



Spring Air

Spring Air Systems Inc.

STANDARD TERMS AND CONDITIONS OF SALE

1. CONDITIONS OF SALE

Spring Air Systems Inc. and its affiliates ("SAS") provide the following Standard Terms and Conditions of Sale ("Terms and Conditions"), which apply to all quotations and sales made by SAS. All purchases by a customer, owner, or its agent ("Purchaser") are expressly limited and conditional upon acceptance of the following Terms and Conditions, and no provision, printed or otherwise, contained in any quotation, order, acceptance, confirmation, or acknowledgment which is inconsistent with, different from, or in addition to these Terms and Conditions is accepted by SAS unless specifically agreed to in writing by SAS. A purchase order received by SAS and accepted shall be subject to the Terms and Conditions and shall supersede any and all terms and conditions of Purchaser contained in the purchase order accepted by SAS.

The term "Product" or "Products" shall mean the equipment, product, parts or services including commercial kitchen ventilation systems and equipment proposed for sale by SAS.

2. TIME LIMIT

All quotations are valid for a period of thirty (30) days, unless otherwise specified. Verbal quotations expire on the same day they are made unless confirmed in writing, whereupon they expire thirty (30) days from the date issued.

3. TAXES & OTHER CHARGES

Purchaser is responsible for the ultimate payment of all federal, state, local, foreign or provincial taxes, fees or charges of any nature whatsoever imposed by any governmental authority including the harmonized sales tax, provincial or state sales tax and duties, that may be assessed or levied on products and services sold hereunder. Unless otherwise stated, prices do not include such taxes, fees or charges which will be added to the sales price where SAS has a legal obligation to collect them. If Purchaser is exempt, Purchaser shall provide SAS with the documentation necessary to support such a claim and to allow SAS to document its decision not to collect such tax, fee or charge.

4. PRICES

Prices quoted herein are based upon presently prevailing duties, rates of duties, taxes, special assessments, monetary exchange and freight as applied to materials and/or equipment purchased or imported by SAS. SAS reserves the right to amend the price(s) in a quotation where variations or increases in the cost of material, components or parts and in regulated costs such as rate of duties, taxes, special assessments, monetary exchange and freight between the date of quotation and date of delivery are deemed material by SAS.

SAS's price does not include any transportation, crating or packaging charges, or any taxes, excises, duties, tariffs or other governmental charges which SAS may be required to pay or collect under any existing or future law, with respect to the sale, transportation, delivery, storage, installation or use of any of the Products. All prices and discounts are subject to change without notice prior to acceptance of a quotation.

5. TERMS OF PAYMENT

The terms of payment shall be as set out in the quotation provided by SAS.

Interest will be added to past-due accounts at a rate of 1.5% per month, or the maximum amount allowed by law. SAS will reserve the right to stop or delay order processing if Purchaser is not in full compliance with the contractual payment terms. If shipments are delayed by Purchaser, payment will become due from the date SAS is prepared to make shipment. Products held for Purchaser because of any delay due to Purchaser's request to hold or inability to receive the Product will be at the risk and expense of Purchaser. SAS at its sole option, and without incurring any liability, may suspend its performance until such time as the overdue payment is made or SAS receives assurances, adequate in SAS's opinion, to indicate that the payment shall be promptly made. In the event of such suspension, the delivery schedule and purchase order price shall be equitably extended and increased taking into account the delay and costs resulting from such suspension. Purchaser shall promptly pay SAS for all costs and related overhead costs arising from such suspensions. If Purchaser suspends performance of either party for whatsoever reason, the delivery schedule and purchase order price shall be equitably extended and increased, taking into account the delay and all costs resulting from such suspension.

6. CREDIT APPROVAL

Acceptance of purchase order is subject to approval of Purchaser's credit worthiness by SAS. Notwithstanding such acceptance and/or approval if, in SAS's sole discretion and judgment, Purchaser's financial condition does not at any time warrant the continuation of production of the Product or shipment of the Product on the original terms, SAS reserves the right to request payment in full in advance.

7. SHIPMENT

Pricing and shipping terms shall be Ex Works (EXW) (as defined in Incoterms 2000) the manufacturing or warehouse facility of SAS. If Purchaser has not issued inspection or shipping instructions by the time the Product is ready for shipment, SAS may select any reasonable method of shipment, without liability by reason of its selection. Shipments made on Purchaser's behalf shall be insured at Purchaser's expense. If SAS is required to arrange for shipment of the Product or any parts thereof, Purchaser shall reimburse SAS for all freight, insurance, duties and other shipping related costs and Purchaser will pay SAS a handling fee for each such shipment. Shipment of Product held by reason of Purchaser's request or inability to receive Product will be at the risk and expense of Purchaser. Claims for shortages in shipment shall be deemed waived unless made in writing to SAS within ten (10) days from date of receipt of the Product.

SAS reserves the right to decline to ship a Product with a shipper that SAS deems unsatisfactory.

