



## Seller's Standard Terms and Conditions

**1. GENERAL.** The terms and conditions (collectively the "Terms") contained herein are hereby annexed to any Purchase Order(s) (the "P.O.") for the delivery of goods and services (collectively the "Goods") provided by AboveAir Technologies, LLC ("AAT") to you ("Buyer") with respect to the transaction(s) covered by the P.O. (the "Transaction"). The Terms set forth below, the P.O. issued by Buyer and the written acknowledgement and acceptance of Buyer's P.O. (collectively the "Transaction Documents") shall become binding on the Parties upon the later of: (i) AAT's written acknowledgement and acceptance of the P.O.; and (ii) Buyer's written acknowledgement of these Terms (collectively the "Effective Date"). For purposes hereof, AAT and Buyer shall be collectively referred to as the "Parties" or singularly as a "Party".

**2. PRICE AND TAXES.** The base purchase price payable by Buyer to AAT for the Goods (collectively the "Price") is based upon the amounts set forth on the face of the AAT quotation from which the P.O. was issued or AAT's pricing in effect on the date of the P.O. if no quotation is provided. The delivery date will be established on the P.O. acknowledgement form prepared and sent by AAT. Unless otherwise specified in writing by AAT, the Price quoted or specified by AAT shall remain in effect for ninety (90) days after the date of AAT's quotation (the "Acceptance Period"), provided that an unconditional authorization from Buyer to release the P.O. for production and/or shipment by AAT is received and accepted by AAT within the Acceptance Period. The Price does not include any applicable Federal, State or local sales, use, excise, value-added or similar-type tax or assessments applicable to the Price of the Goods ordered by Buyer. Any current or future tax or governmental charge (or increase in same) affecting AAT's costs of production, sale, or delivery or shipment, or which AAT is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods shall be for Buyer's account and shall be added to the Price or billed to Buyer separately, at AAT's election. Such taxes and assessments will be included in AAT's invoice and paid by Buyer unless the P.O. plainly states on its face the existence of an exemption from any such tax or assessment and Buyer provides AAT with evidence of such exemption from the applicable taxing authority.

**3. DELIVERY, TITLE & RISK OF LOSS.** Shipment dates are approximate and are based upon prompt receipt of all necessary information from Buyer. While AAT will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by AAT, all shipping dates and/or performance dates are approximate and not guaranteed. AAT reserves the right to make partial shipments. AAT, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse AAT for any and all storage costs and other additional expenses resulting therefrom. Delivery shall be made (and title and risk of loss shall pass to Buyer) upon AAT placing the Goods with a carrier FOB shipping point. Receipt of the Goods by Buyer shall constitute Buyer's acceptance for delivery and waiver of any and all claims against AAT for loss or damage incurred. Passage of title for the Goods is subject to Buyer's compliance with these Terms. In the event Buyer requests changes in the specifications after the Transaction Documents have become binding, such changes shall become part of the P.O. only upon acceptance by AAT, in its sole discretion, whereupon: (i) anticipated delivery dates will be reasonably extended; and (ii) AAT shall be compensated for all costs incurred in connection with such change, including the Price, which shall be adjusted to maintain AAT's anticipated profit margin. No claims for errors in shipment will be binding upon AAT unless made by Buyer within ten (10) days after the receipt of the Goods and only if accompanied by necessary evidence/documents to substantiate the claim. Claims for loss or damage against the shipper in transit may, at AAT's election, be entered and prosecuted directly by Buyer. The Goods shall be installed by and at the expense of the Buyer and/or Buyer's assignees and AAT shall have no obligation with respect thereto.

**4. LIMITED WARRANTY.**

4.1 Unless a different Limited Warranty is provided by AAT in the Transaction Documents, the express provisions of all warranties of every nature and every kind for and with respect to the Goods and/or the Transaction shall be limited to the Limited Warranty set forth in this Section 4. AAT warrants to the original Buyer (and any assignee approved by AAT in writing prior to the assignment thereof) against defects in materials and/or workmanship with respect to the Goods (collectively a "Defect") for a period of twelve (12) months from the date of shipment from AAT's facility; PROVIDED, HOWEVER, in the event Buyer obtains a successful start-up of the Goods and provides documentation thereof evidenced by AAT's receipt of fully-completed, factory-formatted, start-up documentation (which must be received from Buyer within ninety (90) days from the shipment date, time being of the essence), then the twelve (12)-month Limited Warranty set forth above shall be extended for an additional ninety (90)-day period, and the Limited Warranty provided hereunder will continue for a total of fifteen (15) months following the date of shipment as aforesaid. Buyer's sole and exclusive remedy under this Limited Warranty shall be limited to either the repair or exchange of the warranted products (FOB AAT's factory), at AAT's option. As a material and integral term of this Limited Warranty, no attempt to repair and/or improve the Goods and/or any parts or components thereof by any of AAT's representatives shall change or extend this Limited Warranty.

