



## **(Terms & Conditions of Sale – January 1<sup>st</sup>,2018)**

**NOTICE TO BUYERS: The acceptance by seller of your order is expressly conditioned on assent to these terms and conditions of sale. Unless specifically objected to by buyer in writing, within ten days of receipt, these Terms and Conditions shall solely and exclusively govern this quotation and/or sale.**

### **I. GOODS SUBJECT TO SALE**

(a)The goods subject to this sale (hereinafter "Goods" shall be limited to those goods described on the face of Seller's quotation form and/or Seller's acknowledgment form.

(b)Unless specifically noted on the face of Seller's quotation form and/or Seller's acknowledgment form, the Goods subject to this sale do not include, and Buyer hereby assumes responsibility for: (1) set up, start up, and or installation; (2) safety equipment used with the Goods or by Buyer's employees or any third parties in handling or working with the Goods; (3) making manuals or instructions as to the proper use and/or installation of the Goods available to Buyer's employees; or (4) signs and/or plaques related to the proper use and/or installation of the Goods.

(c)Seller reserves the right to substitute substantially comparable goods for the Goods which are the subject of this sale.

### **II. SELLER'S QUOTATION FORM**

(a)Seller's quotation form constitutes an offer, and may be accepted by Buyer, PROVIDED THAT ACCEPTANCE BY BUYER SHALL BE LIMITED TO AND SHALL INCLUDE ALL OF SELLER'S TERMS AND CONDITIONS OF SALE. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE HEREBY REFUSED AND REJECTED BY SELLER.

(b)Any purchase order form of acceptance issued by Buyer shall result in a contract for the purchase of the Goods at the price quoted. The resulting contract shall include all of the terms set forth in Seller's quotation and in any of Seller's subsequent documents signed by Seller and included in the contract, all of which are hereafter called Seller's Terms. Buyer shall be deemed to have accepted any of Seller's Terms not specifically objected to by Buyer. Buyer's issuance of a purchase order which in effect rejects some or all of Seller's Terms by virtue of its standard form language shall not be sufficient objection. Buyer shall be required to set forth each objection to Seller's Terms in a separate writing signed and dated by Buyer and delivered to Seller prior to or contemporaneous with Buyer's purchase order or other form of acceptance.

(c)Seller reserves the right to withdraw any and all quotations at any time prior to its receipt of Buyer's purchase order or other form of acceptance. In the event that Seller issues more than one quotation pertaining to the same Goods, the quotation latest in time shall control and all prior quotations shall be deemed withdrawn. Withdrawal of any quotation shall not reinstate the terms of any prior quotation; however a subsequent quotation may modify a prior quotation, preserving the prior quotation to the extent specifically indicated on the face of the subsequent quotation form.

(d)Seller's quotation is not and shall not be considered a firm offer.

### **III. SELLER'S ACKNOWLEDGMENT FORM**

In cases where Seller has not issued a quotation, Seller's acknowledgment form constitutes an acceptance of Buyer's purchase order. However, Seller's acceptance form constitutes an acceptance of Buyer's purchase order. However, Seller's acceptance is expressly conditioned upon Buyer's assent to any terms in Seller's acknowledgment which are additional to or different from the terms contained in Buyer's purchase order. No contract shall be formed if Buyer does not consent to such additional and/or different terms and conditions.

### **IV. DIFFERENT OR ADDITIONAL TERMS OF BUYER.**

REGARDLESS OF ANY OTHER TERMS AND DOCUMENTS ISSUED BY BUYER OR OTHER PARTIES OTHER THAN SELLER, THE TERMS AND CONDITIONS OF THIS DOCUMENT ARE THE ONLY TERMS AND CONDITIONS EXPRESSLY AGREED UPON BY SELLER, UNLESS SPECIFIED CHANGES, ALTERATIONS, OR ADDITIONS ARE AGREED TO IN WRITING SIGNED BY AN AUTHORIZED OFFICIAL OF SELLER. SIGNATURE BY SELLER ON ANY OTHER DOCUMENT OF BUYER OR ANOTHER COMPANY SHALL NOT CONSTITUTE ACCEPTANCE BY SELLER OF ANY TERMS OR CONDITIONS THEREON. SIGNATURE BY SELLER ON SUCH DOCUMENTS CONSTITUTES ONLY ACKNOWLEDGMENT OF PHYSICAL RECEIPT THEREOF AND DOES NOT IN ANY WAY IMPLY AGREEMENT WITH ANY OTHER TERMS AND CONDITIONS OTHER THAN THOSE EXPRESSLY PRINTED IN THIS DOCUMENT.

