



Thermal Leverage

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TERMS AND CONDITIONS OF SALE FOR EQUIPMENT

GENERAL. As used herein, "Company" is Thermal Leverage, and "Purchaser" is the entity identified on the signature page hereto. The terms and conditions of sale contained herein and the accompanying order acknowledgement, proposal or quotation comprise the entire agreement between Company and Purchaser, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The terms and conditions of sale contained herein prevail over any of Purchaser's terms and conditions of purchase regardless of whether or when Purchaser has submitted its purchase order or such terms or conditions. Fulfillment of Purchaser's order does not constitute acceptance of any of Purchaser's terms and conditions and does not serve to modify or amend these terms and conditions. No waiver or modification of any of these terms or conditions shall be effective unless in writing and signed by Company. The term "equipment" shall refer to any and all equipment contained in the accompanied proposal sold by Company to Purchaser to which these terms and conditions apply.

WARRANTY. Company hereby warrants the equipment manufactured by it and bearing its nameplate in the respects set forth herein and exclusively for the benefit of those users described herein. THIS LIMITED WARRANTY SHALL EXTEND SOLELY TO THOSE PERSONS WHO ARE OWNERS OF THE EQUIPMENT DURING THE WARRANTY PERIOD HEREINAFTER DEFINED AND WHO USE SUCH EQUIPMENT IN THE PROJECT AND FOR THE PURPOSES FOR WHICH SUCH EQUIPMENT WAS ACQUIRED FROM COMPANY.

EXCLUDED FROM ANY COVERAGE UNDER THIS WARRANTY ARE DEFECTS IN EQUIPMENT FROM DAMAGE IN SHIPMENT, FAULTY INSTALLATION, FAILURE TO PROPERLY MAINTAIN, MISUSE, ABUSE, NEGLIGENCE, ACCIDENT OR NEGLIGENCE. If any person becomes entitled to a claim under this warranty, such person shall, as a condition precedent to securing warranty performance, return the equipment to Company's plant, 70 Lambert Avenue, Copiague, New York 11726 USA, transportation prepaid. If the equipment thus returned is found by Company to be defective for a cause and within a time covered by this Warranty, such equipment shall be repaired or replaced without charge and returned to its owner or job site at Company's cost for transportation and handling.

Equipment which is repaired or replaced shall carry a warranty equal to the unexpired portion of the original warranty. Company will commence inspection of any equipment returned to it for warranty claim within seven (7) working days after the arrival of such equipment at Company's plant, and shall complete any repairs required under this warranty within sixty (30) days after such arrival, unless Company shall sooner notify said owner of reasonable cause for delay beyond control of Company. Warranty obligations hereunder will be performed only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday and excluding holidays. Any person believing himself entitled to warranty performance hereunder is required to notify the Warranty Claims Department, 70 Lambert Avenue, Copiague, New York 11726 USA, prior to return of any Warranted Equipment for repair hereunder.

IN ALL EVENTS, COMPANY WILL NOT BE LIABLE FOR AND WILL NOT REIMBURSE ANY LABOR, MATERIAL, OR OTHER REPAIR CHARGES INCURRED BY ANYONE OTHER THAN COMPANY ON ANY EQUIPMENT UNLESS SUCH CHARGES HAVE BEEN SPECIFICALLY AUTHORIZED IN ADVANCE IN WRITING BY COMPANY. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. COMPANY WILL NOT IN ANY EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOST PROFITS, RESULTING FROM OR ATTRIBUTABLE TO THE EQUIPMENT OR ANY AGREEMENT BETWEEN THE PARTIES. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE EQUIPMENT, ANY RELATED SERVICES OR ANY AGREEMENT BETWEEN THE PARTIES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO COMPANY FOR THE EQUIPMENT SOLD PURSUANT TO THE APPLICABLE ORDER OR PROPOSAL.



