

ACE Thermal Systems, Inc.

Terms and Conditions of Sale

1. Agreement. These Terms and Conditions of Sale (the “Terms”), together with Seller’s quote, acknowledgment, credit application, or contract (the “Terms Document”) to which these Terms are attached or in which these Terms are referenced (collectively, the “Agreement”), constitute the entire agreement between ACE Thermal Systems, Inc., a Delaware limited liability company (“Seller”) and the customer (“Customer”) requesting goods and/or services (the “Work”) from Seller. The Agreement supersedes any and all prior or contemporaneous understandings, agreements, negotiations, and communications, whether written or oral. No terms or conditions set forth in any future written or oral communication between Seller and Customer shall alter or supplement the Agreement unless in a writing signed by authorized representatives of Seller and Customer; provided, however, if additional or alternative Work (defined below) is requested by Customer and not contemplated by the Agreement, and Seller agrees to perform such Work, the provision of such Work shall form a part of the Agreement per the agreed upon terms, regardless of whether it is in writing. If these Terms are attached to or referenced in a credit application, the Agreement also includes the transaction specific terms of the applicable quote or acknowledgement. Any individual transaction subject to this Agreement is sometimes referred to herein as an “Order”.

2. Performance of Work. Seller agrees to perform the Work as identified in the Agreement. The Work will be performed with workmanship that is reasonably acceptable in Seller’s trade. If additional goods and services are required beyond what is provided for in the Agreement, other than goods or services specifically excluded from the scope of the Agreement, Seller will use good faith efforts to advise Customer of such additional goods and services, but Customer’s failure to approve such additional goods or services shall not limit or restrict Customer’s obligation to pay Seller for the Work.

3. Price. Customer agrees to pay Seller for all Work provided to Customer at the charges provided in the Terms Document, or if not applicable then Seller’s standard rates, including applicable mark-ups. Any Seller estimation of the cost of the Work is an estimate only, and not a binding quotation. Seller will use good faith efforts to advise Customer of costs exceeding any estimate provided, but Customer’s failure to approve such excess cost shall not limit or restrict Customer’s obligation to pay Seller for such excess costs. All Seller charges for Work provided to Customer are collectively the “Price”. If Seller’s costs to produce the Work increase more than five percent (5%) after the date of the applicable quote or other document from Seller identifying the Price, Seller may give written notice to Customer proposing a new Price proposing to pass through all or some of the increased cost. If Customer does not accept that proposal within five (5) days from receipt of the proposal, Seller may terminate the applicable Order.

4. Delivery, Shipping and Risk of Loss. All shipments are F.O.B. the Seller’s manufacturing or distribution facility (the “Facility”) unless otherwise agreed to in writing by the parties. The Work will be delivered within a reasonable time after the Order is made, subject to availability of finished Work. Seller shall not be liable for any delays, loss, or damage in transit. All risk of loss to all Work provided under the Agreement shall pass to Customer when the Work is delivered to the carrier at Seller’s Facility or otherwise leaves the care, custody, and control of Seller. Customer shall be responsible for all costs associated with transportation, insurance, and duties, and the transport carrier shall be deemed to be an agent of Customer.

If any Work to be delivered under the Agreement cannot be shipped to or received by Customer when ready due to any cause attributable to Customer, Seller may ship the Work to a storage facility, including storage at the Facility, or to a freight forwarder. If Seller places the Work into storage, the following apply: (a) title and risk of loss immediately pass to Customer, if not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipman shall be due; (c) a fee of two percent (2%) of the Work value will be charged to Customer; and (d) when conditions permit and upon payment of all amounts due, Seller shall make the Work available to Customer for delivery.

