

**Harsco Industrial Patterson-Kelley
a Division of Harsco Corporation ("Seller")
TERMS AND CONDITIONS OF SALE**

1. **Acceptance of Terms and Conditions.** The acceptance of the terms and conditions herein and/or attached hereto (these "Terms") is an essential prerequisite to any contract of sale made by Seller. Any offer or acceptance by Seller is made subject to these Terms and no additional or different terms offered by the buyer of products from Seller (the "Buyer"), shall become a part of the agreement of sale between Seller and Buyer unless such terms have been expressly approved in writing by an authorized agent of Seller. If this document is an offer, acceptance of this offer is expressly limited to these Terms, and Seller reserves the right to withdraw this offer at any time before its acceptance by Buyer. If this document has been issued by Seller in response to a written offer made by Buyer, Seller's acceptance of Buyer's offer is expressly conditioned on Buyer's assent to the additional and/or different terms contained herein. If these Terms are not acceptable, Buyer shall notify Seller in writing at once. Buyer's action in (A) accepting any products manufactured and delivered hereunder, or (B) receiving this document without disaffirmance within three (3) business days of receipt shall constitute an unqualified acceptance by Buyer of these Terms.
2. **Standard Limited Warranty.** The terms and conditions set forth in this Section 2 apply to the Standard Limited Warranty, Specific Limited Warranty and, if applicable, the Extended Limited Warranty, as those terms are defined herein (each a "Warranty" and collectively, the "Warranties"). Seller warrants to Buyer that the products sold hereunder are free of defects in material and workmanship, when operated in accordance with the conditions stated herein, for a period of one (1) year commencing on the date of shipment or, if a start-up report is furnished to Seller, on the start-up date shown on the report furnished to Seller (the "Warranty Period"), provided that startup is completed within six (6) months of shipment and a start-up report is furnished to Seller within thirty (30) days of startup (the "Standard Limited Warranty"). If the product sold hereunder is a spare or replacement part, Seller warrants to Buyer that such spare part is free of defects in material and workmanship, when operated in accordance with the conditions stated herein, for a period of one (1) year commencing on the date of shipment of such part, unless the part is a boiler heat exchanger or heat engine in which a prorated warranty will apply as shown below in table 1.0.

**Table 1.0 - Prorated warranty for replacement
Patterson Kelley boiler heat engines and exchangers**

Year	Discount from prevailing list price
1	100%
2	80%
3	60%
4	50%
5	40%

Seller's obligation under the Warranties is limited to repairing or, if in Seller's judgment it seems more appropriate, to furnishing without charge (installation not included), FCA Seller's factory (Incoterms 2010), a similar part to replace any part which after examination shall, to Seller's own satisfaction be determined to have been defective at the time it was shipped. In the event that a replacement is provided by Seller, the defective item will become the property of Seller. Replacement of any part under any of the Warranties does not extend the applicable warranty period. Transportation to Seller's facility or other designated facility for repairs of any products or parts alleged defective shall, in all events, be at Buyer's sole risk and cost. This warranty applies only if the original installer and Seller (Attention: Harsco Industrial, Patterson-Kelley, 155 Burson Street, East Stroudsburg, PA 18301) receive, within the Warranty Period, an immediate written notice, providing a detailed description of all claimed defects, upon discovery of such defects together with proof of purchase (invoice or Order Acknowledgment) and a copy of the start-up report for the affected product.

Seller may seek reimbursement of any costs incurred by Seller where the product is found to be in good working order, or when it has been determined that none of the Warranties apply as per the exclusions set forth below. The remedies available to Buyer set forth herein are exclusive remedies, and all other remedies, statutory or otherwise, including but not limited to the right of redhibition, are waived by Buyer. Buyer acknowledges that the exclusion of remedies is neither unreasonable nor unconscionable. Buyer shall indemnify and hold Seller harmless against, any claim due to any injury or death to any person or damage to any property resulting in whole or in part from any modification or alteration Buyer makes to any product sold hereunder.

