



TWIN CITY FAN COMPANIES, LTD.
TERMS & CONDITIONS OF SALE
(Form 1-111S –A Rev 7/2010)

1. **AGREEMENT AND ACCEPTANCE.** The terms and conditions of Sale set forth herein, in the order, and the order acknowledgement shall constitute the entire Agreement between Twin City Fan Companies, Ltd. doing business as Aerovent (known as Seller) and Buyer and supersedes all other agreements and understandings, whether written or oral, between the parties with respect to the subject matter hereof. Seller's acceptance of any offer by Buyer is expressly made conditional upon Buyer's assent to the terms and conditions hereof, and none of Buyer's additional or different terms shall apply. Acceptance of Seller's offer to sell is expressly limited to acceptance of the terms and conditions hereof, and no other terms or conditions shall apply, unless expressly agreed to by Seller in writing.
2. **PRICE.** All prices exclude federal, state, or local taxes, customs, duties, charges, consular fees, permit and license fees and any other taxes, fees or expenses which shall be added to the price or billed separately to Buyer where Seller has the legal obligation to collect or pay such taxes, fees, or expenses. All such taxes shall be paid by Buyer. Prices quoted are firm for thirty (30) days unless extended in writing by Seller. Prices are firm provided release to manufacturing and shipment is completed by Seller within one hundred and twenty (120) days of acceptance of purchase order by Seller. However, prices may increase as a result of delays due to changes requested by Buyer or Buyer's failure to furnish information requested. Seller reserves the right to change this policy at any time without written notice. Seller reserves the right to charge at any time a monthly service charge of one and one-half percent (1½%) or the highest rate allowed by law, whichever is lower, on accounts outstanding more than thirty (30) days from the date of Seller's invoice, effective as of the thirty-first (31st) day from the date of the invoice.
3. **PAYMENT TERMS.** If Seller has extended credit to Buyer (as evidenced by notation to that effect on the face of this Agreement), payment shall be due net thirty (30) days after date of Seller's invoice. The amount of credit may be changed and/or credit withdrawn by Seller, at any time. On any order on which credit is not extended by Seller, shipment or delivery shall only be made, at Seller's election after payment in cash with order (in whole or in part), C.O.D., or by a signed draft upon presentation of bill of lading or other appropriate shipping documents covering each shipment. All costs of collection shall be borne by Buyer. If shipment or delivery is delayed by Buyer, payment shall be due when Seller is ready to make the shipment or delivery. Unless otherwise set forth on the face of this Agreement, all payments shall be made in U.S. Dollars. If Buyer fails to fulfill the terms of payment or if Seller shall have any doubt at any time as to Buyer's financial condition, Seller may decline to make further deliveries except upon prompt receipt of cash or satisfactory security, as decided by Seller. This requirement will not release Buyer from any previous obligation. Seller's right under this Section shall be in addition to all other rights and remedies provided by law or in equity upon Buyer's default. In addition, if reasonably requested by Seller, Buyer shall furnish an irrevocable letter of credit in favor of Seller, in an amount sufficient to cover the price of products and all related expenses which are for Buyer's account, and which includes such other terms and conditions as may be agreed upon and issued or confirmed by a U.S. bank, as may be acceptable to Seller.
4. **ORDERS.** No order shall be valid until accepted by Seller at its office in Minneapolis, Minnesota. U.S.A.
5. **FORCE MAJEURE.** Seller shall not be liable for any delays in the delivery of orders or any other failure to perform, due in whole or in part, directly or indirectly, to fire, storm, flood, earthquake, war, insurrection, labor disputes or shortages, act of God, strike, shortage of raw materials, supplies or components, retooling, upgrading of technology, delays of carriers, embargo, government order or directive, or any other circumstance beyond Seller's reasonable control. Buyer agrees that Seller shall not be liable for any direct, indirect, consequential, or special damages which may result from any such delays.
6. **DELIVERY TERMS; RISK OF LOSS.** Unless otherwise stated on the face of this Agreement, all deliveries shall be F.O.B. Seller's factory. Seller will attempt to meet the requirements of Buyer's delivery schedule but shall be obligated only to the delivery schedule shown on the order acknowledgment and Seller shall not be in default of performance due to a delay of reasonable duration resulting from any cause. All delivery expenses, including transportation, freight, insurance, and any other shipping costs, and risk of loss during delivery and transportation, shall be for the account of Buyer. Claims for damages in transit must be assessed against the carrier. Unless otherwise instructed, selection of carrier and routing of all shipments shall be at Seller's discretion. All boxing and packaging charges for sales shall be added to the price. When special packaging is specified for domestic or export sales involving greater expense than that customarily supplied, a charge may be made to cover such extra expense. Shipment dates are approximate and are subject to receipt of all necessary Buyer information, letter of credit, if required, and all necessary licenses, permits and other documents.
7. **INSPECTION AND ACCEPTANCE.** Buyer must inspect delivered products and report claims for damages or shortages in writing within ten (10) days of delivery or the products shall be deemed irrevocably accepted and such claims are hereby waived.

