

Thermal Structures, Inc.
TERMS AND CONDITIONS OF SALE

1. APPLICABLE TERMS AND CONDITIONS. All Thermal Structures products and services are furnished only on the terms and conditions of sale stated herein ("T&Cs") and on the face of the applicable Thermal Structures quotation to the exclusion of any Buyer terms and conditions in any specific order documentation, preprinted or otherwise. Thermal Structures' performance of any contract is expressly conditional on Buyer's agreement to Thermal Structures' T&Cs, and in the absence of such agreement shall be for Buyer's convenience only, shall not create any contractual obligation and shall not be construed as acceptance by Thermal Structures of Buyer's terms and conditions printed or stated in its orders. Buyer's request for or acceptance of any product or service shall be deemed acceptance of Thermal Structures' T&Cs below.

2. TERMS OF PAYMENT. Credit terms, shipments, deliveries and performance of work are at all times subject to the approval of an authorized representative of Thermal Structures. Unless credit is granted, payment is due upon delivery. The price of each product is based upon the payment schedule set forth in Thermal Structures' quotation. Any alternative payment schedule and resulting price change must be approved in writing by Thermal Structures. All payments for products released and/or shipped on approved credit accounts shall be due in full thirty (30) days from date of invoice unless otherwise agreed in a writing signed by both parties. Buyer's failure to comply with the above shall be regarded as a fundamental breach of contract. Past due balances shall be subject to a service charge of one and one half percent (1.5%) per month, but not to exceed the maximum amount permitted by applicable law. Thermal Structures may cancel or delay delivery of products in the event of an arrearage in Buyer's account. Thermal Structures may waive any default without waiving any prior or subsequent default.

3. ORDERS, QUOTATIONS AND PRICES. Thermal Structures' prices, quotations and contracts for products and services are subject to the following, unless otherwise stated in Thermal Structures' quotation or other writing signed by an authorized representative of Thermal Structures. The following terms and conditions shall also apply: (a) all purchase orders shall be subject to written acceptance by Thermal Structures; (b) Unless otherwise specified in writing, all price quotations are firm for, and expire, ninety (90) days after their respective dates and constitute offers, provided that, budgetary quotations and estimates, and quotations to non-U.S. customers are solicitations for offers to purchase, are for preliminary information only and shall neither constitute offers, firm pricing, nor impose any responsibility or liability upon Thermal Structures. The foregoing notwithstanding, all delivery/shipment dates are estimated dates only; (c) unless mutually agreed upon in writing, all prices quoted are for products and services only. The total amount charged to Buyer may be adjusted to include license fees, customs fees, duties, taxes (including without limitation sales, use and similar taxes), costs of storage, insurance, shipping, special packaging and other customary charges incidental to provision of the products and services provided hereunder. Thermal Structures' prices exclude, and Buyer shall be solely responsible and liable for, all such charges; (d) clerical and typographical errors are subject to correction; (e) prices quoted are for products and services only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than Thermal Structures' standard tests, and other than Thermal Structures' normal domestic commercial packaging, unless expressly agreed to in writing by Thermal Structures. All published prices are subject to change without notice. Thermal Structures does not grant, and nothing in these T&Cs shall be construed as granting, any license of intellectual property rights. Buyer shall not, nor shall it permit any third party to, reverse engineer any of the products; and (f) Buyer shall be solely responsible and liable for compliance with any and all applicable laws, regulations and licensing requirements governing export and/or re-export of the Thermal Structures products (including but not limited to U.S. Export Administration Regulations).

4. SHIPPING TERMS AND RISK OF LOSS. Except as otherwise may be agreed in a writing and signed by both parties, all shipments are FOB Thermal Structures' shipping place with all charges described in Section 3(c) above at the sole expense and responsibility of Buyer, and risk of loss or damage to products shall pass upon delivery to the transportation company. For products shipped FOB destinations within the United States, risk of loss or damage shall pass to Buyer upon arrival of the transportation company at Buyer's designated destination. For products shipped outside the United States and its possessions, title and risk of loss or damage shall pass from Thermal Structures to Buyer when products arrive at the Buyer's freight forwarder, notwithstanding any shipment terms to the contrary. Thermal Structures shall retain a purchase money security interest in all products, and the proceeds thereof, until Buyer has made payment in full in accordance with the terms hereof. Buyer shall cooperate fully with Thermal Structures to execute such documents and accomplish such filings and/or recordings as Thermal Structures may deem necessary for protection of its interests in the products furnished to Buyer.

