

# EMPIRE VENTILATION, LLC

TERMS AND CONDITIONS  
EFFECTIVE DATE: 10/27/2021

Empire Ventilation, LLC is a Pennsylvania limited liability company ("Empire"). All current and future dealings and/or transactions between Empire or any of its divisions, related entities and/or successors in interest and any customer, vendor and/or subcontractor, hereinafter referred to individually or collectively as ("Transacting Party") or any entity related to said Transacting Party, shall be subject to the following Standard Terms and Conditions ("Terms and Conditions") unless modified, in writing, by Empire, and said Terms and Conditions shall supersede any inconsistent terms and conditions submitted by the Transacting Party or any other individual or entity unless expressly accepted in writing by Empire.

**BY PURCHASING PRODUCTS, GOODS, MERCHANDISE, MATERIALS OR EQUIPMENT (COLLECTIVELY HEREINAFTER "PRODUCTS") FROM EMPIRE OR OTHERWISE CONDUCTING BUSINESS WITH EMPIRE YOU ARE EXPLICITLY ACCEPTING AND AGREEING TO THESE TERMS AND CONDITIONS.**

Empire agrees to extend credit, provide Products and services, and transact other business, as is from time to time necessary in accordance with the following Terms and Conditions.

All transactions with Empire are subject to these Terms and Conditions as they may be amended from time to time and which are available for viewing on Empire's website: <https://www.empirevent.com/terms-conditions/>

**1. Orders.** Orders must be accepted by Empire, in writing, and shall not be subject to cancellation or change in prices, specifications, shipping schedules, or other conditions agreed upon without Empire's written consent, and then only upon agreement to compensate Empire for loss caused by such cancellation or change, including costs of purchased materials, engineering costs, and reasonable profit.

**2. Invoice.** Empire may invoice the Transacting Party for Products and services prior to the date said Products and services are provided.

**3. Payment.** Subject to the establishment of satisfactory credit at Empire's sole discretion, terms of payment are as set forth on any invoice; however, in no case shall the terms exceed net thirty (30) days from the date of said invoice. Partial billing will be made for partial shipments and stored materials. No retainage will be allowed unless agreed to in writing by Empire. Any sum the Transacting Party owes under an invoice, but fails to pay when due, shall be subject to a finance charge computed by applying a monthly periodic rate of 1.5% (corresponding annual rate of 18%), or the highest rate permitted by applicable law, if less, to the adjusted balance of an account. All prices are F.O.B. point of manufacture unless specified otherwise by Empire. Quotations expire thirty (30) days from the date issued and are subject to termination within that period. At its sole discretion, Empire may extend the validity of quotations beyond this thirty (30) day window.

Goods held beyond delivery date for convenience of the Transacting Party will be invoiced on the date of completion and terms of payment in such case will apply from invoice date.

At Empire's sole discretion, such goods may be subject to charges for warehousing and other expenses incident to such delays.

The Transacting Party shall immediately inform Empire of any change in its financial condition or in the structure of its business entity, including, but not limited to, changes to or additions of bank or brokerage accounts, mergers and/or acquisitions, asset purchases or sales, name changes, changes of officers, and any significant litigation to which the Transacting Party is a party, including pending and/or threatened actions, both civil and criminal, if such action will negatively impact the Transacting Party's ability to pay bills due to Empire or deliver goods due for delivery to Empire.

If the financial condition or the business structure of the Transacting Party at any time does not, in the sole judgment of Empire, justify the continued extension of credit or the continuance of the work performed or the goods to be supplied on the terms of payment as set forth above, Empire may require partial or full payment in advance, or shall be entitled to cancel any part of any order then outstanding, and shall be entitled to payment for reasonable cancellations charges.

In the event of bankruptcy or insolvency of the Transacting Party, or in the event any proceeding is brought against the Transacting Party, whether voluntary or involuntary, under the bankruptcy or any insolvency laws, Empire shall be entitled to cancel any credit account and/or any order or portion thereof then outstanding at any time during the period for filing claims against the estate and shall be entitled to payment for reasonable cancellation charges.

**4. Notice of Price Increases.** Except as otherwise agreed in writing by Empire, vendors must give Empire ninety (90) days prior written notice of the effective date of any price increases. A price increase will not affect Empire's cost on a purchase order accepted by vendor prior to the effective date of such price increase.

**5. Designs.** All designs and specifications shown in Empire's catalogues, website or other materials are subject to change without notice.

**6. Force Majeure.** Empire shall not be liable for any loss, damage, failure, inability and/or delay in delivery or performance due to: the acts of any government; acts of civil or military authority; accidents; fires; wars; act of terrorism; insurrections; civil disorders; floods; pandemics; strikes; or other labor disturbances or difficulties; shortages of fuel or power; breakdowns of machinery; acts of G-d; acts of the Transacting Party; failures in source of supply; or any other cause beyond the control of Empire; and Empire shall then have the right to cancel any order or pending work, or extend any shipping or delivery date, if one or more such contingencies prevent or delay shipment or performance hereunder.

