

ITD FOOD SAFETY-TERMS OF SALE updated August 8, 2019

The Terms of Sale apply to direct commercial purchasers (including business, government and public sector customers) of Innovative Technologies by Design, dba ITD Food Safety ("ITD Food Safety") hardware ("Hardware"), software ("Software") and services ("Services") and to commercial end-users who purchase through a reseller. By placing your order, you accept this agreement ("Agreement") and agree that you are bound by these Terms of Sale.

1. Introduction.

These Terms of Sale ("Terms"), made between you ("you" or "Customer") and ITD Food Safety, govern your purchase and use of hardware, software and related services ("Products and Services") from ITD Food Safety. This Agreement is effective upon the first to occur of (i) your issuance of a purchase order to ITD Food Safety, (ii) your acceptance of these terms in writing or by clicking your agreement or assent, or (iii) if you purchased through a reseller, your agreement with the reseller that references this Agreement. The Products and Services are solely for your internal use and may not be resold. If you purchased through a reseller or distributor, final prices and terms of sale will be as agreed between you and the reseller or distributor; however, this Agreement applies to your possession and use of Products and Services.

This Agreement, together with the Software License Agreement and any related Support Agreement form a legally binding contract between you and ITD Food Safety. In the event of a conflict between these agreements, their terms will take precedence in the following order: (1) the Software License Agreement; (2) any applicable Support Agreement and (3) this Agreement. Unless otherwise agreed to by ITD Food Safety in writing, this Agreement constitutes the complete and exclusive understanding between you and ITD Food Safety.

2. Term. This Agreement will continue until all applicable Product and Service warranties or licenses have expired or been terminated. The software license for the Software will continue for the term stated in the Software License Agreement. In the event of a Support Agreement between you and ITD Food Safety, support shall continue for the term stated therein, unless such agreement is terminated.

3. Quotes, Ordering, and Payment

a. Orders. "Order" means your order of Products or Services, either through itdfoodsafety.com or other online process, submitting a purchase order that references a quote from ITD Food Safety, or by executing an ITD Food Safety order form. Your Order is subject to acceptance by ITD Food Safety in its sole discretion. Acceptance of one Order is independent and separate from acceptance or rejection of any other Order. Quoted prices are effective until the expiration date of the quote, but may change due to shortages in materials or resources, increases in the cost of manufacturing, or other factors.

b. Changed or Discontinued Products or Services. ITD Food Safety may revise or discontinue Product and Service offerings at any time without prior notice. Changes may occur after a Customer places an Order but before ITD Food Safety ships the Product or performs the Service. As a result, Products and/or Services Customer receives might display minor differences from those ordered. However, the ITD Food Safety-branded Products will materially meet or exceed all published specifications of the ordered Product. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.

c. Shipping Charges; Title; Risk of Loss. Shipping and handling charges are not included in Product prices unless expressly indicated at the time of sale. Title to Products passes from ITD Food Safety to Customer upon shipment. Delivery of Software is FOB Origin. Loss or damage that occurs during shipping (including returns) is the responsibility of the party that selected the carrier. Shipping and delivery dates are estimates only. You must notify ITD Food Safety within 21 days of your invoice date if you believe any part of your order is missing, wrong, or damaged.

d. Payment. Invoices are due and payable within the time period stated on your invoice, or if not stated, then within 30 days from the invoice date. Payment must be made in the currency identified by ITD Food Safety, and either by credit card, automated clearing house, wire transfer, electronic funds transfer or another prearranged payment method unless credit terms have been agreed to by ITD Food Safety. Credit approval may be revoked at any time. ITD Food Safety may invoice parts of an Order separately or together in one invoice. All invoices shall be deemed accurate unless Customer advises ITD Food Safety in writing of a material error within the later in time of 14 days of the invoice date or 10 days following receipt of the invoice. In the event that Customer advises ITD Food Safety of a material error, (i) payment of any amounts corrected by ITD Food Safety in writing shall be due within 14 days of correction, and (ii) all other amounts shall be paid by Customer by the invoice due date. If Customer withholds payment upon an assertion that an invoiced amount is erroneous, and ITD Food Safety concludes that such amount is accurate, Customer shall pay interest as described below from the due date for such amounts until ITD Food Safety's receipt of those amounts. Customer may not offset, defer or deduct any invoiced amounts that ITD Food Safety determines are not erroneous following the notification process set forth above. Any assignment of your payment obligations to a third-party financing company must be approved in advance in writing by ITD Food Safety, and you will not be excused from your obligations under this Agreement. ITD Food Safety may charge a late penalty of 1.5% per month on undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late penalties will be recalculated every 30 days based on your current outstanding balance. ITD Food Safety, without waiving any other rights or remedies and without liability to Customer, may suspend or terminate any or all Services and refuse additional orders for Products until all overdue amounts are paid in full. ITD Food Safety shall be entitled to all reasonable legal and attorney fees and associated costs of collecting overdue amounts.

