

MODINE® ADVANCED THERMAL SYSTEMS TERMS AND CONDITIONS OF SALE

- 1. APPLICABILITY:** These Terms and Conditions of Sale (the “Terms”) apply to the purchase and/or licensing by the buyer (“Buyer”) from the seller (“Seller”) of all goods and/or services (including without limitation, hardware, firmware and software products, training, programming, maintenance, engineering, parts, repair, and remanufacturing services related to such goods and/or services)(together, “Products”) furnished to Buyer by Seller, whether such sale or licensing is effected by paper-based transactions or via fax, email, or any other form of electronic commerce. The Terms, along with any associated written specification, quotation, and/or supplemental terms and conditions provided by Seller, comprise the entire agreement between the parties (the “Agreement”) except as expressly modified by Seller in writing and signed by an authorized representative of Seller. Buyer accepts these Terms by signing and returning Seller’s quotation, by sending a purchase order in response to Seller’s quotation, by submitting instructions to Seller to ship the Product, and/or by accepting or paying for the Product. All orders are subject to acceptance and approval by authorized personnel of Seller, and Seller will not be bound by any order not accepted in writing by such personnel. No additional or different terms, conditions, or warranties other than those identified in these Terms or the Agreement and no agreement or understanding, oral or written, in any way purporting to modify these Terms or the Agreement, whether contained in Buyer’s purchase order, shipping release forms, or elsewhere, shall be binding on Seller unless made in writing, signed by Seller’s authorized representative, and specifically referencing these Terms and the Agreement and stating that it modifies them. Buyer is hereby notified of Seller’s express rejection of any terms inconsistent with these Terms or to any other terms proposed by Buyer. Neither Seller’s lack of objection to any such terms, nor the delivery of the Products, shall constitute an agreement by Seller to any such terms. Trade custom, trade usage, and past performance are superseded by these Terms and shall not be used to interpret them.
- 2. PRODUCT SPECIFICATIONS; CHANGES:** Products shall be manufactured and delivered by Seller in accordance with the specifications described in Seller’s quotation or otherwise communicated by Seller to Buyer (the “Specifications”). Seller reserves the right at any time to substitute using the latest superseding revision or series or equivalent Product (including but not limited to any repair or replacement parts thereof) having comparable form, fit, and function and, in such event, the Specifications shall be deemed modified accordingly. Buyer agrees to accept promptly after delivery the Products furnished in accordance with the Specifications.
- 3. SALES REPRESENTATIVES AND AGENTS DO NOT HAVE AUTHORITY:** Seller’s sales representatives or agents have no authority to make any agreements, contracts, or understandings, or to incur any obligations or liability on behalf of Seller. Orders and contracts taken by sales representatives or agents are subject to acceptance and approval by authorized personnel of Seller, and Seller will not be bound by any order not accepted in writing by such personnel.
- 4. PAYMENT TERMS:** All sums shall be payable in the currency specified on Seller’s invoices. Payment shall be due no later than fifteen (15) days after the date of Seller’s invoice unless otherwise expressly agreed in writing by Seller, whether the invoices presented comprise the entire order or only part of such order. Buyer shall not withhold payment of any amounts due and payable for any reason including any set-off of any claim or dispute with Seller. Any overdue payments shall bear interest at the rate of 1.5% per month or the maximum rate under applicable usury laws, whichever is less. Credit terms herein extended are subject to revocation, to change, or withdrawal by Seller at any time upon notice to Buyer in writing, and Seller reserves the right to demand guarantees, security, and/or payment prior to commencement of Seller’s performance. Buyer’s failure to pay for any deliveries when due shall excuse Seller from making further deliveries on the applicable order or on any other order. Credit terms for one order establish no precedent in respect to any subsequent orders. Buyer, any higher-tier contractor, or the owner of property to which the Products described herein may become affixed will not be released from liens or claims of any kind unless and until such Products have been fully paid for.
- 5. TITLE, DELIVERY, AND RISK OF LOSS:** Delivery terms are EXW Seller’s plant or factory (per Incoterms 2020); title and risk of loss arising from any cause pass to Buyer upon delivery to a carrier consigned to Buyer or upon delivery directly to Buyer, whichever occurs first; provided that Seller shall retain a security interest in all Products delivered to Buyer until such Products are paid for in full. Buyer shall be responsible for insuring all Products until such time as the same have been paid for in full, and Buyer shall provide Seller with evidence of such insurance reasonably satisfactory to Seller upon request. Claims for loss or damage to Products in transit must be made to the carrier and not to Seller.
- 6. TAXES:** All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer to Seller hereunder; Buyer shall be responsible for all such charges, costs, and taxes (but excluding taxes based on Seller’s income) and if paid, or required to be paid, by Seller, the amount thereof will be added to and become a part of the amounts payable by Buyer to Seller hereunder.

