

Terms & Conditions

1. **SELLER'S TERMS TO GOVERN:** Only the terms and conditions stated herein shall be binding upon The Greenheck Fan Corporation (hereinafter "SELLER"). No modification, amendment or change, whether in Buyer's purchase order, shipping release forms or otherwise shall obligate SELLER unless authorized in writing by SELLER's Wisconsin office. The Buyer shall be conclusively presumed to have accepted the terms and conditions set forth herein, thereby creating a contract limited to these terms, if Buyer does not object in writing to these terms within five (5) business days after their receipt.
2. **PRICES:** Unless otherwise specifically provided in SELLER's quotation or acknowledgement, prices are valid for goods required for delivery within 60 days following acceptance. Thereafter, prices are subject to change due to inflation, transportation or surcharge on material. SELLER reserves the right, at its sole discretion, to add to the quoted price a per month escalation fee for orders that ship more than six (6) months from the date of order acceptance. Prices include ground transportation charges (within the 48 contiguous United States) predicated on a single shipment and any partial shipments may result in additional cost to the Buyer.
3. **TAXES & CUSTOMS:** To the prices quoted add any manufacturer's gross receipts, sales, or use tax, customs, either international, federal, state, or local, payable on the transaction any applicable statute.
4. **PAYMENT:** Payment terms for goods shipped hereunder will be net 30 days. Should the Buyer default in the timely payment to SELLER of sums due on an order, SELLER is entitled to any remedies provided in this contract or by law. If Buyer fails to pay any amounts when due, Buyer shall pay SELLER interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, the maximum allowable legal interest rate), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by SELLER.
5. **PERFORMANCE:** SELLER shall be obligated to furnish only the goods described in its quotation or acknowledgement and agreed to in writing. The duty to perform under any order on the part of SELLER and the price thereof is subject to the approval of its Credit Department, and is contingent upon strikes, accidents, floods, act(s) of terrorism, fires, fuel shortages, the inability to procure materials from the usual sources of supply, the requirements of the US Government (through the use of priorities or preference or any other manner) that SELLER divert 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 reasonable control of SELLER. Upon disapproval of the Credit Department or upon the occurrence of any such event, SELLER may delay performance or, at its option, renegotiate prices and terms and conditions of sale with Buyer. If SELLER elects to renegotiate and SELLER and the Buyer are unable to agree on revised prices or terms, SELLER may cancel without any liability.
6. **SHIPMENT DATE:** Shipment dates are estimates only. Shipment shall be FOB factory or warehouse at named shipping point with title passing to the Buyer upon delivery to the carrier by SELLER. SELLER specifically rejects any order containing a time is of the essence clause or liquidated damage penalties for late shipments.
7. **LIABILITY DISCLAIMER: TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, BUSINESS INTERRUPTION, LOST PROFITS OR LOSSES RESULTING FROM THE INSTALLATION, 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 EVEN IF THE PARTY WAS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SHOULD SELLER NEVERTHELESS BE FOUND LIABLE FOR ANY DAMAGES, THEY SHALL BE LIMITED TO THE PURCHASE PRICE FOR THE PARTICULAR PIECE OR ITEM OF EQUIPMENT.**
8. **CHANGES:** With SELLER'S permission, changes may be made to orders prior to the start of fabrication at the current price list. Changes made after fabrication has started will result in an increase in price deemed appropriate by SELLER to recover all associated labor and material costs, including normal overhead and profit.
9. **CANCELLATION:** In the event that all or a portion of an order is canceled by the Buyer without cause before an order is scheduled for production, the Buyer shall be liable to SELLER for cancellation charges equal to, SELLER's incurred

costs. After Buyer's order is scheduled for manufacturing, from that point forward, Buyer shall also be liable to SELLER for such profits as would have been realized by SELLER from the transaction had the order not been canceled by Buyer.

