



General Conditions of Sale Applicable to Replacement Parts, Materials & Service Work

ERM' O cpwłxewłkpi "NNE."f dc" Tower Tech ("Tower Tech") sells genuine Tower Tech replacement parts and other cooling tower component parts (the "Product" or "Products") along with Factory Authorized Service ("Service" or "Services") by Authorized, Qualified, Factory Trained technicians to Purchaser (Tower Tech Cooling tower owners/operators, and/or other service companies) subject to these General Conditions of Sale, and Purchaser shall be deemed to have accepted these General Conditions of Sale when Purchaser issues a purchase order or other form of request for service (individually or collectively, "Purchase Order") to Tower Tech. Tower Tech and Purchaser are hereinafter referred to individually as "Party" and collectively as "Parties". Tower Tech, its employees, are not contractors, but, provides factory support and service for the equipment it sells.

1. **Permits, Licenses, Approvals.** Purchaser shall, at Purchaser's expense, obtain all permits and licenses and pay all fees and similar charges required by law or local practice in connection with unloading, erection, installation or operation of Services. Purchaser shall procure from the proper authorities the approval of any required plans and specifications.
2. **Auxiliary Equipment.** Purchaser shall furnish and install at its own expense:
 - a. Adequate site preparation, foundations and substructure.
 - b. The piping, valves, fittings, electrical wiring, utility hook-ups, equipment and installation of all items necessary for Service.
 - c. Tools, equipment, disposal services, consumables and other supplies necessary for installation/completion of the Products.
3. **Taxes.** Purchaser shall pay all federal, state, and/or local sales, use, and/or other excise taxes in connection with the sale, transportation and installation of the Products. Tower Tech shall charge Purchaser sales tax unless Purchaser provides a copy of its tax exemption certificate with Purchaser's Purchase Order. If a tax-exempt certificate is not supplied, Tower Tech shall be entitled to assess Purchaser a fee for refunding and/or changing the status of the tax after the Purchaser Order is filled.
4. **Delay.** Tower Tech shall not be liable for loss or damage resulting from delay or failure in the performance of its obligations to the extent that such performance is prevented or delayed due to delays in procurement or manufacturing of Products, and/or Service, acts of God or the public enemy, strikes, lockouts, other concerted action of workmen, fire, explosions, perils of sea, floods, drought, epidemic or other casualty, war, whether or not affecting the country of the contracted Party or countries of the contracted Parties, blockades, embargoes, insurrections, riots, sabotage, shortage or failure of supply of labor, fuel, power, raw materials for manufactured products, interruption or delay in transportation, accident, compliance with any regulations, orders or requests issued by any governmental authority or office or agency thereof of any cause, whether or not of the kind herein enumerated, for which Tower Tech is not solely responsible. Upon the occurrence of any such event preventing Tower Tech from performing its then outstanding contracts, Tower Tech shall be entitled to perform such contracts or portions thereof as it may elect, in its sole discretion, and shall incur no liability to Purchaser by reason thereof. If shipment of Products and/or Service is delayed by Purchaser or by Purchaser's failure to provide adequate site or adjacent storage area after commencement of fabrication of Products, and/or Service, the Product and/or Service price shall nevertheless be due and payable from Purchaser when the Products are ready for shipment and/or Service is completed.



