

## THERMAX, INC. Terms & Conditions of Sale

**1. General** The terms and conditions contained herein, together with any additional or different terms contained in the final, written proposal issued by Thermax, Inc. ("**Thermax**"), and submitted to Buyer, if any (which proposal shall be incorporated herein and control over these terms and conditions to the extent it contains any conflicting terms and conditions), constitute the entire agreement (the "**Agreement**") between the parties with respect to the subject sale. Acceptance by Thermax of Buyer's purchase order and Buyer's acceptance of Thermax's proposal is expressly limited to and conditioned upon Buyer's acceptance of these Terms & Conditions of Sale, which may not be changed or waived except in writing signed by Thermax. Any additional, inconsistent or different terms and conditions contained in Buyer's purchase order or other documents supplied by Buyer are hereby expressly rejected. Unless the context otherwise requires, the term "**Equipment**" as used herein shall mean all goods, equipment, parts, and accessories sold to Buyer by Thermax. Unless the context otherwise indicates, the term "**Services**" as used herein shall mean labor, supervision, repair and project engineering services provided by Thermax. As used herein, the term "**Buyer**" shall mean only the party issuing the purchase order to Thermax for Equipment or Services, regardless of whether or not the Buyer is the end user of the Equipment or Services.

**2. Payment Terms and Invoices** Unless a different payment schedule is agreed to in writing by Thermax, payment terms are net 30 days, except that all payments made by credit card are due at the time of order placement. Late payments are subject to a 1.5% monthly late charge calculated per diem. Any checks returned for non-sufficient funds and any stopped or reversed payments shall be subject to a fee. If required by Thermax, Buyer will cause an irrevocable letter of credit to be established in favor of Thermax on a bank approved by Thermax. Thermax is entitled to charge any costs associated with the letter of credit to Buyer's account. Performance schedules are conditional upon receipt of the letter of credit within 30 days of award. Buyer agrees to furnish Thermax with any requested credit information. Buyer's credit limit will be set at Thermax's sole discretion and may be modified at any time based upon Buyer's credit risk as determined by Thermax. In the event that Buyer's credit risk increases or Buyer fails to pay timely, Thermax may suspend performance and/or require alternate payment methods. Buyer shall notify Thermax of any items disputed in good faith relating to an invoice within 15 days after the invoice date in writing specifying the nature of the disputed item, but in no event is Buyer entitled to withhold or set off any invoiced amounts without Thermax's prior written approval. In the event it becomes necessary for Thermax to refer Buyer's account to a third party for collection or for Thermax to take other enforcement action of this Agreement against Buyer, Buyer agrees to pay any and all attorney and arbitrator fees, lien filing fees, collection costs and legal expenses associated therewith incurred by Thermax.

**3. Taxes** Federal, state, local, value added, sales and use, and other applicable taxes measured on the price of Equipment or Services in any legal system by any taxing authority are not included in the price unless otherwise agreed in writing by Thermax.

**4. Time Limit** All quotations are valid for a period of 30 calendar days, unless otherwise extended in writing by Thermax. If this Agreement is delayed or suspended in whole or in part by Buyer for more than 60 days, pricing shall either be subject to re-negotiation or the Agreement may be deemed cancelled for Buyer's convenience and subject to Section 16, at Thermax's sole option.

**5. Acceptance** Acceptance of Equipment occurs at point of Delivery. Acceptance of any Services provided hereunder occurs at completion.

**6. Warranty** Unless a different warranty is agreed to in writing by Thermax, Thermax warrants to Buyer that all Equipment manufactured by Thermax shall be free from defects in material and workmanship for a period of 1 year after initial use (or placement into storage) or 18 months after the date of shipment, whichever expires first, except that parts sold as spares or for replacement are warranted for 90 days after the date of shipment or until the expiration of the warranty offered by their original manufacturer, whichever expires first. All resale products and components only carry the warranty offered by their original manufacturer. Thermax warrants Services against defects in workmanship for a period of 90 days from date of their completion. **Limitations.** These warranties do not cover Buyer-furnished designs, goods, equipment, services or materials and do not apply to any Equipment or Services or parts thereof which Thermax determines: (1) to have been improperly installed or repaired; (2) to have been altered or modified in any way without Thermax's prior written approval; (3) to have been subjected to misuse, abuse, excessive external forces, negligence or accident; (4) to have been installed, stored, used, or operated in a manner contrary to Thermax's instructions, specifications and drawings, outside the specified design conditions, or not used in accordance with normal operating and maintenance instructions; (5) are purchased as used Equipment, a prototype or a sample; or (6) resulted from normal wear and tear, corrosion or erosion. Each of the foregoing shall act to void any existing warranty. Proper installation of normal maintenance parts does not constitute a modification. Buyer agrees to defend, indemnify and hold Thermax harmless from any third party claims arising out of the use, resale, or lease of said furnished Equipment or Services.