8. **LIMITED WARRANTY AND REMEDIES.** Seller warrants to the original purchaser that the products sold hereunder shall be free from defects in workmanship and material upon delivery under normal use and service (except in those cases where the materials are supplied by Buyer) for a period of one year from the date of original installation or eighteen (18) months from the date of shipment, whichever occurs first. The liability of Seller under this warranty is limited to replacing, repairing, or issuing credit (at cost, FOB factory and at Seller's discretion) for any part or parts which are returned by Buyer during such period provided that (a) Seller is notified in writing within ten (10) days following discovery of such defects by Buyer, or within ten (10) days after such defects should reasonably have been discovered, whichever is less, (b) the defective unit is returned to Seller, transportation charges prepaid by Buyer, (c) payment in full has been received by Seller for said products, (d) Seller's examination of such unit shall disclose to Seller's satisfaction that such defects have not been caused by misuse, neglect, improper installation, repair, unauthorized modification, Buyer's design, alteration, act of God, or accident. No warranty made hereunder shall extend to any Seller's product whose serial number is altered, effaced or removed. Seller makes no warranty, expressed or implied with respect to the specific application for which Seller's products are used or with respect to the design or operation of an entire system, in which Seller's products sold hereunder are mere components, nor does Seller make any warranty, expressed or implied, with respect to motors, switches, controls, or other components of Seller's product, where such components are warranted separately by their respective manufacturers. Repair or replacement of the products sold hereunder, or refund of the purchase price as provided in this warranty, is the Buyer's exclusive remedy. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel for site travel and diagnosis under this warranty shall be borne by Buyer unless accepted in writing by Seller. This exclusive remedy will not be deemed to have failed its essential purpose so long as Seller is willing and able to repair or replace any defective product or refund the purchase price, in the prescribed manner. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. BUYER'S FAILURE TO PAY THE FULL AMOUNT DUE WITHIN SIXTY (60) DAYS OF DATE OF INVOICE SHALL OPERATE TO RELEASE SELLER FROM ANY AND ALL LIABILITY OR OBLIGATION ARISING PURSUANT TO ANY WARRANTY, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, MADE IN CONNECTION WITH ANY CONTRACT FORMED HEREUNDER. BUYER AGREES THAT SUCH FAILURE TO PAY SHALL CONSTITUTE A VOLUNTARY WAIVER OF ANY AND ALL SUCH WARRANTIES ARISING PURSUANT TO SUCH CONTRACT. Seller makes no other warranties of any kind and any repair or attempt to repair products by anyone other than an authorized representative of Seller automatically voids any warranty of those products. Any oral or written statement concerning the products inconsistent with the warranty contained herein shall be of no force or effect.
9. **LIMITATIONS ON LIABILITY.** Under no circumstances shall Seller be liable for any indirect, consequential, collateral, special or incidental damages (including without limitation, increased manufacturing costs, loss of profits, or goodwill) whether such claim is based on contract, negligence, strict tort, warranty or any other basis. Seller's liability shall, in no event, exceed the purchase price of the particular products with respect to which a claim is made. Tools, dies, and other equipment furnished to Seller by Buyer shall be at Buyer's risk and expense. Seller does not insure Buyer under any of its insurance policies, including liability or workers' compensation. Seller will not provide Buyer with indemnification for any matter nor does Seller agree to provide Buyer with contribution for any damages. Seller has no obligation to Buyer to direct Seller's insurance companies to waive their right of subrogation against Buyer in the event of an insured loss.
10. **LIMITATION OF ACTIONS.** Any actions or claims by Buyer under this Agreement shall be brought within 18 months after shipment of the products sold by Seller hereunder, or shall be deemed barred by waiver.
11. **PATENTS.** When Seller has manufactured any products or parts thereof in accordance with specifications or drawings furnished by Buyer or when a product or a part thereof is made to Buyer's design, Buyer at its own expense will defend any suit against Seller for infringement of patents and will satisfy any final award of damages for such infringement; provided Seller gives Buyer notice in writing of any such suit for infringement, opportunity to conduct the defense thereof and assistance and cooperation in said defense. As to other articles furnished by Seller, Seller, at its own expense will defend any suit against Buyer for infringement of United States patents by any such product purchased from Seller when used or sold for its normal purpose and in any such suit will satisfy any final award of damages for such infringement, but Seller assumes no liability, consequential or otherwise, for infringement or patent claims covering any components, switches, motors or other parts purchased by Seller from third parties or covering any other product, or any completed equipment, or any assembly, combination, method or process, in which, or in the manufacture or testing of which, any such product may be used (notwithstanding that such product may have been designed only for use in, or may be useful in, such other patented product or such patented equipment, assembly, combination, method or process, or in the manufacturing or testing thereof, and that such product may have been purchased by Buyer and sold by Seller for such use.) This covenant by Seller is upon the condition that Buyer shall give Seller a prompt notice in writing of such suit or infringement, full opportunity to conduct the defense thereof and full assistance and cooperation in said defense. No cost or expense shall be incurred for the account of Seller without its written consent. When Buyer orders articles Buyer is licensed to have made for Buyer, Seller is hereby authorized to manufacture said articles under Buyer's license and Buyer will be responsible for such royalties as may be due and for such notification to its licensor as Buyer is obligated to make.
12. **CHANGES.** After acceptance by Seller, Buyer's order shall not be subject to cancellation, change or reduction in amount nor to any suspension by Buyer of deliveries without Seller's prior written consent. Buyer acknowledges that Seller engages in continuous product improvement and makes changes to its products from time to time. The Seller reserves the right to make

