

Terms of Sale
Heat Transfer Products Group, LLC

NOTICE: Sale of any Products is expressly conditioned on the Buyer's assent to these Terms of Sale. Seller expressly objects to, and rejects, any additional or different terms proposed by the Buyer. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms for Sale of Products shall not be binding on either party. Any purchase order issued by Buyer and Seller's performance of the same shall constitute the Buyer's assent to these Terms for Sale of Products. Unless otherwise stated in Seller's quotation, each quotation issued by Seller to Buyer shall expire 30 days from the quotation's date and may be modified or withdrawn by Seller before receipt of the Buyer's acceptance.

1. Definitions. "Buyer" means the entity to which Seller is selling the Products. "Products" means all equipment, parts, materials, supplies, and other goods that Seller has agreed to supply to Buyer. "Seller" means the entity selling the Products.

2. PAYMENT.

2.1 Buyer shall pay all invoices from Seller within 30 days after the date of the invoice. Buyer's possession of a Seller Price List does not constitute an obligation on the part of Seller to sell at the prices specified on said Seller Price List. Prices in effect on date of shipment apply. Buyer shall pay Seller all invoiced amounts in US dollars. Should Buyer dispute an invoice, Buyer must notify Seller in writing of the dispute within 30 days after the date on the invoice in question or said dispute will be invalid. A late-payment fee will begin accruing on the 31st day following the invoice date at the maximum interest rate allowed by law. Buyer agrees to pay Seller's reasonable costs (including, without limitation, attorney's fees and court costs) to collect past due amounts. Buyer shall not be entitled to applicable discounts, rebates, freight deductions or other allowances on any orders placed while Buyer's account is past-due.

2.2 All orders are subject to Seller's Credit Department approval and, if accepted by Seller, are accepted with the understanding that they are subject to Seller's ability to ship. Seller reserves the choice of transportation facilities and shipping point. Buyer's orders are also subject to Seller's order policies at the time of the order, including, without limitation, any applicable minimum order quantities, special handling charges, freight policies, etc.

2.3 If at any time Seller reasonably determines that Buyer's financial condition does not justify the continuation of Seller's performance, Seller may require full or partial payment in advance or shall be entitled to suspend or terminate the order.

3. TAXES AND DUTIES. The prices for the Products are subject to the addition of, and Buyer is responsible for, any applicable tax, duty, fee, or other charge of any nature imposed on the sale of the Products. All payments due and payable by Buyer to Seller hereunder shall be made in the full amount of the Product price, free and clear of all deductions and withholding for taxes, duties, fees, or other charges of any nature.

4. DELIVERY; TITLE TRANSFER; RISK OF LOSS; STORAGE; RETURNS; FREIGHT.

4.1 Seller shall deliver Products to Buyer FCA Seller's factory or warehouse shipping point (Incoterms 2020). Except for those obligations that are consistent with Incoterms specifically stated above, Seller shall not be liable in any claim asserted by Buyer with respect to delivery. Partial deliveries will be permitted. If Products delivered do not correspond in quantity, type or price to those itemized in the invoice for the shipment, Buyer will so notify Seller within 10 days after receipt. Seller may deliver any or all Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all materials and information necessary to proceed with the work without interruption.

4.2 Title to and risk of loss of Products shall pass to Buyer upon delivery at Seller's factory or warehouse shipping point per the terms of Section 4.1, above, and thereafter all risk of loss or damage shall be borne by Buyer.

4.3 If any Products cannot be shipped to or received by Buyer when ready due to any cause not attributable to Seller, Seller will notify Buyer and then may ship Products to a storage facility, including a facility within the place of manufacture, or to an agreed freight forwarder. If Seller places Products in storage or if Products are detained at any port, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Buyer if they had not already passed; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoices; (iii) all expenses and charges incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, demurrage, removal and any taxes shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of Products to the originally agreed point of delivery.

4.4 Unless Seller expressly agrees otherwise in its order acknowledgement or other written transaction document, Buyer shall be responsible for arranging and contracting freight carriage. Any claims for shortages or damages suffered in transit must be submitted directly to the carrier. Where Seller allows freight with respect to a purchase order, shipment shall be freight prepaid and/or charged allowed via carrier selected by Seller. Seller reserves the right to select carrier, routing, shipping point, and method of shipment. Freight allowances will not include, and Buyer will be responsible for, any additional charges for service performed by carrier not included in road haul rates, such as stop-off charges, detention of carrier's equipment, redeliveries, re-consignments, unloading, etc. depending on destination requirements.

4.5 In no event may Buyer return Product to Seller without (i) submitting the return request to Seller in accordance with Seller's return material authorization procedures and (ii) obtaining prior written authorization from Seller. Each return will be subject to a restocking charge in accordance with Seller's terms at the time of the return.

