

TERMS AND CONDITIONS OF SALE

Last Revised: February 24, 2025

THESE TERMS AND CONDITIONS OF SALE (this “**Agreement**” or these “**Terms**”), dated effective as of the date set forth on the signature page hereto, govern the purchase and sale of heating, cooling and ventilation systems and other goods, materials, chattel and machinery (“**Equipment**”) by and between Hastings HVAC, Inc., a Nebraska corporation (“**Company**” or “**we**” or “**our**”), and the undersigned individual or entity (“**Buyer**”). For purposes of this Agreement, Buyer and Company are referred to herein as the “**Parties**” and individually as a “**Party**.” Any references herein to “**Buyer**”, “**you**” or “**your**” shall mean the individual accepting this Agreement or the entity, partnership, company or corporation for which any individual is acting on behalf of and representing and warranting that you are authorized to bind such person or entity to this Agreement on its behalf. Please read this Agreement and the terms and conditions contained herein carefully.

1. **SCOPE; ENTIRE AGREEMENT:** This Agreement, along with any other applicable agreement referenced herein, constitutes the entire agreement between the Parties and supersedes (a) all prior or contemporaneous understandings, negotiations, representations and warranties, communications, inducements, promises or other agreements, both written and oral, and (b) any general terms and conditions of Buyer related to the purchase and sale of Equipment, regardless of whether or when Buyer has submitted to Company a purchase order or similar offer to purchase. Company expressly rejects any general terms and conditions of purchase provided by Buyer. No prior representations, inducements, promises or agreements between Company and Buyer, whether written or oral, not set forth hereunder shall be of force or effect, and any such representations, inducements, promises or agreements are hereby revoked and superseded.

2. **ORDER ACCEPTANCE; CANCELLATION:**

2.1 **Order Acceptance.** Subject to Buyer’s timely acceptance within thirty (30) days from the date of this offer or any order, unless sooner revoked prior to acceptance, Company offers to sell the Equipment specified herein solely upon the terms and conditions and at the price(s) and delivery date(s) stated herein. Except as expressly set forth in this Agreement, no terms or conditions provided by Buyer and included as part of Buyer’s purchase order or acceptance or acknowledgement of this Agreement shall be binding upon the Parties. Company’s acceptance of Buyer’s order is conditioned upon Buyer’s acceptance of this Agreement, and Buyer’s agreement to be bound by and comply with the same. In the event Company fulfills a purchase order submitted by any Buyer, such fulfillment shall not constitute or in any way be construed as an acceptance by Company of any of Buyer’s terms and conditions or serve to modify or amend this Agreement. Buyer’s acceptance of any purchase order confirmation by Company, which shall be deemed accepted in the event that Buyer fails to object in writing within thirty (30) days of receipt of such order confirmation, is required to purchase the Equipment and shall operate as an acceptance of this Agreement and the terms and conditions hereunder, all of which are expressly incorporated into any purchase order confirmation. Upon Buyer’s receipt of this Agreement, Buyer shall be considered to be on notice of Company’s objection to and rejection of any additional or conflicting terms set forth in Buyer’s purchase order, acknowledgment or other forms, some of which may be attached hereto.

2.2 **Cancellation.** Buyer may not cancel any order without Company’s prior written consent and payment of the full selling price of the Equipment or such other completed goods, all incurred costs and all applicable charges. Cancellation charges on completed items will be one hundred percent (100%) of the purchase or selling price of the Equipment. Upon cancellation, Buyer shall promptly pay Company liquidated damages equal to all commercially reasonable charges, including expenses already incurred and commitments made by Company, based on Company’s anticipated total profits.

3. **PAYMENT TERMS:**

3.1 **Pricing and Payment Terms.** All prices are subject to change without notice and are exclusive of all applicable taxes, fees, duties, and other charges, which shall be the sole responsibility of Buyer. Payment shall be made in U.S. dollars, on an F.O.B. factory term, with full payment required prior to shipment unless Buyer has been approved for “**Open Account**” arrangement under which Buyer is to pay Company after receiving the Equipment. If an Open Account is established, all invoices shall be due and payable in full within thirty (30) days from the invoice date. Buyer shall make all payments in accordance with the terms set forth in any applicable purchase order(s). Company, in its sole discretion, reserves the right to require pre-payment. Final payment shall be due upon substantial completion of the work described in such purchase order(s).

