



## TERMS & CONDITIONS OF SALE AND DELIVERY

### ACCEPTANCE & APPLICABILITY OF TERMS

#### (a) Effectiveness of Terms & Conditions.

The terms, conditions, and limitations ("Terms") set forth herein are the only terms, conditions, and limitations to which Seller will agree, constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede all prior statements, proposals, negotiations, and representations, and, to the extent permissible by law, supersede all statutory provisions regarding the scope and duration of Seller's warranties and the availability of remedies with regard to such subject matter.

Unless specifically agreed to in writing by a duly authorized representative of Seller, Seller shall not be bound by any terms or conditions other than these Terms, whether written or oral, whether contained in Buyer's purchase order, or elsewhere.

Any such terms and conditions are hereby expressly objected to and rejected by Seller. If an order or other communication from Buyer includes any term or condition contrary to, or in addition to, these Terms, Buyer's acceptance of the goods and services (the "Goods" and the "Services") which are specified in Seller's order confirmation (the "Order Confirmation") or other acknowledgement after Buyer's receipt of these Terms from Seller, shall constitute Buyer's complete and unconditional assent to Seller's Terms notwithstanding anything to the contrary in any such earlier order or communication, unless Buyer clearly instructs Seller in writing, prior to acceptance, to cancel the order.

The terms, conditions, and limitations set forth herein can be modified, altered, or added to only by a subsequent written instrument signed by an authorized Seller representative. No inconsistent course of dealing, course of performance, or usage of trade, if any, shall constitute a waiver or serve to explain or interpret these Terms.

Seller's Order Confirmation shall govern the scope of supply of the Goods and/or Services specified therein.

All orders, contracts and agreements are subject to approval by Seller. All orders must be in writing, and will only be processed when all the pertinent information is received. This includes purchase orders and ship to address information. Acceptance of a customer order is conditioned upon Buyer holding Seller harmless for any delivery delays. Order confirmations are generated to confirm intended ship dates, and Seller may modify them to reflect unforeseen delays. Order confirmations of

delivery are issued only after drawing approval, if required. Any delivery date(s) provided by Seller to buyer are estimates, and Seller reserves the right to modify the delivery date(s) without notice. Seller will undertake commercially reasonable efforts to provide buyer with approximately two (2) weeks of notice of the planned delivery date.

Any quoted lead time(s) may be impacted due to the COVID-19 pandemic or future pandemics or geopolitical crises and any related foreseeable or unforeseeable circumstances arising from it, including but not limited to government regulations, labor shortages, supply chain disruptions, or measures taken to preserve the health and safety of Seller's workforce. Any quoted lead time shall be considered an estimate based upon the best information available to Seller at the time the estimate is made, and is subject to change without notice. Seller reserves the right to postpone any confirmed lead time without previous acknowledgment.

#### (b) Corrections.

Seller reserves the right to correct clerical, arithmetic or typographical errors or omissions in quotes, invoices, price schedules, Order Confirmations, acknowledgements or other relevant documents.

### 1.02 PRICE & PAYMENT

#### (a) Seller's Right to Invoice and Ship.

If Seller notifies Buyer that the Goods are completed and ready for delivery, or inspection, or other release, and Buyer does not respond within three (3) business days, Seller may ship the Goods on or after the delivery date specified in the Order Confirmation and invoice Buyer. In such case payment will be due according to the payment period specified in Section 1.02(d), and any portions of payment to be triggered by an event following shipment of the Goods will be included in the invoice, rather than delayed to a later date. Seller will also have the option of billing for partial shipments.

#### (b) Price.

Unless otherwise indicated, Seller's list prices, proposals, and quotations are net cash (without deduction) FCA Fort Worth, Texas (INCOTERMS) plus shipping, subject to change without notice and may be subject to a surcharge due to the price volatility of raw materials.

Prices for catalogue Goods shall be the price indicated in the price list for such Goods on the date of Buyer's order; Buyer agrees, however, that prices for catalogue Goods are contingent upon exigencies attributable to the COVID-19 pandemic or future

pandemics or geopolitical crises, and may change without notice, through the end of the respective crisis unless otherwise agreed to in writing. If there is a period of more than (3) three months between the date of order and delivery, unless otherwise agreed in written between Buyer and Seller the price for the Goods shall be the price indicated in the price list on the date of delivery, subject to the same contingencies and qualifications noted in the foregoing sentence. If Seller provides a proposal or quotation, the prices in Seller's proposal or quotation are valid for (15) fifteen days, unless otherwise noted, and are subject to the quantities, specifications, and conditions received by Seller at the time of the quotation, as well as any exigencies arising from the COVID-19 pandemic or future pandemics or geopolitical crises. Seller may revise its quotation based on any special sourcing requirements of Buyer. Any agreed upon cash discounts reflected in Seller's proposal, quotation or Order Confirmation are subject to Buyer fulfilling the terms and conditions applicable to any such discounts.

If Buyer orders Goods, Seller reserves the right to invoice Buyer for any increases in material and labor costs, as well as a reasonable amount for Seller's overhead costs, which Seller incurs between the date of Buyer's order and the date of completion of Seller's work.

If Seller incurs any additional costs in packaging or performing any special tests or inspections as requested by Buyer, in addition to those that may be regularly supplied or performed by Seller, Seller will charge such costs to Buyer.

If Buyer requests any changes to its order subsequent to Seller's Order Confirmation or commencement of manufacturing, Seller will separately invoice Buyer for the additional costs and/or charges relating thereto.

**(c) Taxes.**

All prices are exclusive of any and all taxes, duties or government fees. In addition to the stated prices and any other charges due, Buyer shall reimburse Seller for all sales, use, excise, value added, goods and services or other taxes that Seller must at any time either pay or collect in connection with the Goods or Services sold by Seller to Buyer. If, under any laws applicable to Buyer, Buyer is required to withhold any tax on such payments, then the amount of the payment will be automatically increased to totally offset such tax, so that the amount actually remitted to Seller, net of all taxes, equals the amount invoiced or otherwise due. If exemption from any tax, duty, fee or permit is claimed, Buyer shall promptly furnish Seller with proof of exemption satisfactory to Seller and the governing authority, and shall reimburse Seller for any cost or expense, including attorneys' fees, incurred as a result thereof.

