

QUOTATIONS AND PROPOSALS ACCEPTANCE OF ORDERS

Prices stated verbally, or on any quotation forms, or price list are subject to change without notice and are not binding on Thermal unless the prices are confirmed by Thermal's ORDER CONFIRMATION issued in response to a customer's firm order for the products covered there under. All orders are subject to acceptance and approval, by authorized personnel of Thermal, and Thermal will not be bound by any order not accepted, in writing, by such personnel. All price lists, quotations, proposals, acceptances of orders, and sales of Thermal products are conditional upon, and subject to these STANDARD TERMS AND CONDITIONS OF SALE, WHICH SHALL BE PART OF ALL CONTRACTS FOR THE SALE OF THERMAL PRODUCTS.

These STANDARD TERMS AND CONDITIONS OF SALE, together with the terms, and product description on the face of Thermal's QUOTATION FORM and ORDER CONFIRMATION shall take precedence over the product description, terms, and the conditions set forth in Buyer's order form. Thermal will rely upon Buyer's silence after receipt of Thermal's ORDER CONFIRMATION as acceptance of the terms, conditions and product description contained therein and fabrication and shipment of materials will be made in accordance therewith, unless this notice of objection to them is given, in writing, to Thermal within ten days after Buyer's receipt of Thermal's ORDER CONFIRMATION. The ORDER CONFIRMATION shall constitute the final and complete agreement between Buyer and Thermal, and all prior and contemporaneous representations, agreements, and negotiations will be merged therein. Any modifications, alterations, additions, or cancellations thereto are not binding of Thermal unless accepted in writing by Thermal.

PRODUCT DESCRIPTION AND SUBMITTALS

Notwithstanding any provisions to the contrary contained in Buyer's order form, or in any plans and specifications referred to therein, Buyer's return to Thermal of any "Approval of Submittal Data," (as hereinafter defined) shall constitute Buyer's specification of the ordered products, and agreement to accept promptly after delivery, all products furnished by Thermal conforming to the submittal data so approved. Notwithstanding any modifications, limitations, conditions, or exceptions contained in any form of approval including, but not limited, to a signature, approval stamp, or a transmittal form, which is affixed or attached by the Buyer, a higher-tier contractor, the owner of the premises concerned, or the representatives of any of those, to any document or form referring to or containing data prepared by Thermal, such form of approval shall constitute an "Approval of Submittal Data" within the meaning hereof. If any modifications, limitations, conditions, or exceptions contained in such "Approval of Submittal Data" refer to specific changes desired in the products covered by the submittal data, then Thermal shall be obligated to comply therewith or to notify the Buyer, that it will not furnish the products described therein, in which latter case, all obligations of the Buyer and Thermal under any contract for the furnishing of the products covered by such submittal data shall be canceled. In no event will Thermal be obligated to comply with modifications, limitations, conditions or exceptions in the "Approval of Submittals" which refer to plans, specifications, or other documents not expressly referred to on the face of Thermal's ORDER

CONFIRMATION. In the event that the Buyer requires Submittal Data, and releases the ordered products for fabrication or for shipment prior to receipt by Thermal of an

"Approval of Submittal Data," such release shall constitute Buyer's agreement to accept promptly after delivery, the products furnished in accordance with the submittal data last submitted to the Buyer or, if none has been submitted, in accordance with the description on the face of Thermal's ORDER CONFIRMATION.

In the event that Buyer does not require on the face of its order form that submittal data be approved prior to fabrication of the ordered products, the Buyer agrees to accept promptly after delivery, the products furnished in accordance with the product description on the face of Thermal's ORDER CONFIRMATION or in accordance with the submittal data last furnished by Thermal (if any submittal data is furnished without Buyer's request).

AUTHORITY OF SALES REPRESENTATIVES

Thermal's sales representatives or agents have no authority to make any agreements, contracts, or understandings, or to incur any obligations, or liability on behalf of Thermal. Orders and contracts taken by salesmen or agent are subject to approval by Thermal.

