

CLIMATECRAFT, INC. TERMS AND CONDITIONS

- Orders shall not be binding upon ClimateCraft, Inc. ("CC") unless accepted by an authorized employee of CC in Oklahoma City, OK. No distributor, sales representative or any other person or entity (except authorized employees of CC in Oklahoma City, OK) has any authority whatsoever to bind CC to any representation or agreement of any kind.
- CC does not build items to plans and specifications. CC agrees to furnish only the items as described in CC's acknowledgement unless CC has previously received and accepted, in writing, approved submittals from Purchaser.
- Prices acknowledged are firm only if Purchaser releases the goods covered by this order for immediate production by CC within sixty (60) days from the date of Purchaser's initial offer to purchase and for shipment by CC within CC's estimated shipping date unless otherwise agreed to in writing by CC. If Purchaser does not meet the terms and conditions of this paragraph, the prices are subject to escalation to those prices in effect at time of shipment without notice to Purchaser.
- All prices are F.O.B. CC's factory in Oklahoma City, OK, unless otherwise agreed by CC in writing; and, all payments and prices shall be in U.S.A. dollars.
- If goods are released for production but CC is prevented by the Purchaser from shipping upon completion or by CC's estimated shipping date, whichever is later, CC may at its option, in addition to all other remedies, invoice Purchaser for the goods to be payable within thirty (30) days and store the goods at Purchaser's sole expense.
- Title to and risk of loss of the goods passes to the Purchaser F.O.B. CC's factory in Oklahoma City, OK.
- Disclaimer:** It is expressly understood that unless a statement is specifically identified as a warranty, statements made by CC or its representatives relating to CC's products, whether oral, written or contained in any quote, sales literature, catalog, or agreement, are not express warranties and do not form a part of the basis of the bargain, but are merely CC's opinion or commendation of CC's products. **EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THERE IS NO EXPRESS WARRANTY AS TO ANY OF CC'S PRODUCTS. CC MAKES NO WARRANTY OF MERCHANTABILITY OF THE GOODS OR OF THE FITNESS OF THE GOODS FOR ANY PARTICULAR PURPOSE.**
- Grant of Limited Express Warranty: CC warrants CC products purchased and retained in the United States of American and Canada to be free from defects in material and workmanship under normal use and maintenance as follows: (a) All complete custom air handlers built or sold by CC for twelve (12) months from date of unit start-up or eighteen (18) months from date of shipment (from factory), whichever comes first; and (b) Repair and replacement parts, which are not supplied under warranty, for ninety (90) days from date of shipment from the CC Factory. Extended warranties on motors or other parts are available for an additional price; however, no extended warranty shall apply to any order unless such extended warranty is specifically referenced in CC's acknowledgement. Any extended warranty is subject to the provisions, limitations and exclusions of these terms and conditions.
All parts must be returned to CC's factory in OKC, OK, freight prepaid, no later than sixty (60) days after the date of the failure of the part. If CC determines the part to be defective and within CC's Limited Express Warranty, CC shall, when such part has been either replaced or repaired, return such a factory recognized dealer, contractor or service organization, F.O. B. CC's factory, Oklahoma City, OK, freight prepaid. The warranty on any part repaired or replaced under warranty expires at the end of the original warranty period. For information and warranty service contact: ClimateCraft, Inc., Customer Service, (405) 415-9230.
This warranty does not apply to, and CC is not responsible for: (a) air filters, fuses, oil; (b) products relocated after initial installation; (c) any portion of any system that is not supplied by CC; regardless of the cause of the failure of such portion or component; (d) products on which the unit tags have been removed or defaced; (e) products on which payment to CC is or has been in default; (f) products which have defects or damage which result from improper installation, wiring, electrical imbalance characteristics or maintenance or are caused by accident, misuse or abuse, fire, flood, alteration or mis-application of the product; (g) products which have defects or damage which result from a contaminated or corrosive air or liquid supply, and operation at abnormal temperatures; (i) mold, fungus, or bacteria damage; (j)corrosions or abrasion; (k) products manufactured or supplied by others; (l) products which have been subjected to misuse, negligence or accidents; (m) products which have been operated in a manner contrary to CC's printed instructions; (n) products which have defects, damage or insufficient performance as a result of insufficient or incorrect system design or the improper application of CC's products; or (o) any damages arising in connection with the assembly of any air handlers sold in parts or segments rather than as complete air handler units.
CC is not responsible for: (a) the costs of labor, materials or service incurred in removal of the defective part or in obtaining and replacing the new or repaired part; or (b) transportation costs of the defective part from the installation site to CC or of the return of any part not covered by CC's Limited Express Warranty.
Limitation: This Limited Express Warranty is given in lieu of all other warranties. If, notwithstanding the disclaimers contained herein, it is determined that other warranties exist, any such express or implied warranties, including, without limitation, any implied warranties of fitness for particular purpose and merchantability shall be limited to the duration of the Limited Express Warranty.
