

Daily Thermocontrol Purchasing Standard Terms and Conditions

1. **DEFINITIONS** - as used throughout the Purchase Order, this Contract Document, the following terms shall have the meanings set forth below:
 - a. "Buyer" means Thermocontrol, Inc.,
 - b. "Contract/Purchase Order" means the contracting instrument, including change notices, supplements, amendments, or modifications thereto.
 - c. "Seller" means the individuals, partnerships, corporation or associates contracting to perform the work hereunder, synonymous with "Supplier", "Subcontractor", and "Offeror".
 - d. "Goods", "Supplies", or "Items" includes any effort supplied by seller incidental to the sale of goods by seller under the order including, without limitation, installation, repair, and maintenance services. The term "Services" shall also include without limitation any effort specifically requested by the order, including all associated efforts such as design engineering, repair, maintenance, technical support, construction, consulting, professional or other services.
 - e. "Subcontract" unless provided otherwise in a purchase orders means all contracts placed by the seller or lower tier suppliers for the specific purpose of performing any portion of the work under this order, and includes but is not limited to Purchase Orders and changes or modifications thereto.
2. **ACCEPTANCE** - The purchase order incorporating these terms and conditions becomes a binding contract on the terms set forth herein when it is accepted by confirmation, acknowledgement or commencement of performance. Terms and Conditions contained in any acknowledgement of this purchase order, or with delivery of any goods under this purchase order, or conveyed by or through any other means which are different from or in addition to the terms and conditions of this purchase order shall not be binding on the Buyer whether or not they would materially alter this purchase order.
3. **CONFIDENTIAL INFORMATION** - All information including but not limited to writings, drawings, tools, models, and oral disclosures, not in the public domain, received by Seller from the Buyer or learned of or produced by Seller in connection with the performance of work under this order is the sole property of the Buyer and will be held by Seller in confidence at all times hereafter and will not be used by Seller or disclosed by Seller to any person, firm, or corporation without prior written consent of the Buyer. The foregoing shall not be construed as limiting the right of the Seller to use such writings, drawings, tools, models, and disclosures in the manufacture of end items for direct sale to the United States Government to the extent that the Government has the right under its prime contract with the Buyer or otherwise, to authorize such use by Seller, and further, to the extent that such use will not interfere with Seller's performance of this or other orders from the Buyer relating to Government contracts in effect at the time Seller enters into direct sale to the Government provided further, that Seller furnishes prior written notice to the Buyer of such intended use and to the extent practicable Seller prominently identifies each such end item as being manufactured by the Seller for direct sale to the United States Government.
4. **CHANGES** - The Buyer may at any time, in the manner described hereinafter, make changes within the general scope of this contract in any one or more of the following (i) quantities, (ii) drawings, designs, or specifications of supplies being specially manufactured for the Buyer, (iii) method of shipment or packing, (iv) place of delivery, and (v) delivery schedules. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule or both, and the contract shall be modified in writing accordingly. However, no additional charge will be allowed unless authorized by the Buyer's written amendment to the contract. Information, such as technical direction or guidance provided by the Buyer employees in connection with the Seller's performance in this contract, shall not be construed either as a change within the meaning of this provision or as direction to proceed outside the scope of this order. If seller considers the conduct of any of the Buyer's employees has constituted a change hereunder, seller shall notify the Buyer immediately, in writing, as to the nature of the change and its effect on seller's performance including delivery schedule and value of contract. The Buyer employees have no authority (a) to direct any change affecting (ii) above which increases or decreases the contract value, except by a change advise issued by the Buyer, or (b) to direct any other change affecting (i) through (v) above except by a change advice or other writing issued or signed by a the Buyer.

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5. MATERIAL AND OR SPECIAL EQUIPMENT -

