



DESERT AIRE, LLC.
TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale shall govern all purchase orders placed by buyer ("Buyer") for products ("Products") from Desert Aire, LLC, a Delaware corporation, and its affiliates (collectively, "Seller").

- 1. Acceptance; Contrary Terms; Entire Agreement.** All orders for Products are subject to acceptance by Seller at its offices in Germantown, Wisconsin. BUYER'S ORDER IS ACCEPTED ONLY ON THE TERMS AND CONDITIONS CONTAINED HEREIN AND THE PROVISIONS OF ANY PURCHASE ORDER OR OTHER WRITING WHICH ARE INCONSISTENT HERewith SHALL NOT CONSTITUTE PART OF THESE TERMS AND CONDITIONS OF SALE AND SHALL BE DEEMED A MATERIAL ALTERATION HEREOF. SELLER'S ACCEPTANCE OF BUYER'S ORDER IS SUBJECT TO AND CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE. ANY CONDUCT OR ACTION BY BUYER RECOGNIZING OR EVIDENCING THE EXISTENCE OF AN AGREEMENT SHALL BE DEEMED TO BE AN ACCEPTANCE BY BUYER WITHOUT EXCEPTION OF THESE TERMS AND CONDITIONS OF SALE. Seller's written proposal or price quotation ("Seller's Written Proposal") and these Terms and Conditions of Sale are intended by the parties to be the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersede all prior understandings, representations, warranties or agreements between the parties, whether written or oral. Without limiting the generality of the foregoing, no course of prior dealings, course of performance, course of conduct, community standards, industry standards, customary practices or interpretation, or usage of trade shall be relevant to supplement or explain any terms in these Terms and Conditions of Sale. No modification of these Terms and Conditions of Sale, whether in whole or in part, will be valid or binding upon Seller unless expressly agreed to by Seller in a signed writing.
- 2. Changes and Cancellation.** All orders for Products accepted by Seller shall be firm and no changes or cancellation shall be allowed without the written consent of Seller. Buyer acknowledges and agrees that in the event any cancellations are approved by Seller, Buyer will pay to Seller, as liquidated damages and not as a penalty, an amount equal to (i) the costs incurred by Seller up to the date of cancellation determined using Seller's standard pricing, plus (ii) up to a 15% of the purchase price for the Products.
- 3. Prices; Payment Terms.** The prices and the payment terms for the Products shall be those set forth in Seller's Written Proposal and shall be exclusive of all sales, use, excise and other similar taxes, all of which are the sole responsibility of Buyer. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly, and shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorney's fees, in addition to all other remedies available under these Terms and Conditions of Sale. Payment for the Products specified herein shall constitute acceptance by Buyer.
- 4. Taxes.** Unless otherwise specified, all prices shown do not include applicable excise sales, use or other tax imposed upon the sale and/or delivery of these products. Any such taxes, when applicable, will be charged and listed as separate items on the invoice, or in lieu thereof the purchaser shall provide the company with a tax-exemption certification acceptable to the taxing authorities.
- 5. Delivery.** All shipping terms shall be EXW (Incoterms 2010) Seller's Plant. All freight, storage, insurance or other fees or charges (including, without limitation, any sales, use or value-added taxes and import duties on the Products, if any) shall be paid by Buyer and if advanced by Seller, shall be added to Seller's invoice and payable together with payment for the Products purchased. Unless otherwise specified in Seller's Written Proposal or otherwise agreed-to by Seller, Seller will package the Products in a commercially reasonable manner acceptable to commercial carriers and will furnish special packaging, at Buyer's sole expense, only if specifically requested by Buyer and expressly agreed to in writing by Seller. Due to the nature of Seller's custom work, shipping dates in Seller's Written Proposal or Buyer's purchase order are estimates only and any delay in shipment shall not relieve Buyer of its obligation to pay for Products or accept subsequent deliveries.
- 6. Title; Risk of Loss.** Title and risk of loss shall pass to Buyer upon delivery of the Products to a carrier at Seller's plant and as collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer authorizes Seller to file any uniform commercial code financial statements necessary to perfect Seller's security interest in the Products.

7. Shipping Damage. It is Buyer's immediate responsibility to report to the trucking company any exterior shipping damage and to file a claim with the trucking company. The Seller shall not be responsible for the cost to repair damage.

8. Inspection and Rejection of Nonconforming Products. Buyer shall inspect the Products within fifteen (15) days of receipt and shall be deemed to have accepted the Products unless it notifies Seller in writing during such inspection period of any Products that (a) fail to conform to the specifications set forth in Buyer's order or (b) materially exceed the quantity of Products ordered by Buyer (collectively, "Nonconforming Products"). If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, either (i) replace or repair such Nonconforming Products, or (ii) credit or refund the price paid by Buyer for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. THE REMEDIES SET FORTH IN THIS SECTION 7 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR THE DELIVERY OF NONCONFORMING PRODUCTS. All returns must be authorized by seller and no credit will be allowed for returned items that are damaged in transit, incomplete, or received in an unsatisfactory condition. All items which are not eligible for credit will be returned to the purchaser, transportation collect.

