

Chart Cooler Service Company, Inc. Terms & Conditions of Sale

GENERAL

These Terms & Conditions of Sale shall apply to all quotations and offers made, and purchase orders accepted by Chart Cooler Service Company, Inc. ("CCSC"). THESE TERMS & CONDITIONS OF SALE MAY, IN SOME INSTANCES, CONFLICT WITH THE TERMS AND CONDITIONS AFFIXED TO PURCHASE ORDERS OR OTHER PROCUREMENT DOCUMENTS ISSUED BY PURCHASER. IN SUCH CASES, THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL PREVAIL AND CCSC EXPRESSLY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS ISSUED BY PURCHASER. CCSC's acceptance of any purchase order of Purchaser is strictly conditioned upon Purchaser's acceptance of these Terms & Conditions of Sale. Purchaser shall be conclusively deemed to have accepted the same upon any of the following by Purchaser, its agents or representatives: (i) written or electronic acknowledgement or acceptance hereof; (ii) transmission to CCSC, its agents or representatives of any order for CCSC products or services; or (iii) acceptance of or payment for any product or service covered hereby. CCSC's failure to object to any provision contained in any communication from Purchaser shall not be deemed a waiver of any provision hereof. Any changes to these Terms & Conditions of Sale, or to any document or agreement referred to herein, must be specifically agreed to in writing signed by an authorized representative of CCSC, before being binding on either party. No order will be binding upon CCSC unless and until accepted in writing on CCSC's behalf by an authorized official of CCSC at its office in Tulsa, Oklahoma. CCSC may accept or reject any order at CCSC's sole discretion. As used herein, the term "Purchaser" shall mean the party issuing a purchase order to CCSC, regardless of the end user of the Product. Unless the context otherwise requires, the term "Product" as used herein includes all goods, equipment, parts, service and accessories sold to Purchaser by CCSC, including CCSC air cooled heat exchangers. "Purchase Order" or "Order" as used herein shall mean an order issued by Purchaser to CCSC, which shall be subject to these Terms & Conditions of Sale.

PAYMENT TERMS

Payment will be made in accordance with the specified payment schedule in CCSC's quote unless otherwise agreed in writing by the parties. All payments are due net thirty (30) days from the date of the invoice, unless otherwise specified. Purchaser's failure to make payment when due will be a material breach by the Purchaser. CCSC, at its sole option and without incurring any liability, may suspend its performance until such time as the overdue payment will be promptly made. In the event of such suspension of performance by CCSC, there will be an equitable adjustment made to the delivery schedule and Order price reflecting the duration and cost resulting from such suspension.

If required by CCSC, Purchaser will cause an irrevocable Letter of Credit to be established in favor of CCSC on a bank approved by CCSC. Performance schedules are conditional upon receipt of a required letter of credit within thirty (30) days of the award. All costs associated with the Letter of Credit will be for the Purchaser's account.

Purchaser agrees to furnish CCSC with requested credit information. Purchaser's credit limit is set at CCSC's sole discretion and may be modified at any time based upon Purchaser's credit risk as determined by CCSC. In the event that Purchaser's credit risk increases, CCSC may require alternate payment methods.

Federal, state, local, or value added sales and/or use taxes measured on the price of Product are not included in the price, unless otherwise stated.

SHIPMENT AND DELIVERY

The ship date is specified in weeks from the date of receipt of the approved outline drawings marked "Approved for Fabrication," from the Purchaser. Any delays in CCSC's receipt of such approval will impact the price and delivery schedule. CCSC makes every reasonable effort to meet the Ship Date and to maintain production schedules consistent therewith. The Ship Date is an estimate based on present shop load and material deliveries and as such CCSC is not liable for claims of damage or any other expense due to failure to meet the Ship Date.

Unless otherwise agreed to by CCSC in an advanced writing, all sales are made Ex Works CCSC's facility Tulsa, Oklahoma (Incoterms 2010). In other words, delivery is complete and the risk of loss or damage, and the obligation to insure the Products, shall pass to Purchaser, and CCSC's liability shall cease, when CCSC places the Products covered hereby at the disposal of Purchaser (or Purchaser's selected carrier as Purchaser's agent) at CCSC's facility Tulsa, Oklahoma. All claims for loss or damages must be filed by Purchaser with its

carrier. In the absence of timely or specific shipping instructions from Purchaser, or the failure of Purchaser's selected carrier to accept Products on the acknowledged shipment date, CCSC may select another carrier and service level similar to that of Purchaser's selected carrier (if any), so as to complete the Order as originally acknowledged by CCSC. In such cases, Purchaser will promptly accept any and all ordered products as if placed at the disposal of Purchaser or its selected carrier at CCSC's facility. Title shall pass upon CCSC's receipt of full and final payment from Purchaser.

