

## **THERMO KING NORTHEAST, LLC – UNIT AND PARTS SALES, INSTALLATIONS, AND SERVICE STANDARD TERMS AND CONDITIONS OF SALE**

These Standard Terms and Conditions of Sale ("Terms of Sale") represent specific agreements and understandings between Buyer and Thermo King Northeast, LLC ("TKNE") which will apply to products and assembly, installation, and related services purchased by Buyer from TKNE from time to time ("Products" and "Services"). Purchases hereunder may be made on Buyer's standard purchase order form ("Purchase Order") but any terms and conditions set forth on any Purchase Order that are in addition to or are inconsistent with these Terms of Sale shall be deemed stricken from the Purchase Order and shall be void and of no force or effect. These Terms of Sale shall apply to any TKNE Quotation (a "Quote"), Repair Order, Invoice, or Purchase Order whether or not these Terms of Sale are expressly referenced therein. These Terms of Sale and any Quote or Repair Order shall constitute the entire agreement between TKNE and Buyer with respect to the Products and Services.

### **1. Quotations:**

Unaccepted Quotes shall expire thirty (30) days from their date of issuance. Requested changes in Products or Services may result in a price quotation change. The prices set forth in a Quote are based upon TKNE's dealer price in effect as of the date of such Quote. In the event that such dealer price is increased prior to delivery, the prices set forth in such Quote shall be adjusted accordingly.

### **2. Acceptance:**

A written acceptance of a Quote or a written Purchase Order incorporating all of the terms of a Quote shall be received from Buyer prior to any performance by TKNE hereunder. Such accepted Quote or such Purchase Order shall constitute the Buyer's acceptance of these Terms of Sale. TKNE shall use commercially reasonable efforts to fill all accepted Quotes or Purchase Orders from Buyer accepted by TKNE within the time stated for delivery in the applicable Quote, but the delivery date specified in any Quote shall be approximate only, and TKNE reserves the right to readjust delivery schedules.

### **3. Services; Refrigerant Management Requirements; Delivery:**

TKNE shall use commercially reasonable efforts to fill all Purchase Orders accepted by TKNE by the time stated for delivery in the Purchase Order, but the delivery date specified in Purchase Orders shall be approximate only, and TKNE reserves the right to readjust delivery schedules. TKNE shall use commercially reasonable efforts to perform the Services described in each accepted Quote or Purchase Order accepted by TKNE. All Services involving the installation of Products on a Buyer vehicle or trailer shall be performed by TKNE in accordance in all material respects with the installation specifications provided by the applicable Product manufacturer. Buyer hereby acknowledges and agrees that such installation Services may impact certain warranties provided by the manufacturer of the applicable Buyer vehicle or trailer, Buyer hereby directs TKNE to provide such Services, and Buyer knowingly assumes all responsibility for any and all such impacts. TKNE shall have no liability for any underlying defects or other conditions that exist in Buyer's vehicle or trailer.

Buyer acknowledges its responsibilities regarding applicable state and federal refrigerant management requirements including, without limitation, leak detection, repair, monitoring, recordkeeping, and reporting requirements.

Given ongoing supply chain disruptions, all delivery or ship by dates set forth in a Quote or Purchase Order shall be deemed estimates only, and TKNE cannot assure delivery of any Product by such date(s). TKNE shall keep the Buyer informed of the status of delivery.

### **4. Invoice and Payment:**

Invoiced amounts shall be due in full on the date specified in the Quote or in a TKNE invoice. Invoices past due shall accrue interest charges at the rate of 1 1/2% per month, due and payable by the Buyer. In the event of a dispute, the prevailing party shall be entitled to recover reasonable attorney fees, court costs and other expenses incurred.

Payment shall be in lawful money of the United States of America. The purchase price for each Product purchased hereunder shall not include costs of freight, insurance, handling or other similar costs. TKNE's prices for Products or Services shall not include sales, use, excise, import or similar taxes, or duties.

TKNE is obligated to collect state sales tax or use tax. If Buyer is exempt from paying sales tax, Buyer must furnish a valid exemption certificate at the time Buyer accepts a Quote or places an order. If TKNE does not receive a valid exemption certificate from Buyer prior to installation of the Products or performance of any Services, whichever occurs first, Buyer will be presumed to be subject to sales tax and sales tax will be billed at that time.

### **5. Quality and Inspection; Returns:**

Buyer shall have the right to inspect Products at Buyer's sole cost and expense within two (2) business days after delivery to Buyer, and Buyer shall have the right to reject any and all Products that are nonconforming, defective, or damaged within two (2) business days following delivery. Buyer shall be deemed to have accepted any Products delivered to Buyer unless Buyer gives TKNE written notice within two (2) business days after delivery that Buyer has rejected any Products.

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Products returnable for credit must be returned within one hundred eighty (180) days of sale, must be unused in salable condition in their original packaging, and are subject to a 15% restocking fee. Old cores must be returned within sixty (60) days and are subject to inspection by TKNE before any credit will be issued. Warranty parts must be returned within five (5) days with V.I.N. and mileage. No returns are permitted for specially ordered Products, and no returns of any Products are permitted after one hundred eighty (180) days.

**6. Warranty:**

TKNE shall pass through to Buyer the original manufacturer's warranty, if any, for each of the Products. TKNE represents and warrants to Buyer that it shall perform (i) the Services in a professional and workmanlike manner in accordance in all material respects with industry standards and (ii) all Services involving the installation of Products on a Buyer vehicle or trailer in accordance in all material respects with the installation specifications provided by the applicable Product manufacturer. All TKNE Services shall be free from any defects in workmanship by TKNE for a period of ninety (90) days from the date of their performance.

