



- 1. PRICE.** All prices are subject to change without notice and do not include freight.
- 2. APPLICABILITY AND ACCEPTANCE.** These Terms and Conditions of Sale and Warranty, as posted on ABCO's website at [www.ABCOhvacr.com](http://www.ABCOhvacr.com), apply to all sales by ABCO and constitute the complete and final agreement between ABCO and the purchaser whose name appears in the "Sold To" section and/or "Bill To" section on the face of any/all invoice(s) issued by ABCO ("Purchaser"). All orders must be in writing and are not binding until accepted by ABCO. Any purchase order subsequently provided by customer to ABCO shall be accepted for administrative purposes only and the parties specifically acknowledge and agree that any associated purchase order terms and conditions shall not be applicable to or binding on the parties and for all purposes are VOID and without effect. In addition, no representations, warranties, guarantees or other statements not contained in ABCO's Quote, ABCO's Order Acknowledgement, or in these Terms and Conditions of Sale and Warranty, shall be binding on ABCO. ABCO's acceptance of any order is conditional upon the Purchaser's assent to these Terms and Conditions of Sale and Warranty. No additional or different terms or conditions, including any such contained in any Purchaser Purchase Order, Acknowledgment or other form or correspondence will be of any force or effect; and ABCO hereby objects to any such additional or different terms or conditions.
- 3. DELIVERY.** Delivery dates provided by ABCO are approximate estimates only and are not guaranteed. ABCO will make reasonable efforts to deliver in accordance with delivery estimates. ABCO will not be liable for any damages due to any delay or delivery after estimated date. Purchaser will have no right to cancel because delivery was not made within the time estimated. ABCO may make delivery in installments. All installments shall be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries.
- 4. TITLE AND RISK OF LOSS.** ABCO shall retain the fullest right, title, and interest in products purchased from ABCO ("Product") to the extent permitted by law, including a security interest, until full payment has been received. The giving and accepting of drafts, notes and/or trade acceptances to evidence the payments due shall not constitute or be construed as payment so as to transfer ABCO's interests until said drafts, notes and/or trade acceptances are paid in full. Notwithstanding the retention of title, risk of loss shall pass to Purchaser at the delivery point. Purchaser assumes all of the obligations and risks of an absolute owner and agrees to indemnify and save harmless ABCO from any and all loss or damage or claim for loss or damage to persons or properties caused by reason of the use, possession, or operation of the Product.
- 5. PAYMENT TERMS.** Any invoice to Purchaser shall conclusively be deemed accepted, and all defenses thereto irrevocably waived, unless written objection thereto is received by ABCO within sixty (60) days after receipt of the invoice by Purchaser. Credits for cooperative advertising, warranty or other claims shall not be applied until ABCO's approval thereof. Net amounts are due within 30 days of the invoice date, unless ABCO requires payment in advance. These terms apply to partial as well as complete shipments. Payments not made in accordance with these terms are subject to a late payment charge equal to two percent (2%) per month (24% per year) or the highest rate allowed by law, whichever is lesser, from the date payment is due until it is paid. ABCO reserves the right to withhold, refuse, or cancel shipment or to ship COD where an account is unpaid or where ABCO, in its sole discretion, determines that Purchaser's outstanding indebtedness exceeds reasonable credit allowance. In addition, ABCO shall have the right to pursue any remedies available at law or as provided herein.
- 6. CREDIT APPROVAL AND ACCURACY INFORMATION.** Following acceptance, each order is subject to credit approval by ABCO, which may, in its discretion, require payment in advance as a condition to shipment. All orders made on credit are subject to current credit approval. From time to time, ABCO may review Purchaser's creditworthiness. Purchaser agrees to provide ABCO with all credit information ABCO reasonably requests, and Purchaser represents and warrants to ABCO now, and each time an order is placed, that all information provided to ABCO is true and correct, and that no necessary information has been omitted. ABCO may refuse to accept an order or refuse shipment if at any time Purchaser does not meet ABCO's current credit requirements.