**(d) Terms of Payment.**

Seller accepts payment from Buyer in the form of ACH electronic transfer, certified check, or wire transfer. Unless otherwise agreed, Seller shall invoice Buyer upon shipment, and Buyer shall pay Seller net 100% payment in advance - if not otherwise agreed - from the date of invoice, subject to credit approval. The effective date of Buyer's payment shall be governed by the date Supplier actually receives the full, unencumbered payment from Buyer. Seller, in its sole discretion, may require either that (1) Buyer provide an irrevocable Letter of Credit at sight drawn on a bank acceptable to Seller (in such case all banking charges outside Seller's location shall be for Buyer's account, and delivery lead time will commence from Seller's receipt of the Letter of Credit, to be advised through Seller's preferred bank); or that (2) Buyer make 100% payment in advance by wire transfer to Seller's preferred bank (in such case delivery lead time will commence from receipt of Buyer's payment by Seller's preferred bank). For a Buyer whose credit is established or who can furnish satisfactory credit references, upon Seller's sole discretion, terms will be net 30 days from invoice date not to exceed 60 days. A finance charge of 1-½ % per month, or the maximum permitted by law, whichever is less, will be added to balances. Any orders in house will be put on hold if there is any outstanding balance over 30 days on previous orders. A deposit may be required on special built-to-order equipment and cancellations of such orders will incur charges established by the factory.

All payments shall be in United States currency, unless otherwise specified in writing by Seller, and shall be made by means acceptable to Seller. The price is payable on the terms set forth herein without deductions, set-offs, counterclaims, back-charges, or any other charges or claims of Buyer whatsoever, and the obligations of Buyer to Seller shall remain unimpaired regardless of disputes which may arise between Buyer and third parties.

Pro-rata payments shall become due as shipments are made. If shipments are delayed by Buyer, the date Goods are ready for shipment shall be deemed the date of shipment for payment purposes. If manufacture is delayed by Buyer, which is subject to Seller's approval at Seller's sole discretion, payment will be made on basis of purchase price and percentage of completion, with the balance payable in accordance with terms stated.

**(e) Continued Creditworthiness of Buyer.**

Seller will determine extension of credit in its sole discretion. If, in Seller's judgment and sole discretion, Buyer's financial responsibility is or becomes impaired or unsatisfactory or if Buyer has failed or fails to perform under any contract, Seller shall have the right to demand

and Buyer shall provide advance cash payment or security satisfactory to Seller and Seller may withhold shipment until receipt thereof. Overdue payments shall bear interest at the lesser of five percent (5%) per annum or the maximum permitted by law. In addition, Buyer shall pay Seller all costs of collection on overdue accounts including but not limited to reasonable attorney's fees whether or not litigation is commenced in aid thereof. **BUYER WAIVES ANY RIGHT OF SET-OFF AND SHALL MAKE NO DEDUCTIONS FROM PAYMENTS DUE TO SELLER OR FOR ANY DAMAGES OF ANY TYPE CLAIMED BY BUYER AGAINST SELLER.**

**1.03 SHIPPING, DELIVERY & ACCEPTANCE**  
**(a) Schedule.**

All shipping and delivery dates or schedules stated by Seller are good faith projections only and are not warranties, unless specifically agreed in writing by Seller. If Seller has agreed in writing to a specific delivery or shipping schedule, (i) it shall commence on the date of Seller's Order Confirmation, but not before Buyer's delivery of other necessary documents or, where applicable, advance cash payment or tender of security satisfactory to Seller; and (ii) end on the date on which Seller delivers the Goods to the common or contract carrier in accordance with Section 1.03(c) hereof.

Partial shipments will be made by Seller when ready and invoiced absent a written agreement to the contrary. **IN NO EVENT SHALL SELLER BE IN BREACH OF AGREEMENT, LIABLE FOR DAMAGES OF ANY KIND, LIQUIDATED OR UNLIQUIDATED, INCLUDING CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF USE OR LOST PROFITS, DUE TO FAILURE TO MAKE TIMELY DELIVERY OR MEET SHIPPING SCHEDULES.** Delay in delivery of any installments shall not relieve Buyer of its obligation to pay for any shipments received prior to such delay or its obligation to accept the remaining deliveries. If Buyer is unable to receive the Goods when tendered, Buyer shall be liable to Seller for any loss, damage, or additional expense incurred or suffered by Seller as a result thereof.

**(b) Quantity & Weight.**

Seller shall not be responsible for the accuracy of shipping weights, which are correct only within the limits necessary for estimating freight charges.

**(c) Terms of Shipment & Title.**

All Goods are shipped FCA Fort Worth, Texas, and risk passes to Buyer upon delivery of the goods to the carrier. In any case, the Buyer is obliged to inspect the product being received and must sign for compliance. In case of damage or missing items, the Buyer must report it in writing to the carrier on the same delivery-receipt document (POD Proof of Delivery) and must notify Guntner within 3 business days of the date of receipt for land and sea transport, and on the same day of receipt

when received by air. Consequently, Seller is not responsible for any loss or damage to shipments after delivery to the carrier. Shipments are contingent on strikes, or other labor trouble, failure on the part of suppliers to deliver, interruption of or delay in transportation, embargos, war, riot, fires, accidents, any order or regulation of any governmental entity, pandemics, epidemics, acts of God or any other delays unavoidable or beyond Seller's control.

Buyer shall pay or reimburse Seller for all shipping and handling charges. Any claims for damage to or loss of Goods in transit shall be filed by Buyer directly with, and shall be the sole responsibility of, the carrier. Buyer shall effect and maintain at its cost insurance for the Goods with a reputable insurer, and shall produce a certificate of insurance upon request by Seller.

