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# 一般条款与条件

**1. 适用性:** 这些通用条款和条件 (“**条款**”) 是赛盟伴热工程 (上海) 有限公司 (注册地址为中国上海市外高桥保税区泰谷路 88 号 2 楼 C 区, 注册编号为 913101157728605456) (“**赛盟**”) 针对向订单中标示的买方 (“**客户**”, 与赛盟统称为 “**各方**”) 进行的货物和/或服务 (“**产品**”) 的销售或租+赁而达成的所有商业或技术提议、报价、订单和协议 (每项均可称为 “**订单**”) 中不可或缺的一部分。签署或执行要约、报价或销售订单; 以及下达订单或者接收赛盟的产品, 均表示客户同意这些条款取代任何先前的书面或口头协议以及客户的询价、采购订单、发票、订单确认函、更改订单或类似文件中包含的任何条款与条件, 并且订单仅遵循赛盟的条款。如果这些条款与双方签署的有效主协议之间存在冲突, 则以该主协议的具体冲突条款为准。这些条款取代任何先前的书面或口头协议以及客户的询价、采购订单、发票、订单确认函、更改订单或类似文件中包含的任何条款与条件。如果这些条款与作为订单或报价流程的一部分发给客户的另一组赛盟条款与条件之间存在冲突, 则以订单或报价文件的具体冲突条款为准。对这些条款做出任何其他变更均须由赛盟授权代表签字同意。

**2. 报价和订单:** 报价的有效期为 30 天或报价中另行规定的期限, 且报价仅适用于特定订单。

**3. 定价:** 所有价格均不包含任何联邦、省、本地、销售、使用、增值、消费或类似税费或者针对产品的销售或使用而征收的类似款项, 这些税费和款项会添加至发票中并由客户支付给赛盟, 以便由赛盟转交给相应的税收主管部门。如果在交付之前赛盟与产品相关的任何成本上涨, 包括但不限于税费、原材料或工资价格, 赛盟有权提高价格以反映这些成本上涨。客户确认并同意赛盟有权在成本上升的情况下单方面按照上面所同意的条款提高价格, 但提价幅度不得超过 10%。每张订单的最低收费金额为 500.00 美元。

**4. 数量:** 赛盟保留按订单数量的 95% 至 105% 发货的权利。除非客户要求特定长度并且赛盟已经在订单中报价, 否则赛盟保留订单加上所需灵活或散装电缆 10% 的权利。

**5. 保修:** 赛盟保证在下面较早日期之前, 产品将符合适用订单中的规格, 并且在材料和工艺上无缺陷: (i) 从安装日期起 12 个月, 或 (ii) 从交付日期起 18 个月 (“**保修期**”)。如果产品存在缺陷并且客户在保修期内已通过书面方式将此缺陷通知赛盟, 则在经过咨询后, 赛盟可能会通过下面任一种方式来修复缺陷: (i) 修理这些有缺陷的产品, 或者用符合适用规格的产品进行替换, 或 (ii) 对为此类存在缺陷的产品支付给赛盟的任何金额向客户退款。客户可以从赛盟购买不同的额外保修或延期额外保修。如果缺陷是因下列情况而起, 则此处所规定的保修不适用: (a) 安装、检查、测试、运行或维护不当或不符合赛盟的指南或说明; (b) 在未得到赛盟提前书面批准的情况下执行了附加、修改、修理、移除或替换操作; (c) 其设计用途之外的任何使用情况; (d) 异乎寻常的机械、物理或电气压力, 或正常磨损;

(e) 商定的保修期过期后出现或发现的潜在或隐藏缺陷, 或 (f) 由于以赛盟预期之外的方式对产品进行任何滥用或故意照顾不当而造成的缺陷。赛盟进一步保证产品将不含抵押权或其他财产留置权。前述保修旨在替代所有其他保修,

无论明示或暗示, 无论实际存在还是依照法律, 亦无论由于行业习惯或惯例而产生, 还是在交易过程中产生, 包括适销性或符合特定用途的保证, 并且所有此类其他保修均在此予以否认。

**6. 支付:** 客户应在发票日期后的 30 个日历日内支付所有无争议的发票金额, 如未能支付, 客户将自动变为违约状态。延期付款的利息将按照每月 2% 的利率进行累计, 适用法律禁止的情形除外; 如法律禁止, 则按照适用法律所允许的最高利率进行累计。如果客户对任何发票或其中的任何部分有争议, 客户可暂停支付争议金额, 但应该在收到发票之日的