For goods and components not manufactured by Seller, the obligations of Seller under the Warranties shall, in all respects, conform and be limited to one (1) year. Notwithstanding the foregoing, the specific warranty obligations of Seller with respect to certain components of a product shall be as set forth in the specific limited warranty section in the Installation & Owner's Manual (the "Manual") for such product (the "Specific Limited Warranty"). Extended limited warranties providing for a longer warranty period for components covered by a Specific Limited Warranty, subject to additional terms and conditions (the "Extended Limited Warranty"), may be available as an option for products containing such components.

To the full extent permitted by law, Seller shall have no liability for and the Warranties do not cover the following exclusions (collectively, the "Exclusions"): (A) any product which has been altered or repaired by other than Seller's personnel; (B) deterioration or failure of any product due to (i) abrasion, corrosion, erosion or fouling, (ii) misuse, (iii) modification not authorized by Seller in writing or (iv) improper installation, lack of or improper maintenance or operation; (C) equipment not furnished by Seller, either mounted or unmounted, or when contracted for by a party or parties other than Seller to be installed or handled; (D) the suitability of any product for any particular application; (E) the design or operation of owner's plant or equipment or of any facility or system of which any product may be made a part; (F) any damage to the product due to abrasion, erosion, corrosion, deterioration, abnormal temperatures or the influence of foreign matter or energy; (G) the performance of any product under conditions varying materially from those under which such product is usually tested under industry standards at the time of shipment; (H) leakage or other malfunction caused by: (i) defective installations in general and specifically, any

installation which is made (a) in violation of applicable state or local plumbing, housing or building codes or (b) contrary to the written instructions furnished with the product, (ii) adverse local conditions in general and, specifically, sediment or lime precipitation in the tubes, headers and/or shells or corrosive elements in the water, heating medium or atmosphere, or (iii) misuse in general and, specifically, operation and maintenance contrary to the written instructions furnished with the unit, disconnection, alteration or addition of components or apparatus, not approved by Seller, operation with heating media, fuels or settings other than those set forth on the rating plate or accidental or exterior damage; (I) production of noise, odors, discoloration or rusty water; (J) damage to surrounding area or property caused by leakage or malfunction; (K) costs associated with the replacement and/or repair of the unit including: any freight, shipping or delivery charges, any removal, installation or reinstallation charges, any material and/or permits required for installation, reinstallation or repair, charges to return the boiler and/or components; (L) INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, SUCH AS LOSS OF THE USE OF PRODUCTS, FACILITIES OR PRODUCTION, INCONVENIENCE, LOSS OF TIME OR LABOR EXPENSE INVOLVED IN REPAIRING OR REPLACING THE ALLEGED DEFECTIVE PRODUCT; (M) any claim due to any injury or death to any person or damage to any property resulting in whole or in part from any modification or alteration to any product sold hereunder not made by Seller or one of its authorized representatives; and (N) design defects where Seller has complied with Buyer's design specifications.

Seller and Buyer intend for (X) the Standard Limited Warranty, (Y) the Specific Limited Warranty and (Z) if applicable, Extended Limited Warranty to exclusively govern and control each of the parties' respective rights and obligations regarding the warranty of the products. In case of any inconsistency, conflict, or ambiguity between the Standard Limited Warranty, the Specific Limited Warranty and any applicable Extended Limited Warranty (collectively, the "Warranty Documents"), the documents shall govern in the following order: (w) any applicable Extended Limited Warranty; (x) the Specific Limited Warranty; (y) the Standard Limited Warranty and (z) other provisions in these Terms. Information identified in one Warranty Document and not identified in another shall not be considered a conflict or inconsistency. The Specific Limited Warranty of the product(s) purchased by Buyer hereunder and any applicable Extended Limited Warranty are hereby incorporated by reference into these Terms for all applicable purposes hereunder. No sale representative, agent, or employee of Seller is authorized to make any modification, extension, or addition to any of the Warranty Documents, unless agreed to in writing by Harsco Industrial Patterson-Kelley.