9. Exclusive Warranty. Subject to the terms and limitations of the exclusive warranty and remedies described herein, Seller warrants the Products sold pursuant to Seller's Written Proposal to be free from all latent defects in material and workmanship for a period as defined by the warranty statement as part of this proposal. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER NEITHER ASSUMES (NOR HAS AUTHORIZED ANY PERSON TO ASSUME) ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH THE PRODUCTS. SELLER MAKES NO WARRANTIES WITH RESPECT TO BUYER'S USE OF THE PRODUCTS OR CLAIMS BY BUYER'S PERSONNEL ARISING FROM BUYER'S USE OF THE PRODUCTS, OR ANY OTHER VARIABLE OVER WHICH THE SELLER HAS NO CONTROL. IF BUYER'S ORDER IS FOR PRODUCTS WHICH CONTAIN COMPONENTS MANUFACTURED BY A PARTY OTHER THAN SELLER, BUYER ACKNOWLEDGES THAT SELLER IS NOT THE MANUFACTURER OF SUCH COMPONENTS AND AGREES THAT ALL SUCH COMPONENTS ARE WARRANTED ONLY TO THE EXTENT OF THE MANUFACTURER'S EXPRESS WARRANTIES TO SELLER, WHICH SELLER SHALL PROVIDE TO BUYER AT BUYER'S REQUEST. NOTWITHSTANDING THE FOREGOING, SELLER SHALL NOT BE LIABLE FOR A BREACH OF THE WARRANTY SET FORTH IN THIS SECTION 9 IF BUYER ALTERS, MODIFIES OR REPAIRS THE PRODUCTS IN ANY WAY WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER.

10. Warranty Remedies. Buyer shall provide Seller written notice of any defect in breach of the warranty set forth in Section 9, above, promptly after Buyer discovers such defect, and shall give Seller a reasonable opportunity after such notice to examine such Products to verify Buyer's claim that the Products are defective. If it is found that the goods contained defects at the time furnished by seller, seller will either repair or replace the defective part or parts at seller's option. This warranty to repair or replace is the exclusive remedy and is expressly limited to the materials furnished by seller. All replacements or repairs shall be F.O.B. Germantown, WI. The Seller shall not be liable for labor cost incurred in diagnosing the problem, in removal or replacement of the part so repaired or replaced. Accordingly, Seller shall not be liable for any consequential damages, whether to person or property, caused by defects in goods. This warranty does not apply to any goods which may have been repaired or altered in any way outside of our factory, so as to affect its stability in our judgement, nor does this warranty apply to any goods which have been subjected to misuse, negligence or accident. This warranty is in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability, and extends only to the original purchaser.

11. Indemnification. Buyer shall indemnify and hold Seller and each of its officers, directors, employees, shareholders, affiliates, agents, representatives, successors and assigns harmless from and against any and all claims, actions, demands, legal proceedings, judgments, settlements, sums, costs, liabilities, losses, obligations, damages, penalties, fines, costs and other expenses (including, but not limited to, reasonable attorneys' fees) relating to, arising out of or resulting from (i) Buyer's use of the Products (except to the extent caused by the gross negligence or willful misconduct of Seller), or (ii) if the specifications or designs for the Products are provided by Buyer, any claim that the Products infringe upon the intellectual property, proprietary or other rights of any third party.

12. 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 DIMINUTION IN VALUE, 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 BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS.

13. Seller Specifications, Designs and Drawings. BUYER ACKNOWLEDGES AND AGREES THAT ANY SPECIFICATIONS, DESIGNS AND DRAWINGS FOR THE PRODUCTS PROVIDED BY SELLER ARE ONLY APPROXIMATIONS AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO ANY SUCH SPECIFICATIONS, DESIGNS, SOFTWARE CALCULATIONS AND DRAWINGS. Seller shall retain ownership of all specifications, designs and drawings provided by Seller and Buyer shall not provide such specifications, designs and drawings to any other party without the written consent of Seller.

14. Excuse from Performance. Seller shall have no liability for any failure or delay in shipment or other nonperformance if shipment or performance is rendered impossible, impracticable or unreasonably burdensome by any event, whether or not foreseen or foreseeable, brought about by any cause other than the willful misconduct of Seller, including, without limitation, accidents, breakdowns, riots, war, terrorism, interruptions in or failures of sources or subcontractors to supply materials or equipment, failures in manufacturing processes or equipment, strikes, labor or transportation problems, fires, explosions or other acts of God, or orders, contracts, priorities, directives, requisitions or requests of the federal or state governments, whether or not voluntarily assumed.

15. Notices. Any notice relating to these Terms and Conditions of Sale must be in writing and will be considered given at the earlier of the date when actually delivered to an officer of a party at the address provided in writing to the other party or when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, to such address.

16. Assignment. Buyer may not assign any of its rights, duties or obligations under these Terms and Conditions of Sale without Seller's prior written consent. Any attempted assignment without Seller's written consent, even if by operation of law, shall be null and void.

17. Controlling Law. All matters arising out of relating to these Terms and Conditions of Sale shall be governed by the internal laws of the State of Wisconsin, without regard to any choice or conflicts of law provisions. 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 Wisconsin in each case located in Milwaukee County, Wisconsin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The United Nations Convention on Contracts for the International Sale of Products (CISG) does not apply to any transaction between Seller and Buyer.

18. Invalidity or Unenforceability. In the event that any provision of these Terms and Conditions of Sale is found invalid or unenforceable, whether in whole or in part, for any reason, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions. The invalidity or unenforceability of any such provision or part of such provision will not affect the validity or enforceability of the remaining terms and conditions hereof.

19. Waiver. The failure of Seller or Buyer, at any time, to require the performance of any obligation or to assert a right contained herein will not affect either party's right to require such performance or assert such right at any time thereafter; nor shall the waiver of any right or obligation be construed in any way as a waiver of any succeeding breach.

20. Survival. The provisions of, and respective obligations of, Seller and Buyer under Sections 7 through 14 of these Terms and Conditions of Sale, inclusive, shall survive any termination of any of the parties' other obligations hereunder or other termination of their agreement with respect to Products sold hereunder.