10 个日历日之内以书面形式通知赛盟不予以支付的原因。各方将尽全力在原始发票到期日期之前解决任何未决争议。如果客户在发票到期时未能支付, 赛盟可以 (i) 要求提前付款; (ii) 取消任何折扣; 和/或 (iii) 立即暂停有关产品的履约事宜, 或终止任何订单, 无需承担任何责任。客户将向赛盟支付所有合理且记录在案的费用, 包括因催收过期金额而产生的律师费和法庭费。在任何及所有情况下, 如果最终确定客户需要对争议金额负责, 则即使声称有任何原因要暂停付款, 利息也将从原始到期日期开始按照每月 2% 的利率累计。

**7. 发运和所有权的转移:** 产品将按照下方的定义, 根据订单中的说明从适用的赛盟或其附属公司的设施处按照赛盟的标准包装 FCA 条款进行发运 (根据最近的国际商务协议)。客户可以申请并支付与特殊要求或国际货运相关的额外包装费用。赛盟将会在收到订单之后确认交付日期。所有交付日期均为预估日期, 有可能会由于赛盟控制之外的变更或环境 (包括但不限于二级承包商或供应商未能履行他们的交付义务) 而变化。产品的所有权会在全额支付适用发票之后转移给客户。赛盟可以在不发送违约通知和无需任何法院指令的情况下, 取消任何订单, 并对已交付但在付款到期日过后未全额支付, 且赛盟已通知客户其收回产品之意图的任何产品提出索赔。

**8. 检查和测试:** 客户如有意对生产设施进行检查和测试, 其应给出合理的提前通知, 而且此类检查和测试应该在正常工作时间内进行。客户需承担与此类检查和测试相关的所有费用。如果购买之前要求进行测试, 因将产品运至或远离测试地点而产生的所有运费和交通运输费用需由客户全权承担。如果客户在收到产品 45 天内未进行测试或未通过书面方式通知赛盟其对产品 (数量和质量) 有异议, 则可视为客户接受了所交付的产品。

**9. 贮存:** 如果产品在订单中标示的赛盟或其附属公司处已准备好可以发运, 但客户仍未提取, 则这些产品将会最多贮存 30 个日历日, 或者贮存以书面方式商定的更长期间。如果此类贮存的持续时间超过 30 个日历日, 则客户每贮存一周均需要支付相当于产品价值的 0.5% 的贮存费, 最高不超过 10%。如果有必要贮存, 因赛盟的原因而需要贮存的情况除外, 则当产品已经准备好可以交付 (但客户仍未提取) 时, 所有权风险便转移至客户, 且应将运输条款调整为赛盟设施的出厂价。

**10. 订单变更:** 客户保证提供给赛盟的数据、计算内容、尺寸、规格和/或其他设计信息是完整而准确的。对于客户向



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## 一般条款与条件

赛盟返回已签署且已审核的图纸之后的必要更改，客户承担因其而产生的所有费用。客户必须先签署其对所需图纸的批准和认可书，然后赛盟才会开始采购和生产。客户对订单的任何额外更改均可由赛盟全权决定是接受还是拒绝，并且只有双方均以书面方式签署表示同意后，才有约束力。对于由赛盟发起的对客户所申请订单进行的变更，如果其未得到客户的书面接受和确认，则赛盟不会对任何此类变更收取费用。

**11. 知识产权：**“**知识产权**”意指任何知识产权，包括但不限于版权、专利、商业秘密、商标、软件、固件或与所拥有、开发或创作的任何想法、概念、技能、方法、流程、报告或著作相关的其他知识产权，以及对这些内容进行的改善、改进或这些内容的衍生物。除非双方以书面形式另有商定，否则一方的知识产权将是且一直是该方的资产。如果一方的知识产权已经纳入到所提供任何产品的履约过程中或在此过程中是有必要的，则该方授予另一方非专有、不可转让、不可再授权、可撤销、免版税的权利和许可，以将纳入到产品中的此类知识产权仅用于开展与该产品相关的工作或使用该产品（如适用）。除非在此处明确声明，否则任何一方均无使用另外一方任何知识产权（无论直接还是间接）的权利或许可。对一方既有知识产权的任何改进或改善将属于该方。双方均无权在未获得明确书面同意的情况下创建会纳入另一方知识产权的复合知识产权。

