



Marshall W. Nelson & Associates

Process Heating and Control Engineering Since 1958

TERMS AND CONDITIONS OF SALE

1. Controlling Provisions For the Purchase and Sale. Upon Buyer's acceptance of the equipment and/or services sale proposal or quotation (the "Proposal") of which these standard Terms and Conditions of Sale ("Terms") are made a part, Marshall W. Nelson & Associates, Inc. ("Seller"), a Wisconsin based corporation, shall sell and the Buyer shall purchase all of the equipment, goods and/or related services (herein collectively called the "Equipment") described in the Proposal for the sale price specified therein in accordance with all the terms and conditions hereinafter set forth, as well as with all of the other provisions of the Proposal. "Buyer" means the party identified on the Proposal. These terms and conditions represent the final agreement between Buyer and Seller, notwithstanding (and taking precedence over) any inconsistent, contradictory or other and further terms or conditions contained in Buyer's purchase order or other document furnished by Buyer in connection with its purchase of the Equipment, whether such document or documents are exchanged simultaneously with this document or prior or subsequent hereto. Seller's sales representatives are without authority to change, modify or alter these Terms. Buyer shall be deemed to have made an unqualified acceptance of the Proposal, including these Terms, on the earliest of the following to occur: (a) Seller's receipt of a copy of the Proposal or Terms signed by Buyer, (b) Buyer's payment of any amounts due under the Proposal, (c) Buyer's delivery to Seller of any material or specifications to be furnished by Buyer, (d) Seller's delivery of Equipment or commencement of services under the Proposal, (e) failure by Buyer to notify Seller to the contrary within 10 days of receipt of the Proposal or these Terms; or (f) any other event constituting acceptance under applicable law. The parties' agreement is limited to the Proposal and these Terms. Seller objects to and rejects any additional, different or varying terms proposed by Buyer. Written quotations are void unless accepted within 30 days from date of issue. All change orders must be agreed in writing by an authorized officer of Seller and shall be subject to all provisions of the Proposal and these Terms. Seller shall provide only the Equipment specifically described by Seller in the Proposal as being sold by Seller.

2. Sale Price And Payment Terms. The sale price of the Equipment specified in the Proposal does not include any applicable sales, use, excise or other taxes imposed by federal, state, local or other taxing jurisdiction. If any such taxes are imposed with respect to the sale of the Equipment, Buyer shall pay the same. Seller may require the Buyer to pay such taxes directly or, in the alternative, Seller may pay the taxes due on behalf of Buyer and obtain reimbursement from Buyer immediately upon Seller's demand. The terms of payment of the sale price of the Equipment are as set forth on the Equipment Proposal. ALL PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE. The prices for the Equipment will be those in effect at the time of Seller's acceptance of the Proposal. Unless otherwise agreed in writing, the invoice amount shall be due 30 days from the date of the invoice with invoicing on shipment (or when ready to ship, if delivery is delayed by Buyer). All amounts not paid when due shall bear interest at the rate of 1% per month for each month or portion thereof that such payment is past due or, if lesser, at the maximum contract rate permitted by law. If Buyer does not pay Seller any amount due under this contract or any other agreement when such amount is due or if Buyer defaults in the performance of this contract, Seller may, without incurring liability to Buyer and without prejudice to Seller's other

lawful remedies (i) terminate Seller's obligations under this contract; (ii) declare immediately due and payable all Buyer's obligations to Seller; (iii) change credit terms with respect to any further work; (iv) suspend or discontinue any further work; and/or (v) repossess the Equipment. If, during the period of performance of the order, in Seller's judgment, the financial condition of Buyer does not justify the terms of payment specified, Seller may demand full or partial payment in advance before proceeding with the order or satisfactory security or guarantees that invoices will be promptly paid when due or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this contract. Buyer shall not set off amounts due to Seller against claims of amounts due from Seller. Prices are stated and shall be payable in U.S. dollars.

3. Cancellation And Modification Of Orders. Buyer may modify or cancel its order prior to completion only with written notice to Seller, if subsequently accepted in writing by Seller and upon payment to Seller for any reasonable charges to be determined by Seller. Without limiting the foregoing, Buyer shall pay any cancellation fees charged by Seller's vendors in connection with Buyer's modification or cancellation of orders. If the order is cancelled or modified, in part or in whole, at Buyer's request and with Seller's consent, or by Seller for good cause, Buyer will be billed for all materials purchased and all work done, in part or in whole, to the extent of the completion of this contract. Buyer may not return Equipment without written authorization by Seller. Authorized returns must be transportation prepaid and will be subject to a minimum restocking charge of 10%. Special or non-standard items are not returnable.

