

**SELLER:**

Kelix Heat Transfer Systems, LLC  
6505 E. 47<sup>th</sup> Street, Tulsa, OK 74145  
Phone: (918)-663-9177  
Fax: (918)-663-9178



**ORDER FORM**

**BUYER:**

Company: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_ Ext: \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Postal Code: \_\_\_\_\_

**SHIP TO:**

Company: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_ Ext: \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Qty	Product Stock No.	Thermacouple® Earth Energy System Kit(s)	Unit Price (MSRP) Each	Dealer Each Kit	Total Price
	TC30	Up to 3.0 Ton Thermacouple® Kit - 260 Foot Kit	6,206.65		
	TC40	Up to 4 Ton Thermacouple® Kit - 280 Foot Kit	6,558.95		
	TC50	Up to 5 Ton Thermacouple® Kit - 300 Foot Kit	6,880.25		
	TCSW	Installation Strap Wrench (each)	20.00		
		Prices include Freight within the continental United States. See Terms and Conditions.	Total \$		

Purchase Order No: \_\_\_\_\_. Please fax Order Form to (918)-663-9178.  
Call (918)-663-9177 for wire transfer payment instructions. Mail checks payable to Kelix Heat Transfer Systems, LLC.  
Please allow 5 to 8 weeks for delivery. Attach additional shipping information if required.

Terms and Conditions of Sale below accepted by Buyer:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name of Buyer's Authorized Signatory: \_\_\_\_\_

## TERMS AND CONDITIONS OF SALE

### HEAT TRANSFER SYSTEMS, LLC ("SELLER")

IMPORTANT: SEE WARRANTY PROVISIONS AND LIMITS THEREON REGARDING PRODUCTS SOLD. ALL ORDERS, SALES, AND TRANSACTIONS WITH KELIX HEAT TRANSFER SYSTEMS, LLC ("SELLER") ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF SALE, NOTWITHSTANDING ANY CONTRARY OR INCONSISTENT TERMS OR CONDITIONS THAT MAY BE SET FORTH ON THE BUYER'S PURCHASE ORDER.

1. PRICES. For each item or type of Product ordered by Buyer from Seller, Buyer shall pay to Seller the current standard Dealer Price set forth in the Authorized Dealer Agreement executed between the Buyer and Seller, or the price otherwise mutually agreed upon by the Buyer and Seller in writing. Also, Seller has the right to change its Product offering and the terms and prices at anytime and from time to time.

1.1 All prices are exclusive of any applicable U.S.A. federal, state or local sales, use, excise, property, withholding, value added or other taxes or duties imposed by any governmental authority. Also, the amounts payable to Seller by Buyer are payable in full to Seller without deduction and are net of any sales, use, excise, property, withholding, value added or other taxes or duties imposed by any governmental authority.

2. TAXES: All applicable taxes, including U.S.A. federal, state or local sales, use, excise, property, withholding, value added or other taxes or duties imposed by any governmental authority, associated with the purchase and sale of Products, shall be the sole responsibility of and for Buyer's account and paid by Buyer.

2.1. Any taxes (including income, stamp and turnover taxes), duties, fees, charges, or assessments of any nature levied by any governmental authority other than the US Government or State or Local Government within the USA, in conjunction with this transaction, whether levied against Buyer, against Seller or its employees, or otherwise, shall be the sole responsibility of and for the Buyer's account and concern. If Seller is required by law or otherwise to pay any such levy and/or fines, penalties, or assessments or regulations governing the payment of such levies by Buyer, then the amount of any payments so made by Seller shall be reimbursed by Buyer to Seller upon submission of Seller invoices.

3. SHIPPING. Seller shall ship ordered Product to Buyer upon receipt of full payment by Seller for the corresponding purchase order from Buyer, or its affiliate financial institution. Seller shall be responsible for paying the cost of ground freight/shipping for Products to be shipped within the continental United States. Seller shall also pay for any special packaging expenses required. However, for Products to be shipped outside of the continental United States, Buyer shall be responsible for paying the cost of ground freight/shipping to the US Customs Warehouse nearest the Buyer's designated shipping destination, and also for any special packaging required for such Product shipment.

3.1 Seller has the right to ship purchased Product to Buyer using shipping containers owned or leased by Seller, and which are unmarked or marked with Seller's trademarks, branding and/or advertising.

