

LIMITED WARRANTY FOR MESSANA RADIANT COOLING AND HEATING SYSTEMS

1. LIMITED WARRANTY

Subject to the terms and conditions of this Limited Warranty, Messana, Inc. ("Messana") warrants to the owner (the "Owner") of the applicable real property ("Real Property") that the Messana radiant cooling and heating system (the "System") installed in the Real Property and composed by the Messana products: radiant panels, pipes, fittings, manifolds, air units and controls (the "Products"), will be free from defects in material and workmanship, under normal conditions of use, provided that the Products are installed in accordance with the installation manuals, technical notes, and any special written design or installation guidelines provided by Messana for this System, or available online at radiantcooling.com.

2. WARRANTY PERIOD

This Limited Warranty shall commence on the date of delivery of the Product, and shall expire after: (i) five (5) years for radiant panels, pipes, and fittings; (ii) three (3) years for manifolds; (iii) one (1) year, for air units; (iv) one (1) year, for controls (please refer to "Limited Warranty for Messana Controls" document, available online at radiantcooling.com).

Each term in (i) and (ii) and (iii) and (iv) above shall be a warranty period for such product (the "Warranty Period").

3. NOTIFICATION OF DEFECT

(a) Written notification of the failure or believed defect, reasonably described, must be received by Messana within the applicable warranty period and within ten (10) days of the discovery of the failure or believed defect. All Products believed to be defective must be made available to Messana for testing and determination of cause. Upon receipt of a warranty claim or notification of defect, Messana shall have ninety (90) business days to determine whether it acknowledges responsibility for any believed defects in material or workmanship and the appropriate course of action to be taken.

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

4. WARRANTY COVERAGE

If, prior to the expiration of the Warranty Period, Messana receive written notification of any breach of this Limited Warranty, and if Messana determines that:

(a) the Product has failed or is defective in materials and workmanship, and has not been damaged as a result of misuse or misapplication, then Messana may repair or replace the Products that gave rise to the breach or, in Messana's sole and exclusive discretion, refund the amounts originally paid to Messana for the Products;

(b) any damages to the Real Property, in which a defective product was installed, were the direct result of a leak or failure caused by a defect in materials or workmanship in any Messana Products, then Messana may, in its sole and exclusive discretion, subject to written pre-approval, reimburse the Owner for the reasonable costs of repairing such damaged Real Property.

Messana shall not be liable, under any circumstance, for any damage sustained to personal property resulting from a leak or failure of a defective product.

The Owner who have sustained Real Property damage as a result of an allegedly failed or defective part or product covered by this Limited Warranty must submit a claim to his/her/their respective insurance carrier within ten (10) days after said discovery of damage or defect occurs.

Messana shall not reimburse the Owner if he has failed to submit the claim to his/her/their insurance carrier for any costs related to the replacement or repair of the damaged Real Property.

5. PROPER INSTALLATION AND PRESSURE TEST

This Limited Warranty will become null and void if: (i) the Product is improperly installed, improperly operated, or abused; (ii) or if a pressure test was not performed on the hydronic close loop system, following the test procedure as per the Messana System Pressure Test and Fill/Purge Procedure (see online at radiantcooling.com); (iii) or if pressure test is not signed off by an authorized third party; (iv) or if a proper condensate pan with drain or overflow shutoff switch is not installed under any air units of the System.

It is expressly understood that failure as a result of heat transfer fluid freezing within the System does not constitute a defect in material or workmanship and shall not be covered by this warranty.

6. APPLICABILITY

(a) This Limited Warranty applies only if the applicable Products: (i) are purchased by an authorized installer, reseller or distributor; (ii) are selected, configured, and installed by a certified licensed radiant heating and cooling contractor according to the current installation instructions and technical notes provided by Messana, or available on the website radiantcooling.com; (iii) are installed in accordance with applicable building, mechanical, plumbing and electrical code requirements, (iv) are installed in a hydronic close loop system; (v) are properly pressure tested; (vi) in normal design conditions are run at nominal pressure (for example: 20 psi for pex tubing panels, 60 psi for copper tubing panels); in abnormal conditions, for a limited time, are not exposed to pressures that exceed the limitation (for example 60 psi for pex tubing, 145 psi for copper tubing panels); (vii) are not exposed to temperatures that exceed the limitations; (viii) remain in their originally installed location; (ix) are connected to proper water and power supplies; (x) show no evidence of misuse, tampering, mishandling, neglect, accidental damage, modification or repair without the prior written approval of Messana.

(b) Messana shall not be liable under this Limited Warranty and this Limited Warranty shall be void and have no effect if the following events occur: (i) faulty installation; (ii) fluid temperatures flowing in the close loop hydronic system were not regulated by Messana controls; (iii) automatic fill



station or automatic filling valves that allow for fully automatic filling of fluid in the System, unless provided with manual shut-off valve that must remain closed with safety lock during normal operation of the System; (iv) open loop installation; (v) other components not sold by Messana are installed in the System without Messana written approval; (vi) exposure to ultraviolet light; (vii) external physical or chemical conditions, including, but not limited to chemically corrosive or aggressive water conditions; (viii) any abnormal operating conditions.

(c) This Limited Warranty does not apply to any non-Messana branded products even if sold with other Messana Products. Non-Messana branded products may have the benefit of a manufacturer's warranty provided by the product manufacturer.

7. WHAT THIS LIMITED WARRANTY DOES NOT COVER

THIS LIMITED WARRANTY IS THE FULL EXTENT OF EXPRESS WARRANTIES PROVIDED BY MESSANA, AND MESSANA HEREBY DISCLAIMS ANY WARRANTY NOT EXPRESSLY PROVIDED HEREIN, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS COVERED HEREUNDER. MESSANA FURTHER DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTY OF HABITABILITY. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS LIMITED WARRANTY, MESSANA FURTHER DISCLAIMS ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, AND SPECIAL, INDIRECT, SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OR RESULTING IN ANY MANNER FROM THE PRODUCTS COVERED HEREUNDER. SOME STATES DO NOT ALLOW LIMITATIONS ON WARRANTIES OR EXCLUSIONS OR LIMITATION OF DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY.

Messana assumes no responsibility under this Limited Warranty for any damage to the product caused by any trades person, or visitor on the job site, or damage caused as a result of post installation work.

8. PERFORMANCE OF THE SYSTEM

Messana makes no claim as to the performance of the System, and as to the amount of room temperature and relative humidity rise and fall of the System, the amount of time the system takes to reach a given temperature and relative humidity setpoint, due to the innumerable variables in a building construction and environmental conditions.

9. LIMITATIONS OF LIABILITY

(a) IN NO EVENT WILL MESSANA 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 MESSANA 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.

10. GOVERNING LAW; VENUE; DISPUTE RESOLUTION

This Limited Warranty agreement between Messana and the Owner 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 Limited Warranty 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.

11. HOW STATE LAW MAY RELATE TO THIS WARRANTY

Some States do not allow the exclusion or limitation of incidental or consequential damages, so if any clause herein is found to be illegal or unenforceable, that clause will be severed from this Limited Warranty and the remainder of the Limited Warranty will be given full force and effect. Further, this warranty gives you specific legal rights and you may also have other rights, which may vary from State to State.

12. SEVERABILITY

If a term or condition of this Limited Warranty is held invalid, void or unenforceable, such holding shall not affect any other terms or condition of this Limited Warranty.

13. MODIFICATION

No term or condition of this Limited Warranty may be amended or modified except by an instrument in writing executed by the CEO of Messana who holds the right to amend the terms and conditions of this Limited Warranty from time to time without notice.

