

## **Temtrol Standard Terms and Conditions**

### **TERMS AND CONDITIONS OF SALE**

Our offer to sell the products identified by your Purchase Order("Order") is made subject to the express condition precedent that you (the "Buyer") agree to all of the Terms and Conditions set forth below ("Standard Terms and Conditions") even though they may be different from, in addition to, or in conflict with those contained in your Order, including Temtrol's disclaimers of warranty and limitations of liability and remedies. YOUR FAILURE TO OBJECT IN WRITING TO TEMROL'S STANDARD TERMS AND CONDITIONS WITHIN TEN (10) DAYS OF YOUR RECEIPT HEREOF SHALL BE TAKEN AS EVIDENCE OF YOUR AGREEMENT TO ALL OF THE TERMS AND CONDITIONS STATED HEREIN, AND THE WITHDRAWAL OF ANY DIFFERENT, ADDITIONAL OR CONFLICTING TERMS YOU MAY HAVE OFFERED. You agree that the Standard Terms and Conditions stated herein are the complete and exclusive statement of our agreement as to all the matters addressed, and that they supersede all prior communications between us with respect to your Order. The Standard Terms and Conditions cannot be modified, waived or altered except by a writing signed by Temtrol.

### **TERMS OF LIABILITY**

All deliveries shall be F.O.B. Temtrol. Title (subject to any lawful reservation of Temtrol's security interest) and all risk of loss shall pass to the Buyer at the time and place of shipment, even though a document of title is to be delivered at a different time or place. The carrier shall be deemed in all cases to be the agent of the Buyer. The Buyer agrees to accept delivery of any part or all of the goods upon completion of same and the Buyer's failure to timely furnish Temtrol with proper shipping instructions shall not alter the payment terms of Temtrol's invoice as to any material tendered for delivery. Unless agreed to by Temtrol in writing, time is not of the essence with respect to delivery.

All estimated shipping or delivery dates are computed from receipt at Temtrol's factory of the Order and all information necessary to its proper execution. Lead or shipping times are approximate only and may be changed by Temtrol at its sole option. Temtrol shall not be held liable for any expense, loss or damage resulting from detention, delay or non-delivery caused by fire, strike, civil or military authority, insurrection or riot, inability to secure materials from usual sources of supply, or any other commercial impracticability resulting from circumstances beyond Temtrol's reasonable control which prevent fabrication or shipment in the usual course of business. Temtrol will promptly advise the Buyer of the occurrence of any delay, and of its

effect upon the scheduled delivery. Any delay of thirty (30) days or less shall be conclusively presumed immaterial and shall not relieve Temtrol from its obligation to deliver nor excuse the Buyer from accepting delivery. Should any such detention, delay or non-delivery exceed thirty days, the parties shall agree either to cancel this Agreement or any part thereof, without liability, or to extend the time of delivery for a period of time equal to that actually lost by the detention or delay.

## **TERMS OF PAYMENT**

Except to the extent credit terms are expressly agreed to by Temtrol in writing, invoices shall be payable according to their terms and without setoff, in United States Funds. If the Buyer fails, neglects or refuses to pay the invoice according to its terms, or upon such credit terms as expressly agreed to in writing by Temtrol, then the Buyer shall be responsible for any and all commercially reasonable charges, expenses or commissions incurred by Temtrol in stopping delivery, in the transportation, care and custody of the goods, and in connection with the return or resale of the goods, in addition to all other remedies available to Temtrol, and the Buyer shall also be liable to Temtrol for all reasonable costs of collection including reasonable attorney's fees. Temtrol shall have and retain a purchase money security interest in all goods sold to the Buyer or its affiliate companies under the Order, and in all proceeds from the disposition thereof, to secure payment for the purchase price for all such goods, and the Buyer agrees to cooperate with and assist Temtrol in perfecting same.

The maximum late charge allowed by law, not to exceed 1 1/2% per month, will be assessed on any invoiced amount not paid within thirty (30) days and, if credit terms have been expressly agreed to, Temtrol reserves the right to charge lawful rates of interest upon any outstanding balance, whether past due or not. Whenever, in Temtrol's judgment, reasonable grounds for insecurity arise with respect to the Buyer's ability to make payment when due, Temtrol may demand additional satisfactory security or adequate assurance of due performance, may refuse delivery or reclaim the goods, in addition to all other remedies provided for by law. The Order, and ant shipping or delivery instructions, shall each constitute the Buyer's separate written representation that is is solvent.

## **WARRANTIES AND LIMITATIONS OF LIABILITY FOR BREACH OF WARRANTY**

Temtrol, Inc., warrants all products to be free from defects in material and workmanship for twelve (12) months from the date of shipment unless a start-up form is on file and accepted by Temtrol, in which case the warranty is twelve (12) months from the date of start-up, or eighteen (18) months from date of shipment, whichever is shorter. Said start-up form shall signify that the equipment has been properly started and adjusted, and is operating under

normal conditions, prescribed ratings and specifications, and was installed by qualified personnel in accordance with Temtrol instructions and local codes and ordinances. For warranty purposes, start-up occurs when the equipment and/or blowers are started for operation of the equipment regardless of when the building may be ready for operation.

