

## PRICE LIST SUPPLEMENT

### Terms and Conditions of Sale

### heating/ventilating products

#### Terms and Conditions of Sale

##### Quotations and Proposals – Acceptance of Orders

Prices stated verbally or on any quotation forms or price list are subject to change without notice and are not binding on Seller until prices are approved by Seller at time of shipment. All orders are subject to acceptance and approval by authorized personnel of Seller, and Seller will not be bound by any order not accepted by such personnel. All price lists, quotations, proposals, acceptances of orders, and sales of Seller products are conditional upon and subject to these STANDARD TERMS AND CONDITIONS OF SALE WHICH SHALL BE PART OF ALL CONTRACTS FOR THE SALE OF SELLER PRODUCTS.

These STANDARDS TERMS AND CONDITIONS OF SALE shall take precedence over the product description, terms, and conditions set forth in Buyer's order form. Shipment by Seller together with any prior written agreement between the parties relating to the particular order shall constitute confirmation by Buyer and Seller as to the final and complete agreement between Buyer and Seller, including any terms, conditions, and product description, and all prior and contemporaneous representations, agreements, and negotiations will be made by Seller in accordance therewith. Any modifications, alterations, additions, or cancellations thereto are not binding on Seller unless accepted in writing by Seller.

##### Product Description and Submittals

Notwithstanding any provisions to the contrary contained in Buyer's order form or in any plans and specifications referred to therein, Buyer's return to Seller of any "Approval of Submittal Data" (as hereinafter defined), shall constitute Buyer's specification of the order products and agreement to accept promptly after delivery all products furnished by Seller conforming to the submittal data so approved. Notwithstanding any modifications, limitations, conditions, or exceptions contained in any form of approval, including but not limited to a signature, approval stamp, or transmittal form, which is affixed or attached by the Buyer, any higher-tier contractor, the owner of the premises concerned, or the representatives of any of them, to any document or form referring to or containing data prepared by Seller, such form of approval shall constitute an "Approval of Submittal Data" within the meaning hereof. If any modifications, limitations, conditions, or exceptions contained in such "Approval of

Submittal Data" refer to specific changes desired in the products covered by the submittal data, then Seller shall be obligated to comply therewith or to notify the buyer that it will not furnish the products described therein, in which latter case, all obligations of Buyer and Seller under any contract for the furnishing of the products covered by such submittal data shall be cancelled. In no event will Seller be obligated to comply with modifications, limitations, conditions or exceptions in the "Approval of Submittals" which refer to plans, specifications, or other documents not expressly agreed to in writing by Seller. In the event that the Buyer requires Submittal Data and releases the ordered products for fabrication or shipment prior to receipt by Seller of an "Approval of Submittal Data," such release shall constitute Buyer's agreement to accept promptly after delivery the products furnished in accordance with the submittal data last submitted to the Buyer, or, if none has been submitted, in accordance with the last product description approved by Seller.

In the event that Buyer does not require on the face of its order form that submittal data be approved prior to fabrication of the ordered products, Buyer agrees to accept promptly after delivery the products furnished in accordance with the product description last approved by Seller prior to shipment, or in accordance with the submittal data last furnished by Seller (if any submittal data is furnished without Buyer's request).

##### Authority of Sales Representatives

Seller's sales representatives or agents do not have to make any agreements, contracts, or understanding, or to incur any obligations or liability on behalf of Seller. Orders and contracts taken by salesmen or agents are subject to approval by Seller.

