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**Terms & Conditions****THERMACOR PROCESS INC.****TERMS AND CONDITIONS OF SALE**

By submitting a purchase order to Thermacor Process Inc.. ("Seller"), Buyer agrees to comply with Seller's Terms and Conditions of Sale set forth on both sides of this document. Acceptance of Buyer's purchase order is expressly limited to the Terms and Conditions set forth herein and none of Buyer's terms and conditions shall apply by Seller's acceptance of Buyer's purchase order, unless specifically changed in writing signed by an authorized representative of Seller.

1. All invoices are net and due and payable 30 days from date of invoice at Fort Worth, Texas. A monthly carrying charge of 1-1/2% (but not to exceed 18% per annum simple interest) at Seller's option can be added to past due accounts or the maximum permitted by law if less.
2. Delivery is subject to Federal and State laws and regulations, fires, strikes, disputes with workmen, floods, accidents, embargoes, delays in transportation, shortage of cars, shortage of fuel, or other material, shortage of labor and any other causes beyond the Seller's control. Seller shall not be liable for damages incurred due to non-delivery or delay in delivery.
3. Quotations and sales are F.O.B. point of shipment and title to all properties sold shall pass upon delivery to carrier, unless otherwise expressly stated. Quotations and sales prices do not include any charges for special packing, handling, or marking directions of Buyer.
4. If the Buyer fails to fulfill the terms of payment of any order between the Buyer and the Seller, the Seller may defer or suspend further shipments until such payments are made or may cancel any or all unshipped orders. Seller reserves a security interest in the material which is subject of the sale until payment in full is received and the Buyer agrees to do everything necessary to preserve and perfect such interest under applicable law.
5. Seller guarantees the standard quality of materials ordered and their adherence to Seller's submittal information. However, as the use of Seller's products is beyond its control, SELLER EXPRESSLY DISCLAIMS RESPONSIBILITY FOR THEIR HANDLING USE, STORAGE, RESULTS OBTAINED OR ANY INJURY HOWEVER CAUSED, OR FOR ANY DIMENSIONS, MEASUREMENTS, LAYOUTS OR DESIGN UNLESS OTHERWISE AGREED BY SELLER IN WRITING.
6. SELLER'S WARRANTY WITH RESPECT TO PRODUCTS SHOWN IS VOID IF THE SERVICE CONDITIONS ARE NOT ACCURATELY AND COMPLETELY DISCLOSED TO THE SELLER. If such conditions are different from those approved or recommended in our current published literature, written approval by the Seller is required.
7. All sales are final and no return of material will be allowed, without Seller's approval.
8. All products and goods are furnished in accordance with these terms and conditions of sale. Seller is not obligated for any breach beyond the replacement, F.O.B. point of manufacture, of such goods as prove defective within one (1) year of date of delivery in material or workmanship, or the allowance of credit therefore at Seller's option when such goods are in the hands of the original Buyer and have not been misused, mishandled, or improperly installed. Replacement or credit shall be Buyer's sole and exclusive remedy. Seller is not responsible for costs associated with locating, removing, and then re-installing said defective materials. Seller's sole responsibility, if it is determined that materials are in fact defective in nature, is limited to the replacement of the materials that are within their warranty period. The Seller shall be notified promptly of any material claimed to be defective and such material shall be subject to inspection by the Seller. EXCEPT AS OTHERWISE SPECIFICALLY AGREED BY SELLER IN WRITING, AND EXCEPT AS TO TITLE, IT IS EXPRESSLY AGREED (1) THAT THERE IS NO WARRANTY OF MERCHANTABILITY, OR A FITNESS FOR A PARTICULAR PURPOSE, NOR OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, NOR ANY AFFIRMATION OF FACT, OR PROMISE, BY THE SELLER WITH REFERENCE TO THE GOODS SOLD HEREUNDER, OR OTHERWISE, WHICH EXTENDS BEYOND THE DESCRIPTION ON THE FACE HEREOF AND, IF APPLICABLE, OTHER WRITTEN SPECIFICATIONS MUTUALLY AGREED

UPON BY THE SELLER AND THE BUYER, AND (2) THAT THE BUYER ACKNOWLEDGES THAT IT IS PURCHASING THE GOODS SOLELY ON THE BASIS OF THE COMMITMENTS OF THE SELLER EXPRESSLY SET FORTH HEREIN OR IN ANY WRITTEN SPECIFICATION MUTUALLY AGREED UPON BY THE SELLER AND THE BUYER.

