

Terms & Conditions

1. **Agreement.** Except where fully executed MSA exists, this Agreement contains the entire Agreement between Zonatherm Products, Inc. ("Company") and Customer (collectively, "Parties") and supersedes all prior and contemporaneous understandings or agreements between them with respect to the subject matter hereof. This Agreement may be supplemented, amended or modified by the mutual agreement of the Parties only if in writing and signed by both Parties.
2. **Quotation Acceptance.** All quotations offered by Company are valid for thirty (30) days from the quote date and exclude applicable taxes.
3. **Termination for Default.** Either Party may terminate this Agreement for cause upon a material default by the other Party, which default either remains uncured five (5) business days after written notice thereof is given to the defaulting Party or is incapable of being cured, in which case the Agreement shall terminate upon the date of the default notice. If either Party becomes or is declared insolvent or bankrupt, admits in writing of its inability to pay debts generally as they become due, is the subject of any proceedings relating to its liquidation or insolvency, or makes an assignment for the benefit of all or substantially all of its creditors, then the other Party may, by giving written notice thereof to such Party, terminate this Agreement as of a date specified in such notice of termination. If any third-party, without the consent of Company, makes additions, alterations, or repairs to the equipment covered within this Agreement during the Term of this Agreement, this Agreement is terminable at Company's option, upon five (5) business days written notice.
4. **Termination for Convenience.** This Agreement may be terminated by either Party at any time upon thirty (30) days prior written notice to the other Party.
5. **Obligations upon Termination.** Upon termination or expiration of this Agreement, Company will terminate or wind-down all services in process in an orderly manner as soon as practicable. Any equipment purchased for projects is subject to, including but not limited to, cancellation, restocking, and/or freight fees as applicable. Customer shall pay Company any monies due and owing for Services performed net-thirty (30) days from date of termination. If Customer has paid Company for Services not performed as of the date of termination, Company will refund any such amounts to Customer net-thirty (30) days from date of termination.
6. **Independent Contractor.** It is mutually understood and agreed that the Company is acting and performing hereunder as an independent contractors and that no employer/employee, agency, joint venture, or partnership relationship is created between the Parties during the term of this Agreement. Company shall not represent to third parties that it is an employee or agent of Customer in the provision of services under this Agreement.
7. **Non-Solicitation.** Customer agrees that, during this Agreement and for a period of twelve (12) months following its termination or substantial completion of services, it shall not, directly or indirectly, solicit for employment or hire, or attempt to solicit for employment or hire, any person who is employed by Company and who was involved in the performance of services under this Agreement, without the prior written consent of Company. This restriction shall not apply to general employment solicitations not specifically targeted at Company employees, including advertisements published in newspapers, internet job boards, or general recruitment efforts by third-party recruiters not directed specifically at Company or its employees. Customer acknowledges that this restriction is reasonable in duration and scope and is necessary to protect the legitimate business interests of Company, including the stability of its workforce and investment in employee training and development.
8. **Delays.** Company shall not be liable for injury to persons, damage to property, or loss or damage to equipment resulting from its failure to perform the services described herein when such delays are caused by conditions which are beyond the reasonable control of Company, including but not limited to: Acts of God, fire, floods, riots, strikes, labor troubles, material shortages, public utility or electrical failure, and terrorism.
9. **Payment.** Payments are due net-thirty (30) days from date of invoice. Company reserves the right to discontinue Services at any time, upon ten (10) days prior written notice via mail or email to a Customer representative, until undisputed payments due have been made as agreed. In the event of such an election by the Company, Customer hereby releases the Company from any and all claims, damages or liabilities arising out of any delay in completion of the Work to be done by the Company pursuant hereto. Lien waivers and affidavits from Company, for the Work, shall not be required by Customer as a prerequisite for payment.
10. **Pricing.** Company will provide Customer thirty (30) days prior written notice of any changes. The Purchase Price shall also include: Interest assessed on any unpaid balance due at a rate of 1.5% per month and any fees, subscriptions, or surcharges related to portal registration and invoice submission or payment processing at cost of transaction plus fifteen percent (15%) administrative fee. All interest hereunder shall be computed for the actual number of days elapsed on the basis of a year of three hundred sixty (360) days; a late charge of five percent (5%) of the Total Price (the "Late Charge") when such Total Price, or any portion thereof, remains unpaid more than thirty (30) days after its due date. This Late Charge shall be paid as liquidated damages in lieu of actual damages, and not as a penalty, but shall not bar recovery by the Company of any litigation fees and costs herein set forth; and reimbursement to the Company for any costs, expenses, attorneys' fees, consultants' fees, expert fees and litigation costs incurred or anticipated to be incurred in connection with collection of the Total Price, including, but not limited to, any suit to collect the Total Price, which arises in connection with the failure of Customer to make full payment immediately when due.
11. **Change Orders.** No material change may be made without fully executed change order detailing the revised scope or specifications, delivery or other scheduled date, and price. Change order requests are subject to fees determined at the sole discretion of Company. Customer acknowledges any change to scope or specifications may impact delivery or other scheduled date and accepts sole responsibility for any and all delays, damages, penalties, fees, etc., resulting from the change.
12. **Credit Card Surcharge.** The Customer acknowledges and agrees that all payments made using a credit card will be subject to an additional surcharge of 3% of the total transaction amount. This surcharge is applied to cover processing fees associated with credit card transactions. The surcharge will be clearly disclosed at the time of payment and added to the final amount due. By proceeding with a credit card payment, the Customer agrees to this additional charge.

