



TERMS AND CONDITIONS OF PURCHASE

(Revised August 23rd,
2011)

1. **Terms of the Order.** Each purchase order issued by WaterFurnace International, Inc., as Buyer herein, ("Order") is an offer to the seller identified on the face of the Order ("Seller") for the purchase of goods and/or services identified on the Order ("Supplies") and shall at all times be governed exclusively by these Terms and Conditions of Purchase (collectively, the "Terms"). Any additional or different terms on any quotation, acknowledgement, invoice or other document of Seller are unacceptable to Buyer, are expressly rejected by Buyer, and are not a part of the Order. Any modification of Terms must be expressly stated on the face of the Order. Seller accepts the Terms by making any shipment of goods or performing any services under the Order or by acknowledging the Order by any means or any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. The Order is limited to and conditional upon Seller's acceptance of the Terms exclusively.

2. **Quantities and Delivery of Supplies and Risk of Loss.** Time, quantities and delivery locations are of the essence and Seller agrees to 100% on-time delivery of Supplies in the quantities and at the times and locations specified by Buyer in the Order and any related material authorization releases or other instructions furnished in any form of media by Buyer to Seller under the Order. Seller agrees to do all things necessary at Seller's expense to deliver Supplies on time. Buyer makes no representation, warranty or guaranty of any kind as to the accuracy of estimates or forecasts of production volumes or length of program. Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's actual delivery schedule. Buyer may change the rate of scheduled shipments or direct a temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Supplies. If Seller has reason to believe that delivery of any Supplies will be delayed, Seller shall immediately notify Buyer of the cause and duration of the anticipated delay, and Buyer at its sole option may cancel the Order or material authorization release without any liability to Seller. Seller shall be liable for all damages arising out of its failure to supply or deliver Supplies in accordance with Terms. Unless otherwise agreed in writing by Buyer, the risk of loss passes from Seller to Buyer upon delivery to Buyer's transportation carrier (or if shipment is by Seller or common carrier, then upon delivery to Buyer's designated facility). Risk of loss on rejected Supplies shall pass to Seller upon rejection.

3. **Packaging, Marking, Shipping, and Disclosures.** Seller will properly pack, mark, label, tag, and ship Supplies according to the requirements of Buyer, the involved carriers and the country of destination. Upon request, Seller shall promptly furnish to Buyer all certificates of origin and all other information as may be required by Buyer or carriers to comply fully with all customs, tariffs and other applicable Laws.

4. **Inspection and Return.** Buyer shall have the right to inspect and test materials and workmanship of all Supplies at all times and places, including when practical, during manufacture. If any such inspection or test is made on the premises of Seller, Seller shall furnish without additional charge all reasonable facilities and assistance for a safe and convenient inspection or test. Buyer retains the right to return any Supplies that, in Buyer's sole discretion, do not process properly, do not meet the required fit, form, or function when used in Buyer's product, do not meet specifications, are not consistent with the Supplies previously provided by Seller, or are otherwise inconsistent with the Terms. If Supplies are returned, the quantities under the Order will be reduced and any return shall be at Seller's risk and expense at full invoice price, plus transportation charges, and Seller agrees to replace returned Supplies as Buyer deems necessary. Buyer may also correct any Supplies that fail to meet requirements at Seller's expense.

5. **Pricing and Payment.** Unless otherwise expressly stated on the Order, the purchase price and payment terms for the Supplies are (i) as set forth on the face of the Order for the duration of the Order and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes or program length from those estimated or expected; (ii) inclusive of all national, international, multi-national, federal, state, provincial, value added and local taxes and any duties applicable to the provision of Supplies to Buyer; and (iii) inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller warrants that all prices relating to Supplies are no less favorable than those extended to any other customer of Seller for the same or similar products or services in like quantities. If Seller sells to another at a price more favorable than contained in any Order, the price in the Order will be adjusted to meet the more favorable term. All amounts due to Seller will be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer. Buyer will have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer from Seller or its affiliates or subsidiaries. Buyer will pay proper invoices where Seller complies with all of the Terms. All payment shall be made in U.S. dollars unless otherwise agreed.

6. **Changes.** Seller will not make any change in the Supplies' design, specifications, processing, packing, marking, shipping, price or date or place of delivery except at Buyer's written instruction or with Buyer's written approval. If Seller learns of a possible change to the Supplies that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Seller shall inform Buyer of the possible change. Buyer reserves the right to direct, or to cause Seller to make, changes to drawings, specifications, samples or descriptions of Supplies or to otherwise change the scope of the work covered by the Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also direct the supply of raw materials from itself or from third parties. Seller will promptly make any such requested change. The Seller will, within thirty (30) days of making a change, notify the Buyer in writing if the change directed or approved by Buyer above will affect cost or timing and provide substantiation of its claim. If the Buyer determines that an adjustment is appropriate, Buyer and Seller will negotiate in good faith on an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment.

