



Thermotech Company
1302 South Fifth Street
Hopkins, Minnesota 55343-7877
Phone: 952.933.9400
Fax: 952.933.9412

TERMS AND CONDITIONS OF SALE

1. **VALIDITY OF PROPOSAL** -- All Orders received from a recipient of a Proposal ("Buyer") are subject to these terms and conditions of Seller (Thermotech Company). Seller's Proposal, together with any documents incorporated therein shall constitute the entire agreement and may not be changed except by writing signed by both Buyer and a senior executive of Seller. Acceptance by Seller of Buyer's Order is expressly limited to the Terms and conditions herein stated; any additional inconsistent or different terms and conditions contained in Buyer's purchase order or other documents supplied by Buyer are expressly rejected. Seller's failure to enforce any of the terms and conditions of sale as listed in this document will not invalidate any of the other terms and conditions listed herein, nor set a precedent that prevents Seller from enforcing those same terms and conditions at a different time.
2. **SHIPMENT, TITLE, RISK OF LOSS** -- All prices quoted are F.O.B. Seller's facility unless otherwise specifically agreed to in writing. Notwithstanding the granting of any allowances for shipping, title to and risk of loss for Products shipped pursuant to this Proposal will pass to the Buyer when delivered to a carrier at Seller's facility.
3. **MODIFICATION, TERMINATIONS, CANCELLATIONS OF AGREEMENT** -- The entire agreement of Seller and Purchaser shall be expressed in writing. No order accepted by Seller may be altered or modified unless agreed to in writing, signed by authorized official of Seller. No order may be terminated or canceled by Purchaser except upon the following conditions:
 - a) If, at the time the Purchaser requests that work be stopped or that such work be terminated or canceled, the Seller has completed molding of goods, those goods shall be manufactured completely. Such goods, when completely manufactured, and any goods completely manufactured at the time of Purchaser's request, will be shipped and Purchaser agrees to accept the goods and to pay for them in full at the price agreed upon.
 - b) Subject to (a) above, all work on Purchaser's order will be stopped within a reasonable time upon receipt of Purchaser's request, and Purchaser agrees to pay Seller for all work in process and any raw materials, labor or supplies, used, or for which commitments have been made by Seller in connection therewith, on the basis of Seller's full cost and expenses computed in accordance with Seller's standard practice plus 25% thereof, or a \$1000.00 minimum termination charge, whichever is greater.
 - c) The election by Seller to proceed under either (a) or (b) hereof shall conclusively be deemed to be the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization.

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d) The enumeration of remedies under this paragraph 3 shall not be construed as a limitation upon the right of Seller, in the event of any breach of the agreement of sale by Purchaser, to invoke any other remedy available under applicable law or to proceed in any other reasonable manner.

4. QUOTATIONS AND PRICES -- This Proposal automatically expires 60 days from date hereof unless previously terminated by Seller's written notice. Prices quoted are based upon manufacturing the complete order at one time, unless otherwise specifically agreed to in writing. Deliveries scheduled more than 60 days from the date hereof are subject to the provision of those terms and conditions captioned "Escalation."

5. TOOLING -- If Seller is to furnish and use tooling in the manufacture of goods for the Buyer, the following apply to that tooling, unless otherwise agreed to in writing by Seller and Buyer.

a) The force and cavities made by Seller are designed to operate in special fixtures and machines, and will be kept in the possession of the Seller. Permanent tools in Seller's custody will be maintained and serviced by Seller.

b) Tools will be retained by Seller for Buyer's exclusive use without storage charge as long as the tools are in active production. If Buyer does not order goods for a six month period, Seller has the right to assess a tooling storage charge or to return the tooling to Buyer at Seller's own discretion.

c) Seller reserves the right to make nominal tool repairs deemed necessary by Seller and to charge Buyer for such repairs.

d) Outside Tooling: In the event Seller is supplied tooling not of its manufacture, and in that event, Seller expressly reserves the right to perform any maintenance or repair to said tooling which, in Seller's sole opinion, is necessary or desirable, and to pass on the cost thereof. Further, Seller shall not be liable for any delay, default or damage attributable directly or indirectly to tooling not of its manufacture.

e) Seller reserves the right to discontinue the use of tools as obsolete when in Seller's opinion they are worn out or have not been used for three years. Buyer will be given 90 days written notice of Seller's intention to dispose of tools in accordance with Buyer's instructions. If such instructions are not received by Seller from Buyer after expiration of 90 days, Seller shall dispose of such obsolete tools without liability or further obligation to Buyer.

f) Seller reserves the right to place a 30% charge to total tooling costs on tools released to buyer which charge Buyer will pay Seller prior to the release of the tools from Seller's facility.

g) Seller shall have a lien upon and right of possession to all the Buyer's permanent tools for any payments due the Seller by the Buyer, including in the event of default, all costs of collection together with reasonable attorney's fees.

h) Seller will not complete routine mold requalification unless it is requested by the Buyer. Requalification cost will then be quoted by the Seller and will not commence until a purchase order is submitted by Buyer.

