



**DEFINITIONS IN REFERENCE OF BELOW:**

**“SELLER”** - DEKALB BLOWER, INC. Manufacturer or producer of goods or services for sale. Or bids for, or accepts an order from the “BUYER”

**“BUYER”** - The purchaser or persons accepting a proposal or quotation and terms set forth by or from “SELLER” in a written quotation. Listed in the DeKalb Blower presented quotation or sales order confirmation form for goods or services produced or offered by “SELLER”

**CONTRACT:**

The sale of equipment or services described or referred to at the prices or services quoted or indicated is upon the terms and conditions set forth below. Any order for or any statement of intent to purchase any such equipment or services, or any direction to proceed with design, or engineering procurement, manufacture or shipment, shall constitute to said terms and conditions and a representation that the Buyer is solvent. Any additional or different terms or conditions set forth in any such communication from the Buyer are hereby objected and rejected. Herein and shall not be effective or binding unless assented to in writing by an authorized representative of the company.

**TERMS OF PAYMENT:** Terms of payment are typically net thirty (30) days subject to the prior approval of Buyer's credit application. It is at the seller's discretion for large order or qty. Jobs to negotiate or list terms as “special” on the quotation or offer for goods or services. Prior to acceptance of these terms, it must be agreed on by representatives of both seller and buyer company representatives in writing. Down payments on negotiated terms are due on receipt or as agreed upon at time of order. Progress payments on special terms are typically negotiated by both parties with acceptance of both parties in writing. If in Seller's judgment the Buyer's financial condition does not warrant the continuation of production or shipment on the original terms, the Seller reserves the right to request payment in advance.

**PAST DUE OR TARDY PAYMENTS OF TERMS TO THE CONTRACT:** Overdue accounts will bear interest at the prevailing bank rate charged to Seller. Accounts are due in full by the buyer by firm dates set forth in the above context. A finance charge of 2.5% monthly (annual rate of 30%) will be applied on all past due accounts and balances, or the maximum amount permitted by law. Buyer will be required to pay all of seller's collection costs. Seller is entitled to postpone or cancel performance of the contract partially or in whole and to be paid immediately for the contract to date if terms are not withheld.

**TAXES:** Any tax or other governmental charge now or hereafter levied upon the production, sale, use or shipment of goods ordered or sold will be charged to and paid for by the Buyer. Such taxes are not covered in the Seller's price unless expressly so proposed. As the goods and services offered by seller are mostly used in resale situations, it is upon duty of buyer to have and withhold proper state forms and documentation in regards to sales tax exemption. It is duty upon the buyer to pay all applicable taxes and responsibilities of the equipment, goods, or services purchased from the seller.

**ACCEPTANCE OF QUOTATION & PRICES OFFERED FOR GOODS OR SERVICES:** Prices quoted for products manufactured by Seller are subject to acceptance by the Buyer no later than dates listed on the formal quotation used as basis for the purchase by the buyer. This is non-negotiation term unless agreed on by company representatives from both seller and buyer parties in writing. Unless stated otherwise or on quotation form, quotes are valid only for (1) day. Prices quoted for items or components or materials which are not manufactured by Seller are subject to change at any time as the cost of such items charged to Seller changes. Buyer must accept delivery when the order is ready for shipment.

**CANCELLATIONS:** Accepted orders canceled by the Buyer are subject to cancellation charges for all expenses incurred and commitments made by Seller. The cancellation charges on completed items will be one hundred percent (100%) of the selling price. The aforementioned cancellation charges shall not in any way whatsoever limit Seller's other remedies it may have at law including, without limiting the generality of the foregoing, the ability of Seller to claim and recover any amounts or damages to which Seller would otherwise be entitled by reason of accepted orders canceled by the customer.

