation/Sales Order prices are based on quantities shown and are subject to change if quantities change. The prices quoted are F.O.B. point of shipment, with transportation charges extra, unless otherwise stipulated.
- DELIVERY:** Shipping or delivery dates given prior to shipment or delivery are estimates only. Heatlay Ltd. cannot guarantee delivery dates nor will it accept penalties or be liable for any consequential or special damages arising from any delay in delivery. Shortage or damage claims must be made with the delivering carrier in writing within 7 days of receipt of goods, with a copy of the claim to be given to Heatlay Ltd.. Error or omission claims must be made in writing within 24 hours of receipt of goods.
- RETURNS:** Custom electric radiant mats are not eligible for return refund. Uninstalled defective custom mats will be replaced with an equivalent. Standard electric radiant mats or controls are not to be returned without prior written authorization from Heatlay Ltd. and then only in accordance with the terms and conditions specified by Heatlay Ltd.. Return Goods shipping costs are the responsibility of the Purchaser. Goods returned are subject to inspection, approval and a minimum of a 25% restocking charge and must be in original packaging and in resalable condition. If the purchaser delays in releasing the goods for shipment, then (a) payment shall become due as if the shipment had been made on the date actually agreed to; and (b) all handling and storage charges incurred before the goods are released for shipment by the purchaser, shall be for the purchaser's account. Errors and omissions of stenographic or clerical nature are expected and are subject to correction. This quotation and sales order is our interpretation of the available information at the time of the quotation and it is the responsibility of the Purchaser to approve and ensure accuracy and completeness. It is the responsibility of the Purchaser to confirm this bill of material.
- TERMS OF PAYMENT:** Unless otherwise specified, prices are quoted in Canadian dollars. Unless noted otherwise payment terms are net fifteen (15) days from invoice date for cash or cheque without discount. Interest at the rate of 2% per month will be charged on past due accounts (26.8% per annum). If the Purchaser's account is past due, in addition to other rights and remedies, Heatlay Ltd. may suspend shipments, deliveries or performance hereunder or under any other contract with Purchaser until Purchaser's account becomes current or until Heatlay Ltd. receives satisfactory security or cash prior to shipment.
- FORCE MAJEURE:** For all purposes hereof, force majeure includes any act of God, war, mobilization, governmental regulation, strike, lockout, drought, flood, total or partial fire, obstruction of navigation, loss, damage or detention in transit, defective materials or delays by shippers, or other contingences or causes beyond Heatlay Ltd.'s control which might prevent the manufacture, shipment or delivery of Goods covered hereby. Performance of Heatlay Ltd.'s obligations may be suspended pending force majeure, without Heatlay Ltd. being responsible to Purchaser for any damages or losses resulting from such suspension.
- TITLE AND RISK OF LOSS:** All right, title and interest in and to the Goods shall remain with Heatlay Ltd. until such Goods have been paid for in full. However, such Goods shall be entirely at Purchaser's risk from the time placed on a common carrier and the loss, damage, deterioration or destruction of the Goods thereafter shall not release Purchaser from its obligations hereunder. In the event of any default to make payment by the Purchaser, Heatlay Ltd. shall have the right to take possession of any Goods already delivered and to remove same without notice and without legal proceedings, in which case all payments theretofore made shall be credited to the Purchaser's account after deduction of a reasonable rental fee and the costs of repossession, if any, including reasonable legal fees. Purchaser hereby agrees to defend, indemnify, and save harmless Heatlay Ltd. from any and all loss arising out of any or all claims, suits and demands by reason of, but not limited to, the retention of title to the Goods by Heatlay Ltd. while same are at the Purchaser's risk.
- INSTALLATION:** Purchaser shall be responsible for receiving, inspecting, testing, storing, installing, starting up and maintaining all Goods in accordance with the installation instructions provided as well as in accordance with all local, provincial and federal regulations.
- DRAWINGS:** Heatlay Ltd.'s prints and drawings (including without limitation, the underlying technology) furnished by Heatlay Ltd. to the Purchaser in connection with this agreement are the property of Heatlay Ltd. and Heatlay Ltd. retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Purchaser any rights or license, and Purchaser shall return all copies (in whatever medium) of such prints or drawings to Heatlay Ltd. immediately upon request thereof.
- ASSIGNMENT:** Purchaser shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Heatlay Ltd., and any such assignment, without such consent, shall be void.
- LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE. HEATLAY LTD. SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE, AND THE REMEDIES OF THE PURCHASER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL HEATLAY LTD.'S LIABILITY TO THE PURCHASER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY THE PURCHASER FOR THE SPECIFIC GOODS PROVIDED BY HEATLAY LTD. GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. PURCHASER AGREES THAT IN NO EVENT SHALL HEATLAY LTD.'S LIABILITY TO PURCHASER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.
The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.
The Purchaser expressly acknowledges and agrees that Heatlay Ltd. has set its prices and entered into this agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocates the risk between Heatlay Ltd. and the Purchaser and form a basis of this bargain between the parties.
It is expressly understood that any technical advice furnished by Heatlay Ltd. with respect to the use of the Goods is given without charge, and Heatlay Ltd. assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Purchaser's risk.
- GOVERNING LAW AND INVALIDITY:** Any provision hereof which is contrary to law will not invalidate any other provision thereof. The foregoing sets forth the sole and entire agreement between the parties with respect to the Goods supplied hereunder. These terms and conditions and the agreement evidenced thereby shall be governed by and interpreted in accordance with the laws of the province of Canada where the Goods are delivered. If deliveries are made outside Canada the governing laws shall be the laws of the Province where the Goods are shipped from. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued except that an action for nonpayment of any monies due Heatlay Ltd. hereunder may be brought within two (2) years of the date of the invoice. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement or to any order.