

**TERMS AND CONDITIONS OF SALE OF HARTZELL FAN, INC. dba "HARTZELL AIR MOVEMENT"**

These Terms and Conditions of Sale should be read carefully. Sale of any goods or services described or referred to herein is subject to these Terms and Conditions of Sale. Any order for or any statement of intent to purchase any goods or services, or any direction to proceed with engineering, procurement, manufacture or shipment, constitutes assent to these Terms and Conditions of Sale.

**REJECTION OF DIFFERENT TERMS** - This document is not an acceptance of any prior written or oral offer. If any such prior written or oral offer has been made, it is hereby rejected. These Terms and Conditions of Sale supersede any additional or different written or oral terms previously or subsequently communicated. Acceptance is expressly limited to these Terms and Conditions of Sale. Hartzell Air Movement hereby gives notification of its objection to and rejection of any proposed terms different from those contained herein whether communicated previously or subsequently and whether written or oral. This document is the complete and exclusive statement of the agreement between Hartzell Air Movement and Buyer.

**DELIVERY** - Shipping dates are approximate and are based upon prompt receipt of all necessary information.

Hartzell Air Movement is not liable for delays in delivery or in performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control, including errors in manufacture or (2) acts of God, acts of the Buyer, acts of civil or military authority, priorities, fires, strikes, or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortage, or (3) inability on account of causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery or of performances shall be extended for a period equal to the time lost by reason of delay.

**START-UP SERVICE** - On certain equipment start-up service is available from Hartzell Air Movement at per diem rates plus lodging and traveling expenses. Such start-up service is not included unless specifically quoted. There will be an additional charge for time used exceeding any number of days quoted.

**ELECTRICAL EQUIPMENT** - Equipment includes only the electrical components referred to in the proposal. Charges arising from any local, state, provincial or other regulations necessitating changes to electrical equipment will be paid by Buyer unless agreed otherwise in writing by Hartzell Air Movement.

**CANCELLATION/TERMINATION/MODIFICATION** - There can be no cancellation, termination or modification by Buyer without Hartzell Air Movement's prior written consent.

**CLAIMS** - Claims of shortages or errors or other basis for rejection must be made within five (5) days after delivery.

**PRICING** - Prices quoted are firm provided release to manufacture and shipment is completed by Hartzell Air Movement within three (3) months from the date of order entry. If shipment is delayed for reasons beyond control of Hartzell Air Movement and is not made within three (3) months from date of order entry, prices are subject to change at Hartzell Air Movement's option.

**PAYMENT TERMS**

**TAXES** - Any tax or other governmental charge now or hereafter levied upon the reproduction, sale, use or shipment of goods ordered or sold will be charged to and paid for by Buyer. Such taxes are not included in Hartzell Air Movement's price unless expressly so provided.

**TERMS OF PAYMENT** - Terms of payment are Net 30 days from the date of invoice. If shipment is delayed by the Buyer, date of readiness for shipment shall be deemed to be date of invoice for payment purposes. If, in Hartzell Air Movement's judgment, the Buyer's financial condition at any time does not justify normal payment terms, Hartzell Air Movement may require full or partial payment as a condition to commencing or continuing manufacture, or in advance of shipment, or, if shipment has been made, recover equipment from the carrier.

**FREIGHT** - All freight will be shipped Ex-Works Piqua, OH.

**GOODS MANUFACTURED BY OTHERS** - Hartzell Air Movement has no responsibility whatever with respect to goods sold but not manufactured by Hartzell Air Movement and Buyer's sole recourse is against the manufacturer of said goods. Hartzell Air Movement will assign to Buyer any pertinent warranty rights received by Hartzell Air Movement from manufacturer.

**PATENTS** - Hartzell Air Movement shall defend any suit or proceeding brought against the Buyer insofar as based on a claim that any goods sold by Hartzell Air Movement, or any part thereof constitutes an infringement of any patent of the United States, if notified promptly in writing and given to authority, information and

assistance for the defense of same, and Hartzell Air Movement shall pay all damages and costs awarded therein against the Buyer. In case said Hartzell Air Movement goods, or any part thereof, is in such suit held to constitute infringement and the use of said goods is enjoined, Hartzell Air Movement shall, at its own expense and at its option, either procure for the Buyer the right to continue using said goods; or replace same with non-infringing equipment; or modify it so they become non-infringing; or remove said goods and refund purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of Hartzell Air Movement for patent infringement.

The preceding paragraph shall not apply to any goods or any part thereof not manufactured by Hartzell Air Movement or to any goods or any part thereof, manufactured to Buyer's design, nor for any use to which any such goods may be put as a part of any system, mechanism or process covered by patent rights of others. As to such goods or any part thereof, Hartzell Air Movement assumes no liability whatsoever for patent infringement. If any claim is asserted against Hartzell Air Movement that products manufactured by Hartzell Air Movement in compliance with Buyer's specifications or design infringes on any United States patent or copyright, then the buyer shall defend and indemnify Hartzell Air Movement for any damages and costs.

**INTELLECTUAL PROPERTY** - The design, performance information, construction detail of Hartzell Air Movement goods or any part thereof, is proprietary, and remains the valuable property of Hartzell Air Movement. Buyer agrees not to copy or duplicate the goods or any part thereof, or information related thereto provided without express written authorization from Hartzell Air Movement.

**LIMITED WARRANTIES** - Hartzell Air Movement warrants to Buyer that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938 as amended.