**DELAYS:** Seller shall not be liable to the Buyer or to any third party for any delays caused by component or material shortages, riots, strikes, lockouts, weather, fire, floods, lack of transportation, accidents, the failure of Seller's suppliers or “subcontractors” to meet their obligations, breakdowns, or any other contingency beyond Seller's reasonable control and receipt of the product by the Buyer shall constitute a waiver of all claims for loss or damage due to delay. Seller does not agree to damages or claims made by buyer for missed ship dates, as many of the products the seller manufactures and engineers are custom to the buyers application, and many potential delays are out of seller's control. Seller does not agree in part or whole unless started in writing by seller company representatives to late fees, penalties, damages, or liquidated damages caused by any delay. All ship dates and quoted ship dates are estimated. Even on the sales order confirmation or receipt of order, dates listed are projected and not firm. Only estimated. If delayed, or extended delays from fault of buyer from any clause of this contract or fault determined by seller, seller is entitled to receive full payment at the time of original anticipated or estimated ship date by seller not withstanding delay. Shipments held beyond the ship date at request or fault by buyer may be invoiced immediately. Buyer shall assume the risk of loss thereof.

**FREIGHT:** Unless specified in the purchase order from the buyer in the acceptance of the sellers quotation of goods and services, as listed in the quotation and subject to all quotations, freight charges and or travel expenses are not included in the price of the quoted goods or services. Typically the terms of the freight arrangement are listed as “to advise” for the customer to determine the preferred freight method of the goods. DeKalb will abide by the buyers recommendations. DeKalb Blower will provide weights and dimensions and any other information required for the buyer to receive or gather their own independent freight quote that has no attachment to the original or agreed sales order or quote acceptance. If the freight method is chosen or directed by the buyer in writing, suggestion, or listed on the PO, the buyer is responsible for any and all charges for freight, any and all damages from the carrier or freight transportation, and agree that the freight was loaded and supplied “FOB” at pristine condition, less of any defects, flaws, or damages. It is the buyers responsibility to handle any freight or claim damages with their preferred or suggested freight carrier, and shall bear no responsibility or liability to DeKalb Blower, Inc. The freight is sold as listed throughout this contract as “FOB” If the buyer or purchaser of the goods or services waives their own independent freight selection or a preferred carrier or other method for gathering the goods or services via. freight, DeKalb Blower offers a “best-way” prepaid and add (PPD & ADD) option for convenience whereas the seller will prepay all freight charges and add a charge to the invoice of the goods or services sold at the sellers discretion. These charges are determined through quotations or many common freight or LTL carriers to determine both cost and transit time to determine a selection of the freight carrier or preferred carrier by the seller. By accepting these terms, the buyer agrees to any and all charges as listed and itemized on the invoice of the final product. Either transmitted electronically or via paper mail. These are non-negotiable costs and terms, and by the listing, acceptance, via email, writing, or as listed on the sales order confirmation or receipt or order, customer or buyer agrees to all charges as listed and as determined / invoiced by seller.

**FREIGHT CLAIMS:** Unless otherwise expressly agreed in writing, delivery of the product is made FOB factory. The liability and responsibility of Seller for the product ceases upon delivery of the product in good order to the carrier or at pickup from the sellers premises or factory. Once the merchandise leaves the sellers premises, All claims for damage and shortage in transit are the Buyer's responsibility and the Buyer must file the claim against the carrier. Claims for factory shortage will not be recognized unless such alleged shortage is reported to Seller in writing within three (3) days after receipt of the product or a signed delivery receipt such as a freight carrier BOL "bill of landing". If the goods or services have been provided via "best way" or prepaid and add as detailed prior In this contract, if the buyer receives the goods to the destination specified on the PO or as instructed, if damage in any way to the product, good, or service is noted, assumed, visually damaged, arrived in a non-pristine condition, or a non-acceptable condition, or as shipped from sellers shipping point in a pristine condition, less of any defects or damages, the receiving party of the buyer or any party accepting the delivery or freight must refuse the freight . The buyer or any representative must not sign the BOL (shippers bill of landing) and contact must be made immediately to seller to determine the proper course of action. If the buyer accepts the freight, signs the BOL, or takes it upon the buyer to correct the condition of the freight, all warranties will be voided by the seller, and it will be assumed the buyer has accepted the freight as-is. The buyer will still be responsible for charges as listed on the invoice for any or all freight charges the seller lists. Non-negotiable and regardless of condition the goods or services had been received or acceptance as. It is highly suggested and stressed for the buyer or any of the buyers representatives, or employees, or member of buyer that will be accepting the freight or signs the bill of landing that they inspect all goods or merchandise for damage, or signs of damage, or any signs of neglect by the shipping party. Failure to comply with any of the above will void all warranties of the equipment and all costs will still be the responsibility of the buyer. Even if the freight or goods had been accepted and signed for and then need returned for repair of any kind from freight damage, the buyer will bear all costs, including the freight charges to return to the seller or sellers instructed return point.

