

# Standard Terms & Conditions of Purchase

## GENERAL PROVISIONS

BY ACCEPTING THIS PURCHASE ORDER, AND/OR PERFORMING HEREUNDER, SELLER AGREES TO COMPLY FULLY WITH THE TERMS AND CONDITIONS OF PURCHASE SET FORTH IN THIS DOCUMENT. ACCEPTANCE OF THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER AND NONE OF THE SELLER'S TERMS AND CONDITIONS SHALL APPLY IN ACKNOWLEDGING THIS PURCHASE ORDER OR IN THE ACCEPTANCE OF THIS PURCHASE ORDER. ACCEPTANCE BY THERMTROL CORPORATION, INC. (HEREINAFTER CALLED "THERMTROL") OF THE GOODS OR SERVICES DELIVERED UNDER THIS PURCHASE ORDER SHALL NOT CONSTITUTE AGREEMENT TO SELLER'S TERMS OR CONDITIONS. SELLER MAY NOT SHIP UNDER RESERVATION.

**1. Modifications**

Changes, modifications, waivers, additions or amendments to the terms and conditions of this Purchase Order shall be binding on Thermtrol only if such changes, modifications, waivers, additions, or amendments are in writing and signed by a duly authorized representative of Thermtrol.

**2. Applicable Law**

The validity, interpretation and performance of these terms and conditions and any purchase made hereunder shall be governed by the laws of the state from which this Purchase Order is issued, in force at the date of this Purchase Order for contracts made and to be performed in such state. The United Nations Convention on the International Sale of Goods (the Vienna Convention) is deemed waived and shall not apply. Where not modified by the terms herein, the provisions of such state's enactment of Article 2 of the Uniform Commercial Code shall apply to this transaction.

**3. Compliance with Law**

Seller agrees that at all times it will comply with all applicable federal, state, municipal and local laws, orders and regulations, including but not limited to those affecting or limiting prices, production, purchase, sale and use of Goods. If requested by Thermtrol, Seller agrees to timely certify compliance with such laws in such forms as Thermtrol may request.

**4. Release of Information**

Neither party hereto shall, without the prior written consent of the other party (which shall not be unreasonably withheld or delayed), publicly announce or otherwise disclose (except to the U.S. Government, when the Purchase Order references a U.S. Government contract or subcontract number) the existence or the terms of this Purchase Order, or release any publicity regarding this Purchase Order. This provision shall survive the expiration, termination or cancellation of this Purchase Order

Any knowledge or information which Seller may disclose to Thermtrol shall not be deemed to be confidential or proprietary information and shall be acquired by Thermtrol free from any restrictions as to use or disclosure thereof.

## **5. Indemnity**

Seller shall defend, indemnify, protect and save Thermtrol, its officers, employees, servants, agents, successors and assigns, harmless from and against all claims, including without limitation claims, liabilities, losses, judgments, actions, administrative proceedings, costs, expenses, penalties, fines, damages and expenses (including, but not limited to, attorneys' fees, consultants' fees and court costs) ("claims") for bodily injury, harm, sickness, disease and death and for property loss or damage, to the extent arising from: (i) the acts or omissions of Seller, its employees, contractors, subcontractors, servants, or agents; (ii) the failure of Seller, its employees, contractors, servants, or agents, to comply with applicable laws and regulations on or after the effective date of this Purchase Order, including claims based on strict liability; or (iii) breach by Seller, its employees, contractors or subcontractors of the terms and conditions of this Purchase Order. Seller will maintain general comprehensive liability, property damage and automobile liability insurance, including contractual endorsement and products hazards coverage, in reasonable amounts covering the obligations set forth in this Purchase Order and, upon request, it will provide Thermtrol with a Certificate of Insurance indicating the amount of such insurance.

## **6. Waiver**

Any failure of Thermtrol to enforce at any time, or for any period of time, any of the provisions of this Purchase Order shall not constitute a waiver of such provisions nor of Thermtrol's right to enforce each and every provision.