Hartzell Air Movement also warrants to Buyer its goods to be free from defects in workmanship and material under normal use and service for two (2) years after tender of delivery by Hartzell Air Movement. Subject to the following limitations and conditions, the warranty will be extended to five (5) years after tender of delivery, if Buyer registers the product on-line at [www.hartzellairmovement.com/five-year-warranty](http://www.hartzellairmovement.com/five-year-warranty) within ninety (90) days after tender of delivery:

- If the five (5) year warranty applies, applicability of the warranty to any claim arising after two (2) years after tender of delivery is conditioned upon Buyer providing to Hartzell Air Movement maintenance records (prepared contemporaneously with the performance of the maintenance) demonstrating that the product has been maintained (from the time of tender of delivery to the time the warranty claim arises) in accordance with Hartzell Air Movement's Installation, Operation and Maintenance Manual.
- Motors in products are warranted by Hartzell Air Movement for two (2) years after tender of delivery. The only warranty applicable to a motor after expiration of the Hartzell Air Movement two (2) year warranty is the warranty, if any, of the manufacturer of the motor. If the motor manufacturer makes a warranty that extends beyond such two-year period, Hartzell Air Movement will provide to Buyer information regarding submission of a warranty claim to the motor manufacturer, but Hartzell Air Movement does not represent or assure that the warranty, if any, of the motor manufacturer extends beyond two (2) years.

Any extension of any applicable warranty period beyond that indicated above is effective only if the extension is granted by Hartzell Air Movement in writing. No warranty extends to future performance of goods, and any claim for breach of warranty or otherwise accrues upon tender of delivery.

Replacement of belts and other parts as a result of ordinary wear and tear is not covered by this warranty and is the responsibility of the Buyer.

The foregoing constitute Hartzell Air Movement's sole and exclusive warranties and are in lieu of all other warranties, whether written, oral, express, implied or statutory.

**LIMITATION OF LIABILITY FOR BREACH OF WARRANTY** - Hartzell Air Movement's obligation for any breach of warranty is limited to repairing or replacing, at its option, without cost to Buyer at its factory any goods which shall, within such a warranty period, be returned to it with transportation charges prepaid, and which its examination shall disclose to its satisfaction to have been defective. Any request for repair or replacement should be directed to Hartzell Air Movement, Inc., P.O. Box 919, Piqua, Ohio 45356. Hartzell Air Movement will not pay for any repairs made outside its factory without its prior written consent. Hartzell Air Movement has no obligation to repair or replace any Hartzell Air Movement goods which have failed as a

result of faulty installation or abuse, or incorrect electrical connections or alterations made by others, or use under abnormal operating conditions or misapplication of the goods.

**LIMITATION OF LIABILITY** - To the extent the above limitation of liability for breach of warranty is not applicable, the liability of Hartzell Air Movement on any claim of any kind, including negligence, for any loss or damage arising out of or connected with, or resulting from the sale and purchase of the goods or services covered by these Terms and Conditions of Sale or from the performance or breach of any contract pertaining to such sale or purchase or from the design manufacture, sale, delivery, resale, installation, technical direction installation, inspection repair, operation or use of any goods or services covered by these Terms and Conditions shall, in no case exceed the price allocable to the goods or services which gave rise to the claim and shall terminate one year after tender of delivery of said goods or services, plus six months allowance for shipment to approved stocking dealers and distributors.

In no event whether as a result of breach of contract, or warranty or alleged negligence, defects, incorrect advice or other causes, shall Hartzell Air Movement be liable for special or consequential damages, including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of substitute equipment, facilities or services, down time costs, or claims of customers of the Buyer for such damages. Hartzell Air Movement neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its goods or services.

**NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS** – HARTZELL AIR MOVEMENT DOES NOT WARRANT THAT SAID GOODS ARE OF MERCHANTABLE QUALITY OR THAT THEY ARE FIT FOR ANY PARTICULAR PURPOSE. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY AND THERE IS NO IMPLIED WARRANTY OF FITNESS.

**REGULATORY LAWS AND/OR STANDARD** - Hartzell Air Movement makes no promise or representation that its product will conform to any state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing. Hartzell Air Movement's prices do not include the cost of any related inspection permits or inspection fees.

**EXCLUSIVE FORUM SELECTION CLAUSE** - Any claims relating to these Terms and Conditions of Sale of the goods or services thereunder shall be brought (if subject matter jurisdiction exists) solely in the United States District Court for the Southern District of Ohio (Western Division). In the absence of subject matter jurisdiction in that Court, any such claims shall be brought solely in any Common Pleas Court of the State of Ohio within the area encompassed by the United States District Court for the Southern District of Ohio (Western Division).

**NO DELEGATION** - Buyer may not perform any duties under these Terms and Conditions of Sale through a delegate.

**NO ASSIGNMENT** - The rights of the Buyer hereunder cannot be assigned.

**NO MODIFICATION, RESCISSION OR WAIVER** - These Terms and Conditions of Sale are not subject to modification, rescission or waiver except by a writing signed by an officer of Hartzell Air Movement.

**NO THIRD PARTY BENEFICIARY** - These Terms and Conditions of Sale are for the benefit of Hartzell Air Movement and the Buyer and not for any other person.

**GENERAL** - All proposals are made and all orders are accepted by Hartzell Air Movement with the reference to the laws of the State of Ohio and the rights and duties of all persons and the construction and effect all provisions thereof shall be governed by the construed according to the laws of the State of Ohio.

The invalidity of any clause or provision of these Terms and Conditions of Sale shall not affect the validity or enforceability of any other clause or provision contained herein.

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