

- 1) GENERAL – Thermal Solutions of Texas (TST) is herein referred to as the “Seller” and the customer, person or entity, purchasing products (“Products”) from Seller is referred to as the “Buyer”. These Terms and Conditions, any price list or schedule, quotation, acknowledgement or invoice from Seller relevant to the sale constitute the complete and exclusive statement of the terms of the agreement governing the sale of Products by Seller to Buyer. Buyer’s acceptance of the Products will manifest Buyer’s assent to these terms and conditions. Seller reserves the right in its sole discretion to refuse orders.
- 2) PRICES AND TAXES – All prices are subject to change by Seller without notice. All prices specified herein are exclusive of any costs of any sales, use, value added, excise, gross receipts, business and occupation or similar present or future taxes imposed by any governmental body on the sale, delivery, use or other handling of the Products, or in connection with any related or contemplated transactions.
- 3) EXCUSE OF PERFORMANCE – Seller shall not be responsible for non-performance or delays in performance due to acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller’s reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Products, or to obtain material used directly or indirectly in the Manufacture of the Products, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Products or such material (without obligation to acquire other supplies of any such Products or material) among itself and its purchasers on such basis as Seller determines to be equitable with liability for any failure of performance which may result thereof.
- 4) WARRANTY – Subject to the limitations of Section 5, Seller warrants that the Products manufactured by Seller will be free from defects in material and workmanship under normal use and regular service and maintenance for a period of one (1) year from the date of shipment of the Products by Seller, unless otherwise specified by Seller in writing. Products purchased by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer. THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER WITH RESPECT TO THE PRODUCTS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER’S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER’S USE OR PURPOSE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, Buyer’s negligence, unauthorized modification or alteration, use beyond rated capacity, or improper installation, maintenance or application. To the extent that Buyer or its agents has supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Products and the preparation of Seller’s quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void. If within thirty (30) days after Buyer’s discovery of any warranty defects within the warranty period, or within ten (10) days for quantity discrepancies, Buyer notifies Seller thereof in writing, Seller shall, at its option, repair, correct or replace F.O.B. point of manufacture, or refund the purchase price for that portion of the Products found by Seller to be defective or missing. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer’s claim for such defects or shortages. Products repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the warranty period or ninety (90) days from the date of shipment, whichever is longer. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Products, either alone or in combination with other products/components.
- 5) LIMITATION OF REMEDY AND LIABILITY – THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 6) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 6. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER’S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER’S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term “consequential damages” shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.
- 6) PATENTS – Subject to the limitations of the second paragraph of Section 5, Seller warrants that the Products sold, except as are made specifically for Buyer according to Buyer’s specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller’s warranty as to use patents only applies to infringement arising solely out of the inherent operation according to Seller’s specifications and instructions of such Products. In the event such Products are held to infringe such a U.S. patent or copyright in such suit, and the use of such Products is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Products, or replace them with non-infringing Products, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Products and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Products, without liability.

- 7) SPECIAL TOOLING – Notwithstanding any tool, die or pattern changes, all tooling and related items shall be and remain the property of the Seller.
- 8) SHIPMENT AND DELIVERY – Shipments are made F.O.B. Seller's shipping point. Risk of loss of damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier. Any claim for shortages or damages suffered in transit is the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting thereof.
- 9) TERMS OF PAYMENT – Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Products theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries.
- 10) RETURNS AND CANCELLATIONS – In the event Buyer desires to return Products, prior written approval of an authorized representative of Seller at Seller's home office located at Tomball, Texas is required. In the event of approval of a return request, (I) any allowed outgoing prepaid freight costs will apply, (II) all returns must be shipped freight prepaid at Buyer's expense, and (III) Buyer must pay Seller's return and restocking charge. Buyer may cancel orders only upon reasonable advance written notice and upon Seller's approval and payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.
- 11) GENERAL PROVISIONS – These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. The law of the state of Texas shall govern the validity, performance, and all other matters relating to the interpretation and effect of this agreement. Buyer and Seller agree that the proper venue for all allocations arising in connection herewith shall be only in federal or state court in Harris County, Texas, and the parties agree to submit to such jurisdiction. Either party may bring no action, regardless of form, arising out of transactions relating to this contract, more than two (2) years after the cause of action has accrued.