The terms and conditions stated below are incorporated into and shall constitute part of the Order Acknowledgment ("Order Acknowledgment") between you ("Buyer") and The Arctic Chiller Group, its subsidiaries and its authorized distributors ("Seller"). These terms and conditions shall be binding upon Buyer unless otherwise stated in writing on the Order Acknowledgment.

1. Acceptance and Binding. All purchase orders are subject to acceptance at Seller’s factory, and Seller shall have no liability for production until and unless they are so accepted. Sales representatives are not authorized to bind Seller to produce equipment or perform work. Omissions and clerical errors are subject to correction. Seller shall not be bound by any representations or warranties which are not expressly set forth in writing by an authorized employee of Seller.

2. Prices and Taxes. Unless otherwise acknowledged by Seller in writing: (i) all prices are subject to change without notice; (ii) goods will be billed in US Dollars at the prices in effect at the time of shipment; (iii) prices are quoted F.O.B. Seller’s factory and may be prepaid or shipped freight Collect; (iv) prices on the items set forth in the Order Acknowledgment are exclusive of all city, state, provincial and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, occupation, use and similar taxes. Whenever applicable, taxes will be added to the Acknowledgment as a separate charge to be paid by Buyer.

3. Payment Terms. For established US and Canadian customers, Payment Terms are as follows:
   • For standard products and upon approval by Arctic Chiller Group all Invoices shall be paid NET 30 days and payable in US Dollars.
   • For non-standard and equipment with custom engineering with a sales price below $100,000 US, terms shall be 15% at submittal release to the customer; 15% at submittal approval, and Balance Net 30 from shipping date. For non-standard systems greater than $100,000 payment terms are 15% down at submittal release, 15% at submittal approval, 20% with receipt of major materials, and the Balance Net 30 from shipping date.
   • For new customers and international customers, terms will be negotiated.

4. Terms of Payment. Terms of payment shall be as stated in the Order Acknowledgment, or unless otherwise stated, payment is due in full 30 days after the shipping date from the Seller. In the event payment is not made promptly when due, Buyer agrees to pay a penalty at the rate of 1½% per month, or as limited by state, federal or other applicable laws, from the due date.

5. Credit Approval. Shipment of the items in the Order Acknowledgment shall at all times be subject to the approval of Seller’s credit department. Seller may at any time decline to make any shipment except upon receipt of payment or security or upon terms and conditions satisfactory to Seller.

6. Shipment. Shipping dates are approximate and may be contingent upon the prompt receipt from Buyer of drawings, access or approvals to release for procurement of materials and manufacturing. Seller shall have no liability for delays in delivery. All shipments are made at Buyer’s risk. Unless Buyer supplies written instructions that are accepted by Seller, the method and route of shipment are at Seller’s discretion. Regardless of the method of delivery, risk of loss shall pass to Buyer upon Seller’s delivery to a carrier. If Seller is prepared to make shipment, and Buyer delays delivery, terms of payment shall apply as though delivery had been effected on the date that Seller was prepared to make shipment. All costs associated with handling, care, storage and custody of the material shall be charged to the Buyer. The acceptance of the material by Buyer shall constitute a waiver of claims for losses due to delay.

7. Indemnity. Buyer agrees to hold Seller harmless from any and all liability, and to pay all costs and attorney’s fees, for injury or damage to persons or property caused in any manner by material covered by the Order Acknowledgment while in possession or under the control of Buyer or Buyer’s successor.

8. Indemnity for Infringement of Intellectual Property Rights. Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as provided in this provision. Seller will defend and indemnify Buyer against allegations of infringement of U.S. patents, U.S. trademarks, copyrights, and trade secrets (hereinafter collectively referred to as the “Intellectual Property Rights”). Seller will defend at its expense and pay the cost of any settlement or damages awarded in any action brought against Buyer based on an allegation that an Item sold to Buyer that is listed in the Order Acknowledgment (“Item”) infringes the Intellectual Property Rights of a third party. Seller’s obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If an Item is subject to a claim that it infringes the Property Rights of a third party, Buyer may, in its sole discretion procure for Buyer the right to continue using the Item, replace or modify the Item so as to make it non-infringing, or offer to accept return of the Item and return the purchase price less a reasonable allowance for depreciation. Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to Items for which the designs are specified in whole or in part by Buyer, or infringements resulting from the modification, combination or use in a system of the Items. If a claim is based on information provided by Buyer or if the design for an Item is specified in whole or in part by Buyer. Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such Item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

9. Installation, initial operation and service. All material provided by Seller shall be installed by and at the expense of Buyer, unless otherwise arranged and contracted in writing. Should Buyer request the services of Seller, such service shall be rendered and charged at the established rate at the time of performing said service, plus other expenses including travel, hotel bills and living expenses. Start-up of installed equipment may be included in the selling price of the Seller. It is the sole responsibility of the Customer to assure start-up is coordinated with the Seller and equipment is ready, connected to utilities and filled prior to Seller start-up.

10. Tooling. Any tooling designed or produced by Seller in the manufacture of any product or material sold to Buyer shall remain the sole and exclusive property of Seller, unless the cost of designing and producing the tooling is paid by Buyer in which case such tooling shall be the sole and exclusive property of Buyer and shall be provided to Buyer upon completion of the work.

