



# GENERAL TERMS AND CONDITIONS

## for the Sale and Rental of Products and Services

**1. APPLICABILITY:** These General Terms and Conditions for the Sale and Rental of Products and/or Services govern the sale and rental of Products and Services to Customer by Thermon Canada Inc. and its Affiliates, unless the Parties have a binding Master Services Agreement which is applicable to the Work. These Terms supersede any prior written or oral agreement, understanding, representation or promise, and any preprinted or standard terms and conditions contained in Customer's request for quote, purchase order, invoice, order acknowledgment, or similar document. These Terms may not be amended, supplemented, changed or modified except by written agreement signed by an authorized representative of Thermon. Thermon's acknowledgment of Customer's purchase order shall not constitute acceptance of any terms and conditions contained therein.

**2. DEFINITIONS:**

- 2.1 "Affiliates" means any entities that control or are controlled by that Party, or an entity that is controlled by the same entity that controls the Party (whether through controlling at least 50% of voting shares, by contract, or otherwise).
- 2.2 "Claims" means any causes of action, demands, judgments, liabilities, losses, fines and penalties, including reasonable attorneys' fees and costs of litigation.
- 2.3 "Customer" means the entity requesting Work from Thermon.
- 2.4 "Consequential Damages" means any incidental or consequential damages, including, but not limited to, lost or delayed profits, lost or delayed revenue, lost or delayed production, downtime, business interruption, loss of goodwill or any other incidental or consequential damages.
- 2.5 "Force Majeure" means any event that renders it wholly or partially impossible for the affected Party to perform its obligations under these Terms or delays such affected Party's ability to do so (other than any obligation to pay money), when such event is beyond the reasonable control of the affected Party, is not due to the fault or negligence of the affected Party, and could not have been avoided by the affected Party by the exercise of reasonable diligence. These events include but are not limited to staff sickness, interruption of operations, faults in material, lack of raw materials, government orders, pandemics, laws, failure of third parties to deliver, transport difficulties, public disorder, strikes, lockouts, problems with mobilization and other contingencies.
- 2.6 "Intellectual Property" means any intellectual property, including but not limited to copyrights, patents, trade secrets, software, firmware or other intellectual property rights associated with any ideas, concepts, know-how, techniques, processes, reports, or works of authorship owned, developed or created, and enhancements, improvements or derivatives thereof.
- 2.7 "Order" means any purchase order, request for Work (oral or written), or any other means by which Customer requests Products or Services from Thermon.
- 2.8 "Party" or "Parties" means Thermon, Customer, or both collectively.
- 2.9 "Products" means any goods, materials, or equipment offered or provided by Thermon to Customer, whether by sale, rental, or otherwise.
- 2.10 "Regardless of Cause" means without regard to the cause of any Claims or other damages, including, but not limited to, the negligence or fault of any Party (including the indemnified Party), and whether or not any damages were a natural result or contemplated by the Parties at any time.
- 2.11 "Services" means any labor, design, engineering, or other services offered or provided by Thermon to Customer.
- 2.12 "Terms" means these General Terms and Conditions for the Sale of Products and/or Services.
- 2.13 "Thermon" means Thermon Canada Inc., or its respective Affiliate which is providing Work for Customer as the case may be.
- 2.14 "Warranty Period" shall mean twelve (12) months from the date of delivery.
- 2.15 "Work" means any Products sold and/or Services provided by Thermon.
- 2.16 "\$" means Canadian dollars.

