



Standard Terms and Conditions

1. **DEFINITIONS:** In addition to the other terms defined herein, the following terms have the following meaning in these Standard Terms and Conditions:
 - 1.1 **“Buyer”** means the person or entity purchasing Product or Services from Company pursuant to these Terms identified on the face of the Order relating to this Order.
 - 1.2 **“Company”** means Marvair, Inc., the seller of Product or Services under these Terms.
 - 1.3 **“Company Facility”** means Company’s facility located at **156 Seedling Drive, Cordele, GA 31015, having a phone number of (229) 273-3636.**
 - 1.4 **“Company Warranty Certificate”** means the applicable certificate located at marvair.com which reflects the terms and conditions of Company’s separate warranties for each brand and application of Products that comes with the sale of that Product as of the time an Order for that Product becomes a binding agreement on both Buyer and Company.
 - 1.5 **“Order”** means any quote, order and/or order acknowledgement that becomes a binding agreement between Buyer and Company for Product.
 - 1.6 **“Product”** means the goods and/or services being purchased by Buyer and supplied by Company under these Terms that is reflected on the face of the related quote, purchase order and/or order acknowledgement.
 - 1.7 **“Terms”** means these Standard Terms and Conditions.

2. **GENERAL.** These Terms are hereby annexed as the sole terms and condition of each Order for the delivery of Product to be provided by Company to Buyer with respect to the transaction(s) covered by the Order. The Terms of any Order shall become binding on the Parties upon the later of: (i) Company’s written acknowledgment and acceptance of the Order; or (ii) Buyer’s written acknowledgement of these Terms (collectively the “Effective Date”). All Orders are expressly limited and made conditional upon acceptance by Buyer of these Terms without change, addition or deletion. There shall be no understandings, agreements, or obligations (outside these Terms) unless specifically set forth in writing and accepted by signature of an authorized representative of Company at Company’s Facility. Orders shall not be binding upon Company unless accepted by an authorized representative of Company at Company’s Facility. No distributor, sales representative or any other person or entity (except authorized employees of Company at Company’s Facility) has any authority whatsoever to bind Company to any representation or agreement of any kind. Company does not build items to plans and specifications. Company agrees to furnish only the items as described in Company’s quote or order acknowledgement (whichever is later) unless Company’s Facility has previously received and accepted, in writing, approved submittals from Purchaser, in which event the approved submittals reflect the only items being furnished under the Order by Company. For purposes hereof, Company and Buyer shall be collectively referred to as the “Parties” or singularly as a “Party”.

3. **PRICE AND TAXES.** The base purchase price payable by Buyer to Company for the Products (collectively the “Price”) is based upon the amounts set forth on the face of the Company quotation from which the Order was issued or Company’s pricing in effect on the date of the Order if no quotation is provided. The delivery date will be established on the Order acknowledgement form prepared and sent by Company. Unless otherwise specified in writing by Company, the Price quoted or specified by Company shall remain in effect until the expiration date stated on the face of the quote or, if no expiration date is stated, then for thirty (30) days after the date of Company’s quotation (the “Acceptance Period”), provided that an unconditional authorization from Buyer to release the Order for production and/or shipment by Company is received and accepted by Company within the Acceptance Period. The Price does not include any applicable Federal, State or local use, sales, use, excise, value-added, transportation, privilege occupational, consumption, storage, document, transaction or other taxes or assessments and Buyer shall be solely responsible for all such taxes. Company reserves the right to adjust prices to reflect 100% of the direct or indirect cost impact of any tariffs, duties, or similar governmental charges imposed after the date of Company’s quote, including any increased direct cost of the sale or shipment of the Product purchased or the indirect costs of any parts or components used in the manufacture of the Product. These adjustments will be calculated to ensure fair allocation of the increased costs to the Buyer. Company will provide advance notice of any such adjustments along with documentation supporting the changes. Any current or future tax or governmental charge (or increase in same) affecting Company’s costs of production, sale, or delivery or shipment, or which Company is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Products shall be for Buyer’s account and shall be added to the Price or billed to Buyer separately, at Company’s election. Such taxes and assessments will be included in Company’s invoices and paid by Buyer unless the Order plainly states on its face the existence of an exemption from any such tax or assessment and Buyer provides Company with evidence of such exemption from the applicable taxing authority.