The Warranties, subject to the disclaimers in Section 3 and provisions in Sections 13 and 14 hereof, are transferrable to the owner that utilizes the product(s) purchased hereunder for its intended use at the original installation site (the "Original Owner"). The Warranties are non-transferable to anyone who subsequently receives or purchases such products from the Original Owner.

3. **DISCLAIMERS.** EXCEPT AS SET FORTH IN SECTION 2 ABOVE, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESSED OR IMPLIED WITH RESPECT TO ANY PRODUCTS, PARTS OR SERVICES PROVIDED BY SELLER. SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. BEFORE PURCHASING THE PRODUCTS, BUYER SHALL DETERMINE THE SUITABILITY OF THE PRODUCT FOR ITS INTENDED USE, AND BUYER AND ORIGINAL OWNER ASSUMES ALL RISK AND LIABILITY WHATSOEVER THEREFOR.
NO WARRANTY IS MADE OR IMPLIED THAT PARTICULAR PROCESSES UNDERTAKEN BY THE BUYER USING THE EQUIPMENT SOLD HEREUNDER, WHETHER OR NOT SUCH PROCESSES ARE KNOWN TO SELLER, ARE FREE OF PATENT INFRINGEMENT OR OTHER PROPRIETARY RIGHTS WHICH MAY BE ASSERTED BY THIRD PARTIES. BUYER UNDERTAKES TO MAKE SUCH INVESTIGATION AS NECESSARY TO DETERMINE AND ASSESS THE POTENTIAL OF CLAIMS OF THIS NATURE BASED ON BUYER'S USE OF THE EQUIPMENT PURCHASED FROM SELLER.
4. **Delivery.**
 - (A) Shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller will exercise its reasonable efforts to meet the shipment dates specified in the order acknowledgement for an accepted order (an "Order Acknowledgement"). In no event will Seller be liable for its failure to make delivery, any delay in making delivery or any loss or damage when such failure to deliver, delay, loss or damage results from any cause beyond Seller's reasonable control, including but not limited to fire, flood or other act of God, strike or labor difficulty or disagreement, accidents at Seller's facilities, acts or requirements of government or civil authority, riot, war, embargo, truck or car shortage or other transportation delay or difficulty, or Seller's inability to obtain necessary labor, materials or manufacturing facilities. In the event of such delay, the date of delivery shall be extended for a period equal to the time loss by reason of such delay. Seller may, in its sole discretion, without liability or penalty, make partial shipments of products to Buyer.
 - (B) Unless otherwise agreed by Seller and stated in the relevant Order Acknowledgement, delivery hereunder shall be made FCA Seller's factory (Incoterms 2010), with transportation expenses paid by Buyer. Seller shall not be liable for any delays, loss or damage of the products in transit.
5. **Prices.** To the extent that the prices for products sold hereunder (the "Prices") are not specified herein, the Prices for the same, unless otherwise agreed by Seller in writing, shall be those in Seller's published price list in effect at the time of shipment. Prices contained in Seller's published price list are subject to change without notice. All Prices are in United States Dollars, unless otherwise provided in the applicable Order Acknowledgement. All export and import duties, fees,

