

TERMS AND CONDITIONS OF SALE

1. GENERAL POINTS

This document (the "Agreement") constitutes an offer by Thermocoax Inc. ("Thermocoax") to sell its goods and services (the "Equipment") to you (the "Client"). This offer is expressly limited to the acceptance of the terms contained herein and constitutes notice of objection to any additional or different terms in the acceptance so as to preclude the inclusion of any different or additional terms in any resulting contract.

2. ORDERS, PROPOSALS AND ESTIMATES

- 2.1 All orders must be made to Thermocoax in writing.
- 2.2 Any order for less than \$200, exclusive of any applicable taxes pursuant to Paragraph 6.2 herein, shall be invoiced for this amount.
- 2.3 All Thermocoax proposals and estimates made to Client are valid for one month. Thermocoax proposals relate to Equipment designated in the Thermocoax quotations only and do not include equipment installation or entry into service.
- 2.4 Services relating to study and adaptation of a configuration or piece of equipment, as well as its installation or entry into service, are confined to those specified in Thermocoax estimates.
- 2.5 If deliveries are staggered and postponed at the Client's request, Thermocoax prices may be updated pursuant to the latest prices in effect at the time of such delivery.

3. INTELLECTUAL PROPERTY

Any studies, designs, plans and projects created by or for Thermocoax and sent to the Client are the property of Thermocoax and may not be copied, reproduced or used without the written consent of Thermocoax.

4. DELIVERY

- 4.1 Delivery times given by Thermocoax are estimates only. In the event that an act or event beyond the reasonable control of Thermocoax and not the fault of Thermocoax renders it impossible to provide any piece of Equipment or to deliver the Equipment within the agreed upon time, no damages may be claimed by the Client.
- 4.2 Thermocoax reserves the right to deliver and invoice the operable Equipment separately. With respect to cables delivered on a per meter or on a per foot basis, the quantities invoiced are those which are actually delivered; these may differ by 10% from the quantities ordered (barring specifications to the contrary in the estimates).
- 4.3 The Equipment is sent at the Client's risk and peril, even in the event of it being returned or of dispatch sent carriage paid or C.O.D. It is the Client's responsibility to make all necessary reserves and to undertake any claim against the transporters in the event of damage or missing items.

5. RETURN AND CANCELLATION

No Equipment may be returned to Thermocoax without the prior written consent of Thermocoax. Equipment which has been accepted for return must be sent in its original packaging with all its accessories, and with all items in perfect condition, carriage paid, to the address indicated by Thermocoax. There is a minimum 30% restocking fee on any order that has been placed then cancelled by the Client.

6. PRICE AND INVOICING

- 6.1 Unless otherwise agreed, the latest Incoterms issued by the ICC (International Chamber of Commerce) shall apply to the trade terms quoted.
- 6.2 Prices on the equipment are exclusive of all city, state and federal excise taxes, including without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes are the responsibility of and must be paid by the Client.
- 6.3 In addition to the purchase price for the equipment, the Client shall pay and be liable for all of the Client's expenses incurred by Thermocoax for insurance, freight, cartage, warehousing, and all other charges in connection with delivering the equipment to the Client.

7. PAYMENT

- 7.1 Barring any contrary clause, Thermocoax invoices are payable within thirty days from the invoice date, net and without discount. Unless otherwise specified, Thermocoax does not allow discount for earlier payment.
- 7.2 Any order for less than \$200, exclusive of any applicable taxes pursuant to Paragraph 6.2 herein, shall be invoiced for this amount.
- 7.3 Payment for the equipment shall, if Thermocoax so requires, be made in full prior to delivery and Thermocoax shall be entitled to withhold delivery until such payment has been made and any check or other negotiable instrument given in payment has cleared.

8. LATE PAYMENT

- 8.1 Upon failure by the Client to make payment pursuant to the terms of Section 7 herein, all sums due, shall become as of right immediately due for payment, and shall bear interest at the prime rate as published in the Wall Street Journal, plus 6 percentage points, applicable on the first day of each month of delay, plus tax.
- 8.2 In the event of non-payment, the sale of all or part of the equipment the price of which has not been fully paid may be declared cancelled as of right.
- 8.3 In such an event, the Client shall be liable to pay a monthly compensation, equal to 2% of purchase price of the Equipment, as well as the costs of carriage, packaging, and of any repair and reconditioning of the equipment.

