

TERMS AND CONDITIONS

PAYMENT TERMS: Standard payment terms are net thirty (30) days from shipment, subject to credit approval. Progress payments, 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 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: If the shipment date for goods identified in an order received by Seller shall be greater than six (6) months from the date of Seller's receipt of such order, Seller may adjust the price of such goods to the price in effect on the date of actual shipment, unless Seller is the sole cause of a delay in shipment.

TAXES: Prices do not include any sales or use tax, either Federal, State, or Local, payable on the transaction under any applicable statute. All such taxes must be paid by the Buyer.

LIMITATION OF WARRANTIES: Any description of the goods contained herein is for the sole purpose of identifying them and does not constitute a warranty. In the interest of product improvement, the right is reserved to change specifications and/or design without incurring obligations. **OTHER THAN THE EXPRESS MANUFACTURER'S WARRANTY THAT APPLIES TO GOODS IDENTIFIED IN AN ORDER, SUCH GOODS ARE SOLD "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 certified prints. 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 IDENTIFIED IN AN ORDER BY EVAPCO, OR REFUNDING THE PURCHASE 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 Buyer requests a delay in the shipping date, EVAPCO's Storage Fees Policy shall apply.

ALLOCATION OF RISK: The responsibility of EVAPCO ceases upon delivery of goods in good order to the 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.

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 and transportation costs.

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 pursuant thereto shall not constitute EVAPCO's acknowledgement and acceptance of Buyer's conditions of sale. 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 reasonable costs and expenses for the effort expended thereon.