



AGC Heat Transfer Inc.

General Terms and Conditions

PRICES: All prices are subject to change without notice until Buyer's order is accepted and confirmed by AGC ("Seller").

TAXES AND DUTIES: In addition to the price billed by Seller, Buyer agrees to pay the following, and to reimburse Seller for same to the extent paid by Seller:

(a) all applicable sales use or other taxes (notwithstanding their designation as excise, gross receipts, privilege or similar taxes) imposed by any governmental body upon the transaction described herein;

(b) all additional costs arising from any duties and any federal, state or local laws imposed as processing or any other taxes on the raw material or manufactured product for which Seller may be liable; and

(c) all additional costs arising out of or in connection with federal, state or local laws fixing or regulating hours and/or costs of labor producing the equipment described herein.

TERMS: Net due thirty (30) days, unless otherwise specifically agreed.

TITLE: Title to the equipment and all other property covered by this contract, and all replacements, substitutions, repairs and additions thereto, and all proceeds of the foregoing, shall remain in Seller until full payment of the purchase price and all other amounts due Seller hereunder has been made. Buyer shall indemnify and hold Seller harmless from and against all claims of parties claiming under or through Buyer with respect to the equipment and such property.

FREIGHT: All shipments are F.O.B. point of manufacture unless otherwise specified. No allowance will be made for customer pickup at factory location. All transportation and handling charges from F.O.B. point of manufacture shall be at Buyer's expense, and all risk of loss shall be upon Buyer following delivery to the initial carrier at point of manufacture.

INSTALLATION: Unless otherwise specifically agreed, Buyer shall have full responsibility for the installation and the initial starting up of the equipment, and Seller shall not be responsible for any damages to the equipment or to other property, or any personal injury, or any consequential damages or claims arising out of or in connection with such installation. Any materials not specifically listed in the quotation shall be furnished by Buyer and Seller makes no representations or warranties with respect thereto. For certain equipment, Seller recommends installation and start up to be performed under the supervision of Seller's representative. In this instance installation and/or supervision is quoted separately. If Buyer does not accept Seller's proposal for supervision and start up, the warranty of Seller may, at Seller's option, be voided.

WARRANTY:

(a) Seller warrants, to the original purchaser only, that the equipment, unit, parts or material (the "Product") that is the subject of this sale is free from defects in material or workmanship, under normal use, for the duration of one year from the date of delivery to Buyer F.O.B. point of manufacture. If Buyer discovers within this period a defect in material or workmanship, it must promptly notify Seller in writing. In no event shall such notification be received by Seller later than one year from the date of delivery. Within a reasonable time after such notification, Seller will correct any defect in material or workmanship, with either new or used replacement parts. Buyer shall, at its expense, return the Product to Seller for repair or replacement. Such repair or replacement, including both parts and labor, is at Seller's expense. If Seller is unable to repair the Product to conform to the warranty after a reasonable number of attempts, Seller will provide, at its option, one of the following: (i) a replacement Product, or (ii) full refund of the purchase price. These remedies are Buyer's exclusive remedies for breach of warranty.

(b) **Warranty Exclusions:** No warranty of Seller shall apply to any Product which has been repaired or altered outside of Seller's factory in any manner so as, in Seller's sole judgment, to affect its serviceability. No warranty of Seller shall apply to any Product rendered defective because of accident, damage during shipment or handling disasters such as fire, flood, wind and lightning, corrosion or erosion, improper care or storage, misuse, negligence, alteration, use of incompatible supplies or unauthorized attachments or modifications,

failure to reasonably clean or lack of specified maintenance. No warranty of Seller shall apply to any Product operated contrary to Seller's instructions, used for purposes other than those for which it was designed, or operated contrary to the design specifications, if any, provided by Seller. With respect to equipment, materials, parts and accessories manufactured by others, Seller's sole obligation shall be to use reasonable efforts to obtain for Buyer full benefit of the manufacturers' warranties.

(c) **DISCLAIMER OF WARRANTIES:** THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER EXPRESSLY EXCLUDES, DENIES AND DISCLAIMS ANY LIABILITY FOR ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(d) **Limitation of liability and remedies:** The remedies set forth herein are exclusive. In no case shall Seller be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict tort, or any other legal theory. **Infringement:** Seller will not be liable for the infringement of any patent by the Buyer's use of any equipment or materials delivered hereunder.

