



STANDARD TERMS & CONDITIONS OF SALE

1. **ACCEPTANCE:** (a) No order for Brentwood Industries, Inc. ("Brentwood") shall be binding upon Brentwood until accepted in a written acknowledgement by Brentwood. All orders by Purchaser shall be subject to credit screening and approval and also subject to these Standard Terms and Conditions of Sale and Security Agreement ("Terms and Conditions"). Brentwood's acceptance shall be conditioned on Purchaser's assent to these complete and unaltered Terms and Conditions. Purchaser's assent shall be deemed given unless Purchaser notifies Brentwood in writing to the contrary within five (5) days after Brentwood provided to Purchaser written acknowledgement of such order, and returns any goods, products, or materials (collectively the "Product") shipped by Brentwood unopened, in the original packaging within five (5) days of receipt.

(b) No provision of Brentwood's Terms and Conditions shall be subject to change in any manner except as agreed to in writing by a duly authorized officer of Brentwood. These Terms and Conditions supersede any and all other agreements or understandings, whether written or oral, that may exist between the parties.

(c) These Terms and Conditions shall supersede all terms and conditions contained in or attached to orders submitted on Purchaser's forms, where such forms contain conflicting or inconsistent statements, clauses or conditions. Any such statements, clauses or conditions contained in any forms of the Purchaser shall not be effective or binding upon Brentwood and the rights and liabilities of Brentwood shall be determined solely by these Terms and Conditions. By accepting and consummating any such order, Brentwood shall not be deemed to have in any way diminished its rights, remedies, liabilities or obligations as fixed by these Terms and Conditions. If any provision of these Terms and Conditions is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of these Terms and Conditions.

2. **PRICING & PAYMENT:** The Product ordered shall be invoiced at the price in effect at the time of shipment, unless otherwise agreed to in writing by Brentwood. The purchase price is due in full within thirty (30) days after the invoice date. Past due amounts shall bear an interest rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Purchaser shall bear all collection costs including, without limitation, reasonable attorneys' fees and litigation costs. Any invoice disputes not raised within ten (10) days from the invoice date are waived. Clerical errors on invoices may be corrected by Brentwood at any time.

3. **STORAGE FEE:** Unless previously agreed upon by Brentwood and Purchaser, Brentwood will store Product for free for thirty (30) days after the initial delivery date requested by the Purchaser. After the thirtieth (30th) day, Purchaser agrees to pay a monthly storage fee equal to one and one-half percent (1.5%) of the invoice price of the Product. The monthly storage fee shall be due in full upon invoice, regardless of whether Purchaser has been invoiced or paid for the Product.

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4. **PURCHASE MONEY SECURITY INTEREST:** (a) To secure payment and performance of all liabilities, duties and obligations of Purchaser to Brentwood including invoices issued by Brentwood to Purchaser, interest, fees, charges, and any and all other amounts and obligations of Purchaser to Brentwood of any nature that may be due and payable from Purchaser to Brentwood from time to time (collectively, the “Obligations”), Purchaser hereby grants to creditor a purchase-money security interest (as that term is defined in Section 9-103(b) of Article 9 of the U.C.C. as enacted in Pennsylvania [the “UCC”]) in (i) all Product manufactured by or sold by Brentwood, whenever and by whomever sold or delivered, directly or indirectly, to or for the benefit of Purchaser, wherever located, now owned and hereafter acquired; (ii) all replacement and substituted Product, including repossessions and returns; (iii) all proceeds from the sale or other disposition of the foregoing; and (iv) all existing subsequently arising accounts and accounts receivable and supporting obligations, which may from time to time hereafter come into existence during the term of this Agreement (collectively the “Collateral”). Brentwood’s security interest attaches to all Product that Purchaser buys from Brentwood upon receipt of the Product and/or invoice and to all subsequent and outstanding obligations between Brentwood and Purchaser.

(b) The security interest granted hereunder shall constitute at all times a valid first priority purchase money security interest vested in Brentwood in and upon all of the Collateral pursuant to Section 9-103(b) of the UCC, and shall not become subordinate or junior to the security interests, liens, encumbrances or claims of any other person, firm or corporation, including the United States or any department, agency or instrumentality thereof, or any state, county or local governmental agency. Purchaser hereby authorizes Brentwood to file such UCC financing statements without Purchaser’s signature and to generally take such other actions as are reasonably required to perfect Brentwood’s purchase money security interest in the Collateral for purposes of the UCC. Brentwood may, as Purchaser’s attorney in fact, execute, deliver on behalf of Purchaser and file any such financing statements or other documents or instruments as may be necessary to protect, perfect or maintain the perfection of the security interest granted herein. This appointment is coupled with an interest, and is irrevocable so long as any Obligations remain outstanding hereunder. Purchaser will maintain the Collateral, to the extent applicable, in its original condition but for ordinary wear and tear, and will insure the Collateral against all expected risks.

