



## Terms and Conditions of Sale

1. **Applicable Contract Provisions.** These terms and conditions, together with any other documents, which RioVation® (hereafter "Seller") has attached or referenced hereto as part of the contract (the "Agreement"), are the sole and complete contract between Buyer and Seller in respect to the Products and supersede all prior oral and written understandings. Seller rejects those provisions of any previous order, offer, or other communication from Buyer, which are additional to or different from the terms hereof. Neither Seller's delivery of the Products nor any other action at any time on the part of Seller shall constitute acceptance of such additional or different terms. Buyer shall be bound by all of the terms of this Agreement when Buyer accepts this Agreement by any statement, act or course of conduct which constitutes acceptance under applicable law, including failure to object in writing hereto within a reasonable time and acceptance of delivery of the Products.

2. **Description of Products.** Products subject hereto are those described on your invoice or your order confirmation (the "Products"). Seller may substitute reasonably equivalent materials, components or units for any one or more of the products based upon its then current formulation. The only specifications which are a part of this Agreement are the written specifications listed in the "Specifications" section of the Technical Data Sheet, if any, made available to Buyer by Seller regarding the Products. All other material describing the Products is intended only to provide Buyer with a general idea about the Products and may not be relied upon as a "basis of the bargain" for this Agreement. Manufacture's installation, operation, maintenance, and servicing guidelines for use of products are to be adhered to whether provided in print or available on website. Products are intended for use on single family residential applications. Where Products are used for any other application the Buyer and/or Installer assumes all responsibility. The Buyer and/or Installer of the product is/are responsible for adherence to any and all local, state and federal rules and regulations regarding the use of the Products.

3. **Purchase Price and Terms of Payment.**

a. Price. The price for the Products shall be the price agreed upon between the parties as posted on the Seller's website. The price is subject to change and will be updated on Seller's website. Typographic or other clerical errors in stated prices are subject to correction.

b. Terms of Payment. All sales are payable at the time of online checkout via credit card or other provisions available through the online checkout process.

c. Sales and Similar Taxes; Insurance. The purchase price does not include sales, use, excise or similar taxes or insurance costs unless stipulated at time of online checkout. Shipping costs are included for all shipments within the contiguous United States. Any shipments outside the contiguous United States will be quoted at time of sale. Seller will invoice Buyer for any such amounts incurred by Seller on behalf of Buyer.

4. **Shipment, Delivery and Terms of Acceptance.**

a. Shipment. Seller will package the Products for domestic shipment in accordance with standard commercial practices. All shipments shall be delivered by Seller to the Buyer's designated point of delivery at the Seller's expense unless otherwise agreed by Seller in writing. The carrier shall be deemed to be Buyer's agent, and Buyer shall make all claims with respect to damage in transit against the responsible carrier. FOB ship point.



## Terms and Conditions of Sale

b. Title to Products, Risk of Loss. Title to and all risk of loss concerning the Products shall pass to Buyer upon delivery to a common carrier, or to any private carrier designated by Buyer, for shipment to Buyer. Buyer's rejection of any Products shall not shift such risk until the Products are returned to Seller, freight prepaid, pursuant to Seller's written authorization. Buyer hereby expressly acknowledges and agrees that Section 2-510 of the Uniform Commercial Code shall not apply to this Agreement.

c. Force Majeure. Seller shall not be liable to Buyer for any delay or failure of delivery or of any other performance caused in whole or in part by any contingency beyond Seller's reasonable control, including, without limitation, acts of any government or any agency or subdivision thereof or shortage of or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices or from regular sources.

d. Inspection and Acceptance. Buyer shall inspect all shipments upon arrival and shall notify Seller in writing of any shortages or other failures to conform to this Agreement which are reasonably discoverable upon arrival.

e. Cancellation or Modification of Order. This Agreement cannot be cancelled or modified after Buyer's acceptance or after the