

**1. Terms.** The terms and conditions set forth herein (the “Terms”) apply to all sales of goods or services sold by EcoVapor Recovery Systems, LLC (“Seller”) to any purchaser (“Purchaser”). The terms set forth herein are the only terms Seller will accept. Any differing or additional terms printed or otherwise contained in Purchaser’s acknowledgement, confirmation, payment, or acceptance of these Terms, and any alterations of these Terms made by Purchaser, shall have no force or effect. Purchaser agrees that such differing or additional terms or alterations shall not constitute any part of the contract between the parties. Furthermore, unless otherwise agreed to in writing signed by an authorized representative of Seller, any such differing or additional terms or alterations to these Terms are deemed by Seller to be “material” alterations and Seller hereby objects to such alterations.

**2. Prices.** Unless otherwise agreed in writing, all prices quoted by Seller to Purchaser are based on U.S. dollars, F.O.B. Seller’s shipping point, and include standard U.S. domestic packaging. Prices for custom goods or packaging will be quoted in writing by Seller separately upon request. Unless otherwise stated, such prices are effective for thirty (30) days from the date of quotation. Unless otherwise agreed to in writing, except as to goods to be delivered within thirty (30) days of Seller’s acceptance of Purchaser’s order, Seller reserves the right to increase its prices to those in effect at the time of shipment. If the amount Purchaser is charged or quoted for an item is obviously incorrect, regardless of whether it is an error in a price posted on the website or otherwise communicated to Purchaser, then Seller reserves the right, at its sole discretion, to cancel that order or portion thereof and refund to Purchaser any corresponding amount paid or, if the order has already shipped, to charge or invoice Purchaser for the correct amount. The Purchaser will have the option to pay the corrected amount or return the goods in unused condition. This policy will apply regardless of how the error occurred.

**3. Taxes.** Any sales, use, custom, duties, VAT, or manufacturer’s tax which may be imposed upon the sale or use of goods, or any property tax levied after readiness ship, or any excise tax, license, or similar fee required under this transaction are in addition to the quoted prices and paid by Purchaser. Purchaser must provide Seller with a resale/exemption certificate in order to avoid the withholding of applicable taxes. No refund or adjustment to previously withheld taxes will be made by Seller more than sixty (60) days after the invoice date.

**4. Payment.**

**a.** All payments must be made by credit card, check, or wire transfer unless Purchaser has established an account with Seller. For purchases other than by credit card, check, or wire transfer, unless otherwise agreed, terms are net thirty (30) days from the date of invoice. Payment shall be made in US dollars without expense to Seller. Purchaser’s obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Balances remaining unpaid at due date are subject to an interest charge of 1.5% per month or the highest rate permitted by law, whichever is lower, until paid. Any credits or other funds due or owed to Purchaser will be applied against delinquent balances before payment or reimbursement is made.

**b.** If Purchaser believes that any invoiced or billed amount is in error, Purchaser must notify Seller of the dispute within 60 days after the invoice date, or the Purchaser will be deemed to have waived its rights to dispute the invoice or bill. If Purchaser notifies Seller of a dispute as provided above, it must pay the undisputed amount at the time of notification.

c. Seller reserves the right, in its sole discretion, to require prepayment from Purchaser at any time and may refuse to sell and withhold further shipment or services until all overdue balances are made current. Purchaser shall be liable for, and shall reimburse Seller for, all costs and expenses it may incur in connection with collection of any amounts owed to Seller, or for enforcement of its rights, including without limitation, reasonable attorneys' fees and expenses, court costs, and other costs of collection, including collection agency fees.

**5. Delivery & Risk of Loss.** Transportation shall be by common carrier, at Purchaser's risk and expense. Purchaser may supply Seller with its FedEx, UPS or other account number and thereby designate the common carrier. Should the delivery date be postponed by Purchaser, Seller shall have the right either to adjust the price of the undelivered goods to Seller's price at the time of shipment or to deliver the goods to a storage facility chosen by Seller, at Purchaser's risk and expense. Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Purchaser's order. Unless otherwise agreed to in writing, title to the goods shall remain with Seller until all payments for the goods have been made.

**6. Inspection and Acceptance.** Purchaser shall have the right to inspect all goods delivered or services rendered pursuant to these Terms prior to acceptance. Purchaser may test goods to determine whether the goods conform to the specifications of these Terms. Any goods not rejected within ten (10) days of delivery shall be deemed accepted.

