



Performance. Integrity. Results.

## STANDARD TERMS AND CONDITIONS OF SALE

1. **GENERAL.** These terms and conditions ("Terms") will govern the sale of equipment ("Equipment") manufactured or sold by Combustion & Control Solutions, Inc. ("Seller") and the performance of services ("Services") by Seller to the buyer named in Seller's proposal ("Buyer"). These Terms, together with the Price (as defined below) and the payment and delivery terms, description of Equipment and Services, Buyer's name and address and any other information specifically stated in Seller's proposal, offer or quotation (any of which may be called a "Proposal") or sales order acknowledgement are the entire agreement ("Agreement") between Buyer and Seller for Equipment and Services covered by Seller's Proposal. The Agreement sets forth the entire, exclusive and complete agreement of Seller and Buyer with respect to the sale and purchase of the Equipment and the performance of the Services and supersedes any prior or contemporaneous written or oral agreement, understanding and communications and any course of dealing, usage of trade or course of performance. The Agreement prevails over any of Buyer's terms and conditions of purchase or purchase order, regardless of whether or when Buyer submitted such terms and conditions or purchase order. SELLER'S SALE OF ANY EQUIPMENT AND PERFORMANCE OF ANY SERVICES IS SUBJECT TO AND EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS, AND SELLER OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS.
2. **PRICE.** The purchase price ("Price") for the Equipment and Services is set forth in the Proposal. Buyer shall make all payments in U.S. dollars. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets. The Price does not include shipping which, if applicable, will be invoiced as a separate line item.
3. **PAYMENT TERMS.** Unless otherwise agreed to in the Proposal, 40% payment is due at Purchase Order submission, 50% is due prior to shipment, and 10% is due within thirty (30) days after installation. A delinquency charge of 1.5% per month (18% per year) or the lesser legal rate, if any, may be assessed on all invoices not paid in full when due. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller.
4. **SHIPMENT.** Unless stated otherwise in Seller's Proposal, delivery is FOB Seller's shipping location, Incoterms 2020. Commercially reasonable efforts will be made to meet scheduled shipment dates, however any dates provided by Seller are not guaranteed and Seller will not be liable for any losses, costs or damages incurred by Buyer resulting from Seller's failure to meet a shipment date. Title to the Equipment shall pass to Buyer upon payment in full. The risk of loss or damage to the Equipment shall pass to Buyer upon delivery (FOB Seller's shipping location, Incoterms 2020).
5. **PERFORMANCE.** Seller shall use reasonable efforts to meet any performance dates specified in the Proposal, but any such dates shall be estimates only. Seller's performance of the Services is subject to Buyer's performance of the obligations identified in the Proposal as "customer responsibilities," including without limitation obtaining or providing necessary approvals, information, licenses, permits and instructions on a timely basis.
6. **LIMITED WARRANTY.** Seller warrants to Buyer that, for a period of twelve months from the date of shipment of the Equipment, the Equipment will materially conform to Seller's specifications and be free from defects in material and workmanship, provided that any operation of the Equipment by Buyer has been in accordance with generally approved practice as instructed by Seller service personnel or set forth in Seller service instructions, if any. Seller shall repair, or at its option replace, any defective Equipment covered by this warranty. The right to have defective Equipment repaired or replaced shall constitute Buyer's sole and exclusive remedy for breach of this limited Equipment warranty. Seller makes no warranties or guarantees with respect to Equipment not manufactured by Seller. Seller will pass through to Buyer any warranties and limitations provided by the original manufacturer of parts used in the Equipment manufactured by Seller, but Seller does not provide any warranty as to such items. Seller warrants to Buyer that the Services performed hereunder shall be free from defects in workmanship for a period of ninety days from the date of performance. Seller undertakes at its cost to reperform defective Services covered by the warranty. The right to have defective Services reperformed shall constitute Buyer's sole and exclusive remedy for breach of this limited Service warranty. THE EXPRESS WARRANTIES AND WARRANTY REMEDIES PROVIDED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES AND WARRANTY REMEDIES PROVIDED BY SELLER TO BUYER AND ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED (EXCEPT WARRANTY OF TITLE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY FROM COURSE OF DEALING OR USAGE OF TRADE, EACH OF WHICH IS HEREBY EXPRESSLY WAIVED AND DISCLAIMED.
7. **CONFIDENTIALITY.** Buyer agrees that the contents of Seller's Proposal and any drawings, specifications, computer programs, technical data, and other documents or information Seller furnishes, including any intellectual property rights in them relating to the design, manufacture, engineering, sale, installation, operation, repair, maintenance and/or pricing of any Equipment or Services: (a) will be retained in confidence and not disclosed to third parties; (b) will remain Seller's exclusive property, and (c) will be used by Buyer only in connection with the Agreement and not in any manner Seller has not expressly authorized. Buyer also agrees that Buyer will return such materials to Seller upon Seller's request. The obligations of this section shall survive the termination of, and/or completion of Seller's performance under, the Agreement.
8. **SOFTWARE LICENSE.** The Equipment may have embedded software or use application software developed by or for Seller ("Software") and contain valuable proprietary information. THE SOFTWARE MAY BE CRITICAL TO THE SAFE OPERATION OF THE EQUIPMENT. Seller grants Buyer a non-exclusive, nontransferable license to use Software solely in connection with the operation of the Equipment, subject to the following: (a) Buyer acquires no title or other rights to Software or any patents, copyrights or other intellectual property of Seller; (b) Buyer may not copy, reproduce, decompile or reverse engineer Software, load Software on any computer or other equipment, incorporate any portion of Software into other software, modify, adapt, or create derivative works of Software, disclose Software to third parties, or remove Seller's or any third party's trademark, copyright or other proprietary notices from Software or its output; and (c) transfer of Software in connection with Buyer's resale of Equipment is subject to Seller's prior written consent, which will not be unreasonably withheld, and Buyer's delivery to Seller of the purchaser's written consent to these license terms. Unauthorized use or transfer of Software by Buyer will void applicable Equipment warranties and Buyer will indemnify and defend Seller against any claims for personal injury, death or property damage that result and be liable for damages for violation of these license terms. Buyer has title to all raw operational data regarding Buyer's operations or equipment input into the Software, but grants Seller a license to all data, data files, and reports, subject to the following: (i) Seller will not knowingly disclose identifiable Buyer data without Buyer's consent; (ii) Seller may



