

CALORIS ENGINEERING, INC.

STANDARD TERMS AND CONDITIONS

1. General. These terms and conditions (the "Terms and Conditions") apply to that certain contract proposal (including all attachments thereto, the "Proposal") to which these Terms and Conditions are attached, for the sale of "Equipment" and/or the provision of "Services" (as such terms are defined in the Proposal) by Caloris Engineering, LLC ("Caloris"). Except as may be otherwise expressly set forth in an agreement executed by the authorized representatives of both parties, the contract between the parties consists of (1) the Proposal and (2) these Terms and Conditions (collectively, the "Agreement") and constitutes the sole understanding between Caloris and the customer ("Purchaser") with respect to the subject matter of the Proposal. Any provision of Purchaser's purchase order and other documents and communications which is in any way inconsistent with or in addition to the Agreement shall not become part of the Agreement or otherwise be binding on Caloris and shall be disregarded in its entirety. Caloris' failure to object to provisions contained in any purchase order, document or communication from Purchaser shall not be a waiver of the terms and conditions set forth in this Agreement or be deemed to be an acceptance by Caloris of any such provisions.

2. Proposals. The Proposal shall be valid for thirty (30) days from its date of issuance unless otherwise expressly stated in the Proposal, and shall constitute an offer to sell the Equipment and/or perform the Services. Caloris reserves the right to revoke the Proposal at any time prior to its acceptance by Purchaser. Notice of revocation by Caloris shall be deemed to have been given when sent by Caloris via e-mail or other form of mail or delivery service.

3. Price and Payment.

(a) All prices published or quoted by Caloris are in U.S. dollars.

(b) Caloris will invoice Purchaser, and Purchaser shall make payment to Caloris, pursuant to the payment terms and schedule as set forth in the Proposal. Unless otherwise specified in the Proposal, all invoices will be due and payable net thirty days from date of invoice, subject to credit approval. In the event payment is not received within 30 days of invoice, a service charge of one and one-half percent (1-1/2%) per month (but not exceeding the maximum allowable rate) shall be assessed on overdue payments.

(c) Unless otherwise expressly specified, Purchaser will be invoiced in U.S. dollars; provided for sales to a Purchaser having its principal place of business outside the United States of America, Caloris reserves the right to bill in either United States dollars or the currency of the country to which the Equipment is shipped. In the event Caloris invoices Purchaser in a foreign currency, the rate of exchange will be that in effect on the date of invoice.

(d) Notwithstanding the payment terms specified in the Proposal: (i) shipments, deliveries and performance of work shall at all times be subject to the approval of Caloris' credit department, and Caloris may at any time decline to make any shipments or deliveries or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to such department; (ii) if, in Caloris' judgment, Purchaser's financial condition at any time does not justify continuation of production or shipment on the terms of payment originally specified, Caloris may require full or partial payment in advance; (iii) at any time and from time to time during the term hereof, Caloris may require that Purchaser deliver an irrevocable letter of credit, drawn on a financial institution reasonably acceptable to Caloris and payable to Caloris in United States dollars on presentation of a sight draft, a copy of a commercial invoice, a packing list, or a bill of lading indicating delivery to a carrier of the Equipment for delivery to Purchaser or to Purchaser's designee as a condition to acceptance of any order or shipment of any Equipment; (iv) if Purchaser refuses to accept such change in credit terms the order may be canceled without liability arising therefrom to either party, in whole or in part, at Caloris' option; and (v) in the event of Purchaser's bankruptcy or insolvency or in the event any proceeding is brought or threatened against Purchaser or brought by Purchaser under any bankruptcy or insolvency laws or their equivalent or Purchaser commences to be wound up or suffers a receiver to be appointed, Caloris may cancel any order then outstanding without liability to Caloris and Caloris shall receive reimbursement from Purchaser for costs incurred, including but

not limited to attorneys' fees, lost profit for Equipment so canceled, and all other costs associated with the cancellation, direct and indirect, including without limitation costs for work in process or custom goods.

