



# COVENT FANS INC. GENERAL CONDITIONS OF PURCHASING (GCP10R00)

## 1. DEFINITIONS

The Items shall mean all goods, machinery, equipment, materials, apparatus and services to be supplied under this Purchase Order.

The Purchaser means CO-VENT FANS INC; the Seller means the person, the firm or company to whom this Purchase Order is addressed.

## 2. ENTIRE AGREEMENT

Seller agrees that the present General Conditions of Purchasing and this Purchase Order shall constitute the entire agreement between the parties, which supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Purchase Order. The present General Conditions of Purchasing shall be controlling and no differing or additional provisions or conditions shall be binding upon Purchaser unless accepted in writing, signed by a duly authorized representative of Purchaser. Purchaser does not agree to, and expressly objects to and rejects, any different or additional terms or conditions set forth by Seller in response to or acceptance of the Purchase Order. This Purchase Order shall be deemed accepted by Seller in its entirety upon or by acknowledgement of the price for the Scope of Work set forth therein, by means of oral confirmation or by course of conduct.

## 3. CHANGES

Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the Items 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.

## 4. WARRANTY

Seller warrants all Items on this Purchase Order to be free of defects in design, materials, manufacture and workmanship for a period of 12 months from date of installation or 18 months from date of delivery, whichever occurs first. Seller further warrants all Items covered by this Purchase Order will conform to drawings and specifications, will be merchantable and of good material and will be suitable for the use intended. All Items will be subject to Purchaser's inspection and rejection at place of delivery. Seller shall at its own expense and as promptly as possible replace the defective Items or repair or alter the Items; provided, however, that Seller shall pay Purchaser for all costs incurred by Purchaser in connection with such replacement, repair or alteration. The aforementioned warranties, and any warranties and guarantees provided to Seller with respect to the Items, shall inure to the benefit of Purchaser, its customers, and Owner.

## 5. INSPECTION

Seller agrees to permit the Purchaser's inspectors to have access to Seller's plant at all reasonable times for the purpose of inspecting the Items set forth in this Purchase Order or work in progress for production of such Items.

## 6. PACKING AND SHIPPING

All Items shall be prepared and packed for shipment in a manner that will prevent damage in transit and allow for multiple handling. Purchaser is not liable for extra charges for packing, cartage, or anything else unless stated in this order. Seller shall mark the number of this order on each container and enclose a packing slip with the Order number in each container

## 7. SHIPPING INSTRUCTIONS

Unless otherwise specified in the Purchase Order, all shipments are to be made F.O.B. Purchaser's designated plant or facility. In all cases, risk of loss shall pass to Purchaser once the items to be shipped, in conforming

condition, are duly delivered to Purchaser at its designated plant or facility. In the event where the shipment is prepaid & added, Seller shall remain responsible for the risk of loss and damage during transportation. It is also agreed that Purchaser reserves the right to refuse any C.O.D. shipments.

## 8. DELIVERY SCHEDULE

Seller shall follow the delivery schedule shown on this order and shall not make deliveries later or substantially earlier than dates shown. Time is the essence of this agreement. If Items are shipped substantially in advance of scheduled delivery dates, Purchaser may return them at Seller's expense. Seller shall immediately notify Purchaser if delivery cannot be made on time. If delivery cannot be made on time, Purchaser may cancel this Purchase Order and purchase elsewhere, and may charge Seller for any loss incurred as a result thereof. However, if Seller exercises due care, Seller shall not be liable for delays due to acts of God, flood, fire, war, riot, strikes, acts of government and damage in transit due to causes beyond its reasonable control; provided, however, that Seller shall give Purchaser written notice of such cause for delay within three days after it occurs and provided further than Purchaser may cancel this Purchase Order at Purchaser's discretion if such excused delay(s) exceed(s) thirty (30) days in the aggregate. Acceptance by Purchaser of a late delivery of either the whole or a part of the Items shall not constitute a waiver of Purchaser's claim for any damage which the late delivery may have caused. Seller shall also be liable for any liquidated damages for late delivery if specified in this Order.