5. **DEFAULT:** (a) Any of the following shall constitute a Purchaser default hereunder: (i) failure of Purchaser to pay any Obligations which become due according to the terms of any invoices, or any other amount payable to Brentwood when due; (ii) failure of Purchaser to observe or perform any of Purchaser’s Obligations herein; (iii) failure of Purchaser to pay its debts as they come due; (iv) failure to pay or default by Purchaser on any bank loan; (v) Purchaser’s credit or financial condition has become impaired; or (vi) any bankruptcy, insolvency, or assignment by Purchaser for the benefit of creditors. Following a default as defined hereunder, Brentwood may (i) declare all Obligations due and payable, (ii) require Purchaser to assemble the Collateral and make it available to allow Brentwood to take possession of the Collateral, (iii) repossess and remove any of the Collateral from Purchaser with or without notice, (iv) exercise any and all other rights and remedies of a secured party under Article 9 of



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the UCC, and (v) suspend any further Product deliveries until Purchaser pays its Obligations in full.

(b) If Brentwood believes that the prospect of payment or performance of any obligations of Purchaser is materially impaired, Brentwood may make a demand for adequate assurances of performance by Purchaser and Purchaser must provide such within five (5) days. As part of its demand for adequate assurance, Brentwood may demand a credit report from one or more credit agencies. Pending such assurances, Brentwood may make sales and deliveries to Purchaser on a cash-on-demand (C.O.D.) basis.

6. **TAXES:** All government charges upon the production, shipment or sale of the Product, including, without limitation, use, occupation, export and import taxes, and any other impositions by any government whatever, direct or indirect, including those required to be collected by Brentwood, shall be paid by Purchaser or, in lieu thereof, Purchaser shall furnish Brentwood with an exemption certificate acceptable to the taxing authority. Brentwood reserves and Purchaser disclaims all rights to drawback of duties paid on materials used in the manufacture of the Product. Purchaser shall supply Brentwood with proof of exportation and all other documents necessary and otherwise cooperate to obtain payment thereof.

7. **SHIPMENT & TITLE:** Unless otherwise agreed to by Brentwood, Purchaser is responsible for all shipment costs and all shipments are EX WORKS. Once Brentwood notifies Purchaser that the Product are available at Purchaser's disposal, title to the Product passes to the Purchaser and Purchaser bears all risks of loss or damage to the Product from that point forward.

8. **CHANGES & CANCELLATIONS:** Order changes or cancellations are subject to Brentwood's written approval and additional charges may apply. Brentwood shall not be liable for any delays due to order changes. Brentwood may make changes in its Product without obligation to install or manufacture such changes in any Product manufactured prior thereto. Brentwood may make such changes to any ordered Product as do not, in Brentwood's reasonable judgment, interfere with the satisfactory operation of the Product. If Purchaser cancels any order, in whole or in part, or if Brentwood terminates an order due to Purchaser's violation of any duty to Brentwood, Brentwood may charge Purchaser a cancellation charge of twenty percent (20%) of what the total price of the order (or, if applicable, the portion cancelled) would have been if invoiced as of the date of cancellation.

9. **RETURNS:** Product may only be returned for credit and only after obtaining Brentwood's authorization. The Product must be returned in good condition, in their original packaging with complete identification and with all supporting documentation detailing of any claimed defect as required by Brentwood. All shipping and freight charges shall be prepaid by the Purchaser. The returned Product is subject to a restocking charge. The returned Product must be securely packed in the original packing materials and adequately insured and protected to reach Brentwood without damage. All costs incurred by Brentwood to restore equipment and/or product to Brentwood's specifications will be charged to the Purchaser, including any handling charges. Product manufactured according to the design or specifications of the Purchaser (collectively the "Specifications") may not be returned for credit.

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10. **INSPECTION & CLAIMS:** Immediately upon receipt of the Product, Purchaser must inspect the Product. All claims, including claims for an allegedly defective Product, must be made to Brentwood in writing within the sooner of thirty (30) days after delivery or fifteen (15) days after Purchaser learns of facts upon which such claim is based. All claims not made in writing and received within the time period specified above shall be deemed waived. Purchaser expressly hereby assumes all liability for all damages and injury occurring before and after said time period if notice is not made within the required time frame. Any lawsuit or legal action whatsoever by Purchaser against Brentwood relating to any Product purchased hereunder must be filed within one (1) year following the date of delivery of such Product, notwithstanding any statute of limitations or similar law.

