

**Tramec Termico Technologies, LLC**  
**TERMS AND CONDITIONS OF SALE**

- 1. APPLICABILITY.** These Terms and Conditions of Sale ("Terms") apply to the purchase of Product (individually, "Product," collectively, the "Products") by buyer ("Buyer") from TRAMEC TERMICO TECHNOLOGIES, LLC ("Seller"), each of which is identified in the accompanying quotation, credit application, proposal, order acknowledgment, or invoice (the "Sales Confirmation"). These Terms along with the Sales Confirmation comprise the entire agreement between the parties (collectively, the "Agreement"). Each transaction shall be exclusively governed by these Terms.
- 2. ACCEPTANCE.** Seller's acceptance is limited to these Terms and expressly conditional on Buyer's acceptance of these Terms, and any additional or different terms proposed by Buyer are automatically rejected unless expressly assented to in writing by an authorized representative of Seller. Neither Seller's subsequent lack of objection to any terms, nor the delivery of the Products shall constitute an agreement by Seller to any such terms. Buyer accepts these Terms by signing and returning Seller's quotation, by sending a purchase order in response to the quotation, or by Buyer's instructions to Seller to proceed with development, manufacture or shipment of the Product.
- 3. MODIFICATION/CANCELLATION.** Cancellation or modifications of all or part of any purchase order or Release (as defined below) are subject to Seller's prior written consent. If Seller consents to cancellation or modification, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of the cancellation or modification, plus a reasonable profit.
- 4. PROJECTIONS.** Buyer shall provide Seller with a reasonable estimate of its future volume or quantity requirements for the Products during the term of the order ("Projections"). Buyer will issue release orders in accordance with the Projections to Seller and Buyer will specify the quantities needed, delivery locations and shipment dates for the Products (each a "Release" and together "Releases").
- 5. PRICE.** Prices on accepted purchase orders/releases are firm for a period of ninety (90) days from date of acceptance; provided that, if applicable,
  - (a) pricing adjustments (credit or debit) will be made to the purchase order or Release for any commodities underlying the Product pricing, as determined by Seller, including, but not limited to, silver and copper. Such credit or debit pricing adjustments will be issued on all outstanding purchase orders and Releases on July 1st and January 1st while the purchase order or Release is in effect; and
  - (b) unit price of Product is subject to adjustment if actual Release quantities vary from Projections.Seller may revise pricing on any purchase order or Release with ninety (90) days written notice to Buyer. All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively, "Taxes"). Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of Buyer (excluding taxes based on Seller's net income).
- 6. PAYMENT.** Buyer will pay all invoiced amounts within thirty (30) days following the date of Seller's invoice. Seller reserves all other rights granted to a seller under applicable law for Buyer's failure to pay for the Products or any other breach by Buyer of these Terms. Seller may suspend the delivery of any Products if Buyer fails to pay any amounts when due. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller's breach, bankruptcy, or otherwise.
- 7. DELIVERY; SHIPPING.**
  - (a) The delivery date provided by Seller for the Products is only an estimate and may vary depending on available production capacity and material availability at the time of the purchase order placement. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller will not be responsible for any delays, loss or damage of products in transit.
  - (b) Unless otherwise agreed in writing by the parties, Seller will deliver the Products, F.O.B. at Seller's Plant in Elk Grove, IL (the "Location"), using Seller's standard methods for packaging and shipping same. Buyer will be liable for the cost of the Products and all costs and expenses resulting from the failure to accept delivery (including, but not limited to the cost of storage, transportation and insurance).
  - (c) Seller may, in its sole discretion, without liability or penalty, make partial shipments, within +/- 10% of Buyer's requested release quantity of Products to Buyer. Buyer is responsible for all transportation and insurance costs and obtaining any import or export licenses and other consents required for a Product shipment at its own expense.
- 8. TITLE; RISK OF LOSS.** Risk of loss or damage passes to Buyer upon completion of delivery pursuant to the terms of Section 7(b).
- 9. LIMITED WARRANTY.**
  - (a) Seller warrants to Buyer that the Products will be free from defects in material and workmanship for a period of (90) ninety days from of delivery of the Products to the Location or (60) sixty days from product installation,

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whichever is shorter. Buyer is solely responsible for determining the appropriateness of any products purchased and if the product is appropriate for the purpose for which the product is purchased. Seller's sole obligation for a breach of this limited warranty shall be to repair or replace (F.O.B. the original Location) any goods within (30) thirty days of Buyer reporting the defect to the Seller.