(e) Each shipment shall be considered a separate and independent transaction, and payment therefor shall be made accordingly. If shipments are delayed by Purchaser, payments shall become due on the date Caloris is prepared to make shipment. If the work covered by the order is delayed by Purchaser, payments shall be made based on the purchase price and percentage of completion. Equipment held for Purchaser shall be at Purchaser's risk and expense.

4. Title and Delivery.

(a) All sales are made F.O.B. point of shipment, Caloris' manufacturing facility, unless otherwise agreed in writing by Caloris. Title and risk of loss shall pass to Purchaser upon tender by Caloris of the Equipment to the carrier at Caloris' shipping point. Unless otherwise agreed, Caloris will exercise its own discretion with respect to the manner of shipment, packaging, insurance, carrier and the like. All claims for damages must be filed directly with the carrier.

(b) Caloris will ship Equipment in accordance with the planned shipment date as specified in the Proposal. However, the planned shipment date is an estimate only, and Caloris will not be subject to liability for failure to ship on or before such date under any circumstances. Caloris reserves the right to make partial shipments, and invoices will be issued accordingly. Unless otherwise agreed, Caloris shall not be obligated to arrange for deliveries outside the U.S.A. In such event, Purchaser shall be solely responsible for export and import authorizations. Caloris can withhold any shipments in the event Purchaser has not paid its invoices to Caloris when due.

5. Force Majeure. Caloris shall not be liable for nonperformance or delays, under any circumstances, which occur due to any causes beyond its reasonable control. These causes shall include, but shall not be limited to, acts of God, acts of terrorism, wars, riots, strikes, fires, storms, floods, earthquakes, shortages of labor or materials, labor disputes, vendor failures, transportation embargoes, acts of any government or agency thereof and judicial actions. In the event of any such delay or failure of performance, the date of delivery shall, at the request of Caloris, be deferred for a period equal to the time lost by reason of the delay. In the event Caloris' product is curtailed or impacted for any of the above reasons such that Caloris cannot deliver the entire order for Equipment hereunder, Caloris may allocate production deliveries among its customers then under contract for similar goods. Caloris shall notify Purchaser within a reasonable time in writing of any such circumstances causing delay or nonperformance and, in the event of an allocation, of the estimated goods made available.

6. Taxes. Unless otherwise provided, the amount of any present or future sales, revenue, excise, use or other taxes, fees, duties, or charges of any nature imposed by any public authority (local, state, national or other) applicable to the Equipment or their manufacture, use or sale, shall be added to the purchase price and shall be paid by Purchaser, or in lieu thereof, Purchaser shall provide Caloris with a tax exemption certificate acceptable to the taxing authorities.

7. Proprietary and Confidential Information. All drawings, notebooks, operating data, specifications, and other information, data and material furnished to Purchaser by either Caloris or any of its subcontractors or subsuppliers (collectively, "Confidential Information") shall remain the proprietary and confidential property of Caloris or its suppliers, respectively, and shall be used by Purchaser only in connection with its use of the Equipment, and not in connection with any other project or for any other purpose. Such Confidential Information shall not be disclosed to any third party without Caloris' express prior written consent. Without limiting the foregoing, Purchaser shall not, and shall not permit a third party to, reverse engineer the Equipment. Any Confidential Information that Purchaser determines must be disclosed to its employees, shall only be disclosed to such employees on a need-to-know basis and solely for the operation, maintenance, and repair of the Equipment provided under the Contract; provided that such employees must, prior to accessing any Confidential Information, agree to terms at least as restrictive as those herein with respect to Caloris' Confidential Information. These obligations are in addition to, and shall not and are not intended to modify or replace the obligations of the parties under, any confidentiality, non-disclosure or similar agreement previously or hereafter entered into by or between the parties hereto.

8. Safety Requirements of Purchaser. Purchaser (a) shall use, and shall train and require its employees to use, all safety devices, guards, and proper safety operating and maintenance procedures as prescribed by all applicable laws and as otherwise set forth in operating and maintenance manuals and instruction sheets furnished by Caloris, and (b) shall not remove or modify any safety device, guard or warning sign from the Equipment (collectively "Requirements"). If Caloris does not perform installation services for the Equipment, Purchaser assumes full responsibility for installation, operation, training and verification of all aspects of functionality and safety with respect to Caloris' Equipment, including without limitation maintenance thereof and will indemnify Caloris as provided in this Agreement for any Damages resulting therefrom. If Caloris does perform installation services for the Equipment as part of the Services, the rights and responsibility of the parties for such installation services are governed by the Agreement. Commissioning Services provided by Caloris shall include training for one (1) qualified supervisor of Purchaser of proper safety operating and maintenance procedures as set forth in operating and maintenance manuals and instruction sheets furnished by Caloris.