11. **WARRANTY:** (a) Brentwood warrants its Product against defects in the materials and workmanship that affect the performance for which it was intended, as described in the Specifications. This warranty shall be limited to twelve (12) months, beginning at tower start-up, if applicable, or thirty (30) days after shipment, whichever occurs first. This warranty is limited to the repair or replacement of the Product, at Seller's option, and shipping costs of the Product, if applicable, but does not include any costs of labor, removal of the non-conforming Product, or installation associated with the replacement Product. This warranty covers Product manufactured in Brentwood's plant but it shall not cover fill sheets assembled by other parties. This limited warranty is subject to the following limitations and shall not apply if the Product's performance problems relate to:

- (i) Excessive temperatures where the:
 - (A) PVC fill water temperatures were greater than 140°F. (125°F in crossflow applications);
 - (B) HPVC fill water temperatures were greater than 150°F. (135°F in crossflow applications);
 - (C) PVC drift eliminators had air temperatures greater than 120°F; or
 - (D) HPVC drift eliminators had air temperatures greater than 130°F;
- (ii) Nozzle blowout or improper water distribution;
- (iii) Improper handling during installation; improper installation; or improper use;
- (iv) Excessive UV degradation, except where UV protected compounds are purchased;
- (v) Attack due to abnormal chemical constituents in the cooling water that would degrade the PVC material (i.e. MEK, acetone, etc.);
- (vi) Damage due to excessive ice loading or freezing;
- (vii) Damage due to impact from ice or other debris;
- (viii) Damage during shipping; and
- (ix) Damage due to excessive loads not normally found in cooling towers (biomass, silt, algae, etc.).

(b) If the Purchaser orders a Product according to its own Specifications, Brentwood warrants that the Product will meet the Specifications subject to the warranty limitations herein.



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(c) BRENTWOOD DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS SECTION, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. LIMITATION ON LIABILITY: REGARDLESS OF THE FORM OF ACTION, BRENTWOOD'S LIABILITY RELATING TO THE PRODUCT OR THE MANUFACTURE, SHIPPING, SALE OR USE OF THE PRODUCT SHALL NOT EXCEED THE PRICE PAID BY PURCHASER FOR THE SPECIFIC PRODUCT GIVING RISE TO THE CAUSE OF ACTION. BRENTWOOD, ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE, DOWNTIME, FAILURE TO DETECT ANY FLAW IN ANY SUBJECT MATTER OF ANY TEST, LOSS OF GOODWILL, BUSINESS INTERRUPTION, DELAY IN PERFORMANCE, OR LOST OPPORTUNITIES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE IN CONNECTION WITH THE SUPPLY OR SUBSEQUENT USE OR HANDLING OF THE PRODUCT, EVEN IF BRENTWOOD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BRENTWOOD, ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL NOT BE LIABLE FOR PROPERTY DAMAGE AND/OR THIRD PARTY CLAIMS COVERED BY INSURANCE PROVIDED TO PURCHASER, ITS ASSIGNS, AND EACH SUCCESSOR IN INTEREST TO THE PRODUCT.

13. INSURANCE AND INDEMNIFICATION: Purchaser shall at all times maintain a comprehensive program of risk management and adequate broad form liability insurance in connection with Purchaser's business, operations and activities. Purchaser shall at all times indemnify, defend and hold harmless Brentwood, its officers, directors, employees, agents, servants and representatives from and against any and all damages, liabilities, losses, claims, suits, penalties, fines, costs and expenses, including attorneys' fees, (collectively "Claims") arising directly or indirectly out of or in connection with any (a) infringement of any patent, trademark or other intellectual property right arising from compliance by Brentwood with Purchaser's Specifications; (b) use, operation or possession of the Brentwood Product, unless the Claim arises solely from the gross negligence or willful misconduct of Brentwood; or (c) breach by Purchaser of any provision of any agreement with or obligation to Brentwood.

14. NUCLEAR WAIVER & INDEMNITY: Without limitation from Section 13 of these Terms and Conditions, Purchaser shall defend, indemnify and hold harmless Brentwood from any Claim arising from use of the Product in any nuclear facility or related applications or activities, whether the cause of action be based in contract, tort (including negligence), strict liability or otherwise and from all indirect, special, incidental, exemplary, punitive or consequential damages arising out of a "nuclear incident" as defined in the U.S. Atomic Energy



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Act, or as similarly defined in any foreign statute, law or regulation. Purchaser waives all rights of recovery for any such Claims.

