

## **SMI Evaporative Solutions Terms and Conditions of Sale (July 1, 2016):**

**These SMI Evaporative Solutions Terms and Conditions of Sale are incorporated by reference into every quotation, acknowledgement and invoice issued by the SMI Evaporative Solutions division of Snow Machines, Inc. and shall be the only terms and conditions that will apply to the sale of products and/or services by the SMI Evaporative Solutions division of Snow Machines, Inc.:**

**1. ACCEPTANCE.** This Quotation is an offer by the SMI Evaporative Solutions division of Snow Machines, Inc. (hereinafter "Seller") for the sale of goods and/or services listed in the Quotation (the "Product") and is governed by these Terms and Conditions of Sale ("Terms"). Any of the following acts by Buyer shall constitute its acceptance of the Quotation and these Terms in their entirety: (i) acknowledging the Quotation; (ii) issuing a purchase order for the Product(s) on the same or substantially the same terms as reflected on the face of the Quotation; (iii) accepting delivery of the Product(s); or (iii) by other conduct which fairly recognizes the existence of a contract for the purchase and sale of the Product(s). Once accepted in accordance with the foregoing, the Quotation, these Terms, any documents referenced therein, and any other documents signed by an authorized representatives of each Party, shall constitute the "Agreement." Neither the Quotation, any acknowledgement document or other document issued by Seller nor Seller's manufacture or delivery of any Product shall constitute an acceptance of any terms and conditions attached to or incorporated into any purchase order or other document issued by Buyer, and any such general terms and conditions issued by Buyer are specifically excluded and are not incorporated into this Agreement. Seller hereby objects to any additional or different terms proposed by Buyer, whether in its purchase orders, RFQ materials or otherwise, as unacceptable to Seller, and such proposed additional or different terms shall not become part of the contract between Seller and Buyer and shall have no effect with respect to any purchases of Product(s) by Buyer. Seller's performance under any purchase order issued by Buyer is expressly limited to and conditioned upon Buyer's acceptance of the terms of the Quotation and these Terms exclusively.

**2. PRICING.** The price(s) for the Product(s) are listed in the Agreement and are based on shipment being made EXW Seller's Midland, Michigan facility (Incoterms 2010). In addition to the price of the Product(s) as stated in the Agreement, any and all taxes (not including any income or excess profit taxes) that may be imposed by any taxing authority, arising from the sale, delivery, or use of the goods and for which the Seller may be held responsible for collection or payment either on its own behalf or on behalf of the Buyer, shall be paid by the Buyer to Seller upon Seller's request.

**3. SHIPMENT, TITLE, RISK OF LOSS AND RIGHT OF REPOSSESSION.** Shipment dates are estimated and not guaranteed and are based upon Seller's prompt receipt of all information required for manufacture of the Product(s) or otherwise. Seller will use commercially reasonable efforts to ship the Product(s) on the date(s) specified in the Agreement, but shall not be liable for delays in shipment, unless any such delay is of unreasonable length and is entirely the fault of Seller. Unless otherwise stated in the Agreement, shipment shall be made EXW Seller's Midland, Michigan facility (Incoterms 2010). Title and the risk of loss of or damage to all Products sold will pass to Buyer upon delivery of the Products as determined by the Incoterms delivery term. Until the Product(s) has been paid for in full, Buyer, or any agent of Buyer or third party: (i) will hold the Product(s) subject to a security interest or lien in favor of Seller allowing for the right or re-possession by Seller to the extent permitted by applicable law, and (ii) will not alter, remove, destroy, or damage any identifying mark on the Product(s) or their packaging. Seller may take possession of the Product(s) under this provision at any time after payment for the Product(s) or any other payment owed to Seller has become due.

**4. INSPECTION.** The remedies afforded Buyer under paragraph 7 hereof entitled Limited Warranty and Remedies shall be exclusive for any non-conforming Product(s) but shall be unavailable to Buyer if Buyer inspected or reasonably should have inspected the Product(s) and could have discovered the non-conforming Product(s) upon such inspection.

