



Thermcraft

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DOMESTIC PAYMENT TERMS

MINIMUM ORDER: \$150.00

NEW ACCOUNTS:

\$0 - \$500	Credit card or payment before shipping
\$501 & UP	Credit terms may be extended if an acceptable D&B report can be obtained. If not: credit card, or pre-payment will be requested.

CURRENT ACCOUNTS:

\$0 - \$30,000	<u>Net 30</u> – for customers with prior credit approval
\$30,000 & UP	Progressive payments – based on the following schedule:

Delivery schedule of 12 wks or less:

- 30% with orders
- 30% upon approval of drawings by customer
- 30% due at shipment (to be invoiced 30 days prior to shipment)
- Balance due upon start up (limited to 60 days after shipment)

Delivery schedule of more than 12 wks:

- 40% with orders
- 30% at 12 weeks ARO
- 20% due at shipment (to be invoiced 30 days prior to shipment)
- Balance due upon start up (limited to 60 days after shipment)

Freight Terms:

All domestic shipments are quoted FOB: Winston-Salem, NC unless specifically requested to be included in pricing. Preferred transportation can be requested when ordering; otherwise, orders will be shipped best way with freight prepaid and billed separately.

Packaging:

Quoted prices include standard carton or wooden packaging. Occasionally, due to the type of equipment or transport methods, we may advise a special handling/packaging charge. For example: reshipments for export, environmental protection, special exposure to risk, etc.

Thermcraft Holding Co, L.L.C.
TERMS AND CONDITIONS OF SALE

1. Contract and Acceptance.

The terms and conditions set forth herein, and all drawings, specifications, descriptions and other documents attached hereto and incorporated herein by reference constitute the entire agreement between Thermcraft, Holding LLC, Co. ("Thermcraft") and Buyer. THERMCRRAFT'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO THE TERMS CONTAINED HEREIN. Unless agreed to in a writing signed by Thermcraft, the terms and conditions of Thermcraft's proposal (if any) and acknowledgement shall prevail over any conflicting or different terms herein and in Buyer's order and Thermcraft objects to Buyer's terms and conditions and such terms are expressly rejected. The failure of Thermcraft to object to any provision in conflict herewith, whether contained on Buyer's purchase order or otherwise, shall not constitute a waiver of the provisions hereof, nor an acceptance thereof. Thermcraft's proposal is only preliminary unless and until it is confirmed. Any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Buyer of this contract and all of its terms and conditions.

2. Prices.

Prices quoted by Thermcraft are based on the cost of materials, freight and labor prevailing on the date of quotation. Any increase in any of such costs prior to completion of the contract may be invoiced to Buyer at actual additional costs incurred by Thermcraft, which shall include applicable overhead. The costs for all labor are based on a forty (40) hour work week. Overtime, if requested by Buyer, will be invoiced net to Buyer as an extra charge.

3. Taxes, Duties and Other Charges

Prices are exclusive of all excise, sales, use or like taxes, and therefore, are subject to an increase equal in amount to any tax Thermcraft may be required to collect or pay upon the sale or delivery of the items purchased.

Unless expressly agreed otherwise, Buyer shall also pay all import/export duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon, whether payable by Thermcraft or Buyer, imposed or levied on or with respect to the order, the amounts payable hereunder, the equipment or the possession, sale, use, furnishing or ownership of the equipment. Buyer shall also be responsible for obtaining and paying for any permits, licenses, or other governmental authorization(s) necessary for the exportation or importation of the equipment into the designated country of importation, and it shall comply with all laws and regulations thereof. If Buyer shall fail to pay and discharge such taxes, duties and other sums when due, Thermcraft may, at its option, pay the same, in which event Buyer shall promptly reimburse the Thermcraft for such sums paid.

4. Delivery/Title.

Except as otherwise agreed to by Thermcraft in writing, delivery will be made Ex Works Point of Origin. Thermcraft will establish estimated shipping schedules as closely as practicable in accordance with Buyer's requested delivery date. However, Thermcraft will not be responsible for failing to meet delivery schedules nor for any losses or damages to Buyer (or any third person) occasioned by deviations in the performance or the nonperformance of any of Thermcraft's obligations hereunder or by damage to the equipment when caused directly or indirectly by a Force Majeure Event (as defined in Section 9 below). Thermcraft reserves the right to ship in advance of any delivery date requested by Buyer,

except for those dates stipulated "not before" by Thermcraft and Buyer in writing.