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use such data in Seller's internal business, including the improvement of its products and services; and (iii) Seller may aggregate Buyer's data with similar data from other customers for purposes of analysis, evaluation, training, instruction, or promotion. Seller may also provide third party software with Equipment, which is separately licensed by the third parties, and Buyer agrees to comply with the terms of the third-party software licenses. A copy of any applicable third-party software license is available upon request from Seller.

9. **RESPONSIBILITY OF BUYER FOR OPERATION OF EQUIPMENT.** The operation of the Equipment shall be the sole and exclusive responsibility of Buyer. Any assistance rendered by Seller's representatives in connection with the preliminary operations and demonstrations of performance of the Equipment or in any other capacity shall be given solely in a consulting or advisory capacity and shall not release Buyer in any manner whatsoever from its responsibility for operating the Equipment. Buyer shall operate the Equipment in compliance with any operations manual or instructions for the Equipment. Buyer shall comply with all applicable rules, laws, and regulations in connection with operation of the Equipment. Buyer agrees to indemnify and hold harmless Seller, its affiliates and their respective employees and agents from and against any and all liabilities, damages, obligations and claims (including, without limitation, court costs and reasonable attorney's fees) arising from or with respect to the operation of the Equipment or the acts or omissions of Buyer, its directors, officers, employees, agents and/or subcontractors. The obligations of this section shall survive the termination of, and/or completion of Seller's performance under, the Agreement.
10. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE FOR, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER (AND AGAINST SELLER'S AFFILIATES, CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, EMPLOYEES, AGENTS AND VENDORS) FOR, ANY LOSS OF PROFITS OR REVENUES, LOSS OF OPPORTUNITY OR PRODUCTIVITY, INCREASED OPERATIONAL OR CAPITAL COSTS OR EXEMPLARY OR PUNITIVE DAMAGES (ALL OF THESE WHETHER DIRECT OR INDIRECT) OR ANY OTHER CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, EXPENSES (INCLUDING ATTORNEYS' FEES) OR COSTS OF ANY KIND. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY DAMAGES OF ANY KIND UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TORT, INDEMNITY, OR CONTRIBUTION), IN AN AGGREGATE AMOUNT GREATER THAN THE PRICE OF THE EQUIPMENT AND/OR SERVICES SOLD UNDER THE AGREEMENT THAT GAVE RISE TO THE CLAIM.
11. **FORCE MAJEURE.** No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control. The party suffering a force majeure event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized.
12. **CANCELLATION.** Orders cannot be cancelled without Seller's prior consent. As a condition of Seller's consent to any order cancellation for Equipment or Services, Seller may require (as liquidated damages and not as a penalty) cancellation fees up to the greater of (i) all payments made or payable on that order as of the date of termination, or (ii) 20% of the Price plus all Seller's costs and expenses associated with the cancellation. Buyer agrees that the amounts referred to in the previous sentence constitute Seller's best good faith estimate of the loss it is likely to suffer in the event of early cancellation.
13. **GOVERNING LAW.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Tennessee.
14. **DISPUTE RESOLUTION.** All disputes arising out of or in connection with this Agreement shall be submitted to arbitration within one (1) year after the occurrence giving rise to the claim or be barred forever. All disputes arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Chattanooga, Tennessee. Any decision or award issued by the arbitrator(s) shall be final and binding on the parties. BUYER AND SELLER FURTHER KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A JURY TRIAL OF ANY DISPUTE.
15. **TERMINATION.** In addition to any other remedies that may be provided hereunder, Seller may terminate this Agreement with immediate effect upon written notice to Buyer if Buyer (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any material term of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
16. **NOTICES.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Proposal or to such other address that may be designated by the receiving party in writing. Each party shall deliver all Notices by personal delivery, nationally recognized same day or overnight courier (with all fees prepaid), email of a PDF document (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this section.