- (b) The foregoing limited warranties do not apply to (i) any defect in Products not manufactured by Seller; (ii) improper installation or maintenance of the Products; (iii) repairs to the Products by anyone other than Seller or its authorized agent, (iv) any Products manufactured according to Buyer's specifications, and (v) normal wear and tear, negligent or improper use, handling and/or storage of the Products.
- (c) Before any test may be used to evaluate the Products, Buyer will: (i) provide Seller with reasonable written notification of the test, (ii) allow Seller to be present during the test, and (iii) receive Seller's consent to the conditions of the test, which consent will not be unreasonably withheld. If a test is performed on the Products, and Seller has not consented to the conditions of the test, then this limited warranty will be void.
- (d) **THE REMEDIES SET FORTH IN THIS SECTION 9 ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES WHETHER IN TORT, OR OTHERWISE, ARISING FROM DEFECTS IN PRODUCTS. SELLER WILL NOT BE LIABLE FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM ANY CAUSE WHATSOEVER. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**10. INTELLECTUAL PROPERTY.** Seller retains ownership of any patent, know-how, trade secret, trademark, service mark, copyright, or other intellectual property right that is related to the Products or is otherwise developed by or provided to Buyer in connection with the supply of the Products.

**11. PRODUCT USAGE.** Buyer agrees that by accepting Products, it agrees to use each Product solely as Seller intended such Product to be used and in accordance with Seller's instructions. Buyer further agrees that improper operation, storage, or maintenance of Products could result in injury or death to a person, or damage to other property or equipment, and Buyer will hold Seller and its affiliates harmless for any such injury or damage. **BUYER AGREES TO INDEMNIFY AND HOLD SELLER, ITS AFFILIATES AND THEIR OFFICERS AND DIRECTORS HARMLESS AGAINST ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND (INCLUDING ATTORNEY'S FEES) ARISING OUT OF OR RELATED TO THE USE OF ANY OF SELLER'S PRODUCTS.**

**12. INFRINGEMENT.**

- (a) Seller will defend, at its own expense, any action against Buyer brought by a third party to the extent that the action is based upon a claim that the Products infringe any U.S. patents or copyrights, or misappropriate any trade secrets, of a third party.
- (b) The foregoing obligations are conditioned on Buyer (i) notifying Seller promptly in writing of the action, (ii) making no admission of liability and giving Seller sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and, at Seller's request and expense, assisting in the defense.
- (c) If the Products become, or in Seller's opinion are likely to become, the subject of an infringement claim, Seller may, at its option and expense, either (i) procure for Buyer the right to continue using the Products, (ii) replace or modify the Products so that they become non-infringing, or (iii) accept return of the Products and refund Buyer the amounts actually paid by Buyer to Seller for the Products. Seller retains the right to cease production and shipping in the event an infringement claim being brought forth.
- (d) Notwithstanding the foregoing, Seller will have no obligation under this Section 12 or otherwise with respect to any infringement claim based upon any: (i) misuse or modification of the Products by Buyer or its employees or agents, (ii) use of the Products in combination with other materials, goods, products, or services, (iii) failure of Buyer to implement any update provided by Seller that would have prevented the claim, (iv) Products that Seller made to Buyer's specifications or designs.
- (e) Buyer shall defend, indemnify and hold Seller harmless from and against any and all loss, cost, expense, claims, demands, suits and judgments (including, but not limited to, attorney fees) arising from actual or alleged infringement of any third-party intellectual property right for any products manufactured to Buyer's specifications or for any words symbols or designs provided by Buyer to Seller to be incorporated on a particular product.
- (f) **THIS SECTION 12 STATES SELLER'S ENTIRE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.**