**12. 取消和退货：**除特殊或定制生产的产品的订单（对于此类订单，如无赛盟的事先书面同意，客户不能取消）外，客户可以随时取消常规产品的订单。在收到赛盟签署的“退货材料授权”表之前，客户不能退回产品。标准目录或库存产品的退货需要收取再储存费，该费用由赛盟自行决定，但不得超过按照所取消订单应向赛盟支付的金额。客户对将退货产品恢复为可再销售状态所需的任何及所有修复及修理负责。所有退货产品必须处于“如新”状态且必须使用初始包装。

**13. 保险：**赛盟应该保有适当且充分的保险以涵盖其在这些条款下的义务。赛盟出于订单目的而签订的任何保险的金额将仅依照承保公司和保险承保人所确定的保险政策的条件进行支付。此外，赛盟将同意仅在以下情况下向客户提供付款

(i) 导致客户提起索赔的事件在发现事件之后 14 天内客户便通过书面形式通知了赛盟；(ii) 按照此类保险的条款是可允许的；(iii) 如果赛盟在履行其对客户或第三方的义务时其行为被证实有错；以及 (iv) 如果赛盟在第 (iii) 条下的行为已经造成了损失，需要由所提及的保险进行赔偿。应客户要求，赛盟可以向客户提供显示了适用于订单的保险的保险证明。不会将客户视为额外被保险人，赛盟保险的承保范围不会涵盖客户的任意疏忽、欺诈或故意不当行为，也不会涵盖客户或与其直接或间接相关的第三方的任意行为或疏漏。

**14. 产品租赁：**除非在订单中另有注明，否则最短租赁期为 28 个日历日。客户要承担超出正常磨损范围的受损租赁材料的全部维修费用。对于租赁产品未归还或其损害程度已严重到无法维修的情况，如果产品已使用超过 6 个月，则赛盟会向客户收取购买价格的 80%；其他情况下则会收取购买价格的 100%。租赁产品发票会每 28 天发送给客户，直至所租赁产品归还至赛盟的指定设施。在 28 个日历日的最短租赁期之后归还的租赁产品将按以下折扣等级开具发票：1-2 天 -

90%折扣，3-8 天 - 70%折扣，9-15 天 - 40%折扣，16-28 天 - 0%折扣。

### 法律条款

**15. 赔偿：**各方均会负责、赔偿并使对方以及对方控制或受对方控制的实体（无论是通过控制至少 50% 的可表决权股份，还是根据合约，或其他方式）（每一方均称为“**附属公司**”）不受任何索赔的损害，索赔包括但不限于任何诉讼因由、要求、判决、责任、损失、罚款和罚金，包括与订单或产品有关的针对下列情况的合理律师费用和诉讼费用（统称为“**索赔**”）：(a) 对方资产的丢失或损坏，和 (b) 对另一方或其附属公司雇用的任何人所造成的的个人伤害，包括死亡或疾病，前提是此类丢失、损坏或伤害是由于赔偿方的疏忽或失职造成的。如果是客户，赛盟的赔偿义务在且仅在下列情况下有效：在客户获悉或鉴于环境客户应该获悉此类导致索赔的事件后 14 天内将此类事件通知赛盟。

**16. 责任限制：**尽管这些条款中包括相反的任何内容，任何一方应对另一方就任何偶然性或后果性损害负责，包括但不限于另一方或其任何附属公司遭受的损失或延迟的利润、损失或延迟的营收、损失或延迟的生产时间、停机时间、业务中断、商誉损失或因这些条款或履行与产品相关的工作而引起的或与之相关的任何其他偶然性或后果性损害，无论原因为何。尽管这些条款中包括相反的任何内容，赛盟对客户、第三方或其他方的最大责任限于根据引起索赔的适用订单应向赛盟支付的金额，而且客户应该免除赛盟超出此金额的任何及所有索赔，并使赛盟免受损害，无论原因为何。在客户知晓或理应知晓引起诉讼的事件 3 年后，客户不能在诉讼案件中提出任何索赔。

**17. 不可抗力：**如果发生使得受影响方完全或部分程度上不可能按照这些条款执行其义务的事件，而且此事件在受影响方的合理控制范围之外，不是由于受影响方的过失或疏忽所致，而且也无法由受影响方通过合理努力予以避免（每件均称为“**不可抗力事件**”），则任何一方被阻止履行义务均不应视为违反这些条款。不可抗力事件包括但不限于运营中断、材料错误、原材料匮乏、政法法令、疫情、不安全的站点条件、法律、第三方无法交付、交通运输难题、公众骚乱、罢工、封城、动员问题或其他紧急事件。如果阻止履行有关产品的义务的不可抗力事件持续超过 30 个日历日，则任何一方均可以终止所订立的订单或受影响的部分，向另一方提前 5 个日历日给出书面通知即可。

