

Baltimore Aircoil Company, Inc. Terms and Conditions of Sale

Pricing: Prices set forth in Seller's quotation shall remain firm for thirty (30) days. Within such period, the quotation shall convert into an order provided that all of the following have occurred: (1) Buyer submits either a purchase order or a copy of Seller's quotation displaying an authorized signature of Buyer within that thirty (30)-day period; (2) Buyer provides a release for fabrication; and (3) Buyer requests a shipment date that is no later than twelve (12) weeks from the date of Buyer's submission of a purchase order or signed quotation. In the event Buyer's requested shipment date is later than twelve (12) weeks beyond such submission date, Seller's price in effect twelve (12) weeks prior to such shipment date shall apply. In the event that Buyer requests for its convenience that Seller delay delivery of products subject to an order beyond the scheduled shipment date, pricing shall be subject to the same adjustment.

Payments: Terms of payment shall be net cash in thirty (30) days from date of invoice, subject to Seller's prior credit approval. If the Buyer shall fail to make any payments in accordance with the terms and conditions of sale, the Seller, in addition to its other rights and remedies but not in limitation thereof, may, at its option, without prior notice, cancel this order as to any undelivered products or defer shipments or deliveries hereunder, or under any other agreement between Buyer and Seller, except upon Seller's receipt of cash before shipment or such security as Seller considers satisfactory. Seller reserves the right to impose an interest charge (not exceeding the lawful maximum) on the balance of each invoice not paid on its due date for the period from the due date to the date of receipt of payment by Seller. In the event Buyer's failure to make timely payments to Seller results in Seller incurring additional costs, including but not limited to collection expenses and attorneys' fees, said costs shall be added to the amount due Seller from Buyer. Buyer shall have no right to any discount or retainage and shall not withhold payment as a set-off on Seller's invoice in any amount.

Taxes: Unless listed on the front (reverse) side of this document, prices do not include any federal, state or local sales, use or value-added taxes payable in connection with this order. All such taxes shall be paid by Buyer. Buyer shall indemnify Seller from and against such taxes, plus interest and penalties thereon, including, but not limited to, tax, interest and penalties resulting from a failure to collect such taxes because of Seller's reliance upon an invalid exemption certificate provided to Seller.

Allocation of Risk: Deliveries shall be considered made when the products subject to this order are loaded on the carrier. At such time, title to the goods and all risk of loss, damage or shortage shall pass to Buyer, and any claims based thereon must be filed by Buyer with the carrier.

Force Majeure: Seller shall under no circumstances be liable for any loss or damage resulting from delay or failure in the performance of its obligations under this contract to the extent that such performance is delayed or prevented by: fires, floods, war, terrorist activities, riots, strikes, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies or power at current prices, or on account of shortages thereof; acts of God or of the public enemy; any existing or future laws or acts of the federal, state or local government (including specifically, but not exclusively, any orders, rules or regulations issued by any official or agency of any such government) affecting the conduct of Seller's business with which Seller in its judgment and discretion deems it advisable to comply as a legal or patriotic duty, or to any case beyond the Seller's reasonable control.

Warranties: Seller warrants that the equipment sold under this contract shall be free from defects in material and workmanship for a period of twelve (12) months from the date of equipment startup or eighteen (18) months from the date of shipment, whichever occurs first. The following original equipment components only are warranted against defects in materials and workmanship for a period of five (5) years from date of shipment: fans, fan shafts, fan motors, bearings, sheaves, gearboxes, driveshafts, couplings, and mechanical equipment support. Exceptions and details of option-specific warranties follow:

- **TrilliumSeries™ Condenser** Seller warrants that the equipment sold under this contract shall be free from defects in material and workmanship for a period of twenty four (24) months from the date of equipment startup or thirty (30) months from the date of shipment, whichever occurs first. The following original equipment components only are warranted against defects in materials and workmanship for a period of two (2) years from date of shipment: fans and fan motors. The sump and drain pans are warranted against leaks for a period of two (2) years from the date of shipment. Only leaks from the factory seams of the cold water basin are covered; this warranty does not apply to sump field connections, field installed options or modifications by others. Seller does not warrant in any form parts that are considered to be consumable such as On-Demand Adiabatic™ Pre-Cooler media.
- **JE Premier Series™ Construction** is warranted to be free from defects in material and workmanship for a period of five (5) years from date of shipment.
- **EVERTOUGH™ Construction** is warranted to be free from defects in material and workmanship for a period of five (5) years from date of shipment excluding heat transfer coils which are warranted to be free from defects in material and workmanship for a period of twelve (12) months from the date of equipment startup or eighteen (18) months from the date of shipment, whichever occurs first.
- **TriArmor® Corrosion Protection System** Cold Water Basins are warranted against leaks and corrosion for a period of five (5) years from date of shipment. For the purposes of this warranty, "corrosion" means red rust formation on the interior of the cold water basin panels due to a failure of the TriArmor Corrosion Protection System. The leak or corrosion must be caused by a defect in the application of the TriArmor® Corrosion Protection System. This warranty does not apply to cold water basin field connections, field installed options or modifications by others.
- **Welded 304 Stainless Steel** Cold Water Basins are warranted against leaks for a period of five (5) years from date of shipment. Only leaks from the factory seams of the cold water basin are covered; this warranty does not apply to cold water basin field connections, field installed options or modifications by others.
- **ENDURADRIVE™ Fan System** motor is warranted to be free from defects in material and workmanship for a period of seven (7) years from date of shipment with factory authorized start up or five (5) years without factory authorized start up. The ENDURADRIVE Fan System variable frequency drive is warranted to be free from defects in material and workmanship for a period of five (5) years from date of shipment with factory authorized start up or one (1) year without factory authorized start up.
- **BAC Refrigeration Controls** are warranted to be free from defects in material and workmanship for a period of three (3) years from date of shipment with factory authorized start up or two (2) years without factory authorized start up.
- **Replacement Parts** provided by Seller under its original equipment warranty obligations are warranted against defects in materials and workmanship for a period of twelve (12) months from date of shipment or until expiration of their original warranty, whichever occurs first. Parts purchased after expiration of the original equipment warranty are warranted against defects in materials and workmanship for a period of twelve (12) months from date of shipment.
- Original equipment fan motors are warranted against defects in materials and workmanship for a period of seven (7) years from date of shipment when space heaters are field-wired at time of initial installation per the motor nameplate.

Written notice of any defect shall be given to Seller immediately upon discovery by Buyer, and shall fully describe the claimed defect. Defective parts shall be repaired or replaced F.O.B. point of shipment, provided that inspection by Seller verifies the claimed defect(s). This shall be Buyer's exclusive remedy. **This warranty does not cover the costs of removing, shipping or reinstalling the equipment. Repairs made without the prior written approval of Seller shall void all warranties covering material and workmanship.** Any descriptions of the product(s) in the contract are for the sole purpose of identification and do not constitute a warranty. In the interest of product improvement, Seller reserves the right to change specifications and product design without incurring any liability therefore. The foregoing express warranties or those set forth elsewhere on this document are the only warranties of Seller applicable to the product(s) sold under this contract. **All other warranties, whether verbal or written, and all warranties implied by law, including any warranties of merchantability or fitness for a particular purpose, are hereby excluded. Failure on the part of Buyer or of other parties to properly maintain the product(s) sold under this contract, or the operation of such product(s), by Buyer and/or other parties under conditions more severe than those for which such product(s) were designed, shall void all warranties covering materials and workmanship. Seller's warranties do not apply to defects in product(s) for which payment in full has not been received by Seller, and said warranties do not cover normal wear and tear or the erosion, corrosion and/or deterioration of the product(s) on unusual causes. No warranties by Seller shall apply to accessories manufactured by others,** inasmuch as they are warranted separately by their respective manufacturers, except as stated above. Buyer assumes liability for and shall bear the costs of compliance with all laws, regulations, codes standards or ordinances applicable to the location, operation and maintenance of the product(s) sold under this contract, including those requirements pertaining to the distances between such product(s) and air-conditioning system duct intakes. No representative or agent of Seller is authorized to enlarge upon the express warranties of Seller.

