

# Bosch Thermotechnology Corp

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## Terms and Conditions of Sale

### 1. GENERAL

1.1 Your purchase order(s), when accepted, will be subject to the following terms and conditions. The terms and conditions contained herein constitute the entire agreement between you ("Buyer") and Bosch Thermotechnology Corp ("BTC") with respect to the transaction(s) covered by your purchase order(s) as confirmed by BTC.

1.2 No modification or waiver of any of the terms and conditions contained herein and no additional or different terms or conditions shall be effective unless (i) modified by BTC's quotation or sales acknowledgement, or (ii) agreed to in a single writing signed by both parties. No oral agreement, course of performance or other means other than such written agreement signed by both parties expressly providing for such waiver shall be deemed to waive the terms of this document.

1.3 The terms and conditions set forth below shall become binding on the parties by:

1.3.1 BTC's written acknowledgment of Buyer's purchase order,

1.3.2 Signature of Buyer and BTC on an agreement for the purchase and sale of goods, or

1.3.3 BTC's delivery of the Goods, in whole or part.

### 2. PRICES AND TAXES

2.1 All prices are based upon BTC's pricing in effect on the date of the quotation, unless otherwise indicated on the face of the quotation. The delivery date will be established on the order acknowledgement form prepared and sent by BTC.. BTC reserves the right to adjust the prices due to increases in material, labor, manufacturing or shipping costs if the increases occur before the delivery date. If the amount of the cost increases exceed ten (10) percent, BTC has the right to cancel the contract on four (4) weeks notice in writing, and the delivery will not be made unless a new price agreement is reached.

2.2 The Prices do not include any applicable Federal, State or local sales, use, excise, value-added or similar-type tax or assessments applicable to the price, sale, use or delivery of the Goods ordered by Buyer. Such taxes and assessments will be included in BTC's invoice and paid by Buyer unless Buyer's purchase order plainly states on its face the existence of an exemption from any such tax or assessment and Buyer provides BTC with evidence of such exemption from the applicable taxing authority.

### 3. DELIVERY, TITLE & RISK OF LOSS

3.1 Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Delivery shall be made and title and risk of loss shall pass to Buyer upon BTC placing the Goods with a carrier FCA point of shipment or Buyer's designated consignee. Receipt of the Goods by Buyer FCA point of shipment shall constitute Buyer's acceptance for delivery and waiver of any and all claims against BTC for loss or damage incurred due to delay. Shipments will only be insured at Buyer's request and expense. Title to the Goods is subject to Buyer's compliance with these Terms and Conditions. If Buyer fails to do so, BTC may, at its option, retake possession and title pursuant to Section 7.

3.2 In the event Buyer requests changes in specifications after these Terms and Conditions have become binding, such changes shall become part of the purchase order only upon acceptance by BTC in its sole discretion, whereupon delivery dates will be reasonably extended, BTC shall be compensated for all costs incurred in connection with such change and the price shall be adjusted to maintain BTC's anticipated profit margin.

3.3 No claims for errors in shipment will be considered unless made within 10 days after receipt of materials nor unless accompanied by necessary papers or documents to substantiate the claim. Claims for loss or damage in transit must be entered and prosecuted by Buyer.

### 4. INSTALLATION

4.1 The Goods shall be installed by and at the expense of the Buyer unless otherwise expressly stipulated in writing by Buyer and BTC.

4.2 BTC shall not be liable for material and equipment or the acts of Buyer's employees, agents or contractors, nor has it any responsibility for the performance of Goods not installed in compliance with the Installation Manual under the supervision of its superintendent unless deficient performance is caused by defects independent of the installation and within the scope of the warranty set forth in section 5.

4.3 BTC assumes no responsibility for damages due to deterioration during periods of storage by the Buyer prior to installation and operation.

4.4 BTC reserves the right to make changes in design or additions to or improvements in its products without liability to install such changes, additions or improvements in any product manufactured prior thereto.

### 5. WARRANTY POLICY

5.1 Unless a different limited written warranty is provided by BTC with the Goods, the terms and conditions of the warranty for the Goods shall be subject to the following limited written warranty. BTC warrants all Goods manufactured by it to be free from defects in material and workmanship for one year from the following:

5.1.1 The date of installation if a warranty card has been received by BTC that sets forth the correct date of installation;

5.1.2 The date of purchase if the date can be established by an invoice; or

5.1.3 The date of manufacture if the information required in 5.1.1 or 5.1.2 is not available.

Buyer's sole and exclusive remedy under this warranty shall be limited to either the repair or exchange of warranted products, at BTC's option FCA BTC's factory. No attempt to repair or improve the Goods or parts by any of BTC's representatives shall change or extend this warranty.