**(d) Inspection.**

Every effort is made to insure that Buyer's order is delivered trouble free; however all freight must be inspected at delivery point for freight damage. Any damage must be noted on the bill of lading and signed by the driver. A copy of the bill of lading must be retained by Buyer for submission during the freight claim process. Pictures should be taken in all instances. All freight claims must be submitted by Buyer. Seller will lend assistance when necessary to help resolve freight damage claims. There is a short time period for filing claims with transport companies, and paperwork should be expedited. In no instance should the freight be refused. If it is deemed necessary, by a representative of Seller and only with prior written authorization from Guntner, to authorize returning merchandise, a Return Material Authorization ("RMA") will be issued and transportation arranged.

Buyer's failure to make such claims, in accordance with international trade terms, within such time period shall constitute an irrevocable acceptance of the particular shipment and an admission that such shipment fully complies with all terms, conditions and specifications contained in the terms of sale for such Goods. Buyer's right to reject a shipment is limited to the timely identification of errors, defects (other than warranty defects, in accordance with international trade terms) or any other nonconformity in any shipment of Goods. If Buyer rejects a shipment of Goods or any part thereof, Seller shall have the right to cure in any reasonable manner the error, defect, shortage or other nonconformity giving rise to the rejection.

All Goods should be examined and counted to ensure they are in agreement with the carrier bill of lading. Any shipping shortages or damages must be noted on the delivery receipt before the truck leaves the delivery site. The Goods should not be removed from the crate or from the area they were received. All packaging material must be retained for carrier inspection. Regardless of the extent

of any shipping damage, the Goods must be accepted and unloaded at the delivery site. After documentation of shipping damage is completed at the site, a phone call (with written follow-up submitted) must be made to Seller's office for further direction concerning the freight damage claim process.

In the case of damage or shortages during transport, the customer must report it to the supplier within 3 business days of the date of receipt, including photographs of the unit involved while still in transport, and a written report of the damage or shortage in the delivery-receipt document (POD) signed by the carrier and the buyer (see section 1.03 and 1.04 of this document).

#### **1.04 WARRANTY & SERVICE**

##### **(a) Scope & Duration.**

(i) This Warranty & Service section is designed to keep Buyer informed and facilitate Buyer's understanding of Seller's sales and warranty policy procedures. Compensation for warranty claims will not be considered until or unless all policies are strictly adhered to. Unless otherwise specified, Seller warrants that all Goods sold to Buyer will be free from defects in workmanship and material, for a period of two (2) years from the date of delivery of the Goods.

(ii) Buyer must receive approval from Seller prior to starting any on-site work to repair or replace the Goods. Failure to obtain such approval before starting work will void this warranty.

(iii) Seller assumes no responsibility for the suitability, accuracy or reliability of materials, components, design conditions, specification, data or other items supplied, selected or furnished by Buyer. This warranty does not apply to: cosmetic issues such as chipped paint or surface scale or rust; natural wear and tear; dynamically stressed components and Goods; Goods which have been disassembled, repaired or altered by other than authorized representatives of Seller; and Goods subject to misuse, (including failing to comply with the requirements of operating manuals, maintenance instructions and technical documentation), negligence or accident. New parts or components made by others are warranted only to the extent of the warranty to Seller by the manufacturer or supplier; resale by Seller assigns such warranty to Buyer, and Seller reserves the right to refer Buyer to the manufacturer or supplier for its exclusive remedy if such parts or components are defective.

(iv) Continuous conformity of the Goods with the applicable guidelines can only be ensured if necessary assembly or replacement work in explosion-proof environments is carried out by Seller. This shall include the assembly or replacement of: explosion-proof fan

motors; fully explosion-proof fans; repair switches for explosion-hazard environments; and terminal boxes for explosion-hazard environments. Seller can only ensure continuous conformity of the Goods with the applicable guidelines after assembly or replacement if such assembly or replacement is performed by an authorized representative of Seller. Generally, the assembly or replacement may only be carried out by a qualified person who holds a qualification according to Technical Rules for Operating Safety (TRBS) 1203. If the assembly or replacement is carried out by an outside company which is not authorized by Seller, the declaration of conformity issued by Seller shall no longer be valid. In such event, Buyer must ensure that the necessary tests are carried out in order to guarantee the ongoing admissibility of the operation of such device in explosion-proof areas. The company performing any such work shall be liable therefor, not Seller.

(v) The design and the material combination of air-cooled finned heat exchangers are optimized for their operation within dry air. Spraying and evaporating water may cause calcification that leads to incrustation. The minerals dissolved in the water (salt, among other things) may lead to various forms of corrosion. The percentages of lime and minerals in the water can greatly differ and depends on the site. Therefore, the water quality of the site must be analyzed in every project. In order to ensure long-term trouble-free operation of sprayed dry coolers/condensers and evaporative condensers, Seller has defined corresponding requirements for the water quality. Any warranty for sprayed dry coolers/condensers, evaporative condensers and the HydroSpray/Hydroblue system shall be voided if Buyer does not take appropriate measures to meet Seller's defined water quality standards for such systems. Appropriate measures include use of a softening system or, in addition to a softening system, demineralizing the water by means of reverse osmosis (depending on the initial water quality at the location of such equipment).

(vi) Catalog illustrations are representations of a certain size of Goods but do not necessarily represent all sizes in all details. Weights in catalogs, price schedules, quotations, and acknowledgements of all orders are approximate and in no sense guaranteed.

##### **(b) Benefit of Warranty.**

Unless otherwise agreed by Seller in writing, such warranty runs only to Buyer and is non-transferable and non-assignable either directly, indirectly, or by operation of law, and any such purported or attempted transfer or assignment shall be null and void.