3.2 Domestic/Non-Export Sales: Seller will ship all quantities of Product to Buyer within the USA to the designated shipping destination as specified on the Buyer's order form or purchase order placed with Seller. Products shall be shipped by freight or by any other courier at the discretion of Seller.

3.3 Unless otherwise agreed to in writing by Seller, Products sold hereunder for Domestic/Non-Export Sales shall be delivered to Buyer F.O.B. ("Free On Board") at Seller's designated shipping destination, at which point title to the Products shall pass to Buyer who alone thereafter shall bear all risk of loss of and damage to the Products.

3.4 Seller will make an effort to comply with requested shipment dates but cannot guarantee compliance therewith. Buyer must provide Seller all information to permit Seller to proceed with work immediately and without interruption. Seller shall not be held liable for any delay in shipment.

3.5 Seller shall procure and pay for shipping insurance on each order of Products made by Buyer, in an amount no less than the value of the Products purchased by and shipped to Buyer.

3.6 Export Sales: When the Buyer's designated shipping destination is located outside of the continental USA, the Seller shall ship Products to the US Customs Warehouse nearest to the designated shipping location, and Buyer shall arrange for import shipment of Products from said US Customs Warehouse to Buyer's designated shipping destination. Seller will pay for the shipment of all quantities of Product to said US Customs Warehouse, and the Buyer shall pay for shipment of such Products from said US Customs Warehouse to Buyer's designated shipping destination.

3.7 Exported Products sold hereunder shall be delivered to Buyer F.O.B. at the US Customs Warehouse, at which point title to the Products shall pass to Buyer who alone, thereafter, shall bear all risk of loss of and damage to the Product being imported into Buyer's country, or territory outside the continental USA.

3.8 Seller shall procure and pay for shipping insurance on each order of Products made by Buyer, in an amount no less than the value of the Products purchased by and shipped to Buyer to the US Customs Warehouse.

3.9 Buyer shall pay all fees and expenses including, but not limited to, those covering preparation of consular documents (i.e. bills of lading, certificates of origin or special invoice forms), freight from US Customs Warehouse to Buyer's country, storage, and any warehouse-to-warehouse (including war risk) insurance that may be procured by the Buyer.

3.9 Seller shall be without liability on any claim asserted by the Buyer with respect to Seller's Products after such Products have been delivered to the US Customs Warehouse, and title has passed to the Buyer.

4. PAYMENT: All orders for Product are subject to final approval by Seller and require full prepayment before any order is accepted by Seller. Ordered Products will be shipped within 5 to 8 weeks after full payment has been received by Seller.

5. DELAYS: The date on which Seller's obligations are to be fulfilled shall be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from (1) acts of God, forces of nature, unforeseeable circumstances, act (including delay of failure to act) or any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, priorities, fires, strikes, labor disputes, sabotage or epidemics, (2) inability due to causes beyond Seller's reasonable control to promptly obtain instructions or information from Buyer, necessary and proper labor, materials, components, facilities, and transportation, or (3) any other cause beyond Seller's reasonable control. The foregoing extension shall apply even though such cause may occur after Seller's performance of its obligations has been delayed for other causes.

6. SHORT OR DAMAGED PRODUCTS: If the Buyer purchases Product from Seller that arrives at Buyer in a short or damaged/defective condition, then Seller shall replace the shorted or damaged Products at no cost to Buyer. Claims for Products delivered shorted or damaged shall be filed in writing with Seller within thirty days (30) after the date of shipment of the Products.

6.1 All claims for shortages by the Buyer shall detail shipment weights and the Buyer's method of counting the Products received.

6.2 Prior to replacing a damaged or defective Product, Seller has the right to request color photographs and/or samples of the damaged or defective Product and other evidence to be sent to Seller by the Buyer for examination and inspection, before Seller decides whether to have the damaged or defective Product shipped back to Seller, or to be destroyed on-site by the Buyer. In the event that Seller orders that damaged or defective Product to be shipped back to Seller prior to issuance of credit, the Buyer shall request an RMA (Return Merchandise Authorization) number and Seller shall issue an RMA number within five (5) business days of the RMA request. Seller will accept return of damaged or defective Product from Buyer only when damaged or defective Product is clearly labeled with the issued RMA number. Credit will be issued to Buyer upon Seller's receipt of returned Products under an authorized RMA number.

