

TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE OF TERMS AND CONDITIONS – ALTERATIONS.** The provisions on the face hereof, all drawings, specifications, descriptions and other documents attached hereto or incorporated herein, and the Seller's standard terms and conditions of sale set forth hereafter constitute the entire contract between the Seller and the Buyer, and supersede all prior quotations, correspondence and other communications, written or oral, between the Seller and the Buyer. The failure of the Seller to object to any provision in conflict herewith contained in Buyer's purchase order or elsewhere, shall not constitute a waiver of the provisions hereof, nor an acceptance of the Buyer's provision. No waiver, alteration or modification of the terms herein, nor representations or warranties other than expressly herein contained, shall be binding unless made or accepted in writing by an officer of the Seller. Buyer's acceptance of delivery of any shipment of merchandise covered by this acknowledgement shall constitute acceptance in full of these terms and conditions.

2. **PRICES.** The Seller's prices are f.o.b. point of shipment unless otherwise specified. They do not include sales, use or excise taxes, or any taxes of a similar nature now or hereafter imposed with respect to the manufacture, sale or use of the merchandise covered hereby (other than the Seller's income taxes). The amount of any such taxes which the Seller may be required to pay or to collect shall be for the account of buyer and will be added to and become part of the price payable by Buyer.

3. **TERMS AND CREDIT APPROVAL.** a. Unless otherwise specified on the face of this acknowledgement, all orders are for cash and will be shipped on sight draft with bill of lading attached. Invoices will be dated the day of shipment.

b. Buyer represents and warrants to Seller that Buyer is solvent and that he has no reason to believe that there is any danger of becoming insolvent. Buyer agrees to notify Seller immediately upon the filing of any voluntary or involuntary bankruptcy proceedings or other proceedings seeking any reorganization, arrangement, or other relief under any statute, law or regulation, or when he has reason to believe that such proceedings may be commenced, or upon the making of an assignment for the benefit of creditors or upon the appointment of any trustee, receiver or liquidator of the Buyer.

c. Notwithstanding the foregoing, shipments, deliveries and performance of work shall at all times be subject to the approval of Seller's Credit Department. Seller may, whenever in its opinion any reasonable doubt as to Buyer's responsibility exists, suspend or alter credit terms previously quoted and require payment before shipment or delivery, or before manufacture in case of merchandise to be made to special order. In any such event, Seller shall not be liable for nonperformance of this sales agreement, in whole or in part. Buyer agrees to execute such additional documents as shall in the opinion of Seller satisfactorily secure payment.

4. **DELIVERY.** a. Unless otherwise stated, shipments will be made as soon as merchandise is manufactured, and the Seller will use his best efforts to meet any scheduled delivery date shown on the face hereof. Buyer agrees that Seller shall have no liability for any loss, damages, loss of profits, loss of business, or other consequential damages resulting from Seller's failure to deliver merchandise within the time specified herein.

b. Seller reserves the right to ship the products in one lot or in installments as it may determine in its sole discretion. If shipment is made in installments, breach by Seller concerning any installment shall not affect the remainder of the contract.

c. If the manufacture or delivery of the materials required hereunder is delayed at Buyer's request, which must be by registered mail or telegram, for more than thirty (30) days after the scheduled delivery date, Seller may bill Buyer for the cost of materials ordered or received and work performed to date of receipt of request.

d. Seller may substitute products for those specified so long as the substituted products are of equal or better quality and such substitution does not impair specified performance.

5. **RISK OF LOSS.** The risk of loss or damage to the goods from and after the time of their identification to this agreement, which in no event may occur later than the date of shipment, shall be on Buyer.

