

TERMS AND CONDITIONS

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"HHY" shall mean Hoffman Hydronics, LLC, and its officers, employees, and agents. "Buyer" shall mean the person or entity entering into this Agreement to purchase goods and/or services.

1. Controlling Terms & Conditions: This Agreement, upon Buyer's acceptance, is limited to the terms and conditions stated herein, despite any additional or conflicting terms and conditions contained in any purchase order, any other document presented by Buyer, or any contract document between Buyer and any third-party (i.e., owner, other contractor, etc.), all of which additional or conflicting terms are hereby rejected by HHY. No waiver of, or modification to, these Terms and Conditions shall be valid unless made in writing and signed by an authorized representative of HHY. HHY salespeople are not authorized to waive or modify any Terms and Conditions. The terms of any written proposal / quote made by HHY ("proposal") and these Terms and Conditions shall constitute the entire agreement of the parties.

2. Acceptance: Any HHY proposal expires if not accepted by Buyer within thirty (30) days of the date of the proposal. After acceptance but prior to shipment, prices are at all times subject to escalation due to increased costs. Cost increases may result from, but are not limited to, tariffs, taxes, manufacturer price increases, government regulations, etc. Typographical and clerical errors in quotations, orders and acknowledgments are subject to correction. Buyer is deemed to have accepted any HHY proposal, including these Terms and Conditions, when Buyer either (a) receives and retains an acknowledgement from HHY without written objection within ten (10) days, (b) accepts delivery of all or any part of the goods ordered, (c) provides to HHY delivery dates, shipping instructions, or other instructions evidencing acceptance, or (d) otherwise executes or assents to any proposal or these Terms and Conditions. Buyer's acceptance shall be deemed acceptance of the proposal subject solely to HHY's terms and conditions. If Buyer's acceptance is expressly conditioned upon HHY's acceptance or assent to terms and/or conditions other than those stated herein, return or acknowledgment of such order by HHY with HHY's Terms and Conditions attached or referenced serves as HHY's notice of objection to, and rejection of, Buyer's terms and as HHY's counteroffer to provide goods or services in accordance with the HHY proposal and HHY's Terms and Conditions. If thereafter Buyer does not object to HHY within ten (10) days by written notice to Legal@hoffman-hoffman.com, HHY's counteroffer will be deemed accepted by Buyer. Buyer's acceptance of all or any part of any goods ordered will constitute Buyer's acceptance of HHY's proposal subject to HHY's Terms and Conditions.

3. Terms of Payment / Taxes: Payment is due net thirty (30) days from the date of each HHY invoice to Buyer. Interest at the rate of 1 1/2% per month (or the highest interest rate allowed by applicable law, if lower) may be charged after the 30-day period until payment is received. HHY accepts credit card payments. If Buyer chooses to pay by credit card, Buyer is subject to an additional convenience fee of 3.0% of the total amount paid by credit card. Buyer shall pay all costs of collection incurred by HHY including, but not limited to, reasonable attorneys' fees, collection fees, and court costs. HHY may suspend all further services and transactions (regardless of their status) without liability if Buyer's account is more than thirty (30) days past due or if Buyer's credit, in the sole judgment of HHY, is impaired at any time. Partial invoices may be submitted for any portion of completed work and/or delivered materials. While risk of loss passes to Buyer, HHY will have a purchase-money security interest in all goods (including any accessories and substitutions) purchased under this Agreement to secure payment in full of all amounts due HHY, and the underlying proposal, together with these Terms and Conditions, form a security agreement (as defined by the UCC). Buyer shall keep all goods purchased under this Agreement free of all taxes and encumbrances, shall not remove said goods from their original installation point and shall not assign or transfer any interest in said goods until all payments due HHY have been made. The purchase-money security interest granted herein attaches upon HHY's acceptance or acknowledgment of this Agreement and Buyer's receipt of said goods, but prior to installation. Buyer will have no rights to set off against any amounts which become payable to HHY under this Agreement or otherwise. Notwithstanding any Buyer form or document to the contrary, HHY shall not release any rights to make a lien and/or bond claim, or other claim for damages, in connection with goods purchased or services provided until HHY has obtained payment in full for such goods or services and any damages. Furthermore, Buyer is responsible to pay in full for the goods or services provided by HHY regardless of whether such goods or services are funded for Buyer pursuant to any extraneous contract and/or by an applicable project owner or contractor. Unless otherwise agreed by HHY in writing, Buyer shall pay to HHY, in addition to the contract price, all sales, use, excise, privilege or other taxes imposed by any local, state or federal taxing authority payable in connection with the goods or services furnished.

