

Terms and Conditions of Sale

Exclusive Terms:

All sales, whether on credit or for cash, of goods ("Goods") by Thermal Supply Inc. ("Thermal Supply") as seller to Applicant as buyer ("Buyer") are made on the following terms and conditions. Unless otherwise agreed by both parties in writing, no additional, different, or conflicting term in any purchase order or other document shall become part of the agreement between the parties. For value received each and every party who signs this agreement or becomes liable either now or hereafter for the payment of this agreement severally waives presentment, demand, protest and notice of nonpayment hereof, binds himself hereon as the principal and not as surety and agrees to remain bound hereon notwithstanding any extension that may be made to any party liable hereon.

Payment and Credit Terms:

Buyer agrees to pay all invoices when due, in accordance with credit terms established by Thermal Supply from time to time. Buyer agrees to pay a service charge on overdue balances at an annual rate equal to the greater of 18% or the maximum rate allowed by law, together with costs and reasonable attorneys' fees incurred by Thermal Supply in collecting any amounts owed by Buyer. A service fee of \$25 will be charged for all N.S.F. returned checks. Thermal Supply may increase, decrease, or cancel Buyer's credit limit, at any time without notice for any reason, in the sole discretion of Thermal Supply. In the event that the financial condition of Buyer becomes unsatisfactory, as determined by Thermal Supply in its sole discretion, Thermal Supply may, at its option and by written notice, require full or partial cash payment in advance or cancel any order in whole or in part.

Prices; Taxes; Quotations and Specifications:

All quotations and price lists are subject to change without notice. All orders, whether or not submitted pursuant to a quotation, are subject to acceptance by Thermal Supply and shall be on the terms set forth herein. Prices do not include any manufacturer's, sales, use, excise or similar taxes, charges, or duties, and the amount of any such taxes that Thermal Supply is required to pay or collect will be invoiced to Buyer. All specifications for Goods are subject to change without notice.

Delivery; Risk of Loss; Title:

Unless otherwise agreed to in writing, delivery of Goods shall be F.O.B. Thermal Supply. Any delivery date quoted by Thermal Supply is its best estimate of lead-time as of the date of quotation and is subject to change without notice. Risk of loss shall pass to Buyer upon the earlier of delivery to Buyer or tender of the Goods to the carrier. Thermal Supply shall retain, and Buyer hereby grants to Thermal Supply, a security interest in any product sold by Thermal Supply hereunder until payment in full is received.

Cancellation, Modification, Suspension:

No order may be canceled, modified, suspended, or delayed, except with the prior written consent of Thermal Supply. Thermal Supply may consent, or refuse to consent, in its sole discretion, and may condition such consent on terms that will fully indemnify Thermal Supply against loss, including without limitation recovery of all direct costs incurred, indirect costs, overhead charges, and a reasonable profit.

DISCLAIMER OF ALL WARRANTIES:

THERMAL SUPPLY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ABOUT ANY GOODS SOLD BY THERMAL SUPPLY TO BUYER AND THERMAL SUPPLY IS NOT RESPONSIBLE FOR THE QUALITY OF SUCH GOODS. WITHOUT LIMITING THE FOREGOING, THERMAL SUPPLY MAKES NO WARRANTY OF MERCHANTABILITY AND THE GOODS ARE NOT WARRANTED TO BE FIT FOR ANY PARTICULAR PURPOSE. Any extended warranty, if any, purchased by Buyer with respects to any Goods shall be in writing signed by Thermal Supply, and shall be solely on the terms and conditions set forth therein.

LIMITATION OF DAMAGES:

THERMAL SUPPLY SHALL HAVE NO LIABILITY TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LABOR COSTS, DAMAGE TO OTHER EQUIPMENT OR PROPERTY OR LIABILITY OR INJURY TO A THIRD PARTY, ARISING FROM THE SALE, USE, MISUSE, OR MISAPPLICATION OF THE GOODS, FROM THE GOODS BEING INCORPORATED INTO ANOTHER PRODUCT, OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESS OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY.