7. **Warranties.** Seller expressly warrants and guarantees to Buyer, to Buyer's successors, affiliates, assigns, customers, and end users of products sold by Buyer that all Supplies delivered to Buyer will: (a) be new and conform to the specifications, standards, drawings, samples, descriptions and revisions furnished by Buyer or furnished to and approved by Buyer; (b) conform to all Laws in countries where Supplies or other products incorporating Supplies are to be sold; (c) be merchantable and free of defects in design (to the extent designed by Seller), materials and workmanship; (d) be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer; and (e) shall have title vested in Buyer free and clear of any and all liens and encumbrances of any nature. For all services, Seller further warrants that its work will be performed in a good, workmanlike, and efficient manner consistent with high professional standards and in accordance with specifications agreed upon with Buyer and the Terms. The warranties shall continue for the longer of: twelve (12) months from the date Buyer accepts the Supplies; the warranty period provided by applicable law; or such greater period as may be specified in the Order. Seller shall immediately correct all errors, defects and omissions in work performed without any additional cost to Buyer. In addition to any other remedies, Supplies not meeting the warranties will be, at Buyer's option, returned for or subject to refund, repair, or replacement by Seller at no cost to Buyer or its customers and with transportation costs borne by Seller. Supplies that are repaired or replaced shall be warranted as set forth herein. Buyer's payment, or inspection or failure to inspect before or after delivery or Buyer's approval of any design, drawing, material, process or specification,

does not constitute acceptance of any finished goods nor will any of the foregoing limit or impair remedies or relieve Seller of these warranties.

8. Supplier Quality and Development Programs. Seller will conform to the quality assurance standards, programs, inspection and performance evaluations that are established or directed by Buyer, including those described and accessible on Buyer's Supplier Quality Assurance Manual or similar document as amended from time to time. In the event of any discrepancy between any part of the above programs or standards or systems or evaluations and an express provision of these Terms, these Terms will control.

9. Compliance with Laws. Seller, and any Supplies supplied by Seller, shall comply with all applicable laws, rules, regulations, conventions, standards, ordinances or other requirements of any national, state, provincial, local, multi-national or international body (collectively "Laws") relating to the manufacture, labeling, transport, import, export, licensing, approval or certification of the Supplies; (b) hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety and motor vehicle safety; and (c) any hazardous or toxic or restricted material that is an ingredient or part of the Supplies, as well as any environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Seller will reimburse Buyer for any expenses incurred as a result of Seller's non-compliance with Laws, including without limitation expenses associated with improper packing, marking, routing, warning, or shipping. Seller warrants that any such information that is supplied to Buyer is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

Seller represents and warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age, physical or mental disability, veteran status, or any other unlawful criterion and that it will comply with all applicable laws against discrimination and all applicable rules, regulations, and orders issued thereunder or in implementation thereof. The Equal Employment Clauses set forth in 41 C.F.R. §§60-1, 60-300, and 60-741 are incorporated herein by reference.

Seller shall also comply with all federal, state, and local laws, government regulations and orders with respect to minimum wages and hours of employment, now in effect or hereinafter enacted. The clauses set forth in 29 C.F.R. 5.5(a)(1) through (10) and (b)(1) through (4) are incorporated herein by reference.

If this Order is issued under a United States government prime contract or subcontract, to the extent applicable, the clauses in Federal Acquisition Regulation ("FAR") 52.212-5(e)(1) and 52.244-6(c)(1) are incorporated herein by reference.

10. Customer Requirements. As directed by Buyer in writing, Seller agrees to comply with all disclosed and applicable terms of any agreements between Buyer and its customer(s) relating to Supplies incorporated into products supplied by Buyer to such customer(s). Any material change shall be treated as a Buyer change or modification as provided for in Section 6.

11. Indemnification and Remedies. To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer, Buyer's customers and dealers and users of the products sold by Buyer that incorporate Supplies and all of their respective agents, successors and assigns, against all damages, losses, claims, liabilities, corrective service action, and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising, in whole or in part, out of or resulting from any actual or alleged (i) defective or non-conforming Supplies, (ii) negligent or wrongful act or omission of Seller or Seller's agents, employees or subcontractors in connection with the design (to the extent designed by Seller) or manufacture of Supplies, (iii) breach or failure by Seller to comply with any of Seller's representations or warranties or other terms and conditions of an Order (including any part of these Terms), (iv) damages to the property of or personal injuries to Buyer, its customer, their respective agents, or any other person or entity to the extent arising from or in connection with Seller's work on the Buyer's premises or Seller's use of Buyer's property; or (v) any challenge to the Buyer's sole right, title and interest in, or right to possession of, any tooling, material, or information which is the property of Buyer. Seller's obligation to defend and indemnify under this Section will also apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise.