**18. 法律合规：**双方均同意遵守所有适用的法律。各方不会向任何个人或实体直接或间接提供、承诺、授权或提供任何有价之物，以获得或维系业务，或者谋求任何其他不当的业务优势。客户同意其不会直接或间接地向下列各方或出于下列目的销售、让其获得、出口、再出口、转移、挪用、出借、租赁、托运、转载（包括在港口的站点内）、运输或以其他方式处置任何产品：(i) 已知总部位于受美国、加拿大、欧盟或其他对订单所涉及交易拥有管辖权的国家/地区全面制裁的任何国家或地区的任何实体，或由此类国家或地区的国民拥有或控制的任何实体；(ii) 在美国、加拿大、欧盟或其他对订单所涉及交易拥有管辖权的国家/地区的被拒或限制方名单中出现的任何其他个人或实体；或 (iii) 在未获





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得所有必要的政府授权和赛盟的提前书面同意的情况下，参与任何适用法律限制的活动或终端用途。各方应该免除另一方与此类违规相关的任何索赔，为其提供辩护和赔偿，并使其免受损害。

**19. 法律选择：**因执行、解构、解读或违反这些条款而引起的或与之有关的所有事宜，均需按照赛盟所在司法管辖区的法律进行管理，但不包括此类司法管辖区中有关法律冲突的规定以及有关《联合国国际货物销售合同公约》中的规定。

**20. 争议：**各方同意会尽其最大努力通过非正式渠道解决所有争端。以任何方式与这些条款、相关订单或其执行、解构、解读或违反（不包括禁令性救济诉讼或留置权的执行）相关的所有未决争议、索赔或法律诉讼均应仅提交至上述第 19 节（法律选择）中所规定的司法管辖区的法院，不可提交至任何其他法院或法庭。

**21. 审计权：**赛盟会在收到相关订单最后付款后至少 7 年内，按照一般公认会计准则保留与订单相关的所有交易的准确账簿和记录（“**审计期间**”）。如果客户在审计期间正常工作时间内的任何时间，提前 30 个日历日发出书面通知，则赛盟应在必要时允许赛盟为其提供服务的客户（自行承担费用）及其授权代表审查与所提供服务的赛盟记录，以对任何发票的完整性或准确性进行审计和验证。

**22. 保密性：**针对这些条款和订单，“**保密信息**”指一方可从另一方获取的、不限形式的、与订单相关的任何信息、数据和/或文档。无论出于任何原因，各方均负责在订单履行期间以及订单终止后 2 年内维护机密信息的绝对机密性。因履行与产品相关的服务而产生的结果，以及符合下列规定的信息不会被视为机密信息：（i）在从披露方接收之前接收方便已知晓或已为其所有；（ii）在披露给接收方之前或之后其已属于或进入公共领域；（iii）接收方从其他来源获悉，且不违反此来源与接收方或第三方之间的任何保密义务；（iv）其由接收方独立开发而来；（v）该信息的披露已经得到披露方的书面授权；（vi）需要按照对各方拥有管辖权的任何政府实体/机构所实施的法律或法定规定/决定予以披露。

## 23. 一般性条款

**23.1** 通知需要通过电子邮件以书面形式发出并要求回执，或者由国家认可的快递服务进行隔夜配送。

**23.2** 赛盟对其在订单下的义务拥有多项（但并非共同）责任，客户仅应要求此类实体（而非其任何附属公司）履行此类义务。

**23.3** 如果这些条款中的任何规定被发现与任何适用法律不一致或相违背，则应对此规定进行必要的修改，从而符合适用法律，并且经过修改后，这些条款仍继续拥有完全效力。如果任何规定无法通过更改以符合适用法律，则应将其视作从这些条款中删除，剩余规定仍拥有完全效力。