## **7. Acceptance and Warranty**

a) Final acceptance of Goods by Thermtrol will not be until after arrival at the Thermtrol facility from which this Purchase Order originates, unless otherwise specified herein. Seller warrants that all Goods and Services supplied by Seller under this Purchase Order conform to the requirements, specifications, drawings, samples or other descriptions furnished or adopted by Thermtrol and that they are of good material and workmanship and free from all defects in manufacture or design, and are of merchantable quality and fit for their intended purpose. Such warranties by Seller shall run to the benefits of Thermtrol, its employees and purchasers from Thermtrol. Thermtrol's approval of designs furnished by Seller shall not relieve Seller of its obligation under this warranty. Seller's warranty shall be effective for a period of four (4) years from the date of acceptance of Goods by Thermtrol, or for such longer period as specified by Thermtrol. All Goods returned to Seller for breach of warranty hereunder shall be at Seller's expense, including expenses and penalties incurred by Thermtrol in recalling such Goods which have been delivered to Thermtrol's customers and expense of redelivery. Seller agrees that shipment of Goods against this Purchase Order constitutes certification that all Goods included in this shipment conform in all respects to the applicable requirements, specifications and drawings. Seller will make process control data, inspection and test reports covering the Goods and their parts available for review and subject to examination by Thermtrol or its authorized representative to verify conformance to such applicable specifications and drawings. However, a certificate of conformance must accompany individual shipments when so specified on applicable drawings, or on the front of this Purchase Order. Any Goods not accepted by Thermtrol may be returned to Seller at Seller's expense for full credit of the purchase price. Inspection may be performed at Thermtrol's option on a statistical sampling basis. The entire lot may be rejected based on defects revealed by such sampling. At Thermtrol's option, the rejected lot will be either returned to the Seller for replacement or credit or 100% screened by Thermtrol with cost of screening paid by Seller. The initial

inspection performed at Thermtrol upon receipt of Goods is a conditional acceptance, and shall not waive the right of Thermtrol to return to Seller Goods which exhibit or develop defects due to latent causes during or after installation or testing of the end product.

- b) Seller shall preserve all special drawings, dies, patterns, tooling or other items supplied or paid for by Thermtrol in good condition; and they are the property of Thermtrol unless otherwise specified, and the same such items shall be returned in good condition when the work on the Purchase Order has been completed or terminated, or at any other time as requested by Thermtrol. No special drawing, die, pattern, tool or other item supplied by Thermtrol or made by Seller for the use of or delivery to Thermtrol, or for use by Seller in supplying Thermtrol, shall be used by Seller for any purpose other than supplying Thermtrol, without Seller first obtaining the written consent of Thermtrol thereto, provided, however, that if the U.S. Government has rights in such items under a prime contract with Thermtrol, noninterfering use of the items for direct sale to the Government is authorized if written notice is provided to Thermtrol prior to such use. If material, equipment, special drawings, dies, patterns or other items are furnished by Thermtrol for performance of this Purchase Order, all risk of loss thereof or damage thereto shall be upon Seller from the time of shipment to Seller until redelivery to and receipt by Thermtrol.
- c) All inventions which Seller conceives or reduces to practice during the course of its performance under this Purchase Order shall be the exclusive property of Thermtrol. All materials, items and other work prepared by Seller under this Purchase Order shall be deemed “work-for-hire” as defined under United States copyright law and shall be the exclusive property of Thermtrol from the date of inception. If the work product does not qualify as a “work-for-hire”, then in any event all rights in the work product, including the copyright, will be deemed automatically transferred to Thermtrol from its inception. Thermtrol shall have the exclusive worldwide right to use, edit, translate, publish, transfer or sell the work product prepared by Seller in any manner which Thermtrol deems fit.

#### 8. **Patents and Copyrights**

Seller agrees to indemnify and to save Thermtrol, its officers, agents, employees and vendees (mediate and immediate) harmless from any and all loss, expense, damage, liability, claims or demands either at law or in equity for actual or alleged infringement of any patent invention, design, trademark or copyright arising from the purchase, use or sale of materials or articles required by this Purchase Order, except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by Thermtrol.

#### 9. **Changes**

Thermtrol may change from time to time any of the drawings, specifications or instructions for work covered by this Purchase Order and Seller shall comply with such change notices. If such changes result in a decrease or increase in Seller’s cost or in the time for performance, an adjustment in the price and time for performance may be made by the parties in writing, provided, however, that Seller notifies Thermtrol of the request for such adjustment within thirty (30) days after receipt by it of the change notice.