- 13. Portals and Processing Fees.** Any fees, subscriptions, or surcharges related to portal registration, invoice submission, or payment processing will be added to invoices at cost of transaction plus fifteen percent (15%) administrative fee.
- 14. Tariff Price Adjustment.** The prices set forth in this Agreement are based on applicable tariffs, duties, taxes, and other governmental charges in effect as of the Effective Date. If any new tariffs, duties, taxes, or other charges are imposed, or existing ones are increased, modified, or reinterpreted by any governmental authority—whether directly or indirectly impacting the cost of raw materials, components, transportation, or finished goods—Company reserves the right to adjust prices to reflect the resulting increase in costs. Such price adjustments shall apply to all affected products, including any orders previously placed by the Customer that have not yet entered the manufacturing process at the time the tariff-related cost increase becomes effective. Company shall notify the Customer in writing of any such adjustment, which shall become effective immediately upon notice or as otherwise specified in the notice. Failure by the Customer to accept the adjusted pricing within ten (10) days of notice shall entitle Company, at its sole discretion, to suspend performance, cancel the affected order(s), or terminate this Agreement in whole or in part without liability.
- 15. Indemnification.** The Parties mutually agree to indemnify and hold each other (including their officers, agents, and employees) harmless against any and all claims, demands, damages, liabilities, and costs incurred by the other Party, including reasonable attorneys' fees, to the extent arising out of their negligence, willful misconduct, or omissions.
- 16. Waiver of Consequential Damages.** The Parties mutually agree to waive any right to recover consequential, incidental, special, punitive or exemplary damages of any kind from the other Party for any reason, including without limitation, loss of profits or revenues, loss of use, cost of capital or financing, rental costs, etc.
- 17. Confidentiality.** During the term of this Agreement, and any time thereafter, the Parties agree to protect all Confidential Information of the other Party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information. "Confidential Information" shall mean any and all information relating to a Party's protocols, projects or products, Intellectual Property Rights, technology, and financial or business information with the exception of any information that is publicly known (other than through unauthorized disclosure by that Party) or received by that Party by a third party without the obligation of confidentiality.
- 18. Notices.** All notices that may be given under this Agreement shall be in writing, addressed to the receiving Party's address set forth on the proposal unless otherwise noted below, and shall be delivered by (i) traceable courier service (such as Federal Express), (ii) sent by certified or registered mail, return receipt requested, and shall be deemed delivered upon personal service or within three (3) days from deposit in the United States Postal Service in the manner described herein, or (iii) email to the address listed below.