Temtrol's obligation hereunder shall be limited to the exchange of new parts for those returned to Temtrol's factory at buyer's expense and found to be defective, by Temtrol. Replacement parts shall be shipped F.O.B. Temtrol's factory. Replacement of parts hereunder shall not operate to extend the original warranty period as to any part, including replacement parts supplied hereunder.

This warranty does not cover corrosion; normal deterioration; misapplication; labor charges paid for parts replacement; adjustments; repairs or other work; loss of refrigerant; components supplied by others; defects in parts resulting from neglect, negligence, accident, fire, explosion, high or low voltage, jumpering or jamming controls; improper or contaminated fuel; excessive or inadequate fuel pressure; frozen heating coils; war; or any acts of God.

This warranty is void if equipment is misapplied or if any alterations are made to the basic design or operating requirements as listed on the original order and shipped for the factory unless approval is received in writing from Temtrol.

It is expressly understood that this warranty is made IN LIEU OF ALL OTHER WARRANTIES with the exception of those warranties attached hereto, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE and in consideration of the express warranty herein contained, BUYER EXPRESSLY WAIVES ANY RIGHT TO CLAIM OTHER WARRANTIES, EXPRESS AND IMPLIED.

It is further understood that Temtrol's liability for breach of warranty shall be limited to the terms of this warranty. Buyers agree that Temtrol SHALL NOT, IN ANY EVENT, BE LIABLE FOR CONSEQUENTIAL DAMAGES and that the buyer's sole and exclusive remedy shall be limited to that provided herein.

Temtrol neither assumes nor authorizes any person to assume for it any obligation or warranty other than those stated herein.

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Any suggestion to the contrary notwithstanding, Temtrol shall not, in any event have any liability under this warranty unless and until Temtrol has been paid in full for the products supplied. The warranty period shall begin to run as described above, however, whether or not payment has been made.

#### **DISCLAIMER OF LIABILITY FOR LIQUIDATED DAMAGES**

The Buyer agrees that no provisions for liquidated damages apply to this sale and that any provision contained in any other document which purports to fix an amount of liquidated damages for Temtrol's breach of a contract for sale shall be of no force or effect unless expressly agreed to in a writing signed by an Officer of Temtrol.

#### **INDEMNITY**

The Buyer agrees that if all or a part of the goods sold hereunder are incorporated into an improvement to real property owned by a third party, the Buyer will indemnify and defend Temtrol against any claim by such third party to the extent that the claim seeks to recover for damages or otherwise to invoke any legal or equitable remedies beyond those for which Temtrol has agreed to be liable hereunder.

#### **APPROVED SUBMITTALS - PLANS AND SPECIFICATIONS**

Temtrol specifically objects to and rejects any term in the Order or other documents that in any manner incorporates any plans or specifications, other than Temtrol's own specifications for its products, unless such incorporation has been expressly agreed to in a writing signed by Temtrol. However, if requested, Temtrol will prepare and forward to the Buyer or its designated representative submittals representing its interpretation of any such plans or specifications. Acceptance of (or failure to object to) Temtrol's submittals shall conclusively establish that same are in complete conformance with any plans or specifications, and all goods will be fabricated in accord with the submittals so approved.

## **CLAIMS PROCEDURES AND LIMITS**

Notice of any claim that goods delivered hereunder are defective or otherwise non-conforming, if such defect or non-conformity could have been discovered by the Buyer's reasonable inspection, must be delivered to Temtrol in writing within ten(10) days of delivery, and must be stated with particularity as to each and every claimed defect or non-conformity. Notice of any latent defect must be delivered to Temtrol in writing within ten (10) days of its discovery, but in no event more than ten (10) days after the expiration of the applicable warranty period. The Buyer's failure to deliver timely notice of any claimed defect or non-conformity to Temtrol hereunder shall constitute the Buyer's acceptance of the goods, shall relieve Temtrol of any further liability with respect to such defect or non-conformity and shall constitute a waiver of any remedy the Buyer may otherwise have had with respect to that defect or non-conformity; provided that, if Temtrol agrees in writing to perform acceptance testing after installation, completion of such tests or the execution of Temtrol's acceptance form by the Buyer shall constitute the Buyer's acceptance of the goods and waiver of any remedies for defects or nonconformity which could reasonably have been discovered at the time of acceptance.