**PRODUCT CHANGES:** Seller reserves the right to change or modify the product in the interest of continuous product improvement or production without liability.

**RETURNED GOODS:** Goods may not be returned except by the written permission of the Seller, an RMA number will be issued, and any inbound freight is the responsibility of the buyer unless authorized in writing by the seller. Returned goods may be subject to a handling charge and transportation costs to the buyer.

**PERFORMANCE & TESTING:** Where performance figures are specified, the equipment offered is based on Seller's experience and best judgment of the Buyer's request. For performance deficiencies exist, and if not determined not to be due to buyer design, system effects, or any other phenomenon that may occur to the equipment per AMCA or other industry standards on the buyers behalf, seller would only be responsible for cost or sale price of the equipment. Not to exceed from any excess liability, or damages, or liquidated damages that may occur. Should any modifications be required to meet performance specifications, Seller reserves the right to make these modifications, at Seller's expense. If, in Seller's judgment, a modification problem cannot be readily and economically rectified, it is Seller's option to remove the equipment and refund all payments made to Seller by the Buyer for original purchased price only. No other charges will or can be assessed by either the Buyer or Seller. Detailed specifications of design or testing specifications can also be found in the DeKalb Blower Instruction Manual that is provided with all goods sold. A digital version can and will be also provided upon direct inquiry listing specific literature and specifications to the equipment. As well as specific tagging and labeling on the fan or goods sold. Seller is not responsible for sound or decibels of fan or its environment which may also influence along with the buyers design or system may alter or excite said such frequencies. Fans with VFD speed control may require trim balance at alternate frequencies after installation and frequencies of the fan change of weather a coast down or operating frequency. discreet frequencies from outside the operating speed range or frequency will in some cases result in resonance conditions. Natural frequencies or resonant frequencies may effect acceptable vibration limitations due to customer design issues or an un supported or structure which is a much higher frequency than the fan product or service being provided. If multiple fans are operational on similar or same frequencies, this will excite fan vibration and amplitude harmonics of the system, as once installed, the fan or product becomes part of an overall system that plays to many outside influences on vibrations, performance, and fan performance.

**MODIFICATION:** These Standard Terms and Conditions may not be modified except by written agreement signed by the Sellers company representative. The failure of Seller to object to provisions contained in the Buyer's purchase orders or other communications shall not be deemed waiver of the Standard Terms and Conditions hereof or acceptance of such provisions. No other terms and conditions other than the Standard Terms and Conditions contained herein and those terms and conditions with respect to the description of product, quantity and price contained in the "Quotation Proposal" shall be binding upon Seller unless made in writing and signed by the Sellers company representative. Without restricting the generality of the foregoing, agents and sales representatives of Seller do not have authority to modify these Standard Terms and Conditions contained herein

**SERVICES:** Seller is only the supplier of goods, products, or services. Seller bears no responsibility for the assembly or installation of goods as also further detailed and directed in the DeKalb Blower instruction manual. Any claim will burden the buyer and seller shall assume no responsibility for buyers faulty or not limited to which caused by buyers faulty lifting tackle, scaffolding, equipment, or other facilities provided by the buyer.

