thybar CORPORATION

Terms & Conditions

Acceptance and Prices - This Quotation is subject to acceptance within forty-five days from the date, and the prices are subject to change without notice prior to acceptance by Buyer (as listed in the attached Quotation). Following acceptance by Buyer, the prices stated will be increased by the percentage increase in list prices from those effective on the date of order receipt to those effective on the date of shipment unless prices are stated to be firm on the face of this Quotation and the conditions of the firm price Quotation for release for immediate production and shipment are met. Any delay in shipment caused by Buyer's actions will subject prices to increase equal to the percentage increase in list prices during that period of delay. In no event will prices be decreased. Acceptance of orders for Thybar Corporation, an Illinois corporation (the "Company") shall be made solely at its manufacturing facilities.

Performance - The Company shall be obligated to furnish only the Product(s) described in the Company submittal data (if such data is issued in connection with this order), the duty to perform under any order on the part of the company and the price thereof is subject to the approval of its Credit Department and is also contingent upon strikes, accidents, fires, the inability to procure materials from the usual sources of supply, the requirements of the United States Government (through the use of priorities or preference or in any other manner) that the Company diverts either the material or the finished product to the direct or indirect benefit of the Government, or upon any like or unlike cause beyond the control of the Government, or upon any like or unlike cause beyond the control of the Company. Upon disapproval of the Credit Department or upon the occurrence of any such event as aforesaid, the Company may delay performance or, at its option, renegotiate prices and terms and conditions of sale with the Buyer. If the Company elects to renegotiate and the Company and the Buyer are unable to agree on revised prices or terms, the order shall be canceled without any liability.

Taxes - To the price and terms quoted, add any manufacturer's gross receipts, sales, or use tax, either Federal, State, or Local, payable on the transaction under any applicable statute.

Warranty and Liability - The Company warrants for a period of 12 months from the date of shipment (the "Warranty Period") that the Company products covered by this order (the "Products") (1) are free from defects in material and manufacture and (2) have the capacities and ratings set forth in the Company's catalogs and bulletins; provided, that no warranty is made against Product's corrosion, erosion, deterioration, improper installation, modification of the original condition by Buyer, and unintended use. In addition, the Company must receive written notice of any alleged defect during the Warranty Period for any Company warranty to apply. The Company's obligations and liabilities under this warranty are limited to furnishing f.o.b. factory or warehouse at a Company designated shipping point (or port of export for shipments outside the conterminous United States) replacement equipment (or at the option of the Company parts therefor) for Company Products not conforming to this warranty and which have been returned to the manufacturer. No liability whatsoever shall be attached to the Company until said Products have been paid for and then said liability shall be limited to the purchase price of the Product shown to be defective, as further detailed below.

The Company's sole obligation and Buyer's exclusive remedy under this warranty shall be, at the Company's sole option, either (1) repair of the defective Products, (2) replacement of the defective Products with new or refurbished products of equal or greater functionality, or (3) refund of the purchase price paid for the defective Products, pro-rated based on the portion of the Warranty Period elapsed.

The above warranty applies to Company curb products produced by Company

For Company air-handler products and units, the Company follows a warranty of 12 months from initial start-up or 18 months from shipment. It does not duplicate the warranty. The warranty covers manufacturer's defects in the unit casing, which begins either 12 months from unit start-up or 18 months from unit manufacture – whichever occurs first.

The above warranty does not apply to Company products that contain a component manufactured by a company other than Company. In the event a component not manufactured by Company fails, Buyer's sole remedy will be under the warranty provided by the component manufacturer. Company will not be responsible for any related costs such as transportation or labor.

The Company makes certain further warranty protection available on an optional extra- cost basis. Any further warranty must be in writing and signed by an officer of the Company.

Warranty Disclaimer - The above warranties are given in lieu of all other warranties all other warranties, express or implied, including: **THE IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT**, and any implied warranties otherwise arising from course of dealing of trade.

Liability Disclaimer - Any modification to shipped Products requiring additional field material or labor charges will be paid only by first obtaining written prior authorization from the Company. In no event shall the Company be liable for any incidental or consequential damages resulting from the use, misuse, or inability to use the Product. This exclusion applies regardless of whether such damages are sought based on breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory.