**7. Returned Goods Policy.**

a. Goods made to order are non-cancellable from the time the order is accepted and are non-returnable. Returns for standard goods are subject to the following conditions: (i) all returns are subject to the prior authorization of Seller, in its sole discretion; (ii) owners of goods other than the original purchasers may not return goods under any circumstances; (iii) all authorized returned goods must be appropriately cleaned, packaged, and shipped freight prepaid to Seller; (iv) returned goods must not have been exposed to any biohazards; (v) no goods will be accepted for return after thirty (30) days from the date of delivery unless the Seller agrees otherwise in writing; and (vi) goods must not have deteriorated because of use, improper storage, handling, abuse, or other factors.

b. Credit for returned goods is conditioned upon Seller's inspection and approval of such goods upon their return. If Seller determines, in its sole discretion, that any returned goods are not eligible for return due to any of the reasons provided above, Purchaser will not receive a credit, even if a return was authorized. No advance credits will be made.

**8. Indemnification.** Except as provided herein or in a separate written agreement, Purchaser shall indemnify and hold Seller harmless from any and all damage, loss, or liability, including strict liability and reasonable attorneys' fees, arising out of or relating to Purchaser's possession, use, or resale of the Equipment.

**9. Limited Warranty.**

a. Seller warrants to the original purchaser that the goods manufactured by Seller shall be free of defects in material and workmanship for ninety (90) days from the date of delivery. Goods not manufactured by Seller, but sold by Seller, are not warranted by Seller and shall carry whatever warranty, if any, that the manufacturer thereof has conveyed to Seller, but only to the extent that Seller can pass the same on to Purchaser.

b. Any services provided under these Terms will be provided in a good and workmanlike manner. No other warranty, express or implied, is made with regard to services provided under these Terms.

c. The warranty stated in this paragraph pertains to software provided by Seller hereunder and only to such software. Seller warrants that all software provided by Seller hereunder does not and will not infringe upon or violate any intellectual property right or other property right of any third person or entity. In the event of a claim against Purchaser asserting or involving such an allegation, Seller will defend, at Seller's expense, and will indemnify Purchaser and hold Purchaser harmless against any loss, cost, expense (including attorneys' fees), or liability arising out of such a claim, whether or not such claim is successful. In the event an injunction or order should be obtained against use of the software by reason of the allegations, or if in Seller's opinion the software is likely to become the subject of such a claim of infringement, Seller will, at its option and in its expense and as Purchaser's sole and exclusive remedy, (i) procure for Purchaser the right to continue using the software; (ii) replace or modify the software so that it becomes non-infringing (such as modification or replacement shall be functionally equivalent to the original); or, (iii) if neither (i) nor (ii) is commercially and reasonably practicable, refund to Purchaser a pro-rated portion of the purchase price paid for the software.

**10. WARRANTY DISCLAIMER.**

a. THE EXPRESS WARRANTIES STATED IN SECTION 9 OF THESE TERMS ARE THE ONLY WARRANTIES MADE WITH REGARD TO GOODS OR SERVICES PROVIDED UNDER THESE TERMS. EXCEPT FOR SUCH WARRANTIES, ALL GOODS AND SERVICES PROVIDED UNDER THESE TERMS ARE PROVIDED AS-IS AND WITH ALL FAULTS. SELLER, ITS SUPPLIERS, AND ITS LICENSORS DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, AND WHETHER WRITTEN OR ORAL, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ALSO INCLUDING ANY OTHER EXPRESS OR IMPLIED WARRANTIES THAT MAY ARISE UNDER LAW, BY STATUTE, OR BY COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

b. USED GOODS SOLD BY SELLER TO PURCHASER ARE SOLD "AS-IS", WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

c. SELLER'S WARRANTY HEREUNDER SHALL NOT APPLY AND SHALL BE VOID IF AND TO THE EXTENT ANY ALLEGED DEFECT OR BREACH OF WARRANTY ARISES FROM: ANY REPAIR, ALTERATION, OR OTHER WORK OTHER THAN WORK AUTHORIZED BY SELLER; OR ABUSE, MISUSE, IMPROPER MAINTENANCE, ACCIDENT, OR THE NEGLIGENCE OF THE PURCHASER.

d. SELLER'S WARRANTY HEREUNDER DOES NOT EXTEND TO DAMAGE TO OTHER ITEMS OR TO COMPONENTS, ACCESSORIES, PARTS, OR SUPPLIES THAT HAVE NOT BEEN FURNISHED BY SELLER.

