

1. **GENERAL.** The Terms and Conditions outlined herein shall apply to all sales made and service provided by THERMO MANUFACTURING, INC. (hereinafter referred to as "Thermo") to its customer (referred to herein as "Customer") for the Products that are manufactured and sold by Thermo (the same are described at <http://www.thermopan.com/Products> [as may be updated or modified from time to time] and are referred to as "Products"). Any proposal for the sale of Products by Thermo shall be construed as an offer exclusively upon the terms and conditions contained herein, and any conflicting or additional material provisions contained in any Customer purchase order or other document are expressly rejected in advance. When used as part of an acknowledgement or in conjunction with the purchase order, the acknowledgement or purchase order is expressly conditional upon assent to these Terms and Conditions as comprising the exclusive rights and remedies of the parties.

2. **DELIVERY and DELAYS.** Delivery dates provided by Thermo to Customer shall be interpreted as estimated, and Thermo shall not be liable for any loss or delay due to the timing of the delivery of Thermo's Products. Thermo shall not be responsible for any delay in performance resulting in whole or in part from or made impossible or impracticable by any cause beyond the control of Thermo, including but not limited to, terrorism, fire, explosion, accident, breakdown, strike, adverse weather conditions, failure or refusal of any carrier to transport thereof, failure of any source of supply to honor orders within the stated time period, customarily or heretofore experienced by Thermo in the trade, shortage or lack of material, fuel, power, transportation media, sale or transfer of Thermo facilities, embargo or any act of God or action or request by any government authority, any contingency or delay or failure or cause beyond Thermo's control.

3. **WARRANTY.** Thermo warrants that the Products will be free of defects in material and workmanship for a period of thirty (30) days after delivery to Customer. Upon receipt of the Products from Thermo, Customer shall have thirty (30) days to inspect the Products delivered. Should Customer fail to notify Thermo in writing of any defect which justifies rejection of said Products within thirty (30) days of delivery, Customer shall be deemed to have accepted the Products. Claims for shortages or rejections for defects must be made within thirty (30) days after receipt of Products by Customer. Thermo retains the right to either replace the defective Product or issue a credit on such defective Products provided they are returned to Thermo's factory and after Thermo has had an opportunity to inspect them. Credit will not be issued on any Product which has been altered or defaced in any way. Thermo sells Product in closed and sealed boxes. Thermo shall not be obligated to accept the return of, or issue any credit for or offer any

refund on, any Product that is not in its original, sealed box or container. No credit or refund shall be issued on any individual Product piece.

Thermo makes no performance warranty or warranty of any particular use, and the effects of corrosion, erosion, and normal wear and tear are specifically excluded from Thermo's warranty.

THERMO MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

4. **LIMITATIONS OF LIABILITY.** WHETHER BASED ON ANY WARRANTY CLAIM OR OTHERWISE, THERMO WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY LOSS OF PROFIT, INTERRUPTION OF BUSINESS OR ANY OTHER SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES SUFFERED OR SUSTAINED BY CUSTOMER. THERMO'S TOTAL MAXIMUM LIABILITY TO THE CUSTOMER IN RESPECT OF THE MANUFACTURE AND SALE OF ANY PRODUCTS IS LIMITED TO THE WARRANTY STATED HEREIN AND, IF ANY CLAIM BY CUSTOMER IS BASED ON A THEORY OTHER THAN THE WARRANTY, THEN THE DAMAGES ARE LIMITED TO THE TOTAL MONIES RECEIVED BY THERMO FROM THE CUSTOMER FOR THE PARTICULAR PRODUCTS PURCHASED BY CUSTOMER.

5. **PAYMENT.** Customer agrees to pay Thermo for the Product as specified on Thermo's invoice. Should Customer fail to make payment within the specified terms of payment, Thermo may, without notice, accelerate and declare Customer's entire unpaid balance due and owing, including therewith sums due for goods that have been shipped but for which the stated payment term has not expired.

6. **SERVICE CHARGE.** A charge of two percent (2%) per month (twenty-four percent (24%) annually) will be charged on all past due amounts. In the event a charge of two percent (2%) per month may not be charged under applicable state or federal law, then the maximum amount of service charge permitted by applicable state or federal law shall be charged.

7. **PRICE.** All of the stated prices for Thermo's Products are F.O.B. shipping point, unless otherwise specified on the invoice, and payment terms are net thirty (30) days. The price does not include any present or future federal, state, or local taxes or assessments, which may be applicable to or result from this transaction or any services performed in connection herewith.



Prices quoted by Thermo are for the quantities specified, and any changes ordered must be in writing and are subject to price revision if necessary. All pricing is subject to surcharges for increased energy costs, raw material increases, and increased shipping charges. Prices quoted, or set forth in any orders accepted by Thermo, are subject to increase sufficient to compensate for any tax, excise, duty or levy hereafter enacted and imposed by any governmental authority, or for any expenses or charges due to war, terrorism, hostilities or other disorders, domestic or foreign, whereby the cost of the Production or sale of articles to which such prices apply shall be increased, or because of increases in costs of manufacturing, processing, or sales, resulting from the operation of any Federal, State, or Municipal law, or regulatory measure hereafter adopted.

Customer shall make no set-off or deduction from any amounts due on any order or purchase unless specifically approved in writing by Thermo management.

**8. ELECTRONIC TRANSACTIONS.** Buyer expressly consents to doing business with Thermo via email, facsimile and automated ordering systems. Orders placed by Customer electronically shall incorporate and be subject to Thermo's standard Terms and Conditions as set forth herein.

**9. RECOVERY OF LEGAL FEES AND COSTS.** In the event it becomes necessary for Thermo to file a lawsuit to enforce any of the terms and conditions hereof and Thermo is granted a judgment wholly or in part in its favor, Thermo shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

**10. NO MODIFICATION.** The terms and conditions set forth herein shall constitute the sole agreement between Thermo and Customer. Any changes which Customer may request shall be authorized only if in writing and signed by Thermo. These terms and conditions shall be binding upon and inure to the benefit of the respective parties, their successors, representatives and assigns.

**11. CHOICE OF LAW.** These Terms and Conditions and any questions with respect to the construction and interpretation to perform it shall be governed by and determined in accordance with the laws of the State of Ohio. Customer, its successors and assigns, by and through placement of an order for goods or services, hereby waives his, her or its right to remove from state to federal court, and consents to the exclusive jurisdiction of the Stark County Common Pleas Court, or such other forum as Thermo may select to hear and settle any dispute arising from the terms hereof, or any dispute arising from Customer's placement of an order for or accepting said goods or services.

**12. SEVERABILITY.** Should any term or condition above, or any portion hereof be invalid or inapplicable, the balance of these Terms and Conditions shall remain in full force and effect.

**13. NON-WAIVER.** Any waiver or failure of Thermo to require strict compliance with the provisions of these Terms and Conditions in any respect shall not be deemed a waiver of Thermo's right to insist upon strict compliance in other respects or thereafter in the same respect.

Acknowledged and Agreed , by:

**CUSTOMER**

\_\_\_\_\_  
Printed Name of Customer

\_\_\_\_\_  
Address

*The sale and delivery of Thermo's Products is conditioned on Customer's acceptance of the terms and conditions of sale set forth herein. The parties acknowledge that any other terms and conditions contained in any other document are of no force or effect and that only the Terms and Conditions set forth herein shall control the transactions between the parties.*

By: \_\_\_\_\_ (signature)  
\_\_\_\_\_  
(printed name),  
its authorized Representative

Date: \_\_\_\_\_