



TERMS AND CONDITIONS OF SALE

NOTICE: THE OFFER, ORDER ACKNOWLEDGEMENT, ORDER ACCEPTANCE OR SALE OF ANY PRODUCTS COVERED HEREIN IS CONDITIONED UPON THE TERMS CONTAINED IN THIS INSTRUMENT, ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY PURCHASER ARE OBJECTED TO AND WILL NOT BE BINDING UPON COMPANY UNLESS SPECIFICALLY ASSENTED TO IN WRITING BY COMPANY.

1. Shipment. Unless otherwise specified, all shipments shall be made via common carrier or some other reasonable means chosen by thermik Corporation ("Company"). All risk of loss to Products sold shall pass to the Purchaser upon delivery by the Company of such Products to a common carrier.

2. Deliveries. Unless otherwise specified by Company, all deliveries are F.O.B. Company's warehouse (UCC Terms). Delivery is conditional on the timely receipt of documents, of necessary permits to be obtained by Purchaser, and Purchaser's compliance with these terms and conditions. Delivery schedules represent Company estimates only. Partial deliveries are permissible; and Purchaser agrees to accept such partial deliveries. Company will not be liable for any delay in the delivery of orders, or for the inability to deliver Products, or for any damages incurred by reason of such delay or inability to deliver. Delivery is subject to Purchaser maintaining credit standing satisfactory to Company. Company may suspend or delay performance or delivery at any time pending receipt of assurances of Purchaser's ability to pay, including full or partial prepayment, adequate to Company in its discretion. Failure to provide such assurances shall entitle Company to cancel this transaction without liability or further obligation to Purchaser.

3. Prices. Unless otherwise specified, prices are quoted F.O. B. Company's warehouse (UCC Terms). Prices quoted on the front side of this document are valid only for this order. Company may revise prices hereunder at any time during the course of this contract by giving Purchaser written notice, such revised prices to apply to all Products thereafter shipped; provided that if Purchaser objects by written notice to Company within ten (10) days following notice of the revised prices, Company shall have the option of terminating this contract with no liability to Purchaser. Prices apply only if the quantity ordered hereunder is released for shipment within twelve (12) months (or longer if mutually agreed to in writing) from the date of Company's receipt of Purchaser's order. After the twelve (12) months (or longer if mutually agreed to in writing) from the date of Company's receipt of Purchaser's order. After the twelve (12) months (or longer if mutually agreed to in writing) Company's standard prices in effect at time of release shall apply to the quantity shipped and Purchaser shall pay the difference in price, if any, and Company has the right to terminate this contract. Prices do not include packaging, insurance, or freight; nor do they include sales, use, excise, privilege, or any similar tax, and any such applicable tax shall be paid by Purchaser.

4. Terms of Payment. Unless otherwise agreed, the purchase price shall be paid in full by Purchaser immediately upon receipt of Company's invoice. In the event that Company extends credit, invoices shall be due and payable not later than thirty (30) days after date of invoice. Extension of credit may be denied, modified, or withdrawn by Company at any time. Invoices not paid within thirty (30) days will be subject to carrying charges, which shall accrue and be added to the unpaid balance in the amount of one and one-half percent (1½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever is less. Purchaser shall reimburse Company for costs of collection, including reasonable attorneys' fees, of any overdue amount owed by Purchaser to Company, and such collection costs shall also be subject to carrying charges. Purchaser may not hold back or set-off any amounts owed to Company in satisfaction of any claims asserted by Purchaser or others against Company.

5. Returned Goods and Claims. Within thirty (30) days after receipt by Purchaser of Products, Purchaser must give written notice to the Company of any claim based upon the condition, quantity, or grade of Products sold or of any claimed nonconformity with specifications, which notice must indicate the basis of Purchaser's claim in detail. The failure of Purchaser to comply with this Paragraph shall constitute irrevocable acceptance by Purchaser of Product delivered and shall bind Purchaser to pay to the Company the full price of such Products.

6. Cancellation/Changes. An order once placed with and accepted by Company can be cancelled or changed by Purchaser only with the written consent of Company and upon terms that will indemnify Company against any loss or expense. Obvious mathematical or clerical errors may be corrected by Company.

7. Testing. Purchaser must test the Products immediately after receipt and report any defect in writing within thirty (30) days after receipt. Should Purchaser fail to test Products or fail to notify Company of any defect within such time, Purchaser shall have no further claim with respect to any such defects.