4. **DELIVERY, TITLE & RISK OF LOSS.** Shipment dates are approximate and are based upon prompt receipt of all necessary information from Buyer. While Company will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged, estimated or quoted by Company, all shipping dates and/or performance dates are approximate and not guaranteed. Company reserves the right to make partial shipments. Company, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions and other required information. If goods are released for production but Company is prevented by the Buyer from shipping upon completion or by Company’s estimated shipping date, whichever is later, Company may at its option, in addition to all other remedies, invoice Buyer to be immediately payable and Buyer agrees to reimburse Company for any and all storage costs and other additional expenses resulting therefrom. Delivery shall be made (and title and risk of loss shall pass to Buyer) upon Company making the Products available to the carrier Ex Works, Company’s Facility. Receipt of the Products by Buyer shall constitute Buyer’s acceptance for delivery and waiver of any and all claims against Company for loss or damage incurred. Passage of title for the Products is subject to Buyer’s compliance with these Terms. In the event Buyer requests changes in the Products after the Order has become binding, such changes shall become part of the Order only upon acceptance by Company, in its sole discretion, whereupon: (i) anticipated delivery dates will be reasonably extended; and (ii) Company shall be compensated for all costs incurred in connection with such change, including the Price, which shall be adjusted to maintain Company’s anticipated profit margin. No claims for errors in shipment will be binding upon Company unless made by Buyer within ten (10) days after the receipt of the Products and only if accompanied by necessary evidence/documents to substantiate the claim. Claims for loss or damage against the shipper in transit may, at Company’s election, be entered and prosecuted directly by Buyer. The Products shall be installed by and at the expense of the Buyer and/or Buyer’s customers and ATT shall have no obligation with respect thereto. Company shall have no system design, application or maintenance responsibility or responsibility for mold, fungus or bacteria to Buyer or any other third party.

5. **LIMITED WARRANTY/LIMITATION OF REMEDIES AND LIABILITY.**

DISCLAIMER: It is expressly understood that unless a statement is specifically identified as a warranty, statements made by Company or its representatives, relating to Company’s Products, whether oral, written or contained in any sales literature, catalog or any other agreement, are not express warranties and do not form a part of the basis of the bargain, but are merely Company’s opinion or commendation of Company’s Products. **EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THERE IS NO EXPRESS WARRANTY AS TO ANY OF COMPANY’S PRODUCTS. COMPANY MAKES NO WARRANTY AGAINST LATENT DEFECTS. COMPANY MAKES NO WARRANTY OF MERCHANTABILITY OF THE PRODUCTS OR OF THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE**

GRANT OF LIMITED EXPRESS WARRANTY: Company warrants Company’s Products and services to be free from defects in material and workmanship under normal use and maintenance only as follows:

- (1) In connection with any complete air conditioning, ventilation, heating and/or heat pump units built or sold by Company for the period of time stated in the applicable Company Warranty Certificate in effect for such Product.

(2) In connection with any repair and replacement parts, which are not supplied under warranty, for ninety (90) days from date of shipment (from factory); and.

(3) In connection with any services for thirty (30) days from the performance of each item of service.

No Product or any portion thereof shall be returned without prior written authorization from Company. To make a claim under this Limited Warranty, all parts must be returned to Company's Facility, freight prepaid, no later than thirty (30) days after the date of the failure of the part, if the return of the part is required by Company, or the claim will be subject to rejection or, at Company's sole discretion, Company or its agent may inspect the Product or workmanship on Customer's premises. Once Company determines the part to be defective and within Company's Limited Express Warranty, Company shall, when such part has been either replaced or repaired, return such to a factory recognized dealer, contractor or service organization, Ex Works, Company's Facility), freight prepaid, unless otherwise agreed by Company, in its sole and absolute discretion. The warranty on any parts or services repaired or replaced under warranty expires at the end of the original warranty period. No attempt to repair and/or improve the Products and/or any parts or components thereof by any of Company's representatives shall change or extend this Limited Warranty.

