

I. General Provisions

1. This agreement, performances of contract and quotations are made exclusively upon the terms and conditions set out below. Alterations or deviations from the provisions herein contained shall not be binding upon Viessmann unless confirmed in writing by Viessmann.
2. The Purchaser hereby accepts the terms and conditions herein contained in their entirety. Stipulations of terms and conditions contrary to the provisions hereof according to the Purchaser's business or purchasing practices, invoicing, manner of payment or custom of the trade are hereby specifically agreed to be inapplicable to this agreement.
3. In the event that any one or more of the provisions herein contained shall become or be deemed to be invalid, illegal or unenforceable by operation of law, the validity, legality and enforceability of the remaining provisions or any part thereof shall not in any manner be affected or impaired thereby. In place and instead of any such invalid, illegal or unenforceable provisions or any part thereof, the parties hereto shall be deemed to have agreed upon terms and conditions, which, as far as permitted by law, express the intent and purpose of the within terms and conditions.
4. Viessmann products delivered to Purchasers in Canada are for resale and use only in Canada. Purchasers in Canada agree that they will not resell Viessmann products for use or installation outside of Canada, and will take all reasonable and necessary steps to ensure that Viessmann products they purchase are resold only for use and installation in Canada. Viessmann products delivered to Purchasers in the United States are for resale and use only in the United States. Purchasers in the United States agree that they will not resell Viessmann products for use or installation outside of the United States and will take all reasonable and necessary steps to ensure that the Viessmann products they purchase are resold only for use and installation in the United States.

II. Plans and Specifications

1. Drawings, specifications and technical data appended to or forming part of this agreement shall at all times remain the property of Viessmann, with all rights reserved and shall not be provided, submitted or disclosed to third parties without the express written consent of Viessmann. Changes, alterations, deletions or additions thereto shall not be binding upon Viessmann unless confirmed in writing by Viessmann.

III. Prices and Quotations

1. Viessmann hereby specifically reserves the right to change, alter, amend or revoke quotations and the same shall become binding and irrevocable only upon written acceptance by both Viessmann and the Purchaser or upon delivery and acceptance of goods or performance of work or services by Viessmann.
2. Prices are, save and except as otherwise agreed upon, as of Viessmann Manufacturing Company Inc., Waterloo, Ontario, for purchases in Canada and as of Viessmann Manufacturing Company (U.S.) Inc., Warwick, Rhode Island, for purchases in the USA, as applicable, exclusive of cost of packaging, crating, freight or shipping, federal, provincial, state or local rates, tariffs and taxes in effect on date of delivery.
3. All contract prices are guaranteed for thirty (30) days from date of contract. Cost increases thirty days after contract date, including, but not limited to, cost increases of materials, wages, fuel, transportation or energy charges and increases in applicable federal, provincial, state and local rates, tariffs or taxes shall be added to contract price and form part thereof as if originally agreed upon.
4. Contracts for delivery of goods or performance of services without specific agreement as to price shall be subject to the price or prices in effect on the date of delivery of goods or commencement of performance of service.

IV. Terms of Payment

1. For all Viessmann products other than products for any biomass project and save and except as otherwise specifically agreed upon in writing, all invoices or accounts, as the case may be, shall become due and payable in full without deduction whatsoever thirty (30) days after invoice date or account date.
2. For all Viessmann custom panels and biomass projects, payment terms shall be thirty percent (30%) of the total contract price as a down payment at the time of the purchase order and seventy percent (70%) due on receipt of products, including partial shipments.
3. Holdbacks or deductions of any kind whatsoever without prior written authorization from Viessmann are expressly prohibited.
4. Discounts, if any, shall be calculated on the cost of goods as per invoice, exclusive of cost of packaging, crating, freight or shipping, federal, provincial, state or local rates, tariffs or taxes, where applicable, or other costs or surcharges beyond control of Viessmann.
5. Payment by bank draft, money order or uncertified cheque may be made only with the express written consent of Viessmann. All costs for dishonor, presentment for payment or collection shall be at the expense of the Purchaser and Payer. All payments by cheque, whether certified or uncertified, shall be deemed as having been received on the date of acceptance for payment of the said cheque or cheques by the Purchaser's or Payer's bank, trust company or financial institution upon whose account the cheque has been issued.
6. Payments received shall be applied firstly to the oldest costs for presentment for payment, dishonor or collection; secondly, to outstanding interest charges on the oldest accounts; and thirdly, the balance, if any, of any payment shall be applied to the oldest outstanding balance or balances.
7. In the event the Purchaser defaults in payment or causes a cheque, bank draft or money order to be dishonored or stops payment thereon, or Viessmann shall deem the Purchaser insecure, all accounts shall forthwith become due and payable notwithstanding any agreement as to credit or periodic payment.
8. Overdue accounts shall bear interest at the rate stated on the face of the invoice.

V. Reservation of Title and Property

1. It is hereby expressly agreed that all goods shall remain the exclusive property of Viessmann and title shall not pass until payment in full of all invoices or accounts rendered, including cost of goods, packaging, crating, shipping or freight charges, federal, provincial, state or local taxes, rates and tariffs, insurance, extras to contract, interest charges, exchange or collection expenses and other sums or charges applicable has been received pursuant to the terms and conditions herein contained.
2. Goods delivered shall not, in any event, become part of real estate and the Purchaser shall at all times take or initiate all steps necessary to preserve the right of Viessmann to title to and property of such goods.
3. The Purchaser shall not permit any goods sold or delivered by Viessmann to be pledged or encumbered without express written consent from Viessmann. In the event of seizure by third parties, the Purchaser shall forthwith disclose the reservation of title, right and property by Viessmann to such goods and shall forthwith notify Viessmann of such seizure and shall assist Viessmann at the Purchaser's cost in the preservation and enforcement of the right of Viessmann to title and property to the said goods.

