

GLOBAL TERMS AND CONDITIONS OF SALE

1. APPLICABILITY

These Global Terms and Conditions of Sale ("Terms") apply to the purchase of products and ancillary services (collectively the "Products") by seller ("Seller") and the buyer ("Buyer"), each of which is identified in the accompanying quotation, credit application, proposal, order acknowledgment, or invoice (the "Sales Confirmation"). These Terms and the Sales Confirmation comprise the entire agreement between the parties (collectively, the "Agreement"). Buyer accepts these Terms by signing and returning Seller's quotation, by sending a purchase order in response to the quotation, by Buyer making a payment on quotation, or by Buyer's instructions to Seller to ship the Products. No terms or conditions, other than those identified in the quotation and no agreement or understanding, oral or written, in any way purporting to modify the terms and conditions whether contained in Buyer's purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller's authorized representative. Buyer is hereby notified of Seller's express rejection of any terms inconsistent with this Agreement or to any other terms proposed by Buyer in accepting Seller's quotation. Neither Seller's subsequent lack of objection to any terms, nor the delivery of the Products or services, shall constitute an agreement by Seller to any terms.

2. CANCELLATION

Cancellation or modifications of all or part of any order are subject to Seller's prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of the cancellation or modification, plus a reasonable profit.

3. PRICE

Prices on accepted orders are firm for a period of 30 days from date of acceptance. All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively, "Taxes"). Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of Buyer (excluding taxes based on Seller's net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If possible, Seller will bill Taxes as a separate item on the invoice presented to Buyer. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will pay Seller the amount of the Tax and any penalties and interest related thereto.

4. PAYMENT

Unless otherwise set forth in the Sales Confirmation, Buyer will pay all invoiced amounts Cash Before Delivery ("CBD"). Seller accepted cash, check, wire transfer and credit card payments. In the event of a credit card payment, there will be an additional three and one-half percent (3.5%) convenience fee added to the total sales price. Unless specified in the Sales Confirmation, Buyer shall request to Buyer payment instructions upon the Sales Confirmation. Seller reserves all rights granted to a seller under the Uniform Commercial Code ("UCC") for Buyer's failure to pay for the Products or any other breach by Buyer of these Terms. In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Products if Buyer fails to pay any amounts when due and the failure continues for five (5) days following Buyer's receipt of notice thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller's breach, bankruptcy, or otherwise.

If payment is not received by the due date, a late charge will be added at the rate of one and one-half percent (1.5%) per month, or eighteen percent (18%) per year, or the maximum legal rate, whichever is less, to unpaid invoiced amounts from the due date thereof.

5. COLLECTIONS

In the event any third parties are employed to collect any outstanding unpaid invoiced amounts owed to the Seller by Buyer, Buyer agrees to pay to Seller reasonable collection costs, including attorney fees, whether or not litigation has commenced, and all costs of litigation incurred by Seller.

6. DELIVERY; SHIPPING

(a) Seller will deliver the Products within a reasonable time after invoice has been paid in full, subject to their availability. The delivery date provided by Seller for the Products is only an estimate and is based upon prompt receipt of all necessary information from Buyer. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller will not be liable for: (i) any delays caused; (ii) or any losses or expenses incurred as a result of delay in shipment; (iii) or any damage in transit; and failure to deliver within the time estimated will not be a material breach of contract on Seller's part.

(b) Unless otherwise agreed in writing by the parties, the shipping terms will ship FOB Origin and all Products shall ship Freight Collect. If agreed upon between Buyer and Seller, shipment charges may be included in the Sales Confirmation; in such case, Seller shall organize shipping by common carrier from Seller's warehouse to the site indicated by the Buyer ("Destination"), and delivery terms shall be FOB Destination. Flatbed trucks may be utilized to facilitate the use of forklifts at the Destination. Unloading of the truck(s) is not included and may require use of a forklift, which the Buyer shall arrange at the Destination. In the event that the Buyer requires additional time to unload the Products at the Destination, additional fees may apply.



(c) For larger orders, Seller may organize shipment to Buyer directly from factory in Italy. In such case, container(s) (typically 40ft HC) shall be delivered to the Destination on delivery terms DDP. Two to three (2-3) days before arrival of such shipment, an arrival notice shall be sent to Buyer. It is the responsibility of the Buyer to schedule a delivery appointment and coordinate with the shipping company for delivery. The following shall apply to such shipment and delivery: (i) container(s) unload shall not be included in the price or fees in the Sales Confirmation and unload shall require a forklift; (ii) drop fees will be added in the event that Buyer requests container drop; (iii) if chassis is required after container drop, additional charges will apply.

7. RETURN OF PRODUCTS

All sales are final. Buyer acknowledges that Buyer has no right to return the Products to Seller.

8. LIMITED WARRANTY

(a) Seller warrants to Buyer that: (i) all radiant panels, pipes and fittings will be free from defects in material and workmanship for a period of five (5) years; (ii) all manifolds will be free from defects in material and workmanship for a period of three (3) years; (iii) all items in the controls line of Products and all units in the air treatment line of Products will be free from defects in material and workmanship for a period of one (1) year. The warranty period shall start following the date of delivery to the delivery location agreed by the Buyer and Seller. Each term in (a)(i) and (a)(ii) and (a)(iii) above shall be a warranty period for such product (the "Warranty Period"). If, prior to the expiration of the Warranty Period, Buyer informs Seller in writing of any breach of this limited warranty, then Seller may repair or replace the Products that gave rise to the breach or, in Seller's sole and exclusive discretion, refund the amounts that Buyer paid for the Products.

