



TERMS & CONDITIONS

01 AGREEMENT: Goods, Equipment, and Services ("goods") sold by Johnson Heater Corporation or its affiliates ("Seller" or "Manufacturer") are made solely on the terms and conditions hereof notwithstanding any additional or conflicting terms or conditions that may be contained in any purchase order, specifications, contract or contract documents, or other form of purchase, all of which additional or conflicting terms and conditions are hereby objected to and rejected by Seller. No representations or warranties other than those contained herein shall be binding upon Seller unless in writing and signed by an officer of Seller. In any event, acceptance of a shipment by Buyer shall constitute acceptance of these terms and conditions. Goods sold hereunder are custom manufactured and are exclusively described in Seller's Submittal. All quotations ("quotation") or proposals for the sale of goods, unless otherwise specified, are subject to acceptance by a Buyer ("Buyer") within thirty (30) days from date of quotation and are subject to Seller's approval of Buyer's credit.

02 PAYMENT: Terms of payment are shown on the Schedule of Payments in Seller's quotation, but if not, terms of payment are cash in full within thirty (30) days of invoice date. Progress payments are invoiced by Seller upon approval of Submittals, ordering of materials, commencement of manufacturing and final completion of manufacturing of all or any part of Buyer's order. All past due accounts will be subject to a service charge of one and one-half percent (1-1/2%) per month (or, if less, the maximum rate permitted by applicable law.) All orders and shipments at all times are subject to the approval of Seller's Credit Department. Seller may require partial or total payment in advance of production or shipment if, in the judgment of Seller, the payment terms or financial condition of Buyer does not justify other terms. If Buyer delays shipment for any reason, payments shall become due from the date on which Seller tenders shipment, and storage thereafter shall be at Buyer's risk and expense. Acceptance by Seller of Buyer's partial payments shall not constitute a release of Buyer from any balance due claimed by Seller. Buyer shall pay all Seller's attorney fees and collection expenses in the event Buyer is in breach of the Terms of Payment or any other provision of these Terms and Conditions of Sale. Seller shall have an ongoing security interest in the goods and Buyer agrees to execute any forms requested by Seller to reflect this security interest. In addition to all other remedies, Seller may reclaim and repossess the goods. Seller does not waive its right to file a mechanics lien or bond claim under applicable state law. Buyer irrevocably appoints Seller as its Power of Attorney to effectuate Seller's security interest in the goods.

03 SHIPPING: Delivery shall be made EXW (Incoterms 2000) Seller's plant or origination, unless otherwise agreed in writing. All goods are shipped at Buyer's risk. Any claims for damage or shortage in transit when goods are shipped by common carrier must be filed by Buyer against the carrier. Claims for factory damages or shortages are waived by Buyer unless made in writing to Seller within ten (10) days after shipment of the goods by Seller, and accompanied by reference to Seller's bill of lading and factory order numbers. Delivery dates or times which may be specified are not guaranteed. Seller shall not be responsible for any delay or failure to meet a shipment date caused by circumstances beyond the reasonable control of Seller or others, including but not limited to, acts of God, riots, strikes, accidents, lack of transportation, or shortages of fuel, power, labor or equipment. Buyer agrees to pay for the goods notwithstanding the fact that Buyer may be unable to receive or provide suitable storage space for any delivery. If stored by Seller, Buyer agrees to pay storage charges to Seller as an extra.

04 TAXES & FEES: Buyer is responsible for all value added tax, and sales and use taxes, if any, related to the goods. If it is determined by Seller that Sales or Use Tax should be added to the order, Buyer agrees to pay Seller the full amount of any applicable taxes in addition to the price of the goods. Any taxes (except Seller's income tax) are the obligation of the Buyer, and Buyer agrees to indemnify and hold Seller harmless therefrom, including all expenses and attorney fees incurred by Seller related hereto.

05 CANCELLATION: Buyer's orders accepted by Seller shall not be cancelled or placed on hold by Buyer, unless Seller consents in writing. In the event of cancellation, Buyer shall promptly pay to Seller as fixed, agreed and liquidated damages, and not as a penalty, a sum equal to direct and indirect costs of Seller plus ten percent (10%) of the total amount of Schedule of Payments in the quotation. In the event Buyer places its order on hold and Seller consents, Seller shall invoice Buyer for the portion of the work completed, including but not limited to, Seller's direct and indirect costs (storage, opportunity and all other costs) as solely determined by Seller, and Buyer shall pay said invoice as provided for in these Terms and Conditions of Sale. Goods returned without prior authorization shall be at Buyer's risk and expense with no obligation by Seller. Seller is not responsible for rework, repairs or modifications of the goods without advance written agreement.

