



Headwater Engineered Systems Terms & Conditions of Sale

SCOPE: The terms and conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by Headwater Engineered Systems ("HES"). These terms apply to all sales made by HES except to the extent the Terms conflict with an existing individual customer contract where special terms and conditions (signed by HES and Buyer) may take precedence over this document. These terms apply in lieu of any course dealing between the parties or usage of trade in the industry. These Terms may, in some instances, conflict with other terms and conditions referenced to. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. HES's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing, signed by an officer of HES before becoming binding on either party.

ORDERS: Phone lines are available for placing your orders. Please use the HES's order numbers, size and any other definite information necessary. Whenever possible, orders will be processed and shipped within 24 hours. All items not shown as shipped have been back ordered and will be shipped as soon as possible unless otherwise notified. HES reserves the right to correct clerical errors or omission in quotations or other documents.

DELIVERY: All orders are shipped EXWORKS shipping location. We reserve the right to ship via the most economical transportation means, including therouting of the shipment, and the selection of the point of origin for the shipment. If special routing or method is requested, resulting in a higher rate, the additional amount will be charged to the customer. HES will not be responsible for any extra charges, handling or otherwise, arising out of possible misdirected shipments to any location. If the specific error was HES's, only the additional freight charged involved in returning the shipment to HES, or the freight cost involved in forwarding the shipment to another location or company will be paid by HES.

SHORTAGES & FREIGHT CLAIMS: No claims for allowances will be entertained unless presented immediately upon receipt of goods. Shortages or damaged material must be noted on the delivery receipt. HES will not be held responsible for breakage or shortage after goods are delivered to and accepted from the common carrier. Seller shall retain a security interest in the products until Buyer's final payment to HES for the products. Risk in the products shall pass to Buyer as soon as the products have been placed with a transport agent.

MINIMUM INVOICE: HES has a minimum invoice order amount of \$25.00

PRICES & QUOTATIONS: Orders will be invoiced at the price in effect at the time of shipment. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer, unless Buyer provides a proper tax exemption certificate. Unless otherwise specified, prices are Ex Works. All prices and quotations are subject to change without notice. If you need material not shown in our catalog, then please call for a quote. When ordering quoted items, you must specify price, quantity and our quote number.



PAYMENT TERMS: Unless otherwise agreed in writing, payment terms shall be Net Thirty (30) days from the date of invoice. Buyer agrees to pay interest on any unpaid balance as detailed below under "Finance Charges". Unless otherwise agreed in writing, all payments are to be in United States dollars. In the event what HES is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorney's fees and costs of suit.

FINANCE CHARGES: Any account that is past its normal terms will be assessed a finance charge as stated on each invoice. Standard finance charges are 2% per month.

CANCELLATION: Special Order Items may be cancelled only with HES's consent and will be subject to the manufacturer's standard restock charge. Stock items will be subject to a 25% handling and restocking charge. The purchaser will be billed for reasonable charges based on expenses incurred or will occur due to commitments made by HES for the cancelled order.

RETURN MATERIAL POLICY: Material you desire to return will be considered for credit subject to a 25% restocking charge. Material must be approved for return and in good saleable condition within thirty (30) days of delivery.

WARRANTY FOR NON-MANUFACTURED PRODUCT: Defective material under manufacturer's warranty will be accepted for return to be replaced or repaired in accordance with the manufacturer's policy. HES offers no additional warranty beyond that of the manufacturer's written warranty policy. Please include the invoice number & date of purchase. All warranty return merchandise should be sent prepaid.

WARRANTY FOR HEADWATER MANUFACTURED PRODUCT: Unless otherwise expressly authorized in writing, specifying a longer or shorter period. HES warrants for a period of EIGHTEEN (18) months from the date of shipment, or ONE (1) year from the date of installation, whichever occurs first, that all products or parts thereof furnished by HES under the brand name Headwater Engineered Systems, hereinafter referred to as the "HES Product", are free from defects in materials and workmanship and conform to the applicable specification.

HES's liability for any breach of this warranty shall be limited solely to replacement or repair, at the sole option of HES, of any part or parts of the HES Product found to be defective during the warranty period, provided the HES Product is properly installed and is being used as originally intended. Any breach of this warranty must be reported to HES or its authorized service representative within the warranty period, and defective product or parts thereof must be shipped to HES, transportation charges prepaid. Any cost associated with removal or installation of a defective HES Product or part is excluded.

IT IS EXPRESSLY AGREED THAT THIS SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR. UNDER NO CIRCUMSTANCES SHALL HES BE LIABLE FOR ANY COSTS, LOSS, EXPENSE, DAMAGES, SPECIAL DAMAGES, INCIDENTAL DAMAGES OR CONSEQUENTIAL DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THE DESIGN, MANUFACTURE, SALE, USE OR REPAIR OF THE HES PRODUCT, WHETHER BASED ON WARRANTY, CONTRACT, NEGLIGENCE, OR STRICT LIABILITY. THE AGGREGATE LIABILITY OF HES TO BUYER SHALL BE LIMITED IN RESPECT OF ANY OCCURRENCE OR SERIES OF OCCURRENCES TO THE TOTAL CONTRACTUAL VALUE OF THE PRODUCTS OR SERVICES SUPPLIED BY HES UNDER THESE TERMS AND TO WHICH THE CLAIM RELATES. EXCEPT FOR THE WARRANTY SET FORTH ABOVE, HES MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE HES PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.



HEADWATER
ENGINEERED SYSTEMS

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HES neither assumes, nor authorizes any person to assume for it, any other warranty obligation in connection with the sale of the HES Product. This warranty shall not apply to any HES Product or parts of HES Product which have (a) been repaired or altered outside of HES unless such repair was authorized in advance by HES or by its authorized representative; or (b) have been subject to misuse, negligence or accident; or (c) have been used in a manner contrary to HES's instruction.

WAIVER: Failure by HES to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate to bar the exercise or enforcement thereof at any time or times thereafter.

APPLICABLE LAW: Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the state of Texas. Any dispute arising from or in connection with these Standard Terms and Conditions will be brought before a court of competent jurisdiction within the state of Texas.

FORCE MAJEURE: HES shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of God, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of HES. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

CONFIDENTIALITY: Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other if it reasonably knows to be confidential.