9. TITLE TO AND RESERVATION OF SECURITY INTEREST IN THE GOODS

- 9.1 Until the Client has completed payment of the equipment, title and ownership to said equipment shall remain with Thermocoax and its assigns and Thermocoax hereby reserves and the Client hereby grants to Thermocoax a purchase money security interest in the equipment.
- 9.2 Until payment for the equipments has been completed, the Client may not sell, transfer, convey, pledge, hypothecate or otherwise use the goods as security for any borrowing or for any other purposes. A violation of this provision shall result in an immediate default of the Client's obligations under this agreement.
- 9.3 Our Clients must not alter or obliterate signs of identification of Thermocoax equipment and its packaging, checking of which may be carried out at any time by Thermocoax or its assigns. Client shall bear the cost of damage that the equipment may incur or occasion.

10. ACCEPTANCE OF GOODS

If specified and agreed to in writing by the parties, inspection of the Equipment shall be carried out at the expense of the Client and in the presence of the Client and/or the Client's representative. The results of such inspection shall be set forth in a written report produced by the Client and signed by both parties. Such inspection must be carried out by the Client within fifteen days of notification from Thermocoax of the availability of the Equipment for inspection.

11. EXCLUSIVE WARRANTIES AND EXPRESS WAIVER OF ANY TORT OR CONTRACTUAL REMEDY

- 11.1 Thermocoax warrants the equipment to be free from defects in workmanship and/or materials for a period of one (1) year from the date on which such equipment is collected from Thermocoax or, failing this, from delivery of equipment to the Client. This warranty does not extend to parts or components not manufactured or processed by Thermocoax, although Thermocoax will, to the extent possible, pass to the Client the benefit of any guarantee or warranty given to Thermocoax

in respect of such parts or components. No equipment may be returned without the express written approval of Thermocoax after a determination by Thermocoax that such equipment is defective because of poor workmanship or defective materials. Thermocoax shall replace or repair, at its option, any defective equipment or portions thereof. In the event that Thermocoax determines in its sole discretion that the defect is attributable to any cause other than poor workmanship or defective materials (including, but not limited to, misuse or abusive operation of the equipment), then Thermocoax shall have no obligation whatsoever with respect to repair or replacement of the defective equipment and the warranty described herein shall be void and of no force and effect.

- 11.2 EXCEPT AS NOTED IN PARAGRAPH 11.1, THE PARTIES AGREE THAT THERE IS NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES BY THERMOCOAX, EITHER EXPRESSED OR IMPLIED, OR ANY AFFIRMATION OF FACT OR REPRESENTATION WHICH EXTENDS BEYOND THE DESCRIPTION OF THE FACE HEREOF.

- 11.3 THE MAXIMUM DAMAGES RECOVERABLE UNDER ANY LEGAL THEORY WHATSOEVER, IN THE EVENT OF BREACH OF ANY WARRANTY BY THERMOCOAX, EXPRESSED OR IMPLIED, OR OF THIS AGREEMENT OR UNDER ANY CIRCUMSTANCES SHALL BE LIMITED TO THE PURCHASE PRICE OF THE EQUIPMENT. CLIENT AGREES THAT NO OTHER REMEDY, (INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS) SHALL BE AVAILABLE TO IT UNDER ANY CIRCUMSTANCES.

- 11.4 WARNING – Thermocoax equipment is designed and manufactured with experienced and quality workmanship, using quality materials; Thermocoax equipment has been designed to meet all applicable standards. This equipment is available with components of various materials and should be used only in the services recommended by Thermocoax. MISAPPLICATION OF THE EQUIPMENT MAY RESULT IN INJURIES OR PROPERTY DAMAGE.