5. Freight. Delivery of products by Tower Tech shall be F.O.B. Tower Tech, Inc., Oklahoma City, Oklahoma. Date of delivery shall be the date the Products are picked up at Tower Tech by the carrier for transportation to Purchaser, or the Service Crew leaves Tower Tech for mobilization to Purchaser.
6. Risk of Loss. Purchaser shall be responsible for loss or damage to the Products due to any cause, including but not limited to loss or damage resulting from casualty, upon Tower Tech's delivery of the Products to Purchaser or to a carrier for transportation to Purchaser, and/or the Services to Purchaser.
7. Title. Title to the Products passes to Purchaser when Tower Tech delivers the Products to Purchaser or to a carrier for transportation to Purchaser.
8. Cancellation. If Purchaser cancels a Purchase Order:
 - a. Purchaser agrees to pay to Tower Tech a cancellation penalty of up to fifty percent (50%), at Tower Tech's discretion, of Purchase Order amount.
 - b. After delivery to the carrier for transportation to Purchaser, the total Purchase Order price not previously paid shall be immediately due and payable.
 - c. Purchaser shall pay a restocking charge equal to twenty-five percent (25%) of the Purchase Order price applicable to returned Products; provided, however, that such returned Products must be in as-new condition.
 - d. Purchaser must have obtained prior written authorization from Tower Tech's customer service manager, otherwise no credit or refund shall be allowed.
9. Statute of Limitation. Any action for breach or contract negligence or any other action or cause resulting from this contract, or work performed or material furnished hereunder (except as provided by express warranties) must be commenced within six (6) months after the cause of action accrues.
10. Governing Law. This agreement shall be governed by the laws of the State of Oklahoma.
11. Arbitration. All disputes and claims between the Parties which may arise in connection with this contract shall be settled in good faith negotiations between the Parties. If the Parties are unable to resolve any dispute or claim between them by good faith negotiations, such a dispute or claim shall be resolved by arbitration through the American Arbitration Association to be held in Oklahoma City, Oklahoma, USA.
12. Attorneys' Fees. If either Party to this contract is required to bring any legal action or to seek enforcement of the terms or provisions of the agreement, the Party who prevails in such action shall be entitled to reimbursement for all expenses incurred in such action, including reasonable attorney fees.
13. Waiver. No waiver shall be deemed to be made by either Party of any right under this contract unless the waiver is in writing signed by that Party. Each waiver, if any, shall be a waiver only with respect to the specific instances involved. No waiver shall impair the rights of the waiving Party or the obligations of the other Party in any other respect at any other time.
14. Liens. Any notice of intent to lien delivered to Purchaser or to Purchaser's customer by Tower Tech is intended to preserve the legal rights of Tower Tech. Notwithstanding any contract provision



contained elsewhere, Tower Tech may file a lien, claim or notice thereof on its behalf in the event that any payment is not made as and when provided for.

15. Back Charges. No back charge or set-off against Tower Tech shall be valid except by written agreement of Tower Tech.
16. Interest On Past-Due Amounts. All sums not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month from the due date until paid or the maximum rate permitted by law, whichever is less, plus all costs of collection, including attorney's fees.
17. Limited Scope. Purchaser acknowledges and agrees that its Purchase Order is for Service then offered by Tower Tech on the Purchase Order date.
18. Acceptance of Purchaser's Order. No order shall be deemed accepted by Tower Tech until Purchaser shall have delivered to Tower Tech a written Purchase Order and a deposit of fifty percent (50%) of the Purchase Order price, or such other amount as may be negotiated in advance and in writing by the Parties. Whether or not Tower Tech has received any payment from Purchaser or deposited any payment of Purchaser in a bank, Tower Tech shall be deemed to have accepted Purchaser's Purchase Order only upon Tower Tech's acknowledgement of such Purchase Order by delivery of Tower Tech's standard Service Sales Order Form to Purchaser.
19. Form of Payment: All Product purchases shall be in U.S. Dollars and shall be paid in cash, check, credit card, or bank wire transfer, unless other arrangements have been approved by Tower Tech prior to its shipment of parts and materials.
20. General. The terms herein contained shall supersede all other terms, understandings and customs inconsistent herewith.
21. Terms. Any credit must be authorized in writing and in advance by Tower Tech's chief financial officer. Tower Tech reserves the right to suspend credit, refuse shipment, or cancel unfilled orders whenever Tower Tech believes Purchaser's credit is impaired.
22. Manufacturing Variations. All goods shall be subject to normal manufacturing variations of Tower Tech and its raw materials suppliers as recognized in the reinforced plastics and cooling tower industries. Tower Tech reserves the right to change raw materials specifications and/or raw materials at any time and assumes no obligation to continue to supply any product or products previously sold, or used in the Service.
23. Quality. In the event samples of Products are submitted to Purchaser for, future production will be based on the sample standards, recognizing that some modifications will occur through normal tool wear due to production and use during Service.
24. Limited Warranty on Replacement Parts, Materials, and Service.
 - a. Replacement Shell Components. Subject to the Additional Stipulations below, pultruded, extruded and injection-molded replacement shell component parts are warranted for structural integrity, but not for seams or joints, for two years. Tower Tech will, at Tower Tech's sole discretion, supply materials, but not labor or shipping, to repair or replace defective pultruded, extruded and injection-molded replacement shell component parts, excluding pigment and cosmetic discoloration or deterioration or modification of any part by any party other than Tower



Tech. Notwithstanding, Tower Tech shall be liable only for replacement of shell components that fail to conform to Tower Tech's own specifications and production standards.

