

STANDARD TERMS & CONDITIONS OF SALE – PARTS AND SERVICE**AGREEMENT**

The terms and conditions for the sale of Parts and Services set out below, and the attached THERMOGENICS INC. (“Seller”) quotation incorporated herein by reference, as applicable, constitute the entire agreement between Seller and Buyer. SELLER’S ACCEPTANCE OF BUYER’S ORDER FOR PARTS AND SERVICES IS EXPRESSLY CONDITIONED BY BUYER’S ASSENT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. The Seller and Buyer agree that these terms and conditions shall prevail over any conflicting or different terms in the Buyer’s order documents and any failure of the Seller to object to any conflicting or different provision of the Buyer’s order documents, shall not be construed as an acceptance of any such provision or a waiver of these terms and conditions.

PURCHASE AND SALE OF PARTS

The following terms and conditions shall apply to the purchase and sale of the Seller’s parts, supplies, equipment and other products relating to steam, hot water and thermal fluid process system boilers (individually or collectively, “Parts”).

1. PARTS QUOTES, BILLING AND PAYMENT TERMS

All Parts quotes are (i) shown in either Canadian Dollars (CAD) or United States Dollars (USD), as specified on the quote, (ii) EXW Seller’s plant and (iii) firm for thirty (30) days. All quotes are subject to change thereafter without notice to Buyer.

Parts will be billed on date of shipment and payments are due net thirty (30) days from invoice date. Any Parts payment past due shall be subject to an interest charge of 1.5% per month or 18% per annum.

All payments are to be made via Electronic Funds Transfer (EFT) or wire transfer per the banking coordinates on the invoice. Any other payment terms (e.g. cheque, credit card) to be discussed directly with Seller. No deduction shall be made in any payment by the Buyer without the Seller’s prior written agreement.

2. SHIPPING METHOD, RISK OF LOSS, TITLE TRANSFER, SCHEDULING AND DELIVERY

The Seller reserves the right to designate the common carrier and to ship in the manner it deems most economical.

Risk of loss or damage passes to Buyer on delivery to the common carrier. Any claim for loss or damage (obvious or concealed) is the sole responsibility of the Buyer and shall be made to the carrier directly. The Seller will render reasonable assistance to the Buyer in securing satisfactory adjustment of such claims.

Title for Parts transfers to Buyer on Seller’s receipt of payment in full.

The Seller will establish shipping schedules as close as practicable to the Buyer’s requested delivery date, but the Seller will not be responsible for any loss or damage to the Buyer (or any third person) occasioned by shipping delays, changes in shipping schedules or non-delivery by the carrier. Where Parts are manufactured directly by the Seller, Seller shall have the right to manufacture Parts as far in advance of the shipping schedule as it considers appropriate, in its sole discretion. The Seller reserves the right to ship the Parts in advance of any Buyer requested delivery date, except dates expressly stipulated by the Buyer and agreed to in writing by the Seller.

If any shipment is delayed beyond the scheduled date for the convenience of Buyer, the Seller reserves the right to bill immediately for the relevant Parts and to charge Buyer for warehousing insurance, trucking charges and all other expenses relating to such delay. Any added costs due to requests by the Buyer for crating or special routing or changes in planned delivery are billed extra.

The Seller further reserves the right to make delivery in lots. On delivery of each lot, Seller shall have the right to immediately invoice an appropriate portion of the total selling price.

3. CLAIMS FOR PARTS SHORTAGES

Any notices of shortages or other errors with any order must be made in writing to the Seller at the earlier of (i) thirty (30) days from shipment or (ii) twenty five (25) days from receipt; failure to give such notice shall constitute unqualified acceptance and a waiver of all claims by the Buyer.

4. COMPLIANCE

On written request of the Buyer, the Seller shall provide the Buyer with reasonable evidence of Parts’ compliance with applicable local environmental, energy, fire protection, structural design, and department of labour, laws and regulations. Any required application or permits required for installation of the Seller’s Parts shall be the sole responsibility of the Buyer.