reasonable changes and use substitute parts or products as long as such substitutions perform equal to, or better than the original product or part thereof, and shall have the right to deliver revised designs or models and such substitute products or parts against any order.

13. **NONWAIVER OF DEFAULT.** Each shipment made under any order shall be treated as a separate transaction, but in the event of any default by Buyer, Seller may decline to make further shipments without in any way affecting its rights under such order. If, despite any default by Buyer, Seller elects to continue to make shipments, its actions shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedy for such default and Seller's failure to deliver, or nonconformity of, any installment of this Agreement after a Buyer default shall not be a breach of the entire Agreement.
14. **TERMINATION.** If the products to be furnished under this order are to be used in the performance of a Government contract or subcontract and the Government terminates such contract, in whole or in part, this order may be cancelled in the same proportion, and the liability of Buyer for termination allowances shall be determined by the then applicable regulations of the Government (regarding termination of contracts). No termination by Buyer for default shall be effective unless Seller shall have failed to correct such alleged default within fifteen (15) days after receipt by Seller of a written notice specifying such default.
15. **ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the entire business and good will of either Seller or Buyer or of that part of the business of either used in the performance of this Agreement, but shall not be otherwise assignable.
16. **MODIFICATION OF STANDARD TERMS AND CONDITIONS.** No addition to or modification of any of the provisions upon the face or reverse of this form shall be binding upon Seller, unless made in writing and signed by a duly authorized employee of Seller.
17. **ARBITRATION.** Buyer agrees that all claims, demands, disputes, controversies, and differences arising under any contract made hereunder shall be settled exclusively in arbitration in accordance with the rules then prevailing of the American Arbitration Association. Judgment on the award thus rendered shall be binding on the Buyer and may be entered in any court having jurisdiction thereof. Unless the parties agree otherwise in writing, such arbitration will be conducted in Minneapolis, Minnesota, U.S.A.
18. **EXPORT REGULATIONS; PERMITS.** Buyer will comply with the provisions of the United States Government's Export Administration regulations and related documentation requirements and internal control procedures. Buyer shall be responsible for obtaining any necessary export or import licenses and permits.
19. **APPLICABLE LAW AND COMPLIANCE WITH LAW.** This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of Minnesota, U.S.A. and the Buyer submits to the personal jurisdiction of courts located in Minnesota, U.S.A. The United Nations Convention on Contracts for the International Sale of Products shall not apply to this Agreement. Buyer shall comply with all laws, regulations, treaties, directives, and orders, including, but not limited to, any import, export, health, safety, security and environmental laws, regulations, treaties, directives, and orders of any jurisdiction (whether international, country, region, state, province or local) applicable to this Agreement and the products sold hereunder. Buyer agrees to release, defend and indemnify and hold harmless Seller from and against all claims, liabilities, costs and expenses arising out of or resulting from the failure to comply with the requirements of this paragraph, including, but not limited to, claims arising from or connected with the possession, handling, processing or use of the products by Buyer or others.
20. **VALIDITY.** If any provision of this Agreement is found to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not be affected.
21. **NUCLEAR LIMITATION OF USE.** Unless otherwise agreed in writing by a duly authorized representative of Seller, products provided hereunder are not sold or intended for use in any nuclear or nuclear related applications. Buyer (i) accepts the restriction set forth in the immediately preceding sentence, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller from all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from the use of products in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.
22. **MISCELLANEOUS.** All clerical errors are subject to correction. Seller may subcontract the furnishing of any products sold hereunder and any portion thereof.