(b) The foregoing limited warranties for radiant panels, pipes, fittings, and manifolds will become null and void if a pressure test was not performed on the close loop hydronic system, following the test procedure as per the Messina System Pressure Test and Fill/Purge Procedure (see online at radiantcooling.com/downloads). Pressure test must be signed off by an authorized third party.

(c) The foregoing limited warranties do not apply to any defect in Products not purchased by an authorized installer, reseller or distributor.

(d) The foregoing limited warranties do not apply to any non-Messana branded products even if sold with other Messina Products. Non-Messana branded products may have the benefit of a manufacturer's warranty provided by the product manufacturer.

(e) Buyer will bear the costs of access, de-installation, re-installation and transportation of the Products to Seller and back to Buyer. Any repair or replacement pursuant to this limited warranty will not extend the Warranty Period. Seller does not warrant the Products, or any repaired or replacement parts, against normal wear and tear or corrosion. This limited warranty and remedy are expressly conditioned upon: (i) Buyer's payment of the purchase price in full, (ii) Buyer giving written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect, (iii) the storage, installation, operation, use, and maintenance of the Products in compliance with the Instructions, (iv) the existence of proper records of Buyer's operation and maintenance of the Products during the Warranty Period, (v) Buyer providing Seller with a reasonable opportunity to examine the Products and the aforementioned records, and (vi) the absence of any unauthorized modification or repair of the Products, including without limitation the removal or alternation of any serial numbers or warranty date labels.

(f) Before any test may be used to evaluate the Products, Buyer will: (i) provide Seller with reasonable written notification of the test, (ii) allow Seller to be present during the test, and (iii) receive Seller's consent to the conditions of the test, which consent will not be unreasonably withheld. If a test is performed on the Products, and Seller has not consented to the conditions of the test, then this limited warranty will be void.

(g) THE REMEDIES SET FORTH IN THIS SECTION 8 ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. INDEMNIFICATION

(a) Buyer will defend, indemnify, and hold harmless Seller and its affiliates, their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("Claims") arising out of or occurring in connection with the negligence or willful misconduct of Buyer or its employees or agents, including but not limited to: (i) any misuse or modification of the Products by Buyer or its employees or agents, (ii) any act (or failure to act) by Buyer or its employees or agents in contravention of any safety procedures or instructions that Seller provides to Buyer or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the instructions provided with the Products.

(b) Seller will defend, indemnify, and hold harmless Buyer and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any Claims arising out of or occurring in connection with the negligence or willful misconduct of Seller or its employees or agents.



10. LIMITATIONS OF LIABILITY

(a) IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.

(b) EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE GOODS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.

11. CHANGES

Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer.

12. NO LICENSE

(a) Except as provided in Section 12(b), the sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller.

(b) If software is provided by Seller under the Agreement, Buyer agrees that the software may only be used in accordance with the terms and conditions of the software license agreement that accompanies the software. Buyer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software. If Buyer is a U.S. Government agency, Buyer acknowledges that the software licensed under the Agreement is a commercial item that has been developed at private expense and not under a Government contract. The Government's rights' relating to the software are limited to those rights applicable to Buyer's as set forth herein and is binding on Government users in accordance with Federal Acquisition Regulation 48 C.F.R. Section 12.212 for non-defense agencies and/or Defense FAR Supplement 48 C.F.R. Section 227.7202-1 for defense agencies.

13. TERMINATION

In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and the failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

14. CONFIDENTIALITY

All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section 14, without having to post bond or establish the insufficiency of a remedy at law. This Section 14 does not apply to information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Seller on a non-confidential basis from a third party.

15. FORCE MAJEURE

Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller's sole judgment, is not in Seller's best interest.

16. COMPLIANCE

Each party will comply with all applicable laws, regulations, and ordinances, and Buyer will comply with the export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement.



17. GOVERNING LAW; VENUE; DISPUTE RESOLUTION

This Agreement shall be governed and construed for all purposes in accordance with the laws of the State of California, excluding its conflict of laws provisions. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration conducted in Santa Cruz, California by a single arbitrator mutually agreed by the parties and conducted by and in accordance with the rules of JAMS (Judicial Arbitration & Mediation Service). Judgment on the award rendered by the arbitrator may be entered in a court having jurisdiction thereof located in Santa Cruz County, California, provided however, that each party will have a right to seek injunctive or other equitable relief in a court of law. The prevailing party will be entitled to receive from the non-prevailing party all costs, damages and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with that action or proceeding, whether or not the controversy is reduced to judgment or award. The prevailing party will be that party who may be fairly said by the arbitrator(s) to have prevailed on the major disputed issues.

18. SURVIVAL

In addition to any other term whose context may so require, the terms contained in Sections 1, 4, 7, 8, 9, 10, 14, 17, 18, and 19 will survive any cancellation of the purchase order.

19. MISCELLANEOUS

Buyer acknowledges that is has not been induced to purchase any the Products from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. If there is a conflict between the provisions of the Sales Confirmation and these Terms, then the terms of the Sales Confirmation will govern. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of this Agreement is held to be prohibited or unenforceable, the provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Buyer will not assign any quotation or accepted order for the Products, in whole or in part, without Seller's prior written consent.

