Terms and Conditions

THE TERMS, CONDITIONS AND THE LIMITED WARRANTY SET FORTH BELOW, AND THE PURCHASE ORDER PAGE ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT ("AGREEMENT") BETWEEN BUYER AND ABANAKI CORPORATION, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, DIVISIONS, OR ASSIGNEES ("ABANAKI"). ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF ABANAKI THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL BE GIVEN NO EFFECT OR FORCE. No waiver or alteration of terms herein shall be binding unless in writing, signed by an executive officer of the Abanaki.

1. **PRICE.** Unless specified within this Agreement, all prices are F.O.B. Abanaki's plant. Prices stated are subject to change without notice in the event of alterations in specifications, quantities, designs, or delivery schedules.

2. **ACCEPTANCE AND TRANSPORTATION.** Buyer shall immediately inspect the Goods upon Buyer's receipt of shipment,. Goods shall be deemed finally inspected, checked and accepted by Buyer unless Buyer provides Abanaki with written notice of any claim for shortage of or defects in the Goods within forty-eight (48) hours after receipt of shipment. Abanaki shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expenses and valuation.

3. **TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Abanaki to carrier, and any claims for losses or damage shall be made by Buyer directly with carrier.

4. **DELAYS**. All shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Abanaki will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor delay, or (f) any other cause or condition beyond Abanaki's reasonable control. In the event of any such delay or nonperformance, Abanaki may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

5. **TERMINATION, CANCELLATION AND CHANGES.** Orders cannot be terminated, canceled or modified, or shipment deferred after acceptance of Buyer's order by Abanaki, except with Abanaki's written consent and subject to conditions then agreed upon which shall indemnify Abanaki against liability and expenses incurred and commitments made by Abanaki and which shall provide for profit on work in process and contract value of products or parts completed and ready for shipment.

6. **CREDIT TERMS.** All orders and shipments shall at all times be subject to the approval of the Abanaki's Credit Department. The Abanaki reserves the right of declining to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Abanaki shall not in such event be liable for breach of nonperformance of contract in whole or in part. In the event that payment is not made in accordance with the terms of this Agreement, **Buyer agrees to pay to Abanaki all costs of collection** thereof including, but not limited to, reasonable attorney fees.

7. **TAXES & ADDITIONAL CHARGES.** The price for the Goods purchased is net and does not include sales, use, excise or similar taxes, whether federal, state of local unless otherwise specifically provided within this Agreement. The amount of any such taxes applicable to the Goods shall be paid by Buyer in the same manner and with the same effect as if originally included in the purchase price. If substitute or additional Goods, or repair parts, are purchased by Buyer from Abanaki, the terms and conditions of this contract shall be applicable thereto, the same as if such substitute or additional Goods or repair parts had been originally purchased hereunder

Limited Warranty and Remedies

Abanaki warrants to the original owner-user that this Abanaki product will be free from defects in material or workmanship for three (3) months on belts, valves, pumps, wipers, filters and sleeves and for twelve (12) months on all other skimmer and decanter parts and cyclonic dust collectors from the date of shipping. Abanaki's obligations under this warranty and the sole remedy for its breach are limited to repair, at its manufacturing facility, of its Abanaki products which prove to be defective; or, in its sole discretion, replacement of such products at Abanaki's cost. All returns of defective parts or products must include the product model number and serial number, and must be made through an authorized Abanaki distributor or arranged through Abanaki Customer Service. Authorized returns must be shipped prepaid.

1. This warranty provided herein does not cover charges for labor or other costs incurred to remove install any defective, repaired or replaced Goods. Additionally, Abanaki will not itself warrant Goods which it has sold but not manufactured (such as electric motors), but will provide the original warranty from the original manufacturer, if provided thereof.

2. All claims under the warranty provided herein must be made in writing within the earlier of (i) ten (10) days from the date of discovery of the defect, or by reasonable inspections should have discovered the defect, or (ii) three (3) months on belts and wiper blades and twelve (12) months on other skimmer and decanter parts following the date of shipment. The product must be returned to Abanaki's plant cleaned and degreased with transportation cost to be at Buyer's cost (prepaid). Failure to notify Abanaki of a warranted defect within the specified time frame under this provision voids Abanaki's obligations hereunder.

3. The warranty provided herein shall be void and of no effect in the event that (a) the product has been operated outside its designed output capacity (heating, cooling, airflow); (b) the product has been subjected to misuse, neglect, accident, improper or inadequate maintenance, and corrosive environments; (b) unauthorized modifications are made to the product; (c) the product is not installed or operated in compliance with the manufacturer's printed instructions; (d) the product is not installed and operated in compliance with applicable building, mechanical, plumbing and electrical codes; or (e) the serial number of the product has been altered, defaced or removed.

4. The warranty provided herein is for repair or replacement only. ABANAKI SHALL NOT BE LIABLE FOR ANY LOSS, COST, DAMAGE, OR EXPENSE OF ANY KIND ARISING OUT OF A BREACH OF THE WARRANTY. FURTHER, ABANAKI SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, NOR FOR ANY LOSS OF REVENUE, PROFIT OR USE, ARISING OUT OF A BREACH OF THIS WARRANTY OR IN CONNECTION WITH THE SALE, MAINTENANCE, USE, OPERATION OR REPAIR OF ANY ABANAKI PRODUCT. IN NO EVENT WILL ABANAKI BE LIABLE FOR ANY AMOUNT GREATER THAN THE PURCHASE PRICE OF A DEFECTIVE PRODUCT. The disclaimers of liability included in this paragraph 4 shall remain in effect and shall continue to be enforceable in the event that any remedy herein shall fail of its essential purpose.

5. THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY FOR ABANAKI PRODUCTS, AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES. ABANAKI CORPORATION SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No person or entity is authorized to bind Abanaki Corporation to any other warranty, obligation or liability for any Abanaki product. Installation, operation or use of the Abanaki product for which this warranty is issued shall constitute acceptance of the terms hereof. No affirmations of Abanaki, its representatives, agents, or assignees, by words or action, other than as set forth under this Limited Warranty Section shall constitute a warranty.

6. Buyer shall file any action arising from any of these Terms and Conditions within one (1) year after the cause of action exists.

7. GOVERNING LAW. This Order shall be governed and construed under the laws of the State of Ohio and the United States of America

8. ARBITRATION. Any controversy or claim arising out of or relating to this Order or the performance or breach hereof shall be settled in Geauga County, Ohio by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award (rendered by the Arbitrator(s)) may be entered in any court having jurisdiction thereof. The parties consent that any process, notice of motion or other application to either of such courts or any judge thereof may be served by registered mail or personal service outside the State of Ohio, provided a reasonable time for appearance is allowed, or in such other manner as may be allowed under the rules of the court.