5. SUBSTITUTION AND PRORATION

The Seller reserves the right to provide substitutes for materials which cannot be reasonably obtained because of any restrictions, voluntarily or compulsorily established by or in connection with any governmental authority or program.

The Seller may, during any periods of shortage due to causes beyond the control of Seller or its suppliers, prorate its supply of products among its Buyers in a manner deemed equitable in the sole judgement of Seller. The Seller shall not incur any liability to the Buyer because of any proration hereunder.

6. INSTALLATION

Except as otherwise set forth in this agreement, Seller shall have no obligation to provide any installation services in respect of the Parts. If the Seller has agreed to install the Parts, it warrants that such installation will be performed in a workmanlike manner. The Buyer shall pay all costs of installation, including the cost of any modifications to the Buyer’s plant and equipment necessary or advisable to accommodate the installation. Dismounting and reinstallation of defective or non-conforming Parts shall be at the Buyer’s expense.

7. WARRANTIES

OEM Manufactured Parts: The Seller warrants that the products sold conform to any drawings and specifications accepted in writing by the Buyer and will be free from any defects in material and workmanship arising from normal use and maintenance, provided the Buyer gives written notice to the Seller of any such defect by within twelve (12) months from the date of supply (the “Warranty Period”). If, within the Warranty Period, the Seller receives written notice from the Buyer of any non-conformance or alleged defect of any product, and if the product does not so conform, in the Seller’s sole judgement, or is found to be defective in material or workmanship, then:



- a. the Buyer shall, at the Seller's request, return the part or product F.O.B. the Seller's shipping point; and
- b. the Seller shall, at its option, repair or replace the defective part or product or refund the full price paid for such part or product to the Buyer, without interest.

Where Seller is required to perform warranty repair or replacement services at Buyer site, labour will be billed extra, including any time required for dismantling and/or re-installing any defective or non-conforming parts.

Coil and Pressure Vessel: New boiler coils and pressure vessels are warranted for an extended period of twenty five (25) years against solely thermal shock and workmanship arising from normal use. All other warranty terms applicable in the OEM Manufactured Parts warranty (as outlined above) apply.

Non-OEM Manufactured Parts: Seller provides warranties for non-OEM manufactured parts (e.g. controls, motors, feedwater pumps) for a period equivalent to the earlier of (i) warranty period provided to the Seller by the manufacturer of non-OEM parts and (ii) twelve (12) months.

Re-Built Pumps: Seller specifically provides thirty (30) day warranties on re-built pumps conditional on Seller performing installation, mounting and alignment. Seller does not offer warranty on pumps if installed by others.

Any warranty the Seller provides for Parts does not cover and Seller gives no warranty with respect to:

- c. Failures not reported to the Seller within the Warranty Period;
- d. Failure or damage due to abnormal conditions of ambient temperature, improper water treatment, dirt accumulation and/or low water conditions;
- e. Equipment that has not been correctly installed, operated and maintained in accordance with the Installation and Instruction Manuals provided;
- f. Failures due to operation, either intentional or otherwise, outside rated capacities or in an otherwise improper manner;
- g. Products which have been tampered with or altered, in any way, by anyone other than an authorized service representative of the Seller;
- h. Products damaged in shipment, or otherwise, without fault of the Seller;
- i. Expenses incurred by the Buyer in any attempt to repair or rework any alleged defective part; and
- j. Defects in material and workmanship which are attributable to drawings and specifications provided by the Buyer.

8. PARTS RETURN POLICY

All Parts may be returned to Seller within three (3) months from original purchase with advance notification in writing from Buyer to Seller and subject to minimum thirty percent (30%) re-stocking fee. To the extent any warranty offered by third party vendors are reduced or no longer available to Seller upon return, re-stocking fee subject to increase up to the full amount of the original order. All Parts must be unused, undamaged, in original packaging and in re-saleable condition. All freight or shipping costs to return the Parts to Seller are borne by the Buyer.

PURCHASE AND SALE OF SERVICES

The following terms and conditions apply to the purchase and sale of any Seller's services relating to steam, hot water and thermal fluid process systems including, but not limited to coil tube boiler repair, process controls, pump repair and replacement, boiler upgrades, LoNox retrofits and regulatory variance and field approvals (individually or collectively, "Services").

