

TERMS AND CONDITIONS OF SALE

(VERSION: JULY 6, 2023)

1. **Acceptance of Terms and Controlling Conditions.** These Terms and Conditions of Sale, along with Heater Tek, LLC's ("Heater Tek") sales quotation and acknowledgment of order constitute the complete agreement ("Agreement") of Heater Tek and Heater Tek's customer ("Buyer"), unless otherwise provided in writing signed by an authorized representative of Heater Tek, and no terms or conditions in any way modifying the provisions state herein shall be binding upon Heater Tek. Acceptance of the Buyer's purchase order by Heater Tek, or Buyer's acceptance of Heater Tek's sales quotation or proposal, shipment of products by Heater Tek to Buyer ("Products"), or the issuance by Heater Tek of an acknowledgment of order, is made only on the express condition that these Terms and Conditions shall govern regardless of whether Buyer accepts these conditions by a written acknowledgment, by implication, or by acceptance or payment for Products ordered hereunder. Heater Tek's failure to object to provisions contained in any communication from Buyer or Heater Tek's shipment of Products following receipt of any such communication is not a waiver or modification of the terms and conditions contained herein. If Buyer objects to any of the terms and conditions set forth in this document, any changes must be communicated in writing to Heater Tek and reflected in Heater Tek's acknowledgment of order prior to commencement of performance by Heater Tek. All orders shall be accepted only at Heater Tek's offices in Evansville, Indiana. If Buyer is not the end-user of the Products, Buyer will ensure that the subsequent sale and transfer of the Products to said end-user is expressly made subject to these Terms and Conditions of Sale, and Buyer will provide said end-user with a copy hereof.

2. **Prices:** All prices of Products are subject to change by Heater Tek without notice to Buyer prior to Heater Tek's shipment of the Products or its issuance of an acknowledgment of order, and are subject to change at any time by Heater Tek in the event of a change of Buyer's requirements following Heater Tek's issuance of its acknowledgment of order. Unless otherwise provided on the face of Heater Tek's quotation, all sales quotations from Heater Tek are quoted F.O.B. Heater Tek's plant at Evansville, Indiana.

3. **Payment Terms:** Unless provided otherwise in writing in Heater Tek's quotation, payment shall be net thirty (30) days from date of shipment, subject to such change as Heater Tek in its sole judgment, may impose because of Buyer's financial or credit conditions existing at time of shipment of the Products or its issuance of Heater Tek's acknowledgment of order.

4. **Shipments:** Unless otherwise provided on the face of Heater Tek's quotation, all Products sold by Heater Tek to Buyer shall be shipped by carrier F.O.B. Heater Tek's Plant, Evansville, Indiana. Heater Tek shall have the right to select carrier, and Buyer accepts carrier selected by Heater Tek unless carrier is designated by Buyer in its order and such designation is confirmed in Heater Tek's acknowledgment of order. Even if Heater Tek prepays freight, delivery of Products to the carrier constitutes delivery to Buyer and thereafter Buyer shall have all risks of loss or damage. Any transportation damages or claims occurring after Heater Tek's delivery to carrier or any claim for transportation overcharges shall be directed by Buyer to carrier, together with transportation papers, noting shortage or damage, if any, and signed by carrier's representative. Heater Tek may deliver Products in installments, and each shipment is considered a separate and independent transaction and payment shall be made as provided herein for Products delivered in installments. Shortage claims of any type shall be made in writing within ten (10) days after receipt of good by Buyer or shall be deemed to have been waived.

5. **Delays in Delivery** The shipping date shown on Heater Tek's acknowledgment of order is an estimate and dependent upon prior sales and circumstances beyond Heater Tek's control. Time is not deemed of the essence and Buyer is not entitled to reject an otherwise conforming tender made within a reasonable time.

Heater Tek is not liable for any damage or penalty for failure to ship or delays in shipment whether reasonable or unreasonable, caused by the following matters affecting manufacturing or shipping: fire, flood, other casualties, or acts of God; wars, riots, civil commotion, embargoes, governmental regulations, or Heater Tek's inability to obtain necessary materials from the usual sources of supply; shortage of rail cars or semi-tractors and trailers or delays in transit; existing or future strikes or other labor troubles affecting production or shipment, whether employees of Heater Tek or employees of others, and regardless of responsibility or fault on part of any employer; public health emergencies, or any other contingencies affecting Heater Tek's shipment not reasonably within Heater Tek's control whether or not a class or kind mentioned herein.