MATERIAL AND WORKMANSHIP WARRANTY; PERFORMANCE GUARANTEE

Purchaser's payment in full for Product is a condition precedent to CCSC's obligations under this section.

CCSC warrants the Product against defects in material and workmanship, and guarantees the Product to have the capacity to perform according to CCSC Technical Specification Sheet when properly installed and maintained, for a period of one year from start-up, not to exceed 18 months from the date of shipment or notification that the Product is ready for shipment. Before CCSC undertakes any obligation to remedy defects, the Purchaser must give CCSC written notice of the defect within a reasonable time after discovery. CCSC shall repair, replace or promptly refund the purchase price on return of the Product or parts thereof, Ex Works CCSC facility, with a proven defect in material or workmanship within above stated time period. CCSC assumes no responsibility for deterioration of any part of the Product due to corrosion or erosion, when such deterioration occurs after leaving CCSC premises.

Purchaser shall be responsible for assistance in identifying the defect and cause, access to, and decontamination of the Product, as required, to allow CCSC to perform its obligations hereunder. Purchaser will provide CCSC with continuous and unobstructed access to the Product to perform its obligations hereunder within a reasonable time after the defect is discovered.

The Purchaser shall specify the operating conditions and performance requirements under which the Product shall be designed and expected to function, and CCSC's guarantee shall extend to meeting such specified performance requirements under the specified conditions. In the event of disagreement concerning measured performance in the field, arrangements will be made for an inspection of the Product and for a test, to the extent necessary, of CCSC's Product. The test shall be witnessed by CCSC with a mutually agreed testing procedure for determining heat load and cooling capacity of the Product. In case the Product does not perform as per CCSC Technical Specification Sheet, CCSC shall be responsible for any expense CCSC incurred in making the inspection and test, and will at its option either make changes necessary to obtain performance, or replace Ex Works CCSC facility the questioned Product, or promptly refund the purchase price on return of the Product or parts thereof, Ex Works CCSC facility. CCSC's Performance Guarantee does not include responsibility for Product supplied by others, operating conditions not specified, or operation of the Product outside the design conditions specified in the Technical Specification Sheet. If the difference in measured performance is not due to CCSC's Technical Specifications then Purchaser shall be responsible for any CCSC costs required to make necessary corrections, if applicable, and will reimburse CCSC for any expenses related to the inspection and test.

Any repair or alteration without CCSC approval shall act to void any existing warranty, along with any obligation on the part of CCSC to pay for such unauthorized modifications.

The remedial obligation set forth above shall constitute CCSC's sole liability and Purchaser's exclusive remedy, whether arising in (a) warranty, (b) contract, (c) negligence, or (d) otherwise.

INDEMNITY

Anything in this Purchase Order to the contrary notwithstanding, CCSC shall release, defend, indemnify, and hold Purchaser harmless from and against all claims, damages, liability, losses and expenses including but not limited to attorney's fees and other costs of defense attributable to bodily injury, sickness, disease, death or injury to the employees of CCSC or damage or destruction of property of CCSC, including loss of use resulting therefrom and arising out of or resulting from this Purchase Order or the use of the Product hereunder, irrespective of Purchaser's fault or negligence. Likewise, and anything in this Agreement to the contrary notwithstanding, Purchaser shall release, defend, indemnify, and hold CCSC, its parent, affiliates and subsidiaries and the officers, directors, and/or employees of any of the same (hereinafter collectively referred to as CCSC for purposes of this item), harmless from and against all claims, damages, liability, losses and expenses including but not limited to attorney's fees and other costs of defense attributable to bodily injury, sickness,

disease, death or injury to the employees of Purchaser or damage or destruction of property of Purchaser, including loss of use resulting therefrom and arising out of or resulting from this Purchase Order or the use of the Product hereunder, irrespective of CCSC's fault or negligence.

**DISCLAIMER OF WARRANTIES, CONSEQUENTIAL DAMAGES;
LIMITATION OF LIABILITY**

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OR TRADE. CCSC's warranty does not apply to any Product which have been subjected to misuse, mishandling, misapplication, neglect (including, but not limited to, improper maintenance), accident, improper installation, modification (including, but not limited to, use of unauthorized parts or attachments) or repair performed by anyone other than CCSC or CCSC's authorized agents.

