

**AIR POWER, INC.**  
**STANDARD TERMS AND CONDITIONS**

**1. ACCEPTANCE.** Acceptance by AIR POWER, Inc. ("SELLER") of any offer to purchase Equipment is made, if at all, only in writing by SELLER in High Point, North Carolina. Unless agreed in writing by an officer of SELLER, SELLER objects to any terms or conditions proposed by BUYER which vary the terms hereof.

**2. PRICE ADJUSTMENT.** The purchase price of the Equipment is based on current pricing from SELLER'S suppliers, who are manufacturers and/or distributors of the Equipment. Prices are valid according to the terms of the AIR POWER SPECIFICATIONS AND QUOTATION, or a maximum of 90 days from the date of the AIR POWER SPECIFICATIONS AND QUOTATION. If there are changes adverse to SELLER in currency exchange rates or import duties affecting the Equipment between the quotation date and the date of arrival of the Equipment at port of entry, then SELLER shall have the option to cancel the PURCHASE CONTRACT or Order without further liability to the SELLER other than refunding to BUYER any payments for the Equipment received by SELLER from BUYER prior to cancellation. SELLER shall give BUYER reasonable notice of any such cancellation and the reasons therefor.

**3. SHIPMENT, RISK OF LOSS, AND DELIVERY.** The shipment date provided by SELLER is only an estimated shipment date and is not a representation or guarantee of a particular date of shipment or delivery. SELLER will attempt to ship the equipment for delivery on or about the requested dates. SELLER may, at its option, ship the Equipment in lots from time to time or all at one time. In the absence of written instructions from BUYER, SELLER shall have the absolute discretion as to the shipper and routing of shipments. Unless otherwise agreed, BUYER is responsible for ALL freight and delivery charges including duties and taxes where applicable, from point of shipment to final destination. The SELLER will not be liable for any delay in the performance of orders, or contracts based on the delivery or shipment of products or for any damages suffered by the BUYER by reason of such delay.

**4. BUYER'S RESPONSIBILITIES.** Unless specifically outlined in the AIR POWER QUOTATION, it will be the BUYER's responsibility to supply the following, when applicable: (1) Electrical field wiring; (2) Fire protection modifications (sprinklers); (3) Building modifications; (4) Building structural support capability; (5) Field painting; (6) Air piping; (7) Roof and/or wall penetrations or repair of the same; (8) Roof curbs; (9) Concrete Pads, pits, dikes or curbs; (10) Unloading; (11) Any necessary permits; (12) Freight and taxes; (13) Crane service; (14) Fire watch; (15) UL listed components for applicable equipment; and (16) Approval of BUYER's insurance carrier.

**5. LIMITED WARRANTY, EXCLUSIONS, DISCLAIMERS AND LIMITATIONS OF REMEDIES.**

(a) **Express Limited Warranty.** SELLER warrants to BUYER only, and not to any subsequent transferees (other than the lessee using the Equipment pursuant to a lease from BUYER which is in the business of purchasing and leasing equipment), that upon shipment, the Equipment materially conforms to the AIR POWER SPECIFICATIONS AND QUOTATION. The Equipment is warranted by SELLER according to the standard manufacturer's warranty. All warranty claims must be made in a writing specifying the alleged defect or non-conformity and delivered to SELLER within the specific manufacturer's warranty period. Within a reasonable time after any such timely notification, SELLER will act, at SELLER'S sole option, according to the terms of the manufacturer's warranty for the defective product. BUYER agrees to deliver at its own cost and expense any non-conforming or defective Equipment or part(s) to SELLER at SELLER'S place of business. These remedies are BUYER'S exclusive remedies for breach of warranty or contract or in tort.

(b) **Exclusions.** SELLER'S warranty does not apply to: (i) damage caused by use of the Equipment for purposes other than those for which it was designed; (ii) damage caused by disasters such as fire, flood or electrical storm; (iii) damage caused by unauthorized attachments, alterations or modifications; (iv) damage occurring during shipment; (v) damage caused by abuse, misuse or neglect by BUYER; (vi) defects in the manufacturing process discovered after the expiration of the express warranty; (vii) damage caused by third parties; (viii) damage caused by unauthorized repairs; (ix) ordinary wear and tear; or (x) damage not covered under the manufacturer's warranty.

