

## Terms & Conditions of Sale: KE2 Therm Solutions Inc.

KE2 Therm Solutions Inc. herein referred to as "Seller" and the customer or entity purchasing products ("Products") and/or services ("Services") from Seller is herein referred to as "Buyer." Seller's acceptance of Buyer's order is expressly conditional on Buyer's assent to the additional or different terms and conditions contained or referenced herein. These terms and conditions, any price list or schedule, catalog, quotation, or invoice from Seller relevant to the sale of the Products and/or Services and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of sale of the Products and/or Services by Seller to Buyer. Buyer's acceptance of the Products and/or Services will manifest Buyer's agreement to these terms and conditions.

**1. PRICES:** Prices for Products and/or Services, whether specified in Seller's price list or schedule, written quotation, or acknowledgement are subject to change without notice. Such prices shall be adjusted and the invoices will reflect Seller's prices for the Products and/or Services in effect when the Products are shipped and/or the Services are provided. All prices are exclusive of taxes, customs, duties, transportation, and insurance, which are to be borne by Buyer unless Seller's quotation specifies otherwise.

**2. TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the manufacture, sale, delivery, storage, or use of the Products, shall be for Buyer's account and shall be added to the price.

**3. TERMS OF PAYMENT:** With Seller's approval, payment terms are net thirty (30) days from date of Seller's invoice in the currency designated by KE2 Therm Solutions Inc. Seller shall have the right, among other remedies, either to terminate this sale or to stop Products in transit or to suspend further performance under these terms and conditions and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial condition become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller prior to shipment or for future deliveries for Products theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries.

**4. SHIPMENT AND DELIVERY:** Unless Seller's quotation specifies otherwise, shipments of Products are made and delivery shall occur F.O.B. Seller's shipping point. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. Buyer shall inspect the Products delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within thirty (30) days after receipt of such Products shall be an unqualified acceptance of such Products. While Seller will use all reasonable commercial efforts to ship in accordance with the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments.

**5. LIMITED WARRANTY: SUBJECT TO THE LIMITATIONS OF SECTION 6 AND UNLESS OTHERWISE SPECIFIED BY SELLER IN WRITING, SELLER WARRANTS THAT THE GOODS MANUFACTURED BY SELLER WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AND SUBSTANTIALLY MEET SELLER'S PUBLISHED SPECIFICATIONS AT THE TIME OF SHIPMENT UNDER NORMAL USE AND REGULAR SERVICE AND MAINTENANCE FOR THE PERIOD OF ONE (1) YEAR FROM DATE OF USER PURCHASE DETERMINED BY SELLER INVOICE DATE, OR (18) EIGHTEEN MONTHS FROM DATE OF SHIPMENT FROM MANUFACTURER, WHICHEVER IS EARLIER. THIS LIMITED WARRANTY IS VOID IF DEFECT(S) RESULT FROM FAILURE TO HAVE THIS UNIT INSTALLED BY AN INDUSTRY CERTIFIED/LICENSED HVAC/R CONTRACTOR. UNLESS OTHERWISE STATED IN A SEPARATE SOFTWARE LICENSE AGREEMENT, SELLER MAKES NO WARRANTY AS TO ANY SOFTWARE. THE WARRANTIES SET FORTH IN SECTIONS 5 AND 7 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE. PRE-PRODUCTION (PROTOTYPE, ENGINEERING VERIFICATION TEST, OR DESIGN VERIFICATION TEST) UNITS ARE SOLD "WHERE IS, AS IS, WITH ALL FAULTS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR INTENDED PURPOSE.**

**6. LIMITATION OF REMEDY AND LIABILITY:** The sole and exclusive remedy for breach of any warranty hereunder (other than the warranty provided under section 7) shall be limited to repair, correction or replacement, or refund of the purchase price under section 5. Seller shall not be liable for damages caused by delay in performance and in no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), shall Seller's liability to Buyer and/or its customers exceed the price paid by Buyer for the specific products provided by the seller rise to the claim or cause of action. Buyer agrees that in no event shall Seller's liability to Buyer and/or its customers extend to include incidental, consequential or punitive damages. The term "Consequential damages" shall include, but not be limited to, loss of anticipated profits business interruption, loss of revenue, sot of capital or loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of products is given without charge, and seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

