

TERMS AND CONDITIONS

AGREEMENT OF SALE: Any of the terms and provisions of Buyer's order which are additional to or inconsistent with the terms and provisions hereto shall not be binding on EVAPCO unless EVAPCO consents in writing and shall not be considered part of the parties' agreement as expressed herein. EVAPCO's acceptance of an order and subsequent provision of goods or services pursuant thereto shall not constitute EVAPCO's acknowledgement and acceptance of Buyer's conditions of purchase. Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may hereafter occur. Orders accepted by EVAPCO can be cancelled only upon written consent of EVAPCO and after payment by Buyer of any applicable cancellation fees.

PAYMENT TERMS: Standard payment terms are net thirty (30) days from shipment, subject to credit approval. Down payments or progress and milestone payments in advance of shipment, as agreed to by both parties, may apply. If the Buyer shall fail to make any payments in accordance with the terms and conditions hereof, EVAPCO, in addition to its other rights and remedies, but not in limitation thereof, may at its option defer any portion of its work, shipments or deliveries hereunder, or under any other contract with the Buyer, except upon receipt of satisfactory security or of cash before shipment. Buyer shall have no right to any retention and shall not withhold payment as a set-off on EVAPCO's invoice in any amount.

PRICE ADJUSTMENT: Prices for equipment, material and or services set forth in the proposal are firm for a period of thirty (30) days from the date of the proposal. If a purchase order is not received in this time, EVAPCO reserves the right to adjust such pricing to then-current pricing. In the event an agreed delivery schedule is modified due to acts of Buyer or conditions beyond EVAPCO's control and contract costs escalate, an equitable adjustment to the contract price shall be granted to EVAPCO. If the shipment date for goods identified in an order received by EVAPCO shall be greater than six (6) months from the date of EVAPCO's receipt of such order, EVAPCO may adjust the price of such goods to the price in effect on the date of actual shipment, unless EVAPCO is the sole cause of a delay in shipment.

TAXES, DUTIES & TARIFFS: Prices do not include any sales or use tax, either federal, state, or local, payable on the transaction under any applicable statute, or any duty or tariff imposed on the goods. All such amounts must be paid by the Buyer and will be invoiced as a separate line item on invoices unless Buyer provides EVAPCO with a valid tax exemption for the applicable goods and services.

LIMITATION OF WARRANTIES: Any description of the goods or services contained herein is for the sole purpose of identifying them and does not constitute a warranty. EVAPCO's sole guarantees are those contained in its factory-generated submittal for record that has been approved by Buyer and Evapco. In the interest of product improvement, the right is reserved by EVAPCO to change specifications and/or design without incurring obligations. **OTHER THAN THE EXPRESS MANUFACTURER'S WARRANTY THAT APPLIES TO GOODS OR SERVICES IDENTIFIED IN AN ORDER, SUCH GOODS OR SERVICES ARE SUPPLIED "AS IS" AND THERE ARE NO OTHER WARRANTIES. EVAPCO HEREBY DISCLAIMS AND EXCLUDES ALL IMPLIED WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, THAT SUCH GOODS ARE FIT FOR A PARTICULAR USE OR PURPOSE, THAT SUCH GOODS ARE FIT FOR A PARTICULAR APPLICATION OR ENVIRONMENT, AND ANY WARRANTIES THAT MIGHT OTHERWISE ARISE OUT OF A COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE.** Units will be supplied per EVAPCO's factory generated submittal for record that has been approved by Buyer and Evapco. In addition, EVAPCO is not responsible for any warranties provided by any component manufacturers. EVAPCO shall not be responsible for any repairs made outside the factory, nor for defects resulting from improper installation, improper maintenance, care or operation, nor for defects in goods not paid for. The Buyer assumes responsibility for compliance with any regulations, codes, standards or ordinances applicable to the installation, location, operation or maintenance of the goods identified in an order, including responsibility for compliance with any requirements pertaining to distances between evaporative cooling equipment and air conditioning system duct intakes. No person, agent, or dealer is authorized to enlarge upon the warranties set out herein or the obligations of EVAPCO hereunder.