##### Terms

The terms which apply to Buyer's order are specified on the Seller's published price list, pricing policy, or written agreement between Buyer and Seller applicable to any such order. Buyer agrees to make prompt payment of all invoices presented on or after the date of shipment, or as otherwise shown on the invoices, whether the invoices so presented comprise the entire order or only part of such order. Credit terms herein extended are subject to revocation, to change, or withdrawal by Seller at any time upon notice to Buyer in writing, and Seller reserves the right to demand guarantees, security, or payment prior to commencement of Seller's performance. Buyer's failure to pay for and deliveries when due shall excuse Seller from

# TERMS AND CONDITIONS OF SALE

making further deliveries on the order or on any other order. Credit terms for one order establish no precedent in respect to any subsequent orders. The Buyer, any higher-tier contractor, or the owner of property to which the products described herein may become affixed, will not be released from liens or claims of any kind unless and until such products have been fully paid for.

## **Title, Delivery and Risk of Loss**

Delivery of products to Buyer shall take place upon delivery to a carrier consigned to Buyer or upon delivery directly to Buyer, whichever occurs first. Title and risk of loss arising from any cause pass to Buyer, upon delivery; provided that Seller shall retain a security interest in all products delivered to Buyer until such products are paid for in full.

## **Taxes**

Federal, State, or municipal taxes (except income taxes) now or hereafter imposed with respect to all sales and/or the production, manufacture, sale, delivery, use, transportation or proceeds of the ordered products specified against such sales will be for the Buyer's account, and if paid, or required to be paid, by Seller, the amount thereof will be added to and become a part of the price payable by the Buyer.

## **Prices**

Prices specified are contingent upon the requirements of completing an individual order, including but not limited to products description, quantities, current costs of materials and labor, simultaneous production of other orders for similar products, delivery schedule, F.O.B. point, and other conditions. Therefore, prices for an individual order will not necessarily be the same or as low as prices charged previously or prices charged during the period of performance of any order, either to Buyer or to other customers.

## **Patents**

If products or parts produced to the specifications of the Buyer, or to design furnished by him, infringe, or are claimed to infringe, any U.S. or foreign patents under which claims are made against either Seller or the Buyer, the Buyer assumes full responsibility for everything done by Seller in producing such products or parts and agrees to indemnify Seller and to hold Seller free of any and all losses, including expenditures made or incurred for judgments, settlements, attorney's fees, litigation, negotiations, and any and all losses and disbursements directly or indirectly resulting therefrom.

## **Specifications**

In cases of ambiguity in the specifications, drawings, designs, or other requirements of an order, Seller's interpretation of any such requirements shall be final. Installation, Replacement, and Repairs  
Under no circumstances will Seller make or secure installations, replacements or repairs; or be responsible for the costs thereof; or for any damages caused by faulty installation or repair.

## **Deliveries**

Times of delivery are only estimated but are not guaranteed. If Buyer has required that an authorization to ship or Approval of Submittal Data (as defined herein) must be obtained from the Buyer prior to fabrication or delivery, all estimates of delivery are conditional upon receipt by Seller of such required authorization or required Approval within ten days of the date of quotation, or if Buyer has required that a release be obtained prior to fabrication, within ten days of Seller's receipt of such release. In any event, Buyer agrees that Seller may deliver at any reasonable time before or after the date wanted as requested by Buyer.

Deliveries of goods are on contingent upon any cause beyond the reasonable control of seller, including but not limited to strikes, fires, floods, wars, accidents, delays of carriers, shortages of supplies or materials, delays or default of a supplier or a contractor, government regulation, disruption due to failure of production facilities, and disruption due to failure of transportation facilities. In the event of any delay in performance of delivery due to any cause beyond the reasonable control of Seller, Buyer agrees to accept delivery at such time as delivery can be effected, or, if the delay is unreasonable, to compensate Seller for all costs of production, including but not limited to costs of materials, labor, and overhead, incurred up to the time Seller receives written notice of Buyer's desire to have production of the order stopped. Unless the Buyer specifies otherwise, delivery of products may be made by the carrier selected by Seller by either a single delivery or delivery in lots.

## **Disclaimer of Incidental and Consequential Damages**

In no event will Seller be liable for incidental or consequential damage of any kind resulting from the order of or use of Seller's products, whether arising from breach of warranty, nonconformity to ordered specifications, delay in delivery (regardless of whether or not the cause of such delay is beyond the control of Seller), or any loss sustained by the Buyer.