6. **TRANSPORTATION.** Seller shall not be liable for any loss or damage sustained in transit. Claims for damages caused in transit must be asserted by Buyer against the carrier. In the event transportation charges from point of origin of the shipment to a designated point are included in the prices herein, hereafter or heretofore quoted:

a. Any changes in such transportation charges shall be for the account of Buyer;

b. Except as otherwise stated in Seller's quotation, Seller shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service, nor for any charges incurred therefor, unless such charges are included in the applicable tariff freight rate from shipping point to the designated point;

c. No cash discount shall be allowed on any transportation charges included in delivered prices.

7. DEFAULT BY BUYER

a. If Buyer be in default with respect to this or any other contract with Seller, then, at any time during the continuance of such default, Seller may defer further shipments or cancel this sales agreement with respect to any and all quantities not then shipped. Seller also reserves the right to stop any delivery and/or demand payment in cash against shipping documents in case the Seller has reason to doubt Buyer's ability to pay promptly according to the terms herein stated. Buyer, however, shall have the privilege of satisfying the Seller as to his responsibility and when Seller is so satisfied, shipments shall be made and renewed on the basis of the original terms of this contract. Failure on the part of the Seller to exercise this option in case one or more invoices are not paid when due shall not affect Seller's right to subsequently exercise this option.

b. Buyer agrees that if this sales agreement is cancelled by Buyer in accordance with paragraph 8 hereof, any money paid as a down payment shall become the property of Seller to compensate Seller for its liquidated damages resulting from such cancellation.

8. **CANCELLATIONS.** Orders may be cancelled for the convenience of the Buyer only upon condition that Buyer makes immediate payment to Seller for (1) all completed work at the contract price; (2) all work in process, computed by applying to the contract price the percentage of completion, plus a handling charge; and (3) any amounts for which Seller shall be liable by reason of commitments made by it to its suppliers for raw materials or components or finished parts, plus a handling charge applicable to this order. If this acknowledgement relates to a government prime or subcontract, and the termination charges computed as provided above are in excess of those allowable under such a contract, the termination provision set forth in Section 8.706 of the Armed Services Procurement Regulations, as amended and in effect on the date of this acknowledgement, shall supersede the preceding sentence.

9. **TOOL AND DIE CHARGES.** Seller shall retain title to and the right to possession of all special tools, dies, and molds. If no orders are received from Buyer requiring the use of such tooling for a period of one (1) year, Seller may consider the same obsolete and destroy any such tooling with prior concurrence of Buyer, to be received within forty-five (45) days after receipt of notice by registered mail to Buyer.

10. **WARRANTY.** This warranty extends only to the first purchaser (Buyer) of the Unitary Heater products listed on the face hereof, and does not extend to any subsequent purchaser of any of these products. Seller warrants to Buyer that (i) the Unitary Heater products and components, when installed correctly according to instructions provided by Seller, and when properly maintained, will be free from defects in workmanship and material for one (1) year after installation, but not to exceed eighteen (18) months after manufacture, and (ii) the heater section of the Unitary Heater products, consisting of the resisting coils and supporting racks (other than fusible links and overcurrent fuses), and the controls of the Unitary Heater products, consisting of contactors, thermal hi-limit terminal and fuse blocks, when installed correctly according to instructions provided by Seller, and when properly maintained, will be free from defects in workmanship and material for five (5) years after installation, but not to exceed five (5) years and six (6) months after manufacture. This warranty does not apply to defects caused by faulty installation, misuse, accident, alteration, improper use after installation, decreased airflow, dirty filters, unrated voltage or chemical, electrical or physical abuse.

If the product or a component is found not to comply with the above warranty, the defective product or component shall be promptly returned, freight prepaid, to Seller's factory for examination. If the failure is due to causes other than faulty installation, misuse, accident, alteration, improper use after installation, decreased airflow, dirty filters, unrated voltage or chemical, electrical or physical abuse, Seller will repair, or at its option, replace the product, component or parts found to be defective at no charge and return to Buyer with shipping charges prepaid, and issue credit for the incoming shipping charge.

THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, STATUTORY OR OTHERWISE, EXPRESS OR IMPLIED, ALL OTHER REPRESENTATIONS TO THE BUYER, AND ALL OTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO ANY PRODUCT PURCHASED HEREBY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER'S OBLIGATION UNDER ALL SUCH WARRANTIES SHALL NOT EXCEED THOSE SET FORTH ABOVE. NO OTHER WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, HAS BEEN MADE BY SELLER WHICH HAS BEEN RELIED ON BY BUYER. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES OTHER THAN AS SET FORTH ABOVE OR FOR LOSS OF PROFITS OR OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

11. **PATENTS.** Seller shall hold Buyer harmless from any expense, injury, or loss arising out of any claim of patent infringement against Buyer by reason of its sale or use on any articles subject to this order which are not made to Buyer's design, specifications, blueprints, drawings or samples. Buyer shall hold Seller harmless from any expense, injury or loss arising out of any claim of patent infringements against Seller by reason of its manufacture or sale of any articles made to Buyer's design, specifications, blueprint, drawings or samples.

12. **QUANTITIES.** Unless otherwise agreed, Buyer will accept over-runs and under-runs on each individual item not exceeding ten percent (10%) of the quantity ordered. The billing will be adjusted accordingly. Lot prices cover a quantity of parts ordered on a single purchase order, to be shipped complete within ninety (90) days of the initial shipment in one, two or three shipments. Ten dollars (\$10.00) is considered a minimum order charge.

13. **DELEGATION OF DUTIES AND ASSIGNMENT OF RIGHTS.** Without Seller's prior written consent, Buyer shall neither delegate nor assign or transfer in any manner to any person, firm or corporation his obligations or rights which may accrue under this contract.

14. **BUYER'S REMEDIES AND NOTICE OF DEFECTS.** No claim of any kind, whether as to goods delivered or for nondelivery of goods, shall be greater in amount than the purchase price of the goods in respect of which such damages are claimed, and failure to give notice of claim within twenty (20) days from date of delivery or the date fixed for delivery, as the case may be, shall constitute an unqualified acceptance of and a waiver by Buyer of all claims in respect of such goods. Seller shall have a reasonable time from the receipt of such notice to cure any default or defect and if Seller cures within a reasonable time, Buyer shall not be entitled to pursue any legal remedy. Buyer assumes all risk and liability for the results obtained by the use of any products delivered hereunder in processes of Buyer or in combination with other substances. The remedy provided herein shall be the exclusive and sole remedy of Buyer, and right of Buyer to indirect, special, incidental or consequential damages is excluded.

15. **NON-WAIVER BY SELLER.** Seller shall not be bound by or liable to Buyer for any representation, promise or endorsement made by any agent or person in Seller's employ not embodied in this contract.

No waiver by Seller of any default shall be effective unless in writing, nor shall it operate as a waiver of any other default on a future occasion. All rights of Seller hereunder shall inure to the benefit of its successors and assigns; and all obligations of Buyer shall bind the heirs, legal representatives and successors of Buyer.

16. **COMPLIANCE WITH LAW.** Seller agrees that, in the performance of all work hereunder, it will comply in all material respects with all applicable laws, rules, regulations, ordinances and orders of the United States Government, and of all applicable State or political subdivisions thereof.

17. **LEGAL EFFECT AND PROCEEDINGS.** Upon acceptance by Buyer, this order shall constitute a contract which shall be governed, construed and interpreted in accordance with the laws of the State of Tennessee. The courts of the State of Tennessee shall have jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this order or to any matter arising,

Buyer hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced in such court, hereby waiving the right to trial by jury and personal service of the summons and complaint or other process issued therein (herein called "Process") and agreeing that such Process may be served by registered or certified mail addressed to the party to be served at the address shown on the face hereof or such other address as such party may have designated in writing for receiving notices. Should the party so served fail to answer or appear within thirty (30) days after the mailing of such Process, such party shall be deemed in default and judgment or an appropriate order may be entered as demanded or prayed for in such Process.