5. ACCEPTANCE. The furnishing of a product by Thermal Structures to the Buyer shall constitute acceptance of that product by Buyer, unless notice of defect or nonconformity is received by Thermal Structures in writing within fifteen (15) days of receipt of the product at Buyer's designated receiving address; provided that, for products for which Thermal Structures agrees in writing to perform acceptance testing (a) after installation, or (b) at Thermal Structures' facility by a Customer Source Inspector (CSI), the completion of Thermal Structures' applicable acceptance tests, or execution of Thermal Structures' acceptance form by Buyer, shall constitute final acceptance of the product by Buyer. Notwithstanding the above, any use of a product by Buyer, its agents, employees, contractors or licensees, for any purpose after its receipt, shall constitute acceptance of the product by Buyer.

6. PERFORMANCE; FORCE MAJEURE. Thermal Structures shall not be liable for any delay in delivery or other performance hereunder which is due to unforeseen circumstances, or to causes beyond its control, including, without limitation, strike, lockout, riot, war, fire, act of God, act of the government or public utility, accident, failure or breakdown of components necessary to order completion; supplier, subcontractor or Buyer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient supplies; technical difficulties; or compliance with any governmental law, regulation, or order, including but not limited to U.S. Export Administration Regulations. Provided any such delay is neither material nor indefinite, performance shall be deemed suspended during and extended for such time as it is so delayed, and thereafter the other party shall accept performance hereunder. Delay in performance shall not be considered material or indefinite unless it exceeds or is reasonably estimated to exceed six (6) months.

7. ASSIGNMENTS AND TERMINATION. No order accepted by Thermal Structures may be terminated, cancelled, modified or assigned by Buyer except by mutual agreement in writing. Any attempt to do so without Thermal Structures' written consent shall be void. In the event of Buyer's termination, with or without Thermal Structures' consent, for any order accepted by Thermal Structures and terminated or cancelled by Buyer prior to delivery: (1) Buyer will pay, at applicable contract prices, for all products which are completely manufactured and allocable to Buyer at the time of Thermal Structures' receipt of notice of termination; (2) Buyer will pay all costs, direct and indirect, which have been incurred by Thermal Structures with regard to products which have not been completely manufactured at the time of Thermal Structures' receipt of notice of termination, plus an amount equal to Thermal Structures' normal profit thereon; and (3) Buyer will pay a termination charge on all other products affected by the termination. For any order terminated or cancelled by Buyer, Buyer agrees to pay Thermal Structures an additional charge determined solely by Thermal Structures to cover lost profits as determined in accordance with the Uniform Commercial Code or other applicable law. Thermal Structures' normal accounting practices shall be used to determine costs and other charges. In an effort to minimize termination charges, Thermal Structures will divert completed parts, material or work-in-process from terminated contracts to other customers whenever in Thermal Structures' sole discretion, and it is lawful and practicable to do so.

8. LIMITED WARRANTY. Buyer agrees to inspect all goods promptly after receipt, and waives any claim for defective goods, for defective manufacture or workmanship, for shortage in count, or for any other cause not made within Thirty (30) days after receipt of delivery. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (EXCEPT OF TITLE)

INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Thermal Structures' obligation and Buyer's exclusive remedy hereunder will be limited to the repair or replacement of, or the reimbursement for, nonconforming goods, at Thermal Structures' option, and will be conditioned upon Thermal Structures' receiving written notice of any alleged nonconformity within 30 calendar days after identifying such nonconformity, and return of such Goods to Thermal Structures, F.O.B. Thermal Structures' original shipping location. Thermal Structures will have a reasonable period of time to review and agree with the findings made by the customer and will only be responsible for the repair or replacement of the nonconforming Goods. Any credit taken will not be applied by Buyer unless nonconformance is agreed upon by Thermal Structures. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES. It is expressly understood that Thermal Structures products may be consumable and therefore any warranty, expressed or implied is VOID if the product or good has been mounted or used in any manner by Buyer or Buyer's designee.

9. TITLE. Unless specifically agreed in writing by Thermal Structures and Buyer, Thermal Structures is, and shall remain, the sole and exclusive owner of all right, title and interest in all equipment, tools, designs, technical data, and computer software produced, acquired, or used by Thermal Structures for these T&Cs, including all intellectual property rights related thereto, including all patents, copyrights, trademarks, and trade secrets.

10. PROPRIETARY INFORMATION. Thermal Structures and Buyer shall each, during the course of their relationship and thereafter, take all steps reasonably necessary to hold in trust and confidence the others' Proprietary and Confidential Information. "Proprietary and Confidential Information" includes, but is not limited to, technical and business information relating to each party's inventions or products, services, research and development, production, manufacturing processes, costs, profit or margin information, employee skills and salaries, finances, customers, marketing and production and future business plans. These obligations also extend to any third party proprietary and confidential information disclosed during the course of the relationship.