**11. EXCLUSIVE REMEDY.** IN THE EVENT OF A BREACH OF WARRANTY, SELLER'S SOLE OBLIGATION UNDER THESE TERMS SHALL BE TO DO ONE OF THE FOLLOWING, AT SELLER'S ELECTION AND DISCRETION: (A) CORRECT THE GOODS OR RE-PERFORM THE SERVICES THAT FAIL TO CONFORM TO THE WARRANTY, TO THE EXTENT NECESSARY TO RENDER THEM CONFORMING; (B) REPLACE ANY NONCONFORMING GOODS; OR (C) REFUND THE PRICE PAID FOR THE NONCONFORMING GOODS OR SERVICES. IF IT IS NECESSARY TO REMOVE, SHIP, INSTALL, OR RE-INSTALL ALLEGEDLY DEFECTIVE GOODS, PURCHASER WILL BEAR THE COST AND EXPENSE OF THE SAME. PURCHASER SHALL BEAR

ALL RISK OF LOSS OR DAMAGE TO THE GOODS WHILE IN TRANSIT. IN THE EVENT NO DEFECT OR BREACH OF WARRANTY IS DISCOVERED BY SELLER UPON RECEIPT OF ANY RETURNED ITEM, THE ITEM WILL BE RETURNED TO PURCHASER, AND PURCHASER WILL REIMBURSE SELLER THE TRANSPORTATION CHARGES, LABOR, AND ASSOCIATED CHARGES INCURRED IN TESTING AND EVALUATING THE ITEM. THE SELLER'S OBLIGATIONS STATED IN THIS PARAGRAPH SHALL CONSTITUTE THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER FOR BREACH OF WARRANTY. NO OTHER REMEDY WILL BE AVAILABLE TO PURCHASER, AND PURCHASER AGREES NOT TO SEEK ANY OTHER REMEDY.

## 12. Software.

a. If any of the goods supplied under these Terms involve or include software, such software is licensed to Purchaser and not sold. The software and any copyrights, trade secrets, patents, or other rights commonly known as intellectual property rights associated therewith are the exclusive property of Seller and its licensors. All rights not expressly licensed to Purchaser are reserved to Seller. Nothing in these Terms will be deemed to grant, by implication, estoppel, or otherwise, a license to any of Seller's other existing or future intellectual property rights. Purchaser will not remove, alter, or obscure any proprietary notices (including copyright notices) on any software or technology provided under these Terms. Purchaser will not claim any right or interest in or to any intellectual property rights owned by or licensed to Seller. If Purchaser or its employees, agents, or affiliated companies has, or is entitled to, any ownership interest in or to any intellectual property that relates to the goods or services furnished hereunder, or that is created in the course of or because of Seller's performance hereunder, then Purchaser shall assign or cause its employee, agent, or affiliate to assign, and each of the foregoing does hereby assign, such ownership interest to Seller.

b. Purchaser shall not do any of the following, nor shall it permit, assist, or encourage any third party or any of its employees, agents, or affiliates, to do any of the following: (i) copy, modify, adapt, alter, translate, or create derivative works from software or other intellectual property provided by Seller hereunder (collectively, "IP"); (ii) sublicense, distribute, sell, lease, rent, loan, or otherwise transfer any IP to a third party; (iii) merge any IP with other software or works, or use IP to develop an application or program having a substantially similar primary function as the IP; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the IP; (v) directly or indirectly encumber the IP; or (vi) otherwise exercise any rights in or to the IP.

## 13. Confidentiality.

### a. Definition.

i. Subject to the exclusions and exceptions set forth below, the "Confidential Information" of the Seller means all information of the Seller that is disclosed to the Purchaser and that falls within one or more of the following categories: (1) non-public information relating to the Seller's business, affairs, or products that has or could have commercial value; (2) any information which the Purchaser knows or reasonably should know that the Seller is required to keep confidential under a binding obligation with a third party; and (3) all information provided by the Seller to Purchaser that Purchaser knows or reasonably should know could be detrimental to the interests of Seller if disclosed or used without authorization, whether or not such information is identified as Confidential Information. As used in this paragraph, the term "information" refers to data or information in any form or medium.

ii. By way of example, Confidential Information includes the following: (1) sales and customer information; (2) product designs and technical materials; (3) trade secrets and other proprietary information; (4) formulas, research and development techniques, processes, computer programs, software, electronic codes, security codes, inventions, innovations, patents, patent applications, discoveries, improvements, data, know-how, formats, test results, and research projects; (5) lists of customers and potential customers and non-public information concerning them; (6) information about costs, profits, markets and sales; (7) contracts and their terms; (8) plans relating to business, marketing, and strategies; (9) unpublished financial information, budgets, forecasts, and projections; (10) employee personnel files and compensation information; and (11) Seller's intellectual property rights.

iii. Information that falls into any one or more of the following categories will not constitute Confidential Information: (1) information that is or becomes part of the public domain through no fault of Purchaser; (2) information that Purchaser can show was known by Purchaser prior to its receipt from Seller; (3) information that Purchaser can show was independently developed by or for Purchaser without relying on any Confidential Information received from Seller; (iv) information that Purchaser can show was rightfully received from a third party who is not under any obligation to maintain the confidentiality of such information, under circumstances not involving a violation of the rights of Seller.