##### **(c) Buyer's Remedies.**

No order may be cancelled by Buyer after Seller has sent an order acknowledgement. Seller will endeavor to ship within the estimated time noted on the

acknowledgement, but failure to do so shall not be cause for cancellation by Buyer or subject to a penalty of any kind against Seller; Buyer hereby waives any and all claims based on any delay for any reason in Seller's ability to manufacture or ship an order. Cancellation of orders, if agreed to by Seller, will carry a factory handling charge. Seller reserves the right to cancel any order at any time or require prepayment of the balance owing on the order within seven (7) days of notice of such request if, in Seller's sole discretion, Seller determines that (a) Buyer will be unable to meet its payment obligations or (b) other exigent circumstances render uncertain Buyer's ability to perform its obligations.

**THERE ARE NO WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY STATEMENT BELOW, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE WARRANTY STATEMENT BELOW EXCLUDES ANY WARRANTY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.**

Buyer's sole remedy for any breach of Seller's warranty, any damaged or defective Goods supplied by Seller (regardless of whether such defect is discoverable or latent), or for delay or failure to manufacture or deliver, breach of agreement or any other cause whatsoever, including Seller's negligence, **SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO SELLER'S OPTION OF THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR TO A FULL OR PARTIAL CREDIT OF THE PURCHASE PRICE** and shall in no event exceed the purchase price of the particular Goods with respect to which defects, losses or damages are claimed. If Seller elects to refund the purchase price to Buyer, Buyer will return the defective Goods (unless the defect has caused the destruction of the item) and title to such returned Goods will transfer to Seller.

In the event that a failure is attributable to a fault in Seller's manufacturing process, any repairs must be approved and authorized by Seller's U.S. headquarters in Rolling Meadows Illinois (+1 847-781-0900) prior to the making of any repair. A fair estimate detailing labor rates and labor hours must be submitted for this authorization process. Any deviation may or will result in any warranty claim being denied. Seller realizes that occasionally an emergency can occur and an immediate after hours repair is necessary. Full documentation, including pictures clearly showing a manufacturing defect, is required. At this time, Seller allows a \$500.00 limit on an emergency repair before contacting our office for proper authorization, which must be done the following morning. Any request for warranty re-imburement should have all the proper paperwork submitted including: Seller's

authorization number; details of the reason and costs of repair; pictures; subcontractor's invoices; and copies of wholesale invoices for parts bought locally if applicable within Seller's warranty policy. Labor to replace vendor supplied parts is not covered under any warranty or insurance, and no charges for labor should be submitted to Seller.

Warranty claims must be submitted within 30 days after authorized repair work has been completed.

If, for any reason, a visit by Seller's factory personnel for the purpose of service evaluation or assistance is requested, a purchase order to cover the cost of the visit is required. Any field visit will be scheduled at the discretion of Seller's Field Service Department. All forms of corrective remedies must be exhausted before an authorization for a factory visit occurs. If a field service or inspection is required, this will be billed at a rate of \$750.00 per day, per service man required, (with a two days minimum service) plus all related travel, lodging, sustenance, and incidental expenses. If it is determined during the visit that the reason was due to a manufacturing error by Seller, the charges will be waived and the purchase order voided. A jobsite determination by a representative of Seller will then be made for fair compensation to the contractor or customer for costs incurred in the repair of a manufacturing defect.

When ordering replacement parts the following information must be furnished via phone, FAX, or mail with purchase orders provided by fax or mail only.

1. Full name and address of company
2. Person ordering parts
3. Model number
4. Serial number
5. Factory order number
6. Description of part desired
7. Original date of installation
8. Reason for replacement
9. Complete shipping address
10. Purchase order number

All replacement warranty parts will be shipped prepaid by normal ground shipping. If special expedited shipping is requested, it will be the responsibility of the customer, contractor, or end user to bear the shipping costs. Seller makes no representations about the availability of any replacement warranty parts, nor about the timing of any related shipment. In all instances, a purchase order number is required when warranty replacement parts are requested. An invoice will be generated if it is necessary to have the part returned for failure inspection by the vendor. If a failure is determined due to customer neglect, the invoice will become due and payable. If it is determined to be a manufacturing or vendor supplied defect, a credit will be issued against the invoice. In some instances a field scrap determination

may be made after which no invoice will be issued. If Seller requests a part to be purchased locally, it will reimburse at wholesale cost only with a copy of the supplier receipt required. Should the locally purchased part fail it must be returned to the local supplier for replacement, repair, or credit.

Replacement parts will be covered for the balance of Seller's standard equipment warranty or 90 days from date of shipment of the replacement part, whichever is longer.

**THE WARRANTIES AND CONDITIONS PROVIDED IN THIS ARTICLE ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES, CONDITIONS AND LIABILITIES OF SELLER AND ALL CLAIMS AND REMEDIES OF BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, AND RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE AND ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.**

**(d) Warranty Statement.**

Seller warrants the Goods to be free from defects in workmanship and materials under normal usage for a period of 24 months from the date of delivery (the "Warranty Period"), provided that the Goods are correctly installed and operated within the recommended limits of Seller's technical documentation. This warranty is only valid if the Goods are given normal and proper use and complies with Seller's installation and maintenance instructions. Seller assumes no responsibility for repairs to Goods sustaining damages resulting from user modifications, attachments to the Goods, misuse, alteration or negligent use.

Seller, at its option shall repair or replace, free of charge to Buyer, all components of the Goods which are or become defective during the Warranty Period as a result of defects in design, workmanship or materials, ordinary wear and tear excluded, provided, however, that:

- the Goods are applied correctly by Buyer
- all operating and installation instructions for the Goods are complied with by Buyer

- system component and piping design is in accordance with state-of-the-art HVAC practice
  - Nitrogen or an inert gas is introduced into the piping during the brazing of the piping installation
- In all instances, industry standard refrigeration practices must be observed and utilized by certified refrigeration technicians, mechanics, pipe fitters, design engineers, etc. when installing and servicing Seller's Goods.