7. **PRICES:** Prices for Products covered by these Terms and the Agreement may be adjusted by Seller, upon notice to Buyer at any time prior to shipment, to reflect any increase in Seller's cost of raw materials or components (including but not limited to, steel, aluminum, and/or electrical components), changes in volume forecasts or economics (including but not limited to changes in labor, inflation, tariff, or energy costs), changes in sub-supplier conditions, additional costs resulting from any acts of Government, simultaneous production of other orders for similar products, or to cover any extra, unforeseen, or unusual cost elements. Accordingly, prices will not necessarily be the same or as low as prices charged previously or prices charged during the period of performance of any order, either to Buyer or to other customers.
8. **INTELLECTUAL PROPERTY:** Seller warrants that, to the best of its knowledge, the Products are free of rightful claims for infringement of any United States patent or trademark, provided, however, that this warranty shall not apply to claims for patent infringement to the extent that any Products are (1) manufactured or produced to the specifications of Buyer, or to designs furnished by Buyer, (2) used in combination with products not purchased from Seller in a manner that infringes a patent covering the combination, or (3) used in a manner not reasonably anticipated by Seller. Seller's obligation under this paragraph is further conditioned upon Buyer: (a) giving Seller prompt written notice of any infringement claim; (b) cooperating fully with respect to the defense of such claim; and (c) upon Seller's request, providing Seller full control of the defense including settlement and/or litigation of such claim. If Seller is obligated to Buyer under the foregoing warranty, Seller shall be entitled, at its option, to obtain a license on Buyer's behalf for the Product which (allegedly) infringes an intellectual property right, or to modify the Product in such a way that it does not infringe the intellectual property right, or to replace the Product with a similar product which does not infringe the intellectual property right, or if none of the foregoing are commercially practicable, to refund to Buyer the purchase price of the affected Products in exchange for their return.

If Seller or Buyer are subject to any claims for infringement with respect to any Products manufactured or produced to the specifications of Buyer, or to designs furnished by Buyer, Buyer assumes full responsibility for everything done by Seller in producing such Products (or parts thereof) and agrees to indemnify Seller and to hold Seller free of any and all losses, including expenditures made or incurred for judgments, settlements, attorney's fees, litigation, negotiations, and any and all losses and disbursements directly or indirectly resulting therefrom.

All data and/or intellectual property transmitted by Seller to Buyer or developed by Seller in connection with the supply of the Products is and shall continue to be the property of and under the control of Seller; the sale of 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 that all such rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Buyer shall not, direct or through intermediaries, reverse engineer, decompile, or disassemble the Products or any software or firmware contained therein, except as expressly authorized by Seller or expressly permitted by applicable law.