6. TAXES -- Any Manufacturer's Tax, Retailer's Occupation Tax, Use Tax, Sales Tax, Excise Tax, Duty, Custom, Inspection or Testing Fee; or other Tax, fee or charge of any nature whatsoever, imposed by a government authority on or measured by any transactions between Seller and Buyer, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller shall be required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore. Buyer's orders must state the existence and amount of any such tax, fee or charge which it shall be Seller's responsibility to collect from Buyer and pay; but Buyer's failure

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to state any such tax, fee or charge shall not excuse Buyer from paying or reimbursing Seller. In the event any Sales and Use Tax and/or Tangible Personal Property Tax is charged to the Seller on tools retained by Seller pursuant to paragraph 5 of this Proposal, Seller will invoice Buyer and Buyer will reimburse Seller for the payment of such tax.

7. PAYMENT TERMS AND BUYER'S CREDIT -- Payment terms are net thirty (30) days after the date of invoice unless otherwise agreed in writing. Those terms shall apply to partial as well as complete shipments of product. Buyer will furnish reasonably adequate information on Buyer's credit standing within thirty (30) days after Seller's request therefore. If Buyer fails to furnish the requested credit information, Seller may, at its option, ship the Product C.O.D. or withhold shipment until such credit information is supplied. In the event shipment is withheld until receipt of such information, the amounts due shall be subject to change in price in accordance with the provisions captioned "Escalation."

8. ESCALATION -- Prices set forth herein are firm for a period of sixty (60) days from the date hereof. Such pricing shall be adjusted upward to that in effect at the time of shipment in the event shipment is made more than sixty (60) days from the date hereof in those circumstances where manufacture and/or shipment is delayed through no fault of Seller.

Prices on Product manufactured and/or shipped more than sixty (60) days from the date hereof, will be adjusted upward in the event the Seller's cost of labor or materials increases from those costs, used in formulating the prices herein set forth. Data used in computing any escalation of price is available at Seller's facility and may be reviewed at a mutually agreeable time upon the Buyer's prior request.

9. SETOFFS -- All invoices shall be due and payable when submitted for payment in accordance with Paragraph 7 of Seller's Terms and Conditions. No withholding of funds, back charges or credits against amounts otherwise due Seller will be permitted unless specifically agreed to in writing by Seller. Settlement of any amounts due Buyer will be negotiated as separate items and not as setoffs against amounts otherwise due Seller from Buyer for Products sold hereunder.

10. DELIVERY -- Should shipments be held beyond scheduled date for convenience of the Buyer, goods will be billed and charges will be made for warehousing, trucking, and other expenses incident to such delay. Reasonable and sufficient care is taken by Seller in crating its goods. Seller cannot be held responsible for breakage after having received "In good order" receipts from the transportation carrier. All claims for loss and damage must be made by Buyer to the carrier, but Seller will assist insofar as practical in securing satisfactory adjustment of such claims.

Claims for shortages or other errors or any breach must be made in writing to Seller within 15 days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance of goods and a waiver of all claims by Buyer.

The selection of carrier and making of the contract of transportation by Seller, shall conclusively be deemed reasonable having regard to the nature of the goods and other circumstances of the case, unless shipment is being made to Buyer's specification, in which case, Seller has no responsibility whatsoever.

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11. **SHIPPING SCHEDULE** -- All quoted delivery schedules are approximate and will depend upon prompt receipt from Buyer of all blueprints and other information necessary for the design and manufacture by Seller. When requested by Buyer, sample parts manufactured with new tooling will be furnished by Seller. Within seven days after receipt and inspection of sample parts, Buyer will either (a) approve sample parts or (b) state in writing necessary modifications to tooling. If sample part is approved, Seller will commence manufacturing as scheduled; if modification of tooling is required, Seller will modify tooling and resubmit sample parts. Thereafter, Seller and Buyer will follow same procedure as described in this Paragraph 11 and delivery schedule originally quoted by Seller will then be modified accordingly. No work will proceed after Seller or Buyer requests deviations from specifications until Buyer sends written approval.

12. **COMPLETION - DELAYS**

a) Every reasonable effort shall be made by Seller to fulfill the order within the time estimated, but due to the nature of the work undertaken, notice is given that no liability shall be incurred by Seller for delayed performance or delivery.