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INSURANCE. Until the price of the equipment is paid in full, Purchaser shall, at its own expense, provide and maintain insurance to the total value of the equipment delivered hereunder against customary casualties and risks, including fire and explosion, and shall also insure against liability for accidents or injuries to the public or to employees, in the names of Company and Purchaser, as their interest may appear and in amounts satisfactory to Company. If Purchaser fails to provide such insurance, it then becomes Purchaser's responsibility to notify Company so that Company may provide same, and the cost thereof shall be added to the contract price. All loss resulting from failure to affect such insurance shall be assumed by Purchaser.

SECURITY INTEREST. Purchaser hereby conveys and grants to Company a security interest in the equipment to secure payment by Purchaser of all amounts due hereunder including the purchase price and such other debts, obligations and liabilities of Purchaser to Company which may now exist or hereafter arising from this agreement, whether absolute or contingent, or primary or secondary, together with all extensions or renewals of the foregoing and all expenses, legal or otherwise (including court costs and attorneys' fees) incurred by Company in collecting or endeavoring to collect any or all of the foregoing, in protecting any collateral and in enforcing this agreement. The equipment shall remain personal property in all respects notwithstanding the manner of annexation of any of the equipment to realty. Purchaser hereby authorizes Company to file a financing statement to perfect its security interest in the equipment and agrees to execute any other security documents considered necessary by Company to perfect its security interest in the equipment.

EQUIPMENT NOT TO BE REMOVED. As long as the security interest in the equipment is retained by Company, the equipment shall not be removed from the installation site and Purchaser shall not permit, voluntarily or involuntarily, the equipment or any part of it to be sold, transferred, encumbered, attached, seized or removed in any manner whatsoever.

DEFAULT. Upon default by Purchaser in the payment of the purchase price or any other obligations secured under this agreement when due or in the performance of any other term or provision hereof, all unpaid amounts due Company shall thereupon be immediately due and payable and Company shall have the rights and remedies contained herein and the rights and remedies of a secured party under the Uniform Commercial Code of the State of New York or under the laws of any other jurisdiction as a court of competent jurisdiction shall determine to be applicable.

PERMITS AND APPROVAL OF PLANS. Purchaser shall secure any necessary governmental approvals and permits required for the installation and operation of the equipment, all at Purchaser's expense.

COMPLIANCE WITH APPLICABLE LAWS. Purchaser shall comply with all federal, state and local statutes, laws, codes, regulations and ordinances in connection with the installation and operation of the equipment and any other activity related thereto.

INSPECTION AND ACCEPTANCE PERIOD. Purchaser agrees to inspect the equipment immediately after delivery, or, in the event the equipment is to be installed by Company, immediately after such installation by Company. Purchaser also agrees that any claims which Purchaser may have of any nature whatsoever after such inspection, including, but not limited to, any claims for defects, non-conforming equipment or improper installation (if installation has been rendered by Company) shall be made in writing to Company within 30 calendar days after such delivery or installation (as the case may be) (such 30-day period being referred to herein as the "Acceptance Period"), otherwise any such claim shall be deemed waived and shall not be enforceable against Company except to the extent that such claim comes within the scope of the warranty set forth above. Claims for loss in transit will be made to the carrier by Purchaser.

RESPONSIBILITY OF PURCHASER FOR OPERATION OF EQUIPMENT. The operation of the equipment both during and subsequent to the Acceptance Period shall be the sole and exclusive responsibility of Purchaser. Equipment must be operated in strict adherence to the Company's Operations Manual. Any assistance rendered by Company's representatives during the Acceptance Period shall be given solely in a consulting or advisory capacity and shall not release Purchaser in any manner whatsoever from its responsibility for operating the equipment. Purchaser agrees to indemnify and hold harmless Company and all employees of Company from and against all liabilities, damages,



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obligations and claims (including without limitation, court costs and reasonable attorneys' fees) arising from or with respect to the negligent operation or use of the equipment.

DISCONTINUANCE, IMPROVEMENT AND DESIGN CHANGES. Company may discontinue the manufacture of any equipment or make changes or improvements at any time in the specifications, construction or design of any equipment without incurring any obligation to Purchaser. Equipment so changed or improved will be accepted by Purchaser in fulfillment of existing orders.