Cancellation/Changes/Returns: Cancellation of or changes in any order by Buyer shall not be effective without Buyer's notice thereof received, agreed to, and confirmed in writing by Seller. If Seller, in its absolute discretion, approves Buyer's cancellation of an order, Buyer agrees to pay a reasonable cancellation charge. Seller's prior written consent must be obtained before Buyer returns any products, and when so returned will be subject to a handling charge and transportation costs payable by Buyer.

Liability/Indemnification: Seller shall not be liable for any damages caused by delay in delivery of the products. Buyer shall hold harmless and indemnify Seller from and against all liability, claims, losses, damages, and expenses (including attorneys' fees) for personal injury and property damage arising out of Buyer's improper unloading, handling, or use of the products subject to this order, and for Buyer's infringement of another's property rights. The Seller's maximum liability from any causes whatsoever, whether in breach of contract, tort (including negligence), strict liability, or otherwise, shall not exceed the contract price. Neither Buyer nor Seller shall in any event be liable to the other, whether such liability arises out of breach of contract, tort (including negligence), strict liability or any other cause or form of action, for any consequential, special, indirect or incidental damages, including but not limited to loss of actual or anticipated profits or loss of use arising out of this contract, other than such damages resulting from the willful misconduct of Buyer or Seller.

Storage: In the event that Buyer is unable to accept delivery of goods and the Seller is required to hold goods beyond two (2) working days from fabrication completion, a storage fee equal to the greater of \$200/day or 0.20% of the total order value/day will be assessed by Seller for every day beyond two (2) working days from fabrication date which it is required to store goods on behalf of Buyer. Storage will be assessed monthly and will need to be paid in full prior to a new shipment date being scheduled.

Government Contracts: If Buyer's purchase order is for products to be used in the performance of a U.S. Government contract, those clauses of applicable procurement regulations mandatorily required by federal law to be included in U.S. Government subcontracts shall be incorporated herein by reference.

Export Transactions: Buyer shall comply with all applicable export laws and regulations of the U.S. Government, and shall hold harmless and indemnify Seller from and against all liability, damages, and expenses (including attorneys' fees) incurred by Seller as a result of Buyer's violation of any U.S. Government export and/or international antiboycott laws or regulations. Buyer certifies that it will be the recipient of the products to be delivered by seller. Buyer acknowledges that products are subject to export/import control laws of various countries, including the Export Administration Regulations of the United States. Products sold by seller cannot be transferred, sold or re-exported to any party on the Entity List or Restricted Persons list of the US Department of Commerce Bureau of Industry and Security, any party designated by the US Treasury Department Office of Foreign Asset Control and any party debarred or sanctioned for proliferation or terrorism reasons by the US State Department.

Agreement of Sale: Buyer's order is accepted on the terms and conditions stated herein and Seller's acceptance of Buyer's order is expressly made conditional upon Buyer's assent to such terms and conditions, including any of Seller's terms and conditions which may be additional to or different from those contained in Buyer's purchase order or otherwise. Such assent shall be deemed to have been given unless written notice of objection to any such terms and conditions (including inconsistencies between Buyer's purchase order and this acceptance) is given by Buyer to Seller promptly upon receipt of this acknowledgment. Any agreement or understanding, oral or written, which modifies or waives the terms and conditions herein (whether contained in Buyer's purchase order or other documentation) shall be deemed material and shall be rejected unless hereafter agreed to in writing and signed by Seller's authorized officer. Waiver by Seller of any breach or default hereunder shall not be deemed a waiver by Seller of any other or subsequent breach or default which may thereafter occur. Neither the rights nor the obligations of either Buyer or Seller are assignable without the prior written consent of the other party. This agreement of sale and all rights and obligations of Buyer and Seller shall be governed by and construed in accordance with the laws of the State of Maryland.

An electronic copy of the latest version is available online at www.baltimoreaircoil.com/terms.

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