4. Delivery And Risk Of Loss. The Equipment may be delivered at the discretion of Seller in several lots and under separate invoices. In such event, Buyer shall promptly pay the proportionate amount of the total sale price of the Equipment represented by each lot indicated in the invoice furnished by Seller representing such lot. All delivery dates are approximate. Delivery dates given by Seller are based on prompt receipt of all necessary information regarding the order. Seller will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Seller to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence. If delivery is delayed beyond the originally scheduled date(s) due to delays by Buyer in furnishing Seller with technical information, approvals or manufacturing releases, and additional costs are incurred by Seller due to such delays, Buyer shall promptly reimburse Seller for such added costs. Risk of loss or damage will automatically transfer to Buyer upon delivery or tender of the Equipment F.O.B. Seller's or its subcontractor's or manufacturer's facility (or, for deliveries to Buyers outside the U.S., EX WORKS such facility in accordance with INCOTERMS 2010 of the International Chamber of Commerce, as amended from time to time). Buyer shall pay all storage costs and expenses upon Seller's demand if Buyer fails to accept delivery. Claims for shortages or other errors must be made in writing to Seller within 10 days after Seller's delivery or shall be deemed waived.

5. Force Majeure. Seller will not be liable for any default, delay, reduction or failure in delivery attributable to strikes, lock-outs, disputes or disagreements resulting in labor stoppages, plant shutdowns or slowdowns at the facilities of the Seller or elsewhere, government regulations, embargo, lack or failure of shipping facilities, military

service, war, delays by carriers, casualties, fires, earthquakes, floods, storms, explosions, epidemics, civil commotion or disturbances, acts of God or any other causes or conditions, whether similar or dissimilar to those enumerated, beyond Seller's reasonable control. In such circumstances, the time for delivery by Seller will automatically be extended for the period of time Seller is delayed as a result thereof.

6. **Security Interest.** As security for the full and prompt payment of the sale price of the Equipment, as well as of all other amounts now or hereafter owing by Buyer to Seller of whatever nature, Buyer grants to Seller a present and continuing first priority, purchase money security interest in the Equipment, documents relating to Equipment, returns or repossessions and the proceeds of all of the foregoing, together with the additions and accessions thereof. Buyer agrees to execute such financing statements, continuation statements and other documents and to take such actions as may be required by Seller to evidence or perfect the security interest granted herein and the interest of Seller in the Equipment. Seller is authorized in Buyer's name or otherwise to take such actions as permitted under these Terms or applicable law, including, without limitation, signing Buyer's name to financing statements and continuation statements, and Buyer hereby appoints Seller as its attorney-in-fact for such purpose. If Buyer fails promptly to pay, when due, any amount payable hereunder, then Seller may, without any notice or demand of any kind and notwithstanding any other provisions or agreements to the contrary, declare all amounts when owing by Buyer to Seller to be due and payable, whereupon the same will immediately become due and payable; and Seller may exercise from time to time all rights and remedies available to it hereunder or available under applicable law or in equity. Buyer shall pay all costs and expenses incurred by Seller in collecting any amount owing by Buyer to Seller (including, but not limited to, reasonable attorneys' fees).

7. **LIMITED WARRANTY.** Seller shall assign or transfer to Buyer any written warranty of a third party manufacturer of Equipment or components to the extent such warranty is practicably assignable. However, Seller does not adopt, guarantee or represent that the manufacturer will comply with any of the terms of its warranty, and Seller makes **NO WARRANTY** regarding Equipment or services provided by third parties. Seller warrants to Buyer that assembly work performed by Seller or its employees, and control panels manufactured by Seller, shall be free from material defects in workmanship under normal use and service for a period ending (a) 60 days from delivery of the assembly to the F.O.B. (or, for deliveries outside the U.S., EX WORKS) delivery point, or (b) if sooner, 30 days from installation of the assembly. There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, errors or omissions, damage due to environmental or natural elements, failure to follow Seller's instructions or improper installation, storage or maintenance. Seller makes **NO WARRANTY** regarding any other Equipment or services (including, without limitation, repair services) provided by Seller or any third party. Any oral or written description of Equipment is for the sole purpose of identifying it and is not an express warranty. Seller's sole and exclusive obligation under this limited warranty (and Buyer's sole and exclusive remedy) shall be, upon prompt written notice by Buyer during the above described warranty period, to either, at Seller's option, repair or replace without charge, F.O.B. (or, for deliveries outside the U.S., EX WORKS) Seller's facility, any Equipment or part expressly warranted and found by Seller in its sole discretion to be covered by and in breach of this warranty. **SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE EQUIPMENT OR SELLER'S ACTS OR OMISSIONS OR**