9. **SPECIFICATIONS:** In cases of ambiguity in the specifications, drawings, designs, or other requirements of an order, Seller's interpretation of any such requirements shall be final.
10. **INSTALLATION, REPLACEMENT, AND REPAIRS:** Unless otherwise expressly agreed in writing by Seller, under no circumstances will Seller be required to install or arrange for the installation of the Products or be responsible for the costs thereof; similarly, except to the extent required under an express warranty under these Terms or the Agreement, Seller shall not be required to repair or replace the Products, arrange for the repair or replacement of the Products, or be responsible for the costs thereof; further and without limiting the generality of the foregoing, under no circumstances will Seller be responsible for any damages caused by faulty installation or repair.
11. **DELIVERIES:** Seller will use reasonable efforts to deliver the Products in accordance with a mutually agreed upon delivery schedule, using Seller's standard methods for packaging and shipping such Products. Times of delivery (whether in an order confirmation or otherwise) are only estimated but are not guaranteed. If manufacture or production of the Products is dependent upon Seller receiving data, specifications, drawings, designs, or other similar information from Buyer, all estimates of delivery times are conditional upon receipt by Seller of all such information on a timely basis and if such information is delivered late, the estimates of delivery times will be adjusted accordingly. In any event, unless otherwise expressly agreed by Seller in writing, Buyer agrees that Seller may deliver at any reasonable time before or after the estimated or scheduled shipping date. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer; each such shipment shall constitute a separate sale and Buyer shall pay for units shipped whether such shipment is in whole or partial fulfillment of Buyer's order. If Buyer re-schedules a delivery or modifies the quantities of a delivery during an established firm order period, or if Buyer otherwise causes Seller to delay shipment or completion

of the Products (for example, by failing to provide manufacturing information on a timely basis as described above), Buyer shall compensate Seller for all costs associated with the change in schedule, modification, or delay including but not limited to overtime or expedited freight costs. Seller shall not be liable for any delays, loss, or damage in transit or expedited delivery costs unless the delay is due solely to Seller's gross negligence. Deliveries of goods are further contingent upon the non-occurrence of any cause beyond the reasonable control of Seller, including but not limited to strikes, fires, floods, wars, accidents, terrorist threats or acts, riots or other civil unrest, labor shortages or disputes, plagues, epidemics, quarantines, public health risks (or responses thereto), delays of carriers, shortages of labor, energy, supplies or materials, delays or default of a supplier or a contractor, government regulation, disruption due to failure of production facilities, and/or disruption due to failure of transportation facilities. In the event of any delay in performance of delivery due to any cause beyond the reasonable control of Seller, Buyer agrees to accept delivery at such time as delivery can be affected, or if the delay is due to any acts or omissions of Buyer or Buyer's agents, contractors, or suppliers, to compensate Seller for all costs of production, including but not limited to costs of materials, labor, and overhead, incurred as a result of the delay.