All shipping terms shall have the meanings set forth in INCOTERMS™ 2020, as published by the International Chamber of Commerce. Transportation from this point and consular and brokers' fees, if any, shall be at Buyer's expense. Notwithstanding any shipping term, title to any equipment sold and risk of loss of such equipment passes to Buyer upon delivery by Thermcraft to the carrier and equipment shall be deemed "delivered" at such time, and any claims for losses or damage occurring after delivery to carrier by Thermcraft shall be made by Buyer directly with the carrier. In the event Thermcraft pays transportation and insurance beyond the point of shipment to the destination specified by Buyer, all such costs should be billed to Buyer as a separate item on the applicable invoice.

Thermcraft hereby reserves, and Buyer hereby grants to Thermcraft, a purchase money security interest in the equipment sold and the proceeds thereof until payment of the full purchase price to Thermcraft. Buyer agrees to execute financing statements or other documents as Thermcraft requests to perfect its security interest.

5. Payment Terms.

All accounts are payable in United States funds, free of exchange, collection, or any other charges. Buyer agrees to pay all invoices within thirty (30) days. If, in the sole discretion of Thermcraft, the financial condition of Buyer at any time so requires, Thermcraft retains the right to require full or partial payment in advance. If Buyer fails to make payment when due, Thermcraft shall have the right to withhold shipment of any equipment under this or any agreement between Thermcraft and Buyer. Invoices not paid within thirty (30) days of the invoice date will have 1-1/2% per month interest charge assessed against the unpaid balance from the date of invoice until the date of payment, which Buyer agrees to pay. Notwithstanding the foregoing, interest shall not be charged on any overdue payment at a rate in excess of the maximum rate permitted by law.

6. Acceptance of Orders; Credit.

All orders are subject to Thermcraft accounting department approval prior to acceptance by Thermcraft. Thermcraft makes no assurance or guarantee regarding any amount of credit or the continuation of such credit to Buyer. In the event credit is provided by Thermcraft to Buyer, or Performance Assurance (as hereinafter defined) is required by Thermcraft of Buyer, Buyer shall provide to Thermcraft, as requested by Thermcraft, such annual or interim reports containing Buyer's and/or Buyer's Performance Assurance provider's consolidated financial statements for a particular fiscal year or accounting period, as requested. In all cases, such statements shall be in accordance with generally accepted accounting principles. Notwithstanding the foregoing, if Thermcraft determines, in its sole discretion, that the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Thermcraft may: (a) suspend deliveries of equipment, (b) require prepayment by wire transfer of immediately available funds, and/or (c) require Performance Assurance. Buyer hereby waives written notice of any such action. "Performance Assurance" means collateral in the form of either cash, letter(s) of credit, guaranty, or other security acceptable to Thermcraft in its sole discretion. In the event Buyer fails to timely pay Thermcraft any payments due Thermcraft (whether under this contract or pursuant to any other obligation of Buyer to Thermcraft) in accordance with Thermcraft's terms, Thermcraft may, in addition to any other remedies it may have under this contract, defer further shipments until such payments are made or, at its option, cancel the unshipped balance without any liability to Buyer.

7. Documentation and Training.

Thermcraft will supply all documentation and operator's instructions applicable to the equipment ordered and normally supplied for such equipment at no charge. Training can be provided at Buyer's site or Thermcraft's facility for an additional charge.

8. Proprietary Rights.

Thermcraft retains for itself all proprietary rights in and to all designs, engineering, details and other data pertaining to any equipment specified in the contract and to all discoveries, inventions, patent rights, etc. arising out of work done by Thermcraft in connection with the contract and to any and all equipment. Mold or die charges convey to Buyer the exclusive right to the use of molds or dies, but do not convey title or right of possession. The molds will be maintained in first class condition, ordinary wear and tear excepted, provided there is no change in Buyer's specifications or design, but reserves the right to scrap the same if no orders are received over a period of one year.

9. Warranty.

- a. Thermcraft warrants equipment manufactured and sold by Thermcraft hereunder shall conform, at the time of delivery, to the contract specifications agreed upon by Thermcraft in writing. Buyer's remedies with respect to any equipment furnished by Thermcraft hereunder that is found not to be in conformity with forgoing warranty shall be limited exclusively to the right of repair or replacement of such defective equipment or, at Thermcraft's option, refund of the sale price of the equipment. Buyer's obligation to make payment on time for the balance of products delivered under the contract is not affected by any claim of Buyer hereunder. All labor and freight charges within the geographical scope of this warranty from repair or replacement of defective equipment will be borne by Buyer. Warranty claims must be asserted in writing within five (5) days after delivery or installation of the equipment.
- b. The foregoing warranties shall not extend to: (1) any equipment which has been subjected to misuse, misapplication or neglect; damaged by accident; rendered defective by reason of improper installation, erection or starting up not performed by Thermcraft; not used as recommended and in accordance with approved installation and operating practices; or rendered defective by the performance of repairs, modifications or alterations outside of Thermcraft's plant, except when performed under Thermcraft's specific authority; (2) any equipment furnished or solicited by Buyer or acquired from others at Buyer's request and/or Buyer's specifications; (3) any components not manufactured by Thermcraft which are attached to, incorporated in or otherwise made a part of Thermcraft's equipment, it being acknowledged by Buyer that only the respective original manufacturers' warranties with respect to such components shall be offered to Buyer to the extent permitted by such manufacturer; and (4) defects resulting from damage due to unusual physical or electrical stress, corrosive, abrasive, or other wear not normally to be expected in the equipment involved. Thermcraft's liability for the service of any refractories or other component parts manufactured by others than Thermcraft, but incorporated in the equipment sold to Buyer, shall be limited to the guarantee or liability to Thermcraft of the manufacturer or supplier of such components. Thermcraft shall in no way be responsible in any manner for operation of the equipment in Buyer's plant or elsewhere, and Buyer agrees to hold harmless and indemnify Thermcraft from and against any liability with

