

PHOENIX AIR SYSTEMS

General Terms and Conditions of Sale

- 1. Entire Agreement.** These Terms and Conditions of Sale (which include any document(s) attached hereto or referencing these Terms and Conditions of Sale) (the "terms") constitute the entire, complete, and exclusive agreement between the parties with respect to goods and/or services (a "deliverable" or the "deliverables") provided by Phoenix Air Systems (a trade name of Weather-Rite LLC, herein "Seller") to any customer (herein "Buyer") as specified in these terms. **If these terms are different from, or contain terms and conditions in addition to, Buyer's purchase order or any other document provided by Buyer (including any modifications thereto) Seller expressly rejects such different or additional terms in Buyer's document, and Seller's provision of the deliverables is expressly conditioned upon Buyer's assent to these terms. Notwithstanding any other acts or omissions of the parties, Buyer's acceptance of a product constitutes Buyer's assent to all of these terms.**
- 2. Quotations, Approval and Acceptance.** Specifications and any drawings accompanying them are the property of Seller and are subject to recall at any time before a proposal or quote becomes a contract. Any drawings or specifications accompanying a proposal are not to be used for construction or reviewed with Seller's competitors. Seller reserves the right to make suitable substitutions of equal or better materials if the materials as quoted are not available at the time the order is produced. No order received by Seller shall be a contract binding Seller unless accepted by Seller in writing. No commitment by Seller to purchase materials or start production can be made unless Buyer places an order that is accepted by Seller. Buyer is responsible to promptly review and approve system specifications and/or drawings when requested by Seller. In the event of failure of Buyer to respond in a timely manner or to provide components or services that are required to be provided by Buyer in a timely manner, the price of the order may increase and delivery times may be extended, all to the account of Buyer without liability to Seller. Any product design services or other labor quoted by Seller is assumed to be performed on a straight time basis. Should Buyer request schedule changes or should schedule changes be necessitated by Buyer's delay or default, Buyer shall be charged Seller's overtime cost plus an administrative fee of 15%.
- 3. Delivery.** Delivery is F.O.B. Seller's facility. Except as otherwise set forth in a quotation, Buyer assumes full responsibility for deliverables upon Seller's delivery to Buyer's carrier at Seller's facility, including proper arrangement and security for transport. Any dates quoted for delivery are approximate only. In the event of inability for any reason to supply the total demand for deliverables, Seller may allocate its available supply among any or all purchasers, as well as departments and divisions of the Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.
- 4. Services.** Seller will provide such services as may be specifically described in these terms or the quotation of which these terms are a part, but shall have no obligation to provide any services unless agreed by Seller in writing. Services are not provided as work-for-hire and Seller retains on an exclusive basis all rights to any intellectual property developed, delivered and/or used in providing services. No installation or start up is included unless specifically set forth in the quotation. If installation, start up or other services are included in the quotation, Buyer takes full responsibility for the safety and suitability of the work site and all costs and expenses of rigging, hookups, special cranes or other means of transport and the like.
- 5. Price.** Except to the extent Seller provides a signed quotation that states that it is a firm quote for a fixed period of time, all prices provided by Seller, whether in its catalog, pricing software or otherwise, are subject to change and revision by Seller at any time. All orders are deemed made at Seller's prices current at the time of order acceptance and may be accepted by Seller on those terms. The price specified in any quote for deliverables is exclusive of taxes and shipping related costs and is payable only in U.S. currency (at Seller's option sales in Canada may be paid in Canadian Dollars). Price, currency, delivery terms, availability of deliverables and descriptions and specifications of deliverables is subject to change without notice. Buyer shall reimburse Seller for all taxes, shipping related costs or other charges which Seller may be required to pay upon the sale, transportation or use of the deliverables. The opening and maintenance of a credit account with Seller is subject to Buyer providing satisfactory references and observing all of the terms on which credit is given. Seller reserves the right to refuse to extend credit at any time and for any reason.
- 6. Payment.** For deliverables Seller designates as parts, the payment terms of this paragraph apply: Normal terms are net 30. At Seller's option the price and any applicable taxes, shipping related costs or other charges are due and payable on or before delivery.