7. CANCELLATION OR CHANGE ORDER CHARGES: The Buyer shall not cancel or change any order for Product except upon written notice and payment to Seller of all reasonable costs arising therefrom, determined on the basis consistently observed by Seller and in accordance with sound accounting principles.

8. Seller retains the right to change material properties and characteristics of the components comprising all Products, and will give Buyer thirty (30) days notice prior to making any such changes to Products.

9. SELLER'S INTELLECTUAL PROPERTY RIGHTS INCLUDING TRADEMARKS AND PATENTS: Kelix, Thermacouple®, and It's Working! are exclusive trademarks of Seller. Also, Seller's Products are protected under the following US Patents: 7,343,753; 7,347,059 7,363,769; 7,370,488; 7,373,785; 7,377,122 and other US, European, and Chinese Patents pending.

10. NO INTELLECTUAL PROPERTY LICENSES GRANTED HEREIN. Seller shall retain all rights, title and interest, including all intellectual property rights, in and relating to Seller's Products.

10.1 KELIX does not grant Buyer any express or implied license to utilize any trademark, service mark, or other proprietary mark of KELIX, other than to use Products purchased from Seller or an authorized KELIX Thermacouple® Dealer, and bearing proprietary marks of KELIX.

10.2 Nothing herein, nor implied by sale of Products to Buyer, shall be interpreted as granting Buyer a license to utilize any trademark, service mark, or other proprietary mark of Seller.

10.3 As used herein, the term "Property Owner" shall mean an owner of real property for which KELIX's Product(s) are purchased and in which KELIX's Product(s) are installed by an authorized KELIX Thermacouple® Dealer in accordance with KELIX's Thermacouple® Earth Energy System Installation Instructions published at <http://www.kelix.com>, and (ii) function as a ground loop component(s) in an underground Earth Energy exchanging system installation.

10.4 Seller does not grant Buyer any express or implied licenses to Seller's other intellectual property, including Seller's Patents, other than the Buyer's limited right to purchase Products from Seller and resell such Products to Property Owners, and limited right to install purchased Products on the real property of Property Owners, subject to the condition that the Buyer shall only resell and install Products as part of ground loop components of underground Earth Energy exchanging systems installed on the Property Owner's real property.

10.5 Without express written permission from Seller, Buyer shall not resell Products to entities who are not owners of real property in which resold Products are to be installed by the Buyer and/or its subcontractor or for any application where the Products will not function as a ground loop component(s) in an underground Earth Energy exchanging system installation.

11. RESTRICTION ON ASSIGNMENT: Buyer shall not assign any right or delegate any duty hereunder without the prior written consent

of Seller. Any assignment or delegation effected in contravention of the provisions of this Article shall be null and void.

12. FAIR LABOR STANDARDS ACT: Seller represents that all Products covered by Buyer's order were, or will be, produced in compliance with the requirements of the Fair Labor Standards Act of 1938 as amended.

13. RISK OF LOSS AND TITLE: For non-export and export sales of Products, title and risk of loss to Products will pass to Buyer at the time of delivery FOB, specified in Article 3.2 for non-export sales, and Article 3.7 for export sales.

13.1 Neither the time, method, place or medium of payment provided herein, or any combination of the foregoing, will in any way limit or modify the rights of Seller, as the owner of the Products, to have control over and the right to possession of the Products until the title thereto passes to Buyer as provided for above. The term "free on board" (FOB) or other commercial abbreviation, if used on any document related to the transaction contemplated herein, will be deemed to relate to the time when and the place where the ownership of and responsibility for the Products transferred from Seller to Buyer, as set forth in Article 3.3 above.

13.2 Seller will pay all freight and insurance cost from Seller to the designated shipping destination of Buyer specified in Article 3.2 for non-export sales, and to the US Customs Warehouse nearest the designated shipping destination specified in Article 3.7 for export sales.