**7. Exclusive Remedy** Should any failure to conform to the applicable warranties stated above occur during the warranty periods specified above, then Buyer shall appropriately decontaminate the Equipment and provide Thermax with prompt written notice identifying the problem, but in no event shall such notice be more than 30 days after discovery of such failure. Provided that Buyer has fulfilled all of its obligations under the Agreement and complied with the procedures set forth in this Section 7, Thermax shall inspect said Equipment within 10 business days after receipt of Buyer's notice. Thermax's sole obligation, and Buyer's sole remedy, is for Thermax to correct such nonconformity by, at Thermax's option: (1) repair or replacement of the nonconforming Equipment or parts thereof; or (2) refund the purchase price of the nonconforming Equipment or parts thereof; and (3) in the case of nonconforming Services, re-perform the Services or refund the price there for. Repairs or replacements made pursuant to warranty shall be warranted for the time remaining in the original warranty period or 30 days, whichever is longer. Thermax will make all arrangements to either transport such Equipment to and from Thermax's repair or factory facility or go to Buyer's site, at Thermax's sole option; provided, however, that Thermax shall not be responsible for providing working access to the defect, including disassembly and reassembly of Equipment or for transportation costs to and from Thermax's repair or factory facility, all of which shall be at Buyer's risk and expense. If it is determined by Thermax that such failure was not covered by the warranty stated above, then Thermax will invoice Buyer, and Buyer agrees to pay, for all such inspection and other expenses. No Thermax liability for Equipment shown to be defective exists until such time as the Equipment has been paid for.

**8. Disclaimer** *THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER CLAIMS OF RELIEF AND WARRANTIES OF QUALITY, PERFORMANCE AND DESIGN, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED BY THERMAX AND ALL EQUIPMENT MANUFACTURERS.*

**9. Termination** No termination by Buyer for default shall be effective unless, within 15 days after receipt by Thermax of Buyer's written notice specifying such default, Thermax fails to initiate and pursue correction of such specified default.

**10. Excusable Delays** The schedule for Delivery of Equipment and performance of Services will be modified for delays resulting from causes beyond Thermax's reasonable control, including but not limited to, acts of God, war, terrorism, strikes, restrictions of the United States Government or other governments having jurisdiction, delays in transportation, or inability to obtain necessary labor, materials, or manufacturing facilities.

**11. Delivery and Risk of Loss or Damage** Unless otherwise agreed in writing by Thermax, all domestic shipments are FCA manufacturing facility and all international shipments are CPT port of destination, with responsibilities as defined in INCOTERMS 2010, and "**Delivery**" as used herein occurs in accordance with INCOTERMS 2010. Notwithstanding anything to the contrary, all lead times quoted and accepted by Thermax shall be from the date Thermax accepts Buyer's purchase order. If Thermax agrees in writing to prepay transportation and transit insurance charges for the account of Buyer, then Thermax is entitled to include shipping, handling and any transit insurance charges on its invoice. Buyer shall indemnify, defend and hold Thermax harmless from any claims by freight carriers for Buyer's failure to pay freight charges. Claims for shortages in or damage to shipment shall be deemed waived unless made in writing and received by Thermax within 10 days after receipt of Equipment by Buyer or its designated consignee. Delivery dates quoted are based on Thermax's best estimate of a realistic time when shipment will be made and are subject to change. Delivery dates will be confirmed on Thermax's acceptance of any resulting order, and Thermax will use its best efforts to meet such Delivery date. Thermax may make early shipment or partial shipments and invoice Buyer accordingly. Despite any agreement with respect to delivery terms or prepayment of transportation or transit insurance charges, the risk of loss or damage shall pass to Buyer upon completion of Delivery or upon moving the Equipment into storage, whichever occurs first.

**12. Laws, Codes and Standards** Price and Delivery schedule are based on the applicable laws, codes, and standards stated in the Equipment specifications in effect as of the date of Seller's acceptance of the purchase order. If such laws, codes, and standards change, or if Purchaser changes the laws, codes, and standards stated in the Equipment specifications, and such change increases or decreases the cost of performing the work or impacts the Delivery schedule, then Thermax will advise Buyer of the same, and the parties shall promptly negotiate in good faith and mutually agree upon any modification to the order resulting from any such change. Any local laws, statutes, codes or standards, or interpretations thereof that do not match national building codes are hereby exempt from the Agreement unless written copies are presented by Buyer to Thermax as additional specifications and accepted in writing by Thermax as part of this Agreement.