5. FORCE MAJEURE. Seller shall not be liable or in breach or default of its obligations to the extent performance of Seller's obligations is delayed or prevented, directly or indirectly, by or from the following force majeure events: acts of God, fire, terrorism, war (declared or undeclared), epidemics or pandemics (as well as government actions or recommendations to combat and arrest the spread of any such epidemic or pandemic), material shortages, insurrection, acts (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance or any events beyond Seller's reasonable control. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, Seller shall be entitled to an equitable price and performance time adjustment.

6. COMPLIANCE WITH LAWS.

6.1 The Product price, delivery and performance dates and any performance guarantees will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change in industry specifications, codes, standards, applicable laws or regulations.

6.2 Buyer acknowledges that the Products and any related information and services are or may be subject to United States Export Administration Regulations ("EAR") and the regulations, executive orders and other rules administered by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") that pertain to countries, persons and entities subject to trade embargoes or economic sanctions. Buyer agrees that it will not re-export or retransfer, or cause the export or re-export or retransfer, of any products sold or provided in connection with these Terms of Sale to any country subject to OFAC sanctions or embargoes or to any person, country or end use that requires a license under the EAR or OFAC regulations without first obtaining the express prior written consent of Seller and any required U.S. government authorization. This requirement is legal and regulatory in nature and shall survive indefinitely. Buyer shall indemnify and defend Seller against any and all claims, lawsuits and proceedings (and all damages, losses, costs, fees (including, without limitation, attorneys' fees), expenses, judgments, awards, and settlements arising therefrom) brought against Seller as a result of Buyer's breach of these Terms of Sale.

7. INTELLECTUAL PROPERTY. All intellectual property, and rights, title and interests within the Products are solely owned by Seller. Customer agrees not to, or help others, reverse engineer any Product or any portion of any Product or attempt to discover such intellectual property contained in such Product or any portion of any Product. Buyer shall promptly notify Seller if Buyer becomes aware of any attempt to reverse engineer any Product or any portion of any Product. Any designs, manufacturing drawings or other information submitted to Customer remain the exclusive property of Seller. Customer shall not, without Seller's prior written consent, copy such information or disclose such information to a third party. Customer understands and agrees that the sale of Product under this Agreement does not transfer to Customer, and Seller will retain, any and all intellectual property rights (patents, copyrights, trademarks, trade secrets, etc.) in any Products sold hereunder.

8. LIMITED WARRANTY.

8.1 The sole and exclusive warranty offered with the Product is the limited warranty set forth in Seller's Limited Warranty certificate that is included with the Product (or in the absence of such warranty certificate, then Seller's then-current published limited warranty covering the Product).

8.2 If Seller did not provide a limited warranty certificate with the Product and at the time of shipment of the Products Seller did not publish a limited warranty in connection with the Product, then the Product is offered with the following limited warranty:

8.2.1 Seller warrants to Buyer that the Products which it manufactures shall be shipped free from defects in material, workmanship and title. The warranty period for Products shall be one (1) year from date of installation or up to fifteen (15) months from the date of shipment, whichever event occurs first, when properly installed and operated under normal use. On parts not manufactured by Seller, such as motors, controls, valves and compressors, Seller extends to Buyer the same warranty made to Seller by the manufacturer of the part.

8.2.2 If Products do not meet the above limited warranties, Buyer shall promptly notify Seller in writing within the warranty period. Seller shall thereupon at Seller's option repair or replace the defective Products. If in Seller's reasonable judgment the Product cannot be repaired or replaced, Seller shall refund or credit monies paid by Buyer for that portion of Products that do not meet the above limited warranties. Any repair, replacement or re-performance by Seller hereunder shall not extend the applicable warranty period.

8.2.3 Seller's limited warranty does not include labor costs. Buyer shall bear the costs of access (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, re-installation and transportation of Products to Seller and back to Buyer.

8.2.4 These warranties and remedies are conditioned upon the proper storage, installation, operation, and maintenance of the Products and conformance with the proper operation instruction manuals provided by Seller or its suppliers or subcontractors. Seller does not warrant the Products or any repaired or replacement parts against normal wear and tear or damage caused by misuse, accident, or use against the advice of Seller. Any modification or repair of any of the Products not authorized by Seller shall render the warranty null and void.

8.3 This Section 8 provides the exclusive remedies for all claims based on failure of or defect in Products, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. THE WARRANTIES PROVIDED IN THIS SECTION 8 ARE THE EXCLUSIVE WARRANTIES OFFERED IN CONNECTION WITH THE PRODUCTS. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY.