CCSC'S MAXIMUM LIABILITY FOR CLAIMS ARISING UNDER OR OUT OF THE PURCHASE ORDER (WHETHER UNDER THE THEORY OF CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL NOT EXCEED THE PURCHASE PRICE FOR THE PRODUCT GIVING RISE TO SUCH LIABILITY. PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD CCSC HARMLESS FROM ANY CLAIMS BASED ON CCSC'S COMPLIANCE WITH PURCHASERS'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY PRODUCT OF CCSC OR ANY THIRD PARTY OR USE IN COMBINATION WITH OTHER PRODUCTS.

IN NO EVENT SHALL CCSC BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY PURCHASE ORDER, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, BUSINESS INTERRUPTION COSTS, REMOVAL AND REINSTALLATION COSTS, LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING WITHOUT LIMITATION PROPERTY HANDLED OR PROCESSED BY THE USE OF THE PRODUCT), EVEN IF CCSC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER THE SAME MAY BE CAUSED, EVEN IF DUE TO THE FAULT, NEGLIGENCE OR STRICT LIABILITY OF CCSC.

INTELLECTUAL PROPERTY & DOCUMENTS

Unless otherwise agreed to in a writing signed by CCSC's duly authorized representative, all rights, title and interests in any inventions, developments, improvements or modifications of the Product and services provided by CCSC or Purchaser shall exclusively remain with CCSC. Any design, manufacturing drawings, reports, plans, standards, specifications or other information, ("CCSC Documents") furnished by CCSC, regardless of the format in which they were provided, were developed at CCSC's expense and shall remain the exclusive property of CCSC. Purchaser shall not, without CCSC's express prior written consent, copy or disclose the CCSC Documents to any person or use such documents or information for any purpose other than to install, own, operate, and maintain the subject Product. CCSC Documents are not suitable for use on any other agreement or project and any reuse of CCSC Documents without the express written consent of CCSC will be at the sole risk of the Purchaser, and the Purchaser shall indemnify, defend and hold CCSC harmless from any and all claims arising from Purchaser's reuse of CCSC Documents. Upon CCSC'S request at any time, Purchaser shall promptly return all CCSC Documents. The obligations in this paragraph survive termination or expiration of this Agreement. If CCSC's Product is held to infringe a United States patent in effect as of the date of this Agreement (other than any infringement resulting from CCSC's compliance with Purchaser's designs, specifications or instructions), then CCSC may at its option procure for Purchaser the right to use the Product, modify or replace it with non-infringing Product, refund the purchase price allocable to the infringing Product, or settle or otherwise terminate said actions on behalf of Purchaser. The foregoing is CCSC's entire liability on patent infringements. Purchaser shall defend, indemnify and hold CCSC harmless from all expenses, losses and other damages resulting from any actual or alleged infringement of patents, copyrights or trademarks arising from CCSC'S compliance with Purchaser's designs, specifications or instructions.

FORCE MAJEURE

CCSC shall not be liable or deemed to be in default for any delay or failure to perform hereunder from any cause beyond CCSC's reasonable control, including without limitation, industrial disputes of whatever nature, power loss,

telecommunications failure, external computer virus attacks, acts of God, acts of war or terrorism, restrictions, regulations and licensing requirements of the United States Government, or other governments having jurisdiction (including but not limited to state, county, municipality or local governmental agencies), delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities, or any other cause beyond its reasonable control. In the event any such delay continues for a period of more than two (2) months, either party may terminate the Purchase Order upon written notice to the other party. In the event of such termination, Purchaser shall pay CCSC for work performed through the effective date of termination plus the cost to process such termination

EXPORT REQUIREMENTS

These Terms & Conditions of Sale and all Orders are subject in part to applicable governmental laws, regulations and rules of the Government of the United States, including departments, agencies and sub-divisions thereof, and of the country in which the Product and/or services to be sold will be installed, used, or performed. Should any governmental authority prohibit the performance of a Purchase Order, in whole or in part, or if the exportation or importation of the Product which is the subject of this proposal, or any resulting contract, be precluded because of the inability, within a reasonable time, to obtain an export or import license, as appropriate, then CCSC's obligations under such Purchase Order shall be terminated at CCSC's option, and CCSC shall be entitled to reasonable termination charges. In no event shall CCSC be required to export or deliver any technical information, data and/or Product if such export or delivery is then prohibited or restricted by any law or regulation of the U.S. Government or any other applicable governmental agency of any country having jurisdiction. Purchaser accepts all responsibility for exporting any Product sold hereunder outside of the U.S., and shall cause the end user to accept such responsibility and will be responsible for filing any documents required by the U.S. or other government agencies. Purchaser shall be the exporter of record and shall secure all licenses necessary for exportation. Purchaser agrees not to export any Product, technical information or data of CCSC without full compliance with applicable U.S. laws and shall cause the end user to comply with such laws. Purchaser warrants and represents that it is in full compliance with all applicable U.S. export laws. Specifically, Purchaser shall not export or re-export any Product or components thereof supplied by CCSC to a prohibited person, to a prohibited country, or for a prohibited use under the U.S. export laws.