## 9. PATENTS

Seller agrees to indemnify and save Purchaser harmless from any claims for infringement of any patent, trademark, copyright, intellectual property rights or industrial design, covering any Items purchased hereunder.

## 10. TERMINATION FOR CONVENIENCE

Purchaser reserves the right to terminate this Purchase Order or any part hereof for its sole convenience. Purchaser should notify such a termination in writing. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for such termination without cause, (a) Purchaser will pay the contract price for all Items completed and furnished in accordance with this Purchase Order and not previously paid for, (b) Purchaser will pay a fair and proper portion of the contract price for Items in process and unfurnished which cannot be used generally in Seller's business, and (c) Purchaser will pay Seller's costs for all Items, materials and services reasonably acquired or contracted for by Seller (after any applicable release dates and prior to Purchaser's notice of cancellation) for the purpose of filling this Purchase Order, which Seller is unable to cancel or return. Any Items and materials paid for in the preceding sentence shall be delivered by Seller in accordance with Purchaser's directions, and Seller shall use all possible means to mitigate any payments required to be made by Seller. Should Purchaser so desire, cancellation charges shall be subject to Purchaser's audit.

## 11. TERMINATION FOR CAUSE

If Seller fails to perform any of its obligations under this Purchase Order, Purchaser may cure the default and charge the expense therefore to Seller. Purchaser may also terminate this Purchase Order or any part hereof for cause in the event of any default by Seller, or if Seller fails to comply with any of the terms and conditions of this Purchase Order. Late deliveries, deliveries of products which are defective or which do not conform to this Purchase Order, and failure to provide purchaser, upon request, of reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this Purchase Order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by

reason of the default, which gave rise to the termination, without prejudice to any other right or remedy it may have.

## 12. NONDISCLOSURE AND OWNERSHIP

All plans, drawings, specifications, technical information, designs, samples, and documents of any kind (hereafter named "Confidential Information") disclosed by Purchaser to Seller are the confidential property of the Purchaser. Seller will preserve the confidentiality of the Confidential Information and agrees not to make copies of it, unless expressly needed for the execution of the Purchase Order.

Seller agrees to protect and return all Confidential Information to the Purchaser upon simple request. In all cases, Confidential Information transmitted remains the whole property of the Purchaser. It is strictly forbidden for Seller to disclose or use the Confidential Information for its own interest or for a third party or for any kind of other purpose than for the fulfillment of this Purchase Order. Seller is responsible for its employees and its potential subcontractors for the respect of Purchaser's requirements related to this Purchase Order.

## 13. PAYMENTS WITHHELD

In addition to express provisions elsewhere contained in the Purchase Order, Purchaser may withhold from any payment otherwise due to Seller, such amount as determined necessary, in Purchaser's discretion, to protect its interests; if Purchaser reasonably believes that Seller is about to default in the performance of this Purchase Order or is in material violation of any condition or term of this Purchase Order.

## 14. RIGHT TO SET-OFF

Purchaser shall have the right at any time, and from time to time, to set-off against any amounts which are then or may thereafter become due and payable to Seller under this Purchase order, any and all amounts now or hereafter owing by the Seller to the Purchaser.

## 15. INSURANCE

Seller agrees to maintain, at its sole cost and expense, a policy or policies of both products and general liability insurance with respect to the services performed and the goods and equipment furnished by Seller under this Purchase Order and the Scope of Work defined herein. Such insurance shall be extended to include vendors coverage, shall name the Purchaser as an additional insured with respect to such vendor's coverage and shall have limits of coverage of no less than \$1,000,000.00 per each person, and \$5,000,000.00 per each occurrence.