3.2 **Late and Outstanding Payments; Payment Security.** Any amounts not paid when due shall accrue interest at a rate of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is lower. Company reserves the right to withhold delivery of Equipment, suspend work or refuse to honor warranties and field services if Buyer has any outstanding invoices that remain unpaid. If Buyer fails to maintain satisfactory credit standing or comply with agreed payment terms, Company may, in its sole discretion, require advance payment, impose modified payment terms, or suspend performance under any outstanding agreements.

4. **SHIPMENTS; DELIVERY; DESIGN AND CONSTRUCTION:**

4.1 Shipment and Delivery. All shipments shall be made F.O.B. shipping point, with freight prepaid and allowed to the designated job site, unless otherwise agreed in writing by the Parties. Company shall use commercially reasonable efforts to meet estimated completion and shipment dates, subject to availability, and shall deliver the Equipment within a commercially reasonable time after receipt of Buyer's offer to purchase; provided, however, any completion, shipment or delivery dates provided by Company are estimates only and do not constitute guarantees. Such dates are subject to shipping variations and requirements, and Company shall not be liable for any delays, loss or damage in transit arising from causes beyond its reasonable control, including, but not limited to, Force Majeure Events (more fully described in this Section) or other unforeseen circumstances. Company may, in its sole discretion and without liability or penalty, make partial shipments of Equipment to Buyer. Each shipment shall constitute a separate sale, and Buyer shall accept and pay for each shipment in accordance with the terms of this Agreement, whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

4.2 Design and Construction. Company shall have the right to change specifications, ratings, dimensions, design, arrangement, manufacture, or construction or any other element of the Equipment. Additionally, Company shall have the right to substitute materials or components thereof without notice or obligation to Buyer except in the warranty provisions herein.

5. **FORCE MAJEURE; TITLE AND RISK OF LOSS:**

5.1 Force Majeure Events. Company shall not be liable for any failure or delay in performance due to circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, war, terrorism, government actions, labor disputes, supply chain disruptions or any other event that renders performance impracticable ("**Force Majeure Events**"). In such cases, Company's obligations shall be suspended for the duration of the force majeure event, and Company shall make reasonable efforts to resume performance as soon as practicable. If the force majeure event continues for more than ninety (90) days, either Party may terminate such agreement upon written notice without further liability. Delay in completion or shipment shall not relieve Buyer of its obligations under this Agreement, including full payment.

5.2 Title and Risk of Loss. Company retains title until full payment is received and may repossess Equipment upon Buyer's breach of the terms, provisions, obligations or duties hereunder. Equipment is shipped F.O.B. factory term, with risk of loss transferring to Buyer upon shipment. Risk of loss shall pass to Buyer upon delivery of materials and equipment to Buyer's property. Company shall not be responsible for any loss due to fire, theft, vandalism or malicious mischief once delivered to Buyer's property. Buyer shall assume all responsibility for any such loss and Buyer shall maintain insurance coverage to protect against such loss. Buyer must maintain adequate insurance, naming Company as a loss payee, until full payment is made. At Company's option, Buyer agrees to execute a security agreement, Uniform Commercial Code financing statement (UCC-1), and any and all other documents satisfactory to Company, and to cooperate with Company in every regard, to secure payment for the Equipment.

6. **INTERNATIONAL TRANSACTIONS:** All international sales are subject to compliance with U.S. export control laws. Buyer agrees to comply with all applicable regulations and obtain any necessary licenses. Payment for international sales must be made in full via wire transfer prior to shipment unless alternative terms are expressly agreed to in writing by Company. Buyer assumes all responsibility for customs clearance, duties, import taxes and regulatory compliance in the destination country. Buyer shall indemnify and hold Company harmless from any claims, liabilities or penalties arising from non-compliance with international trade laws. Company is not responsible for delays caused by customs, government regulations or international shipping logistics.