e. Taxes/Shipping. Unless you provide ITD Food Safety with a valid and accurate tax-exemption certificate applicable to your purchase, you are responsible for sales tax and any other taxes or governmental fees associated with your order. If you qualify for a tax exemption, you must provide ITD Food Safety with a valid certificate of exemption or other appropriate proof of exemption. The charges stated in the invoice shall include all duties, levies or any similar charges and exclude VAT or equivalent sales or use tax. Customer shall also pay all shipping, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes). ITD Food Safety's invoice shall be in accordance with VAT or other applicable law. If Customer is required by law to make a withholding or deduction from payment, Customer will make payments to ITD Food Safety net of the required withholding or deduction. Customer will supply to ITD Food Safety evidence (e.g. official withholding tax receipts), to the reasonable satisfaction of ITD Food Safety, that Customer has accounted to the relevant authority for the sum withheld or deducted.

f. Returns and Exchanges. You agree to ITD Food Safety's return policy found online <https://www.itdfoodsafety.com/policies/>

All returns must be received by ITD, Inc. within 30 calendar days from the date of delivery confirmation. Returns will not be accepted without prior authorization from ITD, Inc. and being issued a RMA number, which can be obtained by contacting ITD, Inc. directly. Returned products will be shipped to ITD, Inc. at the customer's expense. Returns will be accepted only in cases of defective goods or expired Trial Periods. Defective goods are defined as such when the product does not perform as intended by ITD, Inc., except as limited by this Policy. Returns will not be accepted for items damaged in shipping. In this case, you must file a claim with the carrier. Returns will be accepted only on non-activated products. Once a product is activated, return/refund will not be issued. ITD, Inc. does not satisfy return requests based on incompatibility of our products with third-party software and/or hardware. We do not guarantee that our products are fully compatible with any third-party software and/or hardware and we do not provide support for third-party applications.

Refunds will be given only for products returned in that are not damaged, resaleable condition, as inspected by ITD, Inc. upon receipt of returned goods. The returned goods must include all original components, literature, and packaging, received in the same saleable condition in which it was received. The customer will be assessed a charge for repair of any damaged goods returned to ITD, Inc., and this charge will be subtracted from any applicable refund or credit for the return. Refunds will not be given for used consumable items, such as labels. Label returns will only be accepted and refunded if the roll is complete and unused. Refunds will not be given for intangibles/services, such as software customization or training. If made in full accordance with ITD, Inc. Policies, returns will be given a refund or credit for the purchase price, excluding shipping/handling fees. Upon receipt of the product(s), refunds will be issued promptly via check, except in cases where the customer paid by credit card, in which case refund will be issued to the purchasing credit card. All returns are subject to a restocking fee equal to 15% of the purchase price. This restocking fee will be subtracted from any applicable refund or credit for the return.

4. License/Proprietary Rights. The Hardware Products incorporate certain software and technology that is proprietary to ITD Food Safety. Such software and technology was developed by ITD Food Safety at its sole expense and constitutes valuable proprietary and commercial property of ITD Food Safety.

a. ITD Food Safety grants to Customer a personal, worldwide, fully-paid, perpetual, non-exclusive, non-transferable by sublicense or otherwise, right and license to use the Hardware with the Software and in accordance with these Terms.

b. All right, title, and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Hardware and Software shall belong solely and exclusively to ITD Food Safety or its suppliers or licensors. Subject to ITD Food Safety's receipt of payment in full, ITD Food Safety grants you a non-exclusive, non-transferable, royalty-free right to use the Hardware solely for your internal use, together with the Software (subject to the terms of the Software License Agreement).

c. The Hardware and Software are protected by United States and international patent, copyright, trademark law and treaties, as well as other intellectual property laws and treaties. Unless expressly permitted by ITD Food Safety, you may not (i) modify, remove, delete, augment, add to, publish, transmit, adapt, translate, localize, create derivative works from or create a patent based on the Software, or (ii) resell, sublicense, distribute, or otherwise make available the Software, in whole or in part, to any third party. Except and only to the extent prohibited by applicable law, you may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Software. ITD Food Safety reserves all rights not expressly granted in this Agreement or the Software License Agreement.

