



Johnson MarCraft TERMS AND CONDITIONS OF SALE



1. **Terms of Sale:** Sale of goods by Johnson Heater Corp. d/b/a Johnson MarCraft ("Seller") to Buyer is made solely on the terms and conditions hereof notwithstanding any additional or conflicting terms or conditions, oral or written, that may be contained in any purchase order or other form of purchase, all of which additional or conflicting terms and conditions are hereby objected to and rejected by Seller. No representations or warranties other than those contained herein shall be binding upon Seller unless made in writing and signed by an officer of Seller. In any event, acceptance of a shipment shall constitute acceptance of these terms and conditions. The goods sold hereunder are custom manufactured and are exclusively described in Seller's Submittal.
2. **Price:** All quotations, unless otherwise specified, are subject to acceptance by Buyer within thirty (30) days from date of quotation. Prices quoted by Seller on products manufactured by Seller are subject to change without notice. Prices quoted by Seller to Buyer, based on raw material, components and other goods purchased by Seller, are subject to adjustment by the same percentage of price changes as made effective by Seller's suppliers prior to the date of shipment.
3. **Terms of Payment:** Terms of payment are cash in full within thirty (30) days of invoice date unless otherwise authorized in writing by Seller. Progress payments are invoiced by Seller upon approval of Submittals, ordering of materials, commencement of manufacturing and completion of manufacturing all or any part of Buyer's order. All past due accounts will be subject to a service charge of up to one and one-half percent (1-1/2%) per month (or, if less, the maximum rate permitted by applicable law). All orders and shipments at all times are subject to the approval of Seller's Credit Department. Seller may require full or partial payment in advance of production or shipment if in the judgment of Seller the payment terms or financial condition of Buyer does not justify other terms. If Buyer delays shipments for any reason, payments shall become due from the date on which Seller notifies Buyer that Seller is prepared to make shipment, and storage thereafter shall be at Buyer's risk and expense. Acceptance by Seller of Buyer's partial payments shall not constitute a release of Buyer from any balance due claimed by Seller. Buyer shall pay all of Seller's attorney fees and collection expenses in the event Buyer is in breach of the terms of payment or any other provision of these Terms and Conditions of Sale. Seller shall have an ongoing security interest in the goods and Buyer agrees to execute any forms requested by Seller to perfect this security interest. In addition to all other remedies, Seller may reclaim and repossess the goods.
4. **Delivery:** Delivery shall be made EXW per Incoterms 2000 with carrier selected by Seller, unless otherwise agreed in writing. Seller shall have the right to deliver any portion of the goods and to invoice Buyer. All goods are shipped at Buyer's risk. Any claims for damage or shortage in transit when goods are shipped by common carrier must be filed by Buyer against the carrier. Claims for factory damages or shortages are waived by Buyer unless made in writing to Seller within ten (10) days after receipt of goods and accompanied by reference to Seller's bill of lading and factory order numbers. Any delivery dates or times which may be specified are estimates only and are not guaranteed. Seller shall not be responsible for any delay or failure to meet a shipment date caused by circumstances beyond the reasonable control of Seller or others, including but not limited to, acts of God, riots, strikes, accidents, lack of transportation, or shortages of fuel, power, labor or equipment. Buyer agrees to pay for the goods notwithstanding the fact that Buyer may be unable to receive or provide suitable storage space for any partial delivery. If stored by Seller, Buyer agrees to pay storage charges to Seller as an extra.
5. **Taxes:** Buyer is responsible for all sales and use taxes. Seller may require Buyer to pay or to reimburse Seller for any tax (except Seller's income tax) which now or hereafter may be imposed by any taxing authority with respect to the products or the sale, purchase, manufacture, delivery or use thereof.
6. **Cancellations or Holds by Seller:** Accepted orders shall not be cancelled or placed on hold by Buyer, unless Seller consents in writing. In the event of cancellation, Buyer shall promptly pay to Seller as fixed, agreed and liquidated damages, and not as a penalty, a sum equal to direct and indirect costs of Seller plus ten percent (10%). In the event Buyer places its order on hold, and Seller consents, Seller shall invoice Buyer for the portion of the work completed, including but not limited to, Seller's direct and indirect costs (storage, opportunity and all other costs) as determined by Seller, and Buyer shall pay said invoice as provided for in these terms and conditions of sale.
7. **Field Services:** All Field Services provided by Seller, if any, are set forth in Seller's Submittal, are payable at Seller's current per diem rates plus expenses, are for one (1) trip to the jobsite, are non-refundable, are subject to two (2) weeks minimum advance notice in writing from Buyer stating Seller's products and the jobsite are prepared for Seller's field services, and are subject to Buyer providing requested tools/equipment and qualified technicians to work with and be available to Seller's field service representative. Field Service work and all start-ups of Seller's equipment shall be by factory-trained and authorized technicians.
8. **Warranty:** Seller warrants that the goods sold to Buyer shall be free from defects in material or workmanship for a period of one year from the date of shipment. If Buyer notifies Seller within the warranty period of a defect, Seller at its option will repair or replace the defective component or goods F.O.B. at Seller's Plant. Any lawsuit or claims by Buyer must be brought within one (1) year of Seller's shipment of the goods to Buyer. This warranty extends only to the original Buyer or purchaser. Any damage from improper handling, storage, abuse, misuse, or alteration of the goods in any manner voids Seller's warranty obligation. **THIS WARRANTY CONSTITUTES BUYER'S SOLE REMEDY. IT IS GIVEN IN LIEU OF ALL OTHER WARRANTIES. ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER THE THEORY BE BREACH OF THIS OR ANY OTHER WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.** Labor or service costs, refrigerant losses, the physical or chemical effect on the goods from the use of air, water or steam, including costs for removing or installing parts, and any shipping charges are expressly excluded from this warranty. No person (including any agent or salesperson) has authority to expand Seller's obligation beyond the terms of this express warranty, or to state that the performance of the goods is other than that published by Seller. Failure by Buyer to pay in accordance with these Terms and Conditions of Sale voids Seller's warranty.
9. **Returned Goods:** Goods may not be returned except by permission of an authorized Corporate Officer of Seller at St. Louis, Missouri. Goods returned without prior authorization shall be at Buyer's risk and expense with no obligation by Seller.
10. **Field Rework, Repair and/or Modification:** The Seller will not be responsible for nor accept any costs incurred through field rework, repair and/or modification of its goods or any other charge, back charge or expense without prior written authorization by Seller.
11. **Product Changes:** Buyer is responsible for the approval of Seller's Submittal. Seller reserves the right to receive such approval unconditionally.
12. **Patents:** If any goods shall be manufactured or sold by Seller to meet Buyer's specifications or requirements and are not a part of Seller's standard product offering, Buyer agrees to indemnify and save harmless Seller from any and all damages, claims and demands for actual or alleged infringement of any United States or foreign patents because of such goods.
13. Any controversy or claim arising out of or relating to payment, or to Seller's Submittal, Buyer and Seller's contract or these Terms and Conditions of Sale, or any other matter, shall be settled by arbitration in St. Louis County, Missouri administered by the American Arbitration Association (AAA) under its Construction Industry Arbitration Rules, and Buyer and Seller hereby waive any appeal from the arbitration award and consent to the confirmation and entry of judgment thereon with or without notice in any court having jurisdiction over either Buyer or Seller. Buyer and Seller agree to use the Fast Track Procedures provided for by AAA Rules and Procedures.