# WARRANTY

Seller warrants its products to be free from defects in material and workmanship, EXCLUSIVE, HOWEVER, of failures attributable to the use of materials substituted under emergency conditions for materials normally employed. This warranty covers replacement of any parts furnished from the factory of Seller, but does not cover labor of any kind and materials not furnished by Seller, or any charges for any such labor or materials, whether such labor, materials or charges thereon are due to replacement of parts, adjustments, repairs, or any other work done. This warranty does not apply to any equipment which shall have been repaired or altered outside the factory of Seller in any way so as, in the judgment of Seller, to affect its stability, nor which has been subjected to misuse, negligence, or operating conditions in excess of those for which such equipment was designed. This warranty does not cover the effects of physical or chemical properties of water or steam or other liquids or gases used in the equipment.

BUYER AGREES THAT SELLER'S WARRANTY OF ITS PRODUCTS TO BE FREE FROM DEFECT IN MATERIAL AND WORKMANSHIP, AS LIMITED HEREIN, SHALL BE IN LIEU OF AND EXCLUSIVE OF ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WHETHER ARISING FROM LAW, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, **THERE ARE NO OTHER WARRANTIES, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE, WHICH EXTEND BEYOND THE PRODUCT DESCRIPTION CONFIRMED BY BUYER AND SELLER AS OF THE DATE OF FINAL AGREEMENT.**

This warranty is void if the input to the product exceeds the rated input as indicated on the product serial plate by more than 5% on gas-fired and oil-fired units, or if the product in the judgment of SELLER has been installed in a corrosive atmosphere, or subjected to corrosive fluids or gases, been subjected to misuse, negligence, accident, excessive thermal shock, excessive humidity, physical damage, impact, abrasion, unauthorized alterations, or operation contrary to SELLER'S printed instructions, or if the serial number has been altered, defaced or removed.

## Heat Exchangers

For Seller's non-separated combustion Gas-Fired Unit Heaters BUYER'S REMEDY FOR BREACH OF WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR OR REPLACEMENT AT THE FACTORY OF SELLER, ANY HEAT EXCHANGER WHICH SHALL, WITHIN TEN YEARS FROM DATE OF FIRST BENEFICIAL USE BY BUYER OR ANY OTHER USER, WITHIN TEN YEARS FROM DATE OF RESALE BY BUYER OR ANY OTHER USER, WITHIN TEN YEARS FROM DATE OF RESALE BY BUYER IN ANY UNCHANGED CONDITION, OR WITHIN ONE HUNDRED TWENTY-SIX MONTHS FROM DATE OF SHIPMENT FROM SELLER, WHICHEVER OCCURS FIRST, BE RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE; EXCEPT THAT WHEN THE PRODUCT IS TO BE USED BY BUYER AS A COMPONENT PART OF EQUIPMENT MANUFACTURED BY BUYER, BUYER'S REMEDY FOR BREACH, AS LIMITED HEREIN, SHALL BE LIMITED TO ONE YEAR FROM DATE OF SHIPMENT FROM SELLER. FOR GAS-FIRED PRODUCTS INSTALLED IN HIGH HUMIDITY APPLICATIONS AND UTILIZING STAINLESS STEEL HEAT EXCHANGERS, BUYER'S REMEDY FOR BREACH, AS LIMITED HEREIN, SHALL BE LIMITED TO TEN YEARS FROM DATE OF SHIPMENT FROM SELLER.

