

## TERMS AND CONDITIONS OF SALE

**HEAT & POWER PRODUCTS, INC.** (the "Company"), a manufacture's representative, agrees to sell the Equipment upon the following terms and conditions of sale, which, accordingly, supersede any of Buyer's additional or inconsistent terms and conditions of purchase.

### 1) TERMS AND PRICES

- a) All orders are subject to the approval of the Company's home office. Unless otherwise stated, standard terms of payment are thirty (30) days. Net from the earlier of date of shipment or readiness of the Equipment for shipment. If partial shipments are made, payment shall become due and payable for the partial shipment.
- b) In addition to the purchase price, Buyer shall pay and excise, sales, privilege, use or any other taxes. Local, State or Federal, which the Company may be required to pay arising from the sale of delivery of the Equipment or the use thereof. Prepaid freight, if applicable, will be added to the purchase price separately.
- c) Contract prices are subject to adjustment to the Company's prices in effect at time of shipment unless otherwise specified in a separate Price Adjustment Policy attached to the proposal or other contract document of the Company.
- d) If Buyer requests changes in the Equipment or delays progress of the manufacture or shipment of the Equipment, the contract price shall be adjusted to reflect increases in selling price caused thereby.
- e) "All invoices are due in full thirty (30) days from date of invoice. A late charge of one and one-half (1.50%) percent per month, eighteen (18.0%) percent per annum, shall be added to any balance outstanding after due date. In the event of a past-due account, buyer shall be responsible for any costs of collection incurred by the company including, but not limited to attorney fees, court costs, and service of process costs.

### 2) SHIPMENT: Shipment is F.O.B. place of manufacture.

### 3) DELIVERY

- a) The Company will endeavor to make shipment of orders as scheduled. However, all shipment dates are approximate only, and the Company reserves the right to readjust shipment schedules.
- b) Under no circumstances will the Company be responsible or incur any liability for costs or damages of any nature (whether general, consequential, as a penalty or liquidated damages or otherwise) arising out of or owing to (i) any delays in delivery or (ii) failure to make delivery at agreed or specified times due to circumstances beyond its reasonable control
- c) If shipment is delayed or suspended by Buyer, Buyer shall pay (i) Company's invoice for the Equipment as per payment terms, (ii) Company's handling and storage charges then in effect, and (iii) demurrage charges it loaded on rail cars.

### 4) WARRANTY; WARRANTY ADJUSTMENT; EXCLUSIONS; LIMITAION OF LIABILITY

- a) **WARRANTY:** The Company warrants that at the time of shipment the Equipment manufactured by it shall be merchantable, free from defects in material and workmanship, and shall possess the characteristics represented in writing by the Company. The Company's warranty is conditioned upon the Equipment being properly installed and maintained and operated within the Equipment's capacity under normal load conditions with competent supervised operators and, if the Equipment uses water, with proper water conditioning.
- b) **EXCLUSIONS FROM WARRANTY:**
  - i) THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, ORAL OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION OF THE EQUIPMENT. THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE CONTAINED IN THIS PAPRAGRAPH 4 AND THERE ARE NO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.
  - ii) The Company's warranty is solely as stated in (a) above and does not apply or extend, for example, to expendable items; ordinary wear and tear; altered units; unites repaired by persons not expressly approved by the Company; materials not of the Company's manufacture; or damage caused by accident, the elements, abuse, misuse, temporary heat, over-loading, or by erosive or corrosive substances or by the alien presence of oil, grease, scale, deposits or other contaminant's in the Equipment.
- c) **WARRANTY ADJUSTMENT:** Buyer must make claim of any breach of any warranty by written notice to the Company's home office within thirty (30) days of the discovery of any defect. The Company agrees at it's option to repair or replace, BUT NOT INSTALL, F.O.B. Company's plant, any part or parts of the Equipment which within twelve (12) months from the date of initial operation but no more than eighteen (18) months from date of shipment shall prove to the Company's' satisfaction (including return to the Company's plant, transportation prepaid, for inspection, if required by the Company) to be defective within the above Warranty. Any warranty adjustments made by the Company shall not extend the initial warranty period set forth above. The warranty period for replacements made by the Company shall terminate upon the termination of the initial warranty period set forth above. Expenses incurred by Buyer in replacing, repairing or returning the Equipment or any part will not be reimbursed by the Company.

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- d) **SPARE AND REPLACEMENT PARTS WARRANTY ADJUSTMENT:** The Company sells spare and replacement parts. This Sub paragraph (d) is the Warranty Adjustment for such parts. Buyer must make claim of any breach of any spare or replacements parts warranty by written notice to the Company's home office within thirty (30) days of the discovery of any alleged defect for all Such parts manufactured by the Company. The Company agrees at is option to repair or replace, BUT NOT INSTALL, F.O.B. Company's plant, any part of parts of material it manufactures which, within one (1) year from the date of shipment shall prove to the Company's satisfaction (including return both Company's plant, transportation prepaid, for inspection, (if required by the Company) to be defective within this Parts Warranty. The Warranty and warranty Period for spare and replacement parts not manufactured by the Company (purchased by the Company, from third party suppliers) shall be limited to the Warranty and Warranty Adjustment extended to the Company by the original manufacturer of such part. In no event shall such other manufacturer's warranty create any more extensive warranty obligation of the Company to the Buyer for such parts than the Company's Warranty Adjustment covering parts manufactured by the Company as set forth in this subparagraph (d). expenses incurred by the Buyer in replacing, repairing or returning the spare or replacement parts will not be reimbursed by the Company.
- e) **LIMITATION OF LIABILITY:** The above Warranty Adjustment sets for Buyer's exclusive remedy and the extent of the Company's liability for breach of warranties, representations, instructions or defects from any cause in connection with the sale or use of the Equipment. The Company shall not be liable for any special, indirect or consequential damages or for loss, damage or expense, directly or indirectly arising from the use of the Equipment or from any other cause whether based on warranty or tort or contract.