**7. Disclaimer of Warranties; Limitation of Liability; Warning:**

TKNE's exclusive warranties with respect to any Product or Service is set forth in Section 6 above. Except for TKNE's exclusive warranties set forth in Section 6 above, TKNE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

In the event of a warranty claim, Buyer shall contact TKNE, which shall instruct Buyer as to what action, if any, shall be taken by Buyer. With respect to a warranty claim involving the Services, TKNE shall have the right to reperform the allegedly non-conforming Services, and Buyer shall make the Products available in order to enable TKNE to do so. TKNE shall have no obligation to process any warranty claim with the manufacturer of the applicable Product unless (a) Buyer promptly notifies TKNE in writing of the alleged defect or nonconformity in the Product and offers the manufacturer a reasonable opportunity to cure such deficiency, and (b) TKNE's or the manufacturer's inspection verifies the existence of the alleged defect or nonconformity and determines it was not caused by damage or destruction, including any occurring while in shipment, improper operation, modification, installation by any party other than TKNE, testing or repair (including any repair not by the applicable manufacturer's agents or employees or otherwise not consented to in writing by the applicable manufacturer or TKNE), misuse, neglect, or alteration. THE PRICE ALLOCABLE TO ANY PRODUCT OR SERVICE, AS PROVIDED FOR ON THE APPLICABLE TKNE INVOICE, ALLEGED TO BE THE CAUSE OF ANY LOSS OR DAMAGE TO BUYER SHALL BE THE CEILING LIMIT ON TKNE'S LIABILITY. IN NO EVENT SHALL TKNE BE LIABLE FOR ANY LOSS OF OR DAMAGE TO CARGO OR CONTENTS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES OR LOSS OF PROFITS IN CONNECTION WITH TKNE'S OBLIGATIONS OR PERFORMANCE PURSUANT TO A QUOTATION, PURCHASE ORDER ACCEPTED BY TKNE, OR THESE TERMS AND CONDITIONS, WHETHER OR NOT RELATED TO WARRANTY OR OTHERWISE, WHETHER OR NOT FOUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

TKNE reserves the right to modify, from time to time, the warranty set forth in Section 6 above upon written notice to Buyer.

**WARNING: The following Products do not currently meet California's requirements under title 13, California Code of Regulations, Section 2477.5, as amended, and are therefore not compliant for use in California: C600, C600M, SLXi, T590, T690, T890, T1090, T1090M, UT1290, and TriPac without the Aftertreatment Device (the "CARB Non-Compliant Products").**

Upon purchase of any CARB Non-Compliant Product, Buyer acknowledges and agrees to the following:

- That the CARB Non-Compliant Products are not intended for sale or use in the State of California;
- That should any of the CARB Non-Compliant Products be brought into the State of California, that Buyer shall do so in accordance with California's requirements under title 13, California Code of Regulations, Section 2477;
- That Buyer is familiar with the regulations regarding the sale and use of refrigeration units in California, and is responsible for providing the information contained in this Warning to any person or entity to which Buyer may sell the CARB Non-Compliant Products; and
- That neither TKNE nor its affiliates is responsible for any violation(s), fines, penalties, or fees resulting from Buyer's or its customer's sale or misuse of the CARB Non-Compliant Products inside the State of California.

The prices quoted in this sale were determined in part on the basis that TKNE's liabilities and Buyer's remedies are limited as provided in these Terms of Sale and the prices would have been substantially different had those limitations not been agreed.

**8. Termination and Cancellation:**

Either party may terminate any Purchase Order or Quote immediately if the other party becomes insolvent, fails to pay its bills as due or makes an assignment for the benefit of its creditors. Either party may also terminate any Purchase Order or Quote immediately if the other party fails to perform any of its obligations hereunder, unless such failure is excused as provided in Section 13 below. In the event of any such termination hereunder, TKNE shall be entitled to the payment of prices specified on the applicable Quote or Purchase Order for all Services rendered and Products delivered to Buyer but not yet paid for.

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**9. Inconsistent Terms:**

These Terms of Sale shall govern over conflicting terms on any Purchase Order.

**10. Indemnity:**

Anything to the contrary set forth in these Terms of Sale or any Purchase Order notwithstanding, Buyer shall indemnify, defend, and hold harmless TKNE from any and all claims, actions, liabilities, losses, costs, damages or expenses resulting or claimed to result in whole or in part from any actual or alleged (i) misuse of any Product by Buyer or a user of any Product, (ii) misuse of any Product in the course of a demonstration of such Product by Buyer, its employees or agents, (iii) any action or inaction of Buyer, its employees or agents, or (iv) the display, assembly, service, sale, repair or installation of any Product by Buyer.

**11. Independent Contractor:**

The relationship between TKNE and Buyer hereunder shall be solely that of independent contractors, and nothing herein contained shall be construed as creating any other relationship.

**12. Choice of Law:**

These Terms of Sale shall be governed by, and interpreted in accordance with, the laws of the State of Connecticut, without regard to conflicts of laws principles that would require the application of any other law.

**13. Force Majeure:**

TKNE and Buyer shall be excused for any failure or delay in the performance of their respective obligations hereunder due to fire, war, insurrection, government restrictions, government boycott or other governmental action, acts of God or the public enemy, acts of terrorism, compliance in good faith with any applicable governmental regulation or order whether or not it proves to be valid, pandemics, epidemics, floods, riots, strikes, labor disputes, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies, equipment or power at reasonable prices or on account of shortages thereof, unusually severe weather, or other causes beyond the control and not due to the fault of the non-performing party.

**14. Entire Agreement:**

With respect to the subject matter herein, these Terms of Sale and any Quote or Repair Order represent the entire agreement between the parties involved, and supersedes all other agreements between the parties.

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