TERMS

The terms, which apply to Buyer's order, are specified on the face of Thermal's ORDER CONFIRMATION. Buyer agrees to make prompt payment of all Invoices presented on, or after, the DATE WANTED as specified on the face of Thermal's ORDER CONFIRMATION; whether the invoices, so presented, comprise the entire order or only part of such order. Credit terms herein extended are subject to revocation, to change, or to withdrawal by Thermal, at any time upon notice to Buyer in writing, and Thermal reserves the right to demand guarantees security or payment prior to commencement of Thermal's performance.. Buyer's failure to pay for any deliveries when due, shall excuse Seller from making further deliveries on this order or on any other order. Credit terms for one order establish no precedent in respect to any subsequent orders. The Buyer, any higher-tier contractor, or the owner or property to which the products described herein may become affixed, will not be released from liens or claims of any kind, unless and until such products have been fully paid for.

TITLE, DELIVERY AND RISK OR LOSS

Delivery of products to Buyer will take place upon delivery to a carrier, consigned to Buyer, or upon delivery directly to Buyer, whichever occurs first. Title and risk of loss arising from any cause pass to the Buyer upon delivery provided that Thermal shall retain a security interest in all products delivered to Buyer, until such products are paid for in full.

TAXES

Federal, state or municipal taxes (except income taxes) now or hereafter imposed with respect to all sales, and/or the production manufacture, sale, delivery, use, transportation or proceeds, of the ordered products specified against such sales will be the Buyer's account, and if paid, or required to be paid, by Thermal, the amount thereof will be added to and become a part of the price payable by the Buyer.

PRICES

Prices specified are contingent upon the requirements of completing an individual order, including, but not limited to product description, quantities, current costs of materials and labor, simultaneous production of other orders for similar products, delivery schedule, F.O.B. point and other conditions. Therefore prices for an individual order will not necessarily be the same, or as low as prices, -charged previously, or prices charged during the period of performance of any order, either to Buyer or to other customers.

PATENTS

If products or parts produced to the specifications of the Buyer, or to the design furnished by him, infringe, or are claimed to infringe, any U. S. or foreign patents under which claims are made against either Thermal or the Buyer, the Buyer assumes full responsibility for everything done by Thermal in producing such products or parts, and agrees to indemnify Thermal, and to hold

Thermal free of any and all losses, including the expenditures made or incurred for judgments, settlements, attorney's fees, litigation, negotiations, and any and all losses and disbursements directly or indirectly resulting therefrom.

SPECIFICATIONS

In cases of ambiguity in the specifications, drawings, designs, or other requirements of an order, Thermal's interpretation of any such requirements shall be final.

INSTALLATION, REPLACEMENT AND REPAIRS

Under no circumstances will Thermal make or secure installations, replacements or repairs; or be responsible for the costs thereof; or for any damages caused by faulty installation or repair.

DELIVERIES

Times of delivery are estimated but are not guaranteed. If the Buyer has required that an authorization to ship or approval of Submittal Data (defined herein) must be obtained from the Buyer prior to fabrication or delivery, all estimates of delivery are conditional upon receipt by Thermal of such required authorization or required Approval within ten days of the date of Thermal's order confirmations, or, if the Buyer has required that a release be obtained prior to fabrication within ten days of Thermal's receipt of such release. In any event Buyer agrees that Thermal may deliver at any reasonable time before, or after, the DATE WANTED as specified on the face of Thermal's ORDER CONFIRMATION.

Deliveries of goods are contingent upon any cause beyond the reasonable control of Thermal including but not limited to strikes, fires, floods, wars, to accidents, delays of carriers, shortages of supplies or materials, delays or default of a supplier or a contractor, government regulation, disruption due to failure of production facilities and disruption due to failure of transportation facilities. In the event of any delay in performance of delivery due to any cause beyond the reasonable control of Thermal, Buyer agrees to accept delivery at such time as delivery can be effected or, if the delay is unreasonable, to compensate Thermal for all costs of production, including but not limited to costs of materials, labor, and overhead, incurred up to the time Thermal receives written notice of Buyer's desire to have production of the order stopped. Unless the Buyer specifies otherwise, delivery of products may be made by the carrier selected by Thermal by either a single delivery or delivery in lots.