**5. PAYMENT.** Unless otherwise stated in the Agreement, fifty percent (50%) of the total purchase price for the Product(s) shall be paid by Buyer in United States Dollars via electronic funds transfer at the time of Buyer's issuance of a

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purchase order or other acceptance of the Agreement, and the remaining 50% of the price for the Product(s) shall be paid, together with any and all other amounts to be paid by Buyer, including, without limitation, any freight and packaging costs, on "Net 30 days" basis from the date of delivery of the Product(s). In the event that Seller has reasonable doubt as to Buyer's credit worthiness, or in the event of a substantial risk of its claim to payment due to declining assets of the Buyer, or in the event that the Buyer is in arrears with respect to payment for Products, Seller may require advance payment or collateral from Buyer. If Buyer becomes delinquent in payment, Seller shall have the right, in addition to any other right it may have, to cancel any order of Buyer, to withhold further deliveries, and declare all unpaid amounts for any Product(s) previously delivered immediately due and payable. All amounts past due may be, in Seller's discretion, subject to an interest charge of 1.5% per month. To secure payment of the price payable under the Agreement and performance of all of Buyer's obligations under the Agreement, Buyer hereby: (a) grants to Seller a security interest in all Product(s); and (b) authorizes Buyer to file such financing statements and other documents, and agrees to execute such other documents and to do such other acts, as Seller may reasonably deem necessary or advisable to protect its rights in such Product(s). In the event Buyer breaches the terms or conditions of the Agreement, Seller shall have all the rights and remedies of a secured creditor under the Uniform Commercial Code. Seller is hereby granted a power of attorney on behalf of Buyer to execute all appropriate documents (including financing statements) to perfect and record such security interest.

**6. LABELING AND PACKAGING.** The Product(s) to be delivered hereunder shall be packaged and shipped as provided in the Agreement. In the absence of such a provision in the Agreement, the Product(s) shall be packaged in accordance with sound commercial practice. Notwithstanding anything to the contrary, unless otherwise stated in the Agreement, crating, marking, labeling, corrosion protection, and export or other special packaging costs are not included in the price(s) and will be an additional charge to the Buyer.

**7. LIMITED WARRANTY AND REMEDIES.** Unless otherwise set forth in the Agreement, Seller warrants for a period of six (6) months from the date of delivery to Buyer that the Product will be free from defects in material and workmanship and will conform to the applicable specifications as stipulated in the Agreement.

In the event that the Product(s) is non-conforming, as determined by Seller, Seller's sole liability to Buyer and Buyer's sole remedy under this warranty is limited to the replacement of the non-conforming Product(s); provided, however, that written notice that the Product(s) is potentially non-conforming must be given by Buyer to Seller within 14 days after the delivery of the Product(s) or, if Buyer's inspection of the Product(s) could not have uncovered the potential non-conformance, within 21 days after Buyer knew or reasonably should have known that the Product(s) was potentially non-conforming. Failure to timely provide the foregoing notice shall constitute a waiver by Buyer of any all claims that it may have had with respect to the Product(s). Transportation charges for the return of purportedly non-conforming Product(s) to Seller, should Seller request the same, and the shipment of replacement Product(s) to Buyer will be borne by Seller only if the Product(s) are returned in accordance with Seller's return procedures.

SPECIFICALLY EXCLUDED FROM THIS PARAGRAPH AND ANY WARRANTY ARE THE FOLLOWING, FOR WHICH SELLER SHALL HAVE NO LIABILITY WHATSOEVER: (i) damages or Product defects caused by unauthorized or improper installation, alteration, repair, maintenance (including failure to provide appropriate maintenance), handling or operation of the Product(s) by Buyer or any third party; (ii) damages caused by the failure of the Product(s) to comply with any applicable environmental, land use or other laws, statutes, regulations, rules, ordinances, guidelines, or permitting or other requirements, (iii) damages or Product defects caused by any equipment, component, system, or assembly not manufactured or sold by Seller and/or the integration, incorporation, interaction, connection, placement, or use of conforming Product in or with any such equipment, component, system, or assembly, or (iv) damages or Product defects attributable to or caused by: (a) misuse, neglect, accident, abuse, or vandalism or any transit related damage; (b) acts of God or insurrection; (c) normal wear and tear; (d) or any other acts that are beyond Seller's reasonable control.

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THE WARRANTIES SPECIFIED IN THIS SECTION 7 ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE REMEDIES OF THE BUYER SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR THIS LIMITATION WILL BE BINDING UPON SELLER UNLESS IN WRITING AND SIGNED BY A DULY AUTHORIZED OFFICER OF SELLER.