**PATENTS:** Except as set forth below, in case any suit or proceeding alleging patent infringement is threatened or instituted against the Buyer and is based upon a claim that any equipment or any part thereof furnished under this contract constitutes an infringement of any United States patent, Buyer agrees that no claim shall be made against Seller unless Buyer has notified Seller promptly in writing of the threat or institution of said suit or proceeding and unless Buyer gives Seller full authority, information, assistance and cooperation in the investigation of all facts and in the preparation and maintenance of any defense. The foregoing states the entire liability of Seller for patent infringement by said equipment or any part thereof, and shall not apply to any equipment or any part thereof, manufactured to Buyer's design, nor for any use to which any such equipment may be put as a part of any system, mechanism or process covered by patent rights of others. As to such equipment or part, Seller assumes no liability whatsoever for patent infringement. It is further agreed that Seller shall have the following options: Seller may defend said suit or proceeding in behalf of Buyer and pay all damages and costs awarded therein against the Buyer; or Seller may replace said equipment or part with non-infringing equipment or part; or Seller may procure for the Buyer the right to continue using said equipment; or Seller may remove said equipment or part and refund to Buyer the purchase price less 10% thereof for each year or fraction of a year since the date the same was purchased by Buyer. The foregoing states Seller's entire liability for patent infringement of any equipment or part furnished hereunder which liability shall cease and terminate one year following the date of purchase.

**SELLER PRODUCT DESIGNS (IP):** The design, many of which are protected by USPO patents as listed in accordance online at [www.dekalbblower.com](http://www.dekalbblower.com), performance or design information, and construction detail of the goods or services provided by the seller, is proprietary property and remains the valuable property (IP) of the Seller. By ordering or purchasing these products or services, along with the associated information and any or all technical assistance, the Buyer agrees not to copy or duplicate the product or information provided without express written authorization from Seller. Failure to do so would be a violation of intellectual property of the products being sold. Many of these items or products are custom manufactured to suit specific applications, and taking the information and trying to have provided by others or competition would be in violation of set forth terms.

**LIMITED PRODUCT WARRANTY:** All products are warranted by the Seller to the original Buyer as detailed in the instruction manual provided with the fan and in complete compliance of these instructions. Any violation or found violation or alterations would violate any and all product warranties. Supplied goods or services are to be free from defects in materials and workmanship under normal use and service (except in those cases where

the materials are supplied by the Buyer) for a period of (24) months from date of shipment from the sellers premises or factory location. The liability of Seller under this warranty is limited to replacing, repairing, or issuing credit (at cost, FOB factory and at Seller's discretion) for any part or parts which are returned by Buyer during such period provided that the Seller is notified in writing within three (3) days following discovery of such defects by Buyer, or within five (5) days after such defects should reasonably have been discovered, whichever is less; the defective unit is returned to Seller, transportation charges prepaid by Buyer; payment in full has been received by Seller for product sold; and that Seller's examination of such unit shall disclose to its satisfaction that such defects have not been caused by misuse, neglect, improper installation, repair, alteration, act of God, or accident. No warranty made shall extend to any Seller product whose serial number is altered, effaced or removed. Seller makes no warranty, expressed or implied, with respect to motors, switches, controls, or other components of Seller's product that may be covered under a separate manufacturers warranty., where such components are warranted separately by their respective manufacturers. Repairs for motors should be obtained from the nearest authorized motor service center for the make of motor furnished. This warranty is expressly in lieu of all other warranties, expressed or implied, whether statutory or otherwise, including any implied warranty of merchantability or fitness for a particular purpose. In no event shall Seller be liable to Buyer for indirect, incidental collateral, or consequential damages of any kind. It is the Buyers responsibility to pay all balances due for the product, however the Buyer's failure to pay the full amount owed for the product as agreed within forty-five (45) days of the date of invoice shall release Seller from any and all liability or obligation arising pursuant to any warranty, expressed or implied, whether statutory or otherwise, including any implied warranty or merchantability or fitness for a particular purpose, made in connection with any contract formed hereunder. Buyer agrees that such failure to pay shall constitute a voluntary waiver of any and all such warranties arising pursuant to such contract.

Further detail of product warranties and limited coverage's are detailed in the DeKalb Blower Instruction manual which can be supplied by request in digital or paper form, and is also supplied with products or services produced by the seller.

**TITLE & RISK:** Legal and beneficial ownership of products, goods, or services of the seller shall remain vested in the seller until full payment of the price of product or service or contract price has been paid in full with no outstanding balances due by the buyer.

