

Nexthermal Purchase Order Terms & Conditions

1. **ENTIRE AGREEMENT:** No oral agreement or other oral understanding shall in any way modify this order, or the terms or the conditions hereof. Seller's action in accepting this order, or delivering the material called for hereunder shall constitute an acceptance of the terms and conditions of this purchase order. Terms and conditions contained in or submitted with Seller's acknowledgment and/or proposal shall be ineffective to Nexthermal unless expressly accepted by Nexthermal in writing.
2. **PAYMENT:** Unless otherwise indicated, payment shall be made 45 days from the date the invoice is received at Nexthermal. Time for calculation of payment shall be computed from the date of invoice. Payment of an invoice shall not be an admission on the part of Nexthermal that this order, or any part thereof, has been complied with so as to preclude any action for damages against Seller should the work hereby required not be performed and/or furnished in the substantial and workmanlike manner per the specifications. Nexthermal shall at all times have the right to set off any amount owed to Nexthermal by Seller against any amount payable at any time by Nexthermal or Seller including the right to retain monies owed to Seller when Nexthermal has reason to expect or anticipate legal action or legal action exists due to the Seller's performance under this Order.
3. **TAXES:** Prices stated on the face of this Order include all local, State and Federal taxes, if any, applicable to this order unless otherwise expressly stated herein.
4. **DELIVERY:** Time is of the essence. Unless excused by Section 8 hereof, Seller's failure to deliver material of the quality and within the time or times specified shall, at the option of Nexthermal, without waiver of any other legal right it may have, relieve it of any obligation to accept and pay for such material, as well as any undelivered installment unless otherwise indicated, all material is shipped FOB Destination.
5. **TERMINATION:** Nexthermal shall have the right to terminate this Order, in whole or in part, at any time by written notice to Seller. Upon receipt of notice of termination, Seller shall stop all work in connection with this Order or that portion terminated. In the event of such termination, Nexthermal shall pay, as full compensation for Seller's Work Seller's actual costs to the day Work is stopped, including any reasonable expenses incurred by Seller in connection with its termination of any orders or subcontracts hereunder, plus a reasonable allowance for overhead and profit on the Work performed to date in no event shall the total sum payable upon such termination exceed the value of the purchase order.
6. **CHANGES:** Nexthermal shall have the right to make changes in or additions to the instructions, drawing, or specifications for the Goods or Services to be supplied under this

Order and Seller agrees to comply with such Change Notices which shall become a part of the Order. Any claim by Seller for Adjustment under this clause must be asserted in writing within ten (10) days from the date of receipt by Seller of the Change Notice. Failure to do so shall constitute a waiver of such claim. Upon receipt of an acceptable proposal from the Seller, a written Change Order will be issued by the Nexthermal stating that the extra work or change is authorized and granting any required adjustment of price and schedule Seller shall not perform any work it considers a change or an additional unless such change or additional work is pursuant to a written Change Order, and no claim for an addition to the Order price shall be valid unless documented by Change Order. Additional work performed without a Change Order is performed at Seller's sole risk and expense.