9. Orders for goods "Made to Order" may not be cancelled. Buyer may cancel its order only with the written consent of the Seller and then only upon the payment of the cancellation charge determined by the Seller to be reasonable under the circumstances.
10. Any taxes, excises, levies or charges which the seller may be required to pay or collect under any existing or future law, upon or with respect to services and/or the sale, purchase, delivery storage, processing, use, consumption or transportation of any of the materials covered herein shall be for the account of the Buyer and the quoted or otherwise applicable prices shall be increased thereby.
11. Failure of the Seller to enforce any of these conditions or to exercise any right accruing through the default of the Buyer shall not affect or impair the Seller's rights in case such default continues or in case of any subsequent default of the Buyer and such failure shall not constitute a waiver of Seller's rights in regard to other or future defaults of the Buyer.
12. IN NO EVENT SHALL THE SELLER BE LIABLE FOR (1) ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY TYPE OR NATURE IN CONNECTION WITH THE BUYER'S PURCHASE AND USE OF THE GOODS HEREIN SOLD, WHETHER SAME ARISE OUT OF NEGLIGENCE, STRICT LIABILITY IN TORT, CONTRACT OR OTHERWISE, OR (2) FOR ANY DAMAGES OF ANY KIND WHATSOEVER, INCLUDING INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, FOR THE DESIGN OF ANY SYSTEM OR THE COMPONENTS THEREOF IN WHICH THE GOODS SOLD TO BUYER ARE INCORPORATED, OR OTHERWISE USED BY BUYER, EVEN THOUGH SELLER MAY GIVE INSTRUCTIONS OR ADVICE TO PURCHASER WITH RESPECT TO THE USE AND APPLICATION OF THE GOODS SOLD HEREUNDER, OR (3) FOR ANY DAMAGES OF ANY KIND WHATSOEVER FOR DELAY IN SHIPMENT OR NONSHIPMENT OF ANY GOODS ORDERED HEREUNDER, IRRESPECTIVE OF ANY FAULT OF THE SELLER. No statement or recommendation made or assistance given by the Seller or its representatives to the Buyer or its representatives in connection with the use of any products by the Buyer shall constitute a waiver by the Seller of any of the provisions herein or affect the Seller's liability, as herein defined.
13. Seller certifies that goods of its manufacture covered hereby were produced in compliance with all applicable requirements of Section 6,7 and 12 of the Fair Labor Standards Act, as amended, and of the regulations and orders of the U.S. Department of Labor issued under Section IA thereof.
14. There are no understandings or agreements between the Buyer and the Seller relative hereto which are not fully expressed herein, and no change made herein shall be valid unless it is made in writing and signed by both parties.
15. The validity, interpretation or performance of this transaction as well as the rights and duties of the parties there under shall be interpreted and construed pursuant to and in accordance with the laws of the State of Texas. Buyer further acknowledges that its obligations to Seller are performable in Texas, and Buyer submits to the exclusive jurisdiction of courts in the State of Texas for resolution of any disputes that may arise concerning this transaction.
16. Seller offers to sell the goods, materials, equipment or services described in strict accordance with the terms and conditions stated herein. Submittal of a purchase order by Buyer shall be deemed an acceptance of this offer, which offer and acceptance shall constitute a legally enforceable contract between Buyer and Seller. Any additional or differing terms and conditions contained on Buyer's purchase order (whether or not such terms materially alter this offer are hereby rejected by Seller and shall not become part of the contract between Buyer and Seller unless expressly consented to in writing by Seller. If the Terms and Conditions stated in a Buyer's order are inconsistent with the Terms and Conditions of Sale contained herein, the Seller's acknowledgment of Buyer's purchase order shall constitute a counter offer and the Buyer shall be deemed to accepted these Terms and Conditions of Sale, unless Buyer notifies the Seller to the contrary in writing within five (5) days after receiving Seller's acknowledgment. In the event the Seller agrees to certain terms in a buyer's P.O., Seller's term herein stated and on the face of the Seller's scope that are not in direct conflict with agreed upon Buyer's terms are still applicable.
17. Prices quoted by Seller are firm upon receipt of Buyer's written purchase order provided Buyer provides the appropriate notice to proceed within the time noted on the quote (quote expiration date). In the event Buyer is awaiting approval of submittals, but wishes to secure the firm price, Buyer may direct Seller in writing to acquire raw materials, for which the Buyer will pay for within Seller's standard payment terms (30 days unless specified otherwise).
18. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF THE SELLER AS TO THE GOODS SOLD HEREUNDER, MUST BE COMMENCED WITHIN ONE (1) YEAR AND A DAY AFTER THE CAUSE OF ACTION HAS ACCRUED OR THE GOODS ARE DELIVERED, WHICHEVER SHALL FIRST OCCUR.
19. In the event that seller shall provide any field assistance to Buyer or Buyer's representatives, such technical assistance shall in no way render Seller liable for the installation of the goods sold hereunder and specifically, SELLER EXPRESSLY EXCLUDES ANY WARRANTY OF THE QUALITY AND WORKMANSHIP PERFORMED BY ANY PERSON OR ENTITY INSTALLING SELLER'S GOODS WHICH ARE THE SUBJECT HEREOF.