9. Intellectual Property. Unless otherwise expressly specified in this Agreement, Caloris owns, has developed, has acquired or has obtained exclusive license rights to certain patents and patent applications (including divisionals, continuations, renewals, continuation-in-parts, patents of addition, supplementary protection certificates, extensions, registration and confirmation patents and reissues thereof), know-how, trade secrets and scientific and technical information proprietary to Caloris, now existing or hereafter acquired or developed, whether relating to the Equipment, the Services or otherwise (collectively, the "Caloris IP"). Caloris retains ownership of all Caloris IP, and nothing in this Agreement implies or otherwise grants Purchaser the right to use, make, have made, sell or offer for sale any products or services infringing Caloris IP. Notwithstanding the foregoing, Purchaser is entitled to put the Equipment sold to Purchaser hereunder to the use for which it was developed and intended, and Caloris hereby grants Purchaser a license to use the Caloris IP solely for purposes of its operation and use of the Equipment (but may not use the Caloris IP for any other purpose).

10. Indemnity.

(a) If Purchaser receives a claim, suit or proceeding asserting that the sale, manufacture, or use of the Equipment (but expressly excluding any equipment, or components thereof, not manufactured by or on behalf of Caloris) infringes a U.S. patent or copyright, Purchaser shall promptly notify Caloris in writing and give Caloris information, assistance and exclusive authority to evaluate, defend, and settle such claim. In the event of any claim, suit or proceeding for which Caloris has an obligation to defend pursuant to this paragraph, Caloris may, at its option and expense (i) substitute materially equivalent non-infringing Equipment, (ii) modify the infringing Equipment so that they no longer infringe but remain materially equivalent, or (iii) obtain for Purchaser the right to continue use of the Equipment; provided if, in Caloris' judgment, none of the foregoing is possible at a commercially reasonable expense, Caloris may remove the Equipment and refund the purchase price paid for the infringing Equipment (and, in such event, at Caloris' option and cost, it may take back the infringing Equipment and Purchaser shall reasonably cooperate with Caloris to facilitate). The foregoing states the entire and complete liability of Caloris for any infringement or claimed infringement by reason of the sale, manufacture, or use of the Equipment or any part thereof.

(b) Purchaser assumes liability for, and hereby agrees, at Purchaser's expense, to defend, indemnify, protect and hold harmless Caloris and its successors and assigns and their respective agents, employees, officers, directors, parents, subsidiaries and stockholders/members, from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, actions, costs and expenses (including actual attorney fees and costs) of whatsoever kind and nature (collectively "Losses"), arising out of: (i) Purchaser's use of the Equipment not in accordance with Caloris' instructions and/or specifications; (ii) Purchaser's failure to strictly observe any of the Requirements, including without limitation Losses arising from, related to or in connection with persons injured or property damaged directly or indirectly in connection therewith; (iii) use of the Equipment for materials or products not specified in the Agreement; (iv) use of non-original spare parts not specifically authorized in writing by Caloris; (v) Purchaser's maintenance and support of the Equipment outside the scope of Caloris' instruction and/or specifications; (vi) the modification of the Equipment, or any part thereof, other than as expressly authorized by Caloris; (vii) the use of any Equipment or part thereof furnished in combination with products, software or data not supplied by Caloris; (viii) the failure of the Purchaser to properly service, repair, or maintain the Equipment; or (ix) any negligent or willful act or omission on the part of the Purchaser including, without limitation, Purchaser's performance or failure to perform under this Agreement.

11. Assignment.

(a) Purchaser may not assign this Agreement or any interest or right herein without Caloris' prior written consent. Any assignment without such consent shall be null and void at the Caloris' option.