**8. TERMINATION.** Seller may terminate the Agreement as a result of Buyer's: (i) breach, threat to breach and/or repudiation of any representation, warranty or other term of the Agreement; (ii) making an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Buyer; (iii) request for accommodation from Seller, financial or otherwise, in order to meet its obligations under the Agreement; (iv) entering or offering to enter into a transaction that includes a sale of a substantial portion of its assets or a merger, sale or exchange of stock or other equity interests that would result in a change in control within the meaning of the Internal Revenue Code and regulations issued thereunder; or (v) financial or other condition that could, in Seller's sole judgment, endanger Buyer's ability to perform. Buyer may not terminate the Agreement only upon a material breach by Seller which remains uncured forty-five (45) days after Seller's receipt of written notice of such breach from Buyer or as otherwise agreed in writing by Seller. If this Agreement is terminated prior to delivery of the Product(s) for any reason, in addition to all other rights Seller may have hereunder or other at law or in equity, Buyer shall, within thirty (30) days, pay to Seller: (i) the contract price for all finished Product(s) manufactured prior to termination; (ii) the cost of all work in process (based upon the purchase price multiplied by percentage completion); (iii) the cost of all raw materials and components purchased by Seller in connection with the Agreement; (iv) all other costs incurred by Seller prior to termination directly connected with the Product(s) to be provided under the Agreement; and (v) Seller's costs for settling claims or disputes with its sub-contractors in connection with component parts, raw materials, or services related to the Product(s).

**9. EXCUSABLE DELAYS.** Seller shall not be liable for any failure to perform or delay in performance when due to delays caused by acts of God, compliance in good faith with any applicable foreign or domestic government regulation or order, fires, floods, windstorms, other natural disasters, riots, wars, labor disputes (including strikes or lockouts), inability to obtain power, components, materials, transportation, or equipment or any other cause beyond the reasonable control of Seller (each of the foregoing a "Force Majeure Event").

### **10. LIMITATION OF LIABILITIES.**

10.1 IN THE EVENT ANY REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE AND MONETARY DAMAGES MAY BE IMPOSED, SELLER'S LIABILITY, WHETHER FOUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR RESULTING FROM (I) THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, (II) THE DESIGN, MANUFACTURE, DELIVERY, SALE, REPAIR, REPLACEMENT OR USE OF PRODUCT(S), AND/OR (III) THE FURNISHING OF ANY SERVICE, SHALL NOT EXCEED ONE AND ONE-HALF TIMES THE TOTAL PRICE OF THE PRODUCT(S) AND/OR SERVICES AT ISSUE IN THE CLAIM, EXCEPT IN THE CASE OF SELLER'S GROSS NEGLIGENCE AND/OR WILLFUL AND INTENTIONAL MISCONDUCT.

10.2 IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE DAMAGES, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION EXPENSES, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, OR REMOVAL AND/OR REINSTALLATION COSTS.

10.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE RESPONSIBLE FOR, AND SHALL INCUR NO LIABILITY WITH RESPECT TO, THE FAILURE OF THE PRODUCT(S) TO

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COMPLY WITH ANY APPLICABLE ENVIRONMENTAL, LAND USE OR OTHER LAWS, STATUTES, REGULATIONS, RULES, ORDINANCES, GUIDELINES, OR PERMITTING OR OTHER REQUIREMENTS (COLLECTIVELY, "ENVIRONMENTAL AND OTHER REQUIREMENTS"). BUYER ACKNOWLEDGES AND AGREES THAT IT SHALL BE SOLELY RESPONSIBLE FOR ENSURING THAT THE PRODUCT AND ITS USE BY BUYER COMPLY WITH ALL SUCH ENVIRONMENTAL AND OTHER REQUIREMENTS.

**11. INTELLECTUAL PROPERTY.** In the absence of a written agreement to the contrary, all right, title to, and interest in all intellectual property (including patents, trade secrets, copyright, design rights, and trade marks) and materials (including all plans, diagrams, specifications, designs, data, drawings and models) which are developed, designed or generated by Seller prior to and/or in the performance of the Agreement shall be owned by Seller as legal and beneficial owner. All right, title to and interest in all intellectual property (including patents, trade secrets, copyright, design rights, and trade marks) and materials (including all plans, diagrams, specifications, designs, data, drawings and models) which are developed, designed or generated by Buyer prior to and/or in the performance of the Agreement shall be owned by Buyer as legal and beneficial owner. Seller shall conduct, at its own expense, the entire defense of any claim, suit or action alleging that the design of the Product(s) directly infringes any US or European patent, but only on the condition that (a) Seller receives prompt written notice of such claim, suit or action and full opportunity and authority to assume the sole defense thereof, including settlement and appeals, and all information available to and the cooperation of Buyer for such defense; (b) the Product(s) were made entirely according to a specification or design furnished by Seller, or, if a process patent is involved, the process was recommended in writing by the Seller, and (c) the claim, suit, or action is brought against Buyer or an entity expressly indemnified by Buyer. Provided all of the foregoing conditions have been met, Seller shall, at its own expense, either settle said claim, suit or action or shall pay all damages excluding any and all incidental, indirect, accidental or consequential damages, and costs awarded by the court therein ("Seller's Defense Obligation") If the use or resale of such Product(s) is finally enjoined, Seller shall, at Seller's option, (i) procure for Buyer the right to use or resell the Product(s), (ii) replace the Product(s) with equivalent non-infringing goods, (iii) modify the Product(s) so they become non-infringing but equivalent, (iv) refund the purchase price (less a reasonable allowance for use, damage and obsolescence) to the Buyer.

**12. INDEMNIFICATION.** To the fullest extent permitted by law, Buyer expressly agrees to indemnify and hold harmless Seller, its affiliates, officers, directors, employees, agents, successors and assigns ("Indemnitees") and defend the Indemnitees from and against any and all claims, liabilities, lawsuits, losses, costs, expenses, or damages (including reasonable attorney and professional fees) of any kind or nature whatsoever, including, without limitation, claims for personal injury (including death) or property damage, whether such claims are premised on contract, tort or otherwise, including strict liability, which arise out of or result from, or are in any way related to the Agreement and/or the Product(s) sold hereunder, except to the extent of Seller's willful misconduct or gross negligence.

Seller's obligation to indemnify, defend and hold Buyer harmless arising from any set of facts is limited to: (i) claims brought by third-parties unrelated to Buyer; (ii) the damages are caused by a non-conforming Product and/or Seller's negligence; and (iii) Buyer is without fault. Seller will conduct the defense of the claim in accordance with Seller's Defense Obligation set forth above. All liability shall be apportioned in relation to the fault of Seller, Buyer and any third party which might be liable. Seller shall have no indemnification obligation whatsoever to the extent that the claims, liabilities, lawsuits, losses, costs, expenses, or damages arise from, are attributable to and/or caused by, in whole or in part: (i) unauthorized or improper installation, alteration, repair, maintenance (including failure to provide appropriate maintenance), handling or operation of the Product(s) by Buyer or any third party; (ii) failure of the Product(s) to comply with any applicable environmental, land use or other laws, statutes, regulations, rules, ordinances, guidelines, or permitting or other requirements (iii) any equipment, component, system, or assembly not manufactured or sold by Seller and/or the integration, incorporation, interaction, connection, placement, or use of conforming Product in or with any such equipment, component, system, or assembly, (iv) any of the following: (a) misuse, neglect, accident, abuse, or vandalism or any transit related damage; (b) acts of God or insurrection; (c) normal wear and tear; (d) or any other acts that are beyond Seller's reasonable control.

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**13. SETOFF.** Buyer acknowledges and agrees that it may not set off or otherwise debit against or recoup from any amounts due or to become due to Seller, any amounts due or become due to Buyer, unless and until Seller agrees in writing to such setoff or recoupment, and that shall not exercise any right to setoff or recoupment in connection with any disputed, contingent, or unliquidated claim. In the event Buyer fails to the comply with the foregoing and improperly sets off, debits or recoups from amounts due or to become due to Seller, Seller shall be entitled, in addition to all of its other rights hereunder or otherwise, to suspend performance of its obligations hereunder, until Buyer reverses such improper set off, debit and/or recoupment.

**14. CONFIDENTIALITY.** Any and all information, in whatever form transmitted, and items embodying information (including photographs, samples, models, prototypes) disclosed by or on behalf of Seller to the Buyer or to which Buyer is exposed, including, without limitation, manufacturing methods, procedures, processes, technologies, know-how, trade secrets, formulas, ideas, inventions, drawings, specifications, product data, designs, software, business plans, marketing plans, business operation information, financial information, pricing information, strategies, customer lists, Seller lists, and any representations, compilations, analysis, and summaries of the foregoing (“Confidential Information”) shall be held by Buyer in strict confidence and used solely for the purpose of doing business with Seller. Buyer shall restrict access to and limit disclosure of Seller’s Confidential Information to only those of Buyer’s employees, directors, officers, and advisors with a need to know the information to accomplish the purpose of this Agreement, provided that they have been instructed and are bound in writing not to disclose the Confidential Information or use it for any purpose other than as permitted under this Agreement and that Buyer shall at all times be fully liable to Seller for any breach of this Agreement by such persons and any entities. Buyer shall not disclose or transfer any of Seller’s Confidential Information, either directly or indirectly, to any other person or entity without the written consent of Seller.

**15. BUYER’S COMPLIANCE WITH LAWS.** In the performance of the Agreement, Buyer shall fully comply with all applicable laws, statutes, rules, regulations, conventions, orders, standards and ordinances, including, without limitation, all applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010, as such acts may be amended from time to time.

**16. EXPORT CONTROLS.** Seller and Buyer acknowledge and agree that the Product(s) sold hereunder are subject to export controls imposed by the United States government under various federal laws. Buyer agrees that it will not export or re-export or otherwise transfer any Product(s) or technical data provided hereunder to any country, person, entity or end-used subject to U.S. export restrictions. Buyer specifically agrees not to export or re-export the Product(s) or technical data hereunder (i) to any country or party to which the United States has, at the time of the transfer, embargoed or restricted the export or reexport of the relevant products or services; (ii) to any end-user who the Buyer knows will utilize the Product(s) or technical data for any purposes prohibited by applicable law or regulations including, without limitation, in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S export transactions by any federal agency of the U.S. government. Seller may refuse to enter into or perform any order, and may cancel any order, placed under this Agreement if it determines, in its sole discretion, that entry into or performance of such order would violate any applicable law or regulation of the United States or any other government.

**17. ASSIGNMENT.** Buyer may not assign this Agreement, in whole or in part, without the prior written consent of Seller. Any attempted assignment or subcontracting by Buyer without such consent shall be ineffective and will not relieve Buyer of its duties or obligations under this Agreement. In the event of a proper assignment, the contract shall be binding upon and inure to the benefit of the Buyer’s successors and assigns.

**18. RELATIONSHIP OF THE PARTIES.** Buyer and Seller are independent contractors, and nothing contained herein makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or create any obligation on behalf of the other party.

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**19. GOVERNING LAW, JURISDICTION, FEES AND STATUTE OF LIMITATIONS.** The validity, interpretation and enforcement of this Agreement, matters arising out of or related to this Agreement or its making, performance or breach, and any and all related matters shall be governed by the laws of the State of Michigan. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-laws provisions that would require application of another choice of law, are excluded. The Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the applicable state and federal courts of the State of Michigan. Buyer shall pay Seller's reasonable attorney fees, costs, and expenses incurred in enforcing any provision of this Agreement. Any legal action arising out of or related to this Agreement, whether alleging breach of warranty or other breach, default or tortious act by Seller, must be brought by Buyer, or any other person making a claim under this Agreement, within two (2) years after the date of the receipt of the Product(s) sold herein, or one (1) year after Buyer or such person could reasonably have discovered the basis for the action, whichever comes first.

**20. WAIVER.** No waiver shall be effective unless it is in writing. The failure of Seller to require performance under any provision of this Agreement shall in no way affect Seller's right to require full performance at any subsequent time, nor shall the waiver by Seller of a breach of any of the terms and conditions of this Agreement constitute a waiver of any other breach of the same or any other term.

**21. SEVERABILITY.** If one or more provisions of the Agreement should be or become invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the parties shall substitute the invalid or unenforceable provision with a valid provision that as closely as possible achieves the same business purpose as the invalid or unenforceable provision.

**22. ENTIRE CONTRACT.** This Agreement contains the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof, and may not be amended, modified or otherwise supplemented unless any such amendment, modification, or supplementation is done so in writing and explicitly references this Agreement and is signed by both authorized representatives of both parties hereto.