respect thereto. Thermcraft's warranties or guarantees do not apply to the process of manufacture or the quality of the product on or for which the equipment sold to Buyer may be used.

- c. Thermcraft will defend any action against Buyer to the extent that it is based on a claim of infringement of a United States patent by Thermcraft equipment purchased hereunder, provided Buyer notifies Thermcraft promptly in writing of any such action and all prior related claims and gives Thermcraft sole control of the defense of same and all negotiations for the settlement or compromise thereof. Thermcraft shall have no liability to Buyer under this paragraph or otherwise for any infringement or claim based upon (i) the use of any equipment furnished hereunder in combination with any other equipment not supplied by Thermcraft hereunder; (ii) any equipment engineered, developed, constructed, sold, or used in compliance with Buyer's designs, specifications or recommendations, or for any device or part that is specified by the Buyer; or (iii) the modification of any equipment supplied by Thermcraft.

10. Limitations.

- a. THE ABOVE EXPRESS WARRANTY IS THE ONLY WARRANTY MADE BY THERMCRRAFT. THERMCRRAFT GRANTS NO IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NO OTHER EXPRESS WARRANTIES. THE EXPRESS OBLIGATION STATED ABOVE IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF THERMCRRAFT FOR DAMAGES INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF THERMCRRAFT SYSTEMS.
- b. THERMCRRAFT'S TOTAL LIABILITY TO BUYER FOR DAMAGES FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO ANY CAUSE WHATSOEVER IN RELATION TO THE CONTRACT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, OR OTHER CAUSE (A "CLAIM") SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SHIPMENT WITH RESPECT TO WHICH SUCH CLAIM RELATES. NOTWITHSTANDING THE FOREGOING SENTENCE, UNDER NO CIRCUMSTANCES SHALL THERMCRRAFT BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, REVENUE OR OPPORTUNITY, CLAIMS OF THIRD PARTIES OR FOR INJURY TO PERSONS OR PROPERTY, OR FOR ANY OTHER SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND OR NATURE.

11. Force Majeure Events.

Any delays in or failure of performance of Thermcraft shall not constitute default or give rise to any claims for damages if and to the extent that such delay or failure is caused by a "Force Majeure Event." Force Majeure Event shall mean any and all occurrences beyond the control of Thermcraft, including, but not limited to: acts of God or the public enemy; acts of government; acts of Buyer; expropriation or confiscation of facilities; compliance with any order or request of any governmental authority; compliance with priority or allocation orders or preference ratings issued by the government; pandemics/epidemics; quarantine

restrictions, acts of war, acts of terrorism, rebellion or sabotage or damage resulting therefrom; embargoes or other export restrictions; wrecks or delays of transportation; inadequate transportation facilities; inability to obtain raw materials; a significant increase in the price of materials; fires, floods, explosions, unusually severe weather, accidents, breakdowns; riots or strikes or other concerted acts of workmen, whether direct or indirect; circumstances under the control of its suppliers or subcontractors; or any other causes whether or not of the same class or kind of those specifically above named which are not within the control of Thermcraft and which, by the exercise of reasonable diligence, Thermcraft is unable to prevent or provide against.

12. Unloading and Storage.

Buyer shall at its own expense unload all equipment delivered by Thermcraft and, where installation by Thermcraft is contemplated, will store the equipment within one hundred (100) feet of the furnace site and then deliver it to the site when Thermcraft is ready to commence installation, and shall protect such equipment from any loss or damage. The Buyer shall immediately inspect and be responsible for all equipment delivered to it, and shall notify Thermcraft of any shortage or breakage within five (5) days from the delivery of same to Buyer.