LIMITATION OF LIABILITY: THE SOLE REMEDY FOR BREACH OF THE APPLICABLE EXPRESS WARRANTY SHALL BE REPAIR OR REPLACEMENT OF THE GOODS AND OR SERVICES IDENTIFIED IN AN ORDER BY EVAPCO, OR REFUNDING THE BILLING PRICE SET FORTH ON THE FIRST PAGE OF THE AGREEMENT AND ORDER ACKNOWLEDGEMENT. IT SHALL BE IN EVAPCO'S SOLE DISCRETION AS TO WHETHER REPAIR, REPLACEMENT OR REFUND IS THE APPROPRIATE REMEDY. IF EVAPCO DECIDES TO MAKE REPAIRS, EVAPCO HAS THE OPTION OF COMPLETING SUCH REPAIRS ITSELF, OR AUTHORIZING A THIRD PARTY TO PERFORM SUCH REPAIRS AT EVAPCO'S EXPENSE. EVAPCO IS NOT RESPONSIBLE FOR ANY REPAIR WORK PERFORMED BY A THIRD PARTY THAT EVAPCO DID NOT APPROVE IN WRITING PRIOR TO THE COMMENCEMENT OF SUCH REPAIRS. EVAPCO'S LIABILITY OF ANY KIND WHATSOEVER (WHETHER IN WARRANTY, TORT, CONTRACTUAL OR OTHERWISE) SHALL NOT EXCEED, IN THE AGGREGATE, THE BILLING PRICE SET FORTH ON THE FIRST PAGE OF THE AGREEMENT AND ORDER ACKNOWLEDGEMENT. UNDER NO CIRCUMSTANCES SHALL EVAPCO BE LIABLE FOR LOST PROFITS, LOST SAVINGS, PERSONAL INJURIES, INCIDENTAL DAMAGES, ECONOMIC LOSS, PROPERTY DAMAGE, OR ANY OTHER CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF EVAPCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SHIPPING DATES: Shipping dates are estimates only. No contract will be made to deliver in a specified time unless in writing by an officer of EVAPCO. EVAPCO shall under no circumstances be responsible for failure to fill any order or orders when due to: fires, floods, war, riots, strikes, pandemics, freight embargoes or transportation delays, shortage of labor, inability to secure fuel, material, supplies or power at current prices, or on account of shortages thereof; acts of God or of the public enemy; any existing or future laws or acts of the federal or of any state government including specifically, but not exclusively, any orders, rules or regulations issued by any official or agency of any such government affecting the conduct of EVAPCO's business with which EVAPCO in its judgment and discretion deems it advisable to comply as a legal or patriotic duty, or to any case beyond EVAPCO's reasonable control.

STORAGE FEES: If (a) Buyer is unwilling or unable to accept delivery of equipment or (b) Buyer requests a delay in the ship date that is included in Evapco's "Submittal for Record" and the delay request is made after the order was released to production, EVAPCO's Storage Fees Policy shall apply.

ALLOCATION OF RISK: The responsibility of EVAPCO ceases upon delivery of goods in good order to the freight carrier. The Buyer assumes all risk of loss, damage or shortage in transit, and any claims based thereon must be filed by the Buyer with the transportation company. Buyer also assumes risk of loss or damage caused by improper storage, handling or layup of goods.

GOVERNING LAW AND DISPUTE RESOLUTION: In the event of a dispute arising hereunder, the parties will attempt to amicably resolve the dispute. If after good faith negotiations, the parties cannot reach agreement, then the matter shall be resolved in a court having jurisdiction. This agreement shall be governed and construed in accordance with the laws of the State of Maryland without regard to its choice of law provisions. Any judicial proceeding relating to this agreement, or relating to any other rights or actions the parties may have against each other, shall be conducted in a state or federal court in the State of Maryland, and each of the parties irrevocably consents to the jurisdiction of such courts and agrees that such courts constitute a convenient forum for resolving any dispute between them. To the fullest extent permitted by law, the parties hereby expressly and irrevocably waive all rights to a trial by jury in any action or proceeding arising out of or relating to this Agreement.

CHANGES/ADDITIONAL WORK: EVAPCO is not obligated to incur any expense or do any work in excess of that reasonably anticipated unless the Buyer issues a change order for such expenses or work which shall be in writing and signed by authorized representatives of the Buyer and EVAPCO.

OSHA/HAZMAT/SITE SAFETY: EVAPCO shall not be responsible for health or safety programs or precautions related to Buyer's activities or operations, Buyer's other contractors, the work of any other person or entity, or Buyer's site conditions. EVAPCO shall not be responsible for inspecting or correcting health or safety conditions or deficiencies of Buyer or others at Buyer's site, and Buyer agrees to indemnify, hold harmless, and defend EVAPCO against any claims arising out of such conditions or deficiencies. So as not to discourage EVAPCO from voluntarily addressing health or safety issues by making observations, reports, suggestions, or otherwise, it is understood and agreed that EVAPCO shall nevertheless have no liability or responsibility arising on account thereof. EVAPCO agrees to comply with the Federal OSHA, or other applicable federal authority in place at the job site, requirements in effect as of the date of this Agreement relative to the design of the equipment furnished or services provided within its scope of supply as defined in its submittals. Where state or local safety and health requirements differ from the Federal OSHA requirements, modifications, or changes in design to meet state or local safety and health requirements will be incorporated at Buyer's request. Additional costs arising from such requests and from erection procedures required by state or local safety and health regulations which deviate from Federal OSHA requirements will be for Buyer's account.

Buyer's facilities may contain hazardous materials, including asbestos bearing materials. EVAPCO's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any hazardous, toxic, radioactive or infectious substances, including any substances regulated under Resource Conservation and Recovery Act (RCRA) or any other Federal or State environmental laws (collectively called "Hazardous Materials"). If any such materials are encountered, EVAPCO shall have no obligation to remove or remediate them in the absence of a separate agreement which includes separate consideration to EVAPCO for such work. If EVAPCO or any of its subcontractors is required to perform work within or immediately adjacent to any facilities that are determined to contain Hazardous Materials and/or asbestos, and the said work must be interrupted to allow for the remediation or removal of such materials by others, EVAPCO shall be entitled to any and all costs and other expenses associated with such interruption in work. Buyer shall fully defend, hold harmless and indemnify EVAPCO and its agents from and against any claims arising out of exposure to such Hazardous Materials and/or asbestos-bearing materials.

RETURNS: Goods may not be returned except by permission of authorized factory officials of EVAPCO and when so returned will be subject to handling charges, transportation costs and applicable restocking fees. Goods must be returned in new and merchantable condition to be approved for any credit/refund.