

STANDARD TERMS AND CONDITIONS OF SALE APPLYING TO GOODS, PARTS AND SERVICES SOLD BY

WAIBEL ENERGY SYSTEMS, INC.

(HEREINAFTER THE "SELLER")

1. **Acceptance.** Buyer's order is conditional on acceptance by Seller and on Buyer's assent to the terms and conditions of sale herein, and any other terms and conditions stated in Seller's proposal or specification attached hereto or any acknowledgment, invoice, or other document issued by Seller of which these terms and conditions are a part, as the sole terms and conditions of sale (collectively, the "Terms"). Seller hereby rejects any conflicting, different or additional terms and conditions proposed by Buyer, unless otherwise specifically consented to in a writing signed by a duly authorized officer of Seller. Acceptance of any good, part or service delivered or performed by Seller or other assent by Buyer to the Terms shall constitute an agreement to all of the Terms, including, without limitation, Seller's limitations of warranty and liability. Seller's duty to perform under these Terms and the price hereof is subject to the credit approval of Buyer by Seller. Seller's performance will be excused in the event of strikes, accidents, fires, the inability to procure materials from the usual sources of supply, or upon any like or unlike cause beyond Seller's control. Upon Seller's disapproval or upon the occurrence of any such event as aforesaid, Seller may delay performance or, at its option, renegotiate prices, terms and conditions with the Buyer. If Seller and Buyer are unable to agree on such revisions, the Order shall be canceled without any liability, other than Customer's obligation to pay for goods or services rendered by Seller prior to the date of cancellation.
2. **Delivery.** Unless otherwise stated on the invoice or otherwise agreed to in a writing signed by a duly authorized officer of Seller, all goods or parts thereof are delivered F.O.B. Point of Origin, whereupon all expense, risk of loss, and damage shall be upon Buyer. Buyer shall pay all shipping and freight charges for any good or part thereof, including, without limitation, costs of packing and shipping defective parts and/or replacement or repaired parts. Services will be performed during normal working hours with any overtime or emergency labor billed separately, unless otherwise agreed to in writing.
3. **Warranty.** FOR A PERIOD OF THIRTY (30) DAYS AFTER PERFORMANCE OF THE APPLICABLE SERVICES, SELLER WARRANTS THAT ANY SERVICES IT PERFORMS FOR BUYER SHALL BE PERFORMED IN A WORKMANLIKE MANNER IN ACCORDANCE WITH INDUSTRY STANDARDS. ANY GOOD OR PART THEREOF SOLD BY SELLER TO BUYER IS THE PRODUCT OF A MANUFACTURER OTHER THAN SELLER, SELLER HEREBY ASSIGNS TO BUYER, TO THE EXTENT ASSIGNABLE, SUCH MANUFACTURER'S WARRANTY FOR SUCH GOOD OR PART. EXCEPT AS STATED IN THIS SECTION, SELLER SELLS SUCH GOOD OR PART TO BUYER AND PERFORMS SUCH SERVICES ON AN "AS IS" AND "WITH ALL FAULTS" AND SELLER DISCLAIMS, AND THERE SHALL BE EXCLUDED FROM THE RELATIONSHIP BETWEEN BUYER AND SELLER, ANY WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE AND ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SUCH GOOD, PART, OR SERVICE. THE WARRANTIES STATED IN THIS PARAGRAPH ARE EXCLUSIVE AND IN LIEU OF, AND THE SELLER HEREBY DISCLAIMS AND THERE SHALL BE EXCLUDED FROM THE RELATIONSHIP BETWEEN BUYER AND THE SELLER, ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. For goods or parts manufactured by The Trane Company ("Trane"), Trane warrants that: (1) Trane manufactured material is free from defect in material and manufacture for a period of twelve months from date of start-up or replacement. Trane's obligation under this warranty is limited to repairing or replacing the defective part at its option; (2). Labor is warranted (to have been properly performed) for a period of 90 days from completion. Trane's obligation under this warranty is limited to correcting any improperly performed labor; (3) non-Trane equipment and/or parts are not warranted by Trane. Warranties for such equipment and parts are those extended to Trane by the respective manufacturer.
4. **Prices.** Prices are those in effect at the time an order is accepted by Seller and are subject to change by Seller without notice. If there is any material increase in the costs to Seller of goods or services that Seller uses in any unfilled order of Buyer that has been accepted by Seller, Seller, at its option, may request Buyer to adjust the price(s) applicable to any such unfilled order, and if Seller and Buyer fail to agree in writing to new price(s), Seller may, at its option and with no liability to Buyer, cancel any or all of such unfilled orders and Buyer shall have no claim against Seller with respect to any such canceled and unfilled order. Except as expressly stated on the invoice, Seller's prices do not include sales, use, excise, and similar taxes and charges or import duties. Consequently, in addition to the price specified on the face hereof or elsewhere in any communication between Buyer and Seller, the amount of any present or future sales, use, excise, and similar tax and charge or import duty applicable to the delivery of any good or part thereof or to the use of any good or part thereof by Buyer, or any value-added or added value tax, may, at Seller's sole option, be added to the price of the goods, parts or services sold by Seller to Buyer or billed separately by Seller, and in any event shall be paid by Buyer.
5. **Payments.** Unless otherwise agreed to in a writing signed by a duly authorized officer of Seller, full payment on all amounts owed to Seller hereunder is due from Buyer within thirty (30) days following tender of delivery by Seller. Interest (at the rate of one and one-half percent (1.5%) per month (18% annual percentage rate) or the maximum legal rate, whichever is lower) will be charged to Buyer on all amounts owed to Seller hereunder that remain outstanding after thirty (30) days. Seller reserves the right to modify these payment terms at any time prior to delivery. Buyer's failure to pay on this or on any other obligation to Seller in a timely fashion will entitle Seller to hold delivery of accepted and/or completed orders and/or delay performance of services until appropriate payment is made. Payment terms are subject to ongoing satisfactory credit approval of Buyer by Seller. Seller may, at any time or times, suspend performance and/or cancel further performance of any order or require full or partial payment in cash, delivery of security and collateral, or other adequate assurance satisfactory to Seller when, in Seller's judgment, the financial condition of Buyer or other grounds for insecurity warrant such action. Buyer agrees to pay all collection expenses (including, without limitation, all court costs, legal and administrative expenses, and attorneys' and other fees) paid or incurred by Seller to recover all amounts due to Seller.
6. **Governing Law.** The agreement between Buyer and Seller and the Terms shall be construed to be between merchants and shall be governed by, and construed in accordance with, the laws of the state of Ohio, without application of the conflict of law principles thereof. The parties agree to the exclusive jurisdiction and venue of the state or federal courts located in Montgomery County, Ohio.