This warranty shall not include ordinary maintenance or cleaning of the Goods, defects in the installation of the Goods or defects in turning and moving parts. This warranty also does not cover physical damage to the Goods, during transit or otherwise, after purchase of the Goods but before installation.

Buyer must request repair or replacement of the defective component through a written notice delivered to Seller no later than two business days after Buyer becomes aware of the defect, and Buyer must provide Seller with the time and opportunity to make such repair or replacement. Otherwise, Seller will be released from liability for the defect. Under no circumstances will Seller make any repair or replacement without Seller's prior written consent, except to the limited extent permitted by Seller's Service Policy.

Any transport and exchange costs for the repair or replacement shall be borne by Buyer. Seller shall also not be liable for costs incurred in dismantling or fitting replacement parts or for any independent inspection undertaken by Buyer. Buyer shall return, with prior written authorization from Güntner, any allegedly defective goods, postage or freight paid, to Seller at the address below. Upon receipt of the goods and inspection thereof, Seller shall repair or replace, at Seller's discretion, the defective components and shall return the same to Buyer, return postage and freight paid. This shall constitute full compliance with Seller's warranty obligations hereunder.

Seller accepts no liability for the direct or indirect consequences of any modifications of or repairs to the Goods made by Buyer or by a third party without the prior consent of Seller. Seller reserves the right to inspect the Goods for customer abuse during the warranty period if abnormal claims against the equipment should arise.

This warranty shall not apply to Seller's Goods which have been improperly installed or repaired, or altered in any way outside of the manufacturer's factory or have been subject to misuse, negligence, or accident. Equipment or component parts such as valves, electric motors, electric heaters, and electric accessories manufactured by others and used as part of or in connection with Seller's Goods, carry only the warranty of the manufacturer thereof.

This warranty shall be void if equipment has been subjected to negligence, abuse, misuse, low voltage,

corrosive chemicals, excessive pressure, accident, outward damage, or hidden damage while in transit, or if operated contrary to the manufacturer's recommendations.

**THIS WARRANTY APPLIES ONLY TO THE REPAIR OR REPLACEMENT OF THE GOODS AND/OR ITS COMPONENTS AND EXPRESSLY EXCLUDES RESPONSIBILITY FOR DAMAGES NOT OCCURRING TO THE GOODS AND/OR ITS COMPONENTS THEMSELVES AND FOR CONSEQUENTIAL DAMAGES. THIS WARRANTY IS BUYER'S EXCLUSIVE REMEDY, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS IS EXCLUDED. GÜNTNER SHALL NOT BE LIABLE TO BUYER OR TO ANY CUSTOMER OF BUYER UNDER ANY CIRCUMSTANCES FOR ANY DIRECT OR INDIRECT DAMAGES, INJURY TO PERSONS OR PROPERTY OR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSS OF PROFITS, INCLUDING, WITHOUT LIMITATION, LOSS OF REFRIGERANT, LOSS OF STORED GOODS, LOST SALES, ORDERS, PROFITS OR INCOME, EITHER GROSS OR NET, ARISING, DIRECTLY OR INDIRECTLY, FROM DEFECTIVE GOODS OR WORKMANSHIP OR FROM ANY OTHER CAUSE WHATSOEVER.**

Without exception, the Buyer is obliged to inspect the product being received and must sign for compliance. In case of damage or missing items, they must report it in writing to the carrier on the same delivery-receipt document (POD Proof of Delivery) and must notify Guntner within 3 business days of the date of receipt for land and sea transport, and on the same day of receipt when received by air.

This Warranty Statement is further subject to the provisions on service policy and warranty replacement parts in Seller's Terms. To obtain warranty service or to ask any questions regarding the foregoing, please contact:

Güntner US LLC  
3601 Algonquin Road Suite 925  
Rolling Meadows, Illinois 60008  
847- 781-0900 Tel  
847-781-0901 Fax  
dg-us-service@guentner.com or

[sales.us@guntner.com](mailto:sales.us@guntner.com)

On line support:

<https://guntner.com/en-us/contact>

## **1.05 LIABILITY**

### **(a) Limitation of Liability.**

The limitation of liability contained herein is made and entered into by and between Seller and Buyer, and regardless of the date of any related agreement between Seller and Buyer.

Seller warrants to Buyer only that which is recited in the Warranty Statement above. Buyer shall pay or reimburse Seller for all shipping and handling charges. Any claims for damage to or loss of Goods in transit shall be filed by Buyer directly with, and shall be the sole responsibility of, the carrier. Buyer shall effect and maintain at its cost insurance for the Goods with a expressly reputable insurer, and shall produce a certificate of insurance upon request by Seller. **WARRANTY THAT ANY GOODS SOLD BY SELLER TO BUYER SHALL BE OF MERCHANTABILITY QUALITY, NOR THAT THE GOODS SHALL BE FIT FOR ANY PARTICULAR PURPOSE, NOR ARE THERE ANY OTHER WARRANTIES EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE.**

**SELLER SHALL NOT BE LIABLE TO BUYER OR ANYONE ELSE FOR THE COST OF ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH ANY GOODS SOLD BY SELLER TO BUYER, THIS CONTRACT OR ANY BREACH OF THIS CONTRACT INCLUDING, BUT NOT LIMITED TO, ANY LOSS OR DAMAGE RESULTING FROM THE USE OF THE GOODS BY BUYER, ANY ANYONE AFFILIATED WITH BUYER, OR ANY THIRD PARTIES, OR RELATING IN ANY WAY TO SELLER'S DELIVERY OR FAILURE TO DELIVER THE GOODS (INCLUDING BUT NOT LIMITED TO INTERRUPTION OF BUSINESS OR LOSS OF BUSINESS OR PROFIT) RESULTING FROM THE USE OF OR INABILITY TO USE THE GOODS.**