5.3 This warranty does not cover and does not apply to: (1) Air filters, fuses, refrigerant, fluids, oil, belts or pulleys; (2) Products relocated after initial installation; (3) Any portion or component of any system that is not supplied by Company, regardless of the cause of the failure of such portion or component; (4) Products on which the unit identification tags or labels have been removed or defaced; (5) Products or services on which payment to Company is or has been in default; (6) Products which have defects or damage which result from improper or inadequate installation, maintenance, wiring or voltage conditions, electrical imbalance characteristics or repair; or are caused by accident, misuse or abuse, fire, flood, alteration or misapplication of the Product or Products installed in violation of applicable building codes or regulations; (7) Products or services which have defects or damage which result from a contaminated or corrosive air or liquid supply, operation at abnormal temperatures, or unauthorized opening of refrigerant circuit; (8) Mold, fungus or bacteria damages; (9) Products or services subjected to corrosion or abrasion; (10) Products or services manufactured or supplied by others; (11) Products or services which have been subjected to misuse, negligence or accidents; (12) Products or services which have been operated in a manner contrary to Company's printed instructions; (13) Products or services which have defects, damage or insufficient performance as a result of insufficient or incorrect system design or the improper application of Company's Products or failure to perform reasonable maintenance of the Product or service; (14) Electricity or fuel costs, or any increases or unrealized savings in same, for any reason whatsoever; (15) Products or services altered, disassembled or repaired by anyone other than Company personnel or persons so designated in writing by Company prior to the commencement of said work; (16) Damages due to deterioration during periods of storage by the Buyer prior to installation and operation; (17) ordinary wear and tear; or (18) any other matter, activity and/or passage of time causing a defect which are beyond the reasonable control of Company.

5.4 Company is not responsible for:

- (1) The costs of any fluids, refrigerant or other system components, or associated labor to repair or replace the same, which is incurred as a result of a defective part covered by Company's Limited Express Warranty;
- (2) The costs of labor, refrigerant, materials or service incurred in removal of the defective part, or in obtaining and replacing the new or repaired part;
- (3) Transportation costs of the defective part from the installation site to Company or of the return of any part not covered by Company's Limited Express Warranty; or
- (4) The costs of installation or the costs of normal maintenance.

5.5 Limitation: This Limited Express Warranty is given in lieu of all other warranties. If, notwithstanding the disclaimers contained herein, it is determined that other warranties exist, any such warranties, including without limitation any express warranties or any implied warranties of fitness for particular purpose and merchantability, shall be limited to the duration of the Limited Express Warranty.

5.6 OBTAINING WARRANTY PERFORMANCE

Normally, the dealer or service organization who installed the Products will provide warranty performance for the owner. Should the installer be unavailable, contact any Company recognized dealer, contractor or service organization. If assistance is required in obtaining warranty performance, write or call the Company at the Company Facility.:

NOTE: Some states or Canadian provinces do not allow limitations on how long an implied warranty lasts, or the limitation or exclusion of consequential or incidental damages, so the foregoing exclusions and limitations may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state and from Canadian province to Canadian province. Please refer to the Company Installation, Operation and Maintenance Manual for operating and maintenance instructions.

FORCE MAJEURE: Company shall have no liability or other obligation for any damages if Company's performance is delayed for any reason or is prevented to any extent by any event such as, but not limited to: any war, civil unrest, government restrictions or restraints, strikes or work stoppages, fire, flood, accident, epidemic, riot, power failure, embargoes, boycotts, shortages of transportation, fuel, material, or labor, acts of God, governmental authority or public enemy or any other reason beyond the sole control of Company. In the event of such delay or failure, the Order shall not terminate, but the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay; provided, however, if the delay or failure continues for 60 days, Company may terminate the Order. Any shipping date stated by Company is Company's best estimate, but Company makes no guarantee of shipment by any such date and shall have no liability or other obligation for failure to ship on such date, regardless of cause.

LIMITATION OF REMEDIES: In the event of a breach of the Limited Express Warranty, Company will only be obligated at Company's option to repair the failed part or unit or to furnish a new or rebuilt part or unit in exchange for the part or unit which has failed. If after written notice to Company's Facility of each defect, malfunction or other failure and a reasonable number of attempts by Company to correct the defect, malfunction or other failure and the remedy fails of its essential purpose, Company shall refund the purchase price paid to Company in exchange for the return of the sold Product(s). Said refund shall be the maximum liability of Company. The statute of limitations on any claim of the Buyer against the Company shall be one (1) year from the date the cause of action accrues. **THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY OF THE BUYER OR THEIR PURCHASER AGAINST COMPANY FOR BREACH OF CONTRACT, FOR THE BREACH OF ANY WARRANTY OR FOR COMPANY'S NEGLIGENCE OR IN STRICT LIABILITY.**

LIMITATION OF LIABILITY: COMPANY EXPRESSLY DISCLAIMS AND EXCLUDES ANY LIABILITY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT, OR ANY OTHER SIMILAR DAMAGE CREATED BY, ARISING OUT OF, OR RESULTING FROM BREACH OF CONTRACT, FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, OR IN TORT, WHETHER FOR COMPANY'S NEGLIGENCE OR AS STRICT LIABILITY, OR FOR ANY OTHER THEORY, EVEN IF COMPANY OR ITS REPRESENTATIVES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE ORDER AND THESE TERMS EXCEED THE TOTAL OF THE AMOUNTS PAID TO COMPANY FOR THE PRODUCTS SOLD HEREUNDER.