**7. Claims.** All materials are carefully packed for shipment. Risk of loss shall pass to the Transacting Party after delivery to transportation carrier, and the Transacting Party shall continue to be obligated to pay purchase price for the goods in the event of any damage, loss, or destruction after delivery at the F.O.B. point. Empire will provide the Transacting Party with all

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reasonable assistance in securing satisfactory adjustment of claims.

**8. Products Provided by Others.** Empire shall not be responsible for Products supplied by others, nor for the overall operation of any system comprised of Products furnished by Empire and others. Accordingly, any comments from Empire regarding the Transacting Party furnished drawings are responsive only and Empire shall have no liability therefore. Empire offers no opinion of a professional nature, including, but not limited to, the preparation or approval of plans, opinions, reports, surveys, designs, specifications and/or supervisory, inspection, or engineering services provided by others.

**9. Limited Warranty.** Empire warrants to the original purchaser of the Products that should the Products have any defect, under normal conditions, such defect(s) will be repaired or replaced with new or reconditioned product, at Empire's option, without charge, if submitted to Empire within one (1) year from the date of purchase of the Products. This warranty does not cover conditions arising from the misuse, negligence, alteration, accident, or lack of performance of normal maintenance services so as in any way, in the sole judgment of Empire, to affect adversely its performance and/or reliability. This warranty only covers manufacturer defects, and the Products must be returned to Empire in its original condition. Proof of purchase, in the form of a valid receipt or paid invoice, is required. No Products shall be returned to Empire without written authorization and shipping instructions first having been obtained from Empire. There is no warranty liability hereunder unless payment in full for the Products supplied pursuant to any invoice has been received by Empire.

THIS WARRANTY IS THE ONLY WARRANTY MADE BY EMPIRE AND IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, USE OR WORKMANLIKE PERFORMANCE. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, REPAIR OR REPLACEMENT, AT EMPIRE'S OPTION, OF DEFECTIVE MERCHANDISE OR EQUIPMENT, IN THE MANNER PROVIDED HEREIN, SHALL CONSTITUTE FULFILLMENT OF ALL LIABILITIES OF EMPIRE TO THE TRANSACTING PARTY, WHETHER BASED ON CONTRACT, NEGLIGENCE OR OTHERWISE, WITH RESPECT TO MERCHANDISE OR EQUIPMENT PROVIDED PURSUANT TO THIS INVOICE, AND IN NO EVENT SHALL EMPIRE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, FOR LOSS OF USE, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, DELAY, DETENTION, AND/OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND.

IN NO EVENT SHALL EMPIRE'S AGGREGATE LIABILITY TO THE TRANSACTING PARTY, IN

DAMAGES OR OTHERWISE, EXCEED AN AMOUNT GREATER THAN THE RETAIL PURCHASE PRICE OF THE DEFECTIVE MERCHANDISE OR EQUIPMENT. THE REMEDIES OF THE TRANSACTING PARTY SHALL BE LIMITED TO THOSE PROVIDED HEREIN. IN NO EVENT SHALL EMPIRE BE LIABLE FOR ANY PERSONAL INJURY, INCLUDING DEATH, OR FOR DAMAGE TO PROPERTY, INCLUDING INJURIES TO THIRD PARTIES, REGARDLESS OF WHETHER THE SAME IS THE RESULT OF THE GROSS NEGLIGENCE OF EMPIRE OR ITS EMPLOYEES.

Any affirmation of fact or promise made by Empire to the Transacting Party which relates to the Products or services sold hereunder shall not be regarded as part of the basis of the bargain and shall not be deemed to create an express warranty that such Products or services shall conform to the affirmation or promise. Any description of the Products or services sold hereunder shall not be regarded as part of the basis of the bargain and shall not be deemed to create an express warranty that such Products or services shall conform to the description. The exhibition of any sample shall not be regarded as part of the basis of the bargain and shall not create an express warranty that the whole of the Products or services sold hereunder shall conform to the sample or model.

If any Products, parts and/or materials supplied by Empire are manufactured by someone other than Empire, and said manufacturer provides its own warranty, Empire's warranty shall be superseded with respect to such Products, parts and/or materials. In that event, the manufacturer's warranty shall be the sole applicable warranty and Empire shall have no further liability or responsibility whatsoever, including any failure on the part of any other manufacturer to meet the conditions of its warranty.

There are no express warranties beyond those expressly stated in this writing. Transacting Party agrees that there have been no affirmations of fact or promises made by Empire relating to the Products or services and becoming part of the basis of the bargain, other than those affirmations and promises expressly set forth herein.

**10. Taxes.** Prices quoted and/or invoiced are exclusive of taxes unless specifically stated. The amount of any present or any future sales, occupation, use, tariff, excise, or other similar taxes and/or duties for which Empire may be liable, either on its own behalf or on behalf of the Transacting Party, with respect to any orders for Products, shall be in addition to the billing prices set forth in any invoice, and shall be paid by the Transacting Party.