**REGULATORY LAWS AND/OR STANDARDS:** The Seller makes no promise or representation that its product will conform to any 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 Seller. Seller's prices do not include the cost of any related inspection permits or inspection fees that may be obtained from such claims.

**SUBCONTRACTING:** Seller has authorization and direct authority for the manufacturing of proprietary (IP) goods, products, and services, testing, or any related service to be carried out in the development of goods or products. Any field work required may be carried out by a seller appointed firm or establishment. Any assignment, task, or service carried out by buyer or this contract to sub-contract work or services by a buyer preferred contractor without written consent will null or void all warranties if applicable and will be considered a violation to this contract.

**TERMINATION / CANCELLATION:** if cancellation or termination of order, buyer had three (3) days from day or receipt of order to cancel goods or services placed on order. If after this date of three (3) days after, buyer is to owe seller with damages for time invested and any additional damages for labor, materials, & components that have or may have been ordered after receiving the order from the buyer. The buyer would owe the seller time for labor invested and materials or raw components or raw materials consumed in the various stages of manufacture. The buyer would owe the seller an amount accumulated to the stopping point of manufacture.. The product would then be sold to the buyer in the stage of manufacture at time of termination or cancellation of the order. The buyer would owe the seller amounts due determined in damages , as applicable by law. These items or products or anything supplied to be determined "incomplete" would be sold AS-IS , less any warranty or guarantee of any kind. If the buyer refuses to take ownership of the product in the various stage of manufacture in which the construction had been halted, the seller may also add on costs associated with and not limited to disassembly, scrapping, removing from facility or site, and any additional costs barred or burdened to the seller by the buyers act.

**INSURANCE:** Seller is a fully established company and provides insurance as required. If or upon request, seller will furnish proof of insurance or certificate of insurance in accordance to state guidelines. Additional coverage's will not be covered upon the buyers request unless provided in writing by the sellers company representative. This does not constitute to buyers terms of purchase or further obligations related to buyers request for additional insurances or coverage's.

**FORCE MAJEURE :** Neither party shall be considered in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented or delayed by any circumstances outside its reasonable control including, without limitation: strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, embargoes, economic or trade sanctions, including any amendments to such embargoes and economic and trade sanctions, accidental breakdown of plant or machinery, fire, flood, storm, disease outbreak or epidemic and/or any resulting quarantine restrictions. Either party shall be entitled to terminate the Contract if the Force Majeure situation continues, or it is obvious that it will continue, for more than one hundred (100) days without liability to the other party. Furthermore, should both parties agree that they want to continue the Contract when reasonably practicable to do so, notwithstanding the aforementioned 100 day period being reached, the parties will agree in good faith to renegotiate any necessary Contract amendment(s) to allow the Contract to continue.

**GENERAL LAW & CONDITION:** All quotations or offers are made and all orders accepted by the Seller with reference to the laws of the State of Illinois and the rights and duties of all persons and the construction and effect of all provisions thereof shall be governed by and construed according to the laws of that state. Should any terms or provisions contained in these conditions violate any or be involved under applicable law, the contract of which these conditions form a part shall not fail by reason thereof but shall be construed in the same manner as if such terms or provisions had not appeared herein. The Seller represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. These conditions of sale constitute all the terms in the agreement between Seller and Buyer. Any violation or breach of the set forth contract or violation, disputes, or claims of these terms and conditions of sales or goods or services provided by the seller , shall precede in the courts of Kendall county, Illinois, unless agreed upon in writing by the sellers company authorized representatives.

There are no other terms or conditions of sale.

**-\* This agreement cannot be modified in any way** except in writing signed by all the parties to this agreement. This agreement will be governed by and constructed in accordance with the laws of the state of Illinois, including the Illinois Uniform Commercial Code and the seller and buyer hereby attorn to the jurisdiction of the courts of the state of Illinois. Except where otherwise stated in this agreement, all terms employed in this agreement will have the same definition as set forth in the Uniform Commercial Code in effect in the state of Illinois. If any clause in this agreement is held unconscionable by any court or jurisdiction, arbitration panel, the clause will be deleted from this agreement and the balance of this agreement will remain in full force.