**3. PRICING:** Pricing for Work shall be as agreed in writing by the Parties, or if none, then in accordance with Thermon's price list in effect at the time and in the particular location where the Work is offered. Unless otherwise agreed, all payments shall be made in Canadian dollars. All

prices are exclusive of any federal, provincial, local, sales, use, value added, excise or similar taxes, duties, levies, imposts, fees, imposed on the sale or use of the Product or Services, which will be added to invoices and paid by Customer to Thermon to be remitted to the appropriate taxing authority. Customer is responsible for all customs duty, taxes, interest, penalties, fines or any costs whatsoever arising from a determination by the applicable authorities that the purchase or rental of the Products or the performance of the Services is not exempt from such charges. Customer shall also be responsible for all charges associated with approvals, permits, legalization, clearances, licenses for compliance with laws, currency fluctuations, bank guarantees and similar charges, applicable at all locations where the Work shall be performed and fulfilled. All pricing is based on known quantities of materials associated with Customer's request for quotation. Unless expressly agreed otherwise, pricing for Products does not include design and engineering of installation, change orders, extended warranties, crating, storage, documentation, delivery, inspection and testing, and all other supplies and services as may be necessary for Products to be supplied.

**4. PAYMENT:** Customer shall pay the amounts stated on each invoice within thirty (30) days of the invoice date without deduction or set off. Late invoices accrue interest at the rate of two percent (2%) per month, unless prohibited by applicable law. If Customer disputes any invoice or part thereof, it may withhold payment of the disputed amount, but shall promptly notify Thermon and timely pay all undisputed amounts. Invoices not disputed within thirty (30) days of the invoice date shall be deemed accurate and Customer shall not thereafter be entitled to dispute any amount reflected thereon. If payment of undisputed amounts is not timely received, or Thermon determines, in its sole discretion, that Customer's creditworthiness has become impaired, Thermon shall be entitled to (i) require payment in advance for Work yet to be performed, (ii) revoke any discounts, and (iii) immediately suspend its performance of Work, or terminate any Order, without liability. Customer will pay all of Thermon's costs, including attorney's fees and court costs, incurred in connection with the collection of past due amounts. If Customer requests to cancel an Order and Thermon allows such cancellation, Thermon shall be paid for all Work performed and Products provided to the date of termination and any reasonable costs resulting from such termination, including charges for custom or non-cancelable items.

**5. WARRANTY:** Thermon warrants the Products supplied are free from defects in workmanship for the Warranty Period. If the Products are defective and Thermon is notified within the Warranty Period, then as Thermon's sole liability and Customer's exclusive remedy, Thermon, at Thermon's sole option, shall either repair or replace such defective Products with the type originally furnished, or refund to Customer any amount paid to Thermon for such defective Products. Thermon warrants any Services provided by Thermon will be performed in a good and workmanlike manner. If any Services are improperly performed, then as Thermon's sole liability and Customer's exclusive remedy, Thermon, at Thermon's sole option, shall either repair or re-perform the defective Services, or refund to Customer any amount paid to Thermon for such defective Services, provided that Thermon must be notified in writing of any defective Services prior to Thermon's departure from the worksite. The warranties set forth herein are non-transferable and shall not apply if defects are caused or exacerbated by reason of neglect, abuse, damage during shipment, improper operation, inaccurate information provided by Customer, use inconsistent with standard parameters, unusual mechanical, physical or electrical stress, accidental damage, hidden defects not discovered during the Warranty Period, improper storage, normal wear and tear, repairs not authorized by Thermon, a Force Majeure event, improper installation by a third party, or circumstances not under Thermon's control. Warranties shall not apply to Products that have not been stored in an indoor climate-controlled storage facility within the allowances set forth in the quotation. Furthermore, the warranties shall not apply to Products that have been modified or fitted with improper parts without the written consent of Thermon. If the Products are electrical cables, the warranty shall be void if Customer does not perform a complete inspection and testing, including a Megger test, both before insulation (but after the installation) and after insulation; provided, however, that this exclusion shall not apply if Thermon performs both the installation and insulation Services. In no event shall Thermon be liable to repair equipment, products, and materials which were not provided by Thermon. If installation of the

