

## Opti Temp- TERMS AND CONDITIONS OF SALE

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated by reference therein, binds Opti Temp Inc., hereinafter Opti Temp, and the buyer, hereinafter Buyer, and constitutes the entire Agreement (Agreement) between Buyer and Opti Temp for the provision of the sale of goods (Goods).

**1. PRICES:** Unless otherwise specified by Opti Temp, Opti Temp's price for the Goods shall remain in effect for thirty (30) days after the date of Opti Temp's quotation or acceptance of the order for the Goods, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods pursuant to Opti Temp's standard order processing procedures is received and accepted by Opti Temp within such time period. If such authorization is not received by Opti Temp within such thirty (30) day period, Opti Temp shall have the right to change the price for the Goods to Opti Temp's price in effect for the Goods at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods sold by Opti Temp, but manufactured by others, shall be Opti Temp's price in effect at the time of shipment to Buyer. Quotations containing clerical errors (i.e., omissions, incorrect pricing, inaccurate specifications) are subject to correction and create no liability from seller to buyer. Quotations by third parties are subject to approval by the Company.

**2. DELIVERY, ORDER ACCEPTANCE AND DOCUMENTATION:** All shipping dates are approximate and are based upon Opti Temp's prompt receipt of all necessary information from Buyer to properly process the order. Notwithstanding any provisions to the contrary in this or other documents related to this transaction, and regardless of how price was quoted legal title to the Goods and risk of loss thereto shall transfer to Buyer as follows: for sales in which the end destination of the Goods is within the United States, upon delivery to the freight carrier at the shipping point; for sales in which the end destination of the Goods is outside of the United States, immediately after the Goods have passed beyond the territorial limits of the United States. Acceptance of all orders placed by Buyer pursuant to this Agreement shall take place exclusively in Traverse City, Michigan.

**3. CHANGE ORDERS:** Acknowledged purchase orders which are subsequently changed (specifications, features, terms, etc) by buyer will be amended to reflect the list price of the modifications, including engineering and related overhead components. Production lead times may or may not change resulting from such modifications.

**4. EXCUSE OF PERFORMANCE:** Opti Temp shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond Opti Temp's reasonable control.

**5. TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Goods covered by the Agreement, provided that Buyer gives Opti Temp reasonable advance written notice of such termination or suspension and reimburses Opti Temp for all losses, damages, costs and expenses arising from such termination or suspension according to: a. Standard products with no options or special features: 15% of selling price, net 10 days. b. Non-Standard products with options or special features: 25% of selling price plus special installation drawing fee, net 10 days.

**6. RESTOCKING CHARGES:** From date of shipment, unless waived by the Company, charges will be made for the return of product as scheduled: a. 0-60 days-20%, b. 61-90 days-30%, c. beyond 91 days-no return accepted. No returns of any kind shall be accepted without prior written approval by the Company, including an RMA (return materials authorization) number obtained by the Company.

**7. LIMITED WARRANTY:** Opti Temp Inc. warrants all equipment manufactured by it to be free from defects in workmanship and material when properly installed, operated, and maintained, in accordance with Opti Temp installation and operating guidelines, for a period of one (1) year from the date of shipment to the original purchaser, whichever occurs first. The manufacturer's obligation is strictly limited to the repair or replacement, at its option, any parts thereof which are returned to the factory, freight prepaid, during the warranty period and which upon inspection shall disclose to manufacturers satisfaction, to be defective. Opti Temp's liability does not include any labor charges for replacement of parts, adjustments, repairs, or any other work done outside its authorized repair facilities. Opti Temp's obligation to repair or replace shall not apply to any products which have been repaired or altered outside an Opti Temp authorized repair facility in any way, or which has been subject to negligence or misuse. Opti Temp's liability does not include any resulting damage to persons, property, equipment, goods or merchandise arising out of any defect in, or failure of, its product, or by delays in shipment or delivery. The purchaser's rights under this agreement may not be assigned to any other person or entity, expressly or by implication, without manufacturer's prior written approval. The Warranty shall be deemed void if buyer fails to perform any of its obligations to seller. No claim of "breach of warranty" shall be cause for cancellation or rescission of the "contract of sale" for any system. The Company shall not be liable for failure to perform any obligation with respect to buyer resulting directly or indirectly from, or contributed to, by Acts of GOD; Acts of Buyer; Civil or Military Authority; Fires; Strikes or other Labor Disputes; Accidents; Floods; Epidemics; War; Riots; Delays in Transportation; Inability to Obtain Raw Materials, Components, Labor, Fuel or Supplies; Or Any Other Circumstance beyond the seller's reasonable control whether similar or dissimilar to the foregoing.