**7. PATENTS AND COPYRIGHTS:** Subject to the limitations of Section 6, Seller warrants that the Products manufactured by Seller, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the following conditions: (i) that Buyer promptly notifies Seller of any claim or suit or threat thereof involving Buyer in which such infringement is alleged; (ii) that Buyer provides all reasonable assistance and cooperation requested by Seller in settling or defending against the claim or suit; and (iii) that Buyer permits Seller to control completely the defense, settlement or compromise of any such allegation of infringement. This warranty only applies to infringement arising out of operation of the Products according to Seller's specifications. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore: (i) if infringement is based upon use of the Products in connection with products not manufactured by Seller or in a manner for which the Products were not designed by Seller; (ii) if the Products were not designed by Seller; or (iii) if the Products were designed by Buyer or were modified by or for Buyer in a manner to cause them to become infringing. In the event any such Products are held to infringe any such U.S. patent or copyright in any such suit, and the use of such Products is enjoined, or in the event that Seller elects to compromise or settle the claim, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Products, to replace them with non-infringing Products, to modify the Products to become non-infringing, or to grant Buyer a credit for the depreciated value of such Products and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel this sale as to future deliveries of such Products, without liability.

**8. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; inability to secure materials; default or delay of suppliers; acts of Buyer; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the sale shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Products, or to obtain materials used directly or indirectly in the manufacture of the Products, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Products (without obligation to acquire other supplies of any such Products or materials) among its purchasers as Seller determines in its sole discretion to be appropriate without liability for any failure of performance which may result there from.

**9. CANCELLATION AND RESCHEDULING:** Buyer may reschedule or cancel its order only in accordance with Seller's then current Cancellation and Rescheduling Policy. Buyer agrees to pay any applicable cancellation or rescheduling charges. Such charges may include, among other things, all costs and expenses incurred to cover commitments made, overhead, and a reasonable profit allocable to work in process. Seller's determination of all such charges shall be conclusive. Standard cancellation charge is 25% of amount of cancelled items.

**10. CHANGES:** Orders shall not be subject to cancellation or change by the Buyer for any reason except with Seller's written consent and upon terms that will indemnify, defend and hold Seller harmless against all direct, incidental and consequential loss or damage. Seller may change product features, specification, designs and availability with notice to the Buyer.

**11. INDEMNIFICATION:** Buyer shall indemnify, defend and hold harmless Seller from and against any and all liabilities, losses, expenses, liens, claims, demands and causes of action arising out of any negligent act or omission of Buyer, its officers, agents, employees, contractors or assigns.

**12. ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

**13. U.S. EXPORT CONTROL REGULATIONS:** All Products sold to Buyer are subject to the export control laws of the United States and Buyer agrees not to re-sell or divert any Products contrary to such laws.

**14. TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Products and are due and payable in accordance with Seller's quotation. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer title to or rights to possession of the tools, dies, or patterns or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

**15. GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment or waiver of these terms and conditions shall be binding upon Seller, unless it is made in writing and it is signed on Seller's behalf by a duly authorized representative. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless it is hereafter made in writing and signed by the party to be bound. No modification or additional terms shall be applicable to these terms and conditions by Seller's receipt, acknowledgment, response to or acceptance of Buyer's request for quotation, purchase orders, shipping instructions, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected by Seller. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. Any provisions hereof which are found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions. The section headings are for convenience only and are in no way intended to affect the meaning or interpretation of any provision hereof. Any required or permitted notice will be deemed given when received in writing at the address of the party being given notice. The validity, performance, and all other matters relating to the interpretation and effect of these terms and conditions shall be governed by the laws of the State of Missouri for orders placed with KE2 Therm Solutions Inc. in North America. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in the State of Missouri, in the County of St. Louis, for orders placed with KE2 Therm Solutions Inc. in North America. No action, regardless of form, arising out of transactions relating to these terms and conditions of sale may be brought by either party more than two (2) years after the cause of action has accrued.