OTHERWISE. [This warranty covers only replacement or repair of defective Equipment or parts at Seller's main facility and does not include the cost of field service travel and living expenses, labor, inspection, removal or installation of new Equipment or parts or normal maintenance.] SELLER AND BUYER AGREE THAT THE EXPRESS WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE). SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS AND IMPLIED WARRANTIES. Prior to using or permitting use of Equipment, Buyer shall determine the suitability of the Equipment for the intended use and Buyer assumes all risk and liability whatsoever in connection therewith. Buyer agrees that Seller has no post-sale duty to warn Buyer or any other party about any matter or, if such duty exists, Seller satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post-sale duty to warn its customers and indemnifies Seller against any Damages in connection with such duty or failure to warn. "Damages" means liabilities, losses, suits, demands, fines, penalties, claims, judgments, omissions, damages or expenses of any kind, including, without limitation, attorneys' fees and costs of collection.

8. **LIMITATION OF DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES CAUSED BY LOSS OF PRODUCTION). SELLER'S AGGREGATE LIABILITY WITH RESPECT TO THE EQUIPMENT AND THIS CONTRACT SHALL BE LIMITED TO THE MONIES PAID TO SELLER BY BUYER UNDER THIS CONTRACT WITH RESPECT TO THE RELEVANT EQUIPMENT OR RELEVANT PORTION THEREOF.** Further, Seller makes no representation or warranty that the Equipment complies with, or that it will perform or operate in accordance with, the requirements of the law, code, statute, regulation, rules or ordinance of any federal, state, local or other governmental authority (including, but not limited to, any pollution control agency). Seller neither undertakes nor has any obligation to obtain permits, licenses or approvals from any such governmental authority or agency concerning the Equipment or concerning the installation, operation or use thereof. Only such safety devices as are specified as Seller's responsibility in the Proposal will be furnished by Seller to Buyer. Buyer shall, at its expense, obtain and install all other safety devices required or desirable due to the nature of the Equipment or due to the Buyer's operation of the Equipment. Seller hereby disclaims, and Buyer hereby releases Seller from and agrees to indemnify Seller against, all Damages arising out of improper use of the Equipment or from the absence of proper safety devices respecting the Equipment. In no event will Seller be liable for Damages arising out of the sole or contributory negligence of Buyer, its employees, agents, engineers, architects, or other contractors, and Buyer will indemnify, defend and save Seller harmless therefrom. Buyer hereby releases Seller from, and agrees to indemnify Seller against, all Damages arising out of any issues associated with an unsafe work environment or hazards at Buyer's facility including, without limitation, failure of Buyer's processes to comply with code or applicable law, open and obvious risks, selection, installation, set-up and conditions of use of the Equipment. Buyer acknowledges that (a) the Equipment presents risks that are open and obvious, and (b) Buyer assumes these risks. Buyer acknowledges that Seller is not responsible for Buyer's or its agents' modification of Equipment or change in conditions of use. Buyer acknowledges that Equipment may be inherently dangerous and must be operated by appropriately trained personnel. Seller shall not be responsible for Damages incurred in relation to design, installation, set-up, manufacturing or labeling of components sold, except to the extent that Seller's scope of service in its Proposal specifically and expressly provides that Seller shall be liable for such Damages. In any

event, Seller is not liable for the overall impact of heat from the Equipment on Buyer's property, process equipment and/or risk of fire, explosion or other circumstances at Buyer's or its customer's facility. Buyer hereby releases Seller from and agrees to indemnify Seller against Damages arising in relation to Buyer's or its customer's or agents' designs, intellectual property, instructions and materials, as well as any breach of the Proposal or these Terms. All claims are barred unless made in writing to Seller within 1 year from Seller's delivery of the Equipment hereunder. Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Equipment, including, without limitation, to the extent applicable, to the U.S. Export Administration Act, the U.S. Foreign Corrupt Practices Act, and all regulations thereunder. Without limiting the foregoing, Buyer acknowledges that all Equipment is subject to U.S. export and re-export controls, rules, regulations, requirements, sanctions, embargos and similar laws ("Export Laws"). Buyer agrees that Seller's sale and/or supply of the Equipment and any related technology or services, as well as the use, transfer, re-export or resale by Buyer of said Equipment, may be subject to the Export Laws. Buyer agrees that it fully understands and will comply with all applicable Export Laws. Buyer agrees that, upon request, it will provide to Seller all information and documentation requested by Seller for Seller to comply with all applicable Export Laws including, but not limited to, any reporting Seller is required to make to the U.S. government or any entity empowered thereby. Buyer agrees to create and maintain records to demonstrate compliance with all applicable Export Laws and to allow any post-sale or post-transfer verification of Export Law compliance as may be requested by Seller or the U.S. government for a period of not less than five years from the date of delivery of such Equipment. Buyer further agrees to cooperate in any investigation instituted by the U.S. government or any entity empowered thereby related to Buyer's and/or Seller's compliance with the Export Laws. Any assistance offered by Seller shall not limit or negate the limitations and disclaimers of warranties and Damages provided herein.