11. Limited Warranty. Seller warrants that the products or materials sold to Buyer shall be as described in the Order Acknowledgment and shall be free from defects in materials and workmanship for a period of 18 months from the date of shipment or 12 months from the date of shipment, whichever occurs first.

THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO ITEMS SOLD TO BUYER BY SELLER. SELLER MAKES NO OTHER WARRANTY, GUARANTEE, OR REPRESENTATION OF ANY KIND WHATSOEVER. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW.
TRADE USAGE, OR COURSE OF DEALING ARE HEREBY DISCLAIMED. NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED, WHOLLY OR PARTIALLY, TO BUYER’S DESIGNS OR SPECIFICATIONS.

12. Limitation of Remedy. SELLER’S LIABILITY ARISING FROM OR CONNECTED WITH THE ITEMS SOLD TO BUYER BY SELLER SHALL BE LIMITED EXCLUSIVELY TO REPAIR OR REPLACEMENT OF THE ITEMS SOLD OR REFUND OF THE PURCHASE PRICE PAID BY BUYER, AT SELLER’S SOLE OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST TIME OR MONEY ARISING FROM OR IN ANY WAY CONNECTED WITH ITEMS SOLD TO BUYER BY SELLER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY.

13. Software Programs. Computer software programs that may be included in material or products sold to Buyer have been designed to perform a given set of tasks as defined in the documentation provided and offered AS IS. It is Buyer’s responsibility to determine if the features of the software programs are suitable for Buyer’s requirements and must confirm that the software programs operate correctly. Buyer understands that such software programs are of such complexity that they may have inherent defects and Seller makes no warranty that all software features will perform as intended. For Seller’s software utilizing remote automated servers, improper reading and writing of data to the automation server can cause the server software to malfunction and record inaccurate data. Seller shall not be responsible for damage to any device or damage caused by any device due to the improper or intermittent network connection to Seller’s server.

14. Seller’s Right of Possession. Seller shall have the right, in addition to all others it may possess, at any time, for payment reasons or because of Buyer’s default, to withhold shipments, in whole or in part, and to recall goods in transit, retake same, and repossess all goods which may be stored with Seller for Buyer, without the necessity of taking any other proceedings, and Buyer consents that all goods so withheld, recalled, retaken or repossessed shall become Seller’s absolute property, provided that Buyer is given full credit therefore. The foregoing shall not be construed as limiting in any manner, any of any rights or remedies available to Seller because of default by Buyer.

15. Controlling Provisions. If the Order Acknowledgment is accepted and Buyer’s purchase order is used for any purpose, it is expressly understood and agreed that the terms and conditions set forth in the Order Acknowledgment and these Terms and Conditions of Sale shall prevail insofar as the same may in any way conflict with the terms and conditions set forth in Buyer’s order form, and the issuance of such order by Buyer shall be deemed to note Buyer’s assent to the foregoing. Provisions in Buyer’s purchase orders contrary to these terms and conditions are not binding upon Seller unless accepted in writing by an authorized agent or representative of Seller. Acceptance of the material or products covered by the Order Acknowledgment shall in all events constitute such acceptance. The terms and conditions of the Order Acknowledgment and herein shall supersede any provisions, terms and conditions contained in any other document, order or other writing Buyer may give or receive and the parties shall be governed exclusively by the provisions, terms and conditions hereof. Seller makes no representations or warranties concerning the Order Acknowledgment except such as are expressly contained in the Order Acknowledgment and these Terms and Conditions of Sale, which may not be changed or modified orally.

16. Force Majeure. Seller shall not be liable for any delay in the performance of the Order Acknowledgment, or in the delivery or shipment of goods, or for any damages suffered by Buyer or its customers by reason of such delay, if such delay is, directly or indirectly, caused by, or in any manner arises from, fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, computer issues, transportation delays, or any other cause (whether or not similar in nature to any of these hereinbefore specified) beyond its control.

17. Conditions. The Order Acknowledgment is accepted with the understanding that it is subject to Seller’s ability to obtain the necessary raw materials, and the Order Acknowledgment and all shipments applicable thereto are subject to Seller’s current manufacturing schedules, and governmental regulations, orders, directives and restrictions that may be in effect from time to time.

18. Assignment. Buyer shall not assign, subcontract, delegate or transfer in any way the Order Acknowledgment, in whole or in part, without the prior written consent of Seller and any such assignment, subcontract, delegation or transfer without Seller’s prior written consent shall be void. Buyer shall not be relieved of any of its obligations under the Order Acknowledgment notwithstanding any such written consent by Seller.

19. Non-Waiver by Seller. Waiver by Seller of a breach of any of the terms and conditions of the Order Acknowledgment or the Terms and Conditions of Sale shall not be construed as a waiver of any other breach.

20. Governing Law. The Order Acknowledgment and these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the State of South Carolina. The Convention on Contracts for the International Sale of Goods shall be applicable to the Order Acknowledgment or these Terms and Conditions of Sale. No actions arising out of the sale of material or products covered by the Order Acknowledgment, other than an action by Seller to recover the purchase price of such material or products, may be brought by either party more than two (2) years after the cause of action accrues.