- LIMITATION OF REMEDIES.** In the event of a breach of the Limited Express Warranty, CC will only be obligated at CC's option to repair the failed part or unit or to furnish a new or rebuilt part or unit in exchange for the part or unit, which has failed. If after written notice to CC's factory in OKC, OK of each defect, malfunction or other failure and a reasonable number of attempts by CC to correct the defect, malfunction or other failure and the remedy fails of its essential purpose, CC shall refund the purchase price paid to CC in exchange for the return of the sold good(s). Said refund shall be the maximum liability of CC. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY OF THE BUYER AGAINST CC FOR BREACH OF CONTRACT, FOR THE BREACH OF ANY WARRANTY OR FOR CC'S NEGLIGENCE OR IN STRICT LIABILITY.
- LIMITATION OF LIABILITIES.**
CC shall have no liability if CC's performance is delayed for any reason or is prevented to any extent by any event such as, but not limited to, any war, civil unrest, government restrictions or restraints, strikes or work stoppages, fire, flood, accident, allocation, shortage of transportation, fuel, material, or labor, acts of God or any other reason beyond the sole control of CC. **CC EXPRESSLY DISCLAIMS AND EXCLUDES ANY LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGE IN CONTRACT, FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, OR IN TORT, WHETHER FOR NEGLIGENCE OR AS STRICT LIABILITY, CC MAKES NO WARRANTY AGAINST LATENT DEFECTS.**
- CC shall have no system design or application responsibility, or responsibility for mold, fungus or bacteria, to Purchaser or any other third party.
- All sale, goods and services, use, excise, value added, transportation, privilege, occupational consumption, storage, document, transaction or other taxes which may be levied by any taxing authority as a result of this transaction shall be paid by the Purchaser.
- Unless otherwise agreed to in writing by CC, any technical data furnished in conjunction with this order and not obtainable from another source shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate this order.
- CC shall have no liability or other obligation hereunder, if CC's performance is delayed for any reason or is prevented to any extent by any event such as, but not limited to any act of God, strike or work stoppage, fire, flood, accident, allocation, or other controls of Government authorities, shortage of transportation, fuel, material or labor, or any other cause beyond CC's sole control. Any shipping date stated by CC is CC's best estimate but CC makes no guarantee of shipment by any such date and shall have no liability or other obligation for failure to ship on such date, regardless of cause.
- Payment terms are net thirty (30) days from date of shipment on approved credit. One and one-half percent (1 1/2%) per month (18% annual rate) may be charged on past due accounts or the highest rate permitted by applicable law, whichever lesser. In the event the account is placed for collection, Purchaser shall be responsible for all reasonable attorneys fees or costs on a solicitor and client basis, plus all other costs and expenses incurred by CC in securing payment.
- Purchaser shall not cancel the contract without prior written consent of CC. In the event Purchaser cancels the contract with the prior written consent of CC after the Purchaser's offer to purchase is received and acknowledged in writing, CC shall be entitled to receive from Purchaser CC's costs incurred to time of cancellation plus a reasonable allowance for overhead and profit.
- Purchaser shall not assign any of its interest or rights under this agreement without written consent of CC. Any Purchaser of any air handlers sold in parts or segments rather than as complete air handler units agrees to indemnify, defend and hold CC harmless from any claim or damages arising in connection with the assembly of such air handlers that are sold in parts or segments.
- CC will protect all its lien rights. CC will not furnish lien waivers or releases until CC receives payment, in full, at its office in Oklahoma City, OK from Purchaser for the goods covered by this order. There is no authorized retainage for any reason.
- This Agreement shall be construed, and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Oklahoma. If it shall be found that any portion of this agreement violates any particular law of the United States or any state in the United States having jurisdiction or, if applicable, any law of Canada or any province or territory in Canada having jurisdiction, such portion of the agreement shall be of no force and effect in that political unit, division or subdivision in which they are illegal or unenforceable and the agreement shall be treated as if such portion or portions had not been inserted. In the event that any dispute or disagreement in connection with any order should arise or exist between Purchaser and CC, jurisdiction and venue for any legal action shall be, if CC so elects, exclusively in the state or federal courts in Oklahoma County, OK. The statute of limitations on any claim of the Purchaser against CC shall be one (1) year from the date the cause of action accrues.
- Without regard to any other agreement, all obligations of Purchaser to CC shall become immediately due and payable if Purchaser becomes insolvent or if Purchaser does not make any payment when due or breaches any other agreement or fails to perform any obligation.
- All orders are expressly limited and made conditional upon acceptance by Purchaser of the terms and conditions set forth above without change. There shall be no understandings, agreements, or obligations (outside these terms and conditions) unless specifically set forth in writing and accepted by signature of an authorized representative of CC in Oklahoma City, OK.
- Installation of additional controls for turning individual fans on and off to improve efficiency, or altering individual fan speeds to improve efficiency, is not authorized by ClimateCraft. This is not permitted by ClimateCraft's license with Huntair for fan array technology and may subject the end user to claims of patent infringement.
- The parties hereto have requested that these presents and all judicial proceedings relating thereto be drafted in English. Les parties aux presentes ont demande a ce que les presentes et toutes procedures, judiciaires y afferentes soient redigees en anglais.