



69 Progress Ct.  
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## TERMS & CONDITIONS

The following Standard Terms and Conditions shall govern all sales of goods or services by Thermal Flow Technologies, LLC ("Seller") to the person or entity identified on the Quotation, E-Commerce Acknowledgment, or Purchase Order as purchasing such goods or services ("Buyer").

**ACCEPTANCE:** Buyer's order shall be deemed an offer for purchase which is subject to acceptance by Seller. Seller's acceptance of such offer of purchase is limited to the express terms obtained in the Quotation and these Standard Terms and Conditions. Any proposal for additional or different terms or any attempt by Buyer in its purchase order or otherwise is hereby rejected. Unless Buyer's proposed changes affect the description, quantity, price or delivery schedule of the goods, Seller's objection to the goods or services shall not be deemed a rejection, but shall constitute acceptance thereof without said additional or different terms.

**PRICES:** Prices quoted are not subject to change for fourteen (14) days, with the exception of shipping quotes which will change on a day-to-day basis. All prices and terms of sale are subject to correction for error.

All shipments are F.O.B. shipping point. Shipping charges are calculated based on the actual weight, distance traveled and type of shipping service you specify (LTL, dedicated truck, ground, next day, second day, etc.).

NO SALESMAN OR ANY OTHER PERSON HAS AUTHORITY TO ALTER OR VARY SELLER'S ESTABLISHED PRICES OR TERMS. Any such change must be in writing signed by an authorized officer of Seller.

**TAXES:** Prices quoted do not include any federal, state, or local taxes, which shall in all events remain the responsibility of Buyer. Seller may, at its option, invoice Buyer for taxes at the time of invoicing the goods, or separately. Tax exemption certificates, as required by federal, state, or local regulations, must accompany all orders to which same apply or be on file with Seller.

**PAYMENT:** Payment is required at time of order, unless otherwise stated in writing by Seller. On any account outstanding for more than ten (10) days, Seller may add a service charge of 1½ percent of the principal amount due at the end of each ten (10) day period. Buyer shall not retain, withhold, or escrow any portion of the payment due to Seller at any time or for any reason. In addition to all of Seller's other remedies, Buyer shall compensate Seller for all collection costs, including attorney fees, should Buyer have to take action to enforce these Standard Terms and Conditions.

**SHIPMENT TERMS:** Shipping method is determined by the size and weight of each item. Items of differing size and weight may ship independently, by different methods, even if ordered together. Items that are too large or too heavy for ground shipping will be shipped by LTL freight. Less than 24-hour notification, residential deliveries, lift gate, or inside deliveries are available for an additional charge. Buyer is responsible for confirming their shipping details prior to placing an order. Buyer is responsible and will be invoiced for additional shipping costs incurred due, but not limited to the following reasons: buyer changing the delivery address, missing the delivery, and/or rescheduling the delivery, limited access fee, residential fee, liftgate fee, & reconsignment fee.

Unless otherwise stated, freight and shipping fees will be charged for shipments to anywhere in the contiguous United States, using a carrier of our choice. **Other terms apply to Canada, Alaska, Hawaii, Puerto Rico, and export orders.** Any extra charges incurred for additional services, such as buyer's carrier or special handling by the carrier, must be paid by the buyer and/or consignee. Items back ordered from an order qualifying for prepaid shipping charges will be shipped prepaid. Title and risk of loss pass to the buyer upon tender of shipment to the buyer. In the event of LTL damages we follow the NMFC (National Motor Freight Classification) laws that are regulated by the Federal Government.

Shipment dates are estimates only, unless agreed otherwise in a writing and signed by an authorized officer of Seller. Seller's responsibility for the goods ceases upon delivery of the goods to the buyer, and thereafter, Buyer shall be liable for any and all losses, delays or damage to any goods.

**DAMAGED OR LOST MERCHANDISE CLAIMS:** Unfortunately, damage can occur during shipment. All cartons should be inspected for damage immediately upon receipt for external and/or concealed damage. Damage discovered upon inspection is the responsibility of the freight carrier. Seller is not responsible for any damages incurred during shipment; however, Seller will work with the carrier to resolve damage claims. Shipping damage is not warranted when buyer utilizes their own shipping carrier (buyer arranges shipping of product on their own accord). To expedite any potential claim, do not sign for any portion of the shipment until you have verified the carton count and completed a preliminary inspection for damage. DO NOT accept the delivery without first noting the details of the damage on the Proof of Delivery Receipt (POD) provided by the delivery driver. Retain a copy of the POD and contact Thermal Flow Technologies immediately. Keep both the shipping container, packing contents and product for inspection or pick-up by the carrier.