**4.2. NOTWITHSTANDING ANYTHING IN THIS LIMITED WARRANTY AND/OR THESE TERMS AND CONDITIONS TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE AGREEMENTS, WARRANTIES, REPRESENTATIONS AND COVENANTS OF AAT HEREUNDER REPRESENT "A LIMITED WARRANTY", AND THEREFORE, AAT'S OBLIGATIONS TO CORRECT AND/OR REPAIR ANY DEFECT ARE LIMITED TO THE TERMS AND CONDITIONS HEREOF. EXCEPT AS SET FORTH HEREIN, IT IS UNDERSTOOD AND AGREED THAT THE PHYSICAL CONDITION OF THE GOODS ARE BEING CONVEYED PURSUANT TO THE P.O. IN "AS IS" CONDITION. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACCEPTS THE LIMITED WARRANTY AS THE SOLE WARRANTY GIVEN BY AAT TO BUYER WITH RESPECT TO THE GOODS. THE SALES AGENTS, EMPLOYEES AND/OR INDEPENDENT CONTRACTORS OF AAT ARE NOT AUTHORIZED TO MODIFY THIS LIMITED WARRANTY OR GIVE ADDITIONAL WARRANTIES BINDING ON AAT. ACCORDINGLY, STATEMENTS MADE IN ADVERTISING OR OTHER PRESENTATIONS OR COMMUNICATIONS, WHETHER ORAL OR WRITTEN, DO NOT CONSTITUTE WARRANTIES BY AAT AND ARE NOT RELIED UPON BY BUYER. UNLESS OTHERWISE PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL AAT, IN ANY CASE, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR OTHER SIMILAR DAMAGES CREATED BY, ARISING OUT OF, OR RESULTING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER LEGAL THEORY, EVEN IF AAT OR AAT'S AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL AAT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE P.O. AND THESE TERMS AND CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO AAT FOR THE GOODS SOLD HEREUNDER.**

4.3 Notwithstanding anything in the Transaction Documents to the contrary and as a material and integral term of the Transaction, Buyer expressly agrees that AAT shall not be liable for any indirect, consequential, exemplary, special, incidental or punitive damages, including, without limitation, loss of use, loss of business, revenue, profit or goodwill, downtime costs, damage to associated equipment, cost of substitute goods, facilities or services, or claims of Buyer's customers for such damages, or other commercial or economic damages or costs, that may arise out of, in conjunction with or relate to, the failure of any Goods sold by AAT to Buyer, under any legal theory or cause of action, including, without limitation, tort, contract, warranty, strict liability or federal, state or local statute, ordinance or regulation. In no event shall AAT's liability exceed the Price of the Goods which give rise to the claim. Buyer agrees that if it transfers title to or leases the Goods to any third-party buyer shall obtain such buyer's agreement to the limitations set forth herein. If the Buyer or its agents grants to an end user any warranty which is greater in scope or time period than the Limited Warranty stated herein, AAT shall not be liable beyond the Limited Warranty set forth herein and Buyer shall indemnify and hold AAT harmless with respect thereto.

4.4 No Goods or any portion thereof shall be returned without prior authorization from AAT. Buyer shall prepay all transportation charges for the return of such Goods or any portion thereof to AAT's factory or authorized factory service center. AAT will not accept any charges for labor and/or parts incidental to the removal and remounting of any Goods repaired or replaced under this Limited Warranty. All repair and replacement parts provided under this Limited Warranty will assume the identity, for Limited Warranty purposes, of the part replaced and the Limited Warranty on such replacement parts will expire when the Limited Warranty on the original part would have expired. Claims must be submitted within thirty (30) days of failure or be subject to rejection. This Limited Warranty is not transferable by Buyer unless approved in writing by AAT prior to the assignment or transfer thereof.

4.5 The Limited Warranty set forth above does not cover conditions over which AAT has no control, and therefore, a Defect for purposes hereof shall not include: (i) contamination; (ii) Goods damaged or subjected to excess voltage; (iii) Goods exposed to temperatures, venting requirements and/or flow rates outside of specified range; (iv) accidents, abuse, negligence, improper maintenance and/or misuse after shipment from AAT's factory; (v) Goods altered, disassembled or repaired by anyone other than AAT personnel or persons so designated in writing by AAT prior to the commencement of said work; (vi) damages due to deterioration during periods of storage by the Buyer prior to installation and operation; (vii) damage due to unsuitable fuels, power, selection to the wrong product settings; (viii) damage due to corrosion (including due to water quality, liquids utilized and air), mineral deposits, mold, fungus, abrasion or bacteria; (ix) ordinary wear and tear; (x) any damage caused to the Goods by any portion or component of any system that is not supplied by AAT, regardless of the cause of the failure of such portion or component; (xi) Goods on which payment to AAT is in default; or (xii) any other matter, activity and/or passage of time causing a Defect which are beyond the reasonable control of AAT. In addition, AAT shall not be liable for the acts of Buyer's employees, agents or contractors, nor shall AAT have any responsibility for the performance of Goods not installed in compliance with the installation manual. Whenever possible, each provision of the Limited Warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Limited Warranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the minimum extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Limited Warranty.