### **V. MODIFICATION**

(a)Any resulting contract between the parties may only be modified if Seller issues a new quotation or acknowledgment form setting forth at least the new terms and conditions of the contract. If Buyer does not object to the new terms and conditions in writing within (10) days of the date of the new quotation or acknowledgment, the new terms and conditions shall become a part of the contract. Buyer's objection to such new terms and conditions shall be by a special, separate writing signed and dated by Buyer.

(b) Buyer shall be deemed to consent to the new terms and conditions of the contract proposed by the Seller to the extent that Buyer does not object to those new terms and conditions within (10) days of the date of the new quotation or acknowledgment.

### **VI. PRICES.**

Prices published or quoted by Seller are subject to change without prior notification. All prices are based on U.S. dollars, Ex Works Seller's plant, Lake City, Pennsylvania, unless another Ex Works point is specified. Prices do not include any taxes (sales, excise, use, etc.) or any export or import duties imposed by any country which may be applicable to the sale of the Goods. Such taxes or duties, if applicable, will be paid by Buyer, and Buyer hereby expressly agrees to indemnify and hold harmless Seller from any claim loss, damage, liability, or expense with regard to the payment of any such taxes or charges. Prices on any purchase orders may be adjusted at the time of acceptance and acknowledgment of Seller's offices.

### **VII. ERRORS.**

Seller reserves the right to correct any typographical or clerical errors which may be present in prices, specifications, quotations, or acknowledgments.

### **VIII. TERMS OF PAYMENT.**

(a)Unless other terms of payment are specified in Seller's quotation and/or acknowledgment, payment shall be made in full at Seller's main offices in Lake City, Pennsylvania, U.S.A., or at another designated point within thirty (30) days from the date of shipment and payment is not contingent upon installation or upon field tests. Buyer hereby agrees to make such payment in full without any deduction for claim of set-off or recoupment on account of this contract or any other contract or matter between the parties.

If shipment is delayed by Buyer, payment shall become due thirty (30) days from the date Seller has notified Buyer that it is ready to ship. If production by Seller is delayed by Buyer, partial payment is to be made based on the acknowledged price and a percentage of completion at the time of notification of delay. Should Buyer delay payment beyond limits defined in seller's quotations and/or acknowledgments, interest shall be charged at the lesser of eighteen (18%) percent per annum or the maximum rate allowed by applicable state laws and Buyer hereby agrees to pay all interest charges as so assessed. Note that the Seller reserves the right to require progress payments for any order.

### **IX. CREDIT.**

(a)Seller agrees to extend credit to Buyer for the Goods covered by this sale provided that Buyer is not currently insolvent, and provided further that Buyer is able to pay Seller as agreed under this contract and all other contracts between the parties, and provided further that the financial condition of Buyer as reported to Seller does not change between the date of the contract and the date of any shipment of Goods to Buyer.

(b) Whenever requested, Buyer shall submit to Seller a balance sheet and income statement which reflect the current financial position of Buyer's business.

(c)By placing the order with Seller and by requesting credit, Buyer represents to Seller that Buyer is currently solvent. Such representation shall be deemed to be continuing in nature until Buyer notifies Seller of Buyer's insolvency in writing signed by Buyer.

**X. CANCELLATION/ RETURNS.** After Seller has acknowledgment of Buyer's purchase order to Buyer, Buyer will have no right of cancellation of the resulting contract without written approval of Seller. If written approval is given, Buyer shall be responsible to Seller for, and hereby agrees to pay, all costs incurred by Seller as of the effective date of cancellation plus hereby agrees to pay, all costs incurred by Seller as of the effective date of cancellation plus a cancellation fee equal to fifteen percent (15%) of the total price set forth in the contract. Should Goods already have been shipped prior to the request for cancellation, Seller has the option to accept or refuse return of the Goods. If return is accepted, Buyer must return all Goods to the location designated by Seller, freight prepaid within 90 days of order shipment. The return will be subject to a restocking charge of twenty-five percent (25%) of the total price set forth on the order. In addition, if work is needed to return the Goods to a saleable condition, these costs will also be charged to the Buyer. No returns will be accepted beyond 90 days of order shipment.

