



DIVERSIFIED HEAT TRANSFER INC.

Designers and Manufacturers of Heat Transfer Equipment

SALES ORDER TERMS AND CONDITIONS

1. **Entire Agreement:** All sales by Seller are made subject to the following terms and conditions. Seller expressly rejects any different or additional terms or conditions contained in any documents submitted by Buyer. Seller's provision of credit, acceptances of purchase order and/or sale of any goods ("Products") are expressly made conditional on Buyer's assent to these terms and conditions. All orders by Buyer may be accepted only upon issuance of Seller's sales order acknowledgment. Except as stated in the Limited Warranty, Buyer is responsible for such inspection, processing, and testing as it deems necessary or desirable to ensure that the Products are suitable for Buyer's or end-user's specifications and compliance with its industry standards. Upon acceptance of the Products by Buyer as provided herein, Buyer agrees to the terms and conditions contained herein for all purposes.
2. **Additional Definitions and Interpretation:** As used herein, "Agreement" means these Terms and Conditions and the Purchase Orders; provided that if there are inconsistencies between the terms of a Purchase Order and these Terms and Conditions, these Terms and Conditions shall control. "Delivery" means partial or full delivery of the Products at the locations specified on the Purchase Orders; "Limited Warranty" means Seller's Limited Warranty with respect to the products contained below. In interpreting this Agreement: (a) the singular includes the plural and vice versa, (b) reference to any document or law means such document or law as amended from time to time, (c) the term "or" is not exclusive, (d) "include" or "including" means including without limiting the generality of any description preceding such term, (e) headings are for convenience only and do not constitute a part of this Agreement, and (f) all references to money refers to United States currency unless otherwise indicated on Seller's Sales Order Terms and Conditions.
3. **Acceptance of this Agreement; No conflicting Purchase Orders:** Buyer shall be deemed to have irrevocably accepted the Terms and Conditions of this Agreement upon the earliest of (a) executing this Agreement and delivering same to Seller; (b) acceptance of delivery of any Product, or (c) payment of any amount due for a product hereunder. All deliveries of Products are subject to these Terms and Conditions (the "Controlling Terms"). If any additional or different terms or conditions are contained in the Purchase Orders issued by Buyer, invoicing documentation, or other Buyer generated documents ("Proposed Terms"), the Controlling Terms shall govern regardless of when the Proposed Terms are received by Seller unless Seller agrees in writing to the Proposed Terms; otherwise, Seller objects to any and all Proposed Terms.
4. **Changes, Orders and Cancellation:** Seller may adjust the selling price to cover any requested change in specifications or other terms after receipt of the Buyer's order. Orders accepted by Diversified Heat Transfer, Inc., shall not be cancelled by the Buyer except at Diversified Heat Transfer, Inc. sole discretion. In the event of any cancellation, Diversified Heat Transfer, Inc., reserves the right to impose a termination charge sufficient to cover all losses and out-of-pocket costs incurred by Seller in connection with such order, including cost of materials and/or goods, engineering hours, labor charges and cancellation charges from vendors, etc... that are incurred prior to DHT's knowledge of order termination. Cancellations must be received in writing; DHT will not accept verbal notifications.
5. **Payment Terms; Late Payments, Security, Interest:** Payment for Products is due and payable within 30 days following the invoice date therefore unless stated otherwise in a purchase order or herein. Prices exclude all federal, state and local taxes, all of which shall be paid by Buyer. No taxes may be deducted from any payment unless Seller has received a valid tax exempt certificate Buyer. Past due amounts shall bear interest at the rate of 1 ½ percent per month (18% per annum). Seller reserves the right to require Buyer to pay the purchase price, or to provide adequate security for the payment, prior to delivery of the Products. In connection therewith, Buyer grants to Seller a purchase money security in all Products ordered by Buyer under the Purchase Orders, and authorizes Seller to file Uniform Commercial Code financing statements, amendments as appropriate and to take all other actions Seller deems necessary or desirable to perfect, maintain, and foreclose on the security interest granted herein.
6. **Deliveries:** Delivery dates given by Seller are estimates only and are subject to shipping variations and requirements. Actual shipping dates shall tentatively be set by Seller and confirmed by the carrier. Seller shall attempt to notify Buyer of anticipated Delivery delays, but Seller shall not be in default due to delays in Delivery beyond Seller's reasonable control.
7. **Shipment Title; Risk of Loss:** Transportation shall be arranged by Seller as shown on the Purchase Orders, and unless otherwise specified on the Purchase Order shall be F.O.B. shipping site. Buyer shall pay the freight charges. Buyer shall assume risk of loss upon delivery of the Products to the carrier, but title to the products shall remain with the Seller until such time as Buyer shall have paid the total purchase price for the Products (the "Total Price") in full. Unless waived by Buyer, all Products shall be inventoried at time of Delivery, and Buyer shall note any shortages found on the shipping list and on the Bill of Lading. Any shortages must be claimed within 15 days after Delivery, and shall be addressed by Seller in accordance with the Limited Warranty.

