

## PURCHASE ORDER - TERMS & CONDITIONS

The purchase order, together with these terms and conditions, and any attachment and exhibit, specifications, drawings, notes, instructions, and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between Dimplex Thermal Solutions, Inc. ("Dimplex") and the supplier identified in the Purchase Order ("Supplier") with respect to every sale of products and/or services (the "Product") by Supplier to Dimplex. Dimplex's submission of this Purchase Order is conditioned on Supplier's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgment, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on Dimplex's agreement to such different or additional terms, unless specifically agreed to in writing by Dimplex. **Supplier's acknowledgment of this Purchase Order by any means, including Supplier's commencement of performance,** constitutes Supplier's acceptance of these terms and conditions. The Purchase Order does not constitute a firm offer within the meaning of Section 2205 of the Michigan Uniform Commercial Code, and may be revoked at any time prior to acceptance.

**PRICES.** Unless otherwise specified in the Purchase Order, the price for the Product includes all taxes and other charges (excluding shipping and delivery charges), duties, tariffs, imposts and government-imposed surcharges. Supplier will, at Dimplex's request, denote from the price all such taxes and other charges, in its invoices. Supplier shall use its best efforts to assist Dimplex in all legal efforts to minimize the taxes resulting from the performance of this Purchase Order. The price charged by Supplier to Dimplex for the product shall be the lowest of (i) the price last quoted to Dimplex by Supplier or last paid by Dimplex to Supplier, or (ii) Supplier's lowest price charged any customer for the Product, regardless of any special terms or conditions.

**TERMS AND CONDITIONS OF PAYMENT.** Terms of payment are net 60 days, unless otherwise specified on the Purchase Order, from date of Dimplex's receipt of a properly prepared invoice. A properly prepared invoice must be issued on or after the date the Product was delivered to Dimplex and must include the Purchase Order number, Dimplex item number, quantity, item pricing, and delivery date.

**DELIVERY.** Unless Dimplex expressly instructs otherwise, Supplier will deliver the Product to Dimplex's facility at the address set forth in the Purchase Order, FOB Supplier's location. The Supplier will preserve, pack, package and handle the Product so as to protect the Product from loss or damage and in accordance with best commercial practices in the absence of any specifications Dimplex may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal. Supplier will include with each delivery of Product an itemized packing list identifying the Purchase Order number, a description, the quantity of each of the Products, lot or serial numbers, if applicable, and the date of shipment. The package containing the packing list must be clearly marked as such. Products shipped in excess of Dimplex's Purchase Order, or not in accordance with the contract, may be returned at Supplier's expense. If Supplier delivers Product to a location other than as directed by Dimplex or if it is delivered after the required delivery date specified in the Purchase Order, Dimplex may reject such Product and return it at Supplier's expense. Dimplex will not be responsible for any Product furnished without a written Purchase Order.

**INSPECTION AND ACCEPTANCE.** All Products shall be received subject to Dimplex's right of inspection and rejection. Dimplex may reject any or all of the Product which does not conform to the applicable requirements communicated by Dimplex within 10 business days of Dimplex's receipt of the Product. Dimplex shall have an additional reasonable period of inspection for such defects as are not immediately apparent. At Dimplex's option, Dimplex may (i) return the non-conforming Product to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Product, or (iii) repair at Supplier's cost the non-conforming Product so that it meets Dimplex's requirements, including all shipment and delivery expense of returning non-conforming product and replacement product. In the alternative to its options described above, Dimplex may accept the non-conforming Product conditioned on Supplier providing a refund or credit in an amount Dimplex reasonably determines to represent the diminished value of the non-conforming Product. Dimplex's payment to Supplier for the Product prior to Dimplex's timely rejection of such Product will not be deemed as acceptance by Dimplex, nor does it constitute a waiver of a breach of warranty and is without prejudice to any claim(s) by Dimplex. Supplier shall inspect all Product prior to shipment to ensure conformance with all requirements of this Purchase Order.

**WARRANTY ASSIGNMENT.** Any warranty provided by Supplier with respect to the Product may be assigned by Dimplex. Supplier warrants that all Products (i) shall be of good quality and workmanship and free from defects, latent or patent, in material or workmanship, (ii) shall conform in all respects to all specifications, performance standards, drawings, samples or descriptions from Supplier and/or Dimplex, and (iii) shall be free of any claim of any third party. These warranties are in addition to all other express warranties and legal rights and shall benefit Dimplex. No remedy available to Dimplex for the breach of any warranties hereunder shall be limited except to the extent and in the manner expressly agreed upon by Dimplex in an executed document which specifies such limitation. Dimplex's approval of any sample or acceptance of any Product shall not relieve Supplier from responsibility to deliver goods and to perform services confirming, in all respects, to the approved

sample. These warranties shall not be deemed waived either by reason of Dimplex's acceptance of, or payment for, Product and shall survive delivery. In the event of a breach of warranty, Dimplex may return such Product, at Supplier's expense, for correction, replacement or credit as Dimplex may direct and shall otherwise have available to it all remedies at law and in equity and Supplier shall be liable to Dimplex for any and all attorney and other fees incurred thereby related to a warranty matter. This warranty shall apply to replacement Product. Supplier shall effectuate all such corrections or replacements within 10 days of receipt of returned Product.