LIMITATION OF PROPOSAL. The price and terms quoted in this proposal are subject to acceptance by Purchaser within a period of thirty days from the date hereof, except that Company shall have the right to withdraw its proposal at any time before formal acceptance by Purchaser.

PAYMENT MILESTONES. Unless otherwise agreed on orders, 50% of the price shall be due upon Purchaser's acceptance, 45% upon shipment, and 5% upon receiving product (not to exceed 30 days from the date of shipment). Purchaser agrees in the event any amount payable by Purchaser to Company remains unpaid for more than 30 days from the due date set forth in the invoice, a service charge of 1.5% per month (18% per annum) or any portion thereof (or the highest rate of interest allowed by law, whichever is less) shall accrue on such unpaid amount beginning on the thirty-first (31st) day after such date payment is due. If the indebtedness, including late charges, arising out of this or any other transaction between Company and Purchaser is placed in the hands of any attorney or third party collections company for collection, or is collected by and through an attorney or third party collections company, Purchaser will pay all costs of collection, including without limitation, court costs and reasonable attorneys' fees.

GOVERNING LAW; ARBITRATION. This contract is made in Copiague, New York. This agreement and all questions regarding the performance of the parties hereunder shall be governed by the laws of the State of New York without regard to its choice of law rules. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration in the State of New York in accordance with the rules of the American Arbitration Association, and judgment upon award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. **THE PARTIES FURTHER KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A JURY TRIAL OF THE DISPUTE.**

EXECUTION OF CONTRACT. This proposal is merely the solicitation of an order and is not an offer from Company to Purchaser and does not obligate Company in any manner whatsoever until this proposal is both executed below on behalf of Purchaser as an order made to Company as well as executed below on behalf of Company as an acceptance of such order from Purchaser, at which time this proposal shall become a binding agreement between Company and Purchaser. Purchaser may not cancel or terminate for convenience, or direct suspension of manufacture, except on mutually acceptable terms which shall include a penalty clause.

SEVERABILITY. In the event any provision, or any portion of any provision of these terms and conditions shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.

TAXES. Prices quoted herein do not include any federal, state or municipal taxes. If under existing or future law passed by the United States, any state or any municipality, Company, in its opinion, is required to pay or collect a tax, impost or charge upon the manufacture, sale, use or assembly of the material described herein, the price to be paid by Purchaser shall be increased by the amount of such tax, impost or charge. The amount of such increase is to be paid to Company upon demand. If Purchaser holds resale tax permits and the material described herein is for resale, such information shall be shown by Purchaser.

BACK CHARGES AND ALLOWANCES. Company shall not be deemed to have agreed to reimburse Purchaser for the expense of any material, labor, repairs or alterations in connection with the equipment unless authorized by Company in writing.



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SHIPMENT. Company will attempt to ship equipment in accordance with Purchaser's shipping instructions. In the event Purchaser does not furnish shipping instructions or Company is unable to comply with said instructions, Company may, without liability, select any other commercially reasonable shipping method or route. If Purchaser is notified that the equipment is ready for pick up and fails to make arrangements for the same within 14 days after the later of the contractual ship date or the date it receives notice that the equipment is ready for pick up, then the Purchaser shall be obligated to pay storage fees to Company in an amount of 1% of the order value per week (or part thereof), not to exceed more than 10% of the maximum order price in the aggregate.

FORCE MAJEURE. Company shall not be liable or responsible for, nor shall the contract price, stated herein, be reduced by any amount because of any matters beyond the control of Company which delay or postpone the anticipated delivery date for the delivery of the equipment, including without limitation, war, civil disorder, governmental restriction, acts of God, strike, pandemic, lockout, accidents, freight embargo, fire, flood, inability of Company to obtain necessary materials, supplies, labor or transportation, or any unforeseen water, soil or rock conditions.

NON-ASSIGNABILITY - COMPLETE UNDERSTANDING. The rights and liabilities of the parties hereunder are non-assignable. The complete understanding is herein stated.