For all other deliverables, the payment terms of this paragraph apply: 25% of the price of the deliverables is due with the order, 25% of the price is due with Buyer's approval of engineering drawings, 25% of the price is due thirty (30) days before the scheduled ship date and 25% of the price and any applicable taxes, shipping related costs or other charges is due at least five (5) days before shipment.

If Buyer fails to make payment when due, in addition to Seller's other rights and remedies, (i) Buyer shall pay Seller a late charge equal to the greater of 2%, per month and/or part of a month on the remaining unpaid balance due Seller or the highest lawful amount which may be charged to Buyer and pay all expenses of collection of amounts due Seller from Buyer, including reasonable attorneys' fees and (ii) Seller may suspend performance without responsibility or liability to Buyer for resultant delay. Buyer shall not be entitled to make any deductions or set off of any amounts (including those for alleged damages) against payments due to Seller hereunder. Seller may treat any failure by Buyer to make any payment within 10 days of the due date as an improper cancellation of this order under Section 10 hereof.

7. Security Interest. Until the entire amount due Seller is paid, Buyer grants Seller a purchase money security interest in all deliverables, including the proceeds thereof, with all rights and remedies of a secured party in any jurisdiction. Buyer authorizes Seller to file financing statements, or such other documents, appropriate to protect Seller's security interest, without Buyer's signature. If Buyer has granted a third party a blanket security interest in the type of collateral of which a deliverable would be characterized under the Uniform Commercial Code or applicable law, Buyer shall notify Seller of such fact in writing prior to shipment of deliverables.

8. Inspection. Promptly upon delivery, but no later than fifteen (15) days after delivery, Buyer shall (i) examine and inspect all deliverables; and (ii) notify Seller of any defect in material or workmanship or any other fact that causes the deliverables not to conform to the agreement between Buyer and Seller. Failure to so inspect and inform Seller of a defect within the foregoing time period or the use of a deliverable by Buyer at any time shall be conclusive evidence that Seller has satisfactorily tendered delivery and that Buyer has inspected and accepted the deliverables. Buyer agrees that the foregoing time period provides Buyer with a reasonable time to inspect deliverables. Should Buyer properly notify Seller of any defects in deliverables, in addition to any obligations Buyer may have to Seller, Buyer shall re-pack the deliverable into its original packaging and store that deliverable in an environment that will not be detrimental to the deliverable pending instructions from Seller. At Seller's option, Seller may ship and bill to Buyer product replacing a defective deliverable and issue a credit to Buyer only when the rejected deliverable is received by Seller.

9. Delays. Seller shall not be liable for loss, damage, detention or delay nor be deemed to be in default from causes beyond its reasonable control or from fire, strike, labor difficulties, act or omission of any governmental authority or of Buyer, compliance with import or export regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials or manufacturing facilities from usual sources, failure of supply or from rejection of large work pieces or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be postponed by such length of time as may be reasonably necessary to compensate for the delay, without liability to Seller. In no event shall Seller be liable for any production losses due to late delivery or failure of any deliverable whether or not due to any of the foregoing enumerated causes. If Buyer requires delayed shipment of deliverables in order to accommodate a relevant project build schedule, Buyer shall promptly notify Seller. If Seller has adequate factory space, Seller shall store the affected deliverables for up to 10 business days beyond the original acknowledged ship date of the order, free of charge. If the shipment delays continue longer than 10 business days, Seller at its option may (i) continue to store those deliverables for so long as Seller determines and charge Buyer a storage fee at the rate of 0.3% of the price of the stored deliverables per day (which shall be added to the invoice for the Deliverables) or (or when Seller determines to no longer store the deliverables) (ii) ship those deliverables to the jobsite or storage facility as directed by Buyer or, in the absence of Buyer's direction, as determined by Seller upon notice to Buyer. Buyer shall be responsible for shipping costs (F.O.B. Seller's facility) and the fees of any storage facility. Shipment to a storage facility, whether or not at Buyer's direction, shall constitute delivery of the deliverables to Buyer. All storage and shipment of deliverables shall be at Buyer's risk. If shipments otherwise are delayed at Buyer's request, due to Buyer's acts or omissions, or due to circumstances that are not within Seller's control, payment shall be made by Buyer within seven (7) days after Buyer has been notified by Seller that a deliverable is ready for shipment. If shipment is improperly delayed by Buyer, in addition to any other remedy available to Seller, the deliverable may be stored by Seller at Buyer's risk and expense. If an accepted order at any stage is delayed

at Buyer's request or due to Buyer's fault for more than 30 days, the order shall, if Seller so elects, be considered improperly cancelled and subject to cancellation charges of the next Section.