### 5)PATENTS

- a) **PATENT INDEMINITY AND CONDITIONS:** The Company agrees at it's own expense to defend and hold Buyer harmless in the event of any suits instituted against Buyer for an alleged infringement of any claim of any United States Patent covering solely to the structure of the Equipment as originally manufactured by the Company per the Company's specifications, and without modification by the Buyer, provided Buyer shall (i) have given the Company immediate notice in writing of any such claim or institution or threat of such suit; and (ii) have permitted the Company to defend or settle the same, and have given all needed information, assistance and authority to enable the Company to do so. Buyer shall defend and indemnify the Company against all expenses, costs and loss by reason of any real or alleged infringement by the Company's incorporating a design or modification requested by Buyer.
- b) **LITMITIAION OF LIABILITY:** The Company's total liability hereunder is expressly limited to an amount no greater than the sales price of the Equipment and may be satisfied by the Company's refunding to Buyer, at the Company's option, the sales price for the Equipment. In the event the Company elects to defend any such suit and the structure of the said Equipment is held to infringe any such United States Panted and if the Buyer's use thereof is enjoined, the Company shall, at it's expense and at it's option (i) obtain for the Buyer the right to continue using the Equipment, or (ii) supply non-infringing Equipment for installation by Buyer or (iii) modify the Equipment so that it becomes non-infringing, or (iv) refund the then market value of the Equipment.

### 6)PRIOR USE:

- a) If damage to the Equipment or other property or injury to persons is caused by use or operation of the Equipment prior to being placed in initial operation ("start-up") by the Company where start up, is included in the purchase price, then Buyer shall indemnify and hold the Company harmless form all liability, costs and expenses for all such damage or injury.

### 7)EQUIPMENT CHANGES:

- a) The Company may, but shall not be obligated to, incorporate in the Equipment such changes in specifications, design, material, construction, arrangement, or components as the Company in its judgment believes will not materially affect performance of the Equipment.

### 8)SECURITY INTERESTS; INSURANCE:

- a) To secure payment of the purchase price, Buyer agrees that the Company shall retain a security interest in the Equipment until Buyer shall have paid in cash the full purchase price when due, interest at the highest lawful contract rate until so paid and the costs of collection, including reasonable attorney's fees. The Equipment shall at all times be considered and remain personal property and Buyer shall perform all acts necessary to assure and perfect retention of the Company's security interest against the rights or interest of third persons. In the event Buyer defaults in payment of any part of the purchase price when due, or fails to comply with any and all provisions of this contract, the Company shall have the remedies available under the Uniform Commercial Code.
- b) So long as the purchase price is unpaid, Buyer at its cost shall obtain insurance against loss or damage from all external causes, naming the Company as an insured, in an amount and form sufficient to protect the Company's interest in the Equipment.

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### 9) CANCELLATION:

- a) Buyer cannot cancel orders placed with the Company, except with the Company's express written consent and upon terms and payment to the Company indemnifying the Company against loss, including but not limited to expenses incurred and commitments made by the Company.

### 10) LOSS, DAMAGE, OR DELAY:

- a) The Company shall not be liable for loss, damage or delay resulting from causes beyond its reasonable control or caused by strikes or labor difficulties, acts or omissions or of any governmental authority or the Buyer, insurrection or riot, fires, floods, breakdown or essential machinery accidents, priorities or embargoes, car shortages, delays in transportation or inability to obtain labor, materials or parts from usual sources. In the event of any delay from such sources, performance will be postponed by such length of time as may be reasonably necessary to compensate for the delay.

### 11) WORK BY OTHERS, ACCESSORY DEVICES:

- a) The Company, being only a supplier of the Equipment, shall have no responsibility for labor or work of any nature relating to the installation or operation or use of the Equipment, all of which shall be performed by Buyer or others. It is the responsibility of Buyer to furnish such accessory devices as may be desired by it and/or required by OSHA standards respecting Buyer's use of the Equipment.

### 12) COMPLETE AGREEMENT:

- a) The Complete Agreement between the Company and Buyer is contained herein and no additional or different terms or conditions stated by Buyer shall be binding unless agreed to by the Company in writing. No course of prior dealings and no usage of the trade shall be relevant to supplement or explain any terms used in the Agreement. This Agreement may be modified only by a writing signed by both the Company and Buyer and shall be governed by the Uniform Commercial Code as enacted by the State of Wisconsin. The failure of the Company to insist upon strict performance of any of the terms and conditions stated herein shall not be considered a continuing waiver of any such term or condition or any of the Company's rights.