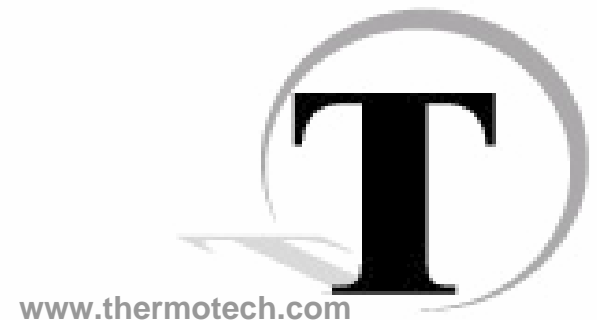
b) If the Buyer requests that the goods be manufactured and shipped on a date (or dates) earlier than originally agreed to by Seller and Buyer, and the Seller agrees to the earlier date (or dates), any increase in the cost of performance incurred by the Seller resulting from earlier manufacture and shipment will be included in an adjustment of the purchase price to be made by the Seller and will be paid by the Buyer.

c) Seller shall not be liable for any damage as a result of any delay due to any cause beyond Seller's control, including, without limitation, any Act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slow down, war, riot, flood, delay in transportation, and inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. The acceptance of goods when delivered shall constitute a waiver of all claims for damages caused by any delay within Seller's control.

13. **RETURN OR REWORK OF GOODS** -- No goods or parts may be returned by Buyer without first obtaining Seller's permission and a return material identification number. Parts must be returned within 30 days after permission is received. Buyer may elect to rework goods rather than return to Seller, and if Seller agrees, Seller will reimburse Buyer for such rework. Seller's agreement to Buyer's rework must be in writing and, in no event, can exceed the Buyer's estimated rework charges.

14. **PATENT INDEMNITY** -- Patent Indemnity by Seller to Buyer. Seller agrees to indemnify and hold harmless the Buyer from and against all legal expenses which may be incurred, as well as all damages and costs (except all consequential and special damages and costs) which may be finally assessed against Buyer in any action for infringement of any United States Letters Patent by the Product delivered to Buyer hereunder; provided that the Buyer shall give Seller prompt written notice of any action, claim or threat of patent infringement suit, either oral or written, or of the commencement of any patent infringement suit against Buyer relating to Products sold by Seller to Buyer hereunder; and provided Buyer shall give Seller opportunity to elect to take over, settle or defend any such claim, action, or suit through counsel of Seller's own choice and under its sole direction, and at its sole expense, and provided that in the event Seller elects to take over, defend or settle same, Buyer will make available to Seller all defenses against any such claim, action, suit or proceeding known to or available to Buyer; and provided further that Seller shall have the right to substitute for

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any such Product or any part thereof claiming to infringe the patent rights of others, non-infringing Products which will give equally good service.

If the use of any such Product or any part thereof shall be enjoined, Seller shall have the right, at its own expense, to take any of the following courses of action:

1. To procure for Buyer the right to continue using such Product;
2. To replace said Product with a non-infringing Product;
3. To modify the Product so that it becomes non-infringing; or
4. To remove said Product and refund the purchase price and the transportation and installation costs thereof.

Limitation. The foregoing provisions as to patent protection by Seller To Buyer shall not apply to any of the following:

1. To any product manufactured to the design or specifications furnished by the Buyer;
2. To orders for special non-commercial Product which Seller has not sold or offered for sale to the public on the open commercial market;
3. To any infringement occasioned by modification by Buyer of any product without Seller's written consent, or any infringement arising from the use of a Product with any adjunct or device added by the Buyer without Seller's written permission.

Patent Indemnity By Buyer to Seller. To the extent that Products delivered hereunder are manufactured pursuant to detailed designs furnished by Buyer, Buyer agrees to indemnify Seller and hold Seller harmless from all legal expenses which may be incurred, as well as all damages and costs, which may finally be assessed against Seller in any action for infringement of any United States Letters Patent by such Products delivered hereunder. Seller agrees promptly to inform the Buyer of any claim for liability made against Seller with respect to such Products, and Seller agrees to cooperate with the Buyer in every way reasonably available to facilitate the defense against any such claim.

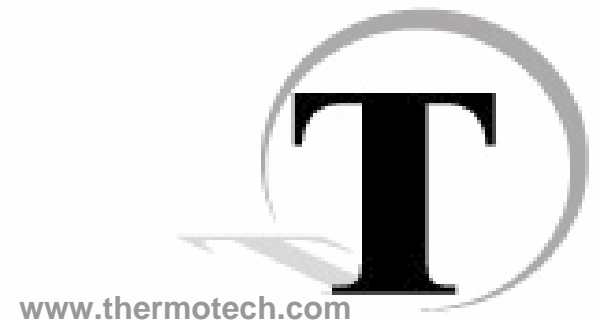
15. SUBSTITUTION -- In the event any raw material specified for incorporation into the Product covered by the Proposal shall become unavailable, Seller shall notify Buyer and Buyer may direct Seller to substitute available material for that originally specified, it being understood and agreed that Buyer shall assume any and all consequences resulting from such substitution.