(c) **DISCLAIMER OF OTHER WARRANTIES.** **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT. THIS DISCLAIMER OF WARRANTY SHALL NOT LIMIT BUYER'S RECOURSE AGAINST THE MANUFACTURER OF THE**

**EQUIPMENT UNDER ANY WARRANTY, IF ANY, EXTENDED BY SUCH MANUFACTURER. ANY WARRANTY OF ANY MANUFACTURER SHALL NOT BE DEEMED TO BE THE WARRANTY OF SELLER.**

(d) **Limitation of Remedies.** The remedies contained herein are BUYER'S only remedies concerning the Equipment or occurrences related thereto. In no case shall SELLER be liable for any special, incidental or consequential damages of any kind which may arise in connection with the use of or inability to use the Equipment and whether such damage is based on a theory of breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory. Damages hereunder not recoverable include, but are not limited to, loss of profits, loss of savings or revenue, loss of use of the Equipment, cost of capital, cost of any substitute Equipment, facilities or service, downtime, the claims of third parties, including customers, and injury to property or persons.

(e) **No Other Warranties.** No agent, representative or employee of SELLER is authorized to change the warranties herein or to give any other warranty, express or implied.

(f) **Entire Contract.** The AIR POWER SPECIFICATIONS AND QUOTATION, and these STANDARD TERMS AND CONDITIONS contain and constitute the complete contract and agreement between the parties respecting the sale of the Equipment and supersede all other agreements, written or verbal, between the parties related to the Equipment, and may not be modified, rescinded or canceled, or any right of SELLER thereunder waived, except in a writing signed by an officer of SELLER.

**6. SECURITY INTEREST.** Until the purchase price payable has been paid in full, BUYER agrees not to sell, mortgage or otherwise encumber the Equipment without SELLER'S written consent. BUYER grants to SELLER a purchase money security interest in the Equipment purchased to secure payment of any unpaid balance of the purchase price of the Equipment. BUYER agrees to sign and deliver, and grants SELLER a limited power of attorney to sign and deliver on BUYER'S behalf, such financing statements and other security instruments as SELLER may require to perfect and maintain the security interest herein granted.

**7. FORCE MAJEURE.** SELLER shall have no liability for any non-performance or delay in performance of its obligations caused by force majeure, failure of transportation, or failure of SELLER'S suppliers to deliver the Equipment.

**8. WARRANTY OF TITLE.** SELLER warrants that upon delivery of the Equipment to BUYER, good title to the Equipment, free and clear of all liens and encumbrances (except for the purchase money security interest granted to SELLER hereunder) will be transferred to BUYER.

**9. SUPERVISION OF INSTALLATION AND START-UP OF EQUIPMENT.** Upon request, SELLER will provide personnel of its own selection to supervise the installation and start-up of the Equipment. BUYER shall pay SELLER in accordance with SELLER'S current service rates for such installation and start-up services and for all expenses of such personnel incurred in connection with such supervision. SELLER shall have absolutely no responsibility for material or equipment provided by BUYER, or for the acts or omissions of persons furnished by BUYER. Upon satisfactory installation of the Equipment, BUYER agrees to execute a certificate acknowledging that the Equipment is satisfactorily installed.

**10. NO LIABILITY TO THIRD PERSONS.** BUYER agrees to hold harmless and indemnify SELLER for any claim or action by any employee of BUYER or SELLER, any installer of the Equipment, and any other third person arising out of or alleged to arise out of the delivery, installation, startup or use of the Equipment at BUYER'S place of business.