- b. Replacement Non-Mechanical Internal Components. Subject to the Additional Stipulations below, replacement of non-mechanical internal component parts are warranted for one year from date of purchase; provided, however, that Purchaser must have stored any uninstalled parts and materials in accordance with Tower Tech's recommendation.
- c. Service Work. Subject to Additional Stipulations below, service work performed by Tower Tech's Factory Authorized Service Technicians is warranted to be free of defects of workmanship for a period of one year. Tower Tech will, at Tower Tech's sole discretion, supply labor to redo, repair defective or faulty workmanship along with any affected parts therein, excluding pigment and cosmetic discoloration or deterioration or modification of any service item, or any part by any party other than Tower Tech.
- d. Additional Stipulations. This Limited Warranty on Replacement Parts, Materials, and Service is subject to the following conditions: (1) Receipt from Purchaser within the applicable warranty period of written notice containing a full description of defects; (2) Purchaser shall not have attempted to correct the defect without Tower Tech's written permission; (3) Purchaser shall have operated and maintained the equipment on or within which the replacement component parts are used, or which was serviced, in strict accordance with Tower Tech's *Installation, Operation & Maintenance Manual* and industry standards for evaporative cooling towers, including, but not limited to, appropriate cold weather operating procedures, an appropriate regime of water treatment, and maintenance; (4) the defect has been caused solely by faulty materials or workmanship for which Tower Tech is responsible, and is not due to such factors as accident, alteration, erosion, corrosion or other physical deterioration caused by exposure to the elements, an abnormally corrosive or abrasive environment, normal wear and tear or from abuse, neglect or operation of the equipment on or within which the replacement component parts are installed in, or Service was performed on, conflict with prevailing standards of the cooling tower industry; (5) all liability of Tower Tech shall be limited, at Tower Tech's sole option, to the repair and replacement of defective replacement component parts, and Tower Tech shall have no liability for consequential or other damages or for transportation charges relating to repaired, replaced or defective parts and/or Service; (6) The replacement component parts must have been installed in accordance with Tower Tech's specifications and recommendations; and (7) this warranty is non-transferable.
- e. No Warranty on Component Parts, Materials, or Equipment Not Manufactured by Tower Tech. Tower Tech does not warrant replacement component parts or materials not manufactured by Tower Tech. Benefits to Tower Tech, if any, with respect to materials and equipment furnished to Tower Tech by other parties are hereby assigned to Purchaser.
- f. Limitation of Liability. Tower Tech shall have no obligation in respect of this Limited Warranty on Replacement Parts, Materials, and/or Service until Purchaser has paid Tower Tech's total invoice amount for parts, materials and Service, less any retainage amount that Tower Tech may have agreed to in writing prior to the date of shipment of the replacement component parts Service commencement. Tower Tech's liability under this Limited Warranty on Replacement Parts, Materials, and/or Service is expressly limited as follows: (1) THIS LIMITED WARRANTY ON SERVICE AND/OR REPLACEMENT PARTS AND MATERIALS IS PURCHASER'S EXCLUSIVE REMEDY AGAINST TOWER TECH AND IS IN LIEU OF ANY OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, SERVICEABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE; (2) Tower Tech shall not be liable to the Purchaser for any consequential, indirect or liquidated damages including, but not limited to, loss of profits or

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revenue, loss of use of equipment, costs of replacement cooling towers or replacement parts or materials, or service, additional expenses incurred in the use of equipment or facilities, or claims of customers of Purchaser. The disclaimer applies to consequential damages based upon any cause of action asserted against Tower Tech, including claims arising out of breach of warranty, express or implied, guarantee, product liability, negligence, personal injury or any other claim pertaining to the performance or non-performance of this contract by Tower Tech; (3) Adequate engineering and quality control must be performed by Purchaser to assure that the Product is suitable for its application; and, (4) Tower Tech shall not be responsible for handling or modification by Purchaser, or end use of Purchaser's product.

25. Receipt of Limited Warranty on Replacement Parts, Materials, and/or Services. Purchaser acknowledges and agrees that Purchaser has received Tower Tech's Limited Warranty on Replacement Parts, Materials, and/or Service.

26. Entire Agreement. These General Conditions of Sale are the entire agreement between Tower Tech and Purchaser with respect to the subject matter hereof. No statement, understanding, representation, agreement, remark, promise, oral or written, made by Tower Tech, or its agent, representative, or employee, which is not contained herein will be recognized or enforceable or binding upon Tower Tech. This agreement may not be modified or amended except by a written instrument signed by a duly authorized representative of Tower Tech and Purchaser. Purchaser acknowledges and agrees that the terms and conditions of its Purchase Order do not conflict with the terms and conditions set forth herein and that Purchaser's issuance of a Purchase Order for replacement parts and/or materials expressly denote Purchaser's assent to the terms and conditions herein.