If Heater Tek is wholly or partially unable to perform because of any cause beyond its reasonable control, Heater Tek may allocate production and deliveries among Heater Tek's customers or may terminate the Agreement without any further liability to Buyer. The delivery schedule of any Products is extended by the period of time equal to the time lost because of any excusable delay enumerated in the proceeding paragraph.

In the event Heater Tek shall inexcusably fail to deliver the Products to the carrier for shipment as described above, or, within ten (10) days thereafter, and if after that time Buyer makes demand for delivery thereof, and delivery is not forthcoming within an additional ten (10) days, then Buyer's sole and exclusive remedy shall be to terminate the Agreement and to secure a refund from Heater Tek of all sums, if any, paid to Heater Tek on account of the Agreement. Buyer agrees that no other remedy, including, but not limited to, incidental or consequential damages for lost profits, lost sales, or lost production or any other incidental or consequential loss, shall be available to it and Heater Tek shall not be liable for such incidental or consequential damages or lost profits, lost sales, lost production due to Heater Tek's failure to deliver Products to carrier for shipment and/or Heater Tek's failure to ship.

6. **Cancellation and/or Termination by Buyer and Returns:** Accepted orders are not subject to cancellation by Buyer except upon written approval of Heater Tek. Heater Tek will not accept returns of conforming Products except in unusual circumstances with the prior written approval of Heater Tek in its sole discretion. Any returned shipments approved by Heater Tek must be sent F.O.B. Heater Tek's plant at Evansville, Indiana.

7. **Termination by Heater Tek:** If at any time Heater Tek determines the financial responsibility of Buyer is unsatisfactory, Heater Tek may require payment for any shipment in advance or satisfactory security. If the Buyer fails to make payments in accordance with the Agreement or fails to comply with any provision of the Agreement, Heater Tek may cancel any unshipped portions of the Products and the Buyer will remain liable for shipped Products. If Heater Tek elects to continue to make shipments after the Buyer has failed to make payment for the shipment in advance or fails to provide satisfactory security, any action by Heater Tek shall not constitute a waiver of any default by the Buyer or in any way affect Heater Tek's legal or equitable remedies for any such default.

8. **Assignment:** Any assignment of the Agreement or any assignment of any rights hereunder by the Buyer without the written consent of Heater Tek shall be void. Any valid assignment made hereunder shall be binding upon and inure to the benefit of successors and assigns of the Buyer and Heater Tek.

9. **Infringement:** Buyer, its successors and assigns, warrant that Products manufactured to Buyer's specifications do not and will not infringe any letters patent, granted by the United States of America or any foreign country, or any trademark or trade names, and Buyer agrees to indemnify and hold Heater Tek harmless, and Heater Tek's successors and assigns against and from all claims, demands, damages, losses, liability, costs and expense including attorney's fees, attributable to such infringement and buyer agrees to defend, at its own expense, any claims or actions of law, or in equity arising therefrom.

10. **Limited Warranty:** Heater Tek warrants to Buyer that:

a. Any Product which is sold by Heater Tek which proves to be defective in either material or workmanship within twelve (12) months after shipment by Heater Tek, will be replaced F.O.B. Heater Tek's plant at Evansville, Indiana, without charge. Buyer shall provide Heater Tek with a completed limited warranty request, together with such photographs and other information that Heater Tek may require to substantiate the limited warranty claim. Heater Tek, in its discretion, may also require Buyer to return the Product claimed to be defective, and in such case, Buyer will return said Product to Heater Tek F.O.B. Heater Tek's plant in Evansville, Indiana.

This limited warranty shall **NOT** apply to defects resulting from improper installation, normal wear and tear, carelessness or negligence on part of Buyer or user, mis-application, misuse, or accident, use of the Product after the expiration of any shelf life set forth on any technical data sheet for the Product, or other causes beyond Heater Tek's reasonable control.

b. Heater Tek may, at its option, refund the purchase price of the Product and sold by Heater Tek in lieu of any obligation of replacement herein.

