

TERMS AND CONDITIONS OF SALE

BRYAN BOILERS

("Seller")

PRICES AND TERMS OF PAYMENT

- A. Prices quoted are firm for no more than 30 days from the date of quotation, subject to any conditions stated in Seller's quotation or in an order submitted by Buyer and expressly accepted in writing by Seller. Seller will not be bound by any price sheet or quote other than a price quote signed by an authorized representative of Seller.
- B. Prices on orders accepted by Seller are firm, to the extent stated in the accepted order, subject to the following:
1. The purchase order must provide for shipment within six months of the date of the purchase order.
 2. Any shipment made more than six months after such date is subject to a price adjustment, at Seller's sole discretion, to the Seller's price in effect at the time of shipment, which will not exceed 125% of the price on the acknowledged purchase order
 3. Any shipment more than 12 months after the date of the purchase order will be invoiced at Seller's price in effect at the time of shipment.
- C. On orders having a total price of less than \$100,000 payment will be due "net 30 days" from date of shipment with approved credit, unless otherwise specifically agreed to by Seller. On orders having a total purchase price of \$100,000 or more, terms are 10% with order, 40% upon Seller's receipt of Buyer's approval of drawings, 45% within 30 days after shipment with approved credit and 5% at start-up of the products or within 90 days after shipment, whichever occurs sooner.
- D. The price of parts, components, and other items not manufactured by Seller is subject to adjustment by Seller to reflect price changes by Seller's suppliers.
- E. Orders accepted by seller are subject to credit investigation and approval. If Buyer's financial condition at any time does not justify the terms specified, Seller may require full or partial payment as a condition to commence or continue to manufacture, or in advance of shipment or, if shipment has been made, recover shipment from the carrier. A service charge of 1-1/2% per month will be added to all accounts 30 days past due.
- F. Any tax or government charge now or hereafter leveled upon the production, sale, use, or shipment of products ordered or sold will be charged to and paid by the Buyer, unless the Buyer has provided Seller with a tax exemption certification acceptable to the applicable taxing authorities. Such taxes are not covered in the selling price unless expressly stated on the quotation form.

SECURITY INTEREST

Notwithstanding transfer of title to Buyer, the Seller retains and the Buyer hereby grants to the Seller a purchase money security interest in all products sold, and Buyer hereby irrevocably appoints Seller as its attorney-in-fact to execute and deliver, in Buyer's name, any such financing statements or other documents as may be necessary under the Uniform Commercial Code or other applicable laws governing the items sold herein to perfect Seller's interest therein.

Buyer will obtain and maintain insurance against loss or damage naming Seller as an additional insured in an amount sufficient to protect Seller's interest in all products until the purchase price has been paid in full.

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 Bryan Boilers shall not be canceled by the Buyer except at Bryan's sole discretion. In the event of any cancellation, Bryan reserves the right to impose a cancellation charge sufficient to cover all losses

and out-of-pocket cost incurred by Seller in connection with such order, including materials and labor charges and cancellation charges from vendors, plus a cancellation charge of 20% of the original face amount of the order to compensate Seller for its lost profits.

RETURNED GOODS

Products may not be returned for refund or credit after Buyer has agreed to accept them. Inspection by a Seller representative may be required before return authorization is granted. A minimum restocking and handling charge of 25% (plus the cost of any missing parts or components and inbound freight) will apply to all such returned products. All transportation charges for returned products must be paid by Buyer.

TRANSPORTATION TERMS AND CLAIMS

Unless otherwise stated on Seller's quotation form, all prices are F.O.B. Seller's shipping point. Delivery to the initial carrier shall constitute delivery to the Buyer. Seller's responsibility ceases and title to the goods passes, subject to Seller's security interest, upon delivery in good order to such carrier, and all products are shipped at the Buyer's risk. The Buyer agrees to examine all deliveries carefully before signing transportation receipts. If products are visibly damaged, the Buyer shall require that written confirmation of the damage be noted on the carrier's delivery receipt and confirmed by the driver for the carrier. If damage is discovered after unpacking, the carrier shall be notified at once so that an inspection can be made and the claimed damage substantiated by the carrier

FORCE MAJEURE AND STORAGE

- A. Seller shall not be liable for any delay or delivery of shipment of products or for any damages failure in the suffered by reason of such delay or failure if, directly or indirectly, due to fire, flood, other weather conditions, accidents, riots, war, embargo, labor stoppages, inadequate transportation facilities, shortages of material or suppliers, regulation by government authority, or any cause beyond Seller's control.
- B. Seller reserves the right to allocate available production among its customers in any fair and reasonable manner that it determines is necessary or desirable.
- C. If delivery is delayed due to any cause beyond Seller's control, Buyer shall reimburse Seller for any added costs. Without limiting the foregoing, product on which manufacture or delivery is delayed due to any cause may be placed in storage by Seller, for the Buyer's account and risk, and regular charges therefore and expenses in connection therewith shall be paid by the Buyer. If, in Seller's opinion, it is unable to obtain or continue such storage, the Buyer will, on request, provide or arrange for suitable storage facilities and assume all costs and risks in connection therewith.