b. **Protection of Confidential Information.** Purchaser will not do any of the following, directly or indirectly, without the written consent of Seller: (i) disclose, transfer, or otherwise communicate to any third party any Confidential Information of Seller; or (ii) use Confidential Information of Seller for any purpose other than in relation to these Terms. Purchaser will not permit any of its respective agents or employees to take any action prohibited by this paragraph.

c. **Availability of Injunctive Relief.** The unauthorized use or disclosure of Confidential Information would be highly prejudicial to the interests of Seller and would materially damage Seller's business. Therefore, Seller will be presumed entitled to injunctive relief to protect its Confidential Information against unauthorized disclosure or use in violation of these Terms.

d. **Return of Confidential Information.** Upon Seller's request (and consistent with Purchaser's right under these Terms, any purchase orders, and any other written agreements between Seller and Buyer): (i) Purchaser will immediately deliver to Seller the originals and all copies of any and all materials and writings received from, created for, or belonging to Seller that relate to or contain any of Seller's Confidential Information; and (ii) Purchaser will permanently delete any and all of Seller's Confidential Information from all computers and other electronic data storage devices in Purchaser's control or under the control of Purchaser's employees, agents, or affiliates.

e. **Court Order.** Purchaser will not be in breach of its confidentiality obligations to the extent that, based upon the advice of counsel, it provides Confidential Information under a court order or discloses Confidential Information as required by law. If Purchaser discloses Confidential Information under this paragraph, it must immediately notify Seller of the court order or legal requirement, must give Seller a reasonable opportunity to contest or limit the required disclosure, and must provide reasonable assistance at Seller's expense.

**14. LIMITATION OF LIABILITY.** IF SELLER, ANY OF ITS LICENSORS, OR ANY OF ITS SUPPLIERS, BREACHES OR DEFAULTS UNDER ANY OF THESE TERMS, OR OTHERWISE COMMITS A BREACH OF A CONTRACTUAL OR OTHER OBLIGATION TO PURCHASER, THE LIABILITY OF SELLER OR ITS LICENSOR

OR SUPPLIER, AS THE CASE MAY BE, SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO SELLER BY PURCHASER UNDER THESE TERMS. PURCHASER ACKNOWLEDGES THAT THE PRICES QUOTED BY SELLER ARE FAIR CONSIDERATION FOR THE ABOVE-STATED LIMITS OF LIABILITY.

**15. WAIVER OF DAMAGES.** IN NO EVENT WILL SELLER, ITS LICENSORS, OR ITS SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST REVENUE OR LOST PROFITS, EVEN IF SELLER AND ITS LICENSORS AND SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT WILL SELLER, ITS LICENSORS, OR ITS SUPPLIERS BE LIABLE FOR ANY ENVIRONMENTAL DAMAGES, INCLUDING ANY OBLIGATION TO REMEDIATE, RESULTING FROM THE USE OF ITS PRODUCTS OR SERVICES.

**16. Disputes.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to such jurisdiction's conflict of laws principles. An action brought by either Party to interpret or enforce any provision of these Terms may be brought only in a state or federal court located in Denver, Colorado. Each Party submits to the jurisdiction and venue of such courts and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue. EACH PARTY HEREBY WAIVES ANY RIGHT IT HAS OR MAY HAVE TO A TRIAL JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THESE TERMS.

**17. General.** Seller and Purchaser are independent contractors in all matters concerning these Terms. Nothing in these Terms creates a joint venture, partnership, or employment relationship between Seller and Purchaser. Seller will not be considered in default under these Terms to the extent that such Seller's performance is delayed or prevented events outside Seller's reasonable control, such as fire, flood, hurricane, tornado, earthquake, other natural disasters, riot, war, terrorism, labor disputes, pandemics, or civil strife. The failure of Seller to insist upon the performance of any provision of these Terms or to exercise any right or privilege granted to Seller under these Terms will not be construed as waiving such provision or any other provision of these Terms. These Terms shall not confer any rights or remedies upon any person other than Seller and Purchaser and their respective successors and permitted assigns. These Terms shall be binding upon the Seller and Purchaser and their heirs, executors, administrators, other legal representatives, and successors and permitted assigns. Purchaser may not assign its rights under these Terms without the prior written consent of Seller. If any term or condition of these Terms is held to be invalid or unenforceable, then the term or condition may be modified or amended by the court to render it enforceable to the maximum extent permitted; if modification or amendment is not practicable, then the term or condition shall be severed from these Terms with no effect upon the remaining terms and conditions of these Terms. The words "including" and "for example", and similar words, will be construed as though they are followed by the words "without limitation". These Terms shall be construed without regard to any presumption or rule requiring construction against the party who caused these Terms to be drafted or in favor of the party receiving a particular benefit hereunder.