5. Limited Warranty

a. ITD Food Safety Hardware shall be free from defects in materials and workmanship for a period of one (1) year from the date of delivery. ITD Food Safety also warrants that all Hardware covered by this order shall conform to ITD Food Safety specifications. The ITD Food Safety Limited Warranty do not cover damage due to external causes, such as accident, abuse, misuse, problems with electrical power, service not performed or authorized by ITD Food Safety (including installation or de-installation), usage not in accordance with product instructions (including unauthorized labels or similar products), normal wear and tear, or use of parts and components not supplied or intended for use with the hardware products. Any warranty for a third-party product is provided by the provider, or original manufacturer.

b. In order for this Warranty to be applicable, you must notify ITD Food Safety within the Warranty Period that the Hardware does not conform to and perform in accordance with the Specifications. In the event that ITD Food Safety is reasonably able to confirm that the Hardware is not conforming, and provided that you reasonably cooperate with us in our efforts to identify any nonconformance with the Specifications, then ITD Food Safety, at its sole cost, will replace, correct, repair or make such modifications as may be required to make the Hardware conform to and perform in accordance with the Specifications.

c. EXCEPT AS EXPRESSLY STATED ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ITD FOOD SAFETY, (INCLUDING ITD FOOD SAFETY AFFILIATES, REPRESENTATIVES, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (II) FOR ANY THIRD-PARTY PRODUCTS; (III) FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM ANY PRODUCTS OR SERVICES, OR (IV) THAT THE PRODUCTS OR SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR.

6. Limitation of Liability. ITD FOOD SAFETY SHALL NOT BE LIABLE IN CONTRACT, TORT, OR OTHERWISE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA, BUSINESS INTERRUPTION, PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE HARDWARE OR ANY TECHNOLOGY INCORPORATED THEREIN, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL ITD FOOD SAFETY-2019 TERMS OF SALE

ITD FOOD SAFETY'S LIABILITY UNDER ANY CIRCUMSTANCE EXCEED THE LICENSE FEE PAID FOR ANY HARDWARE ITEM GIVING RISE TO ANY CLAIM.

7. Support/Data. ITD Food Safety may provide Support in accordance with one or more Support Agreements.
 - a. The Support Agreements are service contracts in which services are rendered in connection with Hardware or Software. Hardware support does not include preventative maintenance, or repairs due to (i) Software problems, (ii) adjustment, alteration or repair of the Hardware by anyone other than ITD Food Safety or ITD Food Safety's authorized representatives, (iii) accident, misuse or abuse of the Hardware, or (iv) an act of nature. Software Support is governed by the Software License Agreement and any related Support Agreement. Each Support Agreement will be interpreted separately from any other Support Agreement, so that all provisions are given as full effect as possible. In the absence of a Support Agreement, additional support is available at our then current rates.
 - b. Customer Data. In connection with ITD Food Safety's performance or your use of the Products and Services, ITD Food Safety may obtain, receive, and/or collect data or information (collectively, the "Data"). You grant ITD Food Safety (i) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to provide the Products and Services; (ii) a license to aggregate and use the Data in an anonymous manner in support of ITD Food Safety's marketing and sales activities; and (iii) the right to copy and maintain the Data on ITD Food Safety's servers as necessary to provide the Products and Services.
8. Confidential Information. "Confidential Information" means information that is not generally known to the public and either is designated as confidential or which, due to the nature of the information or the circumstances, should reasonably be understood to be confidential. Confidential Information may not be disclosed to third parties and may only be disclosed to the receiving party's personnel, advisor's agents and representatives on a "need to know" basis. Your obligations hereunder shall not apply to information you can document: (i) is generally available to the public other than through breach of this Agreement; (ii) is rightfully disclosed to you by a third party without any obligation of confidentiality; or, (iii) is independently developed by you without use of any ITD Food Safety Confidential Information. Because of the unique and proprietary nature of the Confidential Information, you understand and agree that ITD Food Safety's remedies at law for your breach of your obligations hereunder may be inadequate and that ITD Food Safety shall be entitled to seek equitable relief (including, without limitation, provisional and permanent injunctive relief and specific performance). Nothing stated herein shall limit any other remedies provided under this Agreement or available to ITD Food Safety at law or in equity. Upon expiration or termination of this Agreement for any reason, you will return or destroy all copies of all ITD Food Safety Confidential Information in your possession or control.
9. Force Majeure. ITD Food Safety shall not be liable for delays in delivery, failure to deliver, or otherwise to perform any obligation hereunder when such delay or failure arises from causes beyond the reasonable control of ITD Food Safety, including, without limitation, acts of God or public enemies, labor disputes, supplier or material shortages, embargoes, rationing, acts of governmental authorities, utility or communication failures, fire, flood, storms, earthquake, epidemics, riots, terrorism, civil commotion, strikes, or war.
10. Disputes.
 - a. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.
 - b. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.
 - c. At no time prior to the first meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law, by this Agreement, or other agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph a. above.
 - d. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs a. and b. above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.
11. Mandatory Arbitration. Upon the demand of either party hereto, any action or proceeding seeking to enforce or to interpret any provision of this agreement, or any right or obligation, including, without limitation, any statutory right or obligation, of any party under or pursuant to this agreement or arising out of ITD Food Safety's relationship hereunder with you, shall be determined exclusively by arbitration in Brevard County, Florida, before one arbitrator selected by the parties within thirty (30) days of such demand and conducted by and under the rules of the American Arbitration Association; provided, however, that arbitration shall not be required in any action or claim by either party to the extent (and only to the extent) the same includes a request: (i) for injunctive, equitable, emergency, or interim relief on a temporary basis to preserve a status quo until a decision in arbitration can be obtained; or, (ii) to enforce any prior decision of an arbitration panel made hereunder.