**10. Assignments**

Performance obligations shall not be assigned or transferred by Seller without prior written approval by Thermtrol, and any attempted assignment or transfer without such consent shall be void. Seller shall not subcontract any substantial portion of the work to be performed by it under this Purchase Order without the prior written consent of Thermtrol.

**11. Termination**

Thermtrol may terminate the work to be performed hereunder in whole or in part at any time without cause by written notice to Seller. Such notice shall state the extent and effective date of such termination and, upon the receipt of such notice, Seller will comply with the directions pertaining to work stoppage hereunder and the placement of further orders or subcontracts hereunder. The parties shall thereupon employ their best efforts to agree by negotiation, within three (3) months, upon the amount of reimbursement, if any, to be paid to Seller for such termination. Termination under this provision shall not be deemed a breach of contract. The provisions of this paragraph shall not limit or affect the right of Thermtrol to terminate this Purchase Order for cause and shall not apply to a termination with cause. Seller shall mitigate its claim to the maximum extent and, in any event, no claims shall exceed the lesser of fair market value or actual cost of raw materials and work in progress material which Seller shows cannot be diverted to other uses. No claim shall be asserted or honored for loss of expected profits, or for any consequential or incidental damages, due to cancellation.

**12. Price Adjustment**

Except as provided by Section 9 above, Thermtrol will not accept shipment at any increase in price above that indicated on this Purchase Order. Any general price decrease announced by Seller in classification of Goods or Services similar to the items described on this Purchase Order shall automatically reduce the price thereof by a comparable percentage.

**13. Notice of Labor Disputes**

Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice thereof to Thermtrol and, if the Purchase Order relates to a military contract, Seller will also give notice to the nearest military representative.

**14. Payment Terms**

The following terms with respect to payment are applicable to this Purchase Order: Net Invoices  
Net invoices will be paid sixty (60) days from date that Goods or Services are received at Thermtrol unless otherwise stated on the Purchase Order or agreed to in writing by both parties. If Thermtrol receives Seller's invoice prior to such receipt of Goods or Services, the terms of payment shall be measured from the date of such receipt of Goods or Services rather than date of receipt of invoice.

**a. Discounted Invoices**

Invoices discounted at 3.0% or greater will be paid in thirty (30) days from the invoice date. The acceptance of discount offers will be at the discretion of Thermtrol.

**15. Extra Charges**

No charges of any kind, including charges for boxing or cartage, will be allowed unless specifically agreed to by Thermtrol in writing. Pricing by weight, where applicable, covers net weight of Goods, unless otherwise agreed.

**16. Time of Delivery and Title Transfer**

- a. The delivery dates indicated by Thermtrol for the Goods or Services to be supplied under this Purchase Order are of the essence. Failure to meet agreed upon delivery shall be considered a breach of the contract; furthermore, Seller agrees to pay to Thermtrol any penalty and damages imposed upon or incurred by Thermtrol for failure of Seller to deliver Goods or Services on such delivery dates.
- b. Unless otherwise agreed in writing, Seller shall not make commitments for material or production in excess of the amount or in advance of the time necessary to meet Thermtrol's delivery schedule. It is the Seller's responsibility to comply with this schedule, but not to anticipate Thermtrol's requirements. Goods shipped to Thermtrol in advance of schedule may be returned to Seller at Seller's expense. Thermtrol may reschedule the delivery of any unshipped product for later delivery within ninety (90) days of the originally scheduled delivery date.
- c. Title transfer of the Goods occurs only at the time the Goods are physically received by Thermtrol at the Thermtrol "Ship To" location specified on the Purchase Order. For all Goods shipped to any intermediate Supplier Managed Inventory (SMI) location, title transfer does not occur until the Goods are physically received by Thermtrol and timely entered into its inventory system.

**17. Setoff**

Thermtrol shall be entitled at all times to setoff any amount owing, for any reason, at any time, from Seller to Thermtrol or any of its affiliated companies against any amount payable at any time by Thermtrol in connection with this Purchase Order.

**18. Sales and Use Tax Exemption**

Except for purchases of capital equipment, it is hereby certified that the Goods described herein are exempt from the sales and use tax, unless otherwise noted, for the reason that such property is purchased for resale or will become an ingredient or component part of, or be incorporated into or used or consumed in, a manufactured product produced for ultimate sale at retail. If the Goods described on this Purchase Order are purchased tax exempt and subsequent use makes this property taxable, Thermtrol will assess and pay tax to the appropriate state.