#### 5.2 Limitations on Warranty

**THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

The above warranty does not apply to specialty items or modifications to Goods, which as detailed in section 12.2, are purchased "AS IS."

5.3 If the Buyer (as that term is hereafter defined) or Agent grants to an end user any warranty which is greater in scope or time period than the warranty stated herein, BTC shall not be liable beyond this stated warranty. Except as otherwise provided under the Warranty Processing Procedures section of this warranty, equipment and accessories not manufactured by BTC shall not be the responsibility of BTC. The term "Buyer" as used herein means the person or firm that purchased the product directly from BTC and the end customer.

#### 5.4 Warranty Processing Procedures

No products shall be returned without prior authorization from BTC. Buyer shall prepay all transportation charges for the return of such products to BTC's factory or authorized factory service center. BTC will not accept any charges for labor and/or parts

incidental to the removal and remounting of products repaired or replaced under this warranty. All repair and replacement parts provided under this warranty will assume the identity, for warranty purposes, of the part replaced and the warranty on such replacement parts will expire when the warranty on the original part would have expired. Claims must be submitted within 30 days of failure or be subject to rejection. This warranty is not transferable beyond the first using purchaser.

5.5 The foregoing warranty does not cover conditions over which BTC has no control, including, without limitation, contamination, products damaged or subjected to voltage, or temperature outside of specified range, accident, abuse or misuse after shipment from BTC's factory, electricity or fuel costs or any unrealized savings (anticipated or projected) on energy costs, products altered, disassembled or repaired by anyone other than BTC personnel, BTC authorized factory service center personnel or persons so designated in writing by BTC's Customer Service Department prior to commencement of said work.

5.6 Types of failures which are not attributable to defects in materials and/or workmanship and which are not considered by BTC as part of its warranty include, but are not limited to the following:

- Damages due to deterioration during periods of storage by the Buyer prior to installation and operation.
- Damage due to unsuitable fuels, power, selection to the wrong product settings.
- Damage attributable to accident, abuse, neglect and improper maintenance.
- Operating outside the specified temperatures, venting requirements or flow rates.
- Repairs by unauthorized service personnel.
- Use of the product in a manner or purpose for which it was not designed or intended by BTC.
- Improper installation.
- Damage due to corrosion (including due to water quality, liquids utilized and air), mineral deposits, mold, fungus, abrasion or bacteria.
- Ordinary wear and tear.
- Any portion or component of any system that is not supplied by BTC, regardless of the cause of the failure of such portion or component.
- Products on which the unit identification tags or labels have been removed or defaced.
- Products on which payment to BTC, or to the owner's seller or installing contractor, is in default.

5.7 Whenever possible, each provision of the foregoing warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this warranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this warranty.

## 6. FORCE MAJEURE

6.1 BTC shall not be liable for delays or failures in delivery, damage to Goods, or performance due to acts of God, governmental authority or public enemy, fire, flood, strike, labor disturbance, epidemic, war, riot, civil disturbance, power failure, embargoes, shortages in materials, components or service, boycotts, transportation delays or any other cause beyond BTC's control.

6.2 In the event of such delay or failure, Buyer's order shall not terminate, but the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

## 7. CANCELLATION AT DEFAULT OF BUYER

7.1 BTC may cancel Buyer's order without liability effective upon written notice to Buyer, upon occurrence of any of the following Events of Default:

7.1.1 Buyer's failure to make timely payment of any sum owing to BTC for the orders accepted and shipped by BTC or otherwise;

7.1.2 Buyer's failure to conduct its operation in the normal course of business (including the inability to meet obligations as they accrue);

7.1.3 Institution of any proceedings by or against Buyer under any bankruptcy, insolvency or similar law;

7.1.4 Appointment or application for a receiver for Buyer;

7.1.5 An assignment by Buyer for the benefit of creditors;

7.1.6 Failure of Buyer to furnish BTC with a written representation reaffirming Buyer's solvency (it being understood that Buyer's order hereunder constitute a representation by Buyer that it is solvent);

7.1.7 Failure of Buyer to maintain any insurance required as herein provided; or

7.1.8 Failure of Buyer to maintain the Goods free and clear of any and all Liens of third parties prior to Buyer's payment of the full purchase price.