For Seller's Low Intensity Gas-Fired Infrared Heaters BUYER'S REMEDY FOR BREACH OF WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR OR REPLACEMENT AT THE FACTORY OF SELLER, ANY HEAT EXCHANGER WHICH SHALL, WITHIN FIVE YEARS FROM DATE OF FIRST BENEFICIAL USE BY BUYER OR ANY OTHER USER, WITHIN FIVE YEARS FROM DATE OF RESALE BY BUYER OR ANY OTHER USER, WITHIN FIVE YEARS FROM DATE OF RESALE BY BUYER IN ANY UNCHANGED CONDITION, OR WITHIN 66 MONTHS FROM DATE OF SHIPMENT FROM SELLER, WHICHEVER OCCURS FIRST, BE RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE; EXCEPT THAT WHEN THE PRODUCT IS TO BE USED BY BUYER AS A COMPONENT PART OF EQUIPMENT MANUFACTURED BY BUYER, BUYER'S REMEDY FOR BREACH, AS LIMITED HEREIN, SHALL BE LIMITED TO ONE YEAR FROM DATE OF SHIPMENT FROM SELLER.

## Heat Exchanger (Condensers) for all Seller's products except non-separated combustion Gas-Fired Unit Heaters and Infrared Heaters, all Burners except Infrared Heaters, and Sheet Metal for all Seller's products

BUYER'S REMEDY FOR BREACH OF WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR OR REPLACEMENT AT THE FACTORY OF SELLER, ANY HEAT EXCHANGER (CONDENSER) OR BURNER WHICH SHALL, WITHIN ONE YEAR FROM DATE OF FIRST BENEFICIAL USE BY BUYER OR ANY OTHER USER, WITHIN ONE YEAR FROM DATE OF RESALE BY BUYER IN ANY

UNCHANGED CONDITION, OR WITHIN EIGHTEEN MONTHS FROM DATE OF SHIPMENT FROM SELLER, WHICHEVER OCCURS FIRST, BE RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE; EXCEPT THAT WHEN THE PRODUCT IS TO BE USED BY BUYER AS A COMPONENT PART OF EQUIPMENT MANUFACTURED BY BUYER, BUYER'S REMEDY FOR BREACH, AS LIMITED HEREIN, SHALL BE LIMITED TO ONE YEAR FROM DATE OF SHIPMENT FROM SELLER.

## Burners

For Seller's Low Intensity Gas-Fired Infrared Heaters BUYER'S REMEDY FOR BREACH OF WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR OR REPLACEMENT AT THE FACTORY OF SELLER, ANY BURNER WHICH SHALL, WITHIN TWO YEARS FROM DATE OF FIRST BENEFICIAL USE BY BUYER OR ANY OTHER USER, WITHIN TWO YEARS FROM DATE OF RESALE BY BUYER IN ANY UNCHANGED CONDITION, OR WITHIN 30 MONTHS FROM DATE OF SHIPMENT FROM SELLER, WHICHEVER OCCURS FIRST, BE RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE; EXCEPT THAT WHEN THE PRODUCT IS TO BE USED BY BUYER AS A COMPONENT PART OF EQUIPMENT MANUFACTURED BY BUYER, BUYER'S REMEDY FOR BREACH, AS LIMITED HEREIN, SHALL BE LIMITED TO ONE YEAR FROM DATE OF SHIPMENT FROM SELLER.

For Seller's High Intensity Gas-Fired Infrared Heaters BUYER'S REMEDY FOR BREACH OF WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR OR REPLACEMENT AT THE FACTORY OF SELLER, ANY BURNER WHICH SHALL, WITHIN TEN YEARS FROM DATE OF FIRST BENEFICIAL USE BY BUYER OR ANY OTHER USER, WITHIN TEN YEARS FROM DATE OF RESALE BY BUYER IN ANY UNCHANGED CONDITION, OR WITHIN 126 MONTHS FROM DATE OF SHIPMENT FROM SELLER, WHICHEVER OCCURS FIRST, BE RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE; EXCEPT THAT WHEN THE PRODUCT IS TO BE USED BY BUYER AS A COMPONENT PART OF EQUIPMENT MANUFACTURED BY BUYER, BUYER'S REMEDY FOR BREACH, AS LIMITED HEREIN, SHALL BE LIMITED TO ONE YEAR FROM DATE OF SHIPMENT FROM SELLER.