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- permits and licenses for products to be delivered outside of the United States shall be the responsibility of Buyer.
6. **Taxes.** All Prices are exclusive of all sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by any governmental authority. The amount of any sales, use, or excise taxes or other taxes, duties or charges, if any, applicable to the products shall be added to the Price and shall be paid by Buyer, unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand. Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
 7. **Title and Risk of Loss.** Unless otherwise agreed by Seller in writing, title and risk of loss shall pass to Buyer at the time of delivery to the carrier, even though selected by Seller.
 8. **Terms of Payment.** Unless otherwise stated by Seller, terms of payment for shipments are net cash within thirty (30) days from the date of invoice. Seller may, in its sole discretion, submit invoices on partial shipments. Buyer shall pay all amounts due in United States Dollars, unless otherwise provided in the applicable Order Acknowledgement. Failure to make timely payment of invoices covering final or partial shipments entitles Seller at its option to withhold delivery of products ordered without liability. In addition, if this invoice or any part hereof is not paid when due, Seller may assess a late payment charge of 1½ % per month or such lesser amount as may be the maximum permitted by applicable law, calculated daily and compounded monthly, on such past due amount. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller. If shipments are delayed by Buyer, payment shall become due on the date when Seller is prepared to make shipment. If the work covered by contract is delayed by Buyer, payment shall be made based upon the purchase price and percentage of completion. Completed and partially completed products held for Buyer shall be at the sole risk and expense of Buyer.
 9. **Cancellation.** No purchase order accepted by Seller may be modified except with Seller's prior written consent. Any additional costs (plus reasonable overhead and profit) accrued as a result of such modifications will be for Buyer's account. No purchase order accepted by Seller may be canceled except with Seller's prior written consent and by prior payment to Seller of a sum equal to the total of out-of-pocket expenses incurred in connection with the purchase order, including but not limited to any charges made to Seller by suppliers for cancellation, plus a reasonable sum for overhead expenses and lost profits, as determined by Seller.
 10. **Security.** Seller reserves right to require payment in advance, immediate payment in full or satisfactory security or guaranty that an invoice will be promptly paid when due if at any time Buyer's financial responsibility becomes impaired or unsatisfactory to Seller. If such payment is not made or such security or guaranty not posted, Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.
 11. **End User License Agreement.** Buyer hereby agrees to, and shall be bound by, the terms and conditions of the End User License Agreement, as amended or supplemented from time to time, set forth at http://www.harscopk.com/nuro_eula.php.
 12. **Compliance with Laws.** Buyer warrants that its purchase and use of the products, as well as any specifications provided by Buyer to Seller for the products, shall comply with all Federal, State and local laws, regulations and ordinances affecting the products. Seller makes no representation or warranties with respect to compliance with laws.
 13. **Indemnification.** Buyer agrees to defend, indemnify and hold Seller harmless from any and all liability, loss, damage, cost and expense, including actual attorney's fees, which Seller may suffer or incur in connection with or arising from Buyer's breach or non-fulfillment of any representation, warranty or covenant set out in these Terms; the purchase of a product by any person or entity purchasing directly or indirectly through Buyer and not relating to a claim of a Warranty breach; any failure by Buyer or its personnel to comply with any applicable law or regulation; any warranty granted by Buyer or its employees, agents, representatives or resellers that is beyond the Warranties provided herein; or compliance with Buyer's drawings or specifications, including but not limited to, actual or alleged patent, trademark or copyright infringement. Seller shall have no liability under the Warranties set forth in Section 2 above or otherwise for design defects where Seller has complied with Buyer's design specifications. Buyer further agrees to indemnify, defend and hold harmless Seller from liability, loss or expense, including but not limited to actual attorneys' fees, on account of injuries to persons, including death, or damage to property attributable to Buyer's negligence or the negligence of its agents, employees or subcontractors.
 14. **Limitations of Liability.**
 - (A) UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE TO SELLER OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
 - (B) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER PRIOR TO THE DATE OF SUCH CLAIM.
 - (C) The limitation of liability set forth in Section 14(b) above shall not apply to liability resulting from Seller's fraud or willful misconduct.
 15. **Insurance.** Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than US\$3,000,000 with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Harsco Corporation and its subsidiaries as additional insureds on a primary and noncontributory basis. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.