9. SERVICE QUOTES, BILLING AND PAYMENT TERMS

All Services quotes are (i) shown in either Canadian Dollars (CAD) or United States Dollars (USD), as specified on the quote, and (ii) firm for thirty (30) days. All quotes are subject to change thereafter without notice to Buyer.

Unless otherwise agreed, Services will be billed on completion of work and are due in full, no later than thirty (30) days from the date of the Seller's invoice. Services payments past due shall be subject to an interest charge of 1.5% per month or 18% per annum.

All payments are to be made via Electronic Funds Transfer (EFT) per the banking coordinates on the invoice - any other payment terms (e.g. cheque, credit card, cash) to be discussed directly with Seller. No deduction shall be made in any payment by the Buyer without the Seller's prior written agreement.

10. ADDITIONAL SERVICES

Any request from Buyer to perform Services beyond the original Scope ("Additional Services") requires a purchase order from the Buyer prior to the Additional Services being dispatched and performed and shall be billed by Seller at prevailing rates. Any other costs required to accommodate any such Additional Services such as travel, overnight accommodation, out-of-pocket meal expenses, etc. will be billed directly.

11. PERFORMANCE OF SERVICES

The Seller represents and warrants that, in performance of Services, the Seller and its subcontractors will: (a) exercise the degree of care, skill and diligence customarily exercised by responsible and reputable service providers in the same industry and perform the Services in a good and workmanlike manner; and (b) comply with applicable laws and regulations in connection with the supply and delivery of the Services.

12. SCHEDULING AND DELAYS

The Seller will schedule Services on a best efforts basis with the Buyer based on availability and capacity of Seller's service technician team. Due to the emergency service nature of Seller's business, Seller will provide Buyer with reasonable advance notice of any delays in scheduled Services. Buyer must provide Seller with minimum five (5) days advance notice in writing to request re-scheduling of Services otherwise, Seller has the right to bill for any costs incurred to prepare for the previously scheduled Services including administrative wages and storage of materials. Notwithstanding anything else in this section, Seller shall have the right to withhold Services in the event that Buyer's accounts with Seller are not current.

GENERAL

13. CANCELLATION BY SELLER

Seller may, by written notice to Buyer and without any liability, cancel Buyer's order if Buyer:

- i. fails to perform any of the terms and conditions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from Seller specifying such failure, provided, that, no such cure period shall apply to Buyer's failure to pay in a timely manner;
- ii. in Seller's opinion, has not established or maintained credit to meet promptly the payment terms of Seller's payment terms or has defaulted on the payment terms of any other transaction with Seller;
- iii. becomes insolvent, makes an assignment in favour of creditors, or becomes subject to any bankruptcy, dissolution or similar proceedings; or



- iv. is merged into, or all or a substantial part of its assets are sold to, another company.

14. CANCELLATION BY BUYER

OEM Manufactured Parts, Coil and Pressure Vessel, Re-Built Pumps

Due to the design complexity and specialized nature of Parts under these categories, Buyer may, by prior written notice to Seller, cancel an order for however, Buyer shall be liable to Seller as follows:

- i. if cancellation occurs within thirty (30) days from the scheduled production completion or ship date, Seller shall complete production and hold such Products for Buyer's disposition, Buyer shall pay Seller (a) one hundred percent (100%) of order value, plus (b) any actual costs and direct overhead expenses incurred up to the point of cancellation and directly associated with fulfilling Buyer's order including, but not limited to, engineering design, work-in-progress manufacturing, costs of materials and supplies procured (or definite commitments made by Seller), and cancellation fees or penalties charged to Seller by third party vendors ("**Cancellation Charges**");
- ii. if cancellation occurs in advance of thirty (30) days from the scheduled production completion or ship date, Buyer shall pay Seller (a) fifteen percent (15%) of the order value, plus (b) Cancellation Charges.