**WARRANTY, LIMITATION OF LIABILITY, EXCLUSION OF REMEDIES:** Buyer's sole and exclusive remedy for any claims regarding the equipment, including but not limited to the repair or replacement of the equipment or reimbursement of funds spent to repair or replace the same, sold by Seller is the manufacturer's warranty, applicable and enforceable against the manufacturer only. In no event shall Seller be liable for any repair or replacement cost of the equipment.

This warranty does not cover any defect, malfunction, etc... resulting from improper operation, lack of maintenance, freezing, corrosion from chemicals, condensation, tampering, modification, unauthorized or improper repair, accident, acts of nature, shipping after you receive the equipment, or normal wear to items such as power cords, plug adaptors or other items which require replacement resulting from normal usage and may require replacement prior to 1 year based on usage.

If the unit needs to be sent in for a repair that is not related to a defect, the end user/buyer is responsible for the cost & shipping the unit back to Thermal Flow Technologies, or the product's manufacturer, to determine why the unit is not working. If the unit is under warranty and is not working due to a confirmed (by Thermal Flow Technologies and/or the manufacturer) defect, Thermal Flow will pay for the cost of the product to be shipped to the manufacturer for repair or replacement. If the repair falls out of the warranty period, the end user/buyer is responsible for the charges that are incurred in repairing the units and the related shipping costs.

#### Servicing of Unit:

Warranty service must be performed by a firm or Individual authorized by the manufacturer. The end-user/buyer must contact Thermal Flow Technologies at the above location. Thermal Flow Technologies will arrange for covered warranty service. All covered warranty service will be arranged during normal business hours.

Limitations and Exclusions: If any part of the product is repaired or replaced as covered warranty, the new part shall be warranted only for the remainder of the original warranty period of the product. Upon expiration of the written warranty applicable to the manufacturer, the product or any part thereof, all other warranties implied by law, including merchantability and fitness for a particular purpose, shall also expire. All warranties made by the manufacturer are set forth herein, and no claim may be made against the manufacturer, on any oral warranty. In no event shall the manufacturer, in connection with the sale, operation, repair or replacement of any the manufacturer's devices or parts thereof be liable under any legal theory for any special, indirect or consequential damages including without limitation water damage, lost profits, delay, or loss of use or damage to any real or personal property.

SELLER MAKES NO WARRANTIES TO BUYER REGARDING THE EQUIPMENT WHATSOEVER. BUYER SHALL HAVE NO RIGHT TO ENFORCE ANY WARRANTY, INCLUDING ANY WARRANTIES PROVIDED BY THE MANUFACTURER, AGAINST SELLER. THIS WAIVER OF SUPERCEDES ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, WHETHER WRITTEN, ORAL OR IMPLIED. THE REMEDIES AFFORDED BUYER BY THESE TERMS AND CONDITIONS ARE THE ONLY REMEDIES AVAILABLE.

***NO OTHER WARRANTY TO BUYER FROM SELLER IS EXPRESS OR IMPLIED. SELLER SPECIFICALLY (1) DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE BUYER'S PURCHASE OF UNITS OF ANY PRODUCT UNDER THIS AGREEMENT AND (2) MAKES NO WARRANTY OTHER THAN THE WARRANTY OF TITLE AND THE WARRANTIES EXPRESSED IN THIS AGREEMENT.***

THE FOREGOING WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, OR ARISING BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer acknowledges that the foregoing warranty, limitations, and exclusions are a reasonable allocation of commercial risks by and among sophisticated business entities and are not subject to dispute as to their commercial reasonableness, fairness or ability to satisfy the essential purposes of the parties' transaction. Buyer further agrees and acknowledges that there are no warranties which extend beyond the face of these Terms and Conditions.