10. Returns/Cancellation. No deliverable may be returned except upon Seller's written authorization in Seller's sole discretion. Any authorized return must (i) be in new condition, resalable or usable in Seller's current operations at an undiscounted value, as determined in Seller's sole discretion, and with all its original parts and in original undamaged packaging and (ii) not have been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. If Seller agrees to accept a return Buyer must pay all costs and bear all risk of returning the deliverable to Seller's facility. Buyer shall pay a restocking charge of 25% of the price for all returns of spare parts and such amount as Seller may specify in its discretion but not less than 75% for all other non-warranty returns. Orders accepted by Seller can be cancelled only with the written consent of Seller in Seller's sole discretion and only upon payment of a cancellation charge as Seller may specify in Seller's sole discretion but will be not less than the following: 10% of the order value if cancelled during the first week following order acceptance; 20% of the order value if cancelled during the second week following order acceptance; 30% of the order value if cancelled during the third week following order acceptance; and 75% of the order value if cancelled thereafter. Any cancellation without Seller's consent or other improper cancellation by Buyer shall obligate Buyer to pay cancellation charges of the greater of (1) the cancellation charges specified in the immediately preceding sentence plus an additional 10% of the order value or (2) all costs identified to the order incurred or committed up to the effective date of written notice of termination and all charges incurred by Seller in respect to the termination plus the greater of (a) a fixed sum of 15% of such amounts for disruption in scheduling, production and other fixed costs or (b) Seller's projected gross profit. Any cancellation shall terminate all of Seller's obligations with respect to the order.

11. Buyer Responsibilities. Unless and only to the extent set forth in the quotation of which these terms are a part, Buyer, its employees and agents will take all necessary steps to ensure that the deliverables will be set-up, assembled, installed and used (whether by Buyer or a third party) in accordance with Seller's instructions, the instruction manual provided as well as all requirements of all applicable governmental authorities pertaining to the installation and operation of the deliverables. Buyer takes sole responsibility for any installation or application that involves utilization of a deliverable that is not a complete product with components or other items not supplied by Seller. Buyer shall be fully responsible for the safety of any worksite at which any services by Seller away from Seller's premises are performed. Buyer shall indemnify, defend and hold harmless Seller against all damages, losses, costs, claims and expenses, including reasonable legal fees incurred by Seller, arising out of any of the foregoing.

12. Technical Advice. Upon request, Seller may furnish such technical advice or assistance as it has available in reference to the use of deliverables. It is expressly understood, however, that all such technical advice or assistance is given AS-IS and the Seller assumes no obligation or liability for the advice or assistance given or results obtained, all such advice or assistance being given and accepted at Buyer's risk. Any manual in a language other than English has been translated as a convenience to Buyer, and Seller makes no warranty and accepts no liability with respect to any such translation.

13. Limited Warranty. Seller provides such warranty as set forth in any instruction manual provided with the deliverable, or if there is no such warranty or instruction manual, Seller warrants to Buyer that such deliverable will be free from defects in material and workmanship (in either case the "Limited Warranty"). Except as expressly set forth in this Section 13 or specifically authorized by an executive officer of Seller in writing, the Limited Warranty is not transferable or assignable and any such transfer or assignment is void. If Buyer is authorized by Seller to be a reseller of deliverables that are goods or an installing contractor, the Limited Warranty may be passed through to Buyer's customer, but Buyer shall not alter the Limited Warranty in any way. Notwithstanding the foregoing, if Buyer re-brands Seller's deliverable or Seller, at Buyer's request, brands the deliverable with a mark not owned by Seller, the Limited Warranty may not be transferred or assigned, and all claims under the Limited Warranty shall be made directly by Buyer to Seller and not by any customer of Buyer.