Within the warranty period, Opti Temp Inc. will repair or replace defective parts, without charge to the customer except for shipping costs, taxes, or duties, providing the defective parts are returned to Opti Temp Inc. A purchase order must be issued to Opti Temp Inc. for the warranty parts prior to shipment of the warranty parts to the customer. An invoice will then be issued for the warranty parts, referencing the Return Material Authorization number. The defective parts must then be returned to Opti Temp Inc. (see Instructions for returning product to Opti Temp Inc. in this document). When the defective parts are returned, and inspected, a credit will be issued if it is determined that the defective parts failed during normal use and not because of abuse. Filters, OptiShield and other consumables are not covered by Opti Temp Inc's warranty. If the original invoice has not been paid within the terms of the sale, and if the invoice is unpaid at the time the warranty replacement parts are required, the replacement part will not be shipped until the original invoice has been paid. Any damage due to freeze up will void the warranty.

THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Opti Temp's

OBLIGATION UNDER THIS WARRANTY IS STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE COMPONENT PARTS AND Opti Temp INC. DOES NOT ASSUME OR AUTHORIZE ANYONE TO ASSUME FOR IT ANY OTHER OBLIGATION. Opti Temp ASSUMES NO RESPONSIBILITY FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OR DAMAGE TO PROPERTY, LOSS OF PROFITS OR REVENUE, LOSS OF THE UNIT, LOSS OF TIME, OR INCONVENIENCE.

**8. LIMITATION OF REMEDY AND LIABILITY:** Opti Temp SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL Opti Temp's LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY Opti Temp GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL Opti Temp's LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND COSTS INCURRED INCLUDING WITHOUT LIMITATION FOR CAPITAL, FUEL AND POWER, AND CLAIMS OF BUYER'S CUSTOMERS.

**9. PATENTS:** Subject to the limitations contained in Section 8, Opti Temp shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Opti Temp constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Opti Temp in writing of the filing of such suit or the threat thereof; permits Opti Temp to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Opti Temp for the defense of such suit. In the event that only the Goods manufactured by Opti Temp are held to be infringing in such suit and their use is enjoined, Opti Temp shall, at its sole option and expense, provide a commercially reasonable alternative, including, but not limited to, procuring for Buyer the right to continue using the Goods, replacing them with a non-infringing product or modifying them so they become non-infringing. Buyer agrees that Opti Temp shall not be liable for infringement, and that Buyer shall fully indemnify Opti Temp therefore, if infringement is based upon the use of Goods in connection with goods not manufactured by Opti Temp or in a manner for which the Goods were not designed by the Opti Temp or if the Goods were not designed by the Opti Temp or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.

**10. TAXES:** Any tax or governmental charge payable by the Opti Temp because of the manufacture, sale or delivery of the Goods, or provision of Services, may at Opti Temp's option be added to the price herein specified. The foregoing shall not apply to taxes based upon Opti Temp's net income.

**11. TERMS OF PAYMENT:** Subject to the approval of Opti Temp's Credit Department, terms are F.O.B. shipping point, net 30 days from date of Opti Temp's invoice in U.S. currency. International shipments must be assured through a U.S. bank in U.S. funds, irrevocable Letter of Credit, or other arrangements satisfactory to Opti Temp. Freight charges may include shipping and handling charges, and Buyer shall pay all such charges. If any payment owed to Opti Temp hereunder is not paid when due, it shall bear interest charged at a rate of prime rate plus 1.9% per

annum will be applied to all past due balances until balance is paid in full. Opti Temp shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer. Buyer shall be liable for all expenses attendant to collection of past due amounts, including but not limited to attorneys' fees.

**12. BUYER SUPPLIED DATA:** To the extent that Opti Temp has relied upon any specifications, information, representation of operating conditions or other data or information supplied by Buyer to Opti Temp in the selection or design of the Goods and/or provision of the Services and the preparation of Opti Temp's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Opti Temp, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

### **13. Right to Audit/Right of Entry:**

There may be times that Opti Temp will desire to visit supplier's facility and review production process and records. Opti Temp's customers may also request the same rights of access to the facilities, quality procedures, records, and regulatory submission to verify Opti Temp's final product meets implied or specified quality contracted by the final customer.

A site visit or request for information as specified above will only be requested as deemed necessary and upon reasonable notice. Opti Temp or its customer can be granted the right to audit at their sole expense and shall have access to relevant records upon at least two (2) weeks' notice, for purposes of an audit during normal business hours during the term of an ongoing business relationship and for six (6) months after completion of the work to which the records relate. Exception: Exclusionary to all financial records and limited by law for employees records.