9. CANCELLATION AT DEFAULT OF BUYER. Company may cancel the Order without liability effective upon written notice to Buyer, upon occurrence of any of the following Events of Default: (i) Buyer's failure to make timely payment of any sum owing to Company for any Orders; or (ii) institution of any proceedings by or against Buyer under any bankruptcy, insolvency or similar law and/or the appointment or application for a receiver for Buyer or an assignment by Buyer for the benefit of creditors. Upon cancellation, at Company's option: (i) Buyer shall pay for all Products delivered and for all Products completed or in process pursuant to the Order accepted by Company; (ii) with respect to all Products for which Company has not received full payment, Company may stop delivery, retake (Buyer shall surrender the Products without dispute) or retain possession of the Products wherever located (all without notice, demand or legal process) and retain, lease or resell (at public or private auction or otherwise) without accounting to Buyer, and any payments received by Company from Buyer or otherwise may be retained as liquidated damages; and/or (iii) Company may declare any outstanding balance immediately due and owing and collect same from Buyer without further notice or demand, together with interest at the rate of one and one-half percent (1½%) per month or the maximum rate permitted by law, whichever is less. The rights of cancellation and remedies provided in this Section are cumulative and are in addition to any other rights and remedies of Company in law or equity.

10. PAYMENTS TERMS. Unless otherwise agreed to by Company, all Orders submitted to Company under this Agreement shall be on payment terms of (a) 25% of the total purchase price upon submission of an order for Products to Company, (b) 25% of the total purchase price upon the release for production of the Product subject to the order, and (c) 50% of the total purchase price before Company ships the Product subject to the order with no discount allowed for earlier payment and no right of offset and/or diminution for amounts due or allegedly due from Company to Buyer. It is expressly understood and agreed by Buyer that Company shall have no obligation to: (i) order any parts or materials necessary in the completion of the Products; or (ii) commence or continue the manufacturing and/or assembly of any Products hereunder unless and until payments are timely received by Company. If Buyer fails or refuses to pay the Price when due as aforesaid, Company shall have the right, in addition to any other right it may have, to cancel the Order, withhold further deliveries, and declare the Order terminated. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. All costs and expenses incurred by Company as a result for non-payment or delinquent payment by Buyer, including collection costs, interest at the rate of one and one-half percent (1½%) or the maximum rate permitted by law, and reasonable attorneys' fees, shall be paid by Buyer. All invoices are due and payable in cash in US Dollars. Buyer agrees that Company has the right to determine, in its sole discretion, how to apply payments, and which invoices to pay with all payments received on account, despite any advice to the contrary. Company will protect all its lien rights. Company will not furnish lien waivers or releases until Company irrevocably receives payment, in full, at Company's Facility from Buyer for the goods covered by this order. There is no authorized retainage for any reason.

11. CANCELLATION, CHANGES AND SPECIAL ORDERS. Buyer shall not cancel or change the Order without prior written consent of an authorized representative of Company at Company's Facility, which consent may be granted or withheld at Company's sole and absolute discretion. In the event Buyer cancels the contract with the prior written consent of Company after the Buyer's offer to purchase is received and acknowledged in writing, Company shall be entitled to receive from Buyer, Company's total cost incurred to time of cancellation plus a reasonable allowance for overhead and profit.

12. RELEASE AND INDEMNIFICATION. Buyer acknowledges that it will use the Products only in accordance with the installation manuals provided by Company applicable to the Products (or in the event no installation manuals are provided, in accordance with good and sound construction and operational practices). As such, Buyer agrees to release Company from, and to hold harmless and, upon request, defend Company for, from and against, any and all claims, suits, actions or legal proceedings brought against Company, their affiliates and their officers, directors, employees and representatives, seeking injunctive relief or damages to recover any loss, damage or injury to person or property, including reputation and goodwill, whether brought by a federal, state or local governmental agency, or any other person, caused by or arising out of the installation and/or use of the Products following the delivery thereof, except for the Limited Warranty set forth above. This release, hold harmless and indemnification shall apply, regardless of whether such claims, lawsuits, judgments, demands, actions or causes of action allege or are based on negligence, breach of implied warranty, strict liability, reckless or intentional conduct, or any other nature or manner of legal theory or cause of action, except for a claim, suit, action or legal proceeding arising exclusively from failure of the Products to meet the Limited Warranty set forth above.

