

ADDENDUM 1
TMI Climate Solutions, Inc. Terms and Conditions

1. **Applicability.**
 - (a) This purchase order is an offer by TMI Climate Solutions, Inc. (the "Buyer") for the purchase of the goods specified on the face of this purchase order (the "Goods") from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the purchase order, the "Order"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order and expressly excludes any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. This Order form may be used in connection with a formal written agreement between the parties and, in such case, the contract terms of such agreement shall prevail to the extent that they are inconsistent with the terms contained herein, unless otherwise agreed upon in writing.
 - (b) These Terms apply to any repaired or replacement Goods provided by Seller hereunder.
 - (c) Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.
2. **Acceptance.** This Order is not binding on Buyer until Seller accepts the Order in writing or starts to perform in accordance with the Order. Acceptance of this Order or shipment of any part of it will constitute an agreement to all its terms as to specifications, delivery, and prices. Buyer may withdraw the Order at any time before it is accepted by Seller.
3. **Delivery Date.** Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Goods is of the essence and Buyer requires 100% on-time delivery of all Goods and services contained herein. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order in whole or in part immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.
4. **Quantity.** Goods delivered in excess of the amount specified in this Order may be refused and returned at Seller's expense.
5. **Delivery Location.** All Goods shall be delivered to the address specified in this Order (the "Delivery Location") during Buyer's normal business hours or as otherwise instructed by Buyer.
6. **Shipping Terms.** Delivery shall be made as outlined in the TMI Purchase Order. Packing slips must accompany all shipments. Back orders must be prepaid when less than a minimum freight shipment. Buyer reserves the right to cancel any portion of this Order if shipment is not made as specified herein.

7. **Title and Risk of Loss.** Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.
8. **Packaging.** All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. No charge will be allowed for packing, caring, drayage or storage without Buyer's written permission. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.
9. **Changes.** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, Delivery Date, Delivery Location and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.
10. **Inspection and Rejection of Nonconforming Goods.** Payment for the goods under this Order shall not constitute acceptance thereof. The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. Defective Goods or Goods not in accordance with Buyer's specifications will be held for Seller's instructions and at Seller's risk and expense. If instructions are not received within fifteen (15) days after notice of rejection, Goods may be returned at Seller's expense. No goods returned as defective shall be replaced without Buyer's written permission. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 21. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.
11. **Price.** The price of the Goods is the price stated in the Order (the "Price"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.
12. **Payment Terms.** Seller shall issue an invoice to Buyer on or at any time after the completion of delivery and only in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller within [45] days after Buyer's receipt of such goods, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. If material furnished by Buyer in connection with this Order on other than a charge basis, Seller shall be solely responsible for all such material.
13. **Setoff.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
14. **Specifications.**

- (a) Fan(s) shall conform to AMCA standards 210.1985 (ANSI/AMCA 210), ANCA 99, AS 2401.66 and OSHA standards.
 - (b) Coils shall comply with ARI Standard 410-91, ASHRAE 33 standard for design, test and rating of industrial coils, ANSI, ASTM and OSHA standards.
 - (c) Insulation shall comply with ASTM E84 Specification for combustibility or insulating material, flame spread and smoke development: 20 for flame spread and 20 for smoke as part of this contract.
 - (d) All components shall be in compliance with NEMA, JIG and NEC standards. Electrical devices shall be UL listed and labeled.
 - (e) All metal shall comply with ASTM standards A527-90 and A653 G90 and G115 grade steel.
 - (f) All material shall be within cutting tolerances or +/- 1/16" on width and length +/- 1/8" on diagonal.
15. **Warranties.** Seller warrants to Buyer and to Buyer's customers that all Goods delivered hereunder will: (a) be free from any defects in workmanship, material and design; (b) conform to the quality requirements and applicable specifications contained in the Order; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; (f) be in compliance with all applicable laws, rules and regulations, including all environmental, health and safety regulations of the United States and any other country of intended use of the Goods; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights, except that Seller does not warrant against infringement by reason of the use thereof in combination with other materials or in the operation of any process not previously approved by Seller. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.
16. **General Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Buyer's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Goods purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.
17. **Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or

misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

18. **Limit on Purchaser's Liability-Statute of Limitations.** In no event shall Buyer be liable for anticipated profits or for any incidental, exemplary, punitive or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from any Order or other agreement or from the performance or breach thereof shall in no case exceed the price allocable to the Goods or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the Goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.
19. **Insurance.** Seller will procure and maintain (1) comprehensive general liability insurance, including products and completed operation liability, contractual liability, bodily injury and property damage coverages, with limits not less than \$2 million per occurrence, (2) automobile insurance coverage with limits of not less than \$1 million per occurrence, (3) worker's compensation insurance in such form and amount as required by applicable law, (4) all risk property insurance covering the replacement value of all Goods ordered by Purchaser hereunder and (5) such other insurance relating to Seller's business operations and employees as is commercially reasonable and as may be required by applicable law. Buyer shall be named as a "loss payee" on all property insurance with respect to all Goods paid for and owned by Buyer and an "additional insured" on all liability insurance. The policies for such insurance shall include an agreement by the insurer not to cancel or materially alter its coverage except upon thirty (30) days prior written notice to Buyer, and shall state that coverages provided shall be primary and non-contributing with any similar insurance which may be maintained or provided by Buyer. Seller shall, upon Buyer's request, promptly deliver policies and/or certificates of insurance evidencing the above coverages and conditions to Buyer. All insurance shall include contractual liability insurance covering Seller's obligations to indemnify Buyer as required by these Terms.
20. **Compliance with Law.** Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances, including but not limited to the Fair Labor Standards Act of 1938, as amended, and all invoices issued hereunder shall certify such compliance. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods.
21. **Cancellation or Termination:**
 - (a) Buyer reserves the right to cancel all or any part or the undelivered portion of this Order if Seller does not make deliveries as provided in this Order or if Seller breaches any of the terms hereof, including the warranties of Seller.
 - (b) Buyer shall have the right to terminate this Order or any part thereof in the event of the happening of any of the following with respect to the Seller: insolvency; filing of a voluntary petition in bankruptcy; filing of an involuntary petition to have the Seller declared bankrupt, provided it is not vacated within thirty (30) of the date of filing; appointment of a receiver or a trustee, provided such appointment is not vacated with

thirty (30) days from the date of such appointment; the execution of an assignment for the benefit of Seller's creditors.

(1) The provision of this condition shall not limit or affect the right of the Purchaser to terminate this Order for the default of the Seller.

(2) Seller agrees that whenever practicable, it will include a similar condition in all of its commitments made hereunder.]

(c) The remedies provided in this section shall be cumulative and additional to any other of future remedies provided in law or equity.

22. **Waiver.** No waiver or exception to any of the terms, conditions, or provisions contained in this Order shall be valid unless specifically agreed to in writing. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23. **Confidential Information.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure as evidenced by written documentation; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party not subject to confidentiality obligations.

24. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"), including acts of God, acts of governmental authority, acts of public enemy, war, fires, floods, epidemics, strikes, and labor troubles. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than [5] business days, Buyer may terminate this Order immediately by giving written notice to Seller. In the event that Buyer experiences an interruption in its business in whole or in part due to a Force Majeure Event, Buyer shall have the option of canceling any undelivered portion of the Order in whole or in part.

25. **Assignment.** Seller shall not assign, transfer, delegate or subcontract this Order or any of its rights or obligations hereunder without the written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. Such consent shall not release Seller from its obligations and liabilities.

26. **Inspection Rights.** Upon reasonable advance notice, Seller shall allow the Buyer, Buyer's representatives, and Buyer's customer or such customer's representatives when accompanied by the Buyer, to inspect the place and method of production of the Goods to confirm that it meets the Buyer's specifications.
27. **Amendment and Modification.** No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.
28. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order 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. No relationship of exclusivity shall be construed from this Order.
29. **No Third-Party Beneficiaries.** This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
30. **Governing Law.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Missouri without giving effect to any choice or conflict of law provision or rule.
31. **Severability.** If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
32. **Nondiscrimination in Employment:**
 - (1) **Buyer and Seller shall abide by the applicable requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a) which prohibit discrimination against qualified veterans and individuals with disabilities and discrimination against individuals based on race, color, religion, sex or national origin. These regulations also require that covered federal government contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, veteran status or disability.**
 - (2) The Buyer will, in all solicitations or advancements for employees placed by or on behalf of the Buyer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - (3) The Buyer will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Buyer's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Buyer will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Buyer will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Buyer's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Buyer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Buyer will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Buyer will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Buyer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Buyer may request the United States to enter into such litigation to protect the interests of the United States.