

# ASPEQ HEATING GROUP, LLC

## Terms and Conditions of Sale

### 1. Applicability.

(a) These Terms and Conditions of Sale (these "**Terms**") are the only terms that govern the sale of goods ("**Goods**") and services ("**Services**") by ASPEQ Heating Group, LLC ("**Seller**") to the buyer named on the Order Acknowledgement (as defined below) ("**Buyer**"). Collectively Buyer and Seller are referred to as the "**Parties**" and individually as "**Party**."

(b) The accompanying quote (the "**Quote**") or order acknowledgement (the "**Order Acknowledgement**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement supersedes any of terms and conditions submitted by Buyer regardless of whether or when Buyer has submitted its purchase order or such terms. Seller expressly rejects Buyer's terms and conditions of purchase, and fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions or serve to modify or amend these Terms. Acceptance of the Quote or Order Acknowledgement by Buyer (which, in the case of an Order Acknowledgement, shall be deemed accepted should Buyer not object in writing within five (5) business days of receipt of the Order Acknowledgement) is a prerequisite to the purchase of the Goods and shall operate as an acceptance of these Terms, which are expressly incorporated into the Quote or Order Acknowledgement. Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the Goods ("**Master Agreement**"), then the Master Agreement shall prevail to the extent of any inconsistency with these Terms.

### 2. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability. Delivery dates given by Seller are estimates only and are subject to availability of the Goods and shipping variations and requirements. Seller shall not be liable for any delays in delivery or loss, or damage in loading at or transit from the Delivery Point (as defined below).

(b) Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods (in each case "**Delivery**") EXW Seller's location (Incoterms® 2020 Rules) (the "**Delivery Point**") using Seller's standard method of packaging. Buyer shall remove the Goods from the Delivery Point ("**Removal**") within five (5) days of Seller's written notice of Delivery. Buyer is responsible for any fees, including without limitation storage fees, associated with its untimely removal of the Goods from the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Goods shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If the ultimate destination of the Goods is outside of the United States, Buyer shall designate such country on its purchase order, and Buyer shall be the importer of record for such Goods. In the event that Buyer purchases Goods for export without so notifying Seller, Buyer shall have sole liability for and shall defend and indemnify Seller against any loss or damage (including without limitation, claims of governmental authorities) arising from the export from the United States or import into another country of such Goods, including, without limitation, those related to Import Duties (as defined below), packaging, labeling, marking, warranty, contents, use, or documentation of the Goods. Buyer shall neither take, nor solicit Seller to take, any action which would violate any anti-boycott, anti-corruption, or any export or import statutes or regulations of the United States or other governmental authorities and shall defend and indemnify Seller for any loss or damage arising out of or related to such action.

(e) Quantity. If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Quote or Order Acknowledgement, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods at the price set forth in the Quote or Order Acknowledgement adjusted pro rata.

3. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, 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 Goods, wherever located, , as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

4. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party. Buyer may cancel an order only with the written consent of Seller (which may be withheld at Seller's sole discretion) and upon payment of the following cancellation charges. In the event Seller accepts such cancellation for all or any part of the Goods or Services, Buyer shall be liable for the higher of: (i) of the purchase price; or (ii) any loss (including but not limited to work performed by Seller) incurred by Seller, including, without limitation, cost of engineering, reconditioning, labor, materials, and Seller's overhead and profit margin. Notwithstanding anything to the contrary contained in this Agreement, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not affect the nature or scope of the Services, or the fees or any performances dates set forth in the Quote or Order Acknowledgement.

## 5. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Seller's published price list in force as of the date of the Quote or Order Acknowledgement.

(b) All Prices include the cost of delivery of Goods purchased to the Delivery Point, Buyer shall be responsible for all loading costs, costs of transportation from the Delivery Point to Buyer's choice of destination, and installation of the Goods. Buyer shall provide all equipment and labor necessary for same. All Prices are exclusive of all sales, use, and excise taxes and any other taxes, Import Duties (as defined below), and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

(c) Notwithstanding anything in this Agreement to the contrary, in the event of any increase in (i) duties, tariffs, taxes, or similar charges imposed by the United States or any other government (collectively, "**Import Duties**") or (ii) Seller's wholesale or raw material prices affecting the Goods (whether the finished Goods or a component thereof), Buyer agrees to an adjustment in the net price of the affected Goods equal to the actual increase in Seller's costs due to any of the foregoing.

(d) Seller shall provide Buyer with written notice of any Price adjustment pursuant to this Section.

(e) If notice of the Prices increase is given after the date of Quote or Order Acknowledgement but before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased Price was originally reflected within the applicable purchase order and Quote or Order Acknowledgement, and Buyer shall be billed by Seller on the basis of such increased Price.

## 6. Payment Terms.

(a) Unless otherwise agreed in writing, Buyer shall pay Seller all invoiced amounts due within thirty (30) days after the date of Seller's invoice. All payments hereunder shall be in US dollars and made by the payment methods instructed by Seller. Seller reserves the right to require pre-payment in its sole discretion.

