

## PATTERSON-KELLEY, LLC GENERAL 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 agreement 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 representative 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 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. TERMS OF PAYMENT.** Unless otherwise agreed upon by the parties and stated in Seller's order acknowledgement issued for the products ("Order Acknowledgement"), terms of payment for shipments are net cash within thirty (30) days from the date of invoice. Failure to make timely payment of invoices entitles Seller at its option to withhold delivery of additional products ordered until such payments are made or at the Seller's option effect cancellation of all unfilled orders and contracts without liability. In addition, if invoices or any part thereof are not paid when due, Seller may assess a late payment charge of 1% per month (or such lesser amount as may be the maximum permitted by applicable law) on such past due amount. Payment terms shall at all times be subject to the review approval of the Seller's Credit Department. Seller reserves the right to require payment in advance and or security or payment guarantees.
- 3. 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.
- 4. CANCELLATION.** No accepted terms stated in the Order Acknowledgement may be modified or cancelled except with the prior mutual written consent of the parties. If Buyer modifies its order, any additional charges accrued as a result of such modification, will be for Buyer's account.
- 5. TITLE AND RISK OF LOSS.** Unless otherwise agreed upon by the parties and stated in the Order Acknowledgement, title and risk of loss shall pass to Buyer at the time of Seller's delivery of the product to the carrier for delivery to Buyer, even though the carrier may be selected by Seller.
- 6. INDEMNIFICATION.** Seller shall indemnify, defend and hold Buyer harmless from any and all liability, loss, damage, cost and expense, including actual attorney's fees, (collectively, "Losses") incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's gross negligence and/or willful misconduct. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the warranty period as stated herein, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim. Buyer shall indemnify, defend and hold Seller harmless from any and all Losses incurred by Seller as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Buyer's gross negligence and /or willful misconduct. Buyer shall have the sole authority to direct the defense of and settle any indemnified claim. Buyer indemnification is conditioned on Seller (a) promptly, notifying Buyer of any claim, and (b) providing reasonable cooperation in the defense of any claim. For clarity, in the event Losses are caused by the joint or concurrent gross negligence and /or willful misconduct of Buyer and Seller, the Losses shall be borne by each party in proportion to its degree of fault.
- 7. INTELLECTUAL PROPERTY.** The Buyer agrees as part of this agreement to indemnify and hold Seller harmless from any liability, damages, actions, suits, cost, attorneys' fees and expenses occasioned by infringement by Seller of patent or patents existing on any article or process of its manufacture, providing such article was made or such process was conducted in accordance with Buyer's specifications and directions. Buyer will not alter any equipment or products furnished by the Seller, or do anything that will any way infringe, impeach or lessen the validity of, the patents and trademarks under which the Seller's equipment or parts thereof or products are made or sold.
- 8. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, INDEMNIFICATION OF ANY KIND, WARRANTY CLAIM, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE AND/OR WILLFUL MISCONDUCT) OR OTHERWISE, EXCEED THE TOTAL PURCHASE AMOUNT PAID TO THE SELLER FOR THE SPECIFIC PRODUCTS GIVING RISE TO ANY SUCH CLAIM.
- 9. INSURANCE.** During the performance of this agreement and for a one-year period thereafter, the Buyer and Seller shall each maintain commercial general liability, automobile, umbrella, and worker's compensation insurance coverage. Upon request of the other party, each party shall produce certificates of insurance evidencing such coverage.
- 10. FORCE MAJEURE.** Neither party shall be liable for its failure to perform its obligations under this agreement when such failure results from any cause beyond such party's reasonable control, including but not limited to fire, flood or other act of God, labor dispute, strike, 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. 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. If such force majeure event continues for a period of sixty (60) days, either party shall be entitled to terminate this agreement upon notice to the other party. In the event of termination, Buyer shall reimburse Seller for all reasonable costs incurred to the date of the force majeure event and Buyer shall be entitled to take control of the products or any part of the product for which it has compensated Seller. Nothing in this agreement shall require any party to settle any labor dispute, strike, labor difficulty or disagreement.

