



## Agreement for Sale of Machinery and Equipment

This Sales Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Phoenix Heating Solutions-Nevada, LLC, a corporation organized and existing under the laws of the state of Delaware, with its principal office located at 751 W 1000 N, Suite 12, Spanish Fork, UT 84660 referred to herein as ***Seller***, and \_\_\_\_\_ (Buyers company), a business organized and existing under the laws of the state of \_\_\_\_\_, with its principal office located at \_\_\_\_\_, referred to herein as ***Buyer***.

### 1. Sale of Machinery

Buyer agrees to buy, and Seller agrees to sell, for \$ \_\_\_\_\_ subject to the terms and conditions stated below, the machinery described in the sales receipt attached hereto and made a part hereof, hereinafter called Equipment, to be delivered on board truck at \_\_\_\_\_ (Company shipping address), on or about \_\_\_\_\_ (Date of delivery).

### 2. Warranties

*Seller* warrants the *Equipment* to be free from defective material and workmanship and agrees to furnish free of charge any part or parts necessary to make good any defect directly traceable to a fault in material or workmanship of *Seller*, provided that the claim for any such defect is made within one year after erection of the machinery and provided the defective part or parts are promptly returned to *Seller's* factory, freight prepaid by *Buyer*. *Equipment* and accessories not of *Seller's* manufacture are warranted only to the extent that they are warranted by the manufacturers of the same. *Seller's* liability or warranty shall not exceed the amount of the purchase price indicated above. **THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.**

### 3. Payment

If *buyer* is approved for credit, *buyer* agrees to pay 50% of all cost when seller and buyer sign this contract. Upon delivery by seller and setup is completed, buyer agrees to pay remaining amount in full. If *buyer* is not approved for a credit account, the full balance is due upon the submission of the order.

## **4. Freight Charges; Risk of Loss**

*Buyer* agrees to pay the railway and freight charges on the *Equipment* from the point of shipment to destination, the cost of cartage, the cost of unboxing the *Equipment* and the handling the *Equipment* from depot to the floor where the property is to be installed or erected. The risk of loss of or damage to the property shall be on *Buyer* from point of shipment.

## **5. Labor and Equipment for Erection**

Within three days (3) days after the arrival of the *Equipment* at its destination, *Buyer* agrees to afford *Seller* an opportunity to supervise the erection of the *Equipment*, *Buyer* to provide adequate labor and *Equipment* for the prompt completion of such erection. If *Buyer* does not provide such labor and *Equipment*, *Buyer* agrees to pay full balance upon arrival of the equipment.

## **6. Foundation; Wiring and other Equipment**

*Buyer* agrees to furnish a suitable foundation upon which to erect the *Equipment*, with free and ready ingress and egress to and from the same.

## **7. Indemnification**

*Seller* and *Buyer* agree that the erection of the *Equipment* shall be under the supervision of a competent erector, whose services shall be furnished free of charge by *Seller*, and that *Buyer* shall furnish and pay for all equipment, materials, and labor necessary for the erection, including machinists, if required. *Buyer* further agrees to indemnify and save harmless *Seller* against any and all claims of any persons whatsoever, arising out of or resulting from the erection and operation of the *Equipment*; *Seller* will rely on *Buyer's* representations that the *Equipment* is suitable and *Buyer* shall be solely liable for personal injuries or property damages, whether to the *Equipment*, other property or otherwise, occasioned by or resulting from an unsuitable foundation.

## **8. Limitation of Remedies**

*Buyer* agrees that the sole liability of *Seller* by virtue of any warranty or guarantee made by *Seller* is, at *Seller's* option, either to make the *Equipment* that was sold fulfill the warranty, or to remove the same at the *Seller's* own expense, refunding payments made. No warranty made by *Seller* shall be binding on *Seller* after one year from the date of the original erection or installation of the *Equipment*, and no liability for any special, indirect, or consequential damages of any nature is assumed by or shall be imposed by *Seller* based upon its undertakings in this Agreement.

## **9. Payment of Taxes and other Charges**

*Buyer* agrees to pay promptly when due all taxes, assessments, and other public charges that might be directly or indirectly levied, rated, charged upon, or measured by or arise from the sale, transportation, delivery, use or consumption of the *Equipment*, or otherwise upon this transaction. If *Buyer* fails to make payment of the same or to file any required return, *Seller* shall have the right to file a return and to make payment of the tax and the amount so paid shall then become immediately due and payable by *Buyer* to *Seller* and shall be in addition to any and all other money due and payable under this Agreement.

## 10. Transfer of Title

*Seller* and *Buyer* agree that title in and to the *Equipment* shall remain in *Seller* until the full purchase price as provided in this Agreement shall be paid by *Buyer*. Default by the *Buyer* in any of the terms of this Agreement shall give *Seller* the right to take immediate and unconditional possession of the *Equipment*. Until payment in full, the *Equipment* shall remain personal property, regardless of its method or mode of attachment to realty, if any.

## 11. Identification

*Seller* is authorized and empowered to enter in this Agreement the serial or other identification number of the property after this Agreement has been executed.

## 12. Force Majeure

*Seller* shall not be liable in any way for delay, non-delivery or default in shipment due to labor disputes, transportation shortage, delays in receipt of material, priorities, fires, accidents, and all other causes beyond the control of *Seller*, affecting *Seller* or its suppliers. If *Seller*, in its sole judgment, shall be prevented directly or indirectly, on account of any cause beyond its control, from delivering the equipment at the time specified or within three months after the date of this Agreement, then *Seller* shall have the right to terminate this Agreement by notice in writing to *Buyer*, which notice shall be accompanied by full refund of all sums paid by *Buyer* pursuant to this Agreement.

## 13. No Waiver

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

## 14. Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah, excluding any choice of law rules.

## 15. Notices

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

## 16. Attorney's Fees

In the event that any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

## 17. Mandatory Arbitration

Any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.

## 18. Entire Agreement

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

## 19. Modification of Agreement

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

## 20. Assignment of Rights

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

## 21. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

## 22. Gender

In this contract, any reference to a party includes that party's heirs, executors, administrators, successors and assigns, singular includes plural and masculine includes feminine.

## 23. Contact Information

\_\_\_\_\_ Buyers Representative Name

\_\_\_\_\_ Buyers Email

\_\_\_\_\_ Buyers Phone

The parties have executed this agreement the day and year first above written.

SELLER

BUYER

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title