9.1 IN NO EVENT SHALL THE TOTAL LIABILITY OF SELLER AND ITS AFFILIATES FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE SALE OR USE OF THE PRODUCTS OR ANY ORDER EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS GIVING RISE TO THE CLAIM. SELLER'S LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, PROVIDED THAT BUYER MAY ENFORCE A CLAIM THAT ACCRUED PRIOR TO THAT DATE BY COMMENCING AN ACTION BEFORE THE EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS OR REPOSE, BUT NOT LATER THAN ONE YEAR AFTER THE EXPIRATION OF SUCH WARRANTY PERIOD. THE LIMITATIONS AND EXCLUSIONS IN THIS ARTICLE SHALL APPLY REGARDLESS OF WHETHER A CLAIM IS BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

9.2 SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF COVER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES. FURTHERMORE, SELLER SHALL NOT BE LIABLE FOR ANY ADVICE OR ASSISTANCE THAT IS NOT REQUIRED AND PAID FOR UNDER THE ORDER.

9.3 Buyer's and Seller's rights, obligations and remedies arising out of or relating to the Products are limited to those rights, obligations and remedies described in these Terms of Sale.

10. GOVERNING LAW; DISPUTE RESOLUTION.

10.1 The validity, performance and all matters relating to the interpretation and effect of these Terms of Sale, associated order and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws of the State of California, United States, excluding its rules on the conflict of laws.

10.2 All disputes, claims or controversies arising out of or relating to these Terms of Sale or the breach, termination, enforcement, interpretation or validity thereof or the purchase and sale of the Products between Buyer and Seller ("Dispute" or "Disputes"), shall be resolved in accordance with this Section, which shall be the sole and exclusive procedure for the resolution of all Disputes. The parties shall attempt in good faith to resolve any Dispute promptly by negotiation. If the Dispute has not been resolved within sixty (60) days of a party's request for negotiation, then the parties agree that any civil action to resolve said Dispute shall be litigated in the United States District Court for the Central District of California, Western Division (the "Federal Court") or, if there is no jurisdictional basis for the Dispute to be litigated in the Federal Court, the Superior Court of Ventura County, California. The parties expressly consent to the jurisdiction and venue of said courts and acknowledge that they may be waiving rights they might otherwise have to bring suit in any other venue.

11. CHANGES.

11.1 Buyer may not change any aspect of an order without Seller's written approval.

11.2 All Products delivered shall conform to Seller's part or version number specified or (at Seller's option) its equivalent or the superseding number subsequently assigned by Seller. If the number ordered is no longer available, Seller is authorized to ship a valid interchangeable Product without notice to Buyer.

12. GENERAL CLAUSES.

12.1 Products sold by Seller are not intended for use in connection with any nuclear facility or activity without the written consent of Seller. Buyer warrants that it shall not use or permit others to use Products for such purposes, unless Seller agrees to the use in writing. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damages, injury or contamination, and in addition to any other legal or equitable rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors)

harmless against any such liability. If Seller agrees in writing to any such use, the parties shall agree upon special terms and conditions that provide Seller protections against nuclear liability and which are acceptable to Seller under the then current laws that apply.

12.2 Seller may assign or novate its rights and obligations under the order, in part or in whole, to any of its affiliates without Buyer's consent. Buyer agrees to execute any documents that may be necessary to effect Seller's assignment or novation. The delegation or assignment by Buyer of any or all of its duties or rights under the order without Seller's prior written consent shall be void.

12.3 If any provision of these Terms and Conditions is found to be void or unenforceable, the remainder of the provisions shall not be affected. The parties will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and is valid and enforceable.

12.4 The following Sections shall survive completion, termination or cancellation of the order: 2, 3, 4, 5, 6, 7, 8, 9, 10, 12.

12.5 These Terms and Conditions, together with Seller's final quotation and order acknowledgement, represent the entire agreement between the parties. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing by the parties' authorized representatives. These Terms of Sale shall prevail over any conflicting or inconsistent terms and conditions, unless expressly agreed otherwise in a signed writing by Buyer and Seller.

12.6 Buyer acknowledges that each Product to be provided by Seller under this order is of a type that has been customarily offered for sale and actually sold in substantial quantities in the commercial marketplace for use by the general public, and therefore considers each such Product to be a commercial-off-the-shelf (COTS) item. Seller reserves the right, in its sole discretion, to reject, cancel or terminate without liability any order conditioned by Buyer upon (i) receipt of cost and pricing data, (ii) its issuance of a price reasonableness determination, or (iii) receipt of data demonstrating COTS status of a Product.

12.7 Seller assumes no obligation to comply with any federal, state or local government procurement or labor laws and regulations, and any related contract terms and conditions, as may be applicable to Buyer. For avoidance of doubt, as between Buyer and Seller, Buyer assumes all risk of compliance with such laws, regulations and contract terms and conditions.