9. Confidential Information. Buyer acknowledges that all Confidential Information (as defined below) which may be disclosed to it by Seller shall at all times, both during and after expiration or termination of this contract for any reason, remain the exclusive property of Seller and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by Seller to Buyer orally or in writing, or acquired by Buyer through observation, regarding Seller's or its vendors' products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usages and requirements, financial information, business plans, strategies and future business relationships, with the exception of such information which Buyer can demonstrate by clear and convincing evidence: (a) was already part of the public domain at the time of the disclosure by Seller; (b) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); or (c) was in Buyer's possession prior to the disclosure by Seller and was not acquired, directly or indirectly, from Seller or from a third party who was under a continuing obligation of confidence to Seller. Buyer shall not use or disclose any of such Confidential Information, but shall protect it using at least the same degree of care given its own confidential information (but in no event less than a reasonable degree of care). Upon expiration or termination of this contract for any reason, Buyer shall, within 15 days, surrender to Seller all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of Seller's property. Nothing in these Terms shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Seller with broader protection than that provided herein.

10. Intellectual Property. Nothing in these Terms shall be construed to give Buyer any right to use any of Seller's or its vendors' trademarks, designs or other intellectual property rights on or in connection with the sale of any Equipment, and Buyer agrees not to make, or allow any of its affiliates to make, any such use. Any use of Seller's or its vendors' trademarks, designs or other intellectual property shall be subject to Seller's prior written approval in each instance and such restrictions as Seller or its vendor may, in its sole discretion, impose from time to time. Buyer agrees that neither it nor its affiliates will seek to register any trademark owned by Seller or its affiliates or vendors, and if Buyer or any of its affiliates does obtain such a registration, Buyer or its affiliate shall immediately assign the same to Seller. Buyer acknowledges and agrees that Seller or its vendor owns all right, title, and interest in and to the trademarks, designs and other intellectual property rights relating to the Equipment. Buyer agrees to take all steps which Seller may from time to time consider to be necessary to perfect or protect Seller's or its vendors' rights in such trademarks, designs and other intellectual property including, without limitation, executing all necessary assignments, declarations, and other documents requested by Seller from time to time. Upon expiration or termination of this contract for any reason, Buyer shall take such steps and execute such documents as Seller requests to cause Seller or its vendor to own all rights in such trademarks, designs and other intellectual property and to terminate any rights Buyer may have to use the trademarks, designs and other intellectual property. Buyer shall inform Seller promptly of any potential or actual infringement of any of Seller's trademarks, designs and other intellectual property rights.

11. Entire Agreement. The Proposal and these Terms constitute the entire agreement of the parties relating to the sale of the Equipment and services provided with respect thereto. This contract may not be amended except in a writing signed by authorized officers of Seller and Buyer. All rights and remedies of Seller, whether provided for herein, or conferred by law, or in equity, or by statute, or otherwise are cumulative and not alternative, and can be enforced successively or concurrently. No delay or omission by Seller in exercising any of its rights or remedies is to be deemed to be a waiver thereof, and a waiver in writing on one occasion will be effective only in that specific instance and only for the precise purpose for which given. All communications hereunder must be in writing and are to be deemed to have been duly given and to be effective upon delivery to the party to whom directed. None of Buyer's obligations hereunder may be assigned or delegated without the prior written consent of the Seller. Seller reserves the right to perform in whole or in part through its subcontractors. All of the provisions hereof will be binding upon and will inure to the benefit of both parties, and their respective successors and permitted assigns. Each of the provisions hereof is severable from each of the others; and if any provision hereof is prohibited or unenforceable under applicable law, such provision will be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder thereof or the remaining provisions hereof. This contract and any dispute hereunder shall be governed by and construed according to the internal laws of the State of Wisconsin. Neither this contract nor any transaction hereunder shall be governed by the United Nations Convention on Contracts for the International Sale of Goods. Any dispute between the parties regarding this contract shall be exclusively resolved before a court situated in the State of Wisconsin and Buyer hereby submits to the jurisdiction of such court. The English version of this contract shall govern any translation into another language.

v072514