

- 1. MODIFICATIONS OF SALES TERMS** - Terms and Conditions contained in any purchase order or other form of communication from Excelsior Blower Systems LLC ("EBS") customers, which are additional to or different from these Terms and Conditions, shall be deemed rejected by EBS unless expressly accepted in writing.
- 2. ACCEPTANCE OF ORDERS** - All sales by EBS are made under and expressly limited to the Terms and Conditions set forth herein. Acceptance shall be in writing or by the beginning of performance hereunder. Provisions of any purchase order or other writing submitted by Buyer shall be of no force and effect, regardless of any provisions to the contrary in any such purchase order or other writing. EBS's failure to take exception to the terms and conditions embodied in any purchase order or other writing shall not be construed as a waiver of the above provisions.
- 3. QUOTATIONS** - Acceptance of a quotation by EBS to offer goods or services for sale subject to these Terms and Conditions is expressly limited to thirty (30) days from the date the quotation was issued by EBS. Purchase orders submitted by Buyer for the goods quoted by EBS shall constitute acceptance of these Terms and Conditions. All purchase orders will be subject to approval by EBS. The scope of goods and services performed by EBS is limited to that which is described in our quotation including exceptions.
- 4. SERVICES** - The services of an EBS employee, or an authorized agent of EBS, to travel to and provide engineering or technical services, whether under warranty or not, are subject to charge. The cost of the service will be estimated beforehand at EBS prevailing rates and subject to adjustment after the work is completed.
- 5. PRICES AND PRICE CHANGES** - All prices are net Ex Works ("EXW") shipping point in US dollar. Estimated prices are not guaranteed. All prices and terms of sale are subject to correction for error.
- 6. TAXES** - In addition to any prices, Buyer shall pay the amount of any present or future manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise 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 EBS and Buyer. In the event EBS is required to pay any such tax, fee or charge, Buyer shall reimburse EBS. Buyer shall provide EBS at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing such tax, fee or charge.
- 7. TERMS OF PAYMENT** - All orders are subject to the approval of EBS. Except as otherwise provided, terms are payment net 30 days from the date of the invoice. The date of invoice shall be the date that goods are made ready for shipment or that service has been completed. Shipments delayed by Buyer maybe subject to storage fees. If, during the period of performance of an order, the financial condition of Buyer is determined by EBS not to justify the terms of payment specified, EBS may demand full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this order. If Buyer defaults in any payment when due, or in the event any voluntary or involuntary bankruptcy or insolvency proceedings involving Buyer are initiated by or against Buyer, then the whole order price shall immediately become due and payable upon demand, or EBS, at its option without prejudice to its other lawful remedies, may defer delivery or cancel this order.
- All published prices are cash prices, net 30 days with approved credit. Payment terms are at the sole discretion of EBS and credit approval is not guaranteed. Credit card payments are accepted and are subject to 3% processing charges. Wire transfers are accepted and subject to wire transfer fees.
- Nothing contained herein shall be construed as authorizing the Buyer to delay or withhold any payment or payments beyond the due date for any goods or service sold under the provisions of the Order. It is expressly understood that all claims on the part of the Buyer or of any other party are separate and shall have no bearing on the obligation of the Buyer to make payments for the goods sold under these Terms and Conditions. If Buyer shall fail to make any payment to EBS within the time provided, a service charge shall accrue monthly from the due date at the maximum rate allowed by applicable law until full payment has been made. In addition to the accrual of such service charge, Buyer shall be liable for all other losses, damages or expenses directly incurred by EBS as a result of Buyer's failure to make timely payment, including, but not limited to, reasonable attorney's fees incurred with the collection of said payments.
- 8. DELIVERY - RISK OF LOSS** - Ship dates and quoted lead times are estimates only which are not guaranteed and are subject to change. Delivery of product to a commercial carrier at EBS's facility or other loading point shall constitute delivery to Buyer, and any risk of loss and further cost and responsibility thereafter for claims, delivery, loss or damage, including, if applicable, placement and storage, shall be borne by Buyer. Claims for shortages or other errors in delivery must be made in writing to EBS within ten (10) days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Any storage costs incurred by EBS for the storage of goods delayed in shipment at the request of the Buyer shall be paid promptly by the Buyer when invoiced by EBS. In all cases, Buyer shall bear the risk of loss or damage from the EXW point, and the Buyer shall be responsible for the filing of all claims with the carrier.
- 9. DELAYS - CAUSES BEYOND EBS'S CONTROL** - EBS shall not be liable for any ordinary, incidental, or consequential loss or damage as a result of delay in or failure of delivery or installation due to (i) any cause beyond EBS's reasonable control, (ii) an act of God, act of the Buyer, embargo or other government act, authority, regulation or request, fire, theft, accident, strike, slowdown or other labor disturbance, war, riot, delay in transportation, or (iii) inability to obtain necessary labor, materials, components, or facilities. Should any of the aforementioned events of force majeure occur, EBS, at its option, may cancel Buyer's order with respect to any undelivered product or extend the delivery date for a period equal to the time lost because of delay.
- In the event EBS elects to so cancel the order, EBS shall be released of and from all liability for failure to deliver the product, including, but not limited to, any and all claims on behalf of Buyer for lost profits, or any other claim of any nature which Buyer might have. If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer shall pay for all additional charges resulting therefore.
- 10. SHIPPING/HANDLING CHARGES** - Shipping/handling will be prepaid and billed as a separate item on the equipment invoice on the basis of EBS's current shipping/handling policies unless other written shipping arrangements are accepted by EBS.
- 11. ORDER CHANGES** - Buyer may, with the express written consent of EBS make changes in the specifications for equipment or work covered by the contract. In such event the contract price and delivery dates may be adjusted. EBS shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.
- 12. CANCELLATION** - No order submitted to EBS may be cancelled by Buyer without the prior written consent of EBS, which consent will at all times be conditioned on Buyer's agreement to pay EBS's cancellation charge. For product, which in EBS's judgment is readily resalable to others, the cancellation charge shall be 15% of the invoice price of the equipment. For all other cancellations, the cancellation charge shall amount to all costs and expenses incurred by EBS and arising out of or in connection with Buyer's order, net of recoverability, but in no event less than 10% of the invoice price of the product or more than the invoice price.
- 13. DRAWINGS - OTHER DESIGN DATA** - All specifications, drawings, designs, data, information, ideas, methods, tools, gages, dies, fixtures, patterns and/or inventions made, conceived, developed or acquired by EBS in connection with procuring and/or executing Buyer's order will vest in and inure to EBS's sole benefit notwithstanding any charges therefore which may have been or may be imposed by EBS. Buyer shall not give, loan, exhibit, sell or transfer to any person not then employed by Buyer and authorized to receive such information, or to any organization or entity, any drawing, photograph or specification furnished by EBS or reproduction thereof which may enable such person, organization or entity to furnish similar goods or parts therefore.
- 14. RETURN OF PRODUCTS** - No product or part shall be returned to EBS without written authorization first having been obtained from EBS. To be eligible for return products must be in original packaging and condition. Buyer is responsible for shipping costs associated with return of products. A 15% restocking fee will be applied to all returned products. Products that have been damaged, used, or altered will not be accepted for return. Products that arrive to our facility without a return authorization, damaged, or that do not have prepaid ship charges will be returned to you at your cost. Some products are not eligible for return including but not limited to gaskets, oil seals, lubricants, and special or made to order items.