- 12. COMPLIANCE WITH LAWS:** Seller represents that all goods supplied hereunder will have been produced in compliance with applicable federal and state wage and hour laws, including the Fair Labor Standards Act. In addition, each party will at all times strictly comply with all applicable laws, rules, regulations, ordinances, and governmental orders, now or hereafter in effect, relating to its performance hereunder. If requested by Seller, Buyer will sign written assurances and export or import related documents, as may be required under applicable export or import laws and regulations. Specifically and without limiting the generality of the foregoing: Seller is committed to complying with all laws administered by the United States ("U.S.") Treasury Department's Office of Foreign Assets Control and all other governmental entities imposing economic sanctions and trade embargoes against designated countries, entities and persons ("Economic Sanctions Laws"). Any direct or indirect buyer of Seller products must be compliant with all applicable Economic Sanctions Laws and shall provide Seller with proof of such compliance upon request. In addition, Buyer certifies that it will not sell, transfer, export, or re-export any Seller products, software, technical data or services purchased in violation of the export laws of the United States. Each party agrees to comply with all applicable anti-corruption laws including the U.S. Foreign Corrupt Practices Act. Buyer shall indemnify and hold Seller harmless against any claim, demand, action, proceeding, judgment, penalty, fee, loss, liability, cost or expense including reasonable attorney's fees) suffered or incurred by Seller and arising out of or relating to representations made and obligations assumed by Buyer pursuant to this paragraph and/or to Buyer's above certification.
- 13. LIMITED WARRANTY:** Seller hereby warrants that during the Applicable Warranty Period (as defined below) its Products shall be free from defects in material and factory workmanship under normal use and service, limited to the performance specifications identified in the mutually agreed to Design Validation Plan & Report (DVP&R), published technical specifications or generally accepted technical standards, subject to the EXCLUSIONS described below (the "Warranty") and according to the terms outlined in this Warranty. If Seller receives written notice of a breach of this Warranty prior to the end of the Applicable Warranty Period (which such notice shall include the model and serial numbers of the Product, as well as the date and a reasonably detailed description of the Product's alleged failure), Buyer shall with Seller's prior written approval, return the applicable Product or component thereof to Seller with shipping charges prepaid; if upon examination by Seller such Product or component thereof is disclosed to have been defective, then Seller will, without charge to Buyer, at Seller's option, either repair the Product, replace defective parts in the Product, or offer an entire replacement unit of the Product; provided that the warranty period for a Product that has been repaired or provided with replacement parts shall not extend beyond the original Applicable Warranty Period, nor shall any replacement parts provided for a Product be under any warranty beyond the original Applicable Warranty Period for the Product; similarly, if Seller provides an entire replacement unit of the Product, the warranty period for the replacement unit is limited to the remainder of the original Applicable Warranty Period. Seller shall have no responsibility for installation, service, field labor, shipping, handling, or other costs or charges, except as expressly provided in this Warranty. Buyer shall have no remedy hereunder for any defective part returned without proper written authorization from Seller, as described above. For purposes of this Warranty and subject to the exclusions described below, the term "Products" shall mean parts or equipment manufactured by Seller and sold to Buyer under these Terms. The term "Products" shall not include third-party parts or equipment furnished by Seller hereunder, except that, to the extent assignable, Seller will assign to Buyer the benefits (together with all limitations and exclusions) of the third-party manufacturer's warranty for such parts or equipment. This Warranty extends only to the original purchase contract between Buyer and Seller and is nontransferable. All replaced parts or equipment shall become Seller's property. For purposes of this Warranty, the term "Applicable Warranty Period" shall mean twelve (12) months or 50,000 miles whichever occurs first after the date of delivery, unless otherwise expressly agreed by Seller in writing.

EXCLUSIONS AND LIMITATIONS: This Warranty is subject to the following exclusions and limitations:

The term "Products" shall not include and this Warranty shall not apply to any of the following items: refrigerant, coolant, belts, filters, fuses and other items consumed or worn out by normal wear and tear. In addition, this Warranty shall not apply to:

- (1) Products or components thereof that are damaged or adversely affected by conditions beyond Seller's control, including but not limited to pollution or contamination or foreign matter contained in the air or water/coolant/refrigerant utilized for heat exchange or if the failure of the part is caused by improper air or water/coolant/refrigerant supply, or improper or incorrect sizing of power supply to the Product;
- (2) Any Products or components thereof which have been repaired or altered outside the factory of Seller in any way, or otherwise subject to unauthorized repairs or alterations, so as, in the judgment of Seller, to affect the Product's durability or performance;
- (3) Materials or labor of any kind not furnished by Seller, or any charges for any such labor or materials, whether such labor, materials or charges thereon are due to replacement of parts, adjustments, repairs, or any other work done by any party other than Seller;
- (4) Labor or other costs incurred for diagnosing, repairing, removing, installing, shipping, servicing, or handling of either defective or replacement parts;
- (5) Any Products removed from their original location for reinstallation in another location;
- (6) Any Products or components thereof which have been operated, maintained, or serviced contrary to Seller's written installation, operation, and/or servicing instructions or owner's manual;
- (7) Damages resulting from operation with an inadequate or interrupted supply of air or water/coolant/refrigerant;
- (8) Any Products or components thereof which have been subjected to misuse, negligence, faulty installation, improper servicing, accident, excessive thermal shock, excessive humidity, physical damage, impact, abrasion, improper operation, or other operating conditions in excess of or contrary to those for which such equipment was designed;
- (9) With respect to Products with power provided by the customer system, any Products or components thereof if the input to the Product exceeds the rated voltage and/or current input as indicated in the Product's Manual;
- (10) Any Products or components thereof which, in the judgment of Seller, have been installed in a corrosive atmosphere, subjected to corrosive fluids or gases, or damaged or adversely affected by the effects of the physical or chemical properties of water or steam or other liquids or gases used in the Products or any component thereof;
- (11) Damage or failure to start resulting from improper voltage conditions, blown fuses, open circuit breakers, or other inadequacy or interruption of electrical service or fuel supply; or
- (12) Any Products or components thereof from which the serial number has been altered, defaced or removed.