CANCELLATION

Cancellation of any Orders must be by written notice to CCSC and will be subject to cancellation charges to include all costs incurred through the date of cancellation, cost to process such cancellation and lost profit. Orders entered on CCSC's books may not be cancelled except upon CCSC's consent and upon terms indemnifying CCSC against loss.

SERVICE OF NOTICE

All notices required under these Terms & Conditions of Sale shall be sent by registered or certified mail to the addresses of the parties executing this agreement or such other parties or addresses which may, from time to time, be designated by notice in writing by the parties.

GOVERNING LAW

These Terms & Conditions of Sale are exclusively governed by the laws of the State of Texas, excluding its conflicts of laws. Any controversy or claim arising out of or relating to this Purchase Order, or the breach thereof, which cannot be resolved amicably shall be settled by arbitration. This agreement to submit to arbitration shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrator shall be final, and a judgment may be entered upon it by any court having jurisdiction. A party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so. Within thirty (30) days of the date of such notice, each party shall serve upon the other the name of one impartial individual, knowledgeable in matters pertaining to the engineering and construction industry, to serve as an arbitrator. A third arbitrator shall be designated within thirty (30) days thereafter by the two arbitrators. The arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then prevailing, and shall be conducted in Cleveland, Ohio, unless the parties agree otherwise. Discovery shall be made available in accordance with the procedures set forth in the Federal Rules of Civil Procedure, but to a degree limited by the arbitrators as they deem appropriate to render the procedures economical, efficient, expeditious and fair. During the pendency of any dispute, the parties shall continue to perform the obligations imposed upon them by this Purchase Order to the fullest extent possible, consistent with their positions with

respect to the dispute. Purchaser agrees all causes of action under these Terms & Conditions shall expire unless claim is brought within one year of the date of the occurrence of the event giving rise to any such claim. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase Order.

SEVERABILITY AND HEADINGS

If any provisions or any portions of these Terms & Conditions of Sale are held to be invalid, illegal or unenforceable for any reason, then such provision shall be deemed revised and applied to the maximum extent allowed by applicable law, and such invalidity or unenforceability shall not affect the remainder of such provision or any other provision here which shall remain in full force and effect.

The headings are intended for convenience of reference only and shall not be used to construe meaning or intent.

ASSIGNMENT

Purchaser shall not transfer or assign, by operation of law or otherwise, any Purchase Order without the prior express written consent of CCSC. Any transfer or assignment of any rights, duties or obligations hereunder by Purchaser without such consent shall be void.

PRICE ADJUSTMENT

CCSC'S COMPENSATION SHALL BE ADJUSTED EQUITABLY IN REASONABLE AND APPROPRIATE AMOUNTS TO COVER INCREASES IN

CCSC'S COSTS AS A RESULT OF ANY OF THE FOLLOWING: (I) BASIC DESIGN CONDITIONS ARE CHANGED; (II) ESCALATION OF MATERIALS COST; (III) ANY PART OF CCSC'S PERFORMANCE OR FACILITIES IS DELAYED OR DISRUPTED BY PURCHASER OR OTHERS WORKING FOR PURCHASER; AND (IV) ACTS OF GOD, ACTS OF GOVERNMENT, STRIKES OR OTHER CONCERTED ACTS OF WORKMEN, WAR, SABOTAGE, UNAVAILABILITY, UNFORESEEABLE SEVERE WEATHER OR FLOODS, AND OTHER CAUSES BEYOND CCSC'S CONTROL AND WITHOUT THE FAULT OR NEGLIGENCE OF CCSC. IN CONNECTION WITH ANY SUCH CHANGE, ADDITION, OR EVENT, CCSC SHALL PROMPTLY SUBMIT IN WRITING TO PURCHASER THE AMOUNT BY WHICH CCSC PROPOSES THAT ITS COMPENSATION SHALL BE ADJUSTED, AND PURCHASER AND CCSC SHALL THEREUPON AGREE IN WRITING AS TO THE ADJUSTMENT IN CCSC'S COMPENSATION. THE PARTIES AGREE THAT, SO FAR AS REASONABLY POSSIBLE, NO ADDITIONAL OR DIFFERENT WORK OR GOODS SHALL BE FURNISHED UNTIL THE AMOUNTS OF THE ADJUSTMENTS WITH RESPECT THERETO HAVE BEEN MUTUALLY AGREED UPON. ADD CHANGE IN LAWS, CODES

(Revised 3/11)