15. ASSIGNMENT AND SUBCONTRACTING - None of the Buyer's rights under any order shall be assigned by the Buyer to any other person, whether by operation of law or otherwise, without EBS's prior written approval. EBS may, without the necessity of obtaining Buyer's prior written consent, subcontract the production of all or any portion of the product.

16. WARRANTIES AND WARRANTY PERIOD - All EBS products and services are warranted against defects in EBS's workmanship and materials. EBS products are warranted for 12 months from the date of shipment and EBS services are warranted for 90 days from the date of service completion unless otherwise stated.

17. WARRANTY REMEDIES - If an EBS product is defective due to EBS's workmanship or materials and the defect occurs during the warranty period, EBS will either repair the product, replace the product with a new one, or perform the service at the sole discretion of EBS. Warranty service may be completed by EBS or an authorized agent of EBS at the sole discretion of EBS. EBS is not responsible for removal or shipping of the EBS product to the service center, the reinstallation of the EBS product upon its return to the customer, or any incidental or consequential damages resulting from the defect, removal, reinstallation, shipment or otherwise.

Exclusions - This warranty does not:

(i) apply and shall be void with respect to product operated in excess of rated capacity or otherwise not in accordance with installation, maintenance, or operating instructions or requirements, to product repaired or altered by others than EBS or EBS's authorized service agencies, or to product which was subjected to abuse, negligence, misuse, misapplication, accident, damages by circumstances beyond EBS's control, to improper installation (if by others than EBS), operation, maintenance or storage, or to other than normal service, use or wear, and

(ii) apply to product or components not manufactured by or for EBS. With respect to product or components not manufactured by EBS, EBS's warranty obligations shall in all respects conform and be limited to the warranty actually extended to EBS by its suppliers, but in no event shall EBS's obligations be greater than those provided under EBS's Warranty set forth in this section.

EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, EXCELSIOR BLOWER SYSTEMS, INC. DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. NO OTHER WARRANTY, EXPRESS OR IMPLIED, WHETHER OR NOT SIMILAR IN NATURE TO ANY OTHER WARRANTY PROVIDED HEREIN, SHALL EXIST WITH RESPECT TO THE GOODS SOLD UNDER THE PROVISIONS OF THESE TERMS AND CONDITIONS. ALL OTHER SUCH WARRANTIES ARE HEREBY EXPRESSLY WAIVED BY THE BUYER. This is the sole warranty of EBS and no other affirmations or promises made by EBS shall be deemed to create an express or implied warranty. EBS has not authorized anyone to make any representations or warranties other than the warranty contained herein.

18. INDEMNIFICATION BY BUYER - Buyer shall indemnify, hold harmless, and defend EBS and EBS's employees and agents from and against any and all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees, court costs, and out-of-pocket expenses) arising out of or resulting in any way from claims by customers of Buyer or third parties against EBS alleging a breach of contract or warranty by EBS.

19. REGULATORY LAWS AND/OR STANDARDS - EBS takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations as may affect its products; however, EBS recognizes that its products are utilized in many regulated applications and that from time to time standards and regulations are in conflict with each other. EBS makes no promise or representation that its product will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and EBS.

20. LIMITATIONS OF LIABILITY - CONSEQUENTIAL DAMAGES - Disclaimer of Damages - UNDER NO CIRCUMSTANCES SHALL EXCELSIOR BLOWER SYSTEMS, INC. BE LIABLE OR RESPONSIBLE IN ANY MANNER WHATSOEVER FOR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANTICIPATED PROFITS RESULTING FROM THE DEFECT, REMOVAL, REINSTALLATION, SHIPMENT OR OTHERWISE UNDER ANY THEORY OF RECOVERY, INCLUDING BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. Damages not recoverable shall include, but not be limited to, loss of profits or revenues, loss of use of the product or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages.

21. LIMITATION OF LIABILITY - EBS shall not be liable for any loss, claim, expense or damage caused by, contributed to by or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise. In no event shall EBS's liability for any cause of action whatsoever exceed the cost of the item giving rise to the claim, whether based in contract, warranty, indemnity, or tort (including negligence). Any suit arising hereunder must be commenced within one (1) year from the date the cause of action accrues. Except as provided in Article "Indemnity", EBS shall not indemnify any party.

22. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR ASSISTANCE - If EBS provides Buyer with assistance or advice which concerns any parts/products/service supplied hereunder or any system or equipment in which any such part/product/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject EBS to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

23. WEBSITE USAGE AND ELECTRONIC COMMUNICATIONS - Visiting www.excelsiorblower.com or sending emails to EBS constitutes electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically, via email and on the website, satisfy any legal requirement that such communications be in writing. Terms and Conditions of Website Use located at www.excelsiorblower.com/terms-conditions apply.

24. GOVERNING LAW - These Terms and Conditions, and the contract of sale between EBS and Buyer, shall be governed by and construed in accordance with the laws of the state of Pennsylvania. Buyer agrees to the jurisdiction of any state or federal court located in Berks County, Pennsylvania and waives any arguments or defenses based upon personal jurisdiction, venue and forum non conveniens.

25. PROPRIETARY MATERIALS - EBS reserves to itself copyrights and other intellectual property rights on all quotations, drawings, manuals, instructions or any other information or data provided to Buyer. Such materials shall remain the property of EBS and shall not be disclosed to any other third party without EBS's prior written permission. If requested, Buyer shall return all items to EBS and certify, in writing, that all copies thereof have been destroyed.

26. SEVERABILITY - The provisions of these Terms and Conditions are severable and, once accepted, if any provision herein shall be held unenforceable or invalid, such invalidity shall not affect any other provision contained herein.

27. WAIVER - EBS's failure to insist on performance of any of these Terms and Conditions herein or to exercise any right or privilege or the waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

28. ENTIRE AGREEMENT - The Terms and Conditions shall become effective upon acceptance. It is expressly understood and agreed by the Buyer and EBS that this document (together with Buyer's purchase order, if any, or any separate document to which these Terms and Conditions may be attached) constitute the full understanding of the parties, a complete allocation of the risks between them, and the final and entire agreement between them. Any other Terms and Conditions, whether contained in any purchase order, invoice, acknowledgement or any other document, which may vary from any term of condition contained herein shall not be made except with the written consent of both EBS and Buyer.

29. CHANGES TO TERMS AND CONDITIONS - EBS reserves the right, in its sole discretion, to change the Terms and Conditions. The most current version of the Terms and Conditions will supersede all previous versions.