## All Other Components Excluding Heat Exchanger (Condenser), Burner, and Sheet Metal

For all Seller's products except Direct-Fired Heaters and High Intensity Gas-Fired Infrared Heaters BUYER'S REMEDY FOR BREACH OF WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR OR REPLACEMENT AT THE FACTORY OF SELLER, ANY PART OR PARTS WHICH SHALL, WITHIN TWO YEARS FROM DATE OF FIRST BENEFICIAL USE BY BUYER OR ANY OTHER USER, WITHIN TWO YEARS FROM DATE OF RESALE BY BUYER IN ANY UNCHANGED CONDITION, OR WITHIN THIRTY MONTHS FROM DATE OF SHIPMENT FROM SELLER, WHICHEVER OCCURS FIRST, BE RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE; EXCEPT THAT WHEN THE PRODUCT IS TO BE USED BY BUYER AS A COMPONENT PART OF EQUIPMENT MANUFACTURED BY BUYER, BUYER'S REMEDY FOR BREACH, AS LIMITED HEREIN, SHALL BE LIMITED TO ONE YEAR FROM DATE OF SHIPMENT FROM SELLER.

For Seller's Direct-Fired Heaters and High Intensity Gas-Fired Infrared Heaters BUYER'S REMEDY FOR BREACH OF WARRANTY EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW IS LIMITED TO REPAIR OR REPLACEMENT AT THE SELLER'S OPTION ANY PART OR PARTS WHICH SHALL WITHIN A PERIOD OF ONE YEAR FROM DATE OF FIRST BENEFICIAL USE BY BUYER OR ANY OTHER USER, WITHIN ONE YEAR FROM DATE OF RESALE BY BUYER IN ANY UNCHANGED CONDITION, OR WITHIN 18 MONTHS FROM DATE OF SHIPMENT FROM SELLER, WHICHEVER OCCURS FIRST, BE RETURNED TO SELLER WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF THE SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE. BUYER AGREES THAT IN NO EVENT WILL SELLER BE LIABLE FOR COSTS OF PROCESSING, LOST PROFITS, INJURY TO GOODWILL, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND RESULTING FROM THE ORDER OR USE OF ITS PRODUCT, WHETHER ARISING FROM BREACH OF WARRANTY, NONCONFORMITY TO ORDERED SPECIFICATIONS, DELAY IN DELIVERY, OR ANY LOSS SUSTAINED BY THE BUYER.

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## **Cancellation – Inspection – Rejection**

Orders for material or equipment are not cancelable, either in whole or part, nor is material returnable for credit. Seller will replace any material or equipment not conforming to the product description as agreed upon by Buyer and Seller as of the date of shipment only if the Buyer notifies Seller, at the address on the Seller's INVOICE, of the particular details of non-conformance or defect of such material or equipment, by written or electronic notice, either before or immediately upon delivery, and only if such non-conforming material or equipment is returned, sold, or otherwise disposed of in accordance with instructions of Seller. Buyer agrees to inspect all of the ordered material or equipment either before or upon delivery and waives all his rights to reject or refuse to accept any non-conforming material or equipment unless notice is given to Seller in the aforesaid time and manner. Buyer may inspect the ordered material at Seller's plant in an area designated by Seller. Buyer agrees that the right of rejection of non-conforming material or equipment, as limited herein, and the right to replacement by Seller with material or equipment, as limited herein, and the right to replacement by Seller with material or equipment conforming to the ordered specifications, are exclusive of all other remedies provided by law. Written authorization must be issued by Seller before any material is returned to its plant.

## **Governing Law**

It is agreed that the parties hereto intend that all questions as to validity, interpretation, and required performance arising out of this contract are to be governed by the laws of the State of Wisconsin (Uniform Commercial Code).