13.3 In-transit insurance to the point that title passes to Buyer, as specified in Article 3.2 for non-export sales, and Article 3.7 for export sales, will be purchased for Seller's account and will be in an amount in U.S. Dollars. The insurance policies purchased by Seller will be for the benefit of Buyer, whether or not Buyer is named as an insured in such policies, until title and risk or loss of Products pass to Buyer pursuant to Article 3.2 for non-export sales, and Article 3.7 for export sales. Where possible, the policies will provide that such policies are for the benefit of Buyer and/or Seller "as their interests may appear." If Seller received full payment from Buyer for Products shipped and, in addition, for insurance proceeds with respect to such Products, then Seller will promptly remit any excess insurance proceeds to the Buyer.

14. GOVERNMENTAL AUTHORIZATIONS: For export sales, Buyer shall be responsible for the timely obtaining of licenses, exchange permits or any other governmental authorization, even though Seller may apply for any such authorization. Buyer and Seller shall assist each other in every manner reasonably possible in securing such authorizations as may be required for exporting Product(s) to Buyer's country or territory outside of the continental USA. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved thereby of its obligations to pay Seller for ordered Products.

14.1. All sales herein shall be subject to the export control laws and regulations of the United States Government and any amendments thereof. Buyer agrees that it shall not make any disposition, by way of trans-shipments, re-export, diversion or otherwise, except as said laws and regulations may expressly permit, of U.S. original Products purchased from Seller, other than to the country of ultimate destination specified on Buyer's order and/or declared as the country of ultimate designated shipping destination on Seller's invoice.

15. LIMITED PRODUCT WARRANTY TO PROPERTY OWNERS OF REAL PROPERTY IN WHICH SELLER'S PRODUCTS ARE INSTALLED: These Terms and Conditions of Sale and the warranty and disclaimers set forth below constitute all terms governing the sale and purchase of the Products. No modification of these terms and conditions shall be of any force or effect unless in writing and signed by Seller, or by the acknowledgement or acceptance of any purchase order or similar forms containing different conditions. The determination by a court of law as to the invalidity of any terms hereof shall not affect the validity of any other terms.

15.1 Seller warrants to the Property Owner of real property for which KELIX's Product(s) are purchased and in which KELIX's Product(s) are installed by an authorized KELIX Thermacouple® Dealer, that Seller's Products, when properly installed, used, and maintained in accordance with the Seller's Thermacouple® Earth Energy System Installation Instructions (published by Seller on its website at <http://www.kelix.com>), shall be free from material defects, and shall be fit for its intended purpose which is only for transferring heat energy between (i) an underground Earth Energy exchanging system to which said Product is connected, and (ii) the underground Earth environment in which said Products are installed in accordance with the Seller's Thermacouple® Earth Energy System Installation Instructions.

15.2 Unless otherwise specified, the warranty period for Seller's Product(s) shall be fifty (50) years from the date of installation of the Product on the real property of the Property Owner by an authorized KELIX Thermacouple® Dealer, provided that the Property Owner registers its warranty on installed Product(s) with Seller within ninety (90) days from said date of installation. Failure of the Property Owner to register its warranty on installed Product(s) with Seller, within the 90 day warranty registration period, shall void the warranty set forth in this Article.

15.3 Procedures and requirements for registering a Property Owner's limited warranty in Article 15.2, and for submitting warranty claims to Seller, are set forth in the Limited Warranty and Disclaimer Provisions set forth in KELIX's Thermacouple® Earth Energy System Installation Instructions, provided with each Product, and also published Kelix Site at <http://www.kelix.com>.

16. GOVERNING LAW: Any sale of Products by Seller to Buyer shall in all respects be construed under and be given legal effect in conformity with the laws of the State of Oklahoma, in the United States of America (USA).

17. Any lawsuit relating to any matter arising from the sale of Products, initiated by Buyer or Seller shall be initiated in a State or Federal Court located in the State of Oklahoma in the United States of America, or in any court in the country in which the Buyer is located having jurisdiction over the matter. Buyer irrevocably consents to the jurisdiction and to the service of process, pleadings, and notices in connection with any and all actions and processes initiated in a State or Federal court located in the State of Oklahoma in the United States of America, or any such court in the country in which Buyer is located. In the event that litigation is commenced for any dispute between the Parties, the successful party in any such litigation shall be entitled to its costs and expenses, including legal fees.

Accepted by Seller:

\_\_\_\_\_  
John Kidwell, President/CEO

Date: \_\_\_\_\_

KPO No.: \_\_\_\_\_

