

ALPHAIR Ventilating Systems Inc.

Standards #:

SMI-002

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Issued By:

DHM

89/01/01

Revised By:

93/12/17

Approved By:

PRODUCT STANDARDS

ALPHAIR VENTILATING SYSTEMS INC.

STANDARD TERMS AND CONDITIONS

CONTRACT AND ACCEPTANCE

The terms and conditions of sale set forth herein, and all drawings, specifications, descriptions and other documents attached hereto and incorporated herein by reference constitute the entire agreement between ALPHAIR Ventilating Systems Inc. ("Seller") and Buyer. SELLER'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS CONTAINED HEREIN. The Conditions of Seller's Proposal shall prevail over any conflicting terms in Buyer's Order. The failure of Seller to object to any provision in conflict herewith, whether contained on Buyer's Purchase Order or otherwise, shall not be construed as a waiver of the provisions hereof nor as acceptance of that conflicting provision.

SHIPPING SCHEDULE

Seller will establish estimated shipping schedules as closely as practicable in accordance with Buyer's requested delivery date. However, Seller will not be responsible for deviations in meeting shipping schedules nor for any losses or damages to Buyer (or any third person) occasioned by deviations in the performance or by the non-performance of any of Seller's obligations under this contract or by loss of or damage to the products directly or indirectly arising from any casualty, riot, acts of Buyer, strikes or other labor difficulties, shortages of labor, supplies, and transportation facilities or any other similar or different cause or causes beyond its control or the control of its suppliers or subcontractors. Seller reserves the right to ship in advance of any Buyer request dates, except those dates stipulated "not before". Seller reserves the right to make shipment in lots. Upon shipment of each lot, Seller shall have the right to immediately invoice an appropriate portion of the total selling price.

Should shipment be held beyond scheduled date for the convenience of Buyer, the Seller reserves the right to bill immediately for the goods and to charge Buyer for all expenses incident to such delay.

PRICES

All quotations expire 30 days from the date of quotation unless withdrawn sooner. Prices of products scheduled for shipment more than 6 months after the date of Buyer's order shall be subject to escalation.

TERMS OF PAYMENT

Orders LESS than or equal to \$350,000. Payments are due net 30 days from Invoice and shipment or notification of readiness to ship.

Orders GREATER than \$350,000. Payments are due net 30 days from Invoice date. Progress payments will be as follows:

- 10% of total contract value upon issue of outline drawings for review
- 15% of total contract value upon completion of final engineering and shop drawings
- 35% of total contract value upon receipt of major materials at ALPHAIR plant
- 40% of total contract value net 30 days from shipment or readiness to ship

Invoices will be pro-rated by ALPHAIR on the part shipment when itemized prices are not listed on the customers purchase order. Seller may, at any time, or from time to time, require immediate payment for partial shipments, on a pro rate basis, or for shipments delayed by Buyer.

Interest on overdue payments shall accrue at the rate of 2% per month until payment in full of the outstanding account, including payment of all interest accrued thereon, has been made.

Foreign Buyers Only - All payments are to be payable through an irrevocable letter of credit confirmed by a Canadian Bank acceptable to the Seller. (Applies to all buyers outside of North America).

FIELD SERVICE

Field Service will be billed at a per diem rate in effect at time of actual service visit. Refer to Service Rate Policy for current rates.

MINIMUM BILLING

Orders of less than \$50.00 net will be billed at \$50.00.

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TAXES

Seller's prices do not include any applicable sales, use, excise, duty or similar taxes unless stated in Seller's proposal. If, under any law or government regulation, the Seller is required to pay or collect any tax upon the products included in this order or predicated upon, measured by or arising from the sale, transportation, delivery, use or consumption of said products whether directly or indirectly, the price to be paid by the Buyer hereunder shall be increased by the amount of the tax. Buyer agrees to pay that tax as part of the purchase price. Similarly, any adjustments to sales, use, excise, duty or similar charges which come into effect during the life of any contract arising out of this quotation, will be to the account of the Purchaser.

TERMINATION

If Buyer terminates all or any of this order, Seller shall have the right to charge Buyer for all costs already incurred by Seller, including the price of any goods or services required to fill this order already committed to by Seller and a reasonable allowance for overhead and profit.

ADDITIONS OR CHANGES

Buyer shall pay Seller's reasonable charges for changes in contract quantities, materials or services agreed to by Seller.

WARRANTIES

The Seller warrants that the products covered by this contract conform to any applicable drawings and specifications accepted in writing by Seller and will be free from any defects in material and workmanship for a period of 12 months from the date of installation or 18 months from the date of shipment, ("warranty period") whichever period first expires.

If Buyer has not installed the product within the warranty period, and in the absence of any factor that might negate the warranty, Seller will grant Buyer a 12 month extension of the warranty period, provided Seller, at Buyer's expense, is afforded the opportunity to service, repair or refurbish as necessary the product to its condition at time of original shipment. This warranty extension is available for 4 years from the date of shipment of the product.

If within the warranty period, the Seller receives from Buyer written notice of any alleged defect in or non-conformance by any product, and if, in the Seller's sole judgement, the product does not conform or is found to be defective in material or workmanship, then, Buyer shall, at Seller's request, return the part or product F.O.B. Seller's Factory, and Seller, at its option and expense, shall repair or replace the defective part or product, or repay to Buyer the full price paid for the part or product by Buyer. Any repayment of purchase price shall be without interest. Seller's sole responsibility, and Buyer's exclusive remedy hereunder, shall be limited to the repair, replacement, or repayment of the purchase price as above provided.