12. LIMITATION ON DAMAGES RECOVERABLE FOR WARRANTY, TORT OR CONTRACT ACTIONS OF ANY NATURE.

There is a limitation on damages recoverable regardless if the action against Thermocoax proceeds in warranty, contract, or tort pursuant to Paragraph 11 above. Thermocoax shall not be liable for delay in delivery for any cause beyond its reasonable control, nor shall such delay entitle the Client to cancel any order or refuse to accept delivery. Thermocoax shall not be liable for failure or delay in delivery or other performance hereunder if such failure is due in whole or in part to strikes, fires, accidents, wars, rebellions, civil commotion or public strike, acts of any government, whether legal or otherwise, acts or threats of terrorism, force majeure, inability to secure or obtain or delay in securing or obtaining transportation, machinery, materials, or sufficient qualified labor, or any other causes beyond the reasonable control of Thermocoax.

13. RISK OF LOSS

Unless otherwise specifically agreed upon in writing, risk of loss of the equipment shall pass from Thermocoax to Client when the equipment or any portion thereof, properly packed and secured in such a manner as to reach its destination in good condition under normal conditions of transport, is placed in the possession of the carrier, FOB Thermocoax shipping point for shipment to Client. Thermocoax may choose any reasonable carrier for delivery. Tender of delivery shall be deemed made at Thermocoax shipping point even when freight is prepaid to point of destination or Thermocoax is required to deliver the equipment to a particular destination.

14. MODIFICATIONS

This Agreement constitutes the entire agreement of the parties with respect to the terms and conditions of the sale of the goods specified herein. This Agreement supercedes any other agreement representation or statement made by Thermocoax prior to the date these terms and conditions are issued to the Client. No modification of this Agreement shall be binding upon the parties unless in writing and signed by the party to be bound. The requirement that any modification will be in writing cannot be waived unless the waiver of this requirement is in writing. Any terms and provisions contained in any document of the Client which are inconsistent with the terms and provisions hereof shall not be binding on Thermocoax and shall not be considered applicable to the sale or delivery of the equipment. No agent, employee or representative of Thermocoax other than its officers has any authority to bind Thermocoax to any affirmation, representation or warranty concerning the goods sold under this Agreement and unless an affirmation, representation or warranty made by an agent, employee, or representative is specifically included within this Agreement, it has not formed a part of the basis of this bargain and shall not in any way be enforceable or actionable.

15. WAIVER

Waiver by Thermocoax of a breach by the Client of any provision of this Agreement shall not be deemed a waiver of future compliance with the Agreement or the provision breached.

16. ASSIGNMENT

No right or interest in this Agreement shall be assigned by the Client without the written consent of Thermocoax, and no delegation of any obligation by the Client shall be made without the written permission of Thermocoax. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

17. CONTROLLING LAW

The validity and interpretation of this Agreement shall be governed by the laws of the State of Georgia.

18. EXCLUSIVE JURISDICTION

In the event of any legal action, the Client, to the extent it may lawfully do so, hereby submits to the exclusive jurisdiction of any state or federal court located in Fulton County, Georgia. The Client further submits to the exclusive jurisdiction of all Georgia courts from which an appeal may be taken from the aforesaid courts. The parties hereby expressly waive any objections based on personal jurisdiction or venue in any of these Georgia courts.

19. SEVERABILITY CLAUSE

If any paragraph of this Agreement or part thereof is determined to be invalid, all remaining paragraphs of this Agreement and all terms not invalidated shall be considered severable from the invalidated provision.

20. ARBITRATION

The parties hereby agree that any dispute concerning, relating or referring to this Agreement shall be resolved exclusively by binding arbitration according to the then existing rules of the American Arbitration Association in an arbitration conducted in Atlanta, Georgia, U.S.A. Such proceedings will be governed by substantive Georgia law. The dispute will be resolved by a single arbitrator who must be a lawyer admitted to practice in the courts of at least one state in the United States and have a minimum of fifteen years of experience in civil litigation. The arbitrator so described will be selected by the American Arbitration Association. Each party to the dispute shall have the right on a single occasion to veto the designation of an arbitrator so selected. There will be judicial review of the arbitrator's decision if either side can show plain error in the application of law or be able to show an abuse of discretion with respect to factual findings. The parties waive the right to rely on any state law or statute which creates an exception to enforcement of the requirement that disputes be resolved pursuant to arbitration in the manner set forth herein.