BUYER AGREES THAT SELLER'S WARRANTY OF ITS PRODUCTS TO BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP, AS LIMITED HEREIN, ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY SELLER WITH RESPECT TO THE PRODUCTS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW SHALL BE IN LIEU OF AND EXCLUSIVE OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, WHETHER ARISING FROM LAW, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT (EXCEPT AS EXPRESSLY DESCRIBED HEREIN), EACH OF WHICH SELLER HEREBY EXPRESSLY DISCLAIMS. BUYER'S REMEDY FOR BREACH OF WARRANTY, EXCLUSIVE OF ALL OTHER REMEDIES PROVIDED BY LAW, IS LIMITED TO REPAIR, REPLACEMENT AT THE FACTORY OF SELLER OR EXTENSION OF CREDIT FOR ANY PART OR PARTS WHICH SHALL, WITHIN TWELVE (12) MONTHS FROM DATE OF SHIPMENT FROM SELLER, BE RETURNED THERETO WITH TRANSPORTATION CHARGES PREPAID AND WHICH THE EXAMINATION OF SELLER SHALL DISCLOSE TO HAVE BEEN DEFECTIVE. REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED BY STATUTE, TRADE USAGE, OR OTHERWISE, ARE EXCLUDED AND WILL NOT APPLY TO THE PRODUCTS UNDER THIS WARRANTY, EXCEPT FOR WARRANTIES WHICH BY LAW CANNOT BE EXCLUDED OR LIMITED.

- 14. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BUYER AGREES THAT IN NO EVENT WILL SELLER BE LIABLE FOR COSTS OF PROCESSING, LOST REVENUES OR PROFITS, LOSS OF USE, LOSS ARISING FROM DELAYS, LOSS OF DATA OR OTHER LOSSES ARISING FROM VIRUSES, RANSOMWARE, OR CYBER ATTACKS, INJURY TO GOODWILL, OR ANY OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, LIQUIDATED, EXEMPLARY, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND ARISING OUT OF, BASED ON, OR RESULTING FROM THESE TERMS, ANY ORDER PLACED HEREUNDER, OR THE USE, MISUSE OF, OR INABILITY TO USE THE PRODUCTS, WHETHER ARISING FROM BREACH OF WARRANTY, NONCONFORMITY TO ORDERED SPECIFICATIONS, DEFECTS OF ANY KIND, DELAY IN DELIVERY, ANY NEGLIGENCE ON THE PART OF SELLER, ANY LOSS SUSTAINED BY BUYER, OR ANY OTHER CAUSE, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF SELLER AND ITS AFFILIATES AND THEIR RESPECTIVE PERSONNEL, SUPPLIERS, AND VENDORS UNDER THESE TERMS OR OTHERWISE WITH

RESPECT TO THE PRODUCTS PURCHASED HEREUNDER, EXCEED THE AMOUNTS PAID TO SELLER BY BUYER FOR THE SPECIFIC PRODUCTS GIVING RISE TO SUCH LIABILITY, REGARDLESS OF THE CAUSE OR FAULT AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