8. DELIVERY DATES

All delivery and shipment dates quoted are approximate and subject to SAS's availability schedule. SAS will make reasonable efforts to meet the delivery date(s) quoted, however, SAS does not assume liability, consequential or otherwise, because of any delay or failure to deliver all or part of a purchase order for any reason. All delivery promises are predicted upon prompt and timely receipt from Purchaser of all necessary information, material, drawings, plans and documentation and should be reconfirmed at the time of SAS's written order acceptance.



9. EXCUSABLE DELAYS

SAS shall not be liable for loss, damages, detention, or delays resulting from causes beyond its reasonable control or caused by but not limited to strikes, restrictions of the Canadian or United States Government or other governments having jurisdiction, delays in transportation, inability to obtain necessary labour, materials or manufacturing facilities, third party providers of the Purchaser delaying the installation of the Product or any other cause reasonably beyond its control, whether similar or dissimilar to those listed.

10. SHIPMENT F.O.B.

If Purchaser advises SAS that the Product is to be shipped F.O.B. and SAS agrees, title and risk of loss shall pass to Purchaser at the F.O.B. point. If Purchaser has not issued inspection and shipping instructions by the time the Product is ready for shipment SAS may select any reasonable method of shipment, without liability by reason of its selection. Shipments may be insured at Purchaser's expense, and SAS will not place valuation upon shipments unless specifically requested in writing by Purchaser or required for export purposes.

11. WARRANTY

SAS warrants only that the Products manufactured by SAS shall be free from defects in material and workmanship; provided, however, that this warranty shall be limited to Products found to be defective within a period of twelve (12) months from the date of shipment, whichever expires first, except as may otherwise be provided ("Warranty Period"). This warranty does not cover Purchaser furnished/specified equipment and/or Purchaser furnished materials or parts.

The sole and exclusive remedy of Purchaser for any liability against SAS of any kind, including (a) warranty, express or implied whether contained in the Terms and Conditions hereof, or in any terms additional or supplemental hereto, (b) contract, (c) negligence, (d) tort, or (e) otherwise, is limited to the repair or replacement at SAS's designated point of manufacture, by SAS of the Products which an examination by SAS reveals to be defective during the Warranty Period, or at SAS's option to refund to Purchaser the money paid to SAS for such Products. Purchaser and SAS may mutually agree to acceptance of the Products to be designated "as is" with an agreed upon reduction in the price. SAS will have no obligation to remedy defects unless, within the Warranty Period, Purchaser gives SAS written notice of its claim and returns the defective Product after receipt of shipping instructions from SAS to return such Products. Purchaser will ship the Product to SAS, freight prepaid, and SAS will return the Product to Purchaser, freight collect. All Products returned for repair or replacement pursuant to this section are to be packaged in accordance with the instructions received from SAS or in a manner to ensure the returned Product is not damaged in shipping.

In no event shall SAS incur any obligation to repair or replace Products which are determined by SAS to be defective due to Purchaser misuse, or due to use not in accordance with specified operating conditions and operating and maintenance instructions. SAS retains the option to witness the operation of the Product to verify operating conditions. SAS shall not incur any obligation hereunder with respect to Products which are repaired or modified in any way by the Purchaser without SAS's prior written approval.

EXCEPT FOR THE EXPRESS WARRANTY STATED HEREIN, SAS DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PRODUCTS, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR REASON.

12. **CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY.** SAS WILL NOT BE LIABLE FOR ANY LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. In no case will SAS's liability exceed the amount paid to SAS by Purchaser for the specific Product(s) giving rise to such liability. Purchaser agrees to indemnify and hold SAS harmless from and against all liabilities, claims, and demands of third parties of any kind relating to the Product(s) and their use arising after shipment of the Product(s).

PURCHASER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCT AND IS EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, PURCHASER AGREES THAT RETURN OF THE FULL PURCHASE ORDER PRICE TO IT BY SAS SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY PURCHASER AS A FAIR AND ADEQUATE REMEDY.

13. TITLE, SECURITY INTEREST

Purchaser agrees that SAS shall retain a security interest in the Products and any proceeds thereof to secure any portion of the purchase order price not paid, and Purchaser will, on request, execute a security agreement in such form as is required by SAS. SAS shall have all rights and remedies accorded by law or equity to a secured seller, including the right to enter upon the premises where the Products shall be located for purposes of removing or rendering them inoperative, and all such rights and remedies shall be cumulative. Purchaser shall maintain insurance against all risks to cover full replacement value of the Products until SAS has been paid in full.

14. FORCE MAJEURE

SAS or Purchaser will be excused from their respective obligations in the event and to the extent that their respective performance is delayed or prevented (a) by any circumstance (except financial) reasonably beyond their control or (b) by fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labour disputes, riots or other civil disturbances, or voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority. In addition, SAS will be excused in the event of its inability to obtain materials, components, parts or supplies necessary for manufacture of the Product, or total or partial failure of any of its usual means of transportation of the Product.