**11. Remedies.** Upon the failure of the Transacting Party to make any payment when due under any invoice, to accept delivery at times stated, or to comply with all provisions of any invoice, any written agreement between the parties and these Terms and Conditions, Empire shall have the right to suspend or cancel delivery to the Transacting Party or terminate any agreement with the Transacting Party, and the Transacting Party shall not have any cause of action or be entitled to any offset, counterclaim or recoupment against Empire by reason of such action. In addition to any remedies set forth in these Terms

# **EMPIRE**

## **VENTILATION, LLC**

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and Conditions, Empire shall be entitled to any and all rights and remedies available to it under law, and all rights and remedies available to Empire shall be cumulative. Empire shall be entitled to and the Transacting Party responsible for any attorney's fees and costs incurred in connection with the Transacting Party's failure to make any payment when due under any invoice, to accept delivery at times stated, retrieve any Products from Empire property upon thirty (30) days written notice or to comply with all provisions of any invoice or agreement and/or these Terms and Conditions.

**12. Title.** Title to and ownership of any Products provided by Empire shall not pass to the Transacting Party until the purchase price for any such Products and for services related thereto are paid in full. In order to ensure payment in full, the Transacting Party grants to Empire a security interest in the said Products and authorizes Empire to file applicable Uniform Commercial Code financing statements if applicable, with respect to said Products, and the Transacting Party shall, upon request, execute such financing statements and/or other instruments deemed necessary by Empire. Empire shall release such filings upon full payment of all applicable invoices for such goods. Where Empire installs parts, performs service on or stores any merchandise, equipment or property owned by the Transacting Party or others on behalf of or at the Transacting Party's request or direction, the Transacting Party agrees that such installation, service or storage shall create a lien against such merchandise, equipment or property and Empire shall be entitled to repossess and/or hold said merchandise, equipment or property in its sole possession until payment in full has been received by Empire.

**13. Export Shipments.** All Products shall be delivered and packed in accordance with Empire's standard domestic packing methods, unless export packing is expressly ordered, in which case special packing requirements must be specified. Empire does not assume responsibility for obtaining any export or import license or certificate, if required. Export shipment is subject to Empire's ability to ship under the laws and/or regulations of the United States and other governments. Empire reserves the right to cancel any order, whether or not previously acknowledged, without liability, if at the time of the sale or shipment said shipment is subject to restrictions or prohibitions by any governmental agency or department of the United States or of any foreign country claiming jurisdiction over the shipment's transit route or destination.

**14. Indemnification.** To the fullest extent permitted by law, the Transacting Party agrees to indemnify and hold harmless Empire and all of its agents and employees, from all claims, damages, losses, liabilities, actions, causes of action, costs, fines and expenses, including, but not limited to, interest, penalties, reasonable attorney's fees and expenses, and all other amounts reasonably incurred in investigation, defense or settlement of any of the foregoing, arising out of, relating to, or resulting from, any act or failure to act pursuant to any invoice, any written or oral agreement and these Terms and Conditions, including to the extent caused solely by the gross negligence of Empire or its employees.

**15. Miscellaneous.** All clerical errors are subject to correction. None of the Transacting Party rights under these Terms and

Conditions shall be assigned or transferred by the Transacting Party to any other person or entity, whether by operation of law or otherwise, without Empire's prior written approval. The failure of Empire to enforce any rights under these Terms and Conditions or any other written or oral agreement shall not constitute a waiver of any such rights, or any other rights, under these Terms and Conditions or otherwise. Any invoice, agreement and these Terms and Conditions, as set forth herein, or as changed or modified by written instrument executed by persons duly authorized by Empire and the Transacting Party, shall constitute the entire agreement between Empire and the Transacting Party. All of the provisions of these terms and conditions are separate and severable. If any of the provisions hereof are held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.

**16. Choice of Law and Venue.** ANY INVOICE TO WHICH EMPIRE IS A PARTY, ANY AGREEMENT TO WHICH EMPIRE IS A PARTY AND THESE TERMS AND CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, NOTWITHSTANDING ANY CONFLICT OF LAW PROVISION TO THE CONTRARY. THE SOLE AND EXCLUSIVE VENUE FOR RESOLUTION OF ALL DISPUTES ARISING UNDER ANY INVOICE, THESE TERMS AND CONDITIONS OR RELATED TO ANY DISPUTE BROUGHT BY ANY TRANSACTING PARTY IN WHICH EMPIRE IS A NAMED PARTY SHALL BE THE FEDERAL OR STATE COURTS LOCATED IN BUCKS COUNTY, PENNSYLVANIA. THE TRANSACTING PARTY EXPRESSLY CONSENTS TO PERSONAL JURISDICTION IN PENNSYLVANIA AND WAIVES ANY CHALLENGES TO EXCLUSIVE VENUE IN COURTS LOCATED IN BUCKS COUNTY, PENNSYLVANIA AND/OR ANY DEFENSE OF FORUM NON CONVENIENS.