7. LIEN INDEMNIFICATION: Seller agrees to indemnify and hold Nexthermal and Owner harmless for any and all claims, liens, judgments, damages, costs (including court costs and attorney's fees) and expense suffered or incurred by Seller. If a notice of lien or the like alleging non-payment should be filed or served upon Nexthermal, Nexthermal shall have the right to retain out of any payment to Seller then due, or thereafter to become due, an amount sufficient to completely indemnify Nexthermal and Owner against said potential lien. If such payment amount is not sufficient to fully indemnify Nexthermal and Owner, Seller shall compensate Nexthermal and Owner for the insufficient amount.
8. FORCE MAJEURE: Neither Nexthermal nor Seller shall be liable for delays in performance or failures of performance when caused by fires, strikes, epidemics, directions of the Government, war, natural catastrophes, sabotage, civil insurrection, acts of God, or other unforeseeable occurrences which are beyond the reasonable control of the parties.
9. RISK OF LOSS: Unless this Order specifically provides otherwise, transfer of the title and risk of loss or damage to the goods covered by this Order shall remain with Seller until acceptance by Nexthermal or Delivery of the goods to the possession of Nexthermal at the destination specified in this Order, whichever occurs later. Notwithstanding the foregoing, the risk of loss or damage to Goods which so fail to conform to the Order as to give Nexthermal a right of rejection shall remain with Seller until cured; provided however, Seller shall not be liable for loss or damage caused by negligence of agents or employees of Nexthermal acting within the scope of their employment.
10. INSPECTION OF GOODS: Payment of or the goods delivered hereunder shall not constitute acceptance thereof. Nexthermal shall have the right to inspect such Goods and to reject any or all of said Goods which are judged to be defective or not in conformance with this Order. Goods so rejected and Goods supplied in excess of quantities called for herein may at the discretion of Nexthermal, be returned to the Seller at seller's expense. In the event Nexthermal receives goods whose defects or nonconformity is not apparent on

examination resulting in deterioration of Seller's product, Nexthermal reserves the right to require repair of the replacement with all costs borne by Seller.

11. **DEFAULT:** The following circumstances shall, among others, be deemed a default by Seller: (i) Seller fails to make any delivery of goods in the specified quantity or fails to perform any Services, within the time specified herein or any extensions thereof which are agreed to in writing by Nexthermal; (ii) Seller breaches or fails to perform (whether the breach or failure is material or not) any of the other terms and conditions of this order; (iii) Any proceeding in bankruptcy or insolvency is initiated by or against Seller, Seller makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for Seller; and (iv) Seller experiences financial difficulties which, in Nexthermal's judgment, might prejudice Seller's ability to fulfill the terms and conditions of this order. Upon a default by Seller, Nexthermal, in addition to its other remedies, may pursue at any time any one or more or all of the following remedies (i) Seller shall indemnify Nexthermal and hold it harmless for all liabilities, damages (including consequential and incidental), expenses (including refunds to Nexthermal's customers and administrative and other costs incurred by Nexthermal) and or claims (including attorney's fees and legal costs) resulting directly or indirectly, from Seller's default, (ii) Nexthermal may cancel its obligations under all or any part of this order (iii) Nexthermal may elect to reject the full credit, replacement or correction or retain any or all of the Goods which have been delivered to Nexthermal, paying seller the fair value of Goods retained, as determined by Nexthermal, (iv) Nexthermal may require correction of the goods in place; (v) Nexthermal may require Seller to transfer title to and deliver to Nexthermal any and all of the goods not previously delivered by Seller or previously delivered and rejected by Nexthermal, of the goods so requested after their delivery to Nexthermal, and/or (iv) Nexthermal may procure the same or similar Goods elsewhere and /or manufacture the same or similar Goods holding Seller liable for all additional cost of such procurement and or manufacture (including transportations and insurance charges). Upon Seller's default, Nexthermal shall have no obligation or liability whatsoever to Seller except as provided above. Seller shall continue performance of any part of this order which is not cancelled. Seller shall be accountable to Nexthermal for any legal fees and costs incurred by Nexthermal in the prosecution of its right hereunder.
12. **INFRINGEMENT:** Seller shall protect and indemnify Nexthermal, its subsidiaries and its customers from and against all claims, liabilities and losses arising from infringement or alleged infringement of any right of a third party by the sale (including resale), delivery, acceptance, possession or use (except use in combination with another material or in the practice of any process) of the material covered by this order whether or not the material is according to Nexthermal's specifications, drawings or samples, and Seller shall defend at

its own expense all proceeding instituted against Nexthermal, its subsidiaries and customers, based on said infringement or alleged infringement.