- 7. TAXES.** ABCO must charge to Purchaser all appropriate federal, state and local sales, use or other tax on all items, including any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between ABCO and Purchaser, excluding business income or franchise taxes imposed on ABCO, unless proper exemption certificates have been completed and submitted. Unless specifically exempted, all sales, use and any other tax will be invoiced to Purchaser as a separate item in addition to the price of the Product. If the purchase price does not include such taxes, fees, and charges, then ABCO reserves the right to separately invoice Purchaser for all applicable taxes, fees and charges which shall be immediately due and payable. In the event ABCO is required to pay any such tax, fee or charge, the Purchaser shall reimburse ABCO therefor.
- 8. SPECIAL ORDERS.** Non-stock material ordered for established credit customers require a signed acknowledgement, a nonrefundable deposit, and will be invoiced upon receipt by ABCO. Non-stock material ordered for COD customers requires 100% deposit (including freight).
- 9. SPECIFICATIONS AND CHANGES.** ABCO reserves the right to change specifications as conditions warrant. ABCO may, without notice or other obligation to Purchaser, at any time make such changes in design and construction of Products as ABCO deems appropriate. ABCO may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers. ABCO may also at any time, upon notice but otherwise without obligation to Purchaser, discontinue manufacture of any Product ordered.
- 10. SHIPPING.** Delivery of goods to a carrier at ABCO's loading point shall constitute delivery to Purchaser. All Products are shipped at Purchaser's risk and are shipped FOB shipping point such that all freight costs and expenses and any other related charges for the transportation of the Products shall be paid for by Purchaser, and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by Purchaser. Claims for loss or damage to goods in transit must be made to the carrier, and not to ABCO.
- 11. DAMAGE OR SHORTAGES.** Purchaser shall inspect the Product at delivery and shall notify ABCO in writing of any damage, error, or shortage immediately, and in no event later than within ten (10) days of receipt of the Product. Failure to provide timely written notice constitutes and shall be deemed an unqualified acceptance in full of the delivery and a waiver of all such claims by Purchaser.
- 12. CANCELLATION.** Cancellation of an order, in part or full, will not be accepted after material has been purchased or fabrication has been started.

- 13. PRODUCT RETURNS.** Products may not be returned without prior written authorization from ABCO, at ABCO's sole discretion. A minimum charge of twenty-five (25%) percent of the invoice price of each item may be made for handling any returned Product. ABCO does not accept return of the following: 1) Products that have been in Purchaser's possession for more than thirty (30) days; 2) Special Orders; 3) Products damaged by improper use or handling or by a Force Majeure; and/or (4) any electrical components.
- 14. WARRANTY.** ABCO extends to the Purchaser and/or end-user all written warranties, if any, granted by the manufacturer and in effect from time to time, or will pass on to Purchaser any remedy to which ABCO is entitled under that warranty. Purchaser shall deliver any written warranty to its customers, for ultimate delivery to the end users of those Products. ABCO will administer and promptly process all warranties in accordance with the manufacturer's specific warranty policies and procedures. **SUCH WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED. ABCO MAKES NO WARRANTY (EXCEPT OF TITLE) TO ANY DISTRIBUTOR OR OTHER INTERMEDIARY PURCHASER.** NO WARRANTY OF MERCHANTABILITY OR FITNESS, AND NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, ARE MADE BY ABCO WITH RESPECT TO ANY PRODUCT. ABCO SHALL NOT BE RESPONSIBLE FOR ANY LABOR CHARGES OR CONSEQUENTIAL DAMAGES DUE TO DEFECTS THEREIN. PURCHASER'S EXCLUSIVE REMEDY AND ABCO'S SOLE RESPONSIBILITY IS FOR ABCO TO ADMINISTER AND HONOR THE MANUFACTURER'S WARRANTY, IF ANY IS FURNISHED, WITH RESPECT TO DEFECTIVE PRODUCT, PROVIDED THAT WRITTEN NOTICE SHALL BE GIVEN ABCO WITHIN THE MANUFACTURER'S WARRANTY PERIOD. ALL VERBAL STATEMENTS, REPRESENTATIONS AND PROMISES ARE MERGED HEREIN. NOTE- The manufacturer's warranty does not cover Product that has been damaged by improper usage, application or installation, careless handling, or tampering. If the warranty is not honored by the manufacturer, then the Purchaser is responsible for the cost of the repair or replacement.