4. Shipments / Claims: All shipments of goods are at Buyer's risk, f.o.b. factory, or if shipped from another location, f.o.b. point of shipment, with charges either allowed, added to invoice, or collected as noted. Any claims for damage or shortage or loss in transit must be filed by Buyer against the applicable carrier. If requested, HHY will reasonably assist the Buyer when making its claim for damages and/or losses occurring in transit by providing available documentation. Buyer shall inspect all goods promptly upon receipt. Claims for factory shortages, incorrect goods, nonconforming goods, or other quantity or quality issues must be made by Buyer in writing to HHY within five (5) business days after Buyer's receipt of the goods. Buyer's written notice must reasonably identify the applicable order, goods, quantity affected, and basis for the claim. Claims not timely made may be denied and, to the fullest extent permitted by applicable law, shall be deemed waived.

5. Approval: HHY shall not be liable in any way should any third party (such as a project architect, engineer, owner, etc.) fail to accept or approve equipment ordered by Buyer. HHY cannot guarantee to meet or equal specifications written around another make of equipment different than that purchased by Buyer.

6. Warranties and Liability: Upon condition that HHY receives payment in full for all amounts owed under this Agreement, and unless otherwise specifically agreed to in writing by HHY, HHY extends to Buyer only the applicable manufacturer's warranty, subject to the manufacturer's terms, conditions and approval requirements. The applicable manufacturer's warranty is in lieu of any warranties contained in any applicable project contract, conditions, plans, or specifications. Information regarding submission of warranty requests is available in HHY's Returns & Warranty Policy at hoffmanhydronics.com and may be updated from time to time; however, such policy is administrative in nature, does not create or expand any warranty, obligation, or remedy, and, in the event of a conflict, these Terms and Conditions control. HHY ITSELF MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, IMPLIED WARRANTIES OF DESIGN OR FITNESS FOR A PARTICULAR PURPOSE. HHY SHALL HAVE NO LIABILITY FOR ANY DIRECT DAMAGES BY REASON OF FAILURE OF THE EQUIPMENT TO OPERATE OR FAULTY OPERATION OR MISUSE OF THE EQUIPMENT, AND UNDER NO CIRCUMSTANCES SHALL HHY BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR LIQUIDATED DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT OR PRODUCTION, LOST DATA, SPOILAGE, DELAY, OR INCREASED COST OF OPERATION. SAID EXCLUSIONS APPLY EVEN IF HHY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SUCH POSSIBLE DAMAGES WERE REASONABLY FORESEEABLE.

7. Design and Workmanship: Unless otherwise agreed in writing by HHY, HHY is not responsible for the design of goods or services purchased and did not participate in any project design in connection with such goods or services. (a) Goods shall be fabricated in accordance with the contract drawings and specifications furnished by the Buyer and shop drawings approved by Buyer or its representative. (b) HHY shall not be responsible for the suitability, adequacy or legality of use of any designs, plans and specifications, and the Buyer shall indemnify HHY for any loss, damages and expenses incurred by or charged against HHY by reason of any alleged patent or copyright infringement, personal injury or property damage allegedly arising out of the use of designs, plans, and specifications furnished by Buyer for the goods. (c) Once submittals are approved by Buyer, Buyer shall reimburse HHY for all expenses resulting from changes thereto. Charges for extra work outside the limits of the proposal shall be mutually agreed upon by HHY and Buyer at the time such expenses arise, or HHY shall not be responsible for the extra work.

8. Limitation of Remedy: HHY shall have no liability for any damage caused by negligence, accident, misuse, improper storage, improper installation, improper service, maintenance or operation of equipment by Buyer or any third party. To the extent HHY is liable to Buyer under any legal theory (whether under warranty, negligence, strict liability or contract), Buyer's sole and exclusive remedy is limited to one of the following, which HHY shall elect in its sole and absolute discretion: (a) repair or replacement of purchased equipment or its parts by HHY or its duly authorized representative or (b) refund of the purchase price. In no event shall HHY's liability exceed the purchase price paid by Buyer under this Agreement, and Buyer waives all other remedies at law or in equity. Furthermore, Buyer waives any claim with respect to quantity or quality of goods or services purchased, unless Buyer notifies HHY in writing within five (5) business days after Buyer's receipt of the goods. Under no event shall HHY owe any duty or have any obligation whatsoever to any customer or client of Buyer or to any other third party.

9. Hazards: HHY is not responsible for the identification, detection, abatement, encapsulation or removal of hazardous substances, such as (without limitation) asbestos, products or materials containing asbestos, mold, fungi, mildew, or bacteria. At all times now and in the future, HHY takes no responsibility for and makes no representations or warranties concerning any existing or future hazardous substance or condition (i.e., mold) or the remedy or prevention thereof. Furthermore, Buyer has a duty to alert HHY of any known or likely potential hazards at any project site where HHY's representatives and affiliates may be present in connection with this Agreement.