15. CHANGES

Purchaser may request changes to the Product after SAS's acceptance of Purchaser's purchase order, and SAS will quote any changes in price, time of delivery, or other terms associated with the requested change. The proposed change shall not become effective unless and until Purchaser issues a purchase order recording the change and SAS confirms its acceptance in writing.



16. CANCELLATION CHARGES

Purchaser agrees to pay to SAS a cancellation charge in the event it (1) cancels any order or portion thereof or (2) fails to meet any obligation thus causing cancellation. Cancellation charges for a purchase order will be one hundred percent (100%) prorated by work completed on the order, unless otherwise stated in a quotation. Purchaser agrees that this charge is a reasonable approximation of the damages that would result from its cancellation, and that the charge is not a penalty, but is used as a means to avoid the difficulty of proving the actual damages incurred by SAS. No order may be cancelled after shipment has occurred and/or unless accepted in writing by SAS.

17. BACKCHARGES

No back charges will be paid or allowed by SAS unless SAS is notified in writing of any Product defect claim or omission pursuant to the terms herein. All back charges must be approved in writing by SAS before any Product is repaired, replaced or altered in any manner by Purchaser or its designee, or returned to SAS.

18. INSTALLATION, TECHNICAL ASSISTANCE.

The Product shall be installed by and at the expense of Purchaser, unless otherwise expressly stipulated and agreed to by SAS. It is expressly understood that any technical assistance or installation services furnished by SAS will be addressed in a separate written agreement between the parties. In no event will any technical assistance or installation provided by SAS constitute a waiver by it of any of these Terms and Conditions or affect or expand SAS's obligations as stated herein. Installation of Products furnished hereunder will be by the Purchaser, unless otherwise agreed to in writing.

Field service will be provided on a per diem charge basis upon written authorization by Purchaser and will be at the rates in effect at the time such services are provided, unless otherwise agreed to in writing. Field service at the job site to diagnose Product problems will be provided on a per diem basis at the then-current rates.

19. OBLIGATIONS OF PURCHASER

Purchaser is solely responsible for identifying and defining all process, environmental and mechanical considerations which may affect the performance, reliability or operation of the Product furnished by SAS, including such considerations as selecting and specifying the materials of construction for the Product, determining whether the process application may develop or create fouling of the Product. Following delivery, it is Purchaser's responsibility to (a) protect the Product from corrosion, damage and debris; (b) install the Product in a clean condition and environment consistent with accepted industrial practice or any specific instructions provided by SAS; (c) to start up, operate and shut down the unit in which the Product has been installed so as to assure that no foreign debris, contaminants, or other material may form in the Product, or enter the Product from any associated piping, heat exchangers or other auxiliary equipment which may cause the fouling or corrosion of the Product and (d) start up, operate and shut down the unit in which the Product has been installed in a manner that maintains the process or mechanical loadings within the design conditions.

20. INSTALLATION SERVICES & SITE PREPARATION

In order to prevent voidance of warranty, installation and initialization of the Product may require it to be performed by SAS employees or SAS trained and authorized representatives. Installation services are not included in the purchase price of the Product sold hereunder, unless expressly so stated in the quotation. Details regarding installation services, conditions and rates, if applicable, are contained in a separate written enclosure. If Purchaser has contracted with SAS for installation services or such services are included in the quotation, Purchaser will complete all site preparation and operating environment requirements before installation begins. Purchaser will co-ordinate SAS's installation activities with those of Purchaser's personnel and any other contractors at Purchaser's facility. It is Purchaser's responsibility to identify and resolve all physical

and procedural conflicts at Purchaser's facility without cost to SAS and to request whatever information and drawings it requires.

21. MODIFICATION

No change, modification or waiver to any terms or scope of the purchase order will be binding and valid unless it is accepted in writing and signed by an authorized representative of SAS.

22. PROPRIETARY RIGHTS

SAS retains for itself all proprietary rights in and to all designs, engineering details and other data and materials pertaining to all Products supplied by SAS and to all discoveries, inventions, patents and other proprietary rights arising out of the work done in connection with the Products or with any and all Products developed as a result thereof, including the sole right to manufacture any such Products. Purchaser warrants that it will not divulge, disclose or in any way distribute or make use of such information and that it will not manufacture or engage to have manufactured such Products utilizing SAS's proprietary rights.

23. ENTIRE AGREEMENT

The Terms and Conditions in conjunction with any valid quotation provided by SAS constitute the entire agreement between the parties with respect to the subject matter hereof and expressly supersedes all proposals and previous negotiations and understandings, whether written or oral, between the parties with respect to the subject matter hereof.

24. APPLICABLE LAW

The agreement of the parties shall be construed and enforced in accordance with the laws of the Province of Ontario and venue for any disputes shall be Toronto, Ontario, Canada. The parties disclaim any applicability of the U.N. Convention of the International Sale of Goods to the order.