(b) Caloris may assign its rights and obligations under the Agreement if Caloris is involved in, or is a party to one or more transactions in the form of, a stock sale, merger, consolidation, reorganization, sale of all or substantially all of the assets or similar type transaction, with the result being that Caloris is the surviving entity, or, if Caloris is not the surviving entity, the surviving entity continues to conduct the business conducted by Caloris prior to the consummation of the transaction and, pursuant to written agreement, the surviving entity assumes all obligations, rights and liabilities of Caloris under the Agreement.

12. Acceptance.

(a) Purchaser shall give written notice to Caloris (and the carrier where appropriate) of discrepancies between type and quantity of Equipment ordered and Equipment delivered, or damage to the Equipment, within 30 days of delivery of the Equipment to a common carrier or to Purchaser, whichever is earlier. Lacking such notice, the Purchaser shall be deemed to have accepted the Equipment as invoiced.

(b) Equipment may be returned to Caloris as authorized only after prior notification and receipt of a Return Material Authorization ("RMA") number. Equipment returned without a valid RMA number will be returned to Purchaser at Purchaser's expense, or, at Caloris' option, will not be accepted by Caloris.

(c) No credit allowances for defective Equipment will be made or replacements therefor shipped until it is established to Caloris' satisfaction after suitable testing and inspection that the Equipment was in fact defective on the Delivery Date.

13. Termination. Orders for Equipment (standard or custom) may be cancelled by Purchaser provided that Purchaser pays Caloris for completed work and reasonable wind-down costs allocated by Caloris to Purchaser's order at time of termination of the work at the unit selling price and all costs, direct and indirect, for work in process as well as costs resulting from cancellation and a reasonable profit thereon. Specific cancellation charges will be dependent on the type of Equipment ordered; a schedule detailing these charges will be forwarded to Purchaser upon request or when Purchaser's order is acknowledged, at Caloris' option. Orders for Equipment may be rescheduled only with Caloris' prior consent. Caloris shall have no obligation to reschedule.

14. Warranty. Unless otherwise specifically set forth in the Proposal, Caloris gives the limited warranty as to the Equipment as set forth in subparagraph (a) below, and the limited warranty as to the Services as set forth in subparagraph (b) below.

(a) (i) Caloris warrants, for a period of twelve (12) months from the date of Purchaser's first commercial use of the Equipment, but in no event longer than eighteen (18) months after the Delivery Date of the Equipment, that the Equipment will meet the specifications therefor without material defect.

(ii) In the event of breach of warranty during the warranty period, Caloris in its discretion will either repair or replace the defective Equipment, provided that (i) Purchaser notifies Caloris of such nonconformity before the expiration of the Warranty Period, and (ii) Purchaser makes the nonconforming Equipment available to Caloris. Caloris shall be responsible for removal of defective Equipment and re-installation of any replacement Equipment and shall pay all retrieval, transportation costs, handling fees and re-installation costs incurred by Caloris for any returned and replacement Equipment. Purchaser shall pay all costs associated with any modifications to building and structure that may be required to accommodate removal of defective Equipment or re-installation of any replacement Equipment. Purchaser will not return any Equipment to Caloris without having first obtained an RMA, in accordance with the provisions of paragraph 9(b) above. If after reasonable efforts, Caloris is unable to repair or replace the nonconforming Equipment, Caloris may, at its option, refund to Purchaser the purchase price paid by Purchaser for such Equipment in full satisfaction of all claims related to any defects or deficiencies in the Equipment.

(b) Caloris warrants and represents that the Services will be performed in a good and workmanlike manner, in accordance with the applicable Proposal. Caloris' sole obligation, and Purchaser's sole remedy for Caloris' breach of this warranty is for Caloris to, in Caloris' sole discretion: (i) reperform the Services in accordance with the applicable Proposal, or (ii) refund Purchaser the prorated portion of any fees paid for the Services that are the subject of the breach of warranty herein. Purchaser must bring a claim under this performance warranty not more than thirty (30) days following Caloris' completion of the Services.