10. RISK OF LOSS: Risk of loss, including but not limited to loss of goods from shortages, damages or transit delays, shall pass to the Buyer when the goods have been delivered to any transportation carrier (excluding proprietary transportation facilities of SELLER). Any claims for damage to, or loss or mis-delivery or damage of the goods shall be filed with SELLER.
11. LIMITED WARRANTY AND LIABILITY: SELLER warrants to Buyer that products manufactured are free from defects in material and workmanship for a period of 12 months from the date of shipment. SELLER's obligations and liabilities under this warranty do not include labor and are limited to furnishing FOB factory or warehouse at SELLER's designated shipping point, freight allowed to Buyer's city, (or point of export for shipments outside the conterminous United States) replacement equipment (or at the option of SELLER parts therefore) for all Seller's products not conforming to this warranty and which have been returned to the manufacturer. No liability whatever shall attach to SELLER until said products have been paid for and such liability shall be strictly limited to the purchase price of the equipment shown to be defective. SELLER may make further warranty protection available on an optional extra-cost basis and which must be authorized and in writing.

ANY MISUSE, NEGLIGENCE, FAILURE TO FOLLOW INSTRUCTIONS OR MANUALS OF INSTALLATION OR MAINTENANCE REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE WARRANTY AND LIABILITY SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESSED OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. SELLER PROVIDES NO INDEPENDENT WARRANTY FOR THIRD PARTY PRODUCTS OR COMPONENTS SOLD TOGETHER OR INCORPORATED WITH SELLER'S PRODUCT(S).

Electrical components are warranted only to the extent warranted by the original manufacturer. To the extent that SELLER is entitled to pass through a warranty of the original equipment manufacturer of the electrical goods sold, SELLER will pass through such warranties to Buyer.

12. AUTHORITY OF SELLER'S AGENTS: No agent, employee or representative of SELLER has the authority to bind SELLER to any affirmation, representation or warranty concerning the goods sold under this contract, and unless an affirmation, representation or warranty made by an authorized agent, employee or representative is specifically included within this bargain it shall not in any way be enforceable by the Buyer.
13. ASSIGNMENT/DELEGATION: No right or interest under this contract may be assigned by the Buyer, nor may any obligation or performance under this contract be delegated by the Buyer without SELLER's written permission. Any attempted assignment or delegation by Buyer shall be void and ineffective for all purposes. SELLER may assign its rights or obligations under this Agreement in the event of a merger or change of control of SELLER.
14. GOVERNING LAW: This agreement shall be governed and construed in accordance with the laws State of Wisconsin. Buyer consents to jurisdiction in the Circuit Court of Wausau, WI or the Federal District Court for the Western District of WI in Eau Claire, WI.
15. INDEMNIFICATION: SELLER agrees to indemnify, defend and hold harmless Buyer from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation attorneys' fees, disbursements and courts costs) for injury to or death of persons or damage to property to the extent caused by a defect in SELLER'S product. Buyer agrees to indemnify, defend and hold harmless SELLER from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation attorneys' fees, disbursements and courts costs) for injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Buyer, a third party, or Buyer's employees, agents, representatives or contractors. Each party shall provide the other with prompt written notice of any

claim covered hereunder, and the indemnifying party shall have the right to assume exclusive control of the defense or settlement of such claim.

16. RETURNS: Goods shall not be returned except by written permission of SELLER pursuant SELLER's returned goods policy.
17. EXPORT CONTROLS. Buyer or end user(s) agrees to comply with all applicable U.S. export laws and regulations administered by Office of Foreign Assets Control (OFAC), Bureau of Industry and Security (BIS) and the Directorate of Defense Trade Controls (DDTC). This includes the Buyer or end user(s) not being designated on any U.S. Government restricted parties lists or in a sanction country. All items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end user(s) either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.
18. DESIGN SERVICES AND COMPUTATIONAL FLUID DYNAMICS: SELLER shall not be liable for any party's reliance on fan locations and performance specified or included in SELLER's CFD report if product is improperly installed, maintained, or otherwise tampered with or if different product is installed without the SELLER's prior written approval. The purpose of any smoke test conducted is to visually demonstrate the general flow of the smoke from the supply to exhaust within a system and is not representative of the exact smoke flow in case of any fire event. General liability for all other design services, including but not limited to product selection, configuration and placement will be the responsibility of the professional engineer for the project.
19. ENTIRETY OF AGREEMENT: This document, together with any other documents furnished by SELLER shall set forth the entire agreement between the parties. Should any portion herein be deemed to be illegal, invalid or unenforceable the same shall not affect other terms or provisions of this Agreement which shall be deemed modified to the extent necessary to render it enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly. No waiver by either party of any rights under this Agreement will be effective unless it is in writing signed by the party against whom it is being enforced.