The rights and remedies reserved to Buyer in the Order will be cumulative with and in addition to all other or legal or equitable remedies. Seller will reimburse Buyer for any incidental or consequential damages caused by Seller's breach or by nonconforming Supplies, including without limitation costs, expenses and losses incurred directly or indirectly by Buyer or its customer(s): (a) in inspecting, sorting, repairing or replacing the nonconforming Supplies; (b) resulting from production interruptions; (c) conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury (including death) or property damage caused by the nonconforming Supplies. Consequential damages include reasonable professional fees incurred by Buyer. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies, and will participate in and comply with warranty reduction or related programs as directed by Buyer that relate to the Supplies.

12. Infringement of Third Party Rights. If Buyer receives any warning letter or other notice of infringement, or a legal suit or other action is brought against Buyer, alleging infringement of third party rights in connections with any Buyer products that incorporate Supplies, Buyer will notify Seller, and the parties will discuss the best way to respond. If a third party asserts a claim alleging that any activities by Buyer or any of its customers or affiliates in commercializing any Buyer products that incorporate Supplies infringes, misappropriates or violates any rights of such third party arising from the incorporation of Supplies into Buyer products, Seller shall defend and hold Buyer harmless from any such claim. In the event that Seller does not defend Buyer, Buyer shall defend against any such claim brought against it or its affiliates, and all resulting reasonable costs, expenses and fees, including but not limited to attorney fees, shall be reimbursed by Seller. All damages or other amounts, if any, payable to the third party pursuant to a final court order or ruling or pursuant to a settlement effected in good faith (which settlement shall have been approved by both Seller and Buyer, which approval shall not be unreasonably withheld or delayed by either party), together with all reasonable defense costs (including reasonable attorneys' fees) incurred by Buyer or its customers or affiliates, shall be borne by Seller. This Section 12 shall survive any termination of the Order, and supersedes any prior agreement(s) of the parties.

13. Insolvency. The Order may be terminated immediately by Buyer without liability to Seller if any of the following or comparable events occur, and Seller will reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including without limitation attorneys' and other professional fees: (a) Seller becomes insolvent; (b) Seller files a voluntary petition in bankruptcy; (c) an involuntary petition in bankruptcy is filed against Seller; (d) a receiver or trustee is appointed for Seller; (e) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; or (f) Seller executes an assignment for the benefit of creditors.

14. Termination for Breach or Nonperformance. Buyer may terminate all or any part of the Order, without liability to Seller, if Seller: (a) repudiates, fails to perform, breaches, or threatens to breach any of the terms of an Order (including any part of these Terms); (b) fails to make progress or to meet reasonable delivery or quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 15 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach; or (c) without the written consent of Buyer, enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller. Seller will notify Buyer within ten days after entering into any negotiations that could lead to the situation specified in subsection (c) above, provided that upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement as to information disclosed to Buyer in relation to such transaction.

15. Termination. In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may at its option immediately terminate all or any part of the Order at any time and for any reason by giving written notice to Seller. Upon receipt of notice of termination, and unless otherwise directed by Buyer, Seller will: (a) promptly terminate all work under the Order; (b) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing goods for itself or for others; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (e) upon Buyer's reasonable request, cooperate with Buyer in transferring the production of Supplies to a different supplier. Upon termination by Buyer under this Section, Buyer will be obligated to pay only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer conform to the Order; (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer under part (b) above; (iii) Seller's reasonable actual costs of settling claims regarding its obligations to its subcontractors to the extent directly caused by the termination; and (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (d). Notwithstanding any other provision, Buyer will have no obligation for and will not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts exceeding those authorized in the material authorization releases, or general administrative burden charges from termination of the Order, except as otherwise expressly agreed in a separate Order issued by Buyer. Buyer's obligation upon termination under this Section will not exceed the obligation Buyer would have had to Seller in the absence of termination. Seller will furnish to Buyer, within one month after the date of termination, its termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Buyer will have no obligation for payment to Seller under this Section if Buyer terminates the Order or portion thereof because of a default or breach by Seller.