The Limited Warranty does not cover service trips, service calls, costs of removing and reinstalling components and other labor charges or the cost of shipment of replacement parts. The Limited Warranty excludes damages due to (i) failure to install, operate or maintain deliverables as directed in any instruction manual provided or under applicable law or regulation, (ii) misuse, abuse, neglect or modification of a deliverable or any controls, in any way, (iii) improper service, use of replacement parts or accessories that are not specified by Seller, (iv)

improper installation, or any relocation of a deliverable after initial installation, (v) incorrect supply, accident, fire, flood, acts of God or other casualty, (vi) use of a deliverable other than its intended purpose and normal usage, (vii) use of a deliverable in a corrosive atmosphere or any atmosphere containing contaminants, (viii) shipment of a deliverable (all claims must be filed with carrier), (ix) use of a deliverable in the vicinity of combustible or explosive materials, (x) any defect in a deliverable arising from a drawing, design, or specification supplied by or on behalf of Buyer, (xi) failure of parts, components, services or hook-ups not supplied by Seller, (xii) incompatibility with items not supplied by Seller, (xiii) a deliverable not properly installed by a qualified contractor experienced in installing the deliverable, (xiv) inadequate air for combustion, (xv) improper or rapid cycling of the compressor. No warranty coverage is applicable if Buyer cannot prove original purchase date and required annual maintenance history, the data plate and/or serial number on any deliverable is removed, defaced, modified or altered in any way, or Seller is not permitted to inspect the damaged deliverable.

In addition to the foregoing limitations, the Limited Warranty is not applicable to goods if the failure is due to (a) the deliverable having been allowed to exceed its proper temperature limits due to improper operation or maintenance or inadequate air circulation over it, or (b) damage is due to not having a stainless steel secondary if 50% or more of outside air is introduced, temperature rise at minimum firing rate is below 10⁰ F or the air temperature entering the heat exchanger is below 45⁰ F.

Wear items or consumables such as belts, filters, coolant, refrigerant, etc. are not included under the Limited Warranty. The Limited Warranty does not cover the equipment and materials not manufactured by Seller; the warranty for those items shall be limited to only such warranty as that furnished by the manufacturer thereof as may properly be assigned to Buyer.

No person other than an executive officer of Seller, has authority to change or extend the terms of the Limited Warranty and Buyer confirms that no other warranty terms have been extended by Seller or are applicable to the deliverables. Change or extensions to the terms of the Limited Warranty are binding only if confirmed in writing by Seller's duly authorized executive officer.

14. Limitation on Warranties/Damages. Any claim under the Limited Warranty set forth in Section 13 must be made within the following time periods or such claim is waived: (a) for PHOENIX AIR SYSTEMS branded split system condensing units, the claim must be made within twelve (12) months from the date of start-up or eighteen (18) months from the date of shipment by Seller, whichever occurs first; (b) for split PHOENIX AIR SYSTEMS branded system condensing unit compressors, the claim must be made within sixty (60) months from the date of purchase by Buyer; (c) for replacement parts, the claim must be made within the later of twelve (12) months from the date of shipment by Seller or any Limited Warranty period remaining on the deliverable with which the replacement part is used or is intended to be used; and (d) for all other deliverables, the claim must be made within twenty-four (24) months from the date of purchase by Buyer or twenty-seven (27) months from date of shipment by Seller, whichever occurs first. For all deliverables (other than replacement parts) that require installation and start-up, the otherwise applicable warranty period shall be extended by an additional four (4) months if (i) the installation and start-up is performed by a contractor on Seller's current list of contractors who have successfully completed Seller's current installation course for that deliverable and (ii) full details of the installation and start-up are provided to Seller at or prior to the time any warranty claim is made.

Except as set forth in these terms, Seller makes no representation or warranty of any type, express or implied, including any warranty of merchantability, warranty of fitness for a particular purpose or warranty of non-infringement or warranty arising from any course of dealing, course of performance or usage of trade.

