

# GENERAL TERMS AND CONDITIONS OF SALE

1. Conditional Acceptance of Offer. While this acknowledgement constitutes acceptance of Buyer's offer to purchase contained in that purchase order referenced on the face page hereof, such acceptance is expressly conditional upon Buyer's assent to all of the terms and conditions set forth herein or incorporated herein by reference. To the extent that the provisions of this acknowledgement conflict with any of the terms, conditions or provisions set forth in any proposal, quotation, sales agreement, purchase order or other document, the provisions of the acknowledgement shall prevail.
2. Entire Agreement: Modification and Amendment. Buyer's purchase order, as modified by this acknowledgement and any attachments hereto, embodies the entire and complete agreement between the parties (the "Contract") with respect to the subject matter hereof and no additional or different terms shall become part of such Contract unless and until accepted in writing by HEATREX's factory sales staff. To the extent any advertising or promotional material of HEATREX contradicts or disagrees with the terms hereof, HEATREX and Buyer agree that the terms and conditions hereof shall control and that such advertising and/or promotional materials are not part of the Contract. No oral or written statements by HEATREX's sales representatives or other agents shall modify or vary the terms, conditions and provisions hereof unless and until confirmed in writing by HEATREX's factory sales staff on or after the date hereof. Except as expressly provided herein, this Contract is binding upon the parties hereto and is not subject to termination or cancellation unilaterally by either party.
3. Payment. Unless otherwise noted on the face hereof, the entire balance of the price for the goods sold and shipped pursuant hereto (the "Goods") is due on the 30<sup>th</sup> day following the date upon which the Goods are shipped. On any amounts not paid when due, Buyer shall pay all collection costs, including but not limited to interest at the rate of 1½ percent per month until paid in full and reasonable attorney's fees should this account be referred for collection.
4. Taxes. The prices stated herein do not include taxes imposed on the sale or use of the Goods. Any such applicable taxes shall be paid by, and the responsibility of, the Buyer, unless otherwise stated on the face hereof.
5. Quantity Variations. Shipments of custom heating elements may be subject to minor variations from order quantity.
6. Delivery. All prices for Goods are F.O.B. HEATREX's plant freight collect, unless otherwise stated on the face hereof. If Buyer requests delivery other than freight collect, Buyer shall pay, in addition to the price for the Goods, a freight charge equal to the amount charged by the selected common carrier or delivery agent, without credit or rebate for any discount allowed to HEATREX by such carrier or agent. Delivery shall be accomplished by the means specified on the face hereof. Buyer agrees to assert any claims for shortages, losses or damages in shipment solely against the carrier or carriers delivering such goods, any claim against HEATREX based upon such shipment losses being hereby expressly waived by Buyer. While HEATREX will endeavor to ship the goods in a timely fashion, HEATREX does not guarantee that such shipment will be made on or before the date specified. HEATREX and Buyer agree that HEATREX shall not be liable for any compensatory, consequential, special or punitive damage arising out of the failure of the Goods shipped on or before such specified date. Company reserves the right to charge a storage fee of 1.5% of the purchase price per month with a minimum monthly charge of \$300, for any orders not shipped due to the customer's failure to provide shipping instruction.
7. Force Majeure. In the event that HEATREX's performance hereunder is prevented or hindered by causes beyond its control, including without limiting the generality of the foregoing, Acts of God, labor dispute, fire, flood, war, riot, explosion, accident, embargo, material, fuel or power shortage, breakdown of machinery or apparatus, regulation, rule or law of any government authority, whether or not foreseen or foreseeable by HEATREX, HEATREX shall have the option upon notice to buyer to (a) suspend its performance hereunder until such force majeure is eliminated, or (b) terminate this Contract, in whole or in part. In such event if HEATREX shall elect to terminate this Contract in its entirety, this Contract shall be rendered null and void to extent not already performed, without imposition of liability on either party hereto.
8. Product Liability: Indemnification. HEATREX and Buyer hereby agree that HEATREX's liability for injury to persons or for damage or destruction of property shall be limited to only those losses proximately caused by the design or manufacture of the goods, and that Buyer shall be solely responsible and liable for the installation, use, and application of the Goods. Buyer agrees to, on demand, defend, indemnify and hold HEATREX harmless from and against any and all losses, claims, liabilities, costs and expenses (including attorneys' fees) incurred or suffered by HEATREX arising out of the installation, use or application of any product or system in which the Goods constitute a component part.
9. Limited Warranty. HEATREX new products are warranted against defects in workmanship, material, design, labeling and packaging. No other warranty, express or implied, written or oral, applies. No person other than an officer or the general manager of HEATREX is authorized to give any other warranty or assume any liability.  

WARRANTY PERIOD: This warranty is effective for eighteen months from the date of shipment of the product from HEATREX's factory or for twelve months from the date the product is first placed in service, whichever period lapses first.

CONDITIONS OF WARRANTY: HEATREX products must be installed, operated and maintained in accordance with HEATREX's instructions. HEATREX is not liable for damage or unsatisfactory performance of the product resulting from accident, negligence, alteration, unauthorized repair, improper application or installation of the product, improper specifications, or corrosion. HEATREX IS NOT LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. Claims against carriers for damage in transit must be filed by the purchaser with the carrier.

REMEDY: Contact the HEATREX sales department at (314) 333-5500, for a Return Material Authorization Number (RMA#) and return instructions.
10. Assignment. The Contract may not be assigned by Buyer without the prior written consent of HEATREX.
11. Notices. Any notice required or permitted hereunder shall be in writing, signed by the party giving notice and shall be deemed to have been given when delivered by personal delivery, by telegraph, telex or facsimile transmission, by overnight courier, or by registered or certified mail, postage prepaid, to HEATREX or Buyer at the address set forth on the face page hereof.
12. Vendor's Lien. Buyer hereby grants unto HEATREX a vendor's lien on the Goods until the price for the Goods is paid in full. In the event Buyer shall fail to make payment in accordance with the Contract, HEATREX may, without prejudice to any other remedy available at law or in equity, (a) repossess itself of the Goods at Buyer's sole cost and expense, or (b) suspend further shipments of Goods to Buyer.
13. Waivers. No delay on the part of either party hereto in exercising any right hereunder shall operate as a waiver thereof, and no single or partial exercise of any such right shall preclude any other for further exercise thereof, or be deemed to establish a custom or course of dealing or performance between the parties hereto.
14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the United States and the State of Missouri.
15. Arbitration. Any controversy or claim arising out of or relating to this contract, including an alleged breach thereof, shall, at HEATREX's sole election, be settled and resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in St. Louis, Missouri, and judgment may be entered on the award in any court of competent jurisdiction.

