

**TEKNOTHERM, INC.**  
TERMS AND CONDITIONS OF SALE

**1. Quotations:**

Quotations furnished by Teknotherm, Inc. ("Seller") to Purchaser do not constitute an offer. Seller will make every effort to supply the items quoted, but seller cannot guarantee availability.

**2. Terms of sale:**

- (a) **Unless otherwise agreed to in writing, any quotation with respect to items to be furnished** hereunder ("Products") and any contracts with respect thereto ("Contract"), shall incorporate these Terms and conditions and acceptance by seller of any order by confirmation or commencement of performance shall be on the basis of these Terms and conditions even though no reference is made thereto at the time of acceptance. No provision contained in Purchaser's order which are different from, or additional to, these Terms and Conditions shall be binding on Seller or applicable to the sale of the Products.
- (b) All orders from Purchaser are subject to acceptance by Seller at its main office in Seattle Washington, and Seller reserves the right to accept or reject any order in whole or in part.
- (c) **Delivery will be F.O.B. shipping point.**
- (d) Payment shall be 30% at the time contract is signed and the balance shall be due when the product is ready for delivery to purchaser.

**3. Drawings and Descriptions:**

All information regarding weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectuses, circulars, advertisement, illustrations and price lists, or other documents are descriptive only, are not intended as warranties and are subject to alteration without notice. Such information is made part of the contract only to the extent expressly stated therein.

**4. Technical Information and assistance:**

- (a) **Upon request Seller may furnish to Purchaser such technical advice or assistance as** it has available in reference to the use of the Products, as understood, however, that (I) Seller assumes no obligation or liability for the result obtained, (II) all such advice or assistance is given and accepted at Purchaser's risk, and (III) such advice and assistance shall not effect Seller's liabilities under other provisions of this Agreement.
- (b) **Seller will supply at delivery of the Products all information which Seller deems** necessary to enable Purchaser to install, start-up, operate and maintain the Products. Unless otherwise agreed to by Seller, any designs, specifications, drawings, blueprints, or ideas relating to methods of manufacture shall be considered to be disclosed in confidence and shall remain the proprietary information of Seller. Such information shall not be reproduced by Purchaser, not transmitted or disclosed to any person or organization by Purchaser without Seller's prior written consent except in the ordinary course of Purchaser's business.

**5. Performance Tests and Characteristics:**

- (a) Tests shall be carried out in accordance with Seller's standard practice, defined in Paragraph 5(b), unless otherwise agreed upon and explicitly stated in the contract.
- (b) Seller's standard practice is to rely on the results of tests conducted by the manufacturers of components for which the Seller obtains test reports that will be submitted to the Purchaser. The contents of the reports shall be final and conclusive evidence of the results of the test. No other evidence will be considered probative.

**6. Title and risk of Loss:**

Title and risk of loss shall pass to Purchaser at the time of dispatch from the specified shipping point unless specified in the Contract in accordance with the International Rules for the Interpretation of trade terms (Incoterms) of the International Chamber of Commerce in force on the date of signing of the Contract.

**7. Prices:**

Prices applicable to the Products do not include the following, all of which shall be for the account of Purchaser, taxes, duties which Seller may be required to pay or collect under any federal, state, or local law upon or with respect to the importation assembly. Purchase, sale, transportation, delivery, storage, use or handling of any Products, special packaging and handling charges beyond delivery point.

**8. Warranty:**

(a) Seller warrants to Purchaser only that the Products, and any replacement parts therefor furnished by Seller pursuant to this warranty, shall be free of defects in design, material and workmanship at the time of delivery. Seller shall in no event be responsible for non-conformities or damage caused by other than normal and proper usage or contributed by improper maintenance, incorrect installation by Purchaser, misuse or abuse, alterations made without the written consent of Seller, faulty repairs made by those other than Seller, normal wear and tear or defects arising from materials supplied or designed stipulated by Purchaser.

This warranty shall be in effect for twelve months from the date of delivery by Seller. All claims must be made in writing and received by Seller within the said period or shall otherwise be barred. Any defective Products or parts shall be returned to Seller. Unless otherwise agreed, costs of such shipment shall be for the account of Purchaser and shipment will be at Purchaser's risk. Should any failure to conform with the warranty appear, provide timely claim has been made, Seller shall as its option, replace the nonconforming Products or part F.O.B. shipping point or refund the purchase price of each nonconforming Product or part.

(b) DISCLAIMER EXCEPT AS OTHERWISE EXPRESSLY WARRANTED IN THE FORGOING WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER INCLUDING WITHOUT LIMITATION THE DESIGN OR CONDITION OF THE PRODUCTS, THEIR MERCHANTABILITY OR THEIR FITNESS FOR ANY LIABILITY IN NEGLIGENCE OR TORT ( INCLUDING STRICT OR ABSOLUTE LIABILITY). SELLER SHALL NOT BE LIABLE FOR INCIDENTALS OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO "LOST PROFIT", EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL BE LIABLE FOR EXEMPLARY DAMAGES.

SELLER

**9. Indemnity:**

Purchaser agrees to indemnify, hold harmless and defend Seller against any and all liabilities, claims, demands, suits, losses, costs, damages and expenses (including reasonable attorneys; fees ) which Seller may sustain or incur arising out of any claim based on breach of warranty, negligence of Seller or otherwise for injury to or death of persons or damage to property arising out of or in any way connected with the sale, use or operation of the Products.

**10. Force Majeure:**

Seller shall not be liable for any failure or delay in manufacturer or delivery resulting from any cause beyond the reasonable control of Seller or from compliance by Seller with any regulations (including import and export regulations), orders, acts, Instructions or priority requests of any national, state or municipal government (whether of the United States of America or of any other country). or any department or agency thereof, or any civil, or military authority, or from acts of God, fires or other casualty or accident, labor disputes, strikes, lockouts, factory shutdowns or altercations, embargoes, currency restrictions, riots or other disorders, delays or shortages in transportation or inability to obtain in sufficient quantity fuel, power, labor manufacturing facilities or materials or other supplies from the usual sources of Seller.

**11. Disputes:**

Any controversy or claim arising out of relating to these Terms and Conditions of Sale shall be settled before three (3) arbitrators accordance with the Rules of the American Arbitration Association. The arbitration shall be held in Seattle, Washington and judgment upon any award rendered by all or a majority of arbitrators may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to attorney fees and costs. This contract shall be governed by the laws of Washington.

**12. Miscellaneous Provisions:**

These Terms and Conditions of Sale supersede all prior correspondence, agreements and proposals and are intended to be the exclusive expression of the parties understanding of the sale and related Products. No waiver or modification of any provisions thereof shall be binding upon Seller unless agreed to in writing by a duly authorized Officer or Seller. The paragraph heading contained herein are for the purpose of convenience and do not form part of the text of these Terms and Conditions of Sale.