**IF THE GOODS DO NOT CONFORM TO THE WARRANTY STATEMENT, OR IF BUYER MAKES ANY OTHER CLAIM OF ANY SORT WHATSOEVER AGAINST SELLER, BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO REPLACEMENT OF THE GOODS SUPPLIED BY THE SELLER (i.e., SELLER IS NOT RESPONSIBLE FOR REPLACEMENT OR MODIFICATION OF PIPING, SUPPORTING STEEL, ELECTRICAL WIRING, MOTOR STARTERS OR IN AND OUT CRANE OR OTHER EQUIPMENT FEES). OR AT SELLER'S OPTION, REPAYMENT OF THE PURCHASE PRICE. SELLER LIABILITY OF ANY KIND WHATSOEVER SHALL NOT EXCEED THE PURCHASE PRICE SET FORTH ON THE PURCHASE ORDER. ANY GOODS SUPPLIED BY SELLER HEREUNDER TO REPLACE OTHER GOODS SHALL BE DEEMED SUPPLIED TO BUYER SUBJECT TO ALL**

**OF SELLER'S TERMS CONTAINED HEREIN, INCLUDING, WITHOUT LIMITATION, THOSE CONCERNING WARRANTIES, LIMITATION OF LIABILITY, REMEDIES AND DAMAGES, TO THE SAME EXTENT AS THE ORIGINAL GOODS.**

**SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR THE ADEQUACY OF INFORMATION FURNISHED TO BUYER CONCERNING THE GOODS. SELLER SHALL NOT BE LIABLE FOR ANY ERROR OR OMISSION IN THE PREPARATION OF SUCH INFORMATION. SELLER SHALL NOT BE LIABLE TO BUYER, ANYONE AFFILIATED IN ANY WAY WITH BUYER, OR ANY THIRD PARTIES FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE ACCURACY, ADEQUACY OR FURNISHING OF SUCH INFORMATION.**

**(b) Infringement Indemnity.**

Seller agrees to indemnify Buyer from and against any loss or damage incurred by Buyer as a result of a final judgment of a court of competent jurisdiction that Seller's Goods infringe a valid United States patent or copyright held by a third party.

Seller's duty to indemnify shall not apply to any (i) Goods provided pursuant to Buyer's designs, drawings, or manufacturing specifications, (ii) Goods used other than for their ordinary purpose, or (iii) claims of infringement resulting from Buyer combining any Goods furnished hereunder with any article not furnished by Seller. Further, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions set forth in Seller's obligations to Buyer for any suit or proceeding against Seller based upon a claim of infringement resulting from (i), (ii), or (iii) of the preceding sentence.

Buyer shall deliver written notice to Seller (i) within ten (10) days after Buyer first receives notice of any suit or other formal action against Buyer and (ii) within twenty (20) days after Buyer first receives any other allegation or written claim of infringement. **BUYER'S FAILURE TO COMPLY WITH THESE NOTICE REQUIREMENTS SHALL CONSTITUTE A WAIVER BY BUYER OF THE INDEMNITY PROTECTIONS OFFERED BY THIS "INFRINGEMENT INDEMNITY" PROVISIONS OF THESE TERMS.** Buyer shall give Seller full and exclusive control to conduct the defense or settlement of any suit or other proceeding. At Seller's request and expense, Buyer shall provide reasonable assistance including promptly furnishing to Seller all information and records within Buyer's possession or control which Seller considers relevant or material to any alleged infringement. Because Seller has exclusive control of resolving infringement claims hereunder, in no

event shall Seller be liable for Buyer's attorney fees or costs.

In the event any Goods furnished hereunder are determined to have infringed any copyright or patent with respect to which Seller has an obligation to indemnify, Seller may, at its option and expense: (i) procure for Buyer the right to continue to use the Goods; (ii) replace or modify the Goods so that it becomes non-infringing; or (iii) grant Buyer a credit for such Goods, less a reasonable deduction for use, damage, and obsolescence. Each party's liability in the aggregate for damages under this paragraph is limited to the total value of the order hereunder. Except as required by a final judgment entered against Buyer by a court of competent jurisdiction from which no appeals can be or have been filed, Buyer shall obtain Seller's written approval prior to paying, committing to pay, assuming any obligation, or making any concession relative to any infringement covered by these indemnities. **THE OBLIGATIONS OF SELLER AND REMEDIES OF BUYER HEREUNDER ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BUYER HEREBY WAIVES, RELEASES, AND RENOUNCES, ALL OTHER INDEMNITIES, OBLIGATIONS, AND LIABILITIES OF SELLER AND ALL OTHER RIGHTS, CLAIMS, AND REMEDIES OF BUYER AGAINST SELLER.**

**(c) Work on Buyer's Premises or Buyer's Customer's Premises.**

If applicable, Buyer shall obtain any labor or work permits required for Seller to work on Buyer's premises. If Seller's work under these Terms involves operations by Seller on the premises of Buyer or one of Buyer's customers, Seller shall take all precautions reasonable and necessary to prevent the occurrence of any injury to persons or property during the progress of such work, and Seller shall indemnify and hold harmless Buyer or its customers from and against any and all suits, liabilities, demands, costs and expenses (including reasonable attorneys' fees) for injuries to persons, loss of life or damage to property to the extent arising out of the willful misconduct or negligence of Seller, its agents, employees or subcontractors, in proportion to its fault as compared to any other tortfeasors, including Buyer. However, Seller shall not be obligated to indemnify Buyer against any loss, damage, or expense to the extent caused by the fault of Buyer, its agents, employees, or subcontractors.

**1.06 CHANGES**

Except as specifically agreed by Seller, an order which has been accepted by Seller is not subject to changes in specifications or changes in time of delivery. Changes in specification or changes in time of delivery will be permitted if Seller specifically approves such adjustment in writing. Changes or modifications may result in additional costs which will be to Buyer's account.

Changes to specifications may also require adjustment of the delivery schedule, and Seller will advise Buyer as soon as practicable of any such adjustments. Additional costs and/or changes to delivery time in respect of any changes requested by Buyer must be agreed upon prior to Seller's implementation of any change order. Seller reserves the right to change or revise specifications and product design in connection with any feature of its Goods. Such changes do not entitle Buyer to corresponding changes, improvements, additions or replacements for Goods previously sold or shipped.