- a. If the Buyer furnishes any material for fabrication hereunder, Seller (i) agrees not to substitute any other material in such fabrication without the Buyer's written consent, (ii) agrees that title to such material shall not be affected by incorporation in or attachment to any other property and (iii) agrees to state and warrant on its shipper and invoice for final parts. "All material furnished by the Buyer on this contract (except that which became normal industrial waste) has been returned in the form of parts and unused material." Proceeds of scrap salvage shall accrue to Seller and are reflected in the prices stated herein.
- b. Seller agrees that it will use any designs, tools, patterns, drawings, specifications, computer software, data, documents, information and equipment, title to which is in the Buyer, only in the performance of this contract and not otherwise, unless the Buyer's prior written consent has been obtained. The foregoing shall not be construed as limiting the right of the Seller to use designs, tools, patterns, drawings, specifications, computer software, data, documents, information and equipment in the manufacture of end items for direct sale to the United States Government, to the extent that the Government has the right under its prime contract with the Buyer or otherwise, to authorize such use by Seller, and further, to the extent that such use will not interfere with Seller's performance of this or other orders from the Buyer relating to Government contracts in effect at the time Seller enters into direct sale to the Government; provided further that Seller prominently identifies each such end item as being manufactured by the Seller for direct sale to the United States Government. Seller agrees that no inaccuracy in tools or fixtures, which the Buyer furnishes, shall excuse performance not in strict accordance with specifications upon completion or termination of this contract. Seller shall obtain from the Buyer shipping instructions or other authorized disposal instructions prior to the return of any items furnished by the Buyer under this contract. Unless otherwise specified in this contract, the contract price includes the cost of gauges, jigs, fixtures, dies, molds, tools, patterns, and similar property that may be obtained or required by Seller for use in the manufacture, fabrication or assembly of the articles called for herein and unless otherwise specified, title to such property will remain in the Seller.

6. **PROPERTY LIABILITY** - Seller shall (i) immediately notify the Buyer of and (ii) be liable for the loss of or damage to the Buyer and/or Government property while such property is in Seller's possession. Seller shall maintain in serviceable condition, preserve and account for all property furnished hereunder, and shall not use or dispose of same except in accordance with the Buyer written instructions. Seller shall also be liable for all losses to the Buyer occasioned by Seller's failure to furnish timely written notice to the Buyer of loss or damage to the Buyer and/or Government furnished property suffered in transit or prior to receipt by Seller. Seller agrees that the Buyer and/or Government representatives shall at all reasonable times, have access to any premises upon which the Buyer and/or Government property is located for the purpose of inspecting such property.

7. **WARRANTIES** - Seller warrants the articles delivered hereunder to be free from defects in workmanship material and manufacture and to be in compliance with any drawings or specifications incorporated or referenced herein and with any samples furnished by the seller. All warranties shall run to the Buyer, its successors, assigns, and customers and to the users of its products.

8. **INSPECTION** - Notwithstanding the Quality Assurance Procurement Codes noted on the purchase order, all items are subject to final inspection and acceptance at destination irrespective of any payments or inspection at source. Such final inspection and acceptance shall be conclusive except as to latent defects, fraud, such gross mistakes as amount to fraud, and the Seller's warranty obligations. The Buyer retains the right to subject supplies ordered hereunder to inspection by the Buyer and /or Government inspectors upon the premises of the Seller. At the time of inspections, Seller shall make available to the inspectors copies of all drawings and specifications, and process, preservation and packaging data applicable to the articles ordered herein, and reasonable facilities and assistance for the safety and convenience of the inspectors. All such information, facilities and assistance shall be furnished at no additional cost to the Buyer.