5. Payment. Unless otherwise specified in the Agreement, Customer shall pay Seller for the Price as specified in the Terms Document but absent such specification within thirty (30) days from invoice by Seller. Seller may, at its election at any time, require Customer to pay Seller in advance for any Work, and Seller shall not be responsible for performing any further Work unless and until such payment is made. Unless otherwise permitted by Seller, payment for Work shall be in cash. If Seller permits payment in any other form, Customer shall be responsible for any and all additional costs incurred by Seller in connection therewith, including but not limited to cancelled check fees and ACH or wire fees. Any portion of the Price not paid in accordance with this Section 5 shall bear interest at the rate of 1.5% per month, compounded monthly. Customer shall have no right of set-off or recoupment as against the Price and full payment thereof. If any payment to Seller is delinquent by more than thirty (30) days, Seller may suspend or terminate any further Work, Order, or any other contract between Seller and Customer.

6. Warranty; Warranty Disclaimers. Seller warrants its Work pursuant to a separate written warranty, available at www.acethermalsystems.com, which warranty is incorporated herein.

EXCEPT FOR THE WARRANTY SPECIFIED ABOVE, SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL USED OR RECONDITIONED GOODS ARE PROVIDED TO CUSTOMER “AS IS”, AND SELLER MAKES NO WARRANTY RELATED THERETO. Seller agrees to assign to Customer any assignable warranties provided by the manufacturers or distributors of any goods.

7. Disclaimer of Damages; Limitation of Liability. SELLER HEREBY DISCLAIMS ANY AND ALL CONSEQUENTIAL AND INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF USE, DOWNTIME, COVER, AND EMPLOYEE AND INDEPENDENT CONTRACTOR COSTS AND BENEFITS. IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED TWO (2) TIMES THE PRICE OF THE WORK SPECIFICALLY IN DISPUTE.

8. Statute of Limitations. No claim or cause of action arising out of or relating to the Agreement, whether for breach of contract, breach of warranty, tort (including negligence), or otherwise, may be brought by Customer against Seller more than one (1) year after completion of the applicable Work.

9. Insurance. During the term of this Agreement and for a period of one (1) year thereafter, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to (i) commercial general liability (including product liability) and auto liability in a sum no less than \$1,000,000 per policy, and (ii) business property insurance on all machinery and equipment involved in any of the Work. Upon Seller's request, Customer shall provide Seller with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Customer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Customer waives all rights of subrogation as against Seller, and Customer shall require its insurer to waive all rights of subrogation against Seller.

10. Compliance with Laws. Each party shall comply with all applicable laws, regulations and ordinances, and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that party needs to carry out its obligations under this Agreement. Customer assumes all responsibility for shipments of goods requiring any government import clearance.

11. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part and such failure continues for five (5) days after Customer's receipt of written notice of breach; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, or reorganization, or makes an assignment for the benefit of creditors.

Customer shall have no right to terminate the Agreement or delay completion of delivery of the Work. Seller may, in its discretion, permit Customer to terminate an order of Work under the Agreement. If Seller agrees to terminate an Order at Customer's request, Customer shall make fair compensation to Seller for work performed on such Order which shall consider reasonable costs and expenses incurred and commitments already made by Seller in connection with such Order and the termination hereof. Customer will be advised of the amount of such charges with no right to audit or dispute. In addition, in the event that any Work is returned to Seller from Customer, Seller shall have the right to charge Customer a 15% restock fee.

12. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

13. Confidential Information. All non-public, confidential or proprietary information, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates ("Confidential Information"), disclosed by one party ("Discloser") to the other party ("Recipient"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement, is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Discloser in writing. Upon Discloser's request, Recipient shall promptly return all documents and other materials received from

Discloser. Discloser shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Recipient at the time of disclosure; or (c) rightfully obtained by Recipient on a non-confidential basis from a third party. Recipient shall not be responsible for disclosure of any Confidential Information of Discloser if required by legal process, provided Recipient provides reasonable notice to Discloser of the required disclosure, does not disclose any Confidential Information beyond what is required by such legal process, and uses reasonable efforts to obtain a protective order limiting further disclosure.

14. Intellectual Property. Except as set forth in the Terms Agreement, Seller shall retain any and all intellectual property rights in and to any of the Work and any underlying products or services related thereto, including but not limited to any patents, copyrights, trademarks, and inventions (the "IP"), all of which is Confidential Information of Seller, provided Seller grants Customer a non-exclusive, non-transferable, permanent, royalty-free right to use the IP solely for the purpose of utilizing the Work delivered by Seller in the ordinary course as intended. Customer shall not reverse engineer, disassemble for such purpose, or otherwise take any action in an attempt to produce any product competitive with, or serving the same function as, the Work.