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5. **FORCE MAJEURE.** AAT shall not be liable for delays or failures in delivery, damage to Goods, or performance due to acts of God, governmental authority or public enemy, fire, flood, strike, labor disturbance, epidemic, war, riot, civil disturbance, power failure, embargoes, shortages in materials, components or service, boycotts, transportation delays or any other cause beyond AAT's control. In the event of such delay or failure, the Transaction shall not terminate, but the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.
6. **CANCELLATION AT DEFAULT OF BUYER.** AAT may cancel the Transaction without liability effective upon written notice to Buyer, upon occurrence of any of the following Events of Default: (i) Buyer's failure to make timely payment of any sum owing to AAT for any orders accepted and shipped by AAT or otherwise; or (ii) institution of any proceedings by or against Buyer under any bankruptcy, insolvency or similar law and/or the appointment or application for a receiver for Buyer or an assignment by Buyer for the benefit of creditors. Upon cancellation, at AAT's option: (i) Buyer shall pay for all Goods delivered and for all Goods completed or in process pursuant to the P.O. accepted by AAT; (ii) with respect to all Goods for which AAT has not received full payment, AAT may stop delivery, retake (Buyer shall surrender the Goods without dispute) or retain possession of the Goods wherever located (all without notice, demand or legal process) and retain, lease or resell (at public or private auction or otherwise) without accounting to Buyer, and any payments received by AAT from Buyer or otherwise may be retained as liquidated damages; or (iii) AAT may declare any outstanding balance immediately due and owing and collect same from Buyer without further notice or demand, together with interest at the maximum rate permitted by law. The rights of cancellation and remedies provided in this Section are cumulative and are in addition to any other rights and remedies of AAT in law or equity.
7. **PAYMENTS TERMS.** Except as otherwise specified by AAT in writing, terms of payment are net thirty (30) days (but, in all cases, subject to AAT's approval of Buyer's credit) from the acknowledgement and acceptance of the Transaction Documents by AAT, subject to credit approval, with no discount allowed for earlier payment and no right of offset and/or diminution for amounts due or allegedly due from AAT to Buyer. It is expressly understood and agreed by Buyer that AAT shall have no obligation to: (i) order any parts or materials necessary in the completion of the Goods; or (ii) commence the manufacturing and/or assembly of any Goods hereunder unless and until payment in full of the Price has been received by AAT. If Buyer fails or refuses to pay the Price in full as aforesaid, AAT shall have the right, in addition to any other right it may have, to cancel the Transaction, withhold further deliveries, and declare the Transaction terminated. Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. All costs and expenses incurred by AAT as a result of non-payment or delinquent payment by Buyer, including collection costs, interest, and reasonable attorneys' fees, shall be paid by Buyer. All invoices are due and payable in cash in United States of America funds. Buyer agrees that AAT has the right to determine, in its sole discretion, how to apply payments, and which invoices to pay with all payments, received on account, despite any advice to the contrary.
8. **CANCELLATION, CHANGES AND SPECIAL ORDERS.** The Transaction may NOT be canceled or changed by Buyer without the prior written consent of AAT, which consent may be granted or withheld in AAT's sole discretion. In the event of such cancellation, Buyer shall be liable for AAT's anticipated profit and for all costs incurred prior to cancellation.
9. **RELEASE AND INDEMNIFICATION.** Buyer acknowledges that it will use the Goods only in accordance with the installation manuals provided by AAT applicable to the Goods (or in the event no installation manuals are provided, in accordance with good and sound construction and operational practices). As such, Buyer agrees to release AAT from, and to hold harmless and, upon request, defend AAT for, from and against, any and all claims, suits, actions or legal proceedings brought against AAT, their affiliates and their officers, directors, employees and representatives, seeking injunctive relief or damages to recover any loss, damage or injury to person or property, including reputation and goodwill, whether brought by a federal, state or local governmental agency, or any other person, caused by or arising out of the installation and/or use of the Goods following the delivery thereof, except for the Limited Warranty set forth above. This release, hold harmless and indemnification shall apply, regardless of whether such claims, lawsuits, judgments, demands, actions or causes of action allege or are based on negligence, breach of implied warranty, strict liability, reckless or intentional conduct, or any other nature or manner of legal theory or cause of action, except for a claim, suit, action or legal proceeding arising exclusively from failure of the Goods to meet the Limited Warranty set forth above.
10. **NOTICE.** All notices in connection with the Transaction shall be in writing and shall be given by Fed Ex or other reputable next day courier service or U.S. mail, postage prepaid, certified or registered, return receipt requested. Each notice shall be addressed to AAT at 5179 Mountville Road, Frederick, Maryland 21703, Attn: Customer Service Manager, and to Buyer at the address contained in the P.O., or at such other address as a Party shall provide by notice to the other Party. Notice shall be deemed effective upon delivery.