## **2.01 DISPUTE RESOLUTION & GOVERNING LAW**

### **(a) Dispute Resolution.**

(i) In the event of any dispute between Buyer and Seller relating to a purchase made under these Terms which has not been resolved after reasonable attempts by Buyer and Seller to do so, including without limitation any continuing dispute relating to the interpretation of any provision of these Terms, the performance or non-performance by either party hereunder, or the amount of any disputed consideration arising hereunder, then, upon the written request of either party, each of the parties will appoint a designated representative with settlement authority, whose task it will be to meet for the purpose of endeavoring to resolve such dispute. The designated representatives shall meet as often as the parties reasonably deem necessary to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the premises of the dispute. The specific format for such discussions will be left to the discretion of the designated representatives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. If the parties jointly determine that mediation would aid in the resolution of the dispute, they may agree to participate in mediation with each party bearing its own costs.

(ii) For any claims that remain unresolved despite the parties good faith efforts to resolve them through process laid out above, as agreed to herein and subject to the conditions below, for any dispute valued under \$100,000, Buyer and Seller agree to submit any and all claims, demands, disputes, controversies, differences or misunderstandings arising out of or relating to these Terms, or the failure or refusal to perform the whole or any part hereof, to arbitration administered by the American

Arbitration Association ("AAA") under its Commercial Arbitration Rules, except where those rules conflict with this provision, in which case this provision controls. Arbitration shall be conducted before a single arbitrator unless the amount in dispute exceeds \$50,000. If the amount in dispute falls in the range between \$50,000 and \$100,000, it shall be decided by three arbitrators, one to be selected by each party and the two party-appointed arbitrators to agree upon the third. The arbitration shall be held in Chicago, Illinois. Absent agreement of the parties, or an order by the arbitrator(s) based upon compelling evidence of need, there fact discovery in the arbitration shall be limited—on a per side basis—to ten (10) Interrogatories, five (5) Requests for Production, ten (10) Requests for Admission, and three (3) depositions not to exceed a total of twenty (21) hours on the record. If either party deems expert discovery necessary to the resolution of the arbitration, the parties agree to negotiate in good faith regarding the appropriate scope of expert discovery. Any court with jurisdiction, subject to the forum selection clause contained in these Terms, may enforce this clause and enter judgment on any award.

(iii) For any dispute valued over \$100,000, Seller and Buyer shall retain discretion to proceed either under the arbitration rules described above for disputes valued over \$50,000, or to file suit in state or federal court. The state and federal courts of Delaware shall have exclusive jurisdiction over any action, suit or proceeding with respect to these Terms and Seller hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may have, whether now or in the future, to the laying of venue in, or to the jurisdiction of, any and each of such courts for the purposes of any such suit, action, proceeding or judgment and further waives any claim that any such suit, action, proceeding or judgment has been brought in an inconvenient forum, and the Buyer hereby submits to such jurisdiction.

(iv) Should Seller be required to bring an action to enforce its rights under these Terms—whether in arbitration, state, or federal court—it shall be entitled to an award of its court costs and reasonable attorneys' fees if it prevails on any part of such action.

(v) If any of the terms, conditions, or limitations set forth herein or on the face hereof is held in violation of applicable law, the provision shall be interpreted as if such provisions are in full force and effect to the extent legally permitted or, if such provision is prohibited in its entirety, it shall be null and void, and the remaining terms, conditions, and limitations shall remain in full force and effect. Seller and Buyer agree that any action for breach of these Terms or any contract of sale between Buyer and Seller must be commenced within one (1) year of the date of the alleged breach.

**(b) Governing Law.**

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any contract of which these Terms form a part. The law of the State of Delaware, excluding its conflict of laws provisions, shall apply in interpreting these Terms and shall apply to all questions arising in connection with the quotation, order acknowledgment, the sale of Goods or Services covered hereby, any contract of which these Terms form a part, and any claims related to the foregoing.

**3.01 GENERAL TERMS; TERMINATION**

**(a) Integration.**

Any contract of which these Terms form a part and the terms of Seller's corresponding invoice, represent the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between them with respect to the subject matter. Any representations, promises, warranties or statements by any representative or agent of Seller that differ from the Terms shall be given no force or effect. Any change, amendment, or modification of any of these Terms must be made in writing and signed by Seller. Titles incorporated herein are for reference purposes only and do not have any legal effect.

**(b) Force Majeure.**

If Seller is unable carry out its obligations under any contract of which these Terms form a part either wholly or in part due to a cause described in this Section 3.01(b), such obligations shall be suspended during the continuance of such hindrances and the obligations of any contract of which these Terms form a part shall be extended for such periods as may be necessary for the purpose of making good any suspension of deliveries so caused. Seller shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to plant conditions, accident, equipment breakdown or equipment malfunction; strike, differences with workmen, lockout, or any labor shortage or difficulty; fire, flood, accident, quarantine restrictions, earthquake, tornado, epidemic, or other casualty or act of God; act of terrorism, war, riot, civil disobedience, or other emergency, or acts of civil or military authorities; compliance with orders, priorities, or requests of any government agencies or courts or arbitrators; embargoes; failure of suppliers of Seller to meet delivery schedules, or any shortage of raw materials however caused; inability or delay in obtaining labor or materials; inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation; or any cause, condition, or contingency beyond the reasonable control of Seller, whether similar to those enumerated or not. In the event of any of the foregoing, Seller may apportion the Goods among its customers as it considers equitable.

**(c) Termination for Convenience.**

Buyer shall not return any material without first obtaining a RMA number from Seller, the provision of which is subject to Seller's sole discretion which can at any time be revoked. Unless all returns are marked with this RMA on the shipment, Seller will not be responsible for the disposition of any returned materials. Credit for any returns is subject to inspection and handling charges.