Products was not performed by Thermon, Thermon's liability shall be limited to the repair or replacement of the Products and Thermon shall not be liable for charges associated with removal, transportation, or re-installation of any Products. Customer shall reimburse Thermon for all expenses incurred by Thermon when its representatives are dispatched to Customer's location to inspect Products for alleged defects where Thermon determines in its sole discretion that the defect is not covered by the warranty. If Thermon has agreed to pay for and arrange shipping, any claims for damage due to shipping must be submitted in writing within three (3) days of delivery. Any warranty is void in the event of non-payment by Customer. The Warranty Period shall not be renewed or extended if the Products are repaired or replaced pursuant to these Terms. All descriptions, technical specifications, drawings, illustrations and information relating to weight and dimensions furnished by Thermon are approximate only. Thermon does not warrant equipment, products, and materials not manufactured by Thermon, and the warranties for such are limited to the warranties, if any, that are given by the manufacturer and transferable to Customer. No warranty claims are valid for painting or finishes if made after thirty (30) days from the date of installation. THE FOREGOING WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, OR ARISING BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

**6. INDEMNIFICATION:** Thermon agrees to release, defend, indemnify and hold Customer harmless from and against all Claims of any kind or character, whether in tort or in contract, arising out of or relating to the personal injury, illness, or death, or the loss or damage of property suffered by Thermon, its Affiliates, subcontractors and its and their respective employees, officers, directors, agents, invitees, and insurers, in connection with the provision of Work. Customer agrees to release, defend, indemnify and hold Thermon harmless from and against all Claims of any kind or character, whether in tort or in contract, arising out of or relating to the personal injury, illness, or death, or the loss or damage of property suffered by Customer, its other subcontractors, its clients, customers and its and their respective employees, officers, directors, agents, invitees, and insurers, in connection with the provision of Work. THE INDEMNITIES SET FORTH HEREIN APPLY REGARDLESS OF CAUSE.

**7. LIMITATION OF LIABILITIES:**

7.1 NOTWITHSTANDING ANYTHING CONTAINED IN THESE TERMS TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL DAMAGES ARISING FROM OR IN ANY WAY CONNECTED TO THESE TERMS OR THE PERFORMANCE OF THE WORK, WHICH ARE SUFFERED BY THE OTHER PARTY OR ANY OF ITS AFFILIATES, REGARDLESS OF CAUSE.

7.2 NOTWITHSTANDING ANYTHING CONTAINED IN THESE TERMS TO THE CONTRARY, THERMON'S MAXIMUM LIABILITY TO CUSTOMER, THIRD PARTIES, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAYABLE TO THERMON UNDER THE APPLICABLE ORDER GIVING RISE TO THE CLAIM, AND CUSTOMER SHALL RELEASE AND HOLD THERMON HARMLESS FROM ANY AND ALL CLAIMS TO THE EXTENT THEY EXCEED SUCH ORDER PRICE, REGARDLESS OF CAUSE.

7.3 NO CLAIMS, REGARDLESS OF FORM, MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

**8. INSURANCE:** Customer must procure and maintain in support of its indemnity obligations under these Terms, policies of insurance of the following types with coverage amounts not less than the minimum limits specified: (i) Comprehensive general liability insurance (including contractual liability) with limits not less than \$2,000,000 per occurrence; (ii) if available in the jurisdiction, workman's compensation in compliance with local statutory requirements, and/or employer's liability with limits of not less than \$1,000,000 per occurrence; and (iii) as applicable, automobile liability as may be required by statute or similar regulations in the country of operations. Said policies shall name Thermon and Customer's clients as additional insured, and shall be endorsed to provide that Customer's insurers shall, to the extent of Customer's indemnity obligations hereunder, waive their rights of subrogation against Thermon and Customer's clients.

