

Harsco Industrial Air-X-Changers
(Division of Harsco)
("Seller")
TERMS AND CONDITIONS OF SALE

1. Acceptance of Terms and Conditions:

Buyer and Seller have mutually negotiated and agreed upon the terms and conditions contained herein which will apply to the sale of products by Seller to Buyer, unless mutually agreed otherwise. Any terms contained in a purchase order, invoice or other document provided by one of the parties to the other at any point in the sale process shall not apply unless specifically agreed to in writing by both parties hereto.

2. Express Warranty:

Seller warrants that the products sold hereunder will conform to specifications Seller has provided to Buyer (or if the products being sold by Seller is a custom built products for Buyer, to the specifications provided by Buyer to Seller) and will be free from defects in materials and workmanship when operated in accordance with all applicable operating conditions, for a period of one (1) year after start-up, not to exceed 18 months from shipment (the "Warranty Period"). Such warranty shall not apply to any equipment, whose structural integrity or functionality has been altered or repaired by other than the company's personnel or by personnel expressly approved by the Company. Seller shall, during the Warranty Period, repair or replace any products or parts or components of products found to be defective. In the event Seller cannot repair or replace the product, Seller shall refund, or credit to Buyer, the price of such product. Buyer agrees to provide Seller prompt written notice of any defect immediately after the defect is discovered. Seller makes no warranties covering deterioration or failure due to improper installation or operation.

3. WARRANTY DISCLAIMER:

THE EXPRESS WARRANTIES SET FORTH IN SECTION 2 ABOVE ARE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY IN SECTION 18. EXCEPT AS SET FORTH IN SECTION 2, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER. SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE SOUGHT IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE.

4. Delivery/Transportation:

Delivery terms shall be FCA Manufacturer's Facility (Incoterms 2010). Transportation expenses will be paid by Buyer. Seller will exercise its reasonable efforts to meet the shipment dates as specified in Seller's confirmation.

5. Prices:

Pricing for the products purchased shall be agreed upon by the parties and specified on the confirmation issued by Seller. No contract shall have been formed until the pricing has been agreed upon by the parties and specified in Seller's confirmation issued for the products.

6. Taxes:

Unless otherwise agreed upon by the parties and stated in Seller's confirmation, prices specified in the Seller's confirmation do not include sales, use, excise or similar taxes. Buyer shall be responsible for payment of the amount of any present or future sales, use, excise or other similar tax applicable to the sale of products hereunder.

7. Title and Risk of Loss:

Unless otherwise agreed upon by the parties and stated in Seller's confirmation, title and risk of loss shall pass to Buyer at the time of Seller's delivery of the product to the carrier for delivery to Buyer, even though the carrier may be selected by Seller.

8. Terms of Payment:

Unless otherwise agreed upon by the parties and stated in Seller's confirmation, terms of payment for shipments are net cash within thirty (30) days from the date of invoice. Failure to make timely payment of invoices covering final or partial shipments entitles Seller at its option to withhold delivery of products ordered without liability. In addition, if this invoice or any part hereof is not paid when due, Seller may assess a late payment charge of 1% per month (or such lesser amount as may be the maximum permitted by applicable law) on such past due amount.

9. Cancellation:

No accepted terms stated in a confirmation issued by Seller may be modified except with the prior mutual written consent of the parties.

10. Compliance with Laws:

Seller warrants that the products, to the extent based on Seller's specifications, shall comply with all Federal, State and local laws, regulations and ordinances affecting the products. Buyer warrants that its purchase and use of the products, as well as any specifications provided by Buyer to Seller for the products, shall comply with all Federal, State and local laws, regulations and ordinances affecting the products.

11. Insurance:

Seller shall, at Seller's own cost and expense, maintain appropriate insurance coverages for the manufacture and sale of the products, including Comprehensive General Liability Insurance, Worker's Compensation Insurance, Automobile Liability Insurance and any other insurance that may be required under applicable statute, regulation or ordinance. If Buyer requests, Seller shall provide to Buyer certificates of insurance substantiating such coverage.

12. Indemnification:

A. Intellectual Property. Seller shall, indemnify defend and hold Buyer harmless from any and all liability, loss, damage, cost and expense, including actual attorney's fees, (collectively, "Losses") which Buyer may suffer or incur as a result of a third party claim that the products violates their intellectual property or other proprietary rights. This indemnity shall not apply to the extent Buyer may have altered the products. Buyer agrees to defend, indemnify and hold Seller harmless from any and all Losses, which Seller may suffer or incur arising from compliance with Buyer's drawings or specifications, including but not limited to, actual or alleged patent, trademark or copyright infringement.