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8. Installation; Safety; Insurance: Seller shall not be responsible for (a) Installing or supervising or otherwise assisting Buyer with installation of Products, or (b) Buyer's compliance with instruction materials provided by Seller, if any. Buyer shall be solely responsible for (i) investigating installers and determine the qualification of installers for particular projects, and (ii) compliance by Buyer and any installer with all laws and requirements during installation, including OSHA standards and requirement and installation codes. Buyer shall carry adequate insurance coverage, including liability and errors and omissions, for risk of loss, damage and injury before, during, and after installation.

9. Equipment Warranty and Remedy: (a) For new equipment only, we warrant to you that the Equipment that is the subject of this sale is free from defects in design (provided that we have design responsibility), material and workmanship. The duration of this warranty is twelve (12) months from shipment to you (the "Warranty Period"). If you discover within the Warranty Period a defect in design, material or workmanship, you must promptly notify us in writing within the Warranty Period. Within a reasonable time after such notification, we will correct within a reasonable period of time and subject to the availability of replacement parts, any such defect with either new or used replacement parts, at our option. Such repair, including both parts and labor, is at our option. Such repair, including both parts and labor, is at our expense.

(b) For repairs, parts and service provided by us, we warrant to you that the repairs parts and service we provide to you will be free from defects in material and workmanship. The duration of this warranty is ninety (90) days from the earlier of: (i) the date the machine which required the repairs, parts or service is returned to you by us, (ii) the date of your receipt of the part, or (iii) the date of repair, if performed at your facility. If during this ninety day period you discover a defect in the repairs, parts or service you must promptly notify us in writing.

(c) All warranty service is subject to our prior examination and approval and will be performed by us at DHT's facility or at service centers designated by us. All transportation to and from the designated service center will be at our expense, if determined any discrepancy with DHT's production, otherwise, all transportation of the equipment to the designated service center shall be at your cost and expense. If we are unable to repair the equipment to conform the warranty after a reasonable number of attempts, we will provide, at our option, one of the following: (i) a replacement for such Equipment, or (ii) full refund of the purchase price. These remedies are your exclusive remedies for breach warranty. Unless otherwise agreed in writing by us, our warranty extends only to you and is not assignable to or assumable by any subsequent purchaser, in whole or in part, and any such attempted transfer shall render all warranties provided here under null and void and of no further force or effect.

(d) Seller will use all reasonable efforts to obtain for you any manufacturer's guarantees or warranties for any subassemblies included in the equipment. To the extent such warranties are assignable; we hereby assign to you all warranties that are granted to us by our suppliers of any sub- assemblies contained in the Equipment.

(e) The warranties set forth above are inapplicable to and exclude (i) any product, components or parts not manufactured by us or covered by the warranty of another manufacturer, (ii) damage caused by accident, misuse or the negligence of you or any third party, normal wear and tear, erosion, corrosion or by disasters such as fire, flood, wind and lightning, (iii) damage caused by your failure to follow all installation and operation instructions or manuals or to provide normal maintenance, (iv) damage caused by unauthorized or improper installation of attachments, repairs or modifications, (v) damage caused by a product or component part which we did not design, manufacture, supply or repair, or (vi) any other abuse or misuse by you or any third party.