# THERMACOR<sup>®</sup> PROCESS, L.P.

P.O. BOX 79670 • 1670 HICKS FIELD RD. E. • FORT WORTH, TX 76179 • (817) 847-7300 • FAX (817) 847-7222

## 1 Year Limited Warranty EXAMPLE

**THERMACOR PROCESS L.P.** (Seller) warrants that the products sold for the above project are free from defects in materials or workmanship, and in accordance with the contract documents and/or approved submittal data. **Seller makes no representation or warranty of any other kind, express or implied, with respect to the materials, whether as to merchantability or fitness for a particular purpose or any other matter.** There are no warranties that extend beyond the description on the face hereof.

**NOTICE OF CLAIMS:** Immediately upon receipt of the materials, Purchaser shall inspect the same. Any claim for shortage or apparent defects must be made in writing within seven (7) days after delivery, or not later than seven (7) days before installation, whichever occurs first. All claims not made in writing and received by Seller within the time period specified above shall be deemed waived. No materials may be returned without the prior written consent of Seller. With respect to any latent defects, including any incapable of discovery until after installation and operation of the system, all claims for any damages or losses as a result of such defects shall be deemed waived unless made in writing and received by Seller within one (1) year after Purchaser's receipt of the materials, or within seven (7) days after purchaser learns of the alleged defect giving rise to the claim, whichever shall first occur. After the expiration or either of said periods, Purchaser expressly assumes all liability for all such damages or losses, irrespective of any installation or use which shall have occurred or been discovered prior to the expiration of such periods.

**LIMITATION OF LIABILITY:** Seller's liability for any and all losses and damages resulting from any cause whatsoever, including the seller's own sole and/or contributory negligence, alleged damage or defective materials, irrespective of whether such defects are discoverable or latent, shall in no event exceed the replacement cost of the particular materials with respect to which losses or damages are claimed, or, at the election of the seller, the repair or replacement of defective or damaged materials. It is expressly agreed that remedies stated herein are the exclusive, sole remedies available. For this warranty to be in effect, the seller shall have the opportunity to inspect the product alleged to be defective, which may, at the discretion of the seller, include removal for independent laboratory analysis. Defects attributable to improper installation, latent defects in design or engineering, defects caused by operating the system beyond its specified limits, or failures caused by acts of God, are excluded from this warranty. In no event, including in the case of a claim for negligence, shall seller be liable for losses, damages, (consequential or otherwise), delay costs, labor costs, or any other associated cost of excavation, backfill, etc., related to the replacement of defective materials.

This warranty shall be void and seller shall have no further obligation if purchaser modifies, repairs, or in any way alters the materials delivered by seller without the prior written consent of seller. This warranty shall be void if the installing contractor does not follow seller's recommended installation instructions.

Date of Installation: