

# ANTONI International, Inc. "Terms and Conditions of Sale"

## a.) Parties:

ANTONI International, Inc., as used herein "ANTONI" shall mean ANTONI International, Inc., located in San Diego, California, and "Customer" shall mean the party to whom this quotation is addressed.

## b.) Acceptance:

These Terms and Conditions of Sale, set forth in this document, together with ANTONI's invoice, Quotation and any Application for Credit form completed by Customer, constitute the final, complete, exclusive and entire agreement ("Agreement") between ANTONI and Customer, and shall prevail over the terms and conditions contained in any purchase order, confirmation, or other writing submitted by Customer to ANTONI. Any such different or additional terms and conditions proposed by Customer are hereby expressly rejected. ACCEPTANCE BY CUSTOMER IS LIMITED TO THESE TERMS AND CONDITIONS OF SALE. Neither acknowledgment of Customer's order nor commencement of performance or delivery shall be deemed or construed as acceptance of Customer's additional or different terms and conditions. Customer's purchase of any ANTONI product or service shall constitute Customer's acceptance of all these Terms and Conditions of Sale.

## c.) Price:

Customer agrees to buy, and ANTONI agrees to sell, the products and/or services at the prices stated in this Quotation. For the purposes of these Terms and Conditions, "Products" shall be defined as newly manufactured turbine related parts and/or reconditioned parts or Customer's parts that have been repaired by ANTONI. The stated price does not include, and Customers shall pay for, any excise, sales, use or like taxes, and therefore such prices are subject to increase in the amount of any such tax (excluding tax on net profits and any franchise taxes) that ANTONI may be required to collect or pay upon the sale and delivery of the Products purchased hereunder.

## d.) Order and Delivery:

(a) Purchase orders submitted by Customer shall reference the Quotation and shall provide for delivery dates no sooner than those indicated on this Quotation. Delivery of the product will be F.O.B ANTONI's San Diego facility, unless otherwise agreed in writing by ANTONI and Customer. In all cases, whether the merchandise be new, reconditioned or related parts supplied by Customer for repairs, risk of loss in shipment passes at point of shipment (F.O.B ANTONI's facility). Claims for short or damaged merchandise should be made by Customer to the carrier within ten (10) days of delivery. ANTONI will use its best efforts to deliver the Products in accordance with the specified delivery date. However, ANTONI will not be liable for damages as a result of any delay in delivery for any reason other than arbitrary refusal of ANTONI to perform. Customer shall have the right to select the carrier of its choice.

(b) All shipments will be shipped by ANTONI freight collect, or if prepaid, such freight will be subsequently billed to Customer, including charges for insurance against damage or loss, which ANTONI obtained at Customer's request. ANTONI invoices for prepaid freight, including any insurance, are due and payable within 30 days of receipt. Unless otherwise specified by Customer, packing of shipments shall be in accordance with ANTONI's customary practices.

## e.) Acceptance of Products:

Customer shall promptly, and in any event within thirty (30) days of shipment, inspect the Products. If any Products are deemed defective by Customer, Customer shall, within such thirty day inspection period and upon ANTONI's prior written authorization, RMA (Return Material Authorization), return such defective Products to ANTONI in accordance with ANTONI's instructions, freight prepaid, in the same condition as delivered and in the same or equivalent shipping container with a description of such defects, ANTONI assigned RMA number must appear on the package and Packing Slip. Title of the Product and risk of loss or damage with respect to the Products shall remain with Customer unless and until ANTONI confirms the defect, at which time ANTONI shall, at ANTONI's option, repair or replace such defective Product(s).

## f.) Terms of Payment:

(a) Unless otherwise arranged, ANTONI shall invoice Customer at the time of Shipment of each installment of Products hereunder. Payment terms shall be net thirty (30) days from the date of invoice. Customer shall make all payments as provided herein without regard to whether Customer has made or may make inspection or use of the Products delivered hereunder, or whether Customer may have a claim against ANTONI. (b) When, in ANTONI's opinion, Customer's financial condition or previous payment record (including exceeding Customer's credit limit) so warrants, or the financial information regarding Customer available to ANTONI is limited, ANTONI reserves the right to change the credit terms at any time by shipping the Product C.O.D., U.S. bank cashiers check, or by otherwise modifying the credit terms.

## g.) Limited Warranty:

(a) ANTONI warrants the Product manufactured or repaired by or on the behalf of ANTONI and sold hereunder against faulty workmanship or the use of defective materials for a period of twelve (12) months, which period will commence with the date of shipment of such Products. Customer's remedies and ANTONI's liability with respect to this warranty are set forth below. This warranty is the only warranty made by ANTONI with respect to the products manufactured by, or on the behalf of ANTONI, and delivered hereunder, and may only be modified or amended by a written instrument signed by a duly authorized officer of ANTONI. With respect to Products not manufactured by, or on the behalf of ANTONI, ANTONI agrees to assign and pass through to the Customer all warranties (if any) it received with respect to such Products to full extent permitted by the terms of such warranties.