**13. LIMITATIONS OF LIABILITY.**

- (a) **IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, REPUTATIONAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, PROFIT OR UNDER- UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS,**

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**LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LINE STOPPAGE, AND PRODUCT RECALL REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.**

- (b) EXCEPT FOR DEATH OR BODILY INJURY RESULTING SOLELY FROM SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE PRODUCTS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.**
- (c) SELLER SHALL NOT BE LIABLE FOR ANY LOSS, CLAIM, EXPENSE OR DAMAGE CAUSED BY, CONTRIBUTED TO OR ARISING OUT OF THE ACTS OR OMISSIONS OF BUYER, WHETHER NEGLIGENT OR OTHERWISE.**

**14. CHANGES.** Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer.

**15. NO LICENSE.** The sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller.

**16. TERMINATION.**

- (a)** In addition to any other remedies that Seller may have, Seller may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (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; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
- (b)** Upon termination for any reason, Buyer shall purchase and/pay for:
  - (i)** quantities under any discrete purchase order or Release,
  - (ii)** any safety stock held by Seller for Buyer, and,
  - (iii)** for any blanket purchase order, (x) all raw materials and subcontracted components purchased by Seller, and (y) the cost of production and materials for all work-in-process ("WIP") for Products, in each case, prior to termination and not specified on any Release.

For clarity, Seller will complete all WIP for any discrete purchase order or Release at the time of termination to manufacture finished Products.

**17. CONFIDENTIALITY.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing.

Upon termination or expiration of the Agreement or Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section 17, without having to post bond or establish the insufficiency of a remedy at law. This Section 17 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure and without an obligation of confidentiality; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

**18. FORCE MAJEURE.** Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller's sole judgment, is not in Seller's best interest.

**19. COMPLIANCE.** Each party will comply with all applicable laws, regulations, and ordinances, and Buyer will comply with the export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement.

**20. GOVERNING LAW; VENUE; DISPUTE RESOLUTION.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Illinois applicable to contracts made and to be performed therein. The United Nations Convention on contracts for the international sale of goods shall not

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apply. BOTH BUYER AND SELLER CONSENT TO SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED IN CHICAGO, ILLINOIS (AND ELSEWHERE WITH RESPECT TO APPELLATE COURTS WITH JURISDICTION OVER SUCH MATTER) IN THE EVENT ANY DISPUTE ARISES OUT OF THE AGREEMENT. BOTH BUYER AND SELLER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION.

**21. SURVIVAL.** In addition to any other term whose context may so require, the terms contained in Sections 1 (Applicability), 2 (Acceptance), 5 (Price), 6 (Payment), 7 (Delivery; Shipping), 8 (Title; Risk of Loss), 9 (Limited Warranty), 10 (Intellectual Property), 11 (Indemnification), 12 (Infringement), 13 (Limitations of Liability), 15 (No license), 16 (Termination), 17 (Confidentiality), 19 (Compliance), 20 (Governing Law; Venue), 21 (Survival), 22 (Product Return Policy), and 23 (Miscellaneous) will survive any cancellation of a purchase order.

**22. PRODUCT RETURN POLICY.** To request a product return, contact Tramec Termico Technologies, LLC and request a written return authorization from a representative of the Company. Products may not be returned without a return authorization.

**23. MISCELLANEOUS.**

- (a) Buyer acknowledges that is has not been induced to purchase any Products from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter.
- (b) Any cause of action for any alleged breach of this agreement by Seller shall be barred unless commenced by Buyer within one year from the date of delivery.
- (c) None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. If there is a conflict between the provisions of the Sales Confirmation and these Terms, then the terms of the Sales Confirmation will govern.
- (d) No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof.
- (e) 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.
- (f) The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision.
- (g) If any provision of the Agreement is held to be prohibited or unenforceable, the provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.
- (h) Buyer will not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Seller. Any purported assigned is null and void.