**23.4** 任何一方未能执行这些条款中的任何条款、规定和条件均不影响其在之后执行同等内容，而且赛盟的任何弃权均不应视为对之后违规行为的弃权。

**23.5** 无另一方的提前书面同意，任何一方均不可将其权利和义务委派给第三方（不包括其附属公司）。

**23.6** 不可将这些条款中的任何内容视作给予除赛盟和客户之外的任何个人和法律实体这些条款下的或与其有关的任何权利、补救或所有权，这些条款以及其中的规定和条件仅专门服务于双方及其继承者和获许的委派方。

**23.7 数据隐私（如适用）：**赛盟有时会按照《中华人民共和国个人信息保护法》处理客户的个人数据（“客户数据”），以履行其法定义务，执行和管理订单，维系与客户之间的商务关系，以及发送通讯内容。客户数据将会严格按照合法性、合理性和必要性的原则予以处理，赛盟也会采取必要和有效的措施来增强对客户数据的保护力度。赛盟是负责处理客户数据的数据控制方。客户数据可能会出于内部管理目的而披露给赛盟的附属公司，还可能会披露给需要访问客户数据的那些二级承包商或服务提供商，在法定义务或主管当局要求的情况下，客户数据也会予以披露。可以视作客户同意由赛盟按照此条款处理客户数据，前提条件是客户知道此条款并且在处理前并未向赛盟提交书面反对意见。客户可以按照适用的数据隐私规定，随时行使与访问、修订、反对、擦除、限制和便携性相关的任何权利，向订单上标示的赛盟地址提交书面要求即可。



# General Terms and Conditions

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**1. APPLICABILITY:** These general terms and conditions (the “*Terms*”) are an integral part of all commercial or technical proposals, quotations, orders and agreements (each, an “*Order*”) by Thermon Heat Tracing & Engineering (Shanghai) Co. Ltd., having its registered office at Area C, 2nd floor, 88 Taigu Rd, Waigaoqiao Free Trade Zone, Shanghai, China, with registration number 913101157728605456 (“*Thermon*”) for the sale or rental of goods and/or services (the “*Work*”) to the buyer identified in the Order (the “*Customer*” and, together with Thermon, the “*Parties*”). By signing or executing an offer, quotation or sales order, placing an Order or receiving Work from Thermon, Customer agrees that these Terms supersede any prior written or oral agreement and any terms and conditions contained in Customer’s request for quote, purchase order, invoice, order acknowledgment, change order or similar document and the Order is subject to the Thermon Terms only. To the extent that there is a conflict between these Terms and a valid signed master agreement between the Parties, the specific conflicting terms of such master agreement shall prevail. These Terms supersede any prior written or oral agreement and any terms and conditions contained in Customer’s request for quote, purchase order, invoice, order acknowledgment, change order or similar document. To the extent that there is a conflict between these Terms and another set of Thermon terms and conditions issued to the Customer as part of the order or quotation process, the specific conflicting terms of the order or quotation document shall prevail. Any other variation from these Terms shall require the signed consent of an authorized Thermon representative.

**2. QUOTATIONS AND ORDERS:** Quotations are valid for a period of 30 days or as otherwise specified in the quotation and are only applicable to the specific Order.

**3. PRICING:** All prices are exclusive of any federal, provincial, local, sales, use, value added, excise or similar taxes or the like imposed on the sale or use of the Work, which will be added to invoices and paid by Customer to Thermon to be remitted to the appropriate taxing authority. If any of Thermon’s costs relating to the Work increase prior to delivery, including but not limited to taxes, prices of materials or wages, Thermon shall have the right to increase its prices to reflect those cost increases. Customer acknowledges and agrees that Thermon has the right to unilaterally increase its prices as agreed above in the event of cost increases, and the rate of increase on the price shall not exceed 10%. Minimum amount to be charged for each Order is \$500.00 USD.

**4. QUANTITY:** Thermon reserves the right to ship 95% to 105% of the quantity identified in the Order. Thermon reserves the right to ship Order plus 10% of required flexible or bulk cable unless specific lengths are requested by Customer and quoted by Thermon in the Order.

**5. WARRANTY:** Thermon warrants that the Work will comply with the specifications of the applicable Order and will be free from defects in materials and workmanship until the earlier of: (i) 12 months from the date of installation, or (ii) 18 months from the date of delivery (the “*Warranty Period*”). In the event the Work is defective and Thermon is notified of such defect in

writing by the Customer within the Warranty Period, then upon consultation, Thermon may remedy the defect by either: (i) repair or replace such defective Work with Work that complies with the applicable specifications, or (ii) refund to Customer any amount paid to Thermon for such defective Work. The Customer may purchase different or extended additional warranties from Thermon. The warranties provided herein shall not apply in the event of defects which are due to the following: (a) installation, inspection, testing, operation or maintenance that is improper or non-compliant with Thermon’s guidelines and instructions; (b) attachments, modifications, repairs, removals or replacements performed without Thermon’s prior written approval; (c) any use for purposes other than that for which they were designed; (d) unusual mechanical, physical or electrical stress, or normal wear and tear; (e) latent or hidden defects arising or discovered after expiration of the agreed Warranty Period or (f) defect as a result of any abuse or intentional mistreatment of the Work in a manner not intended by Thermon. Thermon further warrants that the Work will be free from liens or other encumbrances. 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 ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