- 15. CONFIDENTIAL OR PROPRIETARY INFORMATION:** 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, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with these Terms, the Agreement, or any related communication or transaction is confidential, solely for the use of performing these Terms or the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section, without having to post bond or establish the insufficiency of a remedy at law. This Section shall not apply to information that is: (a) in the public domain, through no fault of Buyer, at or subsequent to the time such confidential information was disclosed to Buyer by Seller; (b) rightfully known by Buyer free of any obligation of confidence at the time of disclosure to Buyer by Seller, as evidenced by written records; or (c) rightfully obtained by Buyer from a third party without similar restriction from such party and the disclosure of which from such third party does not constitute a violation of an obligation by such third party to Seller, each as evidenced by written records. Either party at any time may seek an injunction or other equitable remedies against the other party for misappropriation of trade secrets or breach of confidentiality obligations without complying with the dispute resolution process in the Dispute Resolution Process section.
- 16. SERVICE PARTS AND DISCONTINUANCE OF PRODUCTS:** For purposes of this Section: the period in which Seller makes certain specific Product(s) available to Buyer for purchase shall be referred to as the "Production Period" with respect to such Product(s); for each specific Product at the end of its Production Period, the period from the shipment of the last unit of the Product through the date two (2) years after the shipment date shall be referred to as the "Service Period"; and components or parts for such Products shall be referred to as the "Service Parts". Notwithstanding anything else contained herein, Seller may discontinue the availability of any Product upon ninety (90) days prior written notice to Buyer. Such notice will state the amount of such Product currently available in finished form and the amount of such Product that Seller will be able to manufacture prior to the effective date of such discontinuance. Following receipt of any such notice, Buyer will be entitled to continue to make purchases of such Product in the normal course of business (subject to Seller's production ability as described in Seller's discontinuance notice to Buyer) until the effective date of such discontinuance. With respect to any particular Product and its applicable Service Period, Seller will continue during such Service Period to sell the related Service Parts to Buyer or Buyer's authorized purchaser in order to fulfill Buyer's commercially reasonable service requirements. At the beginning of the Service Period and annually thereafter, Seller shall notify Buyer of the price(s) for such Service Parts that will apply during any such Service Period. In addition, after the end of the Production Period, Seller will use reasonable good faith efforts to maintain the related tooling and an adequate stock of materials and supplies needed to produce new Service Parts throughout the applicable Service Period.
- 17. CANCELLATION - INSPECTION – REJECTION:** As used in this paragraph, the term "Nonconforming Products" means that the items shipped do not meet the Specifications.. Buyer will inspect the Products within five (5) days following delivery (the "Inspection Period"). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonably required by Seller, which such evidence or documentation fully identifies and establishes the way(s) in which the Nonconforming Products do not conform to the Products' specifications or otherwise do not conform to Buyer's purchase order. If Buyer notifies Seller of any Nonconforming Products prior to the end of the Inspection Period, then Seller will, in its sole discretion, either (1) replace the Nonconforming Products with conforming Products; or (2) credit or refund the purchase price for the Nonconforming Products. At Seller's request and direction, Buyer will return the Nonconforming Products at Seller's expense or dispose of the Nonconforming Products in a manner approved by Seller and upon request Buyer shall provide Seller with a certificate of destruction of such Nonconforming Products. In addition, orders placed with and accepted by Seller may not be canceled or terminated by Buyer, either in whole or part, nor may ordered Products be returned for credit, except with Seller's prior written consent and Buyer's acceptance of Seller's cancellation charges (which shall protect Seller against all costs and losses). Seller reserves the right to cancel any sale hereunder prior to delivery in Seller's sole discretion without liability to Buyer (except for refund of monies already paid). BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS PARAGRAPH ARE BUYER'S EXCLUSIVE REMEDIES AND SELLER'S SOLE LIABILITY FOR THE DELIVERY OF NONCONFORMING PRODUCTS.