**9. LEGAL COMPLIANCE:**

9.1 The Parties agree to comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and any applicable Canadian laws related to anti-corruption, anti-kickbacks, and anti-money laundering. The Parties will not offer, promise, authorize or make, directly or indirectly,

any payments (in money or anything else of value), contributions or gifts to any person or entity in order to obtain or retain business, or secure any other improper business advantage, which would violate the U.S. Foreign Corrupt Practices Act and/or any other applicable anti-bribery laws. Facilitating payments are strictly prohibited regardless of applicable law. Furthermore, the Parties agree to comply with all applicable laws relating to labor, human trafficking, conflicts minerals, and human rights.

9.2 Customer agrees it will not, directly or indirectly, sell, provide access to, export, re-export, transfer, divert, loan, lease, consign, transship (including a stop in port), transport, or otherwise dispose of any Thermon Products or technology to, via, or for (i) any entity known to be headquartered in, or owned or controlled by a national of, any country or region subject to comprehensive sanctions by the United States or other countries with jurisdiction over the transaction, (ii) any other individual or entity identified on a denied or restricted party list of the United States or other countries with jurisdiction over the transaction, or (iii) any activity or end-use restricted by applicable laws, without first obtaining all required government authorizations and Thermon's written permission. Customer agrees to complete Thermon's end-use, end-user, end-destination documentation when requested. Customer will not engage in any activities which would cause Thermon to violate applicable laws, and in such event, Customer shall release, defend, indemnify and hold Thermon harmless from and against any Claims relating to such violations. In the event of a conflict between import/export/anti-boycott laws and regulations of the United States and the laws and regulations of any other country, the Parties agree to abide by the import/export/anti-boycott laws and regulations of the United States.

9.3 Customer shall execute any certifications from time to time as requested by Thermon which affirm Customer's compliance with applicable laws and Thermon's Code of Conduct and Business Ethics, the Thermon Way.

**10. CHOICE OF LAW:** These Terms shall be governed by, and construed in accordance with, the laws of the province of Alberta and the federal laws applicable therein, excluding any conflict of laws principle that would refer to the laws of another jurisdiction.

**11. DISPUTES:** All unresolved disputes (other than actions for injunctive relief or enforcement of lien rights) arising out of or in connection with the Work, shall be exclusively referred to binding arbitration. The location shall exclusively be in Calgary, Alberta, pursuant to the Arbitration Rules of ADR Institute of Canada, Inc. All proceedings shall be conducted in English, unless otherwise agreed in writing. All matters pertaining to any such arbitration must be kept strictly confidential. Any Party may seek to enforce an arbitration award through the local court system of competent jurisdiction.

**12. INTELLECTUAL PROPERTY:** Thermon's Intellectual Property shall be and remain the property of Thermon. To the extent any such Intellectual Property is incorporated into or necessary for the performance of any Work provided, Thermon grants Customer a non-exclusive, non-transferable, non-sub-licensable, revocable, royalty-free, right and license to use such Intellectual Property solely for the purpose of performing or using such Work. Any development of new or improved Intellectual Property shall not be deemed to be "work for hire" but shall belong to Thermon.

**13. SHIPPING:** Unless otherwise agreed in writing, all Products are to be shipped 2020 Incoterms FCA Thermon's facility and include Thermon's standard packaging for domestic shipment only, with Customer arranging and paying for all shipping. Customer shall pay for additional packaging costs associated with special requirements and international shipments. Failure by Thermon to meet any delivery schedule shall not entitle Customer to change the terms of payment, pay a discounted amount, or withdraw the Order. If part of an order is ready, Thermon may, at its discretion, deliver part or wait until the full order is ready. Thermon will confirm delivery dates following receipt of the Order. If part deliveries are made in accordance with the foregoing, and in the case of deliveries of successive parts of an Order, each delivery shall be deemed to constitute a separate Order with the Customer which cannot be revoked once those Products have been delivered. Products which are ready for shipment at Thermon's facility but have not been retrieved by Customer will be kept in storage for a maximum of thirty (30) days, at a reasonable weekly rate, or for a longer period as agreed in writing. Customer assumes responsibility to promptly place any and all claims with the carrier for Products lost or damaged in transit. Any other claims must be made within thirty (30) days after date of delivery. Thermon reserves the right to ship 95% to 105% of the quantity ordered. Thermon reserves the right to ship within plus 10% of required flexible or bulk cable unless specific lengths are requested by Customer and quoted by Thermon.