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9. **EXAMINATION OF RECORDS** - If this order is issued under a Government contract or subcontract hereunder, Seller's manufacturing plant (or such part thereof as may be engaged in work under this order), material and workmanship in connection therewith and Seller's books shall at all times, be subject to inspection and audit by any person designated by the head of any executive department of the Government or by any Contracting Officer, and Seller shall, for a period of three years after final payment hereunder, preserve and make available for such inspection and audit, its books, records, documents and other evidence bearing on its costs and expenses under this purchase order, including records, documents and other evidence in respect to any termination hereunder.
10. **PRIORITY RATINGS** - When a priority rating is specified on the Purchase Order, this is a Rated Order, Certified for National Defense. Seller is required to comply with the Defense Priorities and Allocation System (DPAS) regulation (15 CFR 700) and all contractual flowdown requirements imposed by the Federal Government.
11. **DEFAULT AND EXCUSABLE DELAYS** - Time is of the essence in the performance under this contract. The Buyer reserves the right to terminate this contract in the event of default or anticipatory breach by Seller or if shipments are not made within specified time. Such cancellation shall not be construed as a recession or waiver of any remedy unless expressly so stated upon cancellation. The Buyer's rights will be as specified in the Uniform Commercial Code. If advance or progress payments have been made under this contract, and order is terminated for default, the Buyer shall have the rights of the US Government set forth in FAR 52.232-16, Progress Payments, including paragraph (H), "Special Terms Regarding Default". Seller will not, however, be liable for damages occasioned by delays in delivery due to acts of God, war, Government issued priorities, general strike or similar causes beyond Seller's control and without its fault or negligence provided Seller notifies the Buyer in writing within ten (10) days after Seller has knowledge that any such event may delay or threatens to delay the timely performance of this contract.
12. **OVER AND ADVANCE SHIPMENTS** - No overshipments will be accepted except those resulting in good faith from conditions of loading, shipping, packaging or allowances in manufacturing processes, and in no case exceeding (i) 5% of the quantity called for or \$25.00 whichever is the lesser, or where applicable, (ii) the Forgoing Industry Association quantity tolerances. Unauthorized advance shipments are returnable at Seller's expense.
13. **TERMINATION FOR CONVENIENCE** - The Buyer may terminate this contract, by written notice, in whole or in part, when it is in the Buyer's interest to do so. The Buyer shall terminate by delivery to the seller of a notice of termination specifying the extent of termination and the effective date. Upon receipt of a notice of termination, and except as directed by the Buyer, the seller shall immediately: (i) stop work as directed; (ii) place no further subcontracts or orders for materials, equipment or services except as necessary to complete the continuing portion of the contract, and (iii) terminate all subcontracts to the extent they relate to work terminated. After termination, the seller shall submit a final termination settlement to the Buyer in the form and manner prescribed by the Buyer and in accordance with applicable portions of the Federal Acquisition Regulations (FAR) Subparts 49.1, 49.2 and 49.3
14. **PACKAGING** - All articles are to be packaged in suitable containers for protection in shipment and storage, and if Government specifications are applicable, in accordance with such specifications. Any highly polished, highly finished or precision parts are to be properly preserved and packaged in containers that will afford protection against corrosion, contamination and deterioration. Electronic components and assemblies should be packaged, as required, in hermetically sealed containers with electrostatic protection if necessary. Each container shall be marked with the Buyer purchase order number. Each container, of a multiple container shipment, shall be identified to show the number of the container and the total number of containers in the shipment. The Packing List and required Certifications will be included in package number 1. Material for different purchase orders shall be listed on separate Packing Lists.
15. **SHIPPING INSTRUCTIONS** - Shipments must be made as specified on the face of the purchase order unless subsequently modified in writing by the Buyer. Originals of all Government bills of lading, commercial bills of lading, air bills and rail and air express receipts shall be mailed to the purchasing department of the Buyer.

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16. **PATENT AND COPYRIGHT INDEMNITY** - Seller agrees to defend, at its own expense, all claims and actions asserted against the Buyer or its customers, and to indemnify and hold harmless the Buyer and its customers against all claims, demands, loss and liability, including costs and attorneys fees, resulting from actual or alleged infringement of any U.S. Patent, trademark, or copyright, by reason of the use or disposal of the materials or articles called for hereunder, unless such infringement necessarily arises from the Seller's compliance with drawings, data or instructions of the Buyer directing the performance of work hereunder in a manner not normally practiced by the Seller.
17. **ASSIGNMENT** - Neither this contract nor any interest herein may be assigned or otherwise transferred in any manner, except that claims for monies due or to become due Seller under this contract may be assigned to a bank trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract not already paid, shall not be made to more than one (1) party, and shall be subject to the right hereby reserved and exercisable by and granted to the Buyer to make at any time deductions from assigned claims by way of setoff or recoupment in the same manner that such deductions could be made if such assignment did not exist. This right of setoff or recoupment arose before or after the assignment or before or after any notice with respect thereto that Seller or its assignee may give to the Buyer it is also a condition of this limited consent that if, in spite of the prohibitions herein contained, multiple assignees are involved. The Buyer shall be entitled to apportion recoupment of setoff amongst such assignees in any manner it may elect.
18. **RELEASE OF NEWS INFORMATION** - If this purchase order is issued under Government prime contract or subcontract, no news release, public announcement, denial or confirmation of same or any part of the subject matter of this contract or any phase of any program hereunder shall be made without written approval of the Buyer.
19. **GOVERNMENT CONTRACTS** - If it is indicated on the face of the purchase order form that it is issued under a United States Government prime contract or subcontract, the Federal Acquisition Regulations (FAR) clauses and Defense Federal Acquisition Regulations (DFARS) clauses referenced below are incorporated by reference with the same force and effect as if given in full text.

FAR Clauses

52.219-8	Utilization of Small business Concerns
52.222-26	Equal Opportunity
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222-36	Affirmative Action for Workers and Disabilities
52.222-41	Service Contract Act of 1965, as amended
52.227-1	Authorization and Consent
52.247-64	Preference of Privately owned U.S. Flag Commercial Vessels

DFARS Clauses

252.225-7001	Buy American Act and Balance of Payments Program
252.225-7014	Preference for Domestic Specialty Metals
252-247-7023	Transportation by Sea
252.247-7024	Notification of Transportation of Supplies by Sea