(b) 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. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

(c) Unless otherwise agreed in writing, and except for shipments to Canada, for all export sales from the U.S., payment shall be cash in advance or approved letter of credit. Buyer shall, no later than 60 days prior to each scheduled shipment date, wire transfer funds to Seller's account or cause to be issued for Seller's benefit an irrevocable letter of credit in U.S. Dollars in the full amount of the purchase price, such letter of credit (i) to be issued or confirmed by a prime U.S. bank acceptable to Seller, (ii) to be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500) and to be otherwise acceptable in form and substance to Seller, and (iii) to provide for payment to Seller of the full amount of the purchase price plus prepaid freight in U.S. Dollars, on presentation by Seller of sight drafts, Seller's invoice, and such other documents as shall be reasonably required by the letter of credit. All banking and other charges for such letter of credit are for the account of the Buyer.

**7. Limited Warranty.** Seller warrants to Buyer that:

(a) Upon delivery, Buyer will receive good and valid title to the Goods, free and clear of all encumbrances and liens; and

(b) for a period of twelve (12) month(s) from the date of shipment of the Goods (the "Warranty Period"), the Goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from defects in materials or workmanship.

(c) The warranties under this section do not apply where the Goods have been: (i) installed, operated and maintained not in accordance with Seller's instructions; (ii) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by Seller, or improper testing, installation, storage, handling, repair, or maintenance; (iii) reconstructed, repaired, or altered by anyone other than Seller or its authorized representative; or (iv) used with any third-party product, hardware, or product that has not been previously approved in writing by Seller.

**8. Buyer's Exclusive Remedy for Breach of Warranty.** During the Warranty Period:

(a) Buyer shall notify Seller, in writing, of any alleged warranty claim within five (5) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim (but in any event before the expiration of the applicable Warranty Period);

(b) Buyer shall ship the relevant Goods, at its expense and risk of loss, to Seller's facility located at Seller's location for inspection and testing by Seller;

(c) If Seller's inspection and testing reveals, to Seller's reasonable satisfaction, that such Goods do not conform with the limited warranty set forth herein, Seller shall in its sole discretion, and at its expense (subject to Buyer's compliance with this Section 10), either (i) repair or replace such Goods, or (ii) credit or refund the Price of such Goods less any applicable discounts, rebates, or credits; and

(d) If Seller exercises its option to repair or replace, Seller shall, after receiving Buyer's shipment of such Goods, ship to Buyer, at Buyer's expense and risk of loss, the repaired or replacement Goods to a location designated by Seller.

(e) Buyer has no right to return for repair, replacement, credit, or refund any Goods except as set forth in this Section 9. In no event shall Buyer reconstruct, repair, alter, or replace any Goods, in whole or in part, either itself or by or through any third party.

**(f) THIS SECTION 9 SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8.**

**9. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER INDIVIDUAL OR ENTITY ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 8 OF THIS AGREEMENT.**

**10. Limitation of Liability.**

**(a) IN NO EVENT SHALL SELLER OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.**

**(b) 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, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT TO THIS AGREEMENT FOR SUCH ORDER.**

**11. Compliance with Law.** Buyer shall at all times comply with all laws, rules, ordinances, and regulations of any jurisdiction (collectively "Laws") applicable to the operation of its business, this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any Laws, including without limitation reshipment or resale of any Goods to any persons or places prohibited by the laws of the United States of America, Canada, or any other applicable Laws or jurisdiction.

**12. Waiver.** No waiver by Seller of any of the terms of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege under this Agreement by Seller operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Seller precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Seller.

**13. Confidential Information.**

**(a) All non-public, confidential, or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the**

public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

(b) Seller retains title to all engineering and production prints, drawings, technical data, and other information and documents that relate to the Goods and Services sold to Buyer. Unless advised by Seller in writing to the contrary, all such information and documents disclosed or delivered by Seller to Buyer are to be deemed proprietary to Seller and shall be used by Buyer solely for the purpose of inspection, installation, and maintenance and not used by Buyer for any other purpose.

**14. Force Majeure.** Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Buyer's payment obligations hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("**Impacted Party**") control, including, the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) order or action by any governmental authority or requirements of law; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; (i) pandemics or other health emergencies; and (j) other events beyond the control of the Impacted Party.

**15. Assignment.** Buyer's rights, interests, or obligations hereunder may not be assigned, transferred, or delegated by Buyer without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**16. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.

**17. No Third-Party Beneficiaries.** This Agreement benefits solely the Parties to this Agreement. Nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**18. Governing Law.** This Agreement is governed by, and construed in accordance with the laws of the State of Delaware without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction. All legal proceedings shall be instituted in the state or federal courts of the State of Delaware. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts.

**19. Notices.** All notices shall be in writing and addressed to the parties at the addresses set forth on the face of the Quote or Order Acknowledgement or to such other address for either Party as that Party may designate by written notice. All notices must be delivered by nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested).

**20. Severability.** If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.