- 14. TITLE AND RISK OF LOSS:** Title shall transfer to Customer upon payment in full of the applicable invoice. Risk of loss of all Products shall pass to Customer per the 2020 Incoterms FCA Thermon's facility, or as otherwise agreed in writing. Customer may not pledge or transfer ownership to a third party. The acceptance of a bill of exchange or other commercial paper shall not constitute payment. In the event of non-payment of any amount due or upon receipt of information leading Thermon to reasonably believe full payment may be delayed, Thermon may, without a notice of default and without the need for any court order, dissolve any Order and claim any Products that may have been delivered but have not yet been paid in full, without prejudice to Thermon's rights to demand compensation for any loss or damage.
- 15. FORCE MAJEURE:** Neither Party shall be considered in breach of these Terms (excluding the obligation of Customer to pay Thermon for Work completed and Products delivered) if prevented from performing due to an event of Force Majeure. If any period of Force Majeure preventing performance of Work continues for more than ten (10) days, either Party may terminate the effected Work by giving five (5) days written notice to the other Party. Thermon shall be paid for all Work performed and Products provided to the date of termination and any other reasonable costs incurred as a result of such termination, including charges for custom or non-cancelable items.
- 16. QUOTATIONS AND ORDERS:** Quotations are valid for a period of thirty (30) days from the date of issue or as otherwise specified in the quotation. Quotations are subject to change without notice. Prices given in any quotation are applicable to that specific quotation only. A quotation is not an offer to sell and may be withdrawn or revised by Thermon at any time prior to dispatch. If any price increase occurs, such as an increase of taxes, levies, import duties, prices of materials, wages or social security prior to delivery of the Products, Thermon shall have the right to charge these adjustments, even if it has been agreed that the price will be fixed, without the right of Customer to cancel Orders placed. Product availability and manufacturing capacity is subject to shop loading and rental fleet availability at the time of the Order. Any requested change to an Order may be accepted or rejected for whatever reason by Thermon at its sole discretion. Orders and amendments thereto shall only be binding upon Thermon if agreed in writing by Thermon. Customer acknowledges Thermon's right to substitute Products manufactured by a different vendor to the vendor named in the quotation provided that the substituted Product is of equal or greater quality than the Product quoted. Unless specifically set forth in the quotation or Order, Thermon's scope of work does not include site preparation, installation permits, foundation work, structural modifications, site access, transportation permits, removal of existing equipment, unloading, uncrating, ductwork, ventilation, utilities, operating costs, supply and service connections, safety systems, safety protocols, access rental equipment, storage, and other similar items or services.
- 17. STORAGE OF PRODUCTS:** If Customer requests not to take possession of the Products when the Products are ready for delivery, Customer shall request in writing for Thermon to hold the Products on Customer's behalf, and Thermon will store such Products (or portion thereof) for a reasonable time (not to exceed six (6) months) and invoice Customer for the full price of the Products which are ready for delivery. Customer must specify a delivery date at the time of the storage request. Such Products will be stored separately from Thermon's inventory and clearly identified as Customer's inventory. Unless otherwise agreed in writing, if such storage continues for more than fourteen (14) days, Customer will pay a storage fee equal to 0.5% of the value of the Products per week of storage, up to a maximum of 10%. In the event of such storage, title and risk of ownership shall pass to Customer when the Products are ready for delivery, and shipping terms shall be modified to Ex Works Thermon's facility.
- 18. DESIGN AND DRAWINGS:** Customer represents and warrants the data, calculations, sizing, specifications and/or other design information provided by customer, its agents and independent contractors are complete and accurate. Customer is responsible for all costs resulting from changes requested after Customer has returned signed approved drawings to Thermon. Customer's signed approval and acceptance of required drawings is required prior to Thermon's commencement of procurement and Product manufacturing.
