

# TERMS AND CONDITIONS OF SALE

1. **CONTROLLING PROVISIONS:** ALL SALES ARE EXPRESSLY LIMITED TO AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED EXCLUSIVELY BY THE TERMS AND CONDITIONS STATED HEREIN WHETHER THIS CONTRACT, OF WHICH THIS CONDITIONS OF SALE IS A PART REPRESENTS AN OFFER BY SELLER OR SELLER'S CONDITIONAL ACCEPTANCE OF BUYER'S OFFER. SELLER'S OFFER IS EXPRESSLY CONDITIONED ON BUYER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS CONTRACT. SELLER'S ACCEPTANCE OF BUYER'S OFFER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS OF THIS CONTRACT- No addition to waiver or modification of these terms and conditions shall be binding on Seller unless expressly agreed to in writing by Seller. All quotations or resulting contracts shall be interpreted under the laws of the State of Pennsylvania. No sale shall be final until acknowledged in writing by Seller.

2. **TERMS, TAXES AND PRICES:** a. Terms of payment are subject to the approval of Seller's credit department. Unless otherwise agreed to in writing by Seller, all payments are due net thirty (30) days from the date of invoice. In the event that the Buyer has failed to pay Seller for products or services ordered under different contracts or under this Contract as required by the terms and conditions of said contracts or Contract Seller. At its option shall have the right to make any delivery under this Contract payable on a cash before-shipment basis. In the case of export sales, unless otherwise agreed to in writing by Seller, all payments are to be by means of a confirmed irrevocable letter of credit. b. In addition to the prices specified in the Contract between the parties, (referred to in this Conditions of Sale as "Contract"), Buyer shall pay Seller the amount of any excise, sales, privilege, use or any other taxes or government charges, local, state or federal, which arise from the sale or delivery of the products, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the appropriate taxing authorities. Florida Hydronics, Inc. (FHI) reserves the right to add an applicable fuel surcharge as shall be determined on a weekly basis according to the results of the survey for diesel fuel pricing conducted every Monday by the Department of Energy -Energy Information Administration for the previous week's prices..c. Prices and deliveries are F.O.B. Point of manufacture. Prices on accepted orders and covering Seller-manufactured products are firm for a period of 90 days from date of acceptance. Seller reserves the right to increase the prices at the time of shipment to the extent of any increase in cost to it of any item not of Sellers manufacture on which firm prices were not available on the date of acceptance

3. **SHIPMENT:** Deliveries are F.O.B. point of manufacture. Risk of loss shall pass to the Buyer upon delivery to the earner. Any claims for damage or loss in shipment are the carrier and Buyer. Seller shall not be involved in such claims beyond Seller's assistance in processing and securing information pertaining to such damage claims.

4. **DELAYS:** The delivery date(s) under the Contract is only an estimate and is based upon prompt receipt of all necessary information from Buyer. The delivery date(s) is subject to and shall be extended by delays caused by strikes, fires, accidents, shortages of labor or materials, embargoes or delays in transportation, compliance with government agency or official requests, or any other similar or dissimilar cause beyond the reasonable control of Seller. FAILURE TO DELIVER WITHIN THE TIME ESTIMATED SHALL NOT BE A BREACH OF CONTRACT ON SELLER'S PART AND IN NO EVENT WHATSOEVER WILL SELLER BE RESPONSIBLE OR BUYER ENTITLED TO ANY DIRECT OR INDIRECT INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO ANY DELAY IN DELIVERY. If Buyer causes Seller to delay shipment or completion of work. Seller shall be entitled to any and all extra cost and expenses resulting from such delay.

5. **CANCELLATIONS AND ALTERATIONS:** a. Accepted orders may be cancelled by Buyer only with Seller's express written consent. If cancellation is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of such cancellation, plus a reasonable profit. b. The delivery date(s) or specifications of accepted orders, whether completed or in process, cannot be altered except by Seller's express written consent and upon terms which will indemnify Seller for all expenses incurred and damages sustained by Seller on account of such alteration, plus a reasonable profit

6. **WARRANTY:** Subject to the terms, conditions and limitations hereinafter set forth, Seller warrants, to the original Buyer only, each new product manufactured by seller to be free from defects in material and workmanship. Sellers entire and exclusive obligation and liability, and Buyers sole and exclusive remedy, under the warranty is limited to repairing or replacing at Sellers option, free of charge; F.O.B. factory, any part proving defective during the duration of this express warranty. The obligations of Seller under this warranty shall not include any transportation cost, labor costs, installation costs, or other costs or charges associated with the repair or replacement. This warranty shall not be enforceable if the Buyer is in default in making any contract payment. The duration of this express warranty (a) for new equipment 18 months from the date of shipment; and (b) for any FHI replacement part is 90 days after the date of installation. This warranty does not cover failures caused in whole or in part by (1) improper installation, or maintenance; (2) improper use or application; (3) corrosion; (4) normal deterioration, (5) operation beyond rated capacity, (6) the use of replacement parts or lubricants which do not meet or exceed Seller's specifications, or (7) improper repairs. Products furnished, but not manufactured by Seller, are not covered by this warranty, but by only such warranties as are given by the said manufacturers to Seller. To qualify for warranty consideration at the earlier of the Buyers discovery of the defect or the time at which the Buyer should have discovered the defect, Buyer must immediately notify Seller and must promptly thereafter return to Seller (freight prepaid) all defective parts. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED THE OBLIGATION AND LIABILITY OF FHI (SELLER) UNDER THE EXPRESS WARRANTY STATED SHALL NOT INCLUDE LIABILITY FOR LOSS OF USE, LOSS OF PROFITS OR ANY OTHER DIRECT OR INDIRECT INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY THE FAILURE OF ITS PRODUCT OR ANY DEFECT IN THAT PRODUCT OR DELAY IN REMEDYING THE SAME.

