

## TERMS AND CONDITIONS OF SALE

- 1) **Parties.** Bellows Systems, Inc., will be referred to as "Seller," and the company purchasing as indicated on the Purchase Order (PO) will be referred to as "Purchaser". All materials, goods, or work described in the Purchase Order, regardless of type, will be referred to as "Products."
- 2) **Terms and Conditions.** Seller's acceptance of Purchaser's PO is expressly conditioned on Purchaser's agreement to these terms and conditions. Any term, condition and/or provision of Purchaser's PO or any other document issued by Purchaser, which is in any way inconsistent with these terms shall not be applicable hereto or binding upon Seller. Purchaser, by accepting any Products covered by these terms, shall conclusively be deemed to accept these terms. Seller's failure to object to terms, conditions and/or provisions in any communication by Purchaser will not be a waiver of any terms contained herein. Deviation from these terms and conditions, including additional or different terms and conditions, can only take place by written instrument signed by one of Seller's officers. Seller hereby rejects all terms and conditions set forth under any prime or other contract to which Purchaser is a party.
- 3) **Price Adjustments; Payments.** Purchaser may make changes to its specifications upon reasonable advance notice to Seller. If such changes result in delay or additional expense to Seller, unusable raw materials, work in progress or finished goods, or in the obsolescence of any Products or materials, Seller reserves the right to make an equitable adjustment to the price and delivery schedule.  
Unless otherwise specified by Seller, all prices are F.O.B. Seller's manufacturing facility at 10950 Brittmoore Park Dr, Houston, TX 77041, and payment will be net thirty (30) days from date of invoice. Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum allowable interest rate under applicable law.
- 4) **Delivery Dates; Title and Risk; Shipment.** All delivery dates are approximate, and Seller shall not be responsible for any damages of any kind resulting from any delay. Regardless of the manner of shipment, title to any products and risk of loss or damage shall pass to Purchaser upon tender to the carrier at Seller's Facility. All freight, insurance and other shipping expenses shall be borne by Purchaser. Purchaser shall inspect shipments for freight damage at time of receipt and immediately notify carrier of any freight damage, file its claim directly with the carrier, and notify Seller of the damage. Seller is not liable for freight damage or for losses incurred by Purchaser as the result of freight damage or delays. A deferment of shipment or pick-up by Purchaser beyond five (5) days after notice of delivery readiness is submitted by Seller will need to be agreed in writing by Seller and on terms that Purchaser will indemnify, defend and hold Seller harmless against all loss and additional expense, including, but not limited to demurrage, handling, storage and insurance charges. Any such changes may incur change fees.
- 5) **Warranty.** Seller warrants to the original Purchase that the Product manufactured by the Seller is free from defects in materials and workmanship under normal use and service. Any warranty hereunder shall be effective only if the Product is used for the purposes for which it is intended and if it has been properly installed and operated. Seller's obligation under this warranty is limited to replacing or repairing, in Seller's sole discretion, free of charge, F.O.B., Seller's Facility at 10950 Brittmoore Park Dr, Houston, TX 77041, and any defective Products which are returned to Seller; provided that such Products are returned to

Seller not later than one (1) year after delivery to the original Purchaser and Seller determines in its sole discretion that such Products are defective. Purchaser must notify Seller by certified mail, return receipt requested, of any claimed defects in material or workmanship within thirty (30) days after the discovery thereof, and not later than the warranty period of one (1) year; otherwise, any claims shall be invalid and void. No allowance of any kind will be granted for any repairs or alterations performed by or on behalf of Purchaser with Seller's prior written consent. This warranty shall be invalid and the Seller shall have no further liability with respect to its Product, or part thereof, which has been repaired or altered by anyone without Seller's prior written consent, and / or has been, in Seller's sole judgement, subject to abuse, misuse, negligence, or accident, or which has not been operated under conditions more severe than, or otherwise exceeding, those set forth in the specifications for the Product.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller neither assumes, nor authorizes any person to assume for Seller, any other liability in connection with the sale and the use of its Products, and there are no other agreements or warranties collateral to or affecting this warranty.

- 6) **Claims; Commencement of Actions.** Purchaser shall promptly inspect all Products upon delivery. No claims for shortages will be allowed unless reported to the Seller within five (5) days of delivery. No other claims against Seller will be allowed unless asserted in writing within sixty (60) days after delivery or, in the case of an alleged breach of warranty, within thirty (30) days after the date within the warranty period on which the defect is or should have been discovered by Purchaser.

Any action based upon breach of this Agreement or upon any other claim arising out of this sale (other than an action by Seller for any amount due to Seller by Purchaser) must be commenced within one (1) year from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within one (1) year from the date within the warranty period on which the defect is or should have been discovered by Purchaser.

- 7) **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR TO ANY OTHER THIRD PERSON OR ENTITY (I) FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF SALE, BUSINESS, PROFITS, DATA, OPPORTUNITY OR GOODWILL, EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING DAMAGES, ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR (II) FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S PRIOR WRITTEN CONSENT, EVEN THOUGH SELLER HAS BEEN NEGLIGENT, WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY PURCHASER EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

- 8) **Contingencies.** Seller shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor delay in transportation facilities; or inability to obtain

or non-arrival of any labor, material or equipment used in the manufacture of the Products; failure of any party to perform any contract with Seller relative to the production of the Products; or from any cause whatsoever beyond Seller's control, whether or not the cause is similar or dissimilar to those enumerated. Seller shall notify Purchaser of the happening of any contingency and of the contemplated effect thereof on the manufacture and delivery of the Products.