**6. PAYMENT:** Customer shall pay all undisputed amounts of an invoice within 30 calendar days of the invoice date, failing which Customer shall be automatically in default. Interest on late payments shall accrue at the rate of 2% per month, unless prohibited by applicable law, in which event interest rate shall be at the highest rate permitted by applicable law. If Customer disputes any invoice or any part thereof, it may withhold payment of the disputed amount, but shall notify Thermon within 10 calendar days of receipt of the invoice in writing the grounds for non-payment. The Parties will use their best efforts to resolve any outstanding disputes before the due date of the original invoice. If Customer fails to pay invoices when due, Thermon may (i) require payment in advance; (ii) revoke any discounts; and/or (iii) immediately suspend its performance of Work, or terminate any Order, without liability. Customer will pay all of Thermon’s reasonable and documented costs, including attorney’s fees and court costs, incurred in connection with the collection of past due amounts. Under any and all circumstances, interest shall continue to accrue at 2% per month from the original due date notwithstanding any purported reasons to withhold payment if ultimately determined Customer is liable for the amount disputed.

**7. SHIPPING AND TRANSFER OF TITLE:** The Work will be shipped in Thermon’s standard packaging FCA from the applicable facility of Thermon or one or more of its Affiliates, as defined below, as identified in the Order (as per the most recent Incoterms). Customer may request and pay for additional packaging costs associated with special requirements and international shipments. Thermon will confirm delivery dates following receipt of the Order. All delivery dates are estimated dates and are given



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subject to changes and circumstances beyond Thermon's control, including but not limited to subcontractors or suppliers failing to meet their delivery obligations. Title to the Work shall transfer to Customer upon payment in full of the applicable invoice. Thermon may, without a notice of default and without the need for any court order, cancel any Order and claim any Work that has been delivered but not paid for in full after the date payment is due and Thermon has given notice to Customer of its intent to reclaim the Work.

**8. INSPECTION AND TESTING:** Customer shall give reasonable prior notice of its intent to conduct inspections and testing at the manufacturing facility and such inspections and testing shall take place 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 Work to and from the test location shall be the sole responsibility of Customer. Failure to test and object to Work (quantity and quality) by written notice to Thermon within 45 days after receipt of Work by Customer shall be deemed an acceptance of the Work as delivered.

**9. STORAGE:** Work which is ready for shipment at facility of Thermon or one or more of its Affiliates as identified in the Order but has not been retrieved by Customer will be kept in storage for a maximum of 30 calendar days, or for a longer period as agreed in writing. If such storage continues for more than 30 calendar days, Customer will pay a storage fee equal to 0.5% of the value of the Work per week of storage, up to a maximum of 10%. In the event storage is necessary, with the exception of storage attributable to Thermon, risk of ownership shall pass to Customer when the Work is ready for delivery (but not retrieved) and shipping terms shall be modified to Ex Works Thermon's facility.

**10. CHANGES TO ORDERS:** Customer warrants that the data, calculations, sizing, specifications and/or other design information provided to Thermon is complete and accurate. Customer is responsible for all costs resulting from changes necessitated 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 manufacturing. Any additional changes to a Order requested by Customer may be accepted or rejected by Thermon at its sole discretion and shall only be binding if agreed to in writing signed by both Parties. Thermon shall not charge for any changes it initiates to an Order requested by Customer if not accepted and confirmed in writing by the Customer.

**11. INTELLECTUAL PROPERTY:** "*Intellectual Property*" means any intellectual property, including but not limited to copyrights, patents, trade secrets, trademarks, 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. Unless the Parties have otherwise agreed in writing, a Party's Intellectual Property shall

be and remain the property of that Party. To the extent any Intellectual Property of a Party is incorporated into or necessary for the performance of any Work provided, that Party grants the other Party a non-exclusive, non-transferrable, non-sub-licensable, revocable, royalty-free, right and license to use such Intellectual Property incorporated into the work solely for the purpose of performing or using such work, as applicable. Except as expressly stated herein, neither Party shall have any right or license to use, directly or indirectly, any of the other's Intellectual Property. Any improvement or enhancements to a Party's existing Intellectual Property shall belong to such Party. Neither Party shall have the right to create a composite intellectual property incorporating the intellectual property of the other without their express written consent.