8. Limited Warranty. Company warrants that Products are manufactured to Company's specifications and will be free from defects in material and workmanship for a period of eighteen (18) months from the date of shipment or twelve (12) months from the date of resale by Purchaser to Purchaser's customers, whichever is first to expire. Purchaser is solely responsible for proper selection and application of products, as well as the incorporation of Products into other equipment or products. Purchaser agrees that it will use and apply products only for their intended uses and according to specifications and limitations established by Company from time to time. Purchaser shall indemnify and hold Company harmless from and against any and all damages, claims, or expenses (including reasonable attorneys' fees) arising out of or relating to improper selection, application, use or incorporation of Products or abuse of Products.

Company will repair or (in its sole discretion) replace any Product or part thereof which is returned by Purchaser during the applicable warranty period set forth above; provided that (i) Company is promptly notified in writing within ten (10) days of discovery by Purchaser that such Product or part thereof was defective with a detailed explanation of any alleged defectiveness, (ii) such Product or part thereof is returned to Company immediately (at Purchaser's expense and risk), and (iii) Company's examination of such Product or part thereof discloses to Company that such alleged defect actually existed and was not caused by accident, misuse, neglect, alteration, improper installation, modification, unauthorized repair, or improper testing. If such Product or part thereof is found to be defective by Company, Company shall have a reasonable time to make repairs or replace Product or part thereof.

Specifications, limitations, and recommended applications and uses for Products may be established by Company from time to time. Only those specifications, limitations, and recommended applications and uses expressly identified as such and contained in Company's technical documentation shall be binding upon Company. Samples, descriptions, representations, and other information concerning Products contained in Company catalogs, advertisements, or other promotional materials or statements or representations made by Company employees or sales representatives are for general informational purposes only and are not binding upon Company with respect to such limited warranty provisions. No employee or sales representative of Company shall have any authority whatsoever to establish, expand or otherwise modify Company's Product specifications, limitations, or recommended applications without Company giving its prior express written consent to Purchaser.

This limited warranty does not cover normal, maintenance or items consumed during normal operation, nor does it cover normal wear and tear; use under circumstances exceeding specifications, limitations, or recommended or intended use; abuse; faulty installation or assembly by Purchaser or others or unauthorized repair or alteration.

This limited warranty is Purchaser's exclusive remedy. It shall not be deemed to have failed of its essential purpose so long as Company is willing and able to repair or replace defective Products in the manner specified. No allowance will be made or credit extended for repairs made by Purchaser.

NO OTHER EXPRESS AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH 8 (WHICH ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES) SHALL APPLY TO PRODUCTS.

Except as herein provided, Company shall not be liable to Purchaser in any manner with respect to Products. In no event shall Company's liability to Purchaser ever exceed the purchase price of the allegedly defective Products. Except as herein provided, Company shall not be liable for transportation, labor or other charges for adjustments, repairs, replacements of parts, installation, or other work which may be done upon or in connection with Products sold.

COMPANY SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOST PROFITS, WHETHER ARISING FROM ANY DEFECT IN THE PRODUCTS, ANY USE OF THE PRODUCTS, FROM PURCHASER'S INABILITY TO USE PRODUCTS, OR OTHERWISE.

9. Proprietary Information. Company retains ownership of all patents, trademarks, trade secrets, drawings and designs, and similar industrial or intellectual property rights ("Proprietary Information") relating to Products. Other than the use of Products by Purchaser, Purchaser shall not disclose, or allow the use or disclosure, directly or indirectly by any third party, of any such Proprietary Information without the prior written consent of Company.

10. Limitations. Any action by Purchaser arising out of or relating to this transaction or Products sold must be commenced within one (1) year after such cause of action has accrued.

11. Choice of Law. This transaction and any dispute or claim arising out of or relating to it shall in all respects be governed by and construed according to the laws of the State of North Carolina.

12. Choice of Forum, Venue, and Consent to Jurisdiction. Purchaser and Company agree that the North Carolina General Courts of Justice and United States District Courts in Craven County, North Carolina shall constitute the exclusive forums for the adjudication of any and all disputes arising out of or relating to this transaction or Products sold, and Purchaser and Company consent to the exercise of jurisdiction over them by such courts.

13. Default. In the event of any default by Purchaser, Company may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If Company elects to continue making shipments, Company's action shall not constitute a waiver of any default by Purchaser or in any way affect Company's legal remedies for such default.

14. Entire Agreement. Purchaser and Company acknowledge that these terms and conditions, together with any mutually-agreed upon provisions contained on the front side hereof, constitute the entire agreement between Purchaser and Company with regard to sale or transfer of Products and supersede all prior oral or written statements of any kind made by the parties or their representatives. These terms and conditions may not be amended, modified, or supplemented except by written agreement executed by Purchaser and Company. The provisions of these terms and conditions are hereby deemed by the parties to be severable and the invalidity or unenforceability of one provision shall not effect the validity or enforceability of any other provision.