

## **ELTHERM CANADA INC. PRODUCT WARRANTY**

### **1. Warranty Period**

The warranty period applicable to equipment manufactured by Eltherm ("**Warranty Period**") shall end 12 months from date of installation or 18 months from date of shipment of the equipment to purchaser, whichever occurs first, unless otherwise negotiated in writing with Eltherm.

### **2. Warranty**

During the Warranty Period, Eltherm warrants that equipment subjected to normal use and service will be free from defects in materials and workmanship and will substantially conform to any quality or performance specifications that have been acknowledged and agreed to in writing by Eltherm.

### **3. Remedy for Breach of Warranty**

3.1 In the event of any breach of the warranty set out in Section 2 above, Eltherm shall, at its sole option and subject to the terms of this warranty, either repair or replace the defective equipment. In addition, instead of repairing or replacing the equipment, Eltherm may, at its option, take back the defective equipment and refund in full settlement the purchase price paid by the purchaser for the equipment.

3.2 Eltherm's obligation under this warranty does not include the cost of furnishing any labour in connection with the removal of defective equipment or the installation of repaired or replaced equipment or parts thereof; nor does it include the responsibility for or cost of transportation.

### **4. Warranty Conditions and Exclusions**

4.1 The warranty set out in Section 2 above does not cover any defect, damage or condition resulting from, caused by, relating to or arising out of, directly or indirectly:

- (i) failure to assemble, install or use the equipment other than in strict conformity with instructions provided by Eltherm;
- (ii) dismantling, re-assembly, modification, alteration, repair or testing of the equipment by anyone other than Eltherm or its authorized service providers;
- (iii) the use of parts, components or accessories that have not been provided by Eltherm;
- (iv) improper maintenance of or failure to maintain the equipment in accordance with Eltherm's instructions;
- (v) defect, breakdown or malfunction of other devices, parts, components, materials or services used in connection with the equipment that are that are manufactured by anyone other than Eltherm;

(vi) damage or destruction of the equipment by external influences, including, without limitation, accident, vandalism, fire, flooding, explosions, power outages, electromagnetic disturbances, lightning, extreme weather conditions, and force of elements;

(vii) incorrect storage or inappropriate transport of the equipment by anyone other than Eltherm or its authorized sellers before installation;

(viii) normal wear and tear.

4.2 Eltherm shall not be liable under this warranty for statements, claims, warranties or representations made relating to the equipment by anyone other than Eltherm as set out in its written product descriptions and specifications.

4.3 Eltherm makes no warranty as to and shall not be liable for the truth or accuracy of product descriptions or specifications issued by suppliers of materials, parts or components used in the manufacture of the equipment.

4.4 Authorized repairs to equipment during the Warranty Period will not interrupt or prolong the Warranty Period.

## **5. Claims Process**

5.1 To receive service under this warranty, purchaser must notify the authorized seller of the product at its place of business or Eltherm directly.

5.2 Eltherm's obligation under this warranty is limited to the repair or replacement of the defective product, at its option, f.o.b. point of shipment, provided that prompt notice of any defect is given by purchaser within the Warranty Period and that upon purchaser's return of the defective part to Eltherm or, if designated by Eltherm, to its authorized representative, properly packed and with transportation charges prepaid by purchaser, an inspection thereof reveals to Eltherm's satisfaction that purchaser's claim is valid under the terms of this warranty. Purchaser shall assume all responsibility and expense for dismantling, removal, re-installation and freight in connection with the foregoing.

## **6. Limitations**

To the extent permitted by applicable law, this warranty is expressly intended to exclude all other express or implied warranties, including without limitation any warranty of merchantability or fitness for a particular purpose. THE PROVISIONS OF THIS WARRANTY CONSTITUTE PURCHASER'S SOLE REMEDY WITH RESPECT TO DEFECTIVE EQUIPMENT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS WARRANTY, ELTHERM MAKES NO REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, WHETHER BY STATUTE, USAGE, CUSTOM OF TRADE OR OTHERWISE WITH RESPECT TO ANY EQUIPMENT, AND DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND CONDITIONS RELATING THERETO, INCLUDING BUT LIMITED TO ANY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ELTHERM AND ITS AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES AND AUTHORIZED REPRESENTATIVES SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST ANY AND ALL OF THEM, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES WHATSOEVER. ELTHERM AND ITS AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES AND AUTHORIZED REPRESENTATIVES WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST ANY AND ALL OF THEM, FOR ANY LOSS, DAMAGE OR INJURY TO PERSON, INCLUDING DEATH, OR PROPERTY. IN NO EVENT WILL ELTHERM HAVE ANY LIABILITY TO ANY PERSON RELATING TO THE EQUIPMENT THAT EXCEEDS THE PURCHASE PRICE OF THE SPECIFIC EQUIPMENT AS TO WHICH A CLAIM IS MADE.

## **7. General**

7.1 If any provision of this warranty is held unenforceable or illegal by a court or other body of competent jurisdiction, such provisions shall be modified to the minimum extent required such that the rest of this warranty will continue in full force and effect.

7.2 The rights and responsibilities granted under this warranty shall be governed and construed in accordance with the laws of the Province of Ontario, without regard to its conflict of law principles. The courts of competent jurisdiction of the Province of Ontario shall have exclusive jurisdiction with respect to any action or proceeding relating to this warranty.