**19. Reservation of Rights**

Thermtrol expressly reserves all rights and remedies which are available to it at law or equity including, but not limited to, rights and remedies set forth in the Uniform Commercial Code.

**20. Attachments**

Any attachments referenced on the front side of this Purchase Order shall be deemed for all purposes to be an integral part of this Purchase Order. In the event of irreconcilable conflict between such referenced attachments and the terms stated herein, the terms of such attachments shall control.

## 21. Overshipments

Seller is instructed to ship only the quantity(ies) specified in this Purchase Order. However, any deviation caused by conditions of loading, shipping, packing or allowances in manufacturing processes may be accepted by Thermtrol according to the overshipment allowance indicated on the face of this Purchase Order. If no allowance is shown, it shall be 0% (zero percent). Thermtrol reserves the right to return any overshipment in excess of the allowance at the Seller's expense.

## 22. Packing and Shipping Instructions

- a. Unless otherwise instructed by Thermtrol in the applicable Purchase Order, Seller agrees to insure that shipments are properly packed and described in accordance with Thermtrol specifications and/or applicable carrier regulations. Shipments will be made at the lowest freight charges. Thermtrol may assist Seller by providing freight classifications or classifying Goods. Seller will not insure or declare value on shipments, except on parcel post, unless Thermtrol specifies otherwise. On shipments where value is declared, Seller will ship prepaid insured for \$50 to facilitate tracing. When shipping via small parcel, Seller will ship freight collect, if available, otherwise Seller will ship freight prepaid. Seller shall consolidate air and surface shipments daily on one bill of lading per mode to avoid premium freight costs, unless instructed otherwise by Thermtrol. In case of any shipment that does not correspond to normal past practice between Thermtrol and Seller, or to standard practice in the industry, (e.g., requires special handling equipment or air ride suspension, or air shipment over 500 pounds, or over 120 inches long or wide, or over 56 cubic feet, etc.) Seller agrees to notify Thermtrol's appropriate traffic department 72 hours prior to shipment for special shipping instructions. All truck shipments must be classified by Seller using the current "National Motor Freight Classification Tariff". Each box, crate or carton will show Thermtrol's full street address (not just post office box numbers) and Purchase Order and item numbers regardless of how shipped. On small parcel shipments, a packing list shall accompany each container and shall describe the contents of that container. On other shipments, Seller will provide a packing list to accompany each shipment, referencing the appropriate Purchase Order and item number. The bill of lading also will reference the Purchase Order and item number. Seller is responsible for packing any shipment correctly based on the carrier/mode utilized. Charges for packing and crating shall be deemed part of the purchase price, and no additional charges will be made therefore unless specifically requested by Thermtrol on the Purchase Order. Seller agrees to ship via the carrier specified by Thermtrol. Failure to ship via Thermtrol specified carrier will subject Seller to misroute debit.
- b. All premium freight cost incurred by Thermtrol or Seller beyond that specified by Thermtrol shall be borne by Seller. Seller is responsible for all shipments which are damaged in transit due to improper packaging, improper judgment or any other act or omission of the Seller, shipper or carrier. On all F.O.B. origin shipments, except parcel post, Seller will ship freight collect. (If small parcel carrier collect is unavailable, Seller will ship prepaid).

c. Definition of Terms (Whether F.O.B. origin or destination).

(1) "Freight collect" Seller will ship freight collect - freight carrier will bill Thermtrol.

(2) "Freight prepaid charge back" - Seller will ship freight prepaid and bill Thermtrol.

(3) "Freight prepaid" - Seller will ship freight prepaid and bear all transportation costs.

d. Outline of Incoterms: *Specific explanations of the functions of each Incoterm can be found at [http://export.gov/faq/eq\\_main\\_023922.asp](http://export.gov/faq/eq_main_023922.asp)*

**23. Returns**

Defective Goods shall be returned freight collect to Seller. Replacement Goods shall be sent freight prepaid from Seller, who will absorb the burden of premium transportation when defect or replacement Goods places critical time or delivery schedule constraints on Thermtrol.