 16. **Confidentiality.** Each party agrees to hold in confidence and not disclose to any third party or use for its own benefit, other than as may be approved by the disclosing party, any confidential or proprietary information (collectively, "Confidential Information") supplied to it, whether or not marked, designated or otherwise identified as "confidential" or "proprietary", by the other party. Upon the request of either party, the other shall promptly return all Confidential Information received from the requesting party. Confidential Information does not include information which (A) is within or becomes part of the public domain; (B) was already within the party's possession prior to its disclosure by the disclosing party; (C) is disclosed by a third party not under an obligation of confidentiality with respect to such information; or (D) is independently developed without use of or reference to the disclosing party's Confidential Information.
 17. **Intellectual Property.** All intellectual property rights relating to the products and in and to all documents, work product and other materials that are delivered to Buyer pursuant to a purchase order or prepared by or on behalf of Buyer in the course of performing under the purchase order (collectively, the "Deliverables"), except for any Confidential Information of Buyer or Buyer materials, shall be owned by Harsco Industrial Patterson-Kelley. Harsco Industrial Patterson-Kelley hereby grants Buyer a worldwide, non-exclusive, non-transferable, and non-sublicensable license to use the Deliverables. Any design, invention or other information developed by Harsco Industrial Patterson-Kelley in the performance of a purchase order shall remain the property of Harsco Industrial Patterson-Kelley, whether or not Harsco Industrial Patterson-Kelley charges for design, research, development or similar services. Any patentable features developed by Harsco Industrial Patterson-Kelley shall be the property of Harsco Industrial Patterson-Kelley.
 18. **Assignment, Successors and Assigns.** Seller may freely assign this contract (without further obligation for performance on the part of Seller) to any successor to all or substantially all of Seller's business. Buyer may not assign this contract or any of its rights or obligations hereunder without the prior written consent of Seller. Any purported assignment by Buyer in violation of this Section 18 shall be null and void. These Terms shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
 19. **Modification, Waiver, Cumulative Rights and Severability.** These Terms may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by Seller of any breach of contract shall be effective unless set forth in writing and signed by the party so waiving. No waiver by Seller shall be deemed to be a waiver of any other or subsequent breach. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof. All rights and remedies available to Seller shall be cumulative and in addition to any other rights and remedies provided herein or by law. The invalidity, illegality or unenforceability in whole or in part of any provision hereof shall not affect the validity, legality or enforceability of any other provision.
 20. **Costs and Attorneys' Fees.** Buyer shall pay, in addition to all other remedies to which Seller is entitled, all costs and reasonable attorneys' fees and expenses of Seller incurred in connection with the enforcement of these Terms, even if not recoverable by law (including, without limitation, all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings).
 21. **Governing Law, Jurisdiction and Venue.** The contract between the parties hereto shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania and shall be deemed entered into at Seller's place of business. The parties agree that any controversy arising under the contract herein shall be determined by the Courts of the Commonwealth of Pennsylvania, and both parties hereby submit and consent to the jurisdiction of said Courts and agree that venue for any action arising hereunder shall lie in Monroe County, Commonwealth of Pennsylvania. Buyer and Seller agree that the *United Nations Convention on Contracts for the International Sale of Goods* is expressly excluded.
 22. **Product Improvement Liability Disclaimer.** Seller reserves the right to make any changes in or improvements on its products without incurring any liability or obligation whatsoever and without being required to make any corresponding changes or improvements in products previously manufactured or sold.
 23. **U.S. Government Regulations.** Buyer shall not engage in any transaction with respect to the products, by way of resale, lease, shipment or otherwise, which violates any statute or regulations of the United States of America. If the products purchased are to be exported, Buyer accepts full responsibility for and agrees to comply fully with the U.S. Commerce and/or State Department Export Regulations, including, but not limited to, obtaining export licenses and re-export permission.
 24. **Resale of Products.** Buyer agrees to (A) include in any purchase agreement with its customers (including, but not limited to, any resellers) sections 11, 13, 14, 16 and 17 and this Section 24 of

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these Terms, (B) identify Harsco Industrial Patterson-Kelley as a third party beneficiary with respect to such provisions, (C) expressly identify Harsco Industrial Patterson-Kelley, if not already identified, as (i) one of the indemnified parties in Section 13 and (ii) one of the parties whose liability is limited under Section 14. Neither Buyer nor Buyer's employees, agents, representatives or resellers (or any other subsequent reseller(s) in the chain of sale of the product) shall make any representations, warranties, guarantees, or other commitments to any of its customers regarding the products, which representations, warranties, guarantees, or other commitments are additional to or inconsistent with any then-existing representations, warranties, guarantees, or other commitments in these Terms, the Warranties or any other written documentation provided by Seller to Buyer.