16. QUANTITY VARIANCES -- Delivery of five percent more or less than the quantity ordered shall be accepted as a completed order and will be invoiced accordingly.

17. ASSIGNMENT -- Buyer shall not assign or transfer any rights or obligations arising from this Proposal or monies payable hereunder, without the prior written consent of Seller and any such assignment or transfer made without such written consent shall be deemed null and void.

18. GOVERNING LAW -- Contract shall take affect and be construed in accordance with the local laws of the State of Minnesota. Any controversy arising between the parties shall be determined by a court of competent jurisdiction sitting in Hennepin County, Minnesota.

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19. **PRODUCT WARRANTY** -- Seller warrants that at the time of shipment the products manufactured by Seller and sold hereunder will be free from defects in material and workmanship and will be in conformity with applicable printed or written specifications; or if samples have been approved by Buyer, then the said products will substantially conform to such samples. If it appears that within thirty (30) days of shipment from Seller's plant the products sold hereunder do not meet the warranty specified above, the buyer gives written notice to Seller thereof within ten (10) days of Buyer's discovery of such non-compliance, then after Seller has examined and tested the allegedly non-complying products and found said products to be, in fact, defective within the above warranty, Seller will at its option either (1) furnish a replacement for, but will not install, any products or components thereof which prove to be not in compliance with the aforesaid warranty or (2) issue a credit for the purchase price of any products or components thereof which prove to be not in compliance with the aforesaid warranty. No products claimed by the buyer to be defective within the above warranty will be accepted for return for replacement or credit without the written authorization of Seller, which authorization must be given in advance of Buyer's return of said products. Any recommendations or technical advice furnished by Seller or its representative concerning any use or application of products furnished under this contract is believed to be reliable, but Seller makes no warranty, express or implied, with respect to such information or the results expected to be obtained.

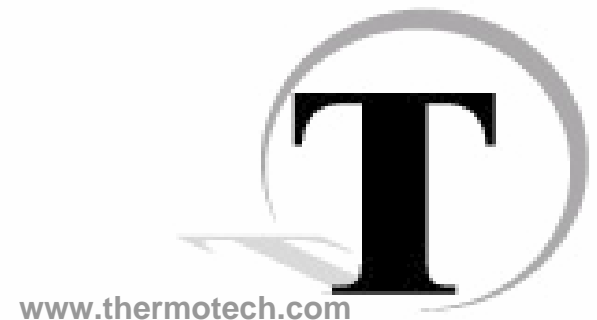
Seller will not be liable for any loss, damage, or expense directly or indirectly arising from the use of the products either separately or in combination with any other equipment or material or from any other cause. The foregoing warranty does not extend to any product manufactured by Seller which has been subjected to misuse by the Buyer's neglect, accident, or improper installation; nor does the said warranty extend to or apply to any unit which has been repaired or altered by persons not expressly approved in writing by Seller; nor does the said warranty extend to or apply to any product the identifying symbol of which has been removed, defaced, or changed. Components manufactured by any supplier other than Seller, which are sold hereunder, shall bear only that warranty made by the manufacturer of those components; but in no event shall such a warranty be more extensive in any manner than Seller's product warranty under this provision. Seller will not be liable for any errors, defects, or omissions in the design or any product sold hereunder irrespective of whether such errors, defects, or omissions in design result from acts or omissions of Seller or of Buyer or of some other third party.

20. **LIMITATION OF LIABILITY** -- Seller will not be liable for any loss, damage, cost of repairs, incidental or consequential damages of any kind, whether or not based upon warranty, express or implied (except for the obligations accepted by Seller under "Product Warranty" above), contract, negligence or strict liability arising in connection with the design, manufacture, sale, use or repair of the products or of the engineering designs supplied to Buyer. In no event will Seller be liable to Buyer for more than the purchase price of the products sold hereunder.

21. **ERRORS AND OMISSIONS** -- Seller reserves to itself the exclusive right to correct clerical or stenographical errors or omissions.

THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES IMPLIED UNDER LAW, SUCH AS BUT NOT

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LIMITED TO WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

SELLER WILL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES RESULTING FROM BREACH OF THE ABOVE WARRANTIES. BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY OR ANY OTHER BREACH RELATING TO THE GOODS DELIVERED PURSUANT HERETO SHALL BE FOR REPAIR OR REPLACEMENT (AT SELLER'S OPTION) OF THE ITEMS EFFECTED BY SUCH BREACH AND IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE THEREOF.

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