- 19. RENTAL OF PRODUCTS:** Minimum rental periods for Products are sixty (60) days unless noted otherwise in the Order. Customer shall bear all repair costs for rental Products damaged beyond normal wear and tear. Rental Products that are not returned or are damaged beyond repair will be charged at 80% of purchase price if such Products have been in use for more than six (6) months and at 100% of purchase price otherwise. Rental Product invoices will be sent to Customer monthly until rental Products have been received and processed by Thermon at Thermon's defined facility(s). Returned rental Products processed and received during the middle of the monthly rental term will be pro-rated. Partial returns will be deducted from the total monthly invoice.
- 20. CANCELLATION AND RETURNS:** Customer acknowledges that Order may be canceled or modified in any respect without the prior written consent of Thermon. Customer agrees to reimburse Thermon from any loss or damages incurred by Thermon arising from the cancellation or modification of an Order. Customer may not return Products prior to receiving Thermon's signed Return Materials Authorization form. Returns of standard catalog and inventory Products will be subject to a restocking charge, which shall be determined by Thermon in its sole discretion based on age of inventory, full reel lengths, storage conditions, etc. Thermon will not restock specialty or custom manufactured Products. Customer is responsible for any and all repairs or reconditioning necessary to put accepted returned Products in a resalable condition. All returned Products must be in an "as new" condition and in their original packaging. Products are to be shipped prepaid to the location address as authorized by Thermon.
- 21. INSPECTION AND TESTING:** All Product inspections and testing performed by Customer or Customer's third party inspector at Thermon's facility shall take place upon prior written notice and during normal business hours. Customer is responsible for all costs relating to such inspection and testing. If testing is a requirement prior to purchase, all freight charges and transportation costs incurred to transport Products to and from the test location shall be the sole responsibility of Customer.
- 22. GENERAL:**
- 22.1 The Thermon entity contracting with Customer shall have several, and not joint, liability with respect to its obligations herein, and Customer may only look to such entity, and not any of its Affiliates, for fulfillment of such obligations.
- 22.2 If any of the provisions in these Terms are found to be inconsistent with or contrary to any applicable law, such provisions shall be deemed to be modified to the extent required to comply with applicable law and as so modified, these Terms shall continue in full force and effect. If any provision cannot be modified to comply with applicable law, the term or provision shall be deemed to be deleted from these Terms and the remaining provisions shall remain in full force and effect.
- 22.3 Thermon's failure to enforce any term, provision or condition of these Terms shall in no manner affect its right to enforce the same at a later time, and any waiver by Thermon shall not be construed to be a waiver of any subsequent breach.
- 22.4 Neither Party may assign its rights or obligations to a third party (other than its Affiliates) without the written consent of the other Party.
- 22.5 Customer may not disclose to any third party any designs, prices, technical specifications, drawings, illustrations and information relating to any Thermon Products and Services, without Thermon's written consent.
- 22.6 Nothing in these Terms shall be construed to give any person or legal entity, other than Thermon and Customer, any right, remedy or claim under or with respect to the Terms, and the Terms and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.
- 22.7 Without prejudice to any of its other rights, Thermon may terminate any Order or suspend further deliveries to the Customer if Customer does not make timely payment for any Work or if Thermon has a reasonable belief that Customer may not be able to meet its financial or other obligations.
- 22.8 Technical data contained in Thermon's marketing materials or on Thermon's website is subject to change without notice. Thermon reserves the right to make dimensional and other design changes in its sole discretion at any time and from time to time. Customer acknowledges Thermon shall not be obligated to modify Products manufactured before any subsequent changes in design.