11. EXPORT CONTROL. Buyer agrees to comply with all applicable export and re-export control laws and regulations, including, without limitation, the U.S. Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control, and the U.S. International Traffic in Arms Regulations ("ITAR") maintained by the U.S. Department of State. Specifically, Buyer agrees that it will not -- directly or indirectly -- sell, export, re-export, transfer, divert or otherwise dispose of any products, software or technology (including products derived from or based on such technology) received from Thermal Structures to any destination, entity or person prohibited by the laws or regulations of the United States or any other country, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. In the event Buyer fails to adhere to the requirements in this Article 15.16 or otherwise violates applicable laws, Thermal Structures shall have the right to unilaterally terminate these T&Cs and take other appropriate action in response to such breach or violation. Buyer agrees to indemnify and hold Thermal Structures, its shareholders, officers, directors and affiliates harmless from and against any and all fines or penalties which may arise as a result of Buyer's breach or violation. The terms and conditions of this Article 15.15 shall survive termination or cancellation of the T&Cs.

12. DAMAGES AND LIABILITY. THERMAL STRUCTURES'S TOTAL LIABILITY IN DAMAGES OR OTHERWISE, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL THEORY, SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY THERMAL STRUCTURES FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, RESULTING IN THE LOSS OR DAMAGE CLAIMED. IN NO EVENT SHALL THERMAL STRUCTURES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL LOSS OR DAMAGES OF ANY KIND, SUCH AS BUT NOT LIMITED TO LOST BUSINESS REVENUE, LOST PROFITS OR COSTS OF DOWNTIME RESULTING FROM THERMAL STRUCTURES'S PRODUCTS OR SERVICES, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL THEORY.

13. INDEMNIFICATION. IN ALL CASES, BUYER WILL HOLD HARMLESS AND INDEMNIFY THERMAL STRUCTURES AGAINST ALL CLAIMS, JUDGMENTS, COSTS AND FEES, INCLUDING REASONABLE ATTORNEY FEES RELATING TO ACTIONS INITIATED AND CLAIMS MADE BY THIRD PARTIES FOR PROPERTY DAMAGE AND PERSONAL INJURIES, INCLUDING DEATH, WHEN ANY PRODUCT MADE PURSUANT TO THESE T&Cs IS MANUFACTURED IN WHOLE OR IN PART TO BUYER'S DESIGNS. PROVIDED, HOWEVER, INDEMNIFICATION AND HOLD HARMLESS DOES NOT APPLY WHERE THE PRODUCT DEFECT IS CAUSED SOLELY BY A MANUFACTURING PROCESS, ASSEMBLY OPERATION, OR NEGLIGENCE OF THERMAL STRUCTURES

14. DISPUTE RESOLUTION. All disputes, controversies or claims of any kind arising from or in any way related to these T&Cs, to the breach, termination or invalidity hereof, or to the products or service provided herein, shall be settled by final and binding arbitration. Arbitration shall be conducted under the direction of the Superior Court of California, County of Riverside, under the rules and procedures of the American Arbitration Association and shall be governed by the commercial law of the State of California, without reference to its conflict of law principles. The parties hereby expressly disclaim and exclude applicability of the UN Convention on Contracts for the International Sale of Goods. The arbitral tribunal shall not award punitive damages. The prevailing party in such arbitration shall be awarded its reasonable attorneys' fees and costs. THE ARBITRAL TRIBUNAL AWARD SHALL BE FINAL AND BINDING, SHALL BE THE SOLE AND EXCLUSIVE REMEDY REGARDING ANY AND ALL CLAIMS AND COUNTERCLAIMS PRESENTED, AND MAY NOT BE REVIEWED BY OR APPEALED TO ANY COURT EXCEPT FOR ENFORCEMENT. NO CLAIMS, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THESE T&Cs, THE PRODUCTS OR SERVICES FURNISHED BY THERMAL STRUCTURES, MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED OR PERFORMANCE UNDER THESE T&Cs HAS BEEN COMPLETED OR TERMINATED, WHICHEVER IS EARLIER.

15. WHOLE AGREEMENT; AMENDMENT. These T&Cs (together with any applicable Thermal Structures quotation incorporated by reference herein) are the final, complete, and exclusive statement of the agreement between Thermal Structures and the Buyer regarding the subject matter hereof, and supersedes all previous and contemporaneous understandings or agreements regarding the same subject matter. These T&Cs may be amended or modified only in a writing signed by authorized representatives of both parties.

16. SEVERABILITY; WAIVER. In the event that one or more provisions of these T&Cs is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision which lawfully enforces the parties' intention underlying the invalid or unenforceable provision. The waiver by Thermal Structures of a breach of any provision of these T&Cs by the Buyer must be in writing to be effective and will not operate or be interpreted as a waiver of any other or subsequent breach.

17. INDEPENDENT CONTRACTOR. It is mutually understood and agreed by Thermal Structures and Buyer that Thermal Structures is at all times acting and performing as an independent contractor for the Buyer.

18. COUNTERPARTS. Any instrument to be executed by Thermal Structures and Buyer may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.