Component parts and accessories not of the Seller's manufacture are warranted only to the extent that they are warranted by the manufacturers thereof.

SELLER GIVES NO OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY AND OF FITNESS FOR PURPOSE: NOR ANY AFFIRMATION OF FACT OR REPRESENTATION WHICH EXTENDS BEYOND THE DESCRIPTION OF THE FACE HEREOF.

The warranties of Seller do not cover and Seller makes no warranty with respect to:

- a. failures not reported to Seller within the warranty period specified above;
- b. failures or damage due to misapplication, abuse, improper installation, abnormal condition of temperature, water, dirt or corrosive matter, abrasion, erosion or improper storage;
- c. failures due to operation above rated capacities or in an otherwise improper manner;
- d. products which have been in any way tampered with or altered by anyone other than an authorized representative of Seller; and
- e. products damaged in shipment or storage or otherwise without fault of Seller.

The existence or occurrence of any factor or event described in sub-paragraphs (a) through (e) shall render void any warranty herein contained.

Claims for expenses of Buyer relating to labor or material supplied by Buyer (commonly know as "Backcharges") will not be honored by Seller unless Buyer obtains the prior written consent of an officer of the Seller or authorized personnel at Seller's factory to supply such labor or material.

CLAIMS, SHORTAGES AND RISK OR LOSS

Any claims for loss, breakage or damage (obvious or concealed) are Buyer's responsibility and should be made to the carrier. Seller will render Buyer reasonable assistance in securing satisfactory adjustment of such claims.

Any notice of shortage or other errors must be made in writing to Seller within 15 days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all claims by Buyer.

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Risk of loss for damages to the products sold hereunder passes to Buyer upon delivery to the carrier regardless of F.O.B. point. Title to the products sold hereunder passes to Buyer upon payment of the full purchase price.

TRANSPORTATION CHARGES AND ALLOWANCES

All prices are F.O.B. Factory. No freight is allowed unless stated in Seller's proposal. If Seller's proposal states that freight is allowed, all prices are F.O.B. Factory, with most economical surface transportation allowed. If the quoted price includes transportation, Seller reserves the right to designate the common carrier and to ship in the manner it deems most economical. Added costs due to special routing requested by the Buyer are chargeable to the Buyer. Under no circumstances is any freight allowance which is absorbed by Seller to be deducted from the selling price. If the quoted price includes transportation, no reduction will be made in lieu thereof whether Buyer accepts shipment at factory, warehouse, freight station, or otherwise supplies its own transportation.

SELLER'S RIGHT TO MANUFACTURE

Seller in its sole discretion shall have the right to manufacture the products provided hereunder as far in advance of its estimated shipping schedule as it deems appropriate.

PATENT INDEMNITY

Seller agrees that it will indemnify Buyer for all damages or costs resulting from any suit or demand alleging infringement of any Canadian patent which claims the structure of the apparatus or any part thereof furnished by Seller under this proposal, if Seller is notified promptly in writing of such suit or demand and given adequate authority, information and assistance for the defence of same. Provided, however, that Seller at its own option and expense shall have the right to settle such suit or demand either by procuring for the Buyer the right to continue using the apparatus or part thereof furnished by Seller, by replacing it with non-infringing apparatus, by modifying it so that it becomes non-infringing, or by removing the allegedly infringing apparatus and refunding the purchase price. On any apparatus or part thereof made to the Buyer's design or the design of which has been modified by the Buyer, this indemnification clause does not apply. Seller shall have no liability for any alleged loss of profits or other, consequential damage; Seller's sole responsibility and Buyer's exclusive remedy for any such suit or demand shall be as set forth in this paragraph.

LIMITATION OF LIABILITY

Seller's responsibility for any claims, damages, losses or liabilities arising out of or related to its performance of this contract or the products covered hereunder shall not exceed the purchase price. In no event shall Seller be liable for any special, indirect, incidental or consequential damages of any character, including, but not limited to, loss of use of productive facilities or equipment, lost profits, property damage, expenses incurred in reliance on Seller's performance hereunder, or lost production, whether suffered by Buyer or any third party. Seller shall not be liable for any costs, claims, expenses or other damages, either direct or indirect, incident to property damages arising out of any cause of action based on strict liability.

MODIFICATION, RESCISSION AND WAIVER

This contract may not be modified or rescinded nor any of its provisions waived unless such modification, rescission or waiver is in writing and signed by an authorized employee of Seller at its factory.

NUCLEAR SALES

The products sold hereunder are not designed or manufactured for use in or with any nuclear containment. If the Buyer or ultimate user of these products intends to use them in such an installation or activity, Seller's Terms for Nuclear Sales shall be a part of and control this contract. Seller will furnish Buyer with a copy of its Terms of Nuclear Sale upon request.

MISCELLANEOUS

Seller reserves the right to furnish substitutes for materials which cannot be reasonably obtained because of any restriction, voluntarily or compulsorily established by or in connection with any governmental authority or program. Seller may during any periods of shortage due to causes beyond the control of Seller or its suppliers, prorate its supply of products among all of its Buyers in such manner as may be deemed equitable in the sole judgement of Seller. Seller shall not incur any liability to Buyer because of any proration hereunder. All orders must be accepted by an authorized employee of Seller at its factory. Failure of Seller to insist in any one or more instances upon the performance of any of the terms of this contract or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term or right hereunder and shall not affect Seller's right to insist upon strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.