**12. CANCELLATION AND RETURNS:** Except for Orders for specialty or custom manufactured Work which cannot be cancelled by Customer without the prior written consent of Thermon, Customer may cancel orders for standard Work at its convenience. Customer may not return Work prior to receiving Thermon's signed Return Materials Authorization form. Returns of standard catalog and inventory Work will be subject to a restocking charge, which shall be determined by Thermon in its sole discretion, not to exceed the amount payable to Thermon under the canceled Order. Customer is responsible for any and all repairs or reconditioning necessary to put returned Work in a resalable condition. All returned Work must be in an "as new" condition and in original packaging.

**13. INSURANCE:** Thermon shall maintain appropriate and sufficient insurance to cover its obligations under these Terms. [The amounts of any insurance taken out by Thermon for the purposes of the Order will only be paid only pursuant to the terms of the insurance policy as determined by the insurance carrier and underwriter. In addition, Thermon will agree to support payment to Customer only if (i) the event which gave rise to a claim by Customer was received in writing from Customer within 14 days after the discovery of the event, (ii) allowable under the terms of such insurance; (iii) if Thermon has acted with proven fault in the performance of its obligations to the Customer or third parties; and (iv) if Thermon's acts, under (iii), have generated a loss subject to indemnification by the mentioned insurance. Upon request, Thermon can deliver to the Customer a certificate of insurance that shows the insurance applicable to the Order. The Customer will not be considered an additional insured and no coverage from Thermon's insurance will cover any negligence, fraud or willful misconduct by the Customer or any act or omission by it or directly or indirectly related third parties.

**14. RENTAL OF PRODUCTS:** Minimum rental periods are 28 calendar days unless otherwise noted in the Order. Customer shall bear all repair costs for rental materials 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 6 months and at 100% of purchase price otherwise. Rental Product invoices will be sent to Customer every 28 days until rental products have been received at Thermon's defined facility.



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Rental products returned after the minimum rental period of 28 calendar days will be invoiced at the following discount levels: 1-2 days – 90% discount, 3-8 days – 70% discount, 9-15 days – 40% discount, 16-28 days – 0% discount.

## **LEGAL TERMS**

**15. INDEMNIFICATION:** Each of the Parties shall be responsible for and shall indemnify and hold harmless each other Party and its entities that control or are controlled by that Party, whether through controlling at least 50% of voting shares, by contract, or otherwise (each, an “*Affiliate*”) from and against all claims including, but not limited to, any causes of action, demands, judgments, liabilities, losses, fines and penalties, including reasonable attorneys’ fees and costs of litigation relating to or in connection with the Order or Work (collectively, “*Claims*”) for: (a) loss of or damage to property of the other Party and (b) personal injury including death or disease to any person employed by the other Party or its affiliates, to the extent that any such loss, damages or injury is caused by the negligence or breach of duty of the indemnifying Party. In the case of Customer, Thermon’s obligation to indemnify is effective if and only if Customer notifies Thermon of the occurrence of the events which give rise to the Claims within 14 days after such occurrence is known to Customer or should have been known to Customer in light of the circumstances.

**16. LIMITATION OF LIABILITIES:** NOTWITHSTANDING ANYTHING CONTAINED IN THESE TERMS TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR 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 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. 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 AMOUNT, REGARDLESS OF CAUSE. NO CLAIMS MADE IN LITIGATION MAY BE BROUGHT BY CUSTOMER MORE THAN 3 YEARS AFTER CUSTOMER IS AWARE OR SHOULD HAVE BEEN AWARE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

**17. FORCE MAJEURE:** Neither Party shall be considered in breach of these Terms if prevented from performing due to an event that renders it wholly or partially impossible for the affected Party to perform its obligations under these Terms, 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 (each, a “*Force Majeure Event*”). Force Majeure Events include but are not limited to interruption of operations, faults in materials, lack of raw materials, government orders, pandemics, unsafe site

conditions, laws, failure of third parties to deliver, transport difficulties, public disorder, strikes, lockouts, problems with mobilization and other contingencies. If any period of a Force Majeure Event preventing performance of Work continues for more than 30 calendar days, either Party may terminate the effected Order or portion thereof by giving 5 calendar days written notice to the other Party.