7.2 Upon cancellation, at BTC's option:

7.2.1 Buyer shall pay for all Goods delivered and for all Goods completed or in process pursuant to purchase orders accepted by BTC;

7.2.2 With respect to all Goods for which BTC has not received full payment, BTC may stop delivery, retake (Buyer shall surrender the Goods without dispute) or retain possession of the Goods wherever located (all without notice, demand or legal process) and retain, lease or resell (at public or private auction or otherwise) without accounting to Buyer, and any payments received by BTC from Buyer or otherwise may be retained as liquidated damages;

7.2.3 BTC may declare any outstanding balance immediately due and owing and collect same from Buyer without further notice or demand, together with interest at the maximum rate permitted by law;

7.2.4 Refuse to deliver except for cash payment for all Goods.

7.3 The rights of cancellation and remedies provided in this Section are cumulative and are in addition to any other rights and remedies of BTC in law or equity.

## 8. PAYMENTS TERMS

8.1 Except as otherwise specified by BTC in writing, terms of payment are net thirty (30) days from date of invoice, with no discount allowed for earlier payment and no right of set-off for amounts due or allegedly due from BTC to Buyer. BTC reserves the right to alter or suspend credit terms, require C.O.D. or advance payment, whenever BTC has reasonable doubt as to Buyer's credit worthiness. If Buyer becomes delinquent in payment or refuses to accept C.O.D. shipments, BTC shall have the right, in addition to any other right it may have, to cancel any order of Buyer's, withhold further deliveries, and declare all unpaid amounts for products or goods previously delivered immediately due and payable. Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Amounts past due may, at BTC's discretion, be subject to an interest charge of 1.5% per month. All costs and expenses incurred by BTC as a result for non-payment or delinquent payment by Buyer, including collection costs, interest, and reasonable attorneys' fees, shall be paid by Buyer. All invoices are due and payable in cash in United States of America funds.

8.2 In the event BTC consents to delay shipments after completion of the Goods or any portion thereof, payment shall

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become due upon notice to Buyer that such Goods are ready for shipment and such Goods shall thereafter be held at Buyer's risk and expense.

8.3 Buyer grants to BTC a purchase money security interest in the goods, products and/or equipment supplied hereunder. Failure of Buyer to make any payment when due shall entitle BTC, in its sole discretion, to declare all obligations of Buyer immediately due and payable; in such event BTC shall have all the rights and remedies of a secured party under applicable law. Buyer agrees to execute upon request such documents which may be deemed necessary or appropriate by BTC to create, perfect and maintain the perfection of its security interest under applicable law. Buyer hereby appoints BTC as its attorney-in-fact to sign and file a financing statement and such other documents as BTC deems necessary to create, file, perfect and maintain the perfection of its security interest.

8.4 In the event Buyer fails to fulfill the terms of payment of any invoice, or if the financial responsibility of the Buyer shall become impaired or unsatisfactory to the BTC, or if necessitated by any acts of any governmental authority, including financial disclosures mandated by Section 409 of Sarbanes Oxley Act, BTC reserves the right to change terms of payment and/or defer or discontinue further shipments without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Buyer's credit standing are received by BTC or until such acts or requirements of such governmental authority shall have been complied with.

8.5 BTC also reserves the right to cancel the contract in the case of any of the events described in Section 8.4, in which event Buyer shall compensate BTC for any commitments, obligations, expenditures, expenses, and costs including attorney fees, BTC may have incurred in connection with the contract. Each shipment by BTC shall be considered a separate transaction and if payment is not received therefore within the periods specified herein, BTC at its option may bring a separate suit to recover the contract price of each such shipment.

8.6 If any of the following events occur, BTC shall have the right to demand assurance from Buyer that payment in full will be made:

8.6.1 Buyer is delinquent in making payment hereunder for a period of 45 days after payment was due.

8.6.2 Buyer fails to meet his obligations with one or more other suppliers as the obligations occur.

8.6.3 A Writ of Attachment or Judgment is entered in any court of competent jurisdiction.

On written demand for assurance by BTC, Buyer shall, within five (5) days after receipt thereof, furnish, in amount sufficient to secure the full payment of the balance of any monies due hereunder on account of the purchase price, either a penalty bond issued by a competent surety company, or financial security, bank irrevocable letter of credit, or other liquid collateral to be held in escrow by an attorney at law as designated by BTC, to secure the payment of the purchase price aforesaid.