15. Force Majeure. Seller shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached the Agreement, due to any failure or delay in fulfilling or performing any term of this Agreement, including providing Work at the Price, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions (including cost increases to Seller resulting from tariffs, duties, trade wars, sanctions, restrictions, prohibitions, and other governmental actions), war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes, or other labor disputes (whether relating to the workforce of Seller, Customer, or a Seller supplier), restraints or delays affecting carriers, supply chain delays and limitations, and telecommunication breakdowns or power outages, including events that result in higher costs or loss of profitability to the Seller (each, a "Force Majeure Event"). Seller will not be liable for damages, whether direct, incidental, or consequential, resulting from a Force Majeure Event, and at Seller's option, one or more of the following shall apply: (a) the time for performance shall be extended in whole or in part until the termination of the Force Majeure Event and for an additional period thereafter reasonably necessary to cure the effects thereof; (b) a part or all of the Work affected may be increased in price to reflect the additional costs to the Seller resulting from the Force Majeure Event; or (c) a part or all of the Work affected by the Force Majeure Event may be eliminated from the scope of the Agreement.

16. Governing Law. The Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware, without reference to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any Order.

17. Exclusive Jurisdiction. Any claim or cause of action arising out of or relating to the Agreement shall be subject to the exclusive jurisdiction of state courts of component jurisdiction over the State of Delaware. The parties waive any right to bring a claim in, or remove a claim to, any federal court, except to the extent that federal courts would have exclusive jurisdiction.

18. Severability. In the event any of the terms and conditions of the Agreement are found to be invalid or unenforceable for any reason: (i)

such invalidity or unenforceability shall not affect any other term or condition of the Agreement; and (ii) the invalid or unenforceable term or condition shall be deemed modified to the least extent possible to cure its invalidity or unenforceability and retain the intent of the parties to the Agreement.

19. No Verbal or Other Representations. Seller makes no other verbal or other representations or warranties arising out of or relating to the Agreement, except as provided in writing by an authorized representative of Seller.

20. Entire Agreement. The Agreement constitutes the entire agreement of the parties with respect to the matters contemplated therein and cannot be modified except in a writing signed by an authorized representative of Seller.

21. Costs. In addition to any other provisions of the Agreement, Customer agrees to pay the reasonable attorneys' fees and costs of Seller arising out of or relating to any dispute under the Agreement, if Seller is the prevailing party with respect to such dispute.

22. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

23. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

25. Export Laws. Customer acknowledges and agrees that the Work may be subject to governmental or quasi-governmental laws, statutes, ordinances, regulations, rules, orders, treaties, and other requirements of the United States, the country of Customer's facility or delivery point, and other jurisdictions in which the Work may be re-sold or delivered, restricting the sale, use, transfer, or recipients of the Work, now existing or hereafter arising (the "Export Laws"). Customer represents to, warrants to, and covenants with Seller, upon issuance of each purchase order, that: (a) Customer is not prohibited by any Export Law from purchasing and taking delivery of any Work; (b) Customer will not sell or transfer any Work to any person or entity if such sale or transfer would be in violation of any Export Law, whether due to the person or entity receiving the Work, the destination of the shipment, or the intended use of the Work; and (c) Customer will indemnify, defend, and hold harmless Seller and its employees and representatives from and against any fines, penalties, or other losses incurred or potentially to be incurred due to any violation or alleged violation of any Export Law. Customer shall have no right to cancel any order due to any potential violation of any Export Law. Seller reserves the right to cancel any order under the Agreement if Purchaser has reasonable grounds to believe that any such transaction will lead to a violation of any Export Law.

26. Equal Opportunity. Seller and Customer shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as a protected veteran or individual with a disability, and require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals with disabilities and veterans. EO 13496: The requirements at 29 CFR Part 471, Appendix A to Subpart A are also hereby incorporated by reference.