6.1 International Payment Terms. Unless otherwise expressly agreed in a writing signed by Company, all payments for international sales shall be made in full via wire transfer prior to shipment. Buyer acknowledges that Company shall have no obligation to ship Equipment until payment is received in full and in cleared funds. All payments shall be made in U.S. dollars unless otherwise agreed in writing.

6.2 Compliance with International Laws and Conventions. All international sales of Equipment are subject to compliance with (i) applicable U.S. export control laws, including but not limited to the Export Administration Regulations and the International Traffic in Arms Regulations, (ii) applicable international laws and conventions governing the sale of goods across borders, including, but not limited to, the United Nations Convention on Contracts for the International Sale of Goods, and (iii) any applicable laws and regulations of the destination country. Buyer represents and warrants that it shall comply with all such laws and shall not export, re-export or transfer the Equipment in violation of any applicable export control or trade sanction laws. Buyer shall obtain, at its sole cost and expense, any required licenses, permits, or other governmental authorizations necessary for the importation, use, or resale of the Equipment.

6.3 International Delivery; Risk of Loss; Import Obligations. Unless otherwise expressly agreed in a writing signed by Company, all international sales shall be made at Company's facility, and the title to and risk of loss of the Equipment shall pass

from Company to Buyer in accordance with the Incoterm selected by the Parties. The Incoterm applicable to this Agreement is F.O.B., and the risk of loss or damage to the Equipment shall pass to the Buyer when the Equipment has been delivered on board the vessel at the port of shipment.

6.4 Force Majeure Events; Indemnification. Company shall not be liable for any delays in delivery resulting from customs clearance, regulatory approvals, government actions, transportation disruptions, Force Majeure Events or other circumstances beyond its reasonable control. Any delivery dates provided by Company shall be deemed estimates only and shall not constitute a guarantee of shipment or arrival by a specific date. Buyer shall indemnify, defend and hold harmless Company and its affiliates, directors, officers, employees, and agents from and against any and all claims, liabilities, losses, damages, fines, penalties, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to (a) Buyer's failure to comply with applicable export control, import, or trade laws and regulations; (b) Buyer's breach of this Section 6; or (c) any act or omission by Buyer related to the international sale, shipment, or importation of the Equipment.

7. **INTELLECTUAL PROPERTY; INFRINGEMENT:** If Equipment furnished by Company hereunder is held to constitute an infringement of any intellectual property or violation of any trade secret and its use is enjoined, Company, within reasonable time and at its own expense, will at its option either (i) secure for Buyer the right to continue using such Equipment by suspension of the injunction or by procuring for Buyer a license or otherwise, (ii) replace such Equipment with non-infringing Equipment, (iii) modify such Equipment so that it becomes non-infringing, or (iv) remove such Equipment and refund the sums paid therefor. The foregoing states the sole and exclusive liability of Company with respect to any intellectual property infringement or trade secret violation. This Section shall not apply to any Equipment or any part hereof manufactured to Buyer's design. As for such equipment or part, Company assumes no liability for any infringement whatsoever, and Buyer shall indemnify Company against all claims of infringement arising out of Company's manufacture of equipment in accordance with Buyer's specifications. Notwithstanding anything to the contrary stated herein, Company retains ownership of its intellectual property and no license to Company's intellectual property is granted by virtue of this Agreement, except as necessary for Buyer to use any deliverables and/or services provided for herein.