8.7 Buyer agrees that BTC retains its mechanic's lien, payment bond or other legal rights for unpaid deliveries, regardless of what other documents have been presented to BTC for signature that may imply otherwise. Buyer further agrees that BTC has the right to determine, in its sole discretion, how to apply payments, and which invoices to pay with all payments, received on account, despite any advice to the contrary.

## 9. LIMITATION OF LIABILITIES

9.1 BTC shall not be liable for any indirect, consequential, exemplary, special, incidental or punitive damages, including, without limitation, loss of use, loss of business, revenue, profit or goodwill, downtime costs, damage to associated equipment,

cost of substitute goods, facilities or services, or claims of Buyer's customers for such damages, or other commercial or economic damages or costs, that may arise out of, in conjunction with or relate to, the failure of any Goods sold by BTC to Buyer, under any legal theory or cause of action, including, without limitation, tort, contract, warranty, strict liability or federal, state or local statute, ordinance or regulation. In no event shall BTC's liability exceed the price of the Goods which give rise to the claim.

9.2 Buyer agrees that if it transfers title to or leases the Goods to any third party Buyer shall obtain such party's agreement to the limitations of section 9.1.

## 10. FEDERAL CONTRACT REQUIREMENTS

If the Goods are purchased under a government contract or sub-contract, Buyer shall promptly notify BTC of the provisions of any government procurement laws and regulations which are required to be included in the contract covering the Goods. If compliance with such provisions increases BTC's costs or liability, BTC shall be entitled, at its option, to adjust the prices accordingly, request separate payment of the additional costs, or terminate this agreement with Buyer being responsible for all costs incurred by BTC.

## 11. EXPORT CONTROLS

BTC and Buyer acknowledge and agree that the Goods covered by Buyer's order are subject to export controls imposed by the United States Government under various federal laws. Buyer shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's ("U.S. Customs") Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative (for information go to <http://www.cbp.gov/> and find the link to the C-TPAT section). Buyer further certifies that the Goods: (a) are not intended to be used for any purpose prohibited by the applicable law or regulations including, without limitation, nuclear related activities or chemical/biological weapons or missiles; (b) are not intended to be released, shipped or re-exported to any destination to which the United States has prohibited shipment; and (c) are not intended to be released, shipped or re-exported, either directly or indirectly, to any persons identified on the Denied Persons List published by the U.S. Department of Commerce Bureau of Industry and Security. This Section shall survive any termination or expiration of Buyer's order.

## 12. CANCELLATION, CHANGES AND SPECIAL ORDERS

12.1 Buyer's orders may NOT be canceled or changed by Buyer without the prior written consent of BTC, which consent may be granted or withheld in BTC's sole discretion. In the event of such cancellation, Buyer shall be liable for BTC's anticipated profit and for all costs incurred prior to cancellation.

12.2 Buyer's may request specialty items or modifications. Any such specialty items or modifications will not be UL approved unless otherwise agreed by BTC in writing by an authorized representative of BTC. BTC does not warrant that the specialty items or modifications will perform to any level or standard and such specialty items or modifications are "AS IS" and the warranty provided in section 5 above does not apply.

## 13. RELEASE AND INDEMNIFICATION

Buyer acknowledges that it will use the Goods only in accordance with the Installation Manual applicable to the Goods. As such, Buyer agrees to release BTC from, and to hold harmless and, upon request, defend BTC for, from and against, any and all claims, suits, actions or legal proceedings brought against BTC, their affiliates and their officers, directors, employees and representatives, seeking injunctive relief or damages to recover any loss, damage or injury to person or property, including reputation and goodwill, whether brought by a federal, state or local governmental agency, or any other person, caused by or arising out of Buyer's purchase or use of the Goods. This

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release, hold harmless and indemnification shall apply, regardless of whether such claims, lawsuits, judgments, demands, actions or causes of action allege or are based on negligence, breach of implied warranty, strict liability, reckless or intentional conduct, or any other nature or manner of legal theory or cause of action. The sole exception to this agreement is if such claims, suits, actions or legal proceedings arise exclusively from failure of the Goods to meet the warranty set forth in Paragraph 5 above.

## 14. MISCELLANEOUS

14.1 NOTICE. All notices in connection with Buyer's order shall be in writing and shall be given by Federal Express or other reputable next day courier service or U.S. mail, postage prepaid, certified or registered, return receipt requested. Each notice shall be addressed to BTC at \_\_\_\_\_, Attn: President and to Buyer at the address contained in the Purchase Order, or at such other address as a party shall provide by notice to the other party. Notice shall be deemed effective upon delivery.