7. **General.** The Terms and the document in which the Terms are included constitute the entire and only agreement by and between Buyer and Seller respecting the subject matter of orders placed by Buyer to Seller and supersede all prior agreements or understandings, whether written or oral. Any representation, affirmation of fact, and course of prior dealings, promise or condition in connection therewith or usage of trade not incorporated herein shall not be binding on any party. The headings preceding any text herein are inserted for convenience of reference purposes and shall not in any way affect the meaning, construction, or effect of the text. Any failure by Seller, as the case may be, to exercise any right shall not constitute or be deemed a waiver or forfeiture of such right or any other rights. Only a duly authorized officer of Seller has the authority to alter, vary, or waive any of the Terms and no waiver, alteration or modification of any of the Terms shall be binding unless in writing and signed by a duly authorized officer of Seller. Unless designated in writing by a duly authorized officer of Seller, no sales representative of Seller shall have such authority. If any of the Terms shall be held by a court of competent jurisdiction to be contrary to any law or be deemed unenforceable, the remaining Terms shall remain in full force and effect with such contrary or unenforceable provision limited or excluded to the minimum extent required under applicable law. All rights of Seller, as the case may be, hereunder shall inure to the benefit of their respective heirs, executors, administrators, and assigns and all obligations of Buyer hereunder shall bind the heirs, executors, administrators, successors, and assigns of Buyer. If there is more than one Buyer, their obligations shall be joint and several. Seller will comply with applicable federal, state and local laws and obtain requisite temporary licenses and permits for its work hereunder. Buyer will obtain at its cost any requisite permanent licenses and permits. Customer will pay for reasonable attorneys' fees incurred by Seller in enforcing collection of amounts due. Seller agrees to carry insurance in the following minimum amounts:
- A. Commercial General Liability \$1,000,000 per occurrence
  - B. Automobile Liability \$1,000,000 CSL
  - C. Workers Compensation Statutory Limits
8. **Limitation on Liability.** Seller and Customer shall indemnify, defend and hold each other harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. However, neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the negligence or misconduct of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination. **NOTWITHSTANDING ANY CONTRARY PROVISION, NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY.**
9. **Asbestos And Hazardous Materials.** Goods, parts and services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Buyer warrants and represents that, except as set forth in a writing signed by Seller, there are no Hazardous Materials on the Buyer's premises (the "Premises") that will in any way affect Seller's services and Buyer has disclosed to Seller the existence and location of any Hazardous Materials in all areas within which Seller will be performing the services. Should Seller become aware of or suspect the presence of Hazardous Materials, Seller may immediately stop work in the affected area and shall notify Buyer. Buyer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Buyer shall be exclusively responsible for any claims, including the payment thereof, arising out of or relating to any Hazardous Materials on or about the Premises, not brought onto the Premises by Seller. Seller shall be required to resume performance of the services in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Seller be obligated to transport or handle Hazardous Material, to provide any notices to any governmental agency, or to examine the Premises for the presence of Hazardous Materials.