(e) **Notice of Breach:** Buyer must give Seller written notice of each and every alleged breach of one of the foregoing warranties no later than sixty (60) days after Buyer has discovered or, by the exercise of reasonable diligence, should have discovered, such alleged breach. Failure to give timely written notice of an alleged breach of express or implied warranty as provided herein shall be deemed a complete waiver by Buyer of any claim for any such breach. Any written notice of breach of contract or warranty by Buyer shall be deemed to be notice only with respect to the part, unit or equipment addressed by the notice and only with respect to the alleged problems specified.

TIME TO BRING SUIT: Any action against Seller for breach of warranty, or otherwise arising out of, or resulting directly or indirectly from the contract, must be filed within one year after the date of delivery to Buyer's F.O.B. point, regardless of Buyer's knowledge or lack of knowledge of the alleged breach, or Buyer shall be deemed to have waived any such claims.

DELIVERY: Delivery and shipment dates indicated on proposals, quotations, or confirmations of orders, are estimated but not guaranteed, and Seller shall not be liable for any delay in delivery. Where shipment is deferred at Buyer's request beyond the date of completion, the order will be subject to invoicing, payment, and storage charges from date of completion. Seller will not be liable for failure to deliver the goods specified, where such failure to deliver is due to contingencies beyond Seller's control, including strikes, lockouts and differences with workmen, when these events affect either Seller or its suppliers of material, or individuals or corporations upon whom it is dependent for transportation of supplies and delivery of its manufactured goods, and also including war, insurrection, embargoes, fire, flood, injuries to works where the goods or raw materials are manufactured, government regulations of fuel, transportation, labor or production, and inability for whatever reason to secure necessary labor, materials or supplies. In case of curtailment of production for any of the above causes, Seller reserves the right to deliver pro rata the goods which it produces to all customers from whom it may have orders, and to invoice Buyer for partial shipment accordingly, and Buyer shall make payment on the purchase price in amounts as so invoiced.

RETURNS: Products are not to be returned to Seller without specific written authorization. Seller assumes no responsibility for Products returned without such authorization. Returns may be subject to a restocking fee.

CANCELLATION: Buyer may not cancel any order except upon written notice to Seller and on payment of a reasonable and proper sum to compensate Seller for expenses incurred in the engineering and/or manufacture of said order to the date of cancellation and for Seller's reasonably anticipated profit in connection with such order.

GOVERNING LAW: This contract shall be deemed to have been entered into in the Commonwealth of Virginia and shall be governed and interpreted in accordance with the law of the Commonwealth of Virginia.

CONFIDENTIALITY: Technical information and drawings supplied by Seller in connection herewith shall remain confidential pending Buyer's acceptance of any proposal and following the formation of a contract and delivery of the equipment.

ENGINEERING SERVICES: In the event that Buyer purchases the Seller's engineering services with respect to a proposal and does not purchase equipment from Seller, Buyer agrees to hold Seller harmless from any and all loss, cost, damage, liability, claim, action, expense (including attorney's fees) arising out of or in connection with the use of engineering services supplied by Seller.

PAYMENT DELINQUENCIES: Buyer shall pay Seller: (a) Delinquency fee: Past-due bills will be charged a late fee of 1.5% per month and thereafter. An Account that is over Ninety (90) Days Past Due, as per our policy, will be sent to our Collection Agent. (b) All costs and expenses incurred by Seller in collecting the delinquent amount, including, but not limited to, reasonable attorneys' fees and fees of collection agencies.

FORUM SELECTION: Buyer and Seller agree that any action brought by either party against the other shall be brought in either the Circuit Court for Prince William County, Virginia, or the United States District Court for the Eastern District of Virginia, Alexandria Division. The parties hereby consent to venue and personal jurisdiction in those courts for the purpose of carrying out this provision.

ENTIRE AGREEMENT: This contract and Seller's price lists as revised from time to time shall constitute the entire agreement between Buyer and Seller irrespective of inconsistent or additional terms and conditions in Buyer's purchase orders or other documents submitted to Seller whether or not the same have been executed or otherwise accepted by Seller. Except as specifically set forth herein all other agreements, proposals and understandings with respect to the subject matter of this contract are merged herein, and there are no promises, terms, conditions or obligations with respect thereto other than those contained herein and in Seller's price lists as revised from time to time.

Any and all representations, promises, warranties or statements by Seller's agents that differ in any way from the terms and conditions of this contract shall be of no force or effect. This contract may be amended only by a written instrument executed by all parties.

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