Non-OEM Manufactured Parts

Buyer may, by prior written notice to Seller, cancel an order for Non-OEM Manufactured Parts however, Buyer shall be liable to Seller as follows:

- iii. if cancellation occurs either subsequent to Seller's acceptance of Buyer's order or within thirty (30) days of scheduled ship date to Buyer, Buyer shall pay Seller (a) fifty percent (50%) of order value, plus (b) Cancellation Charges;
- iv. if cancellation occurs either prior to Seller's acceptance of Buyer's order or in advance of thirty (30) days from scheduled ship date to Buyer, Buyer shall pay Seller (a) fifteen percent (15%) of order value, plus (b) Cancellation Charges.

All amounts due in (i) – (iv) above will be paid by Buyer to Seller within ten (10) days from order cancellation. On receipt of notice of any Buyer Cancellation for any OEM or Non-OEM Manufactured Parts, as set out above, the Seller shall use its commercially reasonable efforts to limit losses associated with cancellation penalties, including Cancellation Charges.

Services

Unless otherwise stated in Seller's quote, any cancellation by Buyer within forty-eight (48) hours of scheduled Services, may be subject to a cancellation fee up to 100% of the value of the quote value. This penalty is designed to compensate the Seller for all administrative planning, scheduling of technicians, preparation of materials along with opportunity cost of not performing Services for other customers and the Buyer agrees that this penalty is fair and reasonable in the context of the above.

15. LIMITATION OF LIABILITY

Notwithstanding any other term of the agreement, the Seller's liability and the Buyer's exclusive remedy for: (a) any and all demands, actions, damages, fines, penalties, liabilities and expenses, including legal fees and expenses (collectively, "**Claims**") arising directly from the purchase, sale or delivery of the Seller's Parts or Services including, but not limited to, claims of death, personal injury, health hazard, damage to property or alleged breach of any statute or regulation; (b) any Claims arising, directly from the provision of any technical support or service by the Seller; and (c) any breach of warranty in this agreement, shall be limited to repair, replacement or repayment of the purchase price for the relevant Parts or Services, as applicable, at the Seller's sole option. Any repayment of the purchase price shall be without interest.

In no event shall the Seller be liable for: (a) any special, indirect, incidental, consequential, punitive or aggravated damages including, but not limited to, loss of use of facilities or equipment, loss of revenue, profits, goodwill, lost business opportunities, business interruption or downtime, in respect of any matter relating to the Seller's provision of Parts or Services or any other matter relating to this agreement; or (b) any loss or damage resulting from the performance or the non-performance of any of the Seller's obligations under this agreement when caused, directly or indirectly, by any casualty, riots, acts of Buyer, strikes or other labour difficulties, shortages of labour, supplies, and transportation facilities or any other similar or different cause or causes which are beyond the Seller's reasonable control or the control of its suppliers or subcontractors.

EXCEPT FOR THE LIMITED WARRANTIES IN THIS AGREEMENT, THE SELLER DISCLAIMS ALL WARRANTIES AND CONDITIONS RELATING TO THE PURCHASE, USE AND PERFORMANCE OF PARTS AND SERVICES, EITHER EXPRESSLY IMPLIED OR ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, CUSTOMS, INCLUDING BUT NOT LIMITED TO: (A) ANY WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO FITNESS OF THE PRODUCT (INCLUDING FITNESS FOR ANY PARTICULAR PURPOSE) OR CONDITION, MERCHANTABILITY, TITLE AND NON-INFRINGEMENT; (B) PERFORMANCE, SECURITY, INTEGRATION OF SATISFACTORY QUALITY OF THE PARTS; (C) PROVISION OF SERVICES, INCLUDING THE OUTCOME OR RESULT OF THE PROVISION OF SUCH SERVICES; (D) ANY FAILURE TO PROVIDE SERVICES. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE PROVISIONS OF THIS ARTICLE WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

16. EXCUSABLE DELAYS

Except with respect to the payment due hereunder, neither party shall be responsible for failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including but not limited to acts of God, civil disobedience, war, acts of terrorism, riots, strikes, work stoppages, floods, water/elements, changes in governmental requirements or inability to secure equipment, raw materials or transport (each an "**Excusable Delay**"). Notice to this effect shall be given immediately in writing to the other party. At Seller's option and on Notice to Buyer, this Agreement may be cancelled without liability in the event an Excusable Delay lasts or is expected to last longer than one hundred and twenty (120) days.