**24. Inspection - Quality System**

a. The Seller agrees to permit Thermtrol and Thermtrol's customer or government representatives if this Purchase Order references a U.S. Government contract or subcontract number, to verify the quality of supplies and services being provided under this Purchase Order at any production stage in the Seller's facility. Verification may consist of a physical assessment/surveillance of the Seller's facilities and quality programs and/or a source inspection. Deficiencies identified during such verification shall be positively corrected by the Seller in the most expeditious manner possible. The Seller shall provide all reasonable facilities and assistance for the safety and convenience of personnel engaged in such verification. Seller agrees to include into each subcontract Seller might make hereunder appropriate provisions to the same effect.

b. Unless modified by the Purchase Order through the use of Thermtrol's Purchase Order clauses, Seller is required to ensure that the manufacturing processes used meet the technical requirements of the applicable drawings, specifications, engineering changes and added requirements of the Purchase Order, and personnel responsible for performing the tasks to meet these requirements are competent. An inspection system inherent to verifying the technical and competency requirements must be maintained and objective evidence of such will be produced on request.

**25. Supplier Quality Management System Requirements**

Thermtrol expects all our suppliers to provide products and services that meet both our requirements, and the requirements of our customers, for quality and on-time delivery. In order to consistently achieve these expectations, Thermtrol encourages all our suppliers to develop, implement and improve a quality management system based on the latest version of ISO9001, titled Quality Management Systems –Requirements, with the ultimate goal of a QMS certified to ISO9001 through 3rd party audits by a recognized certification body. For suppliers providing product to Thermtrol for use in the automotive supply chain, such certification shall be issued by a certification body bearing a recognized accreditation mark, and shall include the ultimate

objective of becoming certified to IATF 16949, titled Automotive Quality Management System Standard.

In addition to meeting Thermtrol's requirements for a) quality and b) on-time delivery, suppliers shall promote continuous improvement within their organization, and shall have the ability to demonstrate upon request that: c) their performance for meeting customer, statutory and regulatory requirements is continually improving, d) processes remain in control for delivering conforming product to avoid disruptions at receiving or in-process, and e) occurrences of premium freight to meet delivery schedules are monitored and kept to a minimum.

**26. Seller Ownership Change**

Seller is required to submit immediately in writing to Thermtrol notification on the, following change conditions, whether subcontract is DOD classified or not:

- a. Acquisition by or merger with any foreign interest;
- b. Majority or controlling interest obtained by a foreign interest.

**27. Government Contract Provisions**

If this Purchase Order references a U.S. Government contract or subcontract number, the dates of the following clauses of the Federal Acquisition Regulation (FAR) are the same as the dates of the corresponding clauses in the prime contract referenced on the front of this Purchase Order are incorporated by reference and will prevail in the event of any inconsistency with the foregoing terms and conditions. Cost Accounting Standards (CAS) requirements are those in effect on the date of the subcontract award or final agreement on price, whichever is earlier. It is understood that the term "contracting officer" or "Government" shall mean Thermtrol and "contractor" shall mean Seller when applicable. Any reference to a "disputes" clause in any FAR clause incorporated in this Purchase Order is deleted. Any FAR clause which by its terms is required to be included in a subcontract is hereby incorporated in this Purchase Order when applicable. Seller shall be entitled to the full benefit of whatever authorization and consent clause is contained in the prime contract referenced on the front of this Purchase Order.

28. Each party hereby agrees that it will not knowingly transfer, divert, export or reexport, directly or indirectly, any product, software, including software source code, or technical data (as defined by the U.S. Export Administration Regulations of the U.S. Department of Commerce) restricted by such regulations or by other applicable national regulations, received from the other party under these Terms and Conditions of Purchase, or any direct product of such software or technical data to any person, firm, entity country or destination to which such transfer, diversion, export, or reexport is restricted or prohibited by U.S. or other applicable law, without obtaining prior authorization from the U.S. Department of Commerce and other competent government authorities to the extent required by those laws.

2.0	UPDATES TO SECTION 24b FOR COMPETENCE. REF DR13387	GMK	DHC	10/2/2018
1.0	INITIAL ISSUE	JK	DHC	5/24/2017
IND	REVISION DESCRIPTION	REVISED BY	REVIEWED BY	DATE