EXCLUSION OF OTHER WARRANTIES:

*THE LIMITED WARRANTY DESCRIBED HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF **MERCHANTABILITY** OR FITNESS FOR A PARTICULAR PURPOSE AND SHALL BE IN LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES, INCLUDING NEGLIGENCE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SALE OR FURNISHING OF PRODUCTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION AND OPERATION.*

11. **Merger Clause:** Heater Tek's sales representative may have made oral statements about Products described in Heater Tek's quotation or Products may be described in catalogs, technical data sheets, or material safety data sheets furnished to Buyer. Such statements do not constitute warranties, shall not be relied upon by Buyer, and are not part of contract for sale. The entire contract is embodied in this writing. This writing constitutes the final expression of parties' agreement, and it is a complete and exclusive statement of the terms of that agreement.

12. **Limitation of Remedies:** *Buyer's sole and exclusive remedy against Heater Tek for defective or nonconforming Products shall be for replacement of defective Products as provided for in subparagraph a. of paragraph 10 hereof or for the refund of payments as provided for in subparagraph b. of paragraph 10 hereof. The sole purpose of this stipulated exclusive remedy provision shall be to provide the Buyer with free replacement of defective Products and/or for refund of payments as herein provided for. This exclusive remedy shall not fail for its essential purpose so long as Heater Tek is willing and able to replace defective Products or refund payments in accordance with this Agreement. Buyer agrees that no other remedy, including, but not limited to, the right to reject or revoke acceptance of the Products, incidental or consequential damages for lost profits, lost sales, loss of production, injury to person, damage to property, or any other incidental or consequential loss shall be available to it and Heater Tek shall not be liable for such incidental or consequential damages for lost profits, lost sales, loss of production, property damage, personal injury, or any other incidental or consequential loss.*

13. **Limitation of Action:** Any action for breach of warranty or any other action under the Agreement or because of this sale must be commenced one year after such cause of action arises.

14. **Governing Law:** These Terms and Conditions of Sale shall be covered by the law of Indiana as such is applied to contracts made and to be performed entirely in Indiana by Indiana residents and, all actions hereunder shall be brought in the United States District Court for the Southern District of Indiana, Evansville Division, or in the Vanderburgh County Circuit or Superior Courts in Indiana and in no other jurisdiction.

15. **U.S. Government Contracts:** If Products purchased by Buyer hereunder are to be used in performance of United States of America government contract or subcontract, a U.S. government contract number shall appear on the Agreement.

16. **Use of Products:** Buyer shall use and require its employees to use all available safety precautions, in addition to any specifically set forth in any manuals, material safety data sheets, technical data sheets or instruction sheets (collectively, "Product Information") which may be furnished by Heater Tek relating to Heater Tek's Products. If Buyer does not receive Product Information for any Products from Heater Tek, Buyer shall be responsible for requesting them from Heater Tek. If Buyer fails to strictly observe each and every one of the obligations set forth in this paragraph or if Buyer's use of any of Heater Tek's Products is in violation of any American National Standards Institute or Occupational Health and Safety Act, or other work place law, regulation or standard, Buyer agrees to protect, indemnify, and hold harmless Heater Tek of and from any and all claims, demands, damages, actions, and causes of action, as well as any and all liability, loss, or expense of any kind, including reasonable attorneys' fees arising from, connected with or in any way pertaining to any of Heater Tek's Products.

17. **Notification:** Buyer shall notify Heater Tek promptly, and in any event within thirty (30) days, of any accident or failure involving Heater Tek's Products which results in personal injury or damage to property and shall cooperate fully with Heater Tek in investigating and determining causes of such accident or failure. In addition to the indemnity herein provided for in paragraph 16, as a separate condition of this contract Buyer agrees to indemnify in the same manner as in paragraph 16 hereof and save Heater Tek harmless from any claims arising from such accident or failure when Buyer has failed to make timely notification as set out herein.

18. **Attorney Fees:** Buyer hereby agrees to pay Heater Tek's reasonable attorney fees, costs and expenses for any legal action undertaken by Heater Tek to enforce these Terms and Conditions of Sale.

19. **Sales and Other Taxes:** Prices are F.O.B. Evansville, Indiana. Any excise tax, property tax, sales tax, use tax, import duty or other tax or duty levied upon the Products sold or the sales transaction whether by any federal, state, local, or foreign government or agency, shall be paid by the Buyer.

20. **Severability:** If any provision or any part of any provision in these Terms and Conditions of Sale are held to be invalid or unenforceable, all other of the Terms and Conditions of Sale shall nevertheless continue in full force and effect.

21. **Errors:** Any and all typographical errors or other clerical errors made by Heater Tek herein are subject to correction by Heater Tek.