- 11. 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 is independently developed without use of or reference to the disclosing party's Confidential Information.
- 12. INTELLECTUAL PROPERTY RIGHTS.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other Confidential Information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights used to create or otherwise relating to the products (collectively, "Intellectual Property Rights") 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 the Buyer in the course of performing under a purchase order (collectively, the "Deliverables") except for any Confidential Information of Buyer or Buyer material, shall be owned by Seller. Seller hereby grants Buyer a license to use the Intellectual Property Rights free of additional charge and on a non-exclusive worldwide, non-exclusive, non-transferable, and non-sublicensable fully paid, royalty-free and perpetual basis to the extent necessary to enable Buyer to make reasonable use of the Deliverables. Any design, invention or other information developed by Seller in the performance of a purchase order shall remain the property of Seller, whether or not Seller charges for design, research, development or similar services. Any patentable features developed by Seller shall be the property of Seller.
- 13. COMPLIANCE WITH LAWS.** Seller warrants that the products, to the extent based on Seller's specifications, shall comply with all Federal, State and local laws, regulations and ordinances affecting the products. 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.
- 14. COMPLIANCE WITH U.S. EXPORT CONTROLS AND TRADE SANCTIONS.** Buyer agrees to comply with all U.S. export controls and trade sanctions requirements. Buyer will obtain, or cause to be obtained, any authorizations required by the U.S. government for transfer outside of the U.S. Buyer agrees that the products will not be transferred, directly or indirectly, to any country subject to U.S. trade sanctions, nor to any person or entity listed on the U.S. Department of Treasury Office of Foreign Assets Control Specially Designated Nationals List (updated list available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).
- 15. 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.
- 16. DAMAGES.** IN NO EVENT SHALL 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.
- 17. ASSIGNMENT.** Either party may freely assign this agreement (without further obligation for performance on the part of such party) to any successor to all or substantially all of its business, provided all rights and responsibilities are assumed by the assignee. In all other events, neither party may assign this agreement or any of its rights or obligations hereunder without the prior written consent of the other party.
- 18. 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.
- 19. 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).
- 20. GOVERNING LAW, JURISDICTION AND VENUE.** The agreement 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 headquarters in Monroe County, PA. The parties agree that any controversy arising under the agreement herein shall be determined by the state and federal courts of the Commonwealth of Pennsylvania. 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, if brought in state court, and the Middle District of Pennsylvania, if brought in federal court.
- 21. COMPLETE AGREEMENT.** This agreement, along with the terms which are to be specified on the Order Acknowledgement, represents the entire agreement of the parties for the sale of the products by Seller to Buyer.

**EXHIBIT A**  
**PATTERSON-KELLEY ADDITIONAL TERMS AND CONDITIONS OF SALE**

- A. 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, permits and licenses for products to be delivered outside of the United States shall be the responsibility of Buyer.
- B. DELIVERY.** Unless otherwise agreed by Seller and stated in the relevant Order Acknowledgement, delivery terms shall be FCA Seller’s Facility (Incoterms 2010). Transportation expenses will be paid by Buyer. Seller will exercise its reasonable efforts to meet the shipment dates as specified in the Order Acknowledgement. Seller shall not be liable for any delays, loss or damage of the products in transit.
- C. STANDARD LIMITED WARRANTY.** The terms and conditions set forth in this section C 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 boiler heat exchanger or heat engine in which a prorated warranty will apply as shown below in Table 1.0 or the replacement part is a 6, 8, 10, or 12 inch copper or copper nickel tube bundle in which a prorated warranty will apply as shown below in Table 2.0.

<b>Table 1.0 - Prorated warranty for replacement Patterson Kelley boiler heat engines and exchanges</b>	
<b>Year</b>	<b>Discount from prevailing list price</b>
<b>1</b>	<b>100%</b>
<b>2</b>	<b>80%</b>
<b>3</b>	<b>60%</b>
<b>4</b>	<b>50%</b>
<b>5</b>	<b>40%</b>

<b>Table 2.0 - Prorated warranty for replacement 6,8,10,12 inch Standard Copper and Copper Nickel Compact Replacement Bundles</b>	
<b>Year</b>	<b>Discount from prevailing list price</b>
<b>1</b>	<b>100%</b>
<b>2</b>	<b>90%</b>
<b>3</b>	<b>80%</b>
<b>4</b>	<b>70%</b>
<b>5</b>	<b>60%</b>
<b>6</b>	<b>50%</b>
<b>7</b>	<b>40%</b>
<b>8</b>	<b>30%</b>
<b>9</b>	<b>20%</b>
<b>10</b>	<b>10%</b>

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. If a replacement is provided by Seller, the defective item will become the property of Seller. Replacement of any part under 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: Patterson-Kelley, LLC 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 such 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 (v) 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 sections 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 Seller.

The Warranties, subject to the disclaimers in section D 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 products from the Original Owner.

- D. WARRANTY DISCLAIMERS.** EXCEPT AS SET FORTH IN SECTION C 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.

- E. 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.pattersonkelley.com/nuro\\_eula](http://www.pattersonkelley.com/nuro_eula).
- F. RESALE OF PRODUCTS.** Buyer agrees to (A) include in any purchase agreement with its customers (including, but not limited to, any resellers) sections 6, 8, 11, 12, 16 and E of these Terms, (B) identify Seller as a third party beneficiary with respect to such sections, (C) expressly identify Seller, if not already identified, as (i) one of the indemnified parties in section 6 and (ii) one of the parties whose liability is limited under Section 8. 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.