12. **Mandatory Arbitration.** Upon the demand of either party hereto, any action or proceeding seeking to enforce or to interpret any provision of this agreement, or any right or obligation, including, without limitation, any statutory right or obligation, of any party under or pursuant to this agreement or arising out of ITD Food Safety's relationship hereunder with you, shall be determined exclusively by arbitration in Brevard County, Florida, before one arbitrator selected by the parties within thirty (30) days of such demand and conducted by and under the rules of the American Arbitration Association; provided, however, that arbitration shall not be required in any action or claim by either party to the extent (and only to the extent) the same includes a request: (i) for injunctive, equitable, emergency, or interim relief on a temporary basis to preserve a status quo until a decision in arbitration can be obtained; or, (ii) to enforce any prior decision of an arbitration panel made hereunder.
13. **Export Regulations.** You understand and agree that, to the extent applicable, you will comply in all material respects with all applicable anti-bribery, export control, and economic sanctions laws, including the U.S. Foreign Corrupt Practices Act, and Export Administration Regulations, and similar laws and regulations maintained by the United States and other nations and economic organizations (collectively "Export Laws"). You represent that no company entity with which you are affiliated has made any payment prohibited by the Export Laws, with the corrupt intent to obtain or retain business, directly or indirectly offered, paid or promised to pay, or authorized the payment of, any money or other thing of value, or any commission payment to: (i) any person who is an official, officer, agent, employee, or representative of any government entity; (ii) any political party or official thereof; (iii) any candidate for political or political party office, in violation of applicable laws. You further represent that each transaction is properly and accurately recorded in all material respects on the books and records of the applicable company entity, and each document upon which such entries are based is complete and accurate.

You also agree that the Hardware or Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the Export Laws. You represent and warrant that you are not a citizen, or otherwise located within, any embargoed nation, and that you are not otherwise prohibited under the Export Laws from receiving or using the Hardware or Software.

14. **Waivers.** No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise.
15. **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision or its effect shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable to the maximum extent permitted.
16. **Governing Law.** This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of, the state of Florida and the United States of America without regard to the conflict of law provisions thereof. The United Nation's Convention on Contracts for the International Sale of Goods is expressly excluded from application to this Agreement. The sole venue for all disputes relating to this Agreement shall be in state court in Brevard County, Florida, or federal court in the Middle District of Florida, as appropriate.
17. **Prevailing Party's Fees.** In any action to enforce this Agreement, the prevailing party will be entitled to reasonable costs and attorneys' fees, including as well costs of expert witnesses and all costs upon any appeal.
18. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and any and all previously existing written or oral agreements between the parties are expressly cancelled or superseded. This Agreement may be modified, replaced, or rescinded only in a writing signed by each party.