DISCLAIMER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES

In no event will Thermal be liable for incidental or consequential damage of any kind resulting from the order of, or use of, Thermal's products, whether arising from breach of warranty, nonconformity to ordered specifications, delay in delivery (regardless of whether or not the cause of such delay is beyond the control of Thermal), or any loss sustained by the Buyer.

WARRANTY

THERMAL CORPORATION warrants all Thermal products to be free from defect in materials and workmanship for a period of one year from date of shipment, provided the equipment has been operated under conditions established as typical for the class of apparatus. This Warranty does not cover corrosion or normal deterioration, or any labor charges paid for replacement of parts, adjustments, repairs, or any other work. The obligation and liability of Thermal under the Warranty is limited to furnishing, F.O.B. Factory, Houston, Texas, replacement parts which are proved by examination at the factory to be defective, upon return of same to Thermal freight prepaid. The Warranty herewith set forth is in lieu of all other warranties and liabilities, either expressed or implied. Liability under this warranty shall not attach and become effective until Thermal has been paid In full for the product supplied; and, upon such payment, liability if any, shall be limited to the purchase price paid for the said merchandise. Thermal is not liable for consequential damages. Thermal makes no warranty with respect to components and parts not manufactured by Thermal. However, such components and parts are covered by a warranty from their respective manufacturers, and this warranty is extended to the purchaser of Thermal equipment.

BUYER'S REMEDY FOR BREACH OF THE WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR OR REPLACEMENT AT THE FACTORY OF THERMAL ANY PART OR PARTS WHICH SHALL, WITHIN ONE YEAR FROM DATE OF SHIPMENT, BE RETURNED THERETO WITH THE TRANSPORTATION CHARGES PRE-PAID AND WHICH THE EXAMINATION OF THERMAL SHALL DISCLOSE TO HAVE BEEN DEFECTIVE.

BUYER AGREES THAT IN NO EVENT WILL THERMAL BE LIABLE FOR COSTS OF PROCESSING, LOST PROFITS, INJURY TO GOODWILL, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND RESULTING FROM THE ORDER, OR USE OF ITS PRODUCT, WHETHER ARISING FROM BREACH OF WARRANTY, NONCONFORMITY TO ORDERED SPECIFICATIONS, DELAY IN DELIVERY, OR ANY LOSS SUSTAINED BY THE BUYER.

CANCELLATION-INSPECTION-REJECTION

Orders for material or equipment are not cancelable either in whole, or part, nor is material returnable for credit. Thermal will replace any material or equipment not conforming to the product description of Thermal's ORDER CONFIRMATION only if the Buyer notifies Thermal, at the address on the face of Thermal's ORDER CONFIRMATION, of the particular detail of the non conformance or defect of such material or equipment, by written or telegraphic notice, either before or immediately upon delivery and only if such non conforming material or equipment is returned, sold, or otherwise disposed of in accordance with instructions of Thermal. Buyer agrees to inspect all of the ordered material, or equipment either before or upon delivery and waives all his rights to reject or refuse to accept, any non conforming material or equipment unless notice is given to Thermal in the aforesaid time and manner. Buyer may inspect the ordered material at Thermal's plant in an area designated by Thermal. Buyer agrees that the right of rejection of non conforming material or equipment, as limited herein, and the right to replacement by Thermal with material or equipment conforming to the ordered specifications, are exclusive of all the other remedies provided by law. Written authorization must be issued by Thermal before any material is returned to its plant.

GOVERNING LAW

It is agreed that the parties hereto intend that all questions as to validity, interpretation, and required performance arising out of this contract is to be governed by the laws of the State of Texas.