(f) NO EXPRESS OR IMPLIED WARRANTIES WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS PARAGRAPH, SHALL APPLY. BUYER SPECIFICALLY AGREES TO THE TERMS AND CONDITIONS HEREIN AND ACKNOWLEDGES THAT ITS RIGHTS ARE SPECIFICALLY LIMITED BY THE SOLE AND EXCLUSIVE REMEDIES CONTAINED IN THESE TERMS AND CONDITIONS.

10. Compliance with Laws: Buyer shall comply with all applicable federal, state, and local laws, rules and regulations in effect from time to time relating to the use, handling, transportation, installation, and disposal of the Products.

11. Indemnification: Buyer shall indemnify, defend, and hold harmless Seller, its affiliates, officers, directors, shareholders, and consultants from and against any and all claims, damages, cost, fees (including reasonable attorney's fees), obligations, or other liabilities of any kind that, directly or indirectly, relate to or arise from (a) failure of Buyer to perform Buyer's obligations under this Agreement, and (b) installation and use of the Products, including injuries to person or property before, during, and after installation.

12. Notices: All notices or other communications that are required or permitted to be given under this Agreement shall be sufficient in all respects if given in writing and delivered in person or by electronic mail, facsimile, overnight courier, or certified mail, postage prepaid, returned receipt requested, to the receiving party at the address shown on the Purchase Orders, or to such other address as such party may have given to the other by notice pursuant to this Section. Notice shall be deemed given on the date of delivery, in the case of personal delivery, electronic mail, or facsimile, or on the delivery or refusal date, as specified on the return receipt in the case of certified mail or on the tracking report in the case of overnight mail.

13. Governing Law and Forum: The laws of the State of New Jersey shall govern any action related to this Agreement. Any litigation with respect to this Agreement shall be brought in the courts of the State of New Jersey, county of Morris, and Buyer irrevocably submits to such personal jurisdiction and venue.

14. Attorney's Fees; Cumulative Remedies: If seller is required to take any action to enforce the terms of this Agreement, Seller shall be entitled to reasonable attorneys' fees and costs, costs of collection, and interest at the rate of 18% per annum on any unpaid amount from the date due. The remedies provided herein are cumulative and not exclusive, and shall not be construed to limit the availability of any and all other remedies available at law or in equity.

15. Amendments; No Assignment; Severability: This Agreement (a) may be amended or cancelled only in writing signed by both parties and (b) may not be assigned by Buyer without Seller's prior written consent, and any attempt to assign it without such consent shall be absolutely void. If any of the provisions herein shall for any reason be held void or unenforceable, the remaining provisions shall remain in full force and effect.

16. Counterparts, Facsimile, and Electronic Signatures: The Purchase Orders, which incorporate these Terms and Conditions, may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one Agreement. A facsimile or electronic signature shall be deemed an original and binding upon the party against whom enforcement is sought. Notwithstanding, by Buyer taking delivery of the Product upon delivery shall be deemed acceptance of these Terms and Conditions and the terms contained in the Purchase Order and any modification or change thereto.

17. Remedies: Seller shall not be liable to Buyer hereunder for any special incidental or consequential damages or for lost profits resulting from or in any manner related to the Products, their delivery, non-delivery, manufacture, design, installation, service, use or any inability to use the same, whether such damages be claimed under contract, tort or any other legal theory, regardless of whether Seller has been advised of the possibility such damages. In addition, Seller shall not be liable to Buyer or any other third party for any injury or damage to person or property due to any misuse, negligence, unauthorized repair, alteration or abuse of the Product. The maximum extent of any liability against Seller shall be the total cost of the Product.

18. Entire Agreement: The Purchase Order and these Terms and Conditions constitute the entire agreement and understanding of the Buyer and Seller with respect to the matters set forth therein and herein, and representations, promises, agreements or understandings, written or oral, which are not contained herein or therein, shall be of no force or effect. No change, modification or waiver of any provision hereof shall be valid or binding unless the same is in writing and signed by the party against whom such change, modification or waiver is sought to be enforced. Certain

changes to a Purchase Order will necessitate a change in the price for a Product, and Seller shall notify Buyer in writing of such price changes; once the Product is accepted with the change, Seller shall have been deemed to accept the price change if no otherwise accepted in writing prior to acceptance