SHORTAGES, VARIANCES, AND WEIGHTS

No claims for variance from or shortages in orders will be considered unless presented within 30 days after receipt of products. Any shipping weights given or estimated are approximate, for the Buyer's convenience only, and not guaranteed by Seller.

LIMITS OF LIABILITY

Any action by Buyer on this contract must be commenced within one year after the cause of action accrues. Actions on Seller's Warranties shall be limited as provided therein. Seller shall in no event have any liability for any liquidated damages, consequential damages or penalties, whether on account of lost profits, or otherwise, unless specifically agreed to in writing signed by an authorized representative of Seller.

PRODUCT CHANGES

Seller reserves the right to make changes in products of any kind without prior notice, and to deliver revised designs or models of products against

any order. Seller shall have no responsibility whatsoever with respect to changes made by the manufacturer of products sold but not manufactured by it.

PATENTS

Products manufactured and sold by Seller may be used by the Buyer pursuant to such patent rights as Seller may own or enjoy. Seller shall not be liable for any use to which any such products may be put as part of any system, mechanism or process covered by patent rights of others.

TESTS

Any tests requested by the Buyer to determine the performance of products covered by Seller's quotation, must utilize procedures acceptable to Seller and the Buyer is responsible for the costs thereof. Whenever an order includes start-up or service agreements, Seller shall not be obliged to provide any start-up or other service as long as any payment to Seller is in default.

CONFLICTING PROVISIONS OFFERED BY BUYER

Any terms and conditions of Buyer's purchase order which are different from, in addition to or inconsistent with the terms and conditions expressed herein, are hereby objected to, and will not be binding on Seller in any manner whatsoever unless accepted by Seller in writing.

Seller shall ship the products referred to in this document only on the condition that the terms and conditions of sales set forth hereon shall be binding on the Buyer.

APPLICABLE LAW

Any orders or contracts received by Seller from Buyer shall be governed by, consulted and enforced by the laws of the state of Indiana.

COMPLETE AGREEMENT

The complete agreement between Seller and Buyer is contained herein and in any specifications signed by the Seller, and no additional or different terms or conditions stated by Buyer shall be binding unless agreed to by Seller in writing. Neither course of dealings, nor usage of trade, shall be relevant to supplement or explain any terms used in this Agreement, and this Agreement may be modified only by a writing signed by both Seller and Buyer. The failure of Seller to insist upon strict performance of any of the terms and conditions stated herein shall not be considered as a continuing waiver of any such terms or conditions or any of Seller's other rights.

CHANGES IN TERMS

These terms and conditions of sale are subject to change by Seller from time to time without prior notice.

LIMITED WARRANTY

BRYAN BOILERS

("Seller")

LIMITED WARRANTY

Subject to the terms and conditions herein, Seller warrants to the original owner at the original installation site that products manufactured by Seller ("Products") comply, at the time of manufacture, with recognized hydronics industry regulatory agency standards and requirements then in effect and will be free from defects in materials and workmanship for a period of 12 months after the date of start-up or 18 months after the date of shipment, whichever shall be less (the "Warranty Period").

REMEDY

- A. The sole remedy for breach of this warranty is expressly limited to the repair or replacement of any part found to be defective under conditions of normal use within the Warranty Period. Installation is not included.
- B. Warranty - The owner must notify the original installer of the Product and Seller, in writing, within the Warranty Period, providing a detailed description of all claimed defects. Transportation to a factory or other designated facility for repairs of any products or items alleged defective shall, in all events, be the responsibility and at the cost of the owner.

EXCLUSIONS

Seller shall have no liability for:

- A. Incidental, special, or consequential damages, such as loss of the use of products, facilities, or production, inconvenience, loss of time or labor expense involved in repairing or replacing the alleged defective Product.
- B. The performance of any Product under conditions varying materially from those under which such Product is usually tested under industry standards as of the time of shipment.
- C. Any damages to the Product due to abrasion, erosion, corrosion, deterioration, abnormal temperature, or the influence of foreign matter or energy.

- D. The design or operation of owner's plant or equipment or of any facility or system of which any Product may be made a part.
- E. The suitability of any product for any particular application.
- F. Any failure resulting from misuse, modification not authorized by Seller in writing, improper installation, or lack of proper maintenance.
- G. Equipment furnished by the owner, either mounted or unmounted, or when contracted for by the owner to be installed or handled.

Seller's liability under this warranty shall not in any case exceed the amount paid for the Product found to be defective.

THIRD-PARTY WARRANTIES

For goods or components not manufactured by Seller, the warranty obligations of Seller shall, in all respects, conform and be limited to the warranty actually extended to Seller by its vendors.

SEVERABILITY

To the extent that any provision of this warranty would be void or prohibited under applicable law, such provisions shall be limited in effect to the minimum extent necessary to render the remaining provisions hereof enforceable.

NO OTHER WARRANTIES

Seller makes no implied warranty of merchantability or fitness for a particular purpose, or other warranties with respect to any products or services except as expressly set forth in this limited warranty.