17. TAXES

If, under any applicable law or governmental regulation, the Seller is required to pay or collect any tax arising from the sale, transportation, delivery or use of the Parts or Services, the price to be paid by the Buyer shall be increased by the amount of any such tax. The Buyer agrees to pay such tax as part of the purchase price.

18. COSTS AND EXPENSES

The Buyer agrees to pay the Seller's costs and expenses, including reasonable attorney's fees (including those on appeal) incurred in exercising any of its rights and remedies hereunder, including the collection of any past due payment for Parts or Services.

19. MODIFICATION, RESCISSION AND WAIVER

This agreement may not be modified or rescinded nor any of its provisions waived unless such modification, rescission or waiver is in writing and signed by an authorized employee of the Seller.



20. NO WAIVER

The failure of the Seller: (a) to insist on the performance of any of the terms and conditions of this agreement; or (b) the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver of any term or condition of this agreement and shall not affect the Seller's right to require strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.

21. GOVERNING LAW/DISPUTE RESOLUTION

This agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein without reference to conflict of laws principles. Any controversy, dispute or claim arising out of or relating to this agreement, including without limitation its negotiation, validity, existence, breach, termination, construction or application, or the rights, duties or obligations of either party, shall be finally determined by binding arbitration provided that, before commencing arbitration, the party initiating the arbitration will notify the other party of the dispute in detail, and in writing ("**Notice**"). Each of the Parties will then use reasonable commercial best efforts to resolve the Dispute, through escalation to the management levels within their respective organizations. In the event the dispute is not resolved within thirty (30) days of the delivery of the Notice (or such longer period as mutually agreed by the Parties), either party may submit the dispute to binding arbitration in accordance with the Ontario Arbitration Act or the Ontario International Commercial Arbitration Act, as applicable. The arbitration shall have its arbitral seat in Toronto, Canada and be conducted by a single arbitrator, in the English language.

22. CONFIDENTIALITY

Seller and Buyer (as to information disclosed, the "**Disclosing Party**") may each provide the other party (as to information received, the "**Receiving Party**") with Confidential Information in connection with this Agreement. "**Confidential Information**" means any of the following items disclosed via written, oral, visual or in any other form of media:

- i. information that is designated in writing as "confidential" or "proprietary" by Disclosing Party;
- ii. information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure
- iii. any Seller pricing and terms for Parts and Services;
- iv. any trade secrets, know-how, business methods, designs, drawings, financial information, business practices and policies, Service delivery processes, reports; and
- v. any other business information that is not generally known or available to the public, whether oral, in writing or in any other form or media.

Receiving Party agrees:

- vi. to use the Confidential Information only in connection with the Order and use of Parts and Services;
- vii. to take reasonable measures to prevent disclosure of the Confidential Information to third parties; and
- viii. not to disclose the Confidential Information to a competitor of Disclosing Party.

Notwithstanding these restrictions:

- ix. Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract;
- x. a Receiving Party may disclose Confidential Information to its auditors;
- xi. Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract; and
- xii. a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information.

Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Order entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

The obligations under this section shall not apply to any portion of the Confidential Information that:

- xiii. is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates;
- xiv. is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party;
- xv. is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information;
- xvi. is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Agreement without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this section shall expire five (5) years after the date of disclosure.

23. INTELLECTUAL PROPERTY

Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the Order. All new intellectual property conceived or created by Seller in the performance of the Order, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

24. NOTICE

Any notice, communications or request to be given or made under this agreement shall be in writing delivered, sent by ordinary mail, facsimile or sent by electronic mail to the parties.

25. ENTIRE AGREEMENT

Notwithstanding any other reference in a Purchase Order, unless explicitly agreed this agreement supersedes and cancels any and all previous agreements, understandings and expressions of intent by or between the Seller and the Buyer pertaining to the subject matter of this agreement and this agreement comprises the complete and final expression of the agreement of the Parties.