**13. Title** Thermax shall retain legal and equitable title to any Equipment until Buyer has paid for such Equipment in full, and Buyer shall complete and execute all documents required to this effect upon Thermax's request and allow Thermax to repossess the Equipment in the event of Buyer's failure to pay after receipt of written notice by Thermax.

**14. Installation** Installation of Equipment furnished hereunder shall be by Buyer, unless otherwise agreed to in writing signed by Thermax's duly authorized representative. Installation services provided by Thermax or one of its affiliates shall be pursuant to a separate agreement.

**15. Field Service** Field service will be provided on a per diem basis upon written authorization by Buyer and at Thermax's rates in effect when such Services are provided. Buyer will provide free and unrestricted access to Thermax personnel, contractors,

subcontractors, equipment and any other personnel necessary in order for Thermax to complete the contracted work.

**16. Cancellation** Cancellation of any order must be by written notice to Thermax and will be subject to Thermax's cancellation charges and fees including, but not limited to, all costs incurred through the date of cancellation, the cost for materials ordered that cannot be returned, return and cancellation fees, cost to process such cancellation, plus a reasonable profit.

**17. Intellectual Property and Confidentiality** Unless otherwise agreed to in writing signed by Thermax's duly authorized representative, all right, title and interest in any inventions, developments, improvements or modifications of the Equipment and Services made by Thermax or Buyer as a result of the Agreement shall exclusively remain with Thermax. Any design, reports, plans, drawings, standards, specifications or other information submitted to Buyer by Thermax ("**Thermax Documents**") were developed at Thermax's expense and shall remain Thermax's exclusive property. Without the express prior written consent of Thermax, Buyer shall not copy or disclose Thermax Documents to any third party, and shall not use them for any purpose other than to install, own, operate, and maintain the subject Equipment or to use the Services, including, without limitation, use with any other project, or for the completion of the project contemplated by this Agreement by others. Thermax Documents are not suitable for use on any other agreement or project and any reuse of Thermax Documents without the express written consent of Thermax will be at the sole risk of Buyer, and Buyer shall indemnify, defend and hold Thermax harmless from any and all claims arising from Buyer's reuse of Thermax Documents. Upon Thermax's request at any time, Buyer shall promptly return all Thermax Documents. If Thermax's Equipment is held to infringe a United States patent in effect as of the date of this Agreement (other than any infringement resulting from Thermax's compliance with Buyer's designs, specifications or instructions or from the use of the Equipment in combination with other materials or the operation of any process), then Thermax may at its option procure for Buyer the right to use the Equipment, modify or replace it with non-infringing Equipment; refund the purchase price allocable to the infringing Equipment, or settle or otherwise terminate said actions on behalf of Buyer. The foregoing is Thermax's entire liability and Buyer's sole remedy for patent infringements of the Equipment. Buyer shall defend, indemnify and hold Thermax harmless from all expenses, losses and other damages resulting from any actual or alleged infringement of intellectual property rights arising from Thermax's compliance with Buyer's designs, specifications or instructions, from the use of the Equipment in combination with other materials, or from the operation of any process.

**18. Assignment** This Agreement may not be transferred or assigned by Buyer by operation of law or otherwise without the prior express written consent of Thermax. Any transfer or assignment by Buyer of any rights, duties or obligations without Thermax's consent shall be void.

**19. Limitation of Liability** *NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL THERMAX, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, COST OF DELAYS, OR FOR ANY PENALTIES, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THERMAX'S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT FOR ANY CLAIMS WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY DESIGN, SALE, INSTALLATION, OPERATION OR USE OF THE EQUIPMENT OR PERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID TO THERMAX BY BUYER FOR THE SPECIFIC EQUIPMENT OR PART THEREOF OR FOR THE SERVICES GIVING RISE TO THE CLAIM.*

**20. Export Sales; Compliance with Trade Laws** In no event shall Thermax be required to export or deliver any technical information, data or Equipment if such export or Delivery is then prohibited or restricted by any law or regulation of the U.S. Government, including departments, agencies and sub-divisions thereof or of any other applicable governmental agency of any country having jurisdiction, including the country in which the Equipment or Services to be sold will be installed, used, or performed. Should Thermax's performance of its obligations hereunder be prohibited by any applicable governmental agency, in whole or in part, or if the exportation or importation of the Equipment which is the subject of this Agreement be precluded because of the inability to obtain an export or import license within a reasonable time, as appropriate, then Thermax's obligations hereunder shall be terminated at Thermax's option, and Thermax shall be entitled to reasonable cancellation charges. Unless otherwise agreed in writing by Thermax, Buyer accepts all responsibility for exporting and importing any Equipment sold hereunder outside of the U.S., will be the exporter of record and importer of record, and will be responsible for filing any documents, obtaining any licenses required by the U.S. or other government agencies, and paying all duties and taxes necessary for exportation and importation. Buyer agrees not to export, re-export or import any Equipment, technical information or data of Thermax without full compliance with U.S. and other laws of countries having jurisdiction and shall cause the end user of Equipment or Services to comply with such applicable laws. Buyer warrants and represents that it is in full compliance with all such applicable export and import laws, including but not limited to, the International Traffic In Arms Regulations, the Export Administration Regulations, and all U.S. anti-boycott