18. **NON-CANCELABLE, NON-RETURNABLE AGREEMENT:** Modine may designate certain Products and Services as Non-Cancelable, Non-Returnable (“NCNR”) and the sale of such Products and Services shall be subject to the terms and conditions contained in Modine’s NCNR Agreement (the “NCNR Agreement”). In the event of any conflict or inconsistency between the NCNR Agreement and the terms and conditions set forth in this Agreement or any terms and conditions set forth in any other document relating to the transactions contemplated by the NCNR Agreement, the terms and conditions set forth in the NCNR Agreement shall prevail.
19. **DIES, TOOLS, FIXTURES, AND PRODUCTIVE EQUIPMENT:** Any charges to Buyer relating to any production equipment, including but not limited to dies, tools, fixtures or any associated equipment (together, “Tooling”), are intended only to apply to and/or reimburse Seller for physical modifications and additions to Seller’s basic production equipment. Such charges, therefore, do not convey to Buyer or any other party any rights of ownership or any other rights with respect to such Tooling. Accordingly, unless otherwise expressly agreed by Seller in writing, all Tooling shall be and remain Seller’s property which Seller shall be free to move, transfer, dispose of, or use in any manner or for any purpose whatsoever, including but not limited to production of products for other customers.
20. **PROPERTY OR EQUIPMENT FURNISHED BY BUYER:** Seller will not be responsible for any loss or damage to property or other equipment furnished by Buyer for any reason, whether or not caused by the negligence of Seller, and Seller shall be free to move, transfer, dispose of, or use such property in any manner or for any purpose whatsoever without notice to Buyer. Seller shall not be required to identify such property or to report or account to Buyer in any way for such property at any time. Buyer agrees to indemnify and save Seller harmless from any claims and expense (including the expense of litigation) for bodily injury and property damage which may arise or result from the use of Buyer’s property, whether or not arising from joint or concurring negligence of other parties.
21. **GOVERNING LAW:** It is agreed that the parties hereto intend that all questions as to validity, interpretation, and required performance, arising out of any contract between them are to be governed by the laws of the State of Wisconsin, excluding its conflict of law rules. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THESE TERMS, THE AGREEMENT, OR THE TRANSACTIONS OR DOCUMENTS RELATED THERETO AND IS HEREBY EXPRESSLY DISCLAIMED BY SELLER AND BUYER. No action for breach of any sales contract, including these Terms, the Agreement, or any covenant or warranty arising herefrom, shall be brought more than one year after the cause of action has accrued. Any legal suit, action or proceeding arising out of the relationship between Seller and Buyer shall be instituted in the federal or state courts located in Milwaukee County, Wisconsin, and Seller and Buyer each irrevocably submit to the exclusive jurisdiction of such courts.
22. **WAIVER:** No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically refers to 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, in whole or in part, operates, or may be construed, as a waiver thereof; similarly, no course of prior dealings between the parties and no usage of the trade will be relevant to determine the meaning of these Terms or the Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
23. **SEVERABILITY:** If any provision of these Terms is held under applicable law to be wholly or partly prohibited, invalid, or unenforceable, the remaining provisions will continue in full force and effect.
24. **NO THIRD-PARTY BENEFICIARIES:** These Terms and the Agreement are for the sole benefit of Seller and Buyer and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms or the Agreement.
25. **DISPUTE RESOLUTION:** Any dispute arising out of or relating to these Terms or the Agreement, whether based on contract, tort, or any other legal or equitable theory, will be resolved as follows: Either party will notify the other party of the dispute, and provide a detailed description of the basis for the dispute as well as any relevant supporting documents. Senior management of each party will then attempt to resolve the dispute. If the parties do not resolve the dispute within forty-five (45) days of the initial dispute notice, either party may provide notice of its demand for formal dispute resolution through non-binding mediation. Within thirty (30) days after the formal dispute resolution demand, the parties will meet

for one day with an impartial mediator selected by mutual agreement and consider dispute resolution alternatives other than litigation. If the parties cannot agree on a mediator, they will each select one nominator, who must not at that time be employed by either party, and the two nominators will agree on and appoint the mediator. If the parties do not resolve the dispute or agree on an alternative method of dispute resolution within sixty (60) days after the formal dispute resolution demand, either party may begin litigation proceedings.

- 26. MISCELLANEOUS:** Buyer acknowledges that is has not been induced to purchase any of the Products from Seller by any representation or warranty not expressly set forth in these Terms. The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of these Terms is held to be prohibited or unenforceable, the remaining provisions will continue in full force and effect. Buyer will not assign any quotation or accepted order for the Products, in whole or in part, without Seller's prior written consent. Buyer agrees that Seller may scan, image or otherwise convert these Terms into an electronic format of any nature. Buyer agrees that a copy of these Terms produced from such electronic format is legally equivalent to the original for any and all purposes, including litigation. All terms that by their nature are intended to survive shall survive any cancellation or expiration of these Terms, the Agreement, or any purchase order, sales confirmation, or similar document to which these Terms apply.