8. **LIMITED WARRANTY:**

8.1 General Warranty Period. Company warrants that all work performed by its personnel and all Equipment manufactured in its facilities will be free from defects in materials and workmanship for a period not to exceed one (1) year from the date of shipment, F.O.B. factory term (the "**General Warranty Period**"). This limited warranty extends only to the original Buyer from Company. If any defect in workmanship or Equipment arises during this General Warranty Period, Buyer must promptly notify Company and return the allegedly defective Equipment to Company's factory, freight prepaid. Upon receipt, Company reserves the right to inspect and verify the defect. Company, in its sole discretion, may repair or replace the defective Equipment or refund the purchase price. For components or parts of the Equipment manufactured by third-party vendors, suppliers, or subcontractors, Buyer accepts the benefit, if any, of any applicable warranties provided by those third parties in lieu of any warranty, obligation or liability of Company.

8.2 Special Warranty Period. Unless otherwise stated, air capacities, heating output capacities and cooling output capacities are warranted for a period of ninety (90) days from the date of startup, but in no event longer than six (6) months from the date of shipment, F.O.B. factory term ("**Special Warranty Period**"); provided, so long as the Equipment is properly installed, maintained, used for its intended purpose and tested in accordance with Company's instructions during this period. If any nonconformity arises within this Special Warranty period, Buyer must promptly notify Company, return the allegedly nonconforming Equipment, freight prepaid, and to allow Company the opportunity to inspect and verify the nonconformity. At its discretion, Company may repair or replace the nonconforming Equipment, F.O.B. factory term, or refund the purchase price.

8.3 Limitations on Warranties; Conditions for Enforcement. The provisions, and in particular the technical and numerical provisions relating to the Equipment supplied hereunder, which appear in this Agreement or any offer, quotation, specifications, drawings, proposal documents, sales literature and any other documents are descriptive only and are not guarantees or warranties, nor are they guaranteed or warranted unless expressly stated so to be. Buyer's right to enforce the warranties set forth herein is conditioned upon (i) full payment for the Equipment, (ii) proper installation, (iii) proper maintenance, (iv) use for its intended purpose, and (v) use in accordance with Company's instructions. **THE WARRANTIES SET FORTH HEREIN ARE CONDITIONED UPON BUYER'S TIMELY NOTIFICATION AND SHALL BE VOID IF EQUIPMENT IS NOT PROPERLY INSTALLED, MAINTAINED OR USED AS INTENDED, OR IF THE EQUIPMENT IS DAMAGED FROM IMPROPER HANDLING, STORAGE, ABUSE, MISUSE OR ALTERATION OF THE EQUIPMENT IN ANY MANNER.**

9. **WARRANTY DISCLAIMER.** THIS LIMITED WARRANTY CONSTITUTES BUYER'S EXCLUSIVE REMEDY AND IS GIVEN IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN

THIS SECTION, COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHERE ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE OR OTHERWISE.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN NO EVENT AND UNDER NO CIRCUMSTANCE, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, SHALL COMPANY OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR (A) ANY BACK CHARGES OR EXPENDITURES INCURRED BY BUYER FOR ANY PURPOSE UNLESS EXPRESSLY AUTHORIZED IN WRITING BY COMPANY, OR (B) INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER THE THEORY BE BREACH OF THIS OR ANY OTHER WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. FAILURE BY BUYER TO PAY COMPANY'S INVOICES VOIDS ALL WARRANTIES PROVIDED FOR HEREIN. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY COMPANY, OR ANY OTHER INDIVIDUAL OR ENTITY ON COMPANY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED.

10. **INDEMNIFICATION:** Buyer shall indemnify, defend, and hold harmless Company and its respective directors, officers, employees, agents, sureties, subcontractors and suppliers from and against any and all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of action, including without limitation administrative and legal costs and reasonable attorney's fees, involving the following: (a) injury or death to any person, or damage to or destruction of any property (including loss of use thereof), except to the extent caused by the sole negligence or intentional misconduct of Company; and (b) any failure of Buyer to comply with the requirements of this Agreement. Unless otherwise stated, all rights and remedies provided herein are cumulative, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

11. **LIMITATION OF LIABILITY:** IN NO EVENT SHALL COMPANY OR ANY OF ITS REPRESENTATIVES BE LIABLE CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO COMPANY UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF COMPANY'S REMEDIES HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE.