and embargo regulations, and Buyer shall provide Thermax with such written assurances of compliance as requested by Thermax from time to time. Specifically, Buyer agrees not to export, re-export, sell or lease any Equipment or components thereof or technical data supplied by Thermax to a prohibited person, to a prohibited country, or for a prohibited use under the U.S. or any other applicable trade laws. Buyer agrees to indemnify and hold Thermax harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Buyer's violation of applicable export and import regulations.

**21. Compliance with Anti-bribery Laws** Buyer warrants and represents that it is familiar with the requirements of the U.S. Foreign Corrupt Practices Act and other similar anti-bribery laws, including without limitation, the OECD Antibribery Convention and the UK Bribery Act, that it has not and will not violate those laws as may be amended from time to time, and that it neither has nor will it offer, make, or agree to make, directly or indirectly, any gift or payment of any kind or any political contribution in violation of such laws. Buyer shall provide Thermax with such written assurances of compliance with such laws as requested by Thermax from time to time. Any payment, offer of payment, or agreement to make a payment that is contrary to the laws of the United States or the laws of the country in which it is made, or any other payment in conflict with this clause, will constitute a material breach of this Agreement, and any obligation of Thermax hereunder shall automatically terminate upon such breach without further liability to Thermax. Buyer agrees to indemnify and hold Thermax harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Buyer's violation of the requirements referenced in this Section.

**22. Governing Law; Arbitration** This Agreement and any claim, controversy or dispute arising under or related to the Agreement, the relationship of the parties, and the interpretation and enforcement of the rights and duties of the parties is exclusively governed by the laws of the State of Ohio, excluding its conflicts of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods. Buyer waives all causes of action arising under this Agreement after one year from the date of the occurrence of the event giving rise to any such claim, waives any sovereign immunity claims or defenses, and consents to and will not contest personal jurisdiction in the local and federal courts of Cleveland, Ohio. Except for account collection disputes, any disputes, controversies or claims arising out of or relating to this Agreement, or the breach thereof which cannot be resolved amicably within 60 days, shall be settled by binding arbitration. This agreement to submit to binding arbitration shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrator shall be final, and a judgment may be entered upon it by any court having jurisdiction. A party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so and the name of an impartial individual who is knowledgeable in matters pertaining to Thermax's industry to serve as an arbitrator. If the other party objects within 15 days to the arbitrator proposed, and the parties fail to agree on an arbitrator within 30 days thereafter, then the arbitrator shall be appointed by the arbitration tribunal. For domestic sales, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then prevailing. For international sales, the arbitration shall be conducted in accordance with the International Arbitration Rules then prevailing of the International Centre for Dispute Resolution. Unless the parties agree otherwise, all arbitrations shall be conducted and all related documents submitted shall be in the English language in Cleveland, Ohio, and the arbitrator shall apply the substantive governing laws as specified above. All awards granted by the arbitrator shall be final and binding on the parties, and shall include interest from the date of any breach or default and from the date of the award until paid in full. Judgment may be entered on any award or decision of the arbitration panel by either party in a court of competent jurisdiction. The arbitrator may grant emergency interim relief according to the applicable arbitration rules, and shall award costs, fees and other expenses of the arbitration, including reasonable attorney's fees, to the party not in default. If Buyer fails to promptly assume Thermax's defense when requested to do so as required under this Agreement, then Thermax may defend with counsel of its own choice at the expense of Buyer.

**23. Miscellaneous** The Agreement as defined in Section 1 constitutes the complete and exclusive agreement between Thermax and Buyer and there are no agreements, understandings, restrictions, warranties, or representations between Thermax and Buyer other than those set forth herein. If any provision, or any part thereof, of this Agreement is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, then such provision shall be deemed revised and applied to the maximum extent allowed by applicable law, and such invalidity or unenforceability shall not affect the remainder of such provision or any other provision here which shall remain in full force and effect. All obligations herein shall survive termination, expiration or completion of this Agreement. No term or condition is intended for the benefit of any third party, and Thermax and Buyer do not intend any term or condition to be enforceable by a third party, including any end user of Equipment or Services. Thermax's failure on any occasion to insist on strict performance of any term or condition hereof shall not constitute a waiver of compliance with such term or condition on any other occasion or a waiver of any default. References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it. The headings used throughout are for convenience only and shall be given no legal effect. Fax copies shall be given the full force and effect as an original.