B. Personal Injury and Property Damage. Seller shall indemnify, defend and hold Buyer harmless from any and all Losses incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim. Buyer shall indemnify, defend and hold Seller harmless from any and all Losses incurred by Seller as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Buyer's negligence. Buyer shall have the sole authority to direct the defense of and settle any indemnified claim. Buyer indemnification is conditioned on Seller (a) promptly, within the Warranty Period, notifying Buyer of any claim, and (b) providing reasonable cooperation in the defense of any claim. For clarity, in the event Losses are caused by the joint or concurrent negligence of Buyer and Seller, the Losses shall be borne by each party in proportion to its degree of negligence.

13. DAMAGES:

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14. Confidentiality:

Each party agrees to hold in confidence and not disclose to any third party or use for its own benefits, other than as may be approved by the disclosing party, any confidential or proprietary information supplied to it by the other party hereto pursuant to this agreement. Confidential information shall not include information which (i) is within or becomes part of the public domain, (ii) is disclosed by a third party not under an obligation of confidentiality with respect to such information, (iii) was already within the party's possession prior to its disclosure by the disclosing party and (iv) is independently developed without use of the disclosing party's confidential information.

15. Intellectual Property:

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights used to create or otherwise relating to the products (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Buyer pursuant to the Purchase Order or prepared by or on behalf of the Buyer in the course of performing under the Purchase Order (collectively, the "Deliverables"), except for any Confidential Information of Buyer or Buyer materials, shall be

owned by Seller . Seller hereby grants Buyer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid, royalty-free and perpetual basis to the extent necessary to enable Buyer to make reasonable use of the Deliverables.

16. **Assignment:**
Either party may freely assign this contract (without further obligation for performance on the part of such party) to any successor to all or substantially all of its business, provided all rights and responsibilities are assumed by the assignee. In all other events, neither party may assign this contract or any of its rights or obligations hereunder without the prior written consent of the other party.
17. **Force Majeure:**
Neither party shall be liable for its failure to perform its obligations under this agreement when such failure results from any cause beyond such party's reasonable control, including but not limited to fire, flood or other act of God, strike or labor difficulty or disagreement, accidents at Seller's facilities, acts or requirements of government or civil authority, riot, war, embargo, truck or car shortage or other transportation delay or difficulty. In the event of such delay, the date of delivery shall be extended for a period equal to the time loss by reason of such delay. If such force majeure event continues for a period of 60 days, the party not impacted by the force majeure event shall be entitled to terminate this agreement upon notice to the other party. In the event of termination, Buyer shall reimburse Seller for all reasonable costs incurred to the date of the force majeure event and Buyer shall be entitled to take control of the products or any part of the product for which it has compensated Seller.
18. **LIMITATION OF LIABILITY:**
IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED 20% OF THE TOTAL AMOUNTS PAID TO THE SELLER FOR THE PRODUCTS SOLD HEREUNDER PRIOR TO THE DATE OF SUCH CLAIM.
19. **Effect of Invalidity:**
The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.
20. **Waiver:**
No waiver by either party of the other party's breach of contract shall be deemed to be a waiver of any other or subsequent breach. All rights and remedies available to the parties hereunder shall be cumulative and in addition to any other rights and remedies provided herein or by law.
21. **Governing Law, Jurisdiction and Venue:**
The contract between the parties hereto shall be governed by and construed in accordance with the laws of the State of Oklahoma and shall be deemed entered into at Seller's place of business.
22. **Siting/Installation:**
Siting of cooler(s) is the responsibility of the Buyer. Buyer must insure that cooler air intake areas are free from obstruction to air flow and sources of hot air (including other air coolers). Spacing of air coolers should be adequate to avoid hot air recirculation. Effects of grouping coolers together should be compensated for by raising units.
23. **Product Improvement Liability Disclaimer:**
Seller reserves the right to make any changes in or improvements on its products without incurring any liability or obligation whatsoever and without being required to make any corresponding changes or improvements in products previously manufactured or sold.
24. **Changes/Revisions:**
Buyer's may change the specification of its order only upon written notice and mutual agreement of the parties to such change. Any additional charges accrued as a result of such change, will be for Buyer's account.
25. **Complete Agreement:**
This agreement, along with the terms which are to be specified on the front of the applicable confirmation issued by Seller, represents the entire agreement of the parties for the sale of the products by Seller to Buyer.
26. **Compliance with U.S. Export Controls and Trade Sanctions:**
Buyer agrees to comply with all U.S. export controls and trade sanctions requirements. Buyer will obtain, or cause to be obtained, any authorizations required by the U.S. government for transfer outside of the U.S. Buyer agrees that the products will not be transferred, directly or indirectly, to Cuba, Iran, Syria, Sudan, to any other country subject to U.S. trade sanctions, nor to any person or entity listed on the U.S. Department of Treasury Office of Foreign Assets Control Specially Designated Nationals List (updated list available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).