Limitation on Liability - The Company's total liability for any direct claims arising out of or related to the Products, whether based on contract, warranty, tort (including negligence), strict liability, product liability, or any other legal theory, shall not exceed the purchase price paid by Buyer for the specific Products giving rise to the claim. The limitations set forth in this paragraph shall survive the termination of any agreement between the Company and Buyer.

Patent Indemnity - The Company shall protect and indemnify the Buyer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the articles or material delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, the Company shall promptly be notified and given full opportunity to negotiate a settlement. The Company does not warrant against infringement by reason of the Buyer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, the Buyer agrees reasonably to cooperate with the Company. All parties concerned shall be entitled, in connection with any proceeding under the provisions of this Article, to be represented by counsel at their own expense.

Buyer's Indemnity - Buyer shall defend, indemnify, and hold harmless the Company, its affiliates, and their respective officers, directors, employees, agents, successors, and assigns from and against any and all claims, demands, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and court costs) arising out of or related to: (1) misuse of the Product(s) by Buyer, (2) unauthorized repair of Product(s), (3) claims arising from the integration, incorporation, or use of the Products in combination with other products, systems, or equipment not supplied by the Company, (4) claims arising from Buyer's resale of the Product(s), or (5) any breach of these Terms and Conditions.

Shipment Dates - Shipment dates are estimates only. No contract will be made to ship in a specified time unless in writing, signed by an officer of the Company. Shipments shall be f.o.b. factory or warehouse at named shipping point with title passing to the Buyer upon delivery to the carrier by the Company.

Returns - The Products must not be returned except by permission of the Company, and when so returned will be subject to discount.

Cancellation - If, following acceptance of this Quotation by the Buyer, all or any portion of this order is canceled by the Buyer without default on the part of the Company or without the Company's written consent, the Buyer shall be liable to the Company for cancellation charges including, but not limited to, the Company's incurred costs and such profit as would have been realized by the Company from the transaction had the agreement not been breached by the Buyer.

Payment - Payment terms for Products shipped hereunder will be net 30 days unless contrary terms appear on the face hereof or unless otherwise expressly agreed to in writing by the Company. The Company reserves the right to add to any account outstanding for more than 30 days a service charge of 1~1/2 % of the principal amount due at the end of each month, or the maximum allowable legal interest rate, if a lesser amount.

Entire Agreement - This Quotation is conditioned upon the acceptance of these Terms and Conditions. These Terms and Conditions shall apply and are incorporated into every PO from Buyer to Company until superseded by revisions to these Terms and Conditions issued by Company. Company will have no responsibility to provide notice of its issuance of such revisions. Acceptance by a Buyer of a Quotation shall be limited to these Terms and Conditions and the Company expressly rejects any additional or different terms stated by Buyer in relation to any prior to future order, quotation or other expression in relation to the subject matter hereof. No other terms and conditions provided by Buyer, including, without limitation, Buyer's standard printed terms or master terms on Buyer's purchase order, Quotation acceptance, invoice or otherwise will have any application to a PO, Quotation, or any transaction occurring pursuant hereto, unless specifically accepted in writing by the Company. Buyer will comply with these Terms and Conditions unless Buyer takes written exception within three business days of acceptance of this Quotation or issuance of a related PO.

Governing Law - These Terms and Conditions shall be governed by and construed in accordance with the laws of Illinois, without regard to its conflict of law principles.

Jurisdiction and Venue - Any legal action or proceeding arising out of or related to these Terms and Conditions or the products shall be brought exclusively in the state or federal courts located in DuPage County, Illinois, and each party irrevocably consents to the jurisdiction and venue of such courts.

LIQUIDATED DAMAGES DISCLAIMER. AT NO TIME DOES COMPANY INTEND TO AGREE OR AGREE TO BE BOUND BY ANY LIQUIDATED DAMAGES PROVISION FOUND IN ANY BUYER TERMS AND CONDITIONS UNLESS COMPANY HAS SPECIFICALLY AGREED IN WRITING IN A FULLY-EXECUTED AND NEGOTIATED MASTER SERVICE AGREEMENT.

Modification - These Terms and Conditions and the attached Quotation may be modified only by a written instrument signed by authorized representatives of the Company and Buyer. No quotation, purchase order, acknowledgment, or other document issued by Buyer shall modify these Terms and Conditions unless expressly agreed to in writing by the Company.