- 9) **Sellers' Specifications, Technical Data, Etc.** Any specifications, drawings, plans, notes, instructions, engineering notices, technical data or other documents disclosed and/or furnished to Purchaser by Seller shall be incorporated by reference into this document. Seller shall at all times retain title to all these documents. Purchaser shall hold these documents in confidence and not disclose them to any party other than Seller or a party duly authorized in writing by Seller. Upon Seller's request, Purchaser shall promptly return these documents, as well as any copies, to Seller.
- 10) **Subcontracting.** Seller expressly reserves the right to subcontract all or part of this Agreement without the consent of Purchaser.
- 11) **Purchaser's Obligation; Rights of Seller.** To secure payment of all sums due or otherwise, Seller shall retain a security interest in, and lien upon, the Products delivered, and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. If Seller shall at any time doubt Purchaser's financial responsibility, Seller may demand adequate assurance of due performance or decline to make any further shipments except upon receipt of cash payment in advance or security. If Purchaser fails in any way to fulfill the terms and conditions of this Agreement, Seller may defer further shipments until such default is corrected or cancel this order and recover damages.
- 12) **Court Action.** In the event Seller institutes a legal proceeding against Purchaser to collect any monies due under the terms of this transaction, or if Seller successfully defends any lawsuit instituted by Purchaser, whether based on contract, tort or any other legal theory of recovery, Seller shall be entitled to recover its costs and expenses, including without limitation, reasonable attorney's fees, collection costs and other expenses incurred by Seller in connection therewith, from Purchaser.
- 13) **Improper use and Indemnity.** Purchaser shall indemnify, defend, and hold Seller and its affiliates, and each of their respective members, managers, officers, directors, employees, agents and representatives, harmless from any claim, liability, damages, lawsuits, and costs (including attorney's fees and costs), whether for personal injury, property damage or other, brought by or incurred by Purchaser, Purchaser's employees, or any other person, arising out of (i) improper selection, improper application or other (mis)use of Products purchased by Purchaser from Seller, (ii) the design, manufacture, integration or usage of a Product which alone or as a component in an assembly, is alleged or proved to have caused injury or damage, (iii) Purchaser's failure to comply with all applicable foreign, U.S. federal, state or local laws, ordinances, rules, orders and regulations, including without limitation U.S. export control laws and any regulations and/or orders thereof or failure to provide Seller adequate information related thereto, (iv) the acts or omissions of Purchaser, its agents and employees and others under its direction or control except to the extent such liabilities are caused by or are the result of the gross negligence or willful misconduct of Seller, and (v) any other breach of Purchaser's obligations hereunder.
- 14) **Cancellations.** PURCHASE ORDERS SHALL NOT BE SUBJECT TO CANCELLATION OR RESCHEDULING BY PURCHASER EXCEPT WITH SELLER'S PRIOR WRITTEN CONSENT AND UPON TERMS THAT WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS AGAINST ALL DIRECT, INCIDENTAL AND CONSEQUENTIAL LOSS OR DAMAGES.

ANY CHANGES MAY INCUR CHANGE FEES.

- 15) **Termination.** Seller shall have the right to terminate this Agreement upon Purchaser's material breach of any terms and conditions stated herein upon ten (10) days prior written notice, if upon expiration of such ten (10) day period Purchaser has not cured its breach. Without prejudice to any other remedy for breach of this Agreement, upon termination of this Agreement, Purchaser shall not be released from the payment of any sum then owed to Seller, which sum shall become immediately due and payable. Upon termination Purchaser shall pay to Seller the price for all Products that have been completed in accordance with this Agreement not previously paid for, work in progress and raw materials, unless Seller, in its absolute discretion, can sell or otherwise use such raw materials.
- 16) **Limitation on Assignment.** Seller reserves the right to assign any of its rights or obligations hereunder. Purchaser may not assign its rights or obligations under this Agreement without the prior written consent of Seller, which Seller may grant, withhold, or condition in its sole discretion. Any purported assignment of rights or obligations without Seller's prior written consent shall be void.
- 17) **Other Rights or Remedies.** Any rights or remedies granted to Seller in this Agreement shall be in addition to, and not in lieu of, any other rights or remedies at law or in equity.
- 18) **Purchaser Supplied Items.** From time-to-time Purchaser may supply Seller with items to incorporate into Products sold under this Agreement. Seller shall use reasonable measures to protect and preserve items provided by Purchaser and will only be liable for replacement of such items if lost, destroyed, or rendered useless due to Seller's gross negligence. Unless otherwise agreed to in a writing signed by authorized representatives of the parties, any items of personal property supplied by Purchaser to Seller related to this Agreement will be returned to Purchaser upon expiration of this Agreement, as received less normal wear and tear. Purchaser warrants that any items provided hereunder will comply with all applicable federal, state and local laws and regulations. Purchaser further warrants that supplied components meet all performance, specification, and inspection criteria.
- 19) **Entire Agreement.** This Agreement contains the entire agreement between the Purchaser and Seller and constitutes the final, complete and exclusive expression of the terms of the agreement. All prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter are herein merged. This Agreement may be modified only by written agreement executed by authorized representatives of the parties.
- 20) **Waiver and Severability.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision. In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, that provision shall be ineffective to the extent of its violation without invalidating any other provision.
- 21) **Governing Law, Jurisdiction and Venue.** This Agreement and the sale and delivery of all Products hereunder shall be deemed to have taken place in and shall be governed and construed in accordance with the laws of the State of Texas, as applicable to contracts executed and wholly performed therein and without regard to its conflicts of laws principles. Purchaser irrevocably agrees and consents to the exclusive jurisdiction and venue of the court sitting in Ector County, Texas with respect to any dispute, controversy or claim arising out of or relating to this Agreement.