Customer

Zonatherm

Zonatherm Products, Inc.
 875 Busch Parkway
 Buffalo Grove, IL 60089
 Attn: Legal Department
 With a copy to legal@thermflo.com

- 19. Dispute Resolution.** The Parties shall meet and confer in good faith to resolve any disputes, claims, questions, or disagreements arising out of this Agreement. Either Party may initiate negotiations by providing written notice to the other Party, setting forth the subject of the dispute and the relief requested.
- 20. Governing Law and Venue.** This Agreement, and the rights and obligations of the Parties hereunder, shall be governed by, interpreted and construed in accordance with the laws of Illinois. All disputes arising out of this Agreement shall be exclusively resolved in a court of competent jurisdiction in the State of Illinois, with claims filed within two (2) years of the date of discovery, but not later than four (4) years from the date of the incident or occurrence. Each Party expressly consents to the jurisdiction and waives any objections or right as to *forum non conveniens*, lack of personal jurisdiction or similar grounds.
- 21. Unenforceability.** If any provision in the Contract Documents is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such provision of the Contract Documents to be illegal, invalid, unlawful, void, voidable or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, and the remainder of the Contract Documents shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable provision was not contained therein, and the rights, obligations and interests of the parties hereto under the remainder of the Contract Documents shall continue in full force and effect.
- 22. Authorization.** Customer, if a corporation, partnership, limited liability Company, limited partnership, limited liability partnership or sole proprietorship, represents and warrants that it is duly incorporated or organized under the laws of its respective state of incorporation or organization. Customer has the right and power to execute and/or accept the Contract Documents, and to grant all powers and rights granted to the Company hereunder.

- 23. Non-Payment Remedy.** Customer hereby authorizes any clerk of any court of record or any attorney, upon failure to pay the Total Price, or any portion thereof, immediately when due, to enter in any court of competent jurisdiction in the State of Illinois and enter judgment by confession against Customer, and in favor of the Company for the Total Price (less sums previously paid by Customer), together with accrued interest, any Late Charges, and actual attorneys' fees incurred by the Company and court costs, without stay of execution or right of appeal and expressly waiving the benefit of all exemption laws and all irregularity or error in entering such judgment or the execution thereon. No single exercise of the foregoing power to confess judgment shall be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable or void, but the power shall continue undiminished, and it may be exercised from time to time as often as the Company shall elect, until such time as the Company shall have received payment in full of all indebtedness of Customer to the Company. No renewal or extension of the time for payment of the Total Price, or portion thereof, or delay in enforcing any right of the Company under the Contract Documents shall affect the liability or the obligations of Customer. All rights of the Company under the Contract Documents are cumulative and may be exercised concurrently or consecutively at the Company's sole option.
- 24. Force Majeure.** The Total Price shall not be reduced for any delay due to circumstances beyond the Company's control, including strikes, casualty or general unavailability of materials, or Acts of God.
- 25. Warranty.** The terms of this covenant extend in perpetuity and take precedent over any written terms to the contrary unless one of the Parties provides a notice of cancellation in writing. These terms can be amended or modified only by written amendment(s) executed by Customer and Company. Company objects to any terms and conditions that differ from the terms contained herein which may be contained in a purchase order, written acceptance, or other document issued by Customer. Company facilitates the equipment(s) & part(s) warranties provided by our manufacturers. Company does not provide its own warranty outside of or in addition to manufacturer warranties. Company shall not be liable for any repairs, replacements, or adjustments to the equipment, or any costs of labor performed by the Customer or others without Company's express written approval. Warranty in all cases is limited to the manufacturers' warranty unless included as a line item to this agreement. Any part(s) found to be defective will be replaced at no charge subject to each manufacturer's respective warranty policy, which Company will administer. Any part(s) replaced that are not subsequently found to be defective by the manufacturer will be charged to the Customer. Warranty labor for replacement or repair is on site only. Should Company's or its service representative's travel to the location and find that the cause is not warrantable, all expenses incurred by Company or their service representative, including but not limited to travel and labor, will be billed to the Customer at Company's or their service representative's posted rates in no less than thirty (30) minute increments. Company or their service representative will not be responsible for crane, barge, or special transportation charges associated with warranty repairs.
- 26. Start-Up Requirements.** Equipment start-ups and warranty inspections require a minimum of ten (10) business days' advanced notice. To schedule a certified technician, contact 847-353-5400, ext.2, or email service@thermflo.com to request a start-up form. The installing contractor must have a completed equipment start-up form on file with Company before scheduling. The unit warranty becomes effective only after Company receives the completed start-up checklist. If Basic Operator Training is required, the installing contractor must notify Company in advance. Additional visits by Company technicians beyond the initial start-up will be billable directly to Customer, including but not limited to basic operator training and installation errors. Videotaping of Company personnel during start-up or training is not permitted.