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Terms and Conditions of Sale, Delivery and Payment

4. In the event of breach of contract by the Purchaser of the terms or conditions herein contained and in particular, default of payment of invoices as hereinbefore provided, Viessmann shall be entitled, without prior notice, to demand delivery up of goods sold and delivered and to seize the same wherever the same may be located at any time of day or night or to cause its agents, workmen or bailiffs to seize the same, wherever the same may be located at any time of day or night notwithstanding the goods may be in possession of a subsequent purchaser or user.
5. Seizure of goods by Viessmann shall not be deemed to constitute termination of contract or contractual rights and obligations as between Viessmann and the Purchaser.

VI. Delivery of Goods

1. Viessmann shall at all times use its best efforts to maintain delivery dates agreed upon. The delivery date or period shall be deemed to have been maintained or complied with in all events, cases or situations where the goods to be delivered leave the premises of Viessmann on or before such date or expiry of such period or upon notification to the Purchaser that the goods are ready for shipment.
2. Delivery dates or periods shall be extended by reason of delays caused by labor shortages, strikes or lockouts or other circumstances beyond the reasonable control of Viessmann. Any delay or postponement of delivery to Viessmann of goods and supplies by its suppliers, subcontractors or co-contractors caused by strike, lockout, labor shortage or unrest or other causes beyond the reasonable control of Viessmann, its suppliers, subcontractors or co-contractors shall in like manner extend delivery dates and periods as if the same applied to Viessmann.
3. In the event of delay of delivery of goods caused by the Purchaser for any reason whatsoever Viessmann shall be entitled to charge the cost of storage calculated at the rate of one half percent (0.5%) per month upon the cost of goods, such calculation commencing one month after delivery of Notice of Readiness for shipment and continuing for each and every month or part thereof thereafter until the delivery of goods to the Purchaser.

VII. Risk of Property

1. Commencing on the date of delivery of goods for shipment or transport to the Purchaser, the said goods or any part thereof shall be at the risk of the Purchaser.
2. Any goods or part thereof delivered for shipment or transport to the Purchaser from Viessmann in Canada or Viessmann in the USA, including goods with unessential or minor defects, shall be deemed to have been accepted by the Purchaser without recourse.
3. Deficiencies or defects in goods or part thereof shipped or shipment of wrong goods or part thereof shall be endorsed upon the bill of lading and shall be communicated to Viessmann in writing within eight (8) days upon arrival at destination. Failing such notification the Purchaser shall be deemed to have accepted the goods without recourse.

VIII. Return of Goods and Cancellations

1. All or any goods returned without prior written authorization by Viessmann shall not be accepted.
2. If returns are authorized by Viessmann, goods will be accepted as follows:
 - (i) Customer must provide proof of purchase, invoice and/or serial number to receive a Return Goods Authorization number from Viessmann. Upon authorization from Viessmann, freight will be prepaid by the customer.
 - (ii) Products in the biomass price list upon forfeiting the down payment or thirty percent (30%) of the project price within the first five (5) weeks from the date of the purchase order. In case any items have been shipped, freight has to be prepaid. Orders for products in the biomass price list may not be cancelled after five (5) weeks from the date of purchase order.
 - (iii) Item and packaging must be new and in saleable condition. Twenty-five percent (25%) restocking charge on product returned after 30 days of purchase.
 - (iv) Electronic parts, where factory seal has been broken are not returnable.
 - (v) Discontinued products and/or parts are not returnable.

IX. Warranties

1. VIESSMANN MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, FOR THE GOODS SOLD OR DELIVERED OR SERVICES PERFORMED UNDER OR PURSUANT TO THE PRECEDING TERMS AND CONDITIONS.

No implied warranty arising by usage or custom or course of dealing or course of performance is given by Viessmann or shall arise by or in connection with the preceding terms and conditions, except those express warranties set forth in writing and delivered with the goods.

2. The obligations of Viessmann with respect to any goods delivered or services performed for any Purchaser under the terms and conditions herein contained are limited exclusively to the repair, replacement or refund of purchase price or cost of service at the sole discretion of Viessmann. The remedies provided pursuant to the terms and conditions herein contained shall be the exclusive remedies for the Purchaser. Viessmann shall not be responsible for any special, indirect, incidental or consequential damages caused by the goods delivered or services performed pursuant to the terms and conditions hereof.

X. Insurance

1. During the period commencing with the delivery of goods for shipment or transport to the Purchaser and ending upon receipt of payment in full for the said goods pursuant to the terms and conditions hereof the Purchaser shall insure the said goods in the joint names of Viessmann and the Purchaser against all risk of loss or damage howsoever caused.

XI. Applicable Law

1. All disputes, claims or demands arising from or relating to warranties, guarantees, representations authorized and published by Viessmann, and from the terms and conditions herein contained and all claims, demands, rights or liabilities arising from such warranties, guarantees, representations or terms and conditions shall be determined in accordance with the laws:
 - (i) The Parties agree that the exclusive jurisdiction and venue for any disputes concerning or arising from goods delivered to Purchasers in Canada will be governed by and construed in accordance with the laws of the Province of Ontario, and the Federal Laws of Canada applicable herein.
 - (ii) The Parties further agree that the exclusive jurisdiction and venue for any disputes concerning or arising from goods delivered to Purchasers in the United States will be the United States District Court for the District of Rhode Island. Should the Rhode Island federal district court lack subject matter jurisdiction over such dispute, then the state courts of Rhode Island will be the exclusive jurisdiction and venue for disputes concerning or arising from goods delivered to Purchasers in the United States.