**18. LEGAL COMPLIANCE:** Both Parties agree to comply with all applicable laws. The Parties will not offer, promise, authorize or make, directly or indirectly, anything of value to any person or entity in order to obtain or retain business, or secure any other improper business advantage. 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 Work to (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, Canada, the European Union or other countries with jurisdiction over the transaction contemplated by the Order; (ii) any other individual or entity identified on a denied or restricted party list of the United States, Canada, the European Union or other countries with jurisdiction over the transaction contemplated by the Order; or (iii) engage in any activity or end-use restricted by applicable laws, without first obtaining all required government authorizations and Thermon’s prior written consent. Each Party shall release, defend, indemnify and hold the other Party harmless from and against any Claims relating to such violations.

**19. CHOICE OF LAW:** All matters arising out of or relating to the execution, construction, interpretation or breach of these Terms, are to be governed by the laws of the jurisdiction in which Thermon is located, excluding such jurisdiction’s rules regarding conflicts of laws and the provision of the *United Nations Convention on Contracts for the International Sale of Goods*.

**20. DISPUTES:** The Parties agree to use their best efforts to resolve all disputes informally. All unresolved disputes, claims or legal proceedings in any way pertaining to these Terms or the associated Order, or the execution, construction, interpretation or breach thereof (other than actions for injunctive relief or enforcement of lien rights) shall be brought exclusively in the courts of the jurisdiction specified in Section 19 above (*Choice of Law*) and in no other court or tribunal whatsoever.

**21. RIGHT TO AUDIT:** Thermon shall keep accurate accounts and records of all transactions relating to an Order in accordance with generally accepted accounting principles for a period of at least 7 years after receipt of the final payment with respect to an Order (the “*Audit Period*”). Upon giving 30 calendar days prior written notice, at any time during normal business hours during the Audit Period, Thermon shall permit Customer, at Customer’s own costs, and its authorized representatives for which Thermon has provided services, to review Thermon’s records relating to the services provided, as may be necessary to audit and verify the completeness and accuracy of any invoice.

**22. CONFIDENTIALITY:** For the purposes of these Terms, of the Order, “*Confidential Information*” means any information, data





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and/or document related to the Order, in any format, that the Parties obtain from one another. The Parties undertake to maintain absolute confidentiality relative to the Confidential Information during the performance of the Order and for a period of 2 years after its termination, for any reason. The results of the services performed in connection with the Work or information that meets the following provisions will not be considered Confidential Information if: (i) it is known to the receiving Party or is in its power before it is received from the revealing Party; (ii) it is or comes into the public domain before or after having been revealed to the receiving Party; (iii) it becomes known to the receiving Party from other sources, without the breach of any confidentiality obligation between such sources and the revealing Party or a third party; (iv) it is developed independently by the receiving Party; (v) its disclosure is authorized in writing by the revealing Party; or (vi) its disclosure is required by law or legal rules/decisions imposed by any government body/agency with authority over the Parties.

## **23 GENERAL:**

**23.1** Notices shall be given in writing via email with a receipt requested or delivery overnight by a national recognized courier service.

**23.2** Thermon shall have several, and not joint, liability with respect to its obligations under the Order, and Customer may only look to such entity, and not any of its Affiliates, for fulfillment of such obligations.

**23.3** If any of the provisions in these Terms are found to be inconsistent with or contrary to any applicable law, such provisions shall 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.

**23.4** Either Party'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.

**23.5** Neither Party may assign its rights or obligations to a third party (other than its Affiliates) without the prior written consent of the other Party.

**23.6** 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.

**23.7 DATA PRIVACY (AS APPLICABLE):** On occasion, Thermon may, following the PRC Personal Information Protection Law, process personal data of Customer ("Customer Data") for the purpose of compliance with its legal obligations, execution and management of the Order and the commercial relationship maintained with Customer and to send communications. Customer Data will be processed in strict compliance with the

principles of lawfulness, reasonableness and necessity, and Thermon will take necessary and effective measure to enhance the protection of Customer Data. Thermon is the data controller responsible for the processing of the Customer Data. The Customer Data may be disclosed to Thermon's Affiliates for internal management and to those subcontractors and service providers that need access thereto, and when required by a legal obligation or a competent authority. It can be regarded that the Customer agrees to the processing of Customer Data by Thermon in accordance with this term on the condition that the Customer is aware of this term and does not submit a written objection to Thermon before the processing. Customer may exercise at any time any rights of access, rectification, objection, erasure, restriction and portability, as contemplated by the applicable data privacy regulations, by writing to the address of Thermon identified on the Order.