

1. Applicability

These terms and conditions of sale (these “Terms”) are the only terms that govern the sale of goods (“Goods”) by S&P Air Control (“Seller”) to the buyer (“Buyer”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. These Terms, together with any purchase order, quotation, or acknowledgment of sale (“Sales Confirmation”) provided to Buyer (collectively, this “Agreement”) constitute the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Terms of Payment

All discountable invoices are eligible for cash discount if paid by the 10th of the month following billing date. All net invoices are due within 30 days from invoice date. A monthly service charge of the lesser of 1.5% or the maximum penalty by law may be added to all accounts not paid by the net due date, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. The foregoing terms are only available on qualified domestic sales. Seller reserves the right to place orders on credit hold and suspend delivery if the Buyer’s account is past due. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy, or otherwise.

3. Terms of Foreign Sales

Payment should be made in favor of S&P Air Control, Chattanooga, TN, USA, by an acceptable and irrevocable Letter of Credit, payable at sight in U.S. Dollars; confirmed by a major U.S. commercial bank acceptable to Seller. Buyer’s instructions to the opening bank should include “Wire Payee Upon Receipt” and “Partial Shipments Allowed”. The Letter of Credit shall meet all customary documentary requirements, as determined in Seller’s reasonable discretion.

4. Shipments

All shipments are made FOB Seller’s location in Romulus, MI. Delivery to the initial carrier constitutes delivery and passage of title and risk of loss to the Buyer. Incident to the passage of title, the Buyer assumes all responsibilities of ownership, including but not limited to control and risk of loss or damage, regardless of the time or method of shipping, the form of shipping documents, the consignee, the method of insuring or the terms or method of payment. Broker and shipment arrangements from origin for international sales are the responsibility of the Buyer. Seller may make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

5. Damage Claims

Seller is not responsible for any loss, damage or delay to goods in transit. The Buyer must file any damage claims directly with the carrier (title transfers to Buyer at factory regardless of who invoices the freight costs).

6. Delivery

Scheduled shipping dates shown in Seller’s Sales Confirmation are approximate and represent the best estimate of shipping date at the time the order is processed. Seller assumes no obligation to ship on the scheduled date or to advise the Buyer that shipment will be delayed. Seller shall have no liability for any liquidated damages or penalty whatsoever because of failure to ship as scheduled unless specifically agreed to in writing.

7. Shortages or Deficiencies

Any shortages or deficiencies to material shipped must be reported within 14 calendar days after receipt to be considered by Seller for adjustment.

8. Warranty

Only Seller’s standard “Limited Product Warranty” will apply to sales of Goods.

9. Proposals & Price Quotations

Any quotation from Seller to Buyer will be an invitation for an offer from Buyer subject to these Terms. Such offer will be accepted only if it is in accordance with these Terms. Seller’s acceptance of Buyer’s order as evidenced by Seller’s Sales Confirmation is expressly made conditional on Buyer’s agreement to all of these Terms, and Seller agrees to furnish the Goods ordered by the Buyer only upon these Terms.

10. Prices

Product prices are subject to change without notice. Seller will notify Buyer of any price change prior to delivery. Freight quotes are subject to market price adjustments without notice.

11. Compliance with Law

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer agrees that Goods purchased will not be reshipped or resold to any persons or places prohibited by the laws of the United States of America.

12. Return of Material

Almost all Seller Goods are fabricated to a customer’s specific order. Seller does not maintain a stock of Goods. Therefore, return of material for credit cannot be allowed without written authorization from Seller, within terms of our warranty. Any returned material must be accompanied by a Return Material Authorization Form issued by Seller covering the specific transaction. Material must be returned by “Freight Prepaid” unless Return Material Authorization Form specifically authorizes shipping “Freight Collect”.

13. Product Changes

Because of a continuous program of Good improvement and uncontrollable factors such as unavailability of certain materials, Seller reserves the right to make reasonable changes in Good design and to supply Goods of revised design against any order without notice.

14. Changes of Order(s)

Orders cancelled before fabrication has begun will be subject to a \$50 minimum charge. Orders cancelled or changing in size or quantity after fabrication has begun will be subject to a \$75 minimum charge or more depending on stage of production. Charges for all changes will be assessed relative to the expenses involved, including administrative and engineering time spent. Changes after fabrication has begun will result in charges deemed appropriate by Seller to recover the cost of material and labor expended that cannot be utilized because of the change. When shipment of an order is delayed at Buyer’s request after material has been ordered or fabrication has begun, partial payment may be required at Seller’s option in an amount based on the purchase price and the percentage of work completed at the time. Delay at the request of the Buyer may cause Seller to incur storage or warehousing expense. In this instance, a charge determined appropriate by Seller may be made to the Buyer to offset this storage or warehousing expense.

15. Limited Product Warranty

Seller warrants that Goods manufactured by Seller will be free from defects in materials and workmanship for 60 months after installation or when placed in service, but in no instance shall the warranty extend past 66 months from the date of original shipment by Seller. During the warranty period, Seller will, at its option: (1) provide replacement material or parts necessary to repair the Good; or (2) repair any Good of its manufacture that is proven to Seller’s satisfaction to be defective in material or workmanship during this described warranty period. Seller may require material claimed defective to be returned “Freight Prepaid” to Seller’s factory that originally shipped the Good. If Seller determines the Good requires service, freight charges relative to replacement material will be paid by Seller (limited to the 48 contiguous United States). The remedies set forth in this Section 15 shall be Buyer’s sole and exclusive remedy and Seller’s entire liability for any breach of this limited warranty.

This limited warranty does not cover minor imperfections within design specifications, or which do not materially alter functionality. Seller does not warrant and is not responsible

for damages caused by misuse, abuse, accidents, unauthorized service or parts, improper storage prior to installation, or the combination of Seller-branded Goods with other products. This limited warranty does not cover non-Seller-branded Goods. Any warranty applicable to non-Seller-branded Goods is provided by the original manufacturer. To maintain this warranty, uninstalled Goods must be stored in an indoor or protected environment at all times prior to installation.

16. Disclaimer of Warranties

This limited warranty contained herein is the only warranty applicable to the Goods and replaces all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose. Specifically, except as provided herein, Seller undertakes no responsibility for the quality of the Goods or that the Goods will be fit for any particular purpose for which Buyer may be buying the Goods. Any implied warranty is limited in duration to the warranty period. No oral or written information or advice given by Seller shall create a warranty or in any way increase the scope of this limited warranty.

17. Limitation of Liability

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

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, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

The limitation of liability set forth in this section shall not apply to (i) liability resulting from Seller's willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

18. Termination

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 15 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

19. Waiver

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

20. Confidential Information

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller 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 this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section 20. This Section 20 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

21. Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 5 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 consecutive days following written notice given by it under this Section 21, either party may thereafter terminate this Agreement upon 30 days' written notice.

22. Assignment

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 22 is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

23. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. No Third-Party Beneficiaries

This Agreement is 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.

25. Governing Law

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Tennessee.

26. Submission to Jurisdiction

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Tennessee in each case located in the City of Chattanooga and County of Hamilton, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

27. Notices

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 27.

28. Severability

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

29. Survival

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.