**INDEMNIFICATION.** Supplier agrees to defend, indemnify, and hold harmless Dimplex, its officers, employees, agents, representatives, customers and affiliates ("Dimplex affiliates") from and against all claims, liability, loss, damage or expense, including reasonable attorney's fees, with respect to any third party claims against Dimplex resulting from, or related to: (i) Supplier's performance in regard to the Purchase Order; (ii) omissions of Supplier or its officers, employees, agents, representatives, affiliates, including Supplier's or its agent's or contractor's manufacturing thereof; (iii) the Product itself, except to the extent the claim is the direct result of Dimplex's negligence or misrepresentation, and/or (ii) Supplier's alleged infringement of any third party's intellectual property rights or any other rights.

**INSURANCE.** Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property related to the Products in amounts sufficient to protect Dimplex in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance, including workers' compensation insurance covering all employees performing work with respect to the Purchase Order, as is customary for a company of similar size and similar operations in the jurisdiction or jurisdictions in which Supplier's operations take place. This provision shall survive expiration or termination of the Purchase Order.

**MISCELLANEOUS.** These terms and conditions can be modified or rescinded only by a writing signed by both Dimplex and Supplier. No right or interest herein may be assigned by Supplier without Dimplex's written consent and no delegation of any obligation owed by Supplier to Dimplex shall be made without Dimplex's written consent. Any attempt at assignment or delegation not made in conformity with this paragraph shall be void for all purposes. If, on any occasion, Dimplex waives any term or condition, such waiver, which must be in writing, is not to be construed as a continuing waiver. In the event any of the provisions of these terms and conditions shall be held to be invalid by any court of competent jurisdiction, the same shall be deemed severable, and as never having been contained herein, and these terms and conditions shall then be construed and enforced in accordance with the remaining provisions hereof.

**CONFIDENTIAL INFORMATION:** Supplier agrees to keep secret and confidential all confidential, proprietary or non-public information of Dimplex and the existence, terms and conditions of this order (the "confidential information"). In addition, Supplier agrees to (i) disclose the confidential information only to its employees who need to know for purposes of fulfilling this order and (ii) use the confidential information only for the purpose of fulfilling this order. It is understood that no license, either expressed or implied, is hereby granted by Dimplex under any confidential information.

**NOTIFICATION REQUIREMENT:** If, for any reason, at any time, Supplier shall refuse or be unable, or should reasonably anticipate being unable to deliver any part or all of the Product(s) in accordance with the terms thereof, Supplier shall notify Dimplex of such refusal or inability at the earliest possible time and by the most practical means under the circumstances. Such notification shall not be deemed to operate as a release of Supplier from its obligations under this order. Dimplex shall have the right to replace, modify, and/or cancel any delayed open orders without any liability to Supplier. In the event of such a replacement or modification, Supplier shall pay to Dimplex (or at Dimplex's option, it may offset such amount from any amount owed to Supplier) promptly upon demand therefore, an amount equal to the cost of such replacement or modification, less the amount which would have been payable to Supplier for an equal quantity and quality of Product(s), plus any amount incurred by Dimplex to effectuate such replacement or modification. Such amount is agreed to be damages for

Supplier's non-performance and shall not, in any event, be construed to be a penalty. Price increases or extensions of time for delivery shall not be binding upon Dimplex unless evidenced by a change order issued by its authorized representative.

**INTELLECTUAL PROPERTY:** Supplier hereby grants a perpetual corporate license relating to any Software or other embodiment of intellectual property embedded in the Product(s), as necessary for Dimplex's purchase, use, maintenance and/or sale of Product(s). Supplier shall hold Dimplex and Dimplex's affiliates harmless from any claim, suit, loss, cost, damage or expense (including, without limitation, the costs and expense incurred in the defense of suits or actions alleging such liability) of whatsoever nature or kind arising out of, as a result of or in connection with a claim for infringement of rights in, to or under patents, trademarks, copyrights or other intellectual property rights by the manufacture, design, use, maintenance, support or sale of any Product(s). This provision shall survive termination or expiration of this order.