11. **WAIVERS.** No waiver of any right or entitlement hereunder shall be effective unless it is in writing and signed by AAT. The failure of either Party to require performance under any provision of the Transaction Documents shall in no way affect the right of such Party to require full performance at any subsequent time, nor shall the waiver by either Party of a breach of any provision of the Transaction Documents constitute a waiver of any succeeding breach of the same or any other provision.
12. **GOVERNING LAW.** The Transaction is made in the State of Maryland, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Maryland without regard to conflicts of law. All suits, proceedings and other actions relating to, arising, directly or indirectly, out of or in connection with the Transaction (including any dispute regarding the Transaction Documents) shall be submitted to the in personam jurisdiction of the courts of the State of Maryland, and venue for all such suits, proceedings and other actions shall be Frederick County, Maryland. The Parties, jointly and severally, hereby waive any claim or objection to in personam jurisdiction and venue in the courts of Frederick County, Maryland. As a material and integral term of the Transaction Documents, in the event any dispute with regard to the Transaction is referred to an attorney for collection of any amounts hereunder or enforcement of any provisions hereof, then even though a judgment has not been entered as against Buyer, Buyer agrees to pay any and all fees, costs and expenses incurred by AAT in the enforcement hereof, including, without limitation, any and all attorneys' fees incurred by AAT. These Terms shall be deemed severable and if any portion hereof shall be held to be invalid for any reason, the remainder shall not be deemed invalid but shall remain in full force and effect. The Transaction Documents are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
13. **ENTIRE AGREEMENT/AMENDMENT.** These Terms may only be modified by: (i) a written amendment executed by authorized representatives of each Party; or (ii) from time to time by posting revised Terms to AAT's website at [www.aboveair.com](http://www.aboveair.com), or its successor website. Such revised Terms shall apply to all P.O. revisions/amendments and any new P.O.s issued on or after the Effective Date. Buyer shall be responsible to review AAT's website from time to time during the term hereof. The Transaction Documents represent the complete and final agreement between the Parties related to the subject matter of these Terms and supersede all prior writings, conversations, understandings or agreements. In the event of any inconsistencies, ambiguities or conflicts between the terms, conditions and provisions of the P.O. and these Terms, the provisions of these Terms shall control. Buyer shall not assign the Transaction without the prior written consent of AAT, which consent may be granted or withheld in the sole discretion of AAT. These Terms supersede all other communications, negotiations and prior oral or written statements regarding the Transaction. No change, modification, rescission, discharge, abandonment, or waiver of these Terms shall be binding upon AAT unless made in writing and signed on its behalf by a duly authorized representative of AAT. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these Terms and/or the remaining Transaction Documents shall be binding unless hereafter made in writing and signed by the Party to be bound, and no modification or additional terms shall be applicable to the Transaction which are at variance with or in addition to those set forth in the Transaction Documents. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If the P.O. shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to these Terms. No waiver by either Party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the Party to be bound. All typographical or clerical errors made by AAT in any quotation, acknowledgment or publication are subject to correction.
14. **DISPOSAL.** Buyer shall be solely and exclusively responsible for the proper disposal of the Goods and/or any portion thereof, and Buyer must comply with all Federal, State and applicable local laws and regulations related to disposal, including, without limitation, the disposal of any and all refrigerants. The obligations of Buyer hereunder shall be subject to the release, indemnification and hold harmless provisions of AAT set forth above.
15. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of AAT, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by AAT to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Transaction is confidential, solely for the use of performing under the Transaction Documents and may not be disclosed or copied unless authorized in advance by AAT in writing. Upon AAT's request, Buyer shall promptly return all documents and other materials received from AAT. AAT shall be entitled to injunctive relief for any violation of this Section. Prints or drawings attached to the P.O. and/or any quotation furnished by AAT to Buyer in connection with AAT's performance under the P.O. are the sole property of AAT. AAT retains all patent and other rights, including exclusive rights of use and/or manufacture and/or sale. AAT prints and drawings that are provided to Buyer for use with the Goods are to be reviewed only by necessary and authorized personnel of the Buyer and with the understanding that the information contained in the prints and drawings is confidential and proprietary to AAT and owned by AAT. AAT does not convey any permission to show, reproduce, or manufacture the article or articles shown in the prints or drawings, such permission to be granted only by specific authorization in writing signed by an officer or other authorized agent of AAT.