**11. COMPLIANCE WITH LAWS.** Unless otherwise expressly agreed in writing signed by SELLER and BUYER, SELLER shall not be liable to BUYER for, and BUYER agrees to indemnify and defend and hold SELLER harmless from, any liability arising or alleged to arise out of, any failure of the Equipment to conform to any such Laws. SELLER specifically disclaims any representation, warranty or guarantee that BUYER is compliant with any Laws.

**12. STATUTE OF LIMITATIONS.** Any arbitration for breach of warranty, breach of contract, tort, or other permitted action or remedy must be commenced within twelve (12) months following delivery of the Equipment to BUYER or it shall be forever barred.

**13. BUYER'S DEFAULT, ATTORNEY FEES.** If BUYER should default in the payment of any sums due and owing to SELLER, and SELLER engages counsel in respect thereof, BUYER agrees to pay, in addition to the balance then due and owing, reasonable attorney fees and all costs of collection.

**14. ARBITRATION, GOVERNING LAW.** The parties agree that any controversy, claim, or dispute arising out of or related to the Equipment, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial

Arbitration rules then in existence of the American Arbitration Association, and judgment upon the award rendered may be entered by any court having jurisdiction of the parties. The place of arbitration shall be Guilford County, North Carolina. Expenses for the arbitrators' services, the court reporter fees, and the prevailing party's reasonable attorney fees and other costs of the proceeding shall be borne by the non-prevailing party. However, each party shall be responsible for compensating its own representatives and witnesses. The arbitrator(s) shall determine which party is the prevailing party and in the case of split decision shall take into account, among other factors, the extent of each party's success or failure, the amount involved, and the results obtained in determining the fees and costs taxed pursuant to this provision. The agreement between BUYER and SELLER, all acts and occurrences related thereto, and the rights and obligations of the parties shall be governed, construed and interpreted according to the laws of the State of North Carolina.

**15. WAIVER-INDEMNIFICATION.** BUYER hereby (i) waives, releases and discharges any and all claims (except for claims for breach of the these STANDARD TERMS AND CONDITIONS) of any and every kind (including, but not limited to, injury to or death of any person or damage to property), which it may have at any time against SELLER, its agents or employees, by reason of or arising out of any condition or defect in the Equipment, including, but not limited to, any claimed improper design, specifications or manufacturing defect of the Equipment, or devices; and (ii) covenants to indemnify and hold harmless SELLER, its agents, employees, distributors or the manufacturer of, from and against any and all loss, damage, expense, claims, suits, costs of defense, including attorney fees or liability which SELLER or any of its employees, agents, distributors or the manufacturer may sustain or incur at any time for or by reason of any injury to or death of any person or persons or damage to any property, arising out of: (1) any condition or defect of the Equipment or any improper use by BUYER(S) employees or any use by unauthorized users; (2) any claimed inadequate or insufficient safeguards or safety devices or warnings or (3) any loss sustained due to inadequate site preparation by BUYER, including but not limited to, failure to install proper fire protection systems and other safety measures as outlined in industry standards, including, but not limited to, NFPA-33.

**16. RESERVATION OF RIGHTS.** No failure of SELLER to insist upon or compel compliance by BUYER with any of the terms, provisions or conditions hereof shall be construed as a waiver by SELLER of its rights to insist upon compliance therewith in the future.

**17. SEVERABILITY.** The terms and provisions set forth in the AIR POWER SPECIFICATIONS AND QUOTATION, and these STANDARD TERMS AND CONDITIONS are severable and the invalidity of any one provision or term shall not affect the enforceability of the remaining provisions or terms.

**18. NON-CANCELABLE.** The agreement between BUYER and SELLER concerning the Order for standard distributed products may not be revoked or canceled by BUYER. SELLER may, in its sole discretion, permit BUYER to cancel its agreement upon payment of a minimum of twenty five percent (25%) of a restocking fee of the Order value. It is the sole responsibility of the BUYER to pay any and all transportation and related expense of returning any unused Equipment to the SELLER. Cancelled orders for custom quoted projects and solutions will be handled on case by case basis based on costs incurred by SELLER, and could exceed twenty five percent (25%).