**(d) Termination for Cause.**

Upon failure or refusal of Buyer to accept conforming Goods, make timely payment of amounts due to Seller, or upon any other default by Buyer, including if Buyer's financial responsibility is or becomes impaired or unsatisfactory in Seller's sole discretion, Seller shall be entitled to terminate Buyer's order and exercise all remedies to which Seller may be entitled by law or in equity, including accelerating all payments due Seller and/or seeking specific performance. In the event of any such termination, Seller may request that Buyer segregate the Goods from its other equipment and/or inventory, have the Goods shipped to Seller at Buyer's expense and/or enjoin Buyer from selling or otherwise encumbering the Goods. Seller shall also be entitled to recover all costs incurred by it in connection therewith, including reasonable attorney's fees.

**(e) Seller's Remedies.**

The remedies for Seller set forth in these Terms are cumulative and in addition to any other remedies provided in law or equity. No delay or failure by Seller to exercise any right or remedy shall impair in any manner whatsoever any of such rights or remedies, or be construed to be a waiver of any breach or acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude other or further exercise thereof or the exercise of any other right or remedy. The terms, conditions, and limitations herein may be enforced by Seller at any time in whole or in part. Buyer shall pay all costs and expenses paid or incurred by Seller in enforcing its rights hereunder, including without limitation reasonable attorneys' fees and court costs.

**(f) Assignment & Delegation.**

Neither party may assign its rights or delegate its obligations under any contract of which these Terms form a part except with the written permission of the other party.

**3.02 INTELLECTUAL PROPERTY & CONFIDENTIALITY**

**(a) Intellectual Property.**

Buyer acknowledges that any and all intellectual property rights, except for exclusively Buyer-supplied designs, used in connection with the provision of Goods and/or Services and any parts thereof are and shall remain the sole property of Seller or of such other party as may be identified therein. In the event of any

advancement of the existing Intellectual Property rights or any new Know-How being generated or arising from the performance of or as a result of the provision of Goods and/or Services, Buyer acknowledges that the same and all Intellectual Property rights therein shall belong to Seller exclusively.

All specification, drawings, technical data, including, but not limited to, drawings, layout details, and specifications, computer programs and their contents which (i) have been furnished by Seller to Buyer shall belong to and remain the property of Seller. All Intellectual Property and results of the work, including software, models, designs, drawings, documents, inventions and know-how, conceived or developed by Seller in connections with the sale of Goods and Services to Buyer are the sole property of Seller.

No right, title, or interest to any of Seller's intellectual property will be transferred to Buyer under these Terms, including intellectual property that existed prior to, or is created during or independent of, the performance of any work by Seller on behalf of Buyer.

All copyrights, trademarks and all inventions, patentable and un-patentable, (i) relating to any work performed by Seller for Buyer, (ii) developed by Seller and Buyer, and (iii) in the course and scope of the work shall be the property of Seller. Buyer agrees to and does hereby grant and assign to Seller any right, title, and interest in and to ideas, inventions and improvements which relate in any way to any task or work of Seller on behalf of Buyer, together with any and all domestic and foreign patent or other intellectual property rights in such ideas, inventions and improvements. Buyer agrees to execute specific assignments and do anything else properly requested by Seller, at any time, to secure such rights. Under no circumstances shall Buyer gain any right or title to any of Seller's intellectual property rights unless expressly agreed to by Seller in writing.

**(b) Confidentiality.**

"Confidential Information" means information, whether of a technical, business or other nature, disclosed by or on behalf of Seller to Buyer which (i) is not generally known to the public; (ii) is identified by Seller as proprietary or confidential or (iii) by the nature of the circumstances surrounding the disclosure ought to be treated as proprietary or confidential. Buyer shall hold all Confidential Information of Seller, whether disclosed by Seller to Buyer in connection with Seller's provision of Goods or Services hereunder or otherwise, in confidence and shall not reproduce, use, or disclose such Confidential Information in whole or in part to any third party without the prior written consent of Seller and shall take reasonable precautions to safeguard the secrecy thereof.

**3.03 LAWS & REGULATIONS**

**(a) Compliance with Law.**

Buyer shall comply with all local, state, and federal statutes and laws and all other requirements having force of law applicable at any time which affect in any manner Buyer's order or Buyer's performance thereunder. Buyer shall notify Seller at once of any governmental action, prohibition, or limitation which affects in any manner Buyer's order.

**(b) Export Compliance.**

By placing its order with Seller, Buyer represents and warrants that it is neither subject to any U.S. embargo or trade prohibition or limitation, nor subject to any embargo or trade prohibition or limitation in which the U.S. participates. Buyer agrees that it will not resell or distribute any Goods to any individual or entity prohibited from receiving Seller's Goods or from dealing with Seller under U.S. law or under any embargo or trade prohibition or limitation in which the U.S. participates. Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, losses, costs, or liability incurred by Seller as a result of Buyer's breach of this provision. Seller reserves the right to cancel Buyer's order, suspend, or terminate Seller's performance, or take any other action it deems necessary as a result of Buyer's breach of this provision. This includes selling to any country or entity listed in the Treasury Department's Office of Foreign Assets Control list (<http://www.treas.gov/offices/enforcement/ofac/>) or the Commerce Department, Bureau of Industry and Security (<http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>).

**3.04 MISCELLANEOUS**

**(a) Severability.**

Buyer shall comply with all federal, state, and local statutes and laws and all other requirements having force of law applicable at any time which affect in any manner Buyer's order or Buyer's performance thereunder. Buyer shall notify Seller at once of any governmental action, prohibition, or limitation which affects in any manner Buyer's order.

**(b) Binding Effect.**

These Terms shall be binding upon and/or inure to the benefit of Seller, Buyer, and their respective successors and assigns. Neither Seller nor Buyer hereto shall be relieved of obligations hereunder by any assignment of any interest in any agreement between them.