

## **1.0 Terms and Conditions of Sale**

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated by reference therein, bind Thermo King of Houston, LP, which issued the quotation or acknowledgment for the sale of goods (“Goods”) to be provided hereunder (hereinafter “Seller”) and the buyer (hereinafter “Buyer”) and constitute the entire agreement (“Agreement”) between Buyer and Seller regarding such sale. By accepting the Goods, the Buyer agrees to these terms and conditions and further understands that Seller is only agreeing to provide the Goods at the price stated, based on the terms and conditions contained herein.

These terms and conditions supersede all previous terms and conditions, understandings, quotations, and purchase orders entered into between Seller and the Buyer, whether oral or written, and shall govern all transactions between the Buyer and Seller. Any contrary terms and conditions issued by Buyer in any form whatsoever are expressly rejected by Seller.

- A. **TERMS OF PAYMENT**: Subject to the approval of the Seller’s credit department, terms are Ex Works Seller’s Houston, Texas, facility, net due upon notice of intent to ship. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date of which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payments hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorney’s fees.
  
- B. **PRICES**: Unless otherwise specified by Seller, Seller’s price for the Goods shall remain in effect for thirty (30) days after the date of Seller’s quotation or acceptance of the order for the Goods, whichever occurs first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods pursuant to Seller’s standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods to the Seller’s price in effect for the Goods at the time the order is released for final manufacture. Notwithstanding any of the forgoing to the contrary, the price for the Goods sold by the Seller, but manufactured by others, shall be Seller’s price in effect at the time of shipment to the Buyer.

- C. **DELIVERY AND DOCUMENTATION**: All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Seller shall provide Buyer with the Goods/data/documentation which is specifically identified in the quotation. If additional Goods/documentation or nonstandard items are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect.
- D. **EXCUSE FOR PERFORMANCE**: Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of material or components, explosion, accident, compliance with governmental requests, laws, regulations, orders actions, or unforeseen circumstances or causes beyond Seller's reasonable control.
- E. **TERMINATION AND SUSPENSION BY BUYER**: Buyer may terminate or suspend its order for any or all of the Goods covered by the Agreement provided that Buyer gives Seller reasonable advance written notice of such termination or suspension. Buyer shall then pay to the Seller a net amount equal to (1) actual costs incurred by the Seller including, but not limited to, the purchase of materials, equipment, and services to be used in the Goods; plus (2) labor costs incurred by the Seller in manufacturing the Goods, to be determined using the Seller's standard, fully burdened rates (which shall include general and administrative costs, but which shall not include any profit); plus (3) reasonable costs incurred by the Seller to cancel any orders for materials and equipment to be used in the Goods; plus (4) fifteen percent (15%) of the total of items (1) through (3) above to account for the Seller's profit; minus (5) the net salvage value of any materials and equipment purchased by the Seller to be used in the Goods after subtracting the Seller's reasonable costs to salvage such materials and equipment.
- F. **LIMITED WARRANTY**: Seller warrants that Goods provided by Seller hereunder will be free from defect in material or workmanship under normal use and service for the period contained in any applicable manufacturer's warranty. Seller further warrants that services provided by Seller hereunder will be performed in a workmanlike manner and that such services shall be free from defects in workmanship for a period of 30 days from the date on which the services were completed.

Seller agrees to repair or replace, at its option, any Goods which prove to be defective within the applicable warranty period, and to correct any defect in services discovered by Buyer within the applicable warranty period. Buyer shall promptly notify Seller in writing of any defect in the Goods found during the warranty period and Seller shall have the right to make an investigation of the reported defect before corrective action is undertaken. Seller shall have the option to repair, replace or correct any defect in the field or at its facilities. Buyer shall bear all costs incurred by Seller to

enable it to gain access to a defect in the Goods in order to repair, replace or correct same. Seller's warranty does not cover: (i) conditions which, in the reasonable judgment of the Seller, arise from misuse, overloading, negligence, alteration, accident or lack of performance of necessary maintenance services; (ii) claims which, in the reasonable judgment of the Seller, arise from Goods not provided by Seller; or (iii) claims for consequential damages, including, but not limited to, loss of use, loss of revenue or profit and loss of or damage to Buyer's property. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- G. **LIMITATION OF REMEDY AND LIABILITY:** Seller shall not be liable for damages caused by delay in performance. Buyer agrees that in no event shall Seller's liability to Buyer 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, loss of use, loss of revenue and cost of capital. Seller shall not be responsible to service any Goods which are functioning within Seller's published specification, and the limited warranty set forth herein shall not apply when any Goods are originally installed by someone other than an authorized representative of Seller, or if service is required due to Buyer's failure to operate or maintain the Goods according to the operator's manual or where services is required because the Goods are subjected to misuse, abuse or alteration, or are repaired by someone other than an authorized representative of Seller. Notwithstanding any other provision hereof to the contrary, Seller's total, cumulative liability arising out of or related to the performance or non-performance of this Agreement shall be limited to the amount of the Agreement price stated herein, and Buyer shall hold harmless and indemnify Seller from and against all liability in excess of such limitation.
- H. **INSTALLATION:** Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer if these functions are requested.
- I. **TAXES:** Any tax or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the Goods or of procuring material used therein, and any tax now in effect or increase in same payable by the Seller because of the manufacture, sale, or delivery of the Goods, may at Seller's option, be added to the price herein specified.
- J. **BUYER SUPPLIED DATA:** To the extent that Seller has relied upon any specification, information, representation of operating conditions or other data supplied in writing by Buyer to Seller in the selection of design of the Goods and the preparation of Seller's quotation, and in the event that actual

operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

- K. **INTELLECTUAL PROPERTY**: The parties acknowledge that Seller has developed certain specialized technology, including, without limitation, designs, discoveries, inventions, software, products, procedures, drawings, notes, documents, information and materials ("Seller Technology") that it is willing to use in connection with the design or manufacture of the Products or incorporate into the Products provided to Buyer hereunder. Seller owns all patents, copyrights, trademarks, trade secrets, know-how, inventions, and works of authorship constituting the Seller Technology which may be embodied in the Products and software and their methods of use, function and manufacture (collectively, "Seller Background Intellectual Property"). Further, the parties acknowledge that Seller may develop in connection with the performance of its responsibilities hereunder, or independent hereof, improvements related to the Products which may be the subject of patents, copyrights, trademarks, trade secrets, know-how, and works of authorship ("Seller Foreground Intellectual Property", collectively "Seller Intellectual Property"). Seller shall have the right to apply for, obtain, enforce and hold in its own name all patents, trademark, copyright, and trade dress registrations, or any other similar legal protection for such Seller Background and Foreground Intellectual Property.
- L. **GENERAL PROVISIONS**: (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representation, express or implied not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the state of Oklahoma.