10. Indemnification / Insurance: To the fullest extent permitted by law, Buyer shall indemnify, hold harmless and defend HHY and its officers, employees and agents from and against all claims, demands, liabilities, suits, judgments, awards, or expenses of any kind (including reasonable attorneys' fees and costs incurred defending such claims or demands, regardless of whether they result in legal action or are prosecuted to final judgment or award), which result or arise from Buyer's purchase, installation, or use of goods or services provided by HHY. Buyer shall indemnify HHY against, without limitation, liability arising from any acts or omissions whether deemed negligent, accidental or intentional, which is caused, in part, by the active or passive negligence or other fault of HHY. To the fullest extent permitted by law, the obligations of defense and indemnification set forth herein shall be binding upon Buyer no matter what the nature of the claim asserted may be (whether it be for negligence, warranty, strict liability, or otherwise) and shall be binding even if HHY is alleged or proven to have acted negligently; provided, however, that Buyer shall have no obligation to provide indemnification to HHY if the claim asserted arises in negligence and is finally adjudicated to have arisen solely from the negligence of HHY. Buyer shall also indemnify and hold harmless HHY from all liability for taxes owing in connection with Buyer's purchase of goods or services. The obligations and rights to indemnity herein shall not negate, abridge or reduce other such rights or obligations under law. This Agreement does not require Buyer to indemnify HHY for HHY's own negligent or intentional acts or omissions to the extent that doing so would violate applicable law. Upon written request of Buyer, HHY shall name Buyer as an additional insured, but only to those coverage types listed on HHY's standard Certificate of Insurance (available upon request). In no event does HHY waive any rights of subrogation.

11. Claims Resolution / Governing Law: Unless HHY elects otherwise, all claims and disputes between Buyer and HHY arising out of or relating to performance of any agreement or breach thereof must be decided by binding arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association (AAA). Demand for Arbitration must be filed in the regional office of the AAA closest to Greensboro, North Carolina, and the filing party must serve such Notice upon the other party in accordance with AAA rules. The procedural and substantive law of the State of North Carolina must apply in and to all arbitration proceedings, and Greensboro, North Carolina, is designated as the sole and exclusive venue for such proceedings. Any award arising from such proceedings shall be final and binding upon the parties and enforceable in accordance with the Federal Arbitration Act. HHY and Buyer agree that their transactions involve interstate commerce. This Agreement shall be governed by and construed solely in accordance with the laws of the State of North Carolina, without regard to principles of conflicts of laws. HHY shall have the sole and exclusive right, at HHY's sole and absolute discretion, to waive the arbitration provision and to elect to litigate any claim or dispute in a court of appropriate jurisdiction. Unless HHY elects another court of appropriate jurisdiction in HHY's sole and absolute discretion, the state courts located in Greensboro, Guilford County, North Carolina, shall be the sole and exclusive forum for any litigation between HHY and Buyer. Buyer consents to the jurisdiction of the state and federal courts located in Greensboro, Guilford County, North Carolina.

12. Delays / Penalties / Force Majeure: Delivery dates are approximate and not guaranteed. In no event and under no circumstances whatsoever will HHY be liable for any damages or expenses caused by any failure or delay in making delivery of goods or in performing services hereunder. No penalty clause or liquidated damages of any kind (for delays or otherwise) apply to HHY unless pre-approved in writing by an HHY officer. Furthermore, in no event and under no circumstances whatsoever will HHY be liable under this Agreement for any event of force majeure, including but not limited to, acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages, pandemic, and other causes beyond HHY's reasonable control.

13. Cancellations / Returns: If an order is canceled through no fault of HHY, the Buyer shall reimburse HHY for all expenses, costs, damages and losses (including lost profits) incurred by HHY in connection with the order and its cancellation. Goods may not be returned without HHY's prior written permission, and Buyer shall comply with HHY's Returns & Warranty Policy.

14. Equal Employment Opportunity: HHY is an Equal Employment Opportunity employer. HHY does not discriminate against its employees or applicants in the terms and conditions of employment on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, genetic information, veteran status or any other basis prohibited by law.

15. Government Contracts: If Buyer's purchase of goods or services is in any way connected to any federal, state, or local government project, which implicates or utilizes any Small, Minority or Disadvantaged Business incentives or qualifications (or other similar laws or regulations), Buyer represents and certifies to HHY that Buyer is performing a commercially useful function on such project. HHY assumes no responsibility for the compliance of any quoted or sold materials or equipment with any government specifications or requirements, including, but not limited to, Federal Acquisition Regulation (FAR) requirements, unless such is specifically stated in HHY's written proposal.

16. Trust Funds: Buyer agrees that all funds Buyer receives that result from the labor, materials, and/or equipment furnished by HHY will be considered "Trust Funds." Buyer will hold all Trust Funds in trust for the sole and exclusive benefit of HHY. Buyer will segregate Trust Funds from other funds. Buyer will account for all Trust Funds and deliver all Trust Funds to HHY. Buyer will not use Trust Funds for any purpose other than paying HHY.

17. Survival: The terms contained herein which explicitly or by their nature are intended to survive the earlier termination or expiration of this Agreement shall survive, including, but not limited to, all indemnity obligations.