(c) Caloris shall not have responsibility or liability, direct or indirect, contingent or otherwise, arising out of or based upon a breach of warranty caused in whole or in part, as determined by Caloris, by Purchaser's (i) failure to operate the Equipment in accordance with Caloris' instructions, (ii) misuse of the Equipment by or on the behalf of the Purchaser, including without limitation modification, abnormal conditions of operation or service not authorized by Caloris, or (iii) to the extent claims are based on or related to specifications, instructions, or designs provided to Caloris by Purchaser. Further, without limiting the foregoing, this warranty shall not cover (w) any equipment furnished by Purchaser or any third party (other than an authorized subcontractor of Caloris), (x) any defects arising from corrosion, abrasion, use of unsuitable lubricants, or negligent attendance, improper operation or abuse, (y) ordinary wear and tear, or (z) any defects caused by errors on the part of the Purchaser such as failure to provide suitable premises in which the Equipment is to be located, adequate foundation works, or adequate protection against influences within or without the premises which may affect the Equipment or its operation. Caloris does not warrant that the operation of the Equipment will be uninterrupted or error-free.

(d) Consumable items and items purchased by Caloris are not covered by the warranty except as expressly warranted by Caloris in writing. Notwithstanding the foregoing, to the extent that any defects in the Equipment are caused by third party subassemblies which are integrated into the Equipment without significant modification by Caloris, defects will be subject to the terms of the applicable third party warranties, if any, and such defects are not warranted by Caloris.

(e) THE FOREGOING IS CALORIS' SOLE OBLIGATION, AND PURCHASER'S SOLE RIGHTS, UNDER WARRANTY UNDER THIS AGREEMENT. THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN, ORAL, EXPRESSED, OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND OF NON-INFRINGEMENT, AND ANY CLAIM OF NEGLIGENT EQUIPMENT DESIGN OR MANUFACTURE.

15. Limitation of Liability. Caloris' liability under or for breach of this Agreement shall be limited to a refund or credit to Purchaser of the purchase price, or to the repair or replacement of the Equipment, at Caloris' option, and in any event will not exceed the amount paid by Purchaser to Caloris hereunder. In no event shall Caloris be liable for Purchaser's costs of procurement of substitute goods, inability to obtain substitute goods or lost profits. IN NO EVENT SHALL CALORIS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE.

16. Specifications. All Equipment is subject to Caloris' standard specifications. Caloris reserves the right to make substitutions and modifications, including package and performance grade, in the specifications of any Equipment without notification to or approval from Purchaser provided that such substitutions or modifications do not materially, adversely affect the performance of the Equipment or the purposes for which they can be used, or the form, fit, or function thereof.

17. Government Agreements. If the goods to be furnished under this agreement are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number appears on Purchaser's purchase order, those clauses of the applicable U.S. Government Procurement Regulations which are required by federal statute or regulation to be included in the U.S. Government subcontracts shall be incorporated herein by reference. Purchaser shall provide Caloris upon request with appropriate information relating thereto.

18. Applicable Laws. The validity, performance, and construction of this agreement shall be governed by the laws of the State of Delaware as applied to transactions taking place wholly within Delaware between residents of Delaware.

19. Security Interest. Caloris hereby reserves a purchase money security interest in the Equipment sold and the proceeds thereof, in the amount of its purchase price. In the event of default by Purchaser of any of its obligations to Caloris, Caloris shall have the right to repossess the Equipment sold hereunder without liability to Purchaser. In such event, Purchaser agrees to make the Equipment available to Caloris so that Caloris can repossess them without a breach of the peace. This security interest will be satisfied by payment in full. A copy of this agreement may be filed with appropriate authorities at any time as a financing statement and/or chattel mortgage, in order to perfect Caloris' security interest. On request of Caloris, Purchaser will execute any other financing statements and instruments Caloris desires to perfect its security interest.

20. Laws and Regulations. Purchaser agrees to comply with all applicable local, state and federal laws and regulations, including without limitation export laws and regulations of the United States of America.

21. Entire Agreement. The Agreement constitutes the entire agreement between the parties as to the subject matter hereof. The Agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing without Caloris' written consent. No representation, promise or condition not expressly provided in writing and signed by authorized representatives of Purchaser and Caloris shall be binding on either party. The invalidity, in whole or in part, or any provision hereof shall not affect the validity of this agreement or any other provision.

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