13. **TITLE OF WARRANTY:** Seller warrants Nexthermal full, clear and unrestricted title to all Goods furnished by Seller in performance of the Order free and clear of any and all liens, restrictions, security interests and encumbrances. Seller represents and warrants that all materials, goods and/or services, delivered under this Order shall be merchantable and free from all defects in material and workmanship, shall be fit for their intended purpose, and shall strictly conform to the specification, if any. If this Order relates to purchase of a chemical product, the Seller also represents and warrants that Seller has fully disclosed to Nexthermal all material information known to Seller regarding risks to human and animal health and the environment that may be associated with the use, exposure to for disposal of that product.
14. **RESOLUTION OF CONFLICTS OR INCONSISTENCIES:** It is Seller's responsibility to comply with this and all referenced documents and to clarify with Nexthermal any inconsistencies or conflicts in any parts of this Order, such as the terms of this Order, additional terms and conditions, general specifications, detailed specifications, and the like furnished by Nexthermal in connection with this referenced the version in effect at the time of order placement shall apply.
15. **CONFIDENTIALITY:** Seller and Nexthermal are obliged to keep strictly confidential all information (written or verbal), including plans, drawings, documents and know-how furnished by Nexthermal unless such information and data are a matter of common knowledge and a part of the public domain, which it has already received or which it may acquire from Nexthermal at any time for the performance of work. Seller shall be obliged to obtain prior written approval from Nexthermal for any press release or report in relation with this Order prior to such release.
16. **COMPLIANCE WITH LAWS AND REGULATIONS:** Seller warrants that all Goods sold or Services performed hereunder have been or will be manufactured and packaged or, in the case of Services performed in compliance with all applicable local, state, and federal laws and regulations including but not limited to Fair Labor Standards Act, Occupational Safety and Health Act, and Equal Employment Opportunity. In accepting this Order, Seller assumes responsibility for a testing, process control, labeling and other requirements of the U.S. Consumer Product Safety Commission and/or other regulatory, agencies or laws and is responsible for reporting product hazards in accordance with Section 15 of the Consumer Product Safety Act, Public Law 92-573.
17. **WAIVER:** Failure of Nexthermal to insist upon strict performance of any of the terms and conditions of this Order, or to exercise any right or privilege contained in this Order, or the

waiver, of any breach of the terms or conditions of this Order shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred. All rights and remedies reserved under the terms and conditions hereof shall be cumulative and in addition to any further rights and remedies provided in law or equity.

18. **GOVERNING LAW:** This Order shall be governed by the laws of the State of Michigan without regard to the conflicts of law provision thereof.
19. **RIGHT OF ENTRY:** Nexthermal Corporation hereby reserves the right of entry to the Suppliers facilities for the purpose of verifying quality, auditing procedures and /or inspection of the purchase items. The Right of Entry shall extend to Nexthermal Corporation customers, Government, or other regulatory agency. Nexthermal Corporation shall adequately notify the Supplier in advance of the visit.
20. **WORK ON PREMISIS:** If this Order involves the presence of Seller on the Premises of the Nexthermal or Nexthermal's Customer, Seller shall comply with all safety and security regulations and shall take all necessary precautions to prevent injury or damage persons or property while so engaged, Seller shall indemnify, defend, and save Nexthermal and/or Nexthermal's Customer harmless from and against liability, losses and expenses (including costs and attorney's fees) for any suit, claim , settlement, award or judgment (herein referred to single or collectively as the "claim") arising out of the failure of Seller to comply with safety and security regulation, and out of any negligence on the part of Seller, except to the extent such claim may be caused solely by the negligent act or omission of Nexthermal and/or Nexthermal's Customer.
21. **DRAWINGS, PATTERNS, ETC:** All drawings, blueprints, tracings, patterns, samples, and the like, prepared by Seller and paid for by Nexthermal, or furnished hereunder to Seller by Nexthermal, and in the information contained therein, are the property of Nexthermal, shall not be used by Seller, except to execute this Order, or except as authorized in writing by Nexthermal, and shall be delivered to Nexthermal promptly after completion or termination of this Order.