Generac Order Additional Terms

- 27. Shipping Dates.** Any shipment date provided in the quote is approximate and is calculated from the lead-times provided by the manufacturer(s) of the quoted equipment. Customer acknowledges that the estimated ship date may change between the quote date and purchase order (PO) date, or when specification and drawing approvals are required. Company shall not be liable for any losses, damages, delays, or non-deliveries arising from the actions of the Customer or by reason of Force Majeure including but not limited to: Acts of God, war, riots or civil unrest, blockades, embargoes, sabotage, epidemics, fires, strikes or labor disputes, lockouts or other industrial disturbances, delays of carriers, the inability to secure materials, or supply chain shortages or manufacturing delays. Any delay resulting from any such cause shall extend shipping dates. Notwithstanding, Company shall not be held liable for any special, direct or indirect or consequential damages arising from material delay(s), regardless of cause.
- 28. Freight.** Equipment is shipped on an open flat-bed truck with other equipment. Dedicated truck delivery, or special truck is available by request only. Additional costs apply, inside delivery is not included. All reconsignment fees post shipment from Generac are the responsibility of the customer. Company is not responsible for any liquidated damages due to late shipments.
- 29. Shipping and Delivery Acceptance.** It is the responsibility of the Customer or the Customer's representative to inspect all equipment at time of delivery for visible or concealed freight damage. Apparent and /or concealed damage must be noted on the driver's delivery ticket, and subsequent freight claims must be completed and filed directly with the carrier by the Customer. Customer thirty (30) days from date of delivery to file freight claims when damage is noted with the carrier. Company expressly disclaims any damage incurred to equipment during shipment and shall not be held responsible for filing any freight claims relating to damaged equipment.
- 30. Equipment Storage.** It is hereby understood and agreed that the Customer will accept delivery of all purchased equipment upon fabrication completion. Company may, at the customers written request, store, or stage all or part of the customers purchased equipment at one of our strategic facilities provided the customer submits an acceptable "Bill & Hold" letter to Company. Customer hereby agrees to pay Company in full for all stored equipment. Additional Storage fees will be billed separately.
- 31. Exclusions.** Unless expressly listed in this quotation, the following products and services are excluded from the scope of work: Installation or installation material of any kind, code and standard review, testing and balancing, Infrared Scanning, NETA, or NIST, special monitoring, fault current coordination study, ATS upsizing as a result of fault current studies, and diesel fuel.

- 32. Literature.** Company will provide upon request, the manufacturers standard literature. This includes Spec Sheets, Bill of Materials, Drawings, Operation and Maintenance Manuals and/or Factory Test Reports. Company takes exception to all specification requirements & requests for non-standard factory literature.
- 33. Hours of Operation.** Normal hours of operation for Company are 8:00 am to 5:00 pm Monday through Friday central time. Any work performed outside of the normal operating hours will be billed at off-hour rates unless included in this quote.