13. Construction Facilities.

Buyer shall provide and make available during normal business hours, without cost to Thermcraft, all construction services and facilities required for installation of equipment. Buyer shall also provide necessary openings in the walls of its building, and shall furnish unobstructed access to the erection site, a suitable crane with operator and power when needed, and necessary foundations, reinforcement of floors and such modifications of the Buyer's building and premises as may be required to effect the installation, and such runways, timber, blocking and tackle as may be required.

11. Working Conditions.

Working conditions where Thermcraft's representatives and/or labor are required to supervise and carry out the installation of the equipment furnished hereunder shall be such as to permit the work to proceed without interruption. In addition, the Buyer shall furnish and maintain salamander heaters when required in cold weather, and shall furnish and maintain drinking water, and any necessary safety and sanitary facilities. Buyer shall reimburse Thermcraft in full for any loss or expense to Thermcraft caused by failure to maintain proper working conditions.

12. Protection for Thermcraft.

Buyer shall protect and hold harmless Thermcraft from and against any loss or damage through conditions beyond Thermcraft's control and against loss due to conditions on Buyer's premises during the period Thermcraft is engaged in work at the installation site which may be undertaken hereunder, and Buyer shall provide adequate insurance protecting Thermcraft and covering such risks. Buyer shall further defend, indemnify and hold harmless Thermcraft and its affiliates, directors, officers, agents, servants, employees, successors and assigns against, and hold them harmless from and against and pay on behalf of or reimburse any and all claims, demands, actions, causes of action, suits, obligations, liabilities, losses, damages, deficiencies, expenses, judgments, settlements and compromises (whether or not arising out of third-party claims), including, without limitation: (a) costs associated with a recall of any product into which Thermcraft's products are incorporated; (b) Buyer's failure to specify to Thermcraft any requirements that are required to be passed through to Thermcraft pertaining to a product into which Thermcraft's products are

incorporated; and (c) for bodily injury, death, property damage, or economic loss, as well as any and all costs and expenses, including interest, penalties, reasonable attorneys' fees, court costs, amounts paid in investigation, defense or settlement, and all indirect, special, incidental, consequential or punitive damages, relating to, resulting from or arising out of acts or omissions of Buyer relating to or arising out of the use, operation, ownership or condition of any of the products purchased by Buyer or the breach or non-performance of Buyer's obligations under these terms and conditions.

13. Substitutions and Modifications.

Thermcraft reserves the right to make substitutions and modifications in the specifications of equipment designed by Thermcraft providing that such substitutions and modifications will not materially and adversely affect performance of the equipment.

14. Cancellations.

The order or contract is subject to cancellation or instructions to suspend or delay work or delivery by Buyer only upon receipt of written notification and with Thermcraft's written consent, and upon Buyer's agreement to pay any applicable adjustment charge as determined by Thermcraft. Failure by the Buyer to make any payments at the times due and provided herein shall give Thermcraft the right to suspend work or delivery until payment is made. In the event that any failure to pay continues for more than fifteen (15) days after the due date, Thermcraft may at any time thereafter cancel this agreement by written notice mailed or faxed to Buyer and thereupon be entitled to recover the cost of all work done, all material provided and all damages sustained, and to repossess the equipment without process. Any such failure to make payments at the time provided shall be a bar to any claim by Buyer against Thermcraft for delay in completion of the work due to such suspension arising out of a failure to pay.

15. General.

A valid contract binding upon Thermcraft will come into being only at the time a formal written acceptance of the order is dispatched to the Buyer by a duly authorized agent of Thermcraft. This contract is made in, governed by, and shall be construed in accordance with the laws of the State of Ohio. The parties hereby expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Thermcraft and Buyer agree that any legal suit, action, or proceeding hereunder shall be brought and resolved exclusively by the State and Federal courts located in Cuyahoga County, Ohio, and the courts to which an appeal therefrom may be taken. Thermcraft and Buyer hereby consent to the jurisdiction of such courts and waive all questions of jurisdiction and venue. Legal process in any proceeding may be served on any party anywhere in the world. This agreement constitutes the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof, and supersedes all prior proposals, oral or written. Buyer agrees to pay Thermcraft all costs and expenses, including reasonable attorneys' fees (including those on appeal) incurred by Thermcraft in exercising any of its rights and remedies hereunder, including specifically the collection of any outstanding balance owed to Thermcraft by Buyer. This contract is not assignable without the prior written consent of an officer of Thermcraft and any attempt by the Buyer to assign any rights, duties or obligations under this contract will be void. In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be



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interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability. All Thermcraft rights and remedies shall be cumulative and may be exercised singularly or concurrently. If either party fails to perform any term of this contract and the other party does not enforce that term, failure to enforce on that occasion shall not prevent enforcement on any other occasion.