13. NOTICE. All notices in connection with the Order shall be in writing and shall be given by nationally recognized overnight delivery service (e.g., Fed Ex) or U.S. mail, postage prepaid, certified or registered, return receipt requested or by electronic transmission (e.g., fax or email). Each notice shall be addressed to Company at Company Facility, Attn: Customer Service Manager, and to Buyer at the address contained on the face of the, or at such other address as a Party shall provide by written notice to the other Party hereunder. Notice shall be deemed effective upon the sooner of (a) delivery or (b) the next business day after being sent by overnight delivery service or by electronic transmission or (c) three days after being sent by U.S. mail.

14. WAIVERS. No waiver of any right or entitlement hereunder shall be effective unless it is in writing and signed by Company. The failure of either Party to require performance under any provision of the Order shall in no way affect the right of such Party to require full performance at any subsequent time, nor shall the waiver by either Party of a breach of any provision of the Order constitute a waiver of any succeeding breach of the same or any other provision.

15. GOVERNING LAW/VENUE/SEVERABILITY/NO THIRD PARTY BENEFIT. The transaction leading to an Order is made in the State in which the Company's Facility is located, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State in which the Company's Facility is located without regard to conflicts of law. Venue for all suits, proceedings and other actions related to this Order shall be in the State and County in which the Company Facility is located. The Parties hereby waive any claim or objection to in personam jurisdiction and venue in the courts of the State and County in which Company's Facility is located. In the event any dispute with regard to collection of any amounts due Company under this Order, then Buyer agrees to pay any and all attorney fees, costs and expenses incurred by Company in the collection thereof. These Terms shall be deemed severable and if any portion hereof shall be held to be invalid for any reason, the remainder shall not be deemed invalid but shall remain in full force and effect. The Order is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these terms. The parties hereto have requested that these presents and all judicial proceedings relating thereto be drafted in English. Les parties aux présentes ont demandé à ce que les présentes et toutes procédures judiciaires y afférentes soient rédigées en anglais.

16. ENTIRE AGREEMENT/AMENDMENT. These Terms may only be modified by a written amendment executed by authorized representatives of each Party. The Order represents the complete and final agreement between the Parties related to the subject matter of these Terms and supersedes all prior writings, conversations, negotiations, understandings or agreements. In the event of any inconsistencies, ambiguities or conflicts between the terms, conditions and provisions of the Order and these Terms, the provisions of these Terms shall control. Buyer shall not assign the Order without the prior written consent of Company, which consent may be granted or withheld in the sole and absolute discretion of Company. These Terms supersede all other communications, negotiations and prior oral or written statements regarding the Order. No change, modification, rescission, discharge, abandonment, or waiver of these Terms shall be binding upon Company unless made in writing and signed on its behalf by a duly authorized representative of Company at Company's Facility. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these Terms and/or the remaining Orders shall be binding unless hereafter made in writing and signed by the Party to be bound, and no modification or additional terms shall be applicable to the Order which are at variance with or in addition to those set forth in the Order. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If the Order shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to these Terms. No waiver by either Party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the Party to be bound. All typographical or clerical errors made by Company in any quotation, acknowledgment or publication are subject to correction.

17. DISPOSAL. Buyer shall be solely and exclusively responsible for the proper disposal of the Products and/or any portion thereof, and Buyer must comply with all Federal, State and applicable local laws and regulations related to disposal, including, without limitation, the disposal of any and all refrigerants. The obligations of Buyer under this Section shall be subject to the release, indemnification and hold harmless provisions of Company set forth above.

18. CONFIDENTIALITY. All non-public, confidential or proprietary information of Company, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Company to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing under the applicable Order and may not be disclosed or copied unless authorized in advance by Company in writing. Upon Company's request, Buyer shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section without posting any bond. Prints or drawings attached to the Order and/or any quotation furnished by Company to Buyer in connection with Company's performance under the Order are the sole property of Company. Company retains all patent and other rights, including exclusive rights of use and/or manufacture and/or sale. Company prints and drawings that are provided to Buyer for use with the Products are to be reviewed only by necessary and authorized personnel of the Buyer and with the understanding that the information contained in the prints and drawings is confidential and proprietary to Company and owned by Company. Company does not convey any permission to show, reproduce, or manufacture the article or articles shown in the prints or drawings, such permission to be granted only by specific authorization in writing signed by an officer or other authorized agent of Company at Company's Facility.