14.2 WAIVERS. No waiver shall be effective unless it is in writing. The failure of either party to require performance under any provision of this Agreement shall in no way affect the right of such party to require full performance at any subsequent time, nor shall the waiver by either party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision.

14.3 SEVERABILITY. These Terms and Conditions shall be deemed severable and if any portion hereof shall be held to be invalid for any reason, the remainder shall not be deemed invalid but shall remain in full force and effect.

14.4 GOVERNING LAW/ARBITRATION. These Terms and Conditions shall be governed and construed in accordance with the laws of the State of Michigan except for its choice of law provisions. The United Nations Convention of the International Sale of Goods shall not apply. The Buyer and BTC agree to submit all disputes, except for requests for equitable relief by way of an injunction or restraining order (including BTC's right to relief under Section 7 above), between them to binding arbitration, which shall be held in or near Farmington Hills, Michigan, in accordance with the rules of the American Arbitration Association ("AAA") pertaining to commercial arbitration. All of Buyer's disputes and claims shall be brought within two (2) years of the date of delivery by BTC. Within 30 days after either party has notified the other in writing that it is submitting a dispute to arbitration, one arbitrator shall be appointed in accordance with said rules. The arbitrators shall have no authority to award punitive damages or any other damages excluded herein. A hearing of no more than five (5) consecutive business days shall be completed within 180 days from the Statement of Claim. The arbitration award shall be by a written decision containing findings of fact and conclusions of law and shall be final and binding. It may be entered in and enforced by any court of competent jurisdiction. The party prevailing in the arbitration or any other legal proceedings shall be entitled to recover its costs including reasonable attorney's fees incurred due to the arbitration or other legal proceedings.

14.5 MODIFICATION. These Terms and Conditions may not be amended, modified or supplemented at any time except by a written document signed by the parties.

14.6 ENTIRE AGREEMENT. This is the complete and final agreement between the parties related to the subject matter of these Terms and Conditions and supersedes all prior writings, conversations, understandings or agreements.

14.7 CREDIT. BTC reserves the right to grant, deny or stop advancing credit at any time in its sole discretion. BTC's credit policies are subject to change at any time without notice.

a. CREDIT INFORMATION. Buyer hereby consents to BTC giving or obtaining credit information to or from third parties regarding Buyer.

b. CREDIT CHECK AUTHORIZATION. Buyer authorizes BTC to conduct a credit investigation for the purpose of extending credit to Buyer. Buyer agrees to supply such information as may be required by BTC to: (i) warrant the future extension of credit; (ii) enable BTC to perfect liens; or (iii) recover upon any bond issued for its protection.

c. Buyer further agrees to inform BTC of any material change in the condition of its business or of any changes in its legal structure.

14.8 PARTIES IN INTEREST. These Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

14.9 ASSIGNMENT. Buyer shall not assign Buyer's order without the prior written consent of BTC, which consent may be granted or withheld in the sole discretion of BTC.

14.10 CLASS I OR II SUBSTANCES. Buyer warrants and agrees that pursuant to 40 C.F.R. 82.154(m), any class I or II substances included as a part of this sale are sold only for eventual resale to certified technicians or that Buyer is a certified technician under 40 C.F.R. 82, subpart B.

14.11 ENFORCEMENT. Buyer shall indemnify BTC against all costs and expenses (including attorney fees) reasonably incurred in the enforcement of Buyer's order and these Terms and Conditions.

14.12 DISPOSAL. **Buyer is responsible for the proper disposal of the Goods and must comply with all Federal, State and applicable local laws and regulations related to disposal, including the disposal of refrigerants. BTC is not responsible or liable for the disposal of the Goods.**

14.13 CONFIDENTIALITY. Prints or drawings attached to Buyer's order or otherwise furnished by BTC to Buyer in connection with BTC's performance under Buyer's order are the sole property of BTC. BTC retains all patent and other rights, including exclusive rights of use and/or manufacture and/or sale. BTC prints and drawings that are provided to Buyer for use with the Goods are to be reviewed only by necessary and authorized personnel of the Buyer and with the understanding that the information contained in the prints and drawings is confidential and proprietary to BTC and owned by BTC. BTC does not convey any permission to show, reproduce, or manufacture the article or articles shown in the prints or drawings, such permission to be granted only by specific authorization in writing signed by an officer or other authorized agent of BTC.