12. **COMPLIANCE WITH LAWS:** Buyer shall at all times comply with all laws applicable to this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Equipment. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase or use of the Equipment and (b) not engage in any activity or transaction involving the Equipment, by way of shipment, use, or otherwise, that violates any law.

13. **TERMINATION:** In addition to any remedies that may be provided under this Agreement, Company may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

14. **RELATIONSHIP OF THE PARTIES:** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

15. **GOVERNING LAW; EXCLUSIVE JURISDICTION:** This Agreement shall be subject to, governed by and construed under the laws of the State of Nebraska in the United States of America without respect to its conflict of laws principles. The Parties agree to submit to the personal jurisdiction of a state court located in Hastings, Adams County, Nebraska or the United States District Court for the State of Nebraska for any actions not subject to the arbitration provisions herein. Buyer hereby consents to and waives

all objection to the exclusive jurisdiction of the federal and state courts in the State of Nebraska and venue therein to resolve any controversy or claim of whatever nature arising out of or relating to this Agreement; provided, Company retains the right to bring legal proceedings in any jurisdiction where we believe any infringement is taking place or originating.

16. **NOTICE:** Any notice required to be given by any Party to another Party shall be in writing, shall be addressed to the appropriate Party, and shall be effected by email at the addresses indicated below, by delivery of notice personally, or to the attention of such other person or to such other address as the recipient party has specified by prior written notice to the sending party. Notices shall be deemed received when received in person or when delivered to the email address set forth on the signature page hereto.

If to Company: HASTINGS HVAC, INC.
Attn: Shawn D Hartmann, President
3606 Yost Avenue
Hastings, NE 68901
Email: shawnhartmann@hastingshvac.com

With a copy to:
(which shall not
constitute notice): SMITH PAULEY LLP
Attn: Daniel C. Pauley
3555 Farnam Street, Suite 1000
Omaha, NE 68131
Email: dpauley@smithpauley.com

If to Buyer: Buyer's mailing address and email address set forth on the signature page hereto.

17. **WAIVER:** No waiver of any terms of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Company's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. Any conflicting or additional terms or conditions set forth by Buyer in a purchase order or other document shall not be binding, and Company hereby expressly objects thereto.

18. **NO THIRD-PARTY BENEFICIARIES:** This Agreement benefits solely the Parties to this Agreement. Nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

19. **ASSIGNMENT; BINDING EFFECT:** Buyer may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Company. Company may assign without Buyer's consent any of its rights or delegate any of its obligations to any affiliate or other individual or entity acquiring all or substantially all of Company's assets. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and assigns.

20. **AMENDMENT AND MODIFICATION:** Company reserve the right to update this Agreement from time to time at our discretion. No amendment or modification shall be binding on Company unless signed by its officer or authorized employee. Any updated version will be effective immediately upon posting, unless otherwise specified. Any updated version of this Agreement will be effective immediately upon posting, unless otherwise specified.

21. **SEVERABILITY; INTERPRETATION:** If any term or provision of this Agreement are invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidates or renders unenforceable such term or provision in any other jurisdiction. This Agreement shall be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein, as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be..

22. **COUNTERPARTS:** This Agreement may be signed in any number of counterparts, any of which may be executed or transmitted by facsimile or other electronic method, and each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

23. **SURVIVAL:** These Terms shall be in effect from date of signing and continue unless cancelled by either Party; provided, however, the obligations contained herein which, by their terms, survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement for any reason.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereunder have made and entered into this Agreement as of the Effective Date set forth below.

BUYER:

Signature: _____

Printed Name: _____

Mailing Address: _____

Email Address: _____

Telephone Number: _____

AGREED AND ACCEPTED (as of the Effective Date):

COMPANY:

Hastings HVAC, Inc., a Nebraska corporation

By: _____

Printed Name: Shawn D. Hartmann

Title: President

Principal Office Address: 3606 Yost Avenue
Hastings, NE 68901

Email Address: shawnhartmann@hastingshvac.com