Upon receipt of any notice under this paragraph, Temtrol shall have a reasonable opportunity to inspect the goods at the Buyer's premises or, at Temtrol's option, have the goods reshipped to its factory for inspection at the Buyer's expense. If the goods are determined to be defective, Temtrol's liability shall be limited to repair or replacement of the defective part(s) or, at its option, a refund of all or a pro-rata portion of the purchase price. However, in no event shall Temtrol be liable for any costs or expenses incurred by the Buyer to correct or repair any defect or non-conformity unless Temtrol has been timely notified of the defect or non-conformity and has specifically agreed in a writing signed by Temtrol to be responsible for such costs or expenses. Furthermore, any such unauthorized corrections or repairs may void Temtrol's obligations under its Standard Warranty. Expenses incurred by Temtrol in connection with claims for which it is not liable may be charged to the Buyer.

Defects or non-conformities that do not impair service or substantially impair the value of the goods shall not be cause for rejection. Temtrol shall not be liable for freight damage, whether concealed or not, misuse, abuse, misapplication or faulty installation, or any liabilities, costs or expenses incurred by the Buyer with respect to the goods, including but not limited to those incurred by the Buyer as the result of obligations it owes to third parties. If the Buyer has furnished or specified material not manufactured or normally used by Temtrol and it proves defective or otherwise results in expenses or damages not contemplated by the contract of sale, the Buyer agrees to indemnify Temtrol for all such expenses and damages incurred up to the time of the discovery of the defect, including consequential damages.

Any action against Temtrol for breach of contract or warranty must be commenced no later than one (1) year after accrual of the cause of action therefore.

### **TECHNICAL ADVICE AND SERVICES**

Temtrol assumes that any purchaser of its products is a knowledgeable and sophisticated commercial user and/or installer of same and that it will rely solely on its own judgment, experience and expertise. Accordingly, technical advice, recommendations and services are provided by Temtrol only as a convenience to the buyer, and are given and accepted at the Buyer's own risk. Temtrol assumes no responsibility or liability for the advice given or the results obtained.

### **ALTERATIONS**

No alterations to the goods being fabricated or supplied hereunder or to any specifications for same may be made by the Buyer without the express written consent of Temtrol. In the event such alterations are made without consent, the Buyer will be liable to Temtrol for all additional costs and expense incurred as a result.

### **CANCELLATION**

Except as otherwise provided herein, in the event the Buyer requests Temtrol to suspend work, delay delivery or terminate or otherwise cancel its Order, with respect to all finished goods and those that are within thirty (30) days of being finished the Buyer agrees to pay Temtrol's invoice for same. With respect to any unfinished goods, Temtrol may, at its option, complete fabrication and identify the goods to the contract, in which event the Buyer agrees to pay Temtrol's invoice for such goods, or at its option Temtrol may cease manufacture and resell the unfinished goods for scrap or salvage value at public or private sale, in which event the Buyer agrees to pay the contract price for such goods plus any incidental and consequential expenses incurred by Temtrol, less the sale price and any expenses saved by Temtrol as the result of cessation of manufacture.

### **INDEMNITY FOR INFRINGEMENT**

The Buyer agrees to hold Temtrol harmless and to indemnify Temtrol for any claim of infringement arising out of Temtrol's adherence to specifications, or use of materials furnished by the Buyer.

## **FAIR LABOR STANDARD**

All goods covered hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended, and all regulations promulgated hereunder.

## **PRICE SUBJECT TO CHANGE**

YOUR ORDER IS SUBJECT TO PRICE ESCALATION IF YOU DO NOT AUTHORIZE IT FOR RELEASE IN TIME TO PERMIT DELIVERY WITHIN SIX (6) MONTHS FROM THE DATE HEREOF (TEMTRON'S CUSTOMARY FABRICATION LEAD TIME IS EIGHT WEEKS). ESCALATION SHALL BE A PRICE WHICH IS THE LOWER OF THE NET PRICE COMPUTED ACCORDING TO TEMTRON'S PRICE ANNOUNCEMENT IN EFFECT AT THE TIME OF SAID SHIPMENT OR THE AGREED UPON PRICE INCREASED BY 1% PER MONTH FROM THIS ACKNOWLEDGMENT UNTIL THE EQUIPMENT IS SHIPPED.

## **ERRORS**

Stenographical, typographical and clerical errors are subject to correction.

## **TAXES**

Applicable federal, state and local sales, use or other taxes, whether required to be paid by Temtrol on its own behalf or on the Buyer's behalf with respect to the goods sold hereunder, shall be added to any price quoted or agreed to by Temtrol, unless Temtrol has expressly stated in writing that the price is inclusive of such tax.

## **CHOICE OF LAW AND FORUM**

The contract resulting from Temtrol's offer to sell goods identified by the Order shall be subject to and governed by the laws of the State of Oklahoma. The Buyer agrees that Oklahoma has a reasonable connection to the transaction contemplated by its Order and that all actions relating to disputes or controversies arising from or related to said transaction shall be brought and venued exclusively in a state or federal court located in Oklahoma County, Oklahoma, to the personal jurisdiction of which the Buyer submits.