**WAIVER OF LIABILITY:**

IN NO EVENT SHALL SELLER BEAR ANY LIABILITY FOR INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, LOST PROFITS OR OTHER ECONOMIC LOSS, **INCLUDING FOR DAMAGES OR LOSS ARISING OUT OF OR ASSOCIATED WITH SELLER'S OWN NEGLIGENCE.**

Buyer acknowledges that the foregoing waiver is a reasonable allocation of commercial risks by and among sophisticated business entities and are not subject to dispute as to their commercial reasonableness, fairness or ability to satisfy the essential purposes of the parties' transaction.

**RETURNS:**

In the event buyer wishes to return a product and/or products, buyer must obtain a Return Authorization (R.A.) from Thermal Flow Technologies, and such items shall be returned to Thermal Flow Technologies within **14 days** of initial receipt. In the event of such returns, buyer is responsible for the cost of the shipment back to Thermal Flow Technologies. All returns will incur a **20% restocking fee, & initial shipment costs (if applicable) are not refundable.** Products will also be assessed to determine if any damage, alterations & excessive use (**exceeding 24 operating hours**) have been made to the product, and if any are found, charges will be assessed for the labor and parts needed to return the equipment and/or components back to their original condition.

If a buyer wishes to return a product due to a suspected **defect that has not been confirmed by Thermal Flow Technologies** (ie. Buyer claims product is "not working"), Thermal Flow Technologies will arrange for the product/s to be shipped back to Thermal Flow Technologies for inspection. If the product is found to be free of defect and buyer wishes to return the product/s, the 20% restocking fee plus the cost to ship the product back to Thermal Flow Technologies will be charged to the buyer. **Initial shipment costs (if applicable) are not refundable.** If the product is found to be free of defect and buyer wishes to receive the product back, the buyer will be responsible for the shipping costs to ship the product back to Thermal Flow Technologies for testing and shipping the product back to the buyer.

End-User Responsibilities: The buyer is **expected to inspect all items that have been received and make sure that they are in proper working order and/or not damaged from shipping.** If items are missing, damaged from shipping, or a defect is suspected, the buyer is responsible for informing Thermal Flow Technologies upon receipt.

**CANCELLATION:** Buyer shall not cancel any order hereunder, in whole or in part, without Seller's written consent. Buyer shall be liable to Seller for cancellation charges including, but not limited to, Seller's incurred costs and such profit as would have been realized by Seller from the transaction but for the cancellation. Seller shall have the right to cancel or suspend performance, in the event of Buyer's failure or delay in performing any of its obligations hereunder, including without limitation payment or acceptance of delivery, or in the event of Buyer's bankruptcy or insolvency, all without any liability of Seller.

**FORCE MAJEURE:** Seller's failure of or delay in performance hereunder shall be excused in the event of any cause beyond its reasonable control, including without limitation, governmental acts, strikes, civil disturbance, war, acts of terrorism, accidents, fires, floods, acts of God, Seller's inability to procure materials from the usual sources, or shortages of materials, supplies, labor or fuel.

**ASSIGNMENT:** Neither Buyer or Seller may assign or transfer, by operation of law or otherwise, in whole or in part, any of its rights and obligations hereunder, without the prior written consent of the other party.

**RESTRICTIVE COVENANTS OF BUYER:** Buyer shall not (i) license, lease or otherwise transfer its ownership interest in, or its right to use, any of the equipment to any other person or entity other than in connection with the sale of Buyer's business or all or substantially all of the assets used in Buyer's business, or (ii) reverse engineer, decompile any of the Products sold by Seller hereunder or otherwise assist any other person to do the foregoing.

**INDEMNIFICATION BY BUYER:** Buyer shall indemnify and hold harmless Seller and its affiliates from and against any and all losses, damages (including legal fees and costs), claims, actions, suits or proceedings of any kind which may be brought against Seller arising out of or related to Buyer's use of the equipment or Buyer's breach of the representations, warranties and covenants set forth in these Terms and Conditions.

**CHOICE OF LAW AND VENUE:** This transaction and contract are governed by the laws of the State of Missouri, and the exclusive jurisdiction for resolution of any dispute between Buyer and Seller shall be the Circuit Court of Lincoln County, Missouri.

**ENTIRE AGREEMENT:** The signed quotation, buyer's Purchase Order (P.O), and/or Seller's order acknowledgment and any documents incorporated therein, and these Terms and Conditions constitute the entire agreement of the parties and shall not be altered or modified except by the written agreement of both parties.