### **XI. SHIPMENT DELIVERY AND DELAYS.**

Any shipment date stated in the quotation and or acknowledgment is approximate only and does not constitute any guarantee of shipment on any particular date. Notwithstanding the reservation of title by Seller, risk of loss or damage to all Goods sold Ex Works shall pass from Seller to Buyer upon delivery by Seller to possession of the carrier or other person providing delivery of the Goods. Any claims for loss or damage after possession by the carrier will be solely between Buyer and the carrier. Seller will provide reasonable assistance to Buyer in filing loss or damage claims.

Notification of receipt of damaged Goods by any customer or distributor when having been shipped on a "prepaid and add," or "freight allowed" basis must be made to Seller's offices within thirty (30) days of receipt of the Goods together with carrier's delivery documents denoting any damage. Seller will attempt to package, load and prepare all shipments with care to attempt to assure arrival of Goods at destination in good condition, and bagged chemicals will be loaded in the carrier in such a manner as to attempt to preclude any shifting during transit, but Seller cannot control the manner in which the carrier is moved or handled and will not be responsible for shifting of loads within the carrier, or puncturing of bags or other damage to goods by material handling equipment. Seller assumes responsibility for failure of packaging seals.

Seller shall not be responsible to Buyer or any third party for any damages resulting from failure to manufacture, delays in manufacture, failure to make shipment, or delay in shipment where such failure to perform or delay in performance is due to compliance or noncompliance with any statutes, acts, ordinances, regulations, order or instructions of any federal, state, municipal or local government or any other agencies or departments; acts of God; acts of civil or military authority; fire; flood; strikes; factory or plant shutdown, or other labor disputes; embargoes, war, riot or civil disturbance; delays in transportation; inability of Seller to obtain necessary labor or to schedule manufacturing capacity; lack of manufacturing facilities or equipment of Seller; lack of utilities, utility service or energy availability or inability to obtain, or delays in obtaining materials, supplies, components, or other matters from third parties, or any cause or causes beyond the reasonable cause of Seller. If shipment by Seller is delayed or extended by Buyer, Buyer shall arrange for and notify Seller of the place or places to which Seller shall ship the Goods covered by the order, for warehousing or storage at Buyer's expense. All risk of loss or damage to the Goods shall be borne by Buyer.

### **XII. INSTALLATION.**

Unless otherwise set forth in a quotation and/or acknowledgment, Seller shall not be responsible for installation. Cost of and all risks of damage to the equipment and/or components thereof caused by installation shall be the sole responsibility of Buyer. If supervision of installation and/or supervision of start-up of the equipment is to be provided by Seller, Buyer shall assume all costs incurred by Seller in furnishing supervision. If supervision of installation and/or supervision of start-up of the equipment is provided by Seller, Seller shall only be responsible for any loss or damage growing out of a direct negligent act or acts of Seller's supervisor.

**SELLER SHALL NOT BE RESPONSIBLE FOR IMPROPER OPERATION OF THE EQUIPMENT DUE TO FAULTY ERECTION OR INSTALLATION.**

### **XIII. PERFORMANCE.**

a. Seller shall have no responsibility for the performance of its Goods when installed under conditions varying materially from those under which the product is usually tested or operated under existing industry standards.

### **XIV. LIMITATIONS OF LIABILITIES AND INDEMNITIES.**

a. IN NO CASE, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY OR TORT (INCLUDING SELLERS OR BUYERS NEGLIGENCE OR STRICT LIABILITY) SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES INCURRED BY BUYER, INCLUDING BUT NOT LIMITED TO, LOSS OF SALES, PROFIT REVENUE OR GOOD WILL; LOSS OF USE OF GOODS OR ANY ASSOCIATED EQUIPMENT OR MATERIAL; COST OF CAPITAL; COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES; DOWN TIME COSTS; ATTORNEY'S FEES OR LOSSES OR CLAIMS OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES. BUYER HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY AND ALL SUCH DAMAGES. BUYER FURTHER AGREES TO DEFEND INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES OR EXPENSES (INCLUDING ATTORNEY'S FEES) DUE TO PERSONAL INJURIES OR DEATH, TO BUYER, ITS EMPLOYEES, AND THIRD PARTIES AND FROM PROPERTY DAMAGE RESULTING FROM THE NEGLIGENCE OR STRICT LIABILITY OF BUYER NOTWITHSTANDING THE PROVISIONS OF ANY WORKER COMPENSATION OR SIMILAR STATUTE.