(b) Any Product manufactured or repaired by or on behalf of ANTONI and purchased from ANTONI, which becomes defective during the warranty period stated above will, in ANTONI's discretion, be repaired or replaced by ANTONI or its designee. These remedies are available only if ANTONI's examination discloses to ANTONI's satisfaction that such defects actually exist and were not caused by Customer's misuse, unauthorized modifications, neglect, improper storage, improper installation or testing attempt to repair, or by accident, fire or other hazard. Repair or replacement of a part does not extend the warranty period beyond the initial warranty period, which commences with the date of original shipment of Products to Customer.

(c) THE ABOVE EXPRESS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANTONI SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## h.) Limitation of Remedies & Liabilities:

THE REMEDIES PROVIDED HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ANTONI'S LIABILITY FOR BREACH OF ANY WARRANTY HEREUNDER IS LIMITED TO EITHER REPAIR OR REPLACEMENT, AT ANTONI'S OPTION, OF ANY PRODUCT ON WHICH LIABILITY IS BASED. IN NO EVENT SHALL ANTONI BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, PRODUCT OR USE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE DELIVERY, USE OR PERFORMANCE OF ANTONI'S PRODUCTS, WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, OR ANY OTHER LEGAL THEORY, EVEN IF ANTONI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL EXTENT OF ANTONI'S LIABILITY FOR DAMAGES OF ANY NATURE TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE PRICES OF THE SPECIFIC PRODUCT AND/OR SERVICES ON WHICH LIABILITY IS BASED. CUSTOMER AGREES THAT ANTONI SHALL NOT BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY. THE PARTIES EXPRESSLY AGREE THAT THE PRODUCTS ARE NOT CONSUMER GOODS.

## i.) Late Payment:

Customer shall pay to ANTONI on demand a late charge at the lower of the maximum legal rate of interest or the rate equal to the then applicable prime rate of interest as announced by UB of CA in San Diego, California plus three per cent (3%) per annum on the amount of any payment not made when due hereunder from the date due until payment is made.

## j.) Default and Termination:

If Customer fails to perform its obligation under this Agreement, including, but not limited to, failure of Customer to make any payment when due, or the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Customer, insolvency of Customer, assignment by Customer for the benefit of creditors, or liquidation of Customer's business, Customer shall be in default under this Agreement. Upon Customer's default, ANTONI may, with or without demand or notice to Customer, declare the entire unpaid amounts under this Agreement immediately due and payable. In addition to any other remedies at law or in equity which ANTONI may have in the event of default, ANTONI shall have the right, by written notice to Customer, to terminate its obligations under this Agreement or any other agreement between the parties.

## k.) Cancellation:

In the event Customer cancels all or any part of any order, Customer shall provide written notice of cancellation to ANTONI and shall pay to ANTONI an equitable amount for all work satisfactorily performed by ANTONI as of the date such written notice of cancellation is received, as well as a reasonable amount for administrative costs, if applicable. Customer may not cancel all or part of any order after shipment.

## l.) Designs:

Where products are made, repaired or supplied to Customer's own specification, pattern or design, Customer warrants and undertakes full responsibility not only for the suitability and fitness of the specification, pattern or design, but also that such specification, pattern or design does not infringe on any United States or foreign patent, trademark, registered design, copyright, or any other proprietary right, and customer agrees to indemnify, defend and hold ANTONI harmless from any and all claims, liabilities, damages or expenses, directly or indirectly resulting from any infringement or alleged infringement of any such property right.

## m.) General:

This contract is not assignable or delegable without the prior written consent of any officer or ANTONI and any attempt to assign or delegate any rights, duties, or obligations under this contract will be void. All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. If either party fails to perform any term of this contract and the other party does not enforce that term, failure to enforce on that occasion shall not prevent enforcement on the later occasions of that or any other term. ANTONI's acceptance of any payment after the due date or ANTONI's election to continue making shipments after default shall not constitute a waiver of any default by Customer or affect ANTONI's legal remedies for any such default. ANTONI shall not be liable for any delay in performance or inability to perform due to any cause beyond its reasonable control, including, but not limited to, acts of God, acts or omissions of civil or military authority, fire, labor disputes, earthquakes, floods, tornadoes, riots, or wars. In the event that any portion of these Terms and Conditions of Sale shall be held to be unenforceable, that portion (to the extent not enforceable) and the remaining portions of these Terms and Conditions of Sale remain in full force and effect.

## n.) Final Destination

The product (commodities) contained on all orders are licensed by the United States for shipment in the United States. If the final destination is other than the United States, then Customer must state so in writing. Any diversion contrary to United States law is strictly prohibited.

(April 2005)