06 WARRANTY: Seller extends to Buyer the warranties received by Seller from the original manufacturers and suppliers of the components of the goods sold to Buyer. All other components of the goods manufactured by Seller shall be free from defects in material for a period of one (1) year from the date of Seller's shipment or tender of shipment. A Bill of Sale and a warranty certificate will be provided to Buyer upon payment of Seller's invoices. If Buyer notifies Seller within the warranty period of a defect, Seller, at its option, will repair or replace the defect FCA (Incoterms 2000) at the location selected by Seller. This limited warranty extends only to the original Buyer from Seller. Any damage from improper handling, storage, abuse, misuse, or alteration of the goods in any manner voids Seller's warranty obligation. THIS LIMITED WARRANTY CONSTITUTES BUYER'S SOLE REMEDY. IT IS GIVEN IN LIEU OF ALL OTHER WARRANTIES. ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER THE THEORY BE BREACH OF THIS OR ANY OTHER WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. Labor or service costs, refrigerant losses, the physical or chemical effect on the goods from improper storage, weather, foreign substances, mold, mildew, or chemicals in air, water or steam, including costs for removing or installing parts, and any shipping charges, are expressly excluded from this limited warranty. No person (including any agent or salesperson) has authority to expand Seller's obligation beyond the terms of this limited warranty, or to state that the performance of the goods is other than that published by Seller. Failure by Buyer to pay Seller's invoices in accordance with the Terms and Conditions of Sale voids all warranties provided for herein. Any lawsuit or claim other than a warranty claim shall be brought within one (1) year from tender of shipment.

07 FIELD SERVICES & INSTALLATION: All Field and Job-Site Services provided by Seller, if any, are set forth by the later of Seller's Quotation or Submittal, are payable at Seller's current per diem rates plus expenses, are for one (1) trip to the jobsite, are non-refundable, are subject to two (2) weeks minimum advance notice in writing from Buyer stating Seller's goods and the jobsite are prepared for Seller's field services, and are subject to Buyer providing requested tools/equipment and qualified technicians to work with and be available to Seller's field service representative(s). Field Service work and all start-up of Seller's goods will be by authorized technicians. Seller is not responsible for field service work beyond the number of days listed in the Submittal. Start-up of the goods is solely and exclusively determined by and deemed acceptable by Seller. Although Seller strives, in good faith, to provide a detailed Scope of work, there may be situations beyond Seller's control. Buyer acknowledges and agrees that any delays caused by Buyer or Buyer's subcontractors, weather delays, or any other circumstance outside of Seller's control could result in additional fees and will be billed at Seller's daily rate as found in this quotation. Quotation for field services is based upon 40 hour work week including M-F. Weekend or overtime will be billed at additional cost if applicable. Buyer to notify Seller in writing if overtime/weekend permission is not authorized. Seller will not be responsible for nor accept any costs incurred through field service, rework, repair and/or modification or alteration of its goods without prior written authorization by Seller. Seller is not responsible for permits or licenses, nor for state, federal, county, city or other local codes, zoning, and/or regulations and compliance related thereto.

08 MARKETING & PHOTOGRAPHY: Buyer hereby authorizes Seller to take and/or publish photographs of the Project or Property for use in Seller's print, website, social media, broadcast media, and/or video-based marketing materials, as well as other Seller publications. It is Seller's intention to upload any photographs taken on its Facebook page, website or any other lawful social media outlets as well as use them in print/marketing materials. Buyer understands and agrees that all photographs taken and/or time-lapse videos made by Seller will become the property of the Seller. Buyer hereby releases and holds Seller harmless from any reasonable expectation of privacy or confidentiality associated with any images/photographs taken by the Seller.

09 DESIGN ENGINEERING: Seller reserves the right to change specifications and/or designs of the goods or their components based on Seller's interpretation of Seller's Approved Submittal at no cost to Buyer. Failure by Buyer to promptly approve Seller's Submittal may result in added charges or change orders on behalf of Seller. If any goods shall be manufactured or sold by Seller to meet Buyer's specifications or requirements and are not a part of Seller's standard product offering, Buyer agrees to indemnify and save harmless Seller from any and all damages, and for claims and demands for actual or alleged infringement of any United States or foreign patents because of such goods.

10 DISPUTES: Any controversy or claim arising out of or relating to payment, or to Seller's Submittal, Buyer and Seller's Contract, including these Terms and Conditions of Sale, or any other matter, shall be settled exclusively in St. Louis County Missouri Circuit Court, or at Seller's option, by arbitration administered by the American Arbitration Association (AAA) under its Construction Industry Arbitration Rules in St. Louis County, Missouri, and Buyer hereby waives any appeal from the arbitration award and consents to the confirmation and entry of judgment thereon with or without notice in any court having jurisdiction over either Buyer or Seller. Buyer and Seller agree to use the Fast Track Procedures provided for by AAA Rules and Procedures and to be governed by the laws of the State of Missouri.

Effective: 04/01/2018

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