Seller will not under any circumstances, be liable for any special, indirect, punitive or consequential damages (even if Seller has been notified of the possibility of such damages) resulting from or related to a product including, without limitation, any loss of profits, or loss of opportunity. Some jurisdictions do not allow limitations on warranties or damages, so this limitation or exclusion may not apply to Buyer.

15. Remedy. **Seller's sole obligation and Buyer's exclusive remedy with respect to any deliverable, whether arising in contract, tort (including negligence), strict liability, breach of warranty or otherwise, is limited to Seller, at its discretion, replacing or repairing the defective deliverable, providing replacement parts or issuing Buyer a credit equal to the price paid to Seller for such defective deliverable, and in no event will Seller's liability exceed the amounts actually received by Seller for any deliverable.**

This exclusive remedy shall not be deemed to have failed its essential purpose so long as Seller is willing and able to repair or replace a defective deliverable or parts thereof or, also at Seller's option, to refund the price received by Seller for the defective deliverable, within a reasonable time after Buyer demonstrates that a defect exists in accordance with the terms and limitations of the Limited Warranty.

16. Intellectual Property. Seller is not transferring to Buyer any patent, copyright, trademark or other intellectual property rights in or related to any deliverable, other than the limited license to use the deliverable for Buyer's internal business purposes. The deliverables provided hereunder may be subject to patent, trade secret and other intellectual property rights and Buyer agrees that should the deliverables or certain information relevant thereto be made available to others it would cause irreparable harm to Seller. Therefore, Buyer agrees not to, and not to permit others to, use, disclose, copy or replicate (through for example reverse engineering or other similar process) any deliverable and/or any documentation or information regarding any deliverable.

Should Buyer request that any deliverable conform to a certain specification or description, including but not limited to specifications or descriptions regarding design, performance or labeling and marking of deliverables, Buyer warrants to Seller that Seller's compliance with such specifications or descriptions will not infringe any third-party's intellectual property rights and Buyer shall indemnify, defend and hold Seller harmless from any losses, liabilities, claims, causes of action and expenses (including reasonable attorneys' fees) arising out of Seller's compliance with Buyer's specifications.

17. Limitation of Actions. **Any action against Seller arising out of this transaction shall be commenced within one (1) year from the date such cause of action has accrued, otherwise the same shall be barred.**

18. Export Control. If any deliverable is being exported, the commodities, technologies and software are exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to United States Law is prohibited.

19. Governing Law. These terms shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws, and shall not be governed by the provisions of the United Nations Convention on Contracts for International Sales of Goods. The parties agree that all actions or proceedings between them shall be tried and litigated only in the state and federal courts located in the County of Erie, State of New York USA.

20. Termination. Seller may terminate these terms, and have no obligation to supply deliverables, immediately upon the bankruptcy or insolvency of Buyer or Buyer's breach of these terms. Buyer will pay the price for any deliverables delivered on or before the date of termination. Seller is not liable for any other costs, expenses, losses, damages or liabilities arising out of such termination. Termination or cancellation will not alter or terminate any of the parties' obligations under any section of the terms that by its nature extends beyond termination or cancellation.

21. Assignment/Subcontract. Buyer may not delegate or assign any duties or rights under these terms without Seller's prior written consent which may be withheld for any or no reason. Any such delegation or assignment in violation of this Section is void.

22. Severability/Revision. Should any provision of these terms be held by a court of law, or other body having proper jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of these terms shall not be affected or impaired thereby and the parties agree that partial enforcement of these terms or revisions of the illegal, invalid or unenforceable provision is appropriate.

23. Notices. To be effective, all notices and other communications under these terms shall be in writing and sent to the intended recipient by personal delivery, by registered or certified mail, return receipt requested, or recognized overnight courier, at the party's address as set forth in the face of this purchase order. Each party may change its address for receipt of notice by giving notice of such change pursuant to this Section. Notice is given immediately upon personal delivery, or three business days following the date on which such notice is mailed in accordance with this Section, or the next day following the date on which such notice is sent by overnight courier.

24. Entire Agreement. These terms constitute the entire agreement between the parties as to the subject matter thereof, and may be modified, or any right waived, only by a written document signed by the party to be charged that specifically references these terms and the section(s) so modified.