- 15. DEFAULT.** In the event that Purchaser becomes insolvent, commits an act of bankruptcy or defaults in the performance of this Agreement, the entire unpaid portion of amounts payable to ABCO shall, without notice or demand, become immediately due and payable. Without notice or demand, ABCO shall be entitled to sue for said amounts and reasonable legal fees, plus out-of-pocket expenses and interest; and/or to enter any place where Products are located and take immediate possession of and remove Products, with or without legal process; and/or resell Products, without notice or demand, and apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale including repossession, necessary Products repairs, storage, taxes, liens, collection and legal fees and all other expenses in connection therewith) to the balance due to ABCO for the Products and to receive the deficiency between such net proceeds of sale and such balance. Purchaser hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal, retention, alteration, and sale.
- 16. WAIVER.** ABCO's failure to enforce Purchaser's performance of any provision hereof will not constitute a waiver of its right to later enforce such provision.
- 17. FORCE MAJEURE.** If ABCO is rendered unable, wholly or in material part, by reason of Force Majeure to carry out any of its obligations hereunder, then such obligations shall be suspended. Further, ABCO shall not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond ABCO's reasonable control, including a Force Majeure event. "Force Majeure" shall include, but not be limited to, acts of God, laws and regulations, strikes, slowdowns, riots, acts of terrorism, accidents, pandemics or other widespread outbreak of disease, lightning, fire, flood, washout, storm, communication lines failure, acts of Purchaser, including but not limited to delays of Purchaser or Purchaser's subcontractors, breakage or accident to equipment or machinery, wars, police actions, embargos or other governmental acts, regulations or requests, delays in transportation or delays by ABCO's suppliers, and any other causes that are not reasonably within ABCO's control.
- 18. LIMITATION OF LIABILITY.** TO THE EXTENT PERMISSIBLE BY LAW, ABCO SHALL NOT BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE AGGREGATE VALUE OF THE DEFECTIVE PRODUCTS DETERMINED BY THE PRICE PAID BY THE CLAIMANT AND EVIDENCED BY APPROPRIATE DOCUMENTATION. NOTWITHSTANDING ANY RESPONSIBILITIES OR LIABILITIES ASSUMED BY ABCO HEREUNDER, ABCO SHALL IN NO EVENT BE RESPONSIBLE FOR LOSS OR DAMAGE SUSTAINED AS A RESULT OF THE USE OF THE PRODUCT, LOSS OF PROFIT OR REVENUES, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, CONTINGENT, OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD BY ABCO, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. Without limiting the generality of the foregoing, ABCO shall have no liability for property or personal injury damages, penalties, special or punitive damages, damage for lost profits or revenues, loss of use of Products or any associated equipment, cost of capital, cost of substitute products, facilities or services, or for any other types of economic loss, or for claims of Purchaser's customers or any third party for any such damages.
- 19. CHANGES TO TERMS AND CONDITIONS.** These terms and conditions are subject to change by ABCO without notice.
- 20. COMPLIANCE WITH LAW.** Purchaser shall ensure that all Products purchased by Purchaser from ABCO are sold in compliance with all laws, statutes, regulations, judicial or governmental restrictions, codes, and ordinances, whether local, state, or national. Purchaser shall immediately provide to ABCO a copy of all communications received from or sent to any regulatory body that pertains to the Products purchased by Purchaser from ABCO. Purchaser shall be responsible for, and shall defend and hold ABCO and its affiliates harmless from, any claims made for Products purchased by ABCO and resold in violation of this Section.
- 21. GOVERNING LAW.** THE SALE OF THE PRODUCTS COVERED BY THESE TERMS AND CONDITIONS OF SALE AND WARRANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REFERENCE TO CONFLICTS OF LAWS). THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY TEXAS STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN HARRIS COUNTY, AND ANY APPELLATE COURT FROM ANY OF THE AFOREMENTIONED COURTS, WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND CONSENT TO THE SERVICE OF PROCESS IN ANY MANNER PERMITTED BY LAW.
- 22. SEVERABILITY.** If any provision of these Terms and Conditions of Sale and Warranty shall for any reason be held unenforceable, such provision shall be deemed deleted and replaced by an enforceable provision which, insofar as possible, achieves the same economic and other benefits for the parties as the severed provision was intended to achieve, and the remaining provisions of these Terms and Conditions of Sale and Warranty shall continue in full force and effect.