### **XV. LIMITATIONS OF ACTIONS.**

(a) Buyer or anyone claiming through Buyer must bring any action against Seller within one (1) year from the date on which the act complained of occurs.  
(b) Seller shall have a maximum of four (4) years from the date when payment is due from Buyer to Seller to bring any action against Buyer.

### **XVI. SERVICE, OPERATING PROCEDURE, WARNINGS.**

Should Buyer request start-up supervision by Seller, a maximum number of days required for this supervision may be included and specified in the quotation and/or acknowledgment as a separate price item. The specified days are only approximate, since start-up supervision is contingent upon equipment and work supplied by others and beyond the control of Seller, and Seller shall be paid for any days actually worked in addition to those specified on a pro-rated basis.

Start-up supervision and warranty supervision and warranty service time will include all elapsed time during the standard working hours as defined by Seller or Seller's representative from the time Seller's representative leaves his operating base or another customer's plant. Where the service to be performed is start-up supervision, Seller should be notified approximately 30 days prior to start-up. Seller's representatives may be required to have standard time verification sheets approved by Buyer's authorized representative and the name and title of this representative should be furnished to Seller with the notification.

Unless set forth in the quotation and/or acknowledgment, Seller shall not be obligated to provide special operating manuals or operating procedures for the operation of its equipment or supply special warning placards to be affixed to the equipment. If such manuals, procedures or placards are provided by Seller, Buyer shall be responsible for payment of cost of furnishing such items; for instructing any operator of the equipment as to the contents of such manuals and/or procedures; for requiring that such procedures be abided by; for insuring that warning placards remain affixed to the equipment; and for requiring operators to abide by warning placards.

Any safety equipment required to be worn by any operator or maintenance person shall be provided by Buyer and the failure to provide such equipment or the failure to require the use thereof shall be the Buyer's sole responsibility. Buyer shall indemnify and hold Seller harmless for any liability with respect thereto.

Seller shall not be responsible for providing safety devices and/or guarding of the equipment except as provided for in the quotation and/or acknowledgment and Buyer specifically assumes all responsibility for supplying such safety devices and/or guarding necessary for the safe operation of the equipment. If safety devices and/or guarding are specified in the quotation and/or acknowledgment, Buyer shall be solely responsible for making certain that any operator of the equipment uses such safety devices and/or guarding and Buyer shall indemnify and hold Seller harmless with respect to any property damage and/or personal injury including death, occasioned by any person by reason of such failure on the part of Buyer and/or its operator.

### **XVII. PRODUCT CHANGES.**

Factors beyond Seller's control and the need for continuing improvements of products require the making of changes in products from time to time. Seller reserves the right to make reasonable design modifications of parts against any order, unless this right is specifically waived by Seller in writing. Seller will, however, supply equipment dimensionally in accordance with certified drawings submitted for a given order. Seller will have no responsibility whatever with respect made to changes made to Goods sold but not manufactured by Seller. Product changes or modifications requested by a customer after a PO is acknowledged will require a \$250 change fee to be paid before any engineering and/or manufacturing work will commence.

### **XVIII. PATENTS.**

Seller warrants that Goods furnished and any parts of those Goods which are manufactured to Seller's design, shall be delivered free of any rightful claim of infringement of any United States patent and that if Seller is notified promptly in writing of any claimed patent infringement and given authority, information, and assistance, Seller will defend or may settle, at its expense, any suit. Failure to do so will be considered a breach of this warranty by Seller and Seller shall pay all damages and costs awarded against Buyer due to such breach in case any Goods or parts thereof is in the suit held to constitute such an infringement. If the use of the Goods or parts is enjoined, or if Seller deems it necessary to defend or settle a claimed patent infringement, Seller shall at its expense and option, either procure for Buyer the right to continue using such Good or parts, or replace the same so that it becomes non-infringing or remove the Goods and refund the purchase price (less reasonable depreciation for any period of use). The foregoing states the entire liability of Seller for patent infringement by said Goods of any part thereof.