15. **FORCE MAJEURE:** Brentwood shall not be liable for any failures or delays due to acts beyond Brentwood's control including, without limitation, acts of God, war (declared or undeclared), embargoes, labor disputes, strikes, fires, floods, earthquakes, accidents, terrorist acts, government mandates, restrictions, or other actions, equipment failure, shortages or inability to obtain components or subcontracted work or raw materials, damage by the elements, transportation difficulties, production delays or unusually severe weather conditions.

16. **CONFIDENTIAL INFORMATION:** (a) All information and proprietary materials provided or developed in whole or in part by Brentwood are confidential ("Confidential Information"), whether or not identified as such. Purchaser shall hold all Confidential Information in confidence and shall disclose it only to its employees who have a need to know, and shall not use it to the detriment of Brentwood. Purchaser shall not, and shall not attempt to, analyze, disassemble, or reverse engineer any Brentwood Product. "Confidential Information" does not include information which: (i) is or becomes available to the public generally (other than as a result of a disclosure by the Purchaser in violation of these Terms and Conditions); (ii) is subject to public disclosure under any federal, state, or local law, ordinance or regulation; (iii) becomes available to Purchaser on a non-confidential basis from a source other than Brentwood, its affiliates, and their officers and directors, employees, agents, or representative, or any other person bound by a confidentiality agreement with or has contractual, legal or fiduciary obligation of confidentiality to Brentwood, its affiliates, their officers and directors, employees, agents or representatives; (iv) was known by or was available to Purchaser prior to or at the time Brentwood disclosed it.

(b) Nothing in these Terms and Conditions shall be deemed to grant a license directly or by implication, estoppel, or otherwise under any patent, patent application or other intellectual property related to any Confidential Information disclosed or developed pursuant to these Terms and Conditions. These Terms and Conditions shall not be construed as a teaming, joint venture, partnership, or other such arrangement; rather, the parties hereto expressly agree that these Terms and Conditions are for the purposes of protecting Brentwood's Confidential Information and intellectual property and defining the ownership of, and use rights in, intellectual property and technical information.

17. **GOVERNING LAW & JURISDICTION:** These Terms and Conditions shall be construed under the laws of the Commonwealth of Pennsylvania without reference to conflicts of law principles. The parties hereby agree that disputes hereunder shall be subject to the exclusive jurisdiction and venue of the courts of Berks County, Pennsylvania, in either the Pennsylvania Court of Common Pleas or the United States District Court for the Eastern District of Pennsylvania. The parties hereby waive any right to jury trial.

18. **EXPORT CONTROL:** Purchaser will not use, distribute, transfer or transmit any Product, components or technical information (even if incorporated into other products) provided



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in connection with this transaction except in compliance with U.S. export laws and regulations (the "Export Laws"). Purchaser will not, directly or indirectly, export or re-export the following items to any country which is in the then current list of prohibited countries specified in any applicable Export Laws: (a) the Product, components or technical data disclosed or provided to Purchaser by Brentwood; or (b) any improvements or variations of such Product, components or technical data. Purchaser agrees to promptly inform Brentwood in writing of any written authorization issued by the U.S. Department of Commerce office of export licensing to export or re-export any such items referenced in (a) or (b). The obligations stated above in this clause will survive the expiration, cancellation or termination of this transaction or any other related agreement.

19. TRANSLATION: This document may be translated into one or more languages; however, the English translation shall be the official version and shall prevail over all other translations. All dollar amounts are United States currency unless specified otherwise. Purchaser shall abide by the United States Foreign Corrupt Practices Act of 1997, as amended.

20. ASSIGNMENT: Purchaser shall not assign or delegate its obligations hereunder without Brentwood's written consent, and any attempted assignment or delegation without such written consent shall be void. These Terms and Conditions are binding on both parties, their successors and permitted assigns.

21. WAIVER: The failure of Brentwood to insist in any one or more instances, upon the performance of any the Terms or Conditions as set forth herein or the failure of Brentwood to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such terms, conditions or rights thereunder and shall not effect Brentwood's right to insist on strict performance and compliance with regard to any future performance of these Terms and Conditions.

22. SEVERABILITY: If any provision of these Terms and Conditions or any order subject to these Terms and Conditions are found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such provision is prohibited or unenforceable and shall not invalidate the balance of such provision or the other provisions of these Terms and Conditions or any order subject to these Terms and Conditions.

23. AUTHORITY: The individual assenting to or executing any documents or orders, whether as a hard copy or online, on behalf of Purchaser acknowledges, represents and warrants that he or she has read and understands these Terms and Conditions and has been duly authorized by the Purchaser to execute such on behalf of the Purchaser and bind the Purchaser to these Terms and Conditions.