16. Force Majeure. Any delay or failure of either party to perform its obligations will be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; inability to obtain power; or court injunction or order. The change in cost or availability of materials or components based on market conditions or supplier actions will not constitute *force majeure*. As soon as possible (but no more than one full business day) after the occurrence, Seller will provide written notice describing such delay and assuring Buyer of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Buyer may at its option: (a) purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Buyer at Buyer's expense all finished goods, work-in-process and parts and materials produced or acquired for work under the Order; or (c) have Seller provide Supplies from other sources in quantities and at a time requested by Buyer and at the price set forth in the Order. In addition, Seller at its expense will take all necessary actions to ensure the supply of Supplies to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

17. Tooling, Material, and Information Furnished by Buyer. All special dies, tools, patterns, designs, drawings, materials, information, intellectual property, trade secrets, proprietary rights, and/or equipment directly or indirectly used in the furnishing of Supplies, either furnished or paid for by Buyer or purchased from funds furnished by Buyer as allocated on Seller's books, belong to and shall be the property of Buyer, and shall not be used by Seller for itself (except for the purposes of an Order) or for the benefit of any other entity, and may be recovered or removed by Buyer at any time. Seller shall fully cooperate in any such recovery or removal. All such items while in the possession of Seller shall be maintained and cared for at Seller's expense and Seller shall bear the risk of loss and damage to same. Unless otherwise expressly stated in writing, any material furnished by Buyer in connection with an Order shall remain Buyer's property. All such materials not used in the manufacture of Supplies shall be returned to Buyer at Seller's expense and materials not accounted for or so returned shall be paid for by Seller. The furnishing of any material or other items by Buyer shall in no way release Seller from Seller's obligations hereunder.

18. Confidentiality. Seller acknowledges that proprietary and confidential information will be received by it from or through Buyer or developed for Buyer under the Order, regardless of whether such information is marked or identified as confidential. Seller agrees to keep all proprietary or confidential information of Buyer and its customers and other vendors in strictest confidence, and further agrees not to use or disclose, or permit disclosure to others of, any such proprietary and confidential information of Buyer other than the purpose of the Order. Following the expiration or termination of the Order, upon Buyer's request, Seller will promptly deliver to Buyer any and all documents and other media, including all copies thereof and in whatever form, that contain or relate to such confidential or proprietary information. Seller's obligations under this Section will continue for a period of five years from the date of disclosure of information covered by this Section, unless a longer period is specified in writing by Buyer. The restrictions and obligations of this Section will not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or access to Buyer's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect and be supplemental to these Terms.

19. Proprietary Rights. Seller agrees (a) that all Supplies will be original to Seller and will not incorporate any intellectual property rights (including copyright, patent, trade secret, or patent rights) of any third party, (b) that Supplies based upon Buyer's designs, drawings, or specifications may not be used for Seller's own use or sold or transferred to third parties without Buyer's written consent, (c) that Seller will grant Buyer, at no additional cost, a license to use any intellectual property owned by Seller that is necessary or incident to the reasonable intended use or application of Supplies.

20. No Publicity. Seller will not advertise, publish or disclose to third parties (other than to Seller's professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Supplies covered by the Order or the terms of the Order, or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

21. Severability; Survival; and No Implied Waiver. If any term of any Order is held invalid or unenforceable under any applicable law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions will remain in full force and effect. The obligations of Seller to Buyer under the Terms survive termination of the Order. The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require performance at any later time, nor will the waiver of either party of a breach of any provision of the Order constitute a waiver of any later breach of the same or other provision of the Order.

22. Additional Terms. The Order shall be interpreted in accordance with, and the construction shall be governed by, the laws of Indiana, U.S.A. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of the Order in appropriate state or federal court in Indiana, and Seller hereby irrevocably consents to personal jurisdiction in any such court, hereby appointing the Indiana Secretary of State as agent for receiving service of process. Any action or claim by Seller with respect hereto shall also be brought in such appropriate state or federal court in Indiana if Buyer so elects either before or after filing. Seller may not assign or delegate its obligations under the Order without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for Supplies, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer. Seller and Buyer are independent contracting parties and the Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

23. Modification of Terms. The Order may only be modified by a written amendment executed by authorized representatives of each party or, for changes within the scope of Section 7, by a new purchase order issued by Buyer. Buyer may modify these Terms and Conditions of Purchase with respect to future Orders at any time by posting revised Terms to its web site at <http://www.waterfurnace.com>, and such revised Terms will apply to all Orders issued thereafter.

These Terms and Conditions of Purchase, as amended and revised as provided herein, shall apply to any pending or future Order for the purchase of goods and/or services by Buyer.