The preceding paragraph shall not apply to any Goods or part specified by Buyer or manufactured to Buyer's design or to the use of any Goods furnished hereunder in conjunction with any other item(s) in a combination not furnished by Seller as a part of this transaction. As to any such item, part, or use in such combination, Seller shall have no liability whatsoever for patent infringement and buyer will indemnify Seller and hold Seller harmless against any claims liability damages or expenses including attorney's fees as a result of infringement claims arising therefrom.

### **XIX. COLLECTION COSTS, ATTORNEY'S FEES.**

b. Buyer agrees that in the event suit is instituted by Seller to recover possession of any goods sold, to enforce any of these terms and conditions; or to collect any sums of money, damages or costs from the Buyer hereunder or any sum of money for the use or rental of the Goods, Buyer shall pay all actual costs of collection and attorney's fees incurred by Seller in such suit or suits. In the event that Buyer brings any action against Seller arising from the sale or use of Seller's Goods and Buyer fails to prevail in such action, Buyer hereby agrees to reimburse Seller for any attorney's fees and cost related to such litigation.

### **XX. ASSIGNMENT**

(a) Except as provided to the contrary hereunder, Seller or Buyer may assign any contract resulting from one or more quotations and/or acknowledgements, with the other party's written consent, which shall not be unreasonably withheld.  
(b) Any such contract shall be binding upon and inure to the benefit of the successors and assigns of Buyer and Seller.  
(c) Any assignment of such contract by Buyer, if approved by Seller, shall not relieve Buyer of buyer's duties to Seller hereunder, and in the event that Buyer's assignee fails in performing those duties to Seller, Seller shall have the right to pursue both Buyer and Buyer's assignee for any appropriate relief.

### **XXI. APPLICABLE LAW.**

The validity, performance and all matters relating to the interpretation and effect of a contract resulting from any one or more quotations and/or acknowledgments shall be governed by the laws of the Commonwealth of Pennsylvania, U.S.A. The United States Convention on the International Sale of Goods shall not apply.

### **XXII. ARBITRATION.**

Seller shall not be bound by any provision of any document of buyer requiring arbitration of any claim which Seller may have against Buyer related to or arising out of any contract resulting from one or more quotations and/or acknowledgments.

### **XXIII. SELLER'S REMEDIES.**

Seller may simultaneously pursue any and all remedies it may have against Buyer for or on account of Buyer's failure to perform as agreed hereunder and in pursuing any one or more remedies Seller shall not be deemed to have made an election of remedies.

### **XXIV. WAIVER.**

Failure of Seller to require Buyers performance of any of these terms and conditions or waiver by Seller of any breach by Buyer or any of these terms and conditions shall not prevent subsequent enforcement of such term and/or condition, nor shall it be deemed a waiver of any subsequent breach thereof.

### **XXV. CAPACITY LIMITATIONS.**

All quotations are based on the current availability of Seller's manpower, materials and manufacturing facilities to perform the design, fabrication, and services required. In the event other purchase orders are awarded to Seller that utilize the available manpower and facilities prior to the acknowledgment of Buyers purchase order, Seller reserves the right to withdraw or amend its quotation accordingly.

### **XXVI. ENTIRE AGREEMENT.**

The terms of a quotation and/or acknowledgment (including any specifications or other documents incorporated by reference therein) and these terms and conditions will constitute the entire understanding and agreement between Buyer and Seller concerning the subject matter. Any representation, promise, course of dealing or trade usage not contained herein will not be binding on either party. No modification and amendment, recession, waiver or other change of any resulting agreement or any part thereof shall be binding upon Seller unless consented to in writing by Seller's authorized representatives in Lake City, Pennsylvania, U.S.A. If any term or condition set forth in a quotation and/or acknowledgment is declared null and void by any court with competent jurisdiction, the remaining terms and conditions shall nevertheless remain applicable.

## **Van Air Systems/ Van Gas Technologies**

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