**TERMINATION:** Dimplex shall have the right, without liability to Supplier, to cancel any unshipped portion of an order (i) a portion of which is not in strict conformance with this order or Dimplex's or Supplier's description or specifications, (ii) in the event Supplier has breached this order, any warranty or its obligations to Dimplex, (iii) in the event that Dimplex's business is interrupted because of strikes, labor disturbances, riot, fire or acts of God or any other cause beyond the control of Dimplex or (iv) if Supplier makes an assignment for the benefit of creditors, a receiver or trustee is appointed with respect to Supplier's business, the Supplier is adjudicated insolvent or if the Supplier files or there is filed against Supplier a petition for bankruptcy or other relief under the Bankruptcy code or any successor statute. Dimplex shall have the right to cancel any unshipped portion of an order, in whole or in part, at any time, for a reason other than set forth above, in which event Dimplex shall be liable to Supplier for the actual amount of Supplier's costs reasonably incurred in contemplation of performance of the cancelled portion, less any amount saved by Supplier as a result of such cancellation and less any amounts which could have reasonably been mitigated by Supplier. Supplier is cautioned not to ship, fabricate, or build inventories of raw or finished stock at a rate faster than is required to meet delivery requirements of this order.

**COMPLIANCE WITH LAW:** Supplier warrants and represents that the Product(s), including all packaging thereof, shipped pursuant to this order shall have been produced in compliance with and meet the minimum standards of all applicable federal, state and local laws, regulations, rules, guides, ordinances and/or standards in effect as of the date on which such Product(s) is accepted by Dimplex and that the sale by Supplier or purchase by Dimplex of such Product(s) does not violate any such laws, regulations, rules, guides, ordinances and/or standards, including, without limitation, Material Safety Data Sheets (MSDS). Supplier shall appropriately label containers of all goods which are known to constitute a health, poison, fire, environmental, safety or explosion hazard and shall provide Dimplex any and all material required for Dimplex to comply.

**EQUAL OPPORTUNITY:** The Equal Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (Handicap

and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2012), and the implementing rules and regulations in Title 41, GFR, Part 60 are incorporated herein by reference unless this order is exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding E.O. As used in said clause, "Contractor" means Supplier. Supplier agrees to provide Dimplex with an executed Equal Employment Opportunity Certificate indicating Supplier's compliance or exempt status, annually upon request of Dimplex. In the event Supplier has a current Certificate on file with Dimplex, it is incorporated herein by reference, and shall be valid until the next report delivered by Dimplex.

**ASSIGNMENT:** Supplier agrees that Supplier will neither assign its rights nor delegate it under this order without the prior written consent of Dimplex. Any attempted assignment violates this paragraph shall be VOID AB INITIO.

**INTERPRETATION OF ORDER:** Irrespective of the place of performance of this order, this order shall be interpreted in accordance with the laws of the State of Michigan without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in Kalamazoo County, Michigan, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise.

**AMENDMENT, MODIFICATION, WAIVER, AND REMEDIES:** Performance of this order must be strictly in accordance with its stated terms and conditions and no change, modification, revision, alteration or waiver shall be binding unless executed by Dimplex. No waiver of and/or failure to perform any or all of the terms or conditions hereof shall constitute a waiver of or an excuse for nonperformance as to any other part of this or any other order. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law or in equity. Under no circumstances shall the Dimplex be obligated for consequential damages, loss of revenue or profit, or any amount in excess of the total amount stated on the face of this order. Supplier shall bear all expenses, including reasonable attorneys' fees, Dimplex incurs to enforce its rights under this order.

**DIMPLEX PROPERTY:** All tooling, dies, parts, schedules, and specifications and all reproductions thereof, any other property furnished to Supplier by Dimplex or paid for by Dimplex, shall be (i) the property of Dimplex, (ii) clearly identified as Dimplex's property by Supplier, (iii) subject to removal at any time upon Dimplex's demand, and (iv) used only in filling orders from Dimplex or its nominee. Supplier assumes all liability for loss of, and damage to, such property and Supplier shall, unless otherwise directed in writing by Dimplex, insure at Supplier's expense such property in an amount equal to the replacement cost thereof with loss payable to Dimplex.

**APPLICABLE LAW.** These terms and conditions and any matter between Dimplex and Supplier concerning the Product shall be governed by the laws of the State of Michigan, notwithstanding its conflicts of laws provisions. The exclusive jurisdiction and venue for any legal action relating to the Product or these terms and conditions shall be the State or Federal Courts sitting in, or with jurisdiction over, Kalamazoo, Michigan; Dimplex and Supplier submit to the personal jurisdiction of said courts.