Manufacturer's Warranty:

To the extent not prohibited by any applicable law or contract, Thermal Supply assigns to Buyer any warranty provided by the manufacturer of any Goods purchased by Buyer from Thermal Supply. Thermal Supply will assist Buyer in making any warranty claim with respect to such Goods and will facilitate the repair or replacement of any defective or non-conforming Goods, in accordance with the manufacturer's warranty policy and based solely upon such manufacturer's determinations and findings.

Indemnification:

Buyer agrees to indemnify and hold Thermal Supply harmless against any claim, demand, action, proceeding, liability, loss, cost, or expense, including reasonable attorneys' fees, arising in connection with Buyer's specifications and/or design of Goods sold hereunder, with the incorporation of the Goods into Buyer's products or equipment and the use thereof, with unauthorized modifications to or use of any of the Goods, or with Buyer's sale of any of the Goods (whether or not incorporated into Buyer's products) to a third party.

Compressor Replacement Policy:

The purchase price of any compressor purchased by Buyer to replace an existing compressor is due in accordance with Thermal Supply's then-applicable credit terms, whether or not Buyer asserts any warranty claim against the manufacturer (or pursuant to any extended warranty purchased by Buyer from Thermal Supply) with respect to the Goods to be replaced. Any eligible compressor returned to Thermal Supply within 30 days after shipment of a replacement will be accepted only for salvage credit or scrap, the amount of which shall be based solely on the manufacturer's determination of salvage value, if any. A compressor is eligible for purposes of return and credit only if such compressor was purchased from Thermal Supply or was made by a manufacturer for which Thermal Supply is an authorized distributor at the time of replacement.

Returned Goods Policy:

Thermal Supply will accept the return of Goods only with Thermal Supply's prior authorization and only in accordance with Thermal Supply's then-current returned goods policy, which may be modified or terminated by Thermal Supply from time to time without notice. Without limiting the foregoing, Thermal Supply's current policy with respect to returned goods is: Except for refrigerants and certain electrical devices, Thermal Supply will accept or credit return of regularly stocked items within 30 days of the purchase date when unused and in clean factory packages; after 30 days, a handling charge will be deducted from the credit for such returned goods. Returns of non-stock or special-order items are subject to a handling charge and the manufacturer's return policy; order cancellations on special-order items are subject to the manufacturer's acceptance. Thermal Supply will not accept returns of refrigerants and certain electrical devices. Transportation charges and other costs of returning Goods shall be paid by buyer. Unauthorized returns will be returned to Buyer freight collect or held and sold at salvage value to cover storage and handling expenses.

Damaged Shipment Policy:

Transportation companies delivering Goods accept full liability while the merchandise is in transit and until Buyer acknowledges receipt of the delivering carrier. UPON RECEIVING EACH SHIPMENT, CAREFULLY INSPECT EACH PACKAGE, looking for punctures, abrasions, and other evidence of possible damage. In the event that there is visible damage to the cartons, do not accept delivery until the condition is noted on Buyer's copy of the freight bill and signed as much by the driver of the delivering carrier. Open all packages and inspect the items as soon as possible. In the event damage is discovered later, please notify the delivering carrier immediately in writing, and ask for an inspection report. PLEASE DO NOT RETURN DAMAGED MERCHANDISE. DAMAGED MERCHANDISE IS THE RESPONSIBILITY OF THE TRUCKING COMPANY AND SHOULD NOT BE RETURNED TO THERMAL SUPPLY.

Miscellaneous:

The validity, construction and enforcement of any sale by Thermal Supply to Buyer, including the obligations of Buyer to pay when due all amounts in respect of credits granted to Buyer by Thermal Supply, now or in the future, shall be governed by the internal laws of the State of Washington. Buyer hereby irrevocably submits to the non-exclusive jurisdiction of any Washington state courts sitting in King County, Washington in any action or proceeding arising out of or relating to such sale and/or obligations. No waiver or modification of any of the provisions hereof shall be binding upon Thermal Supply unless in writing and signed by an authorized representative of Thermal Supply. Buyer and Thermal Supply agree that a signature affixed to any instrument, agreement, or document in connection with the purchase and sale of Goods and delivered by facsimile by any person is intended to be its, his, or her signature and shall be valid, binding and enforceable against such person.