Vertiv Order Additional Terms

- 34. Scope Exclusions.** The following are not included in this quotation: Commissioning, Installation, Rigging, Storage, Control Wiring (including Networking, Cabling, and Routers), Sound Attenuation, Circuit Breakers, Auxiliary Drain Pan, Vibration Isolation/Neoprene Pads, Roof Curbs, Housekeeping Pads, Refrigerant/Pre-Charged Line Sets, Glycol, Piping Specialties, BMS/BAS/EMS Interface, Basic Operator Training after Start-Up, Labor Warranty, Extended Parts Warranty, Field Testing/Balancing, Factory Performance Testing, Classroom/Technical Training, Spare Filters/Belts/Parts, or any other items not specifically listed in the Bill of Materials.
- 35. Freight and Delivery Terms.** Unless otherwise agreed, shipments are freight-on-board (FOB) Factory. Customer must inspect shipments upon delivery and report any damage immediately to the shipper and Company. The Customer is responsible for arranging inspection, issuing a purchase order for repairs or replacements, and filing any necessary freight claims. Claims for damage discovered after moving the equipment or not noted on the bill of lading at delivery will not be honored. FOB first destination, dedicated truck delivery, and lift gate service are available upon request and may incur additional charges. Company does not deliver via open bed trucks or trailers; such arrangements must be made by the Customer. Inside delivery is not included. Any reconsignment fees after shipment are the Customer's responsibility. Company is not liable for liquidated damages due to late shipments.
- 36. Additional Comments and Clarifications.** This quotation is based on the specification sections and mechanical drawings reviewed by Company for this project. Flexible duct connections are by others. No extra parts are included unless specifically stated.

Maintenance & Service Additional Terms

- 37. Automatic Renewal.** Where applicable, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term") on the anniversary of the date first executed, with a reasonable market adjustment to the agreement price and time and material rates, unless written intent not to renew is given by one Party to the other at least thirty (30) days prior to the end of the initial or any renewal Term, or unless Customer requires a PO or other written form of approval.
- 38. Access to Equipment.** It is agreed that Customer will provide reasonable means of access to the site and equipment, including any removal, replacement, or refinishing of the building structure required. If Company is unable to get access to the site to perform Preventative Maintenance within the month of the scheduled maintenance due to Customer scheduling issues or request, Company shall no longer be liable for performing that service visit but shall be due payment for it.
- 39. Miscellaneous HVAC.** This Agreement does not include water treatment, air balancing, duct work or duct cleaning, emergency service due to loss of electrical power or water interruptions beyond Company's control, electrical power wiring, disconnect switches, main fuses or breakers that are not internal of unit cabinet, water piping, steam lines, building drains, damage due to freezing weather, equipment cabinets, deterioration of equipment cabinet or coils. This Agreement does not include any items of equipment as are recommended or required by insurance companies, government, state, municipal or other authorities. During the first year of Platinum Coverage, Company will require Customer authorization and payment for any repairs found to be needed during the first inspection. Platinum Coverage does not include any refrigerant conversion required by insurance companies, government, state, municipalities, EPA or any other governing authorities.
- 40. Miscellaneous Generator.** This Agreement does not include fuel tanks, engine replacement or internal engine component repairs, gear box assembly, any part of the main alternator assembly or entirety, duct work or duct cleaning, emergency service due to loss of electrical power, electrical power wiring, disconnect switches, main fuses or breakers that are not internal of unit cabinet, damage due to freezing weather or rodent infestation, clean-up of rodent infestation, and deterioration of equipment cabinet or coils. This Agreement does not include any items of equipment as are recommended or required by insurance companies, government, state, municipal or other authorities. Company will require Customer's authorization and payment for any repairs found to be needed during the first inspection under Platinum Coverage. If parts are obsolete, best efforts will be made to repair unit, however, additional costs may apply due to a need for remanufactured components. Coverage is generally limited within the footprint of the Generator Enclosure and ATS Enclosure. Anything outside the enclosure is considered quoted work.