7. **LIABILITY:** Seller shall not be liable to Buyer for (a) any losses; (b) any direct or indirect incidental or consequential damages or (c) any delays, caused by the failure of its product or any defect in that product except to repair or replace defective parts as provided for in the Warranty provision. Seller's warranty runs only to Buyer and does not extend expressly or by implications, to any other person. Buyer agrees that Seller's fulfillment of its obligations under the Warranty provision shall constitute a fulfillment of all Seller's liabilities whether in contract or in tort, with respect to the Contract. Buyer also agrees that Seller shall not be liable for any damages to Buyer or to a third person arising out of the presence of the installed products on Buyers premises or out of the use or operation thereof. In no event whatsoever, shall Seller be held liable to Buyer for any direct or indirect incidental or consequential damages.

8. **PATENTS:** Seller agrees to indemnify Buyer against all damages and costs recovered in any patent litigation upon Buyer's use of Sellers products in the manner intended by Seller in an amount not exceeding the sum paid for the infringing products provided (1) Buyer immediately notifies the Seller in writing of any such claim of infringement (2) Buyer allows Seller to employ counsel. Conduct the defense to a finality and assist Seller with the defense; and (3) Buyer shall have paid for all the products or shall not be in default in any of the required payments. Seller assumes no liability as to possible patent infringement by virtue of the use of its products in combination with other elements or structures or the use of products manufactured to Buyer specifications. If any of its products should be held in any such suit to constitute infringement and its use enjoined Seller shall have the right, at Seller's option, at its own expense, either to procure for Buyer the right to continue such use or to substitute, other non-infringing or to remove such infringing products and refund to Buyer all money paid to Seller. Except as herein specifically provided, Seller shall not be liable to Buyer for any patent infringement by said products or any part thereof.

9. **EQUIPMENT NOT SPECIFIED Machinery, equipment, materials and labor services, including engineering or mechanical services not specified in the Contract. Are to be furnished in all cases by Buyer.**

10. **CHANGES OF CONSTRUCTION AND DESIGN** Seller reserves the right to change or revise the construction and design of the products purchased by Buyer, if in its judgment it is to its own or Buyer's best interest to do so. Buyer agrees to bear the expense of meeting any changes or modifications in local code requirements which become effective after Seller has accepted Buyers order.

11. **MATERIAL SPECIFIED BY CONTRACT:** The Contract specifies the products supplied by Seller. The amount or the kind of such products is not changed nor increased by anything shown upon drawings furnished by Seller which are not a part of the Contract documents.

12. **RETURNED PRODUCTS AND RESTOCKING:** Products may not be returned without the express written consent of Seller and in accordance with shipping instructions from Seller. All transportation charges to and from Seller's factory are to be paid by Buyer. Products made to special order are not returnable. A restocking charge of not less than twenty percent (20%) will apply on standard products accepted by Seller for a return and credit. Seller will not be responsible for the disposition of returned products unless the terms of this provision are compiled with.

13. **ENTIRE AGREEMENT:** The parties agree that there are no agreements or representations express or implied, between the parties other than what is contained in this Contract of which this Conditions of Sale is a part which represents the entire agreement between Seller and Buyer with the exception of those agreements, if any, expressly agreed to in writing by Seller. No course of prior dealings and no usage of the trade shall be relevant to supplement or explain any terms used in this Contract. The Contract between the parties may be modified or rescinded only by a writing signed by both Seller and Buyer

14. **CHARACTER OF PRODUCT AND SECURITY INTEREST:** The products delivered by Seller under the terms of the Contract shall remain personal property and retain its character as such no matter in what manner affixed or attached to any structure or property. Buyer grants Seller a security interest in said products any replacement parts and any proceeds thereof until all sums due Seller have been paid to it in cash. This security interest shall secure all indebtedness or obligations of whatsoever nature now or hereafter owing Buyer to Seller. Buyer shall pay all expenses of any nature whatsoever incurred by Seller in connection with said security interest.

15. **INSURANCE:** Buyer agrees to ensure the products delivered under the Contract in an amount at least equal to the purchase price against loss or damage from fire, wind, water or other causes within such period will not relieve Buyer from its obligations under the Contract. The insurance policies are to be made payable to Seller and Buyer in accordance with their respective interests, and when issued are to be delivered to Seller and held by it. Failure to take out and maintain such insurance shall entitle Seller to declare the entire purchase price to be immediately due and payable and shall also entitle Seller to recover possession of said products

16. **INSTALLATION:** If installation by the Seller is included within this quotation, Purchaser shall provide all of the following at its own expense and at all times pertinent to the installation-

- a) Free dry, unrestricted and continuous access to Purchasers premises.
- b) Proper foundations, lighting, power, water and storage facilities reasonably required