## 16. LIQUIDATED DAMAGES FOR DELAY IN SHIPMENT

Both parties agree and understand that Purchaser will be damaged if Seller fails to meet the agreed upon delivery date for the equipment, but that such delay damages are incapable of exact computation. Accordingly, Seller agrees and understands that, to the extent such delays are due to the acts, errors, or omissions of Seller, Seller shall be liable to Purchaser of an amount as liquidated damages, and not as a penalty, for such delays. Should this article be applicable to the present order, the amount of liquidated damages will be detailed in the Purchase Order documents.

Seller agrees that monies payable by Seller to Purchaser as Liquidated Damages pursuant to this Section may be deducted by Purchaser from the price to be paid to Seller. It is further agreed that this Section shall not constitute a waiver of any rights to Purchaser to damages or other remedies of Purchaser for Seller's improper performance or default in performance of the Purchase Order.

## 17. INDEMNIFICATION

Seller shall hold harmless and indemnify the end user and Purchaser and their officers, directors, representatives, agents and employees from and against all claims, damages, liability, losses and expenses, including attorney's fees, arising out of or in any way resulting from the performance of the Purchase Order. In any and all claims against the end user or Purchaser, or any of their officers, directors, representatives, agents, or employees, by any employee of Seller, any of its subcontractors, anyone

directly, or indirectly employed by them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Seller or any subcontractor under workers compensation acts, disability benefit acts or other employee benefits acts.

## 18. TAXES

Seller assumes full and exclusive responsibility and liability for withholding and/or paying (1) all Federal, State or province and Local taxes as may be required by law; (2) sales, consumer, use or other similar taxes required by the law of the place where the work is performed. The Purchase Order price includes all such taxes unless otherwise indicated. Seller shall indicate on every invoice the Federal and State taxes on each item.

## 19. TRANSFER OF TITLE

Ownership of the Work or any portion thereof shall belong to the Purchaser as and from the date of payment of said Work or portion thereof by the Purchaser. Notwithstanding the foregoing and any provision of law to the contrary, the risk of loss of the Work or any portion thereof, which has been paid for by the Purchaser, shall vest with the Seller until completion of the Work.

## 20. GOVERNING LAWS

This Purchase Order and all matters relating to this Purchase Order shall be governed exclusively by the substantive law of the Province of Quebec, Canada.

## 21. SETTLEMENT OF DISPUTES

Any dispute arising from or in connection with the present Purchase Order may at Purchaser's sole option be settled by arbitration in the Province of Quebec and the judgment upon the award rendered by the Arbitrators may be entered in any Court having jurisdictions thereof.

## 22. STORAGE

If requested by Purchaser, Seller shall store all material ordered under this Purchase Order for a period up to ninety (90) days after the required ship date, at no cost to Purchaser. Seller shall remain fully responsible and cover all risks during this period. If storage is required, Seller shall be paid as if shipped in place per payment terms defined in the Purchase Order.

## 23. EFFECTS OF PURCHASER'S APPROVAL

Any approval by Purchaser shall not relieve Seller of any duty, responsibility or obligation imposed on it by any provision of this Purchase Order.

## 24. DISCLAIMER BY PURCHASER OF CONSEQUENTIAL DAMAGES

NOTWITHSTANDING ANY OTHER PROVISION OF THIS PURCHASE ORDER TO THE CONTRARY, IN NO EVENT SHALL PURCHASER OR OWNER BE LIABLE IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT OF THE PURCHASE ORDER OR FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, LOSS OF PROFITS OR PRODUCTION, LOSS OF REVENUE OR USE OF REVENUE, PLANT DOWNTIME, PROPERTY DAMAGE, OR EXPENSES OR DAMAGES INCURRED IN RELIANCE ON PURCHASER'S OR PURCHASER'S VENDORS' OR SUBCONTRACTORS' PERFORMANCE OR NON-PERFORMANCE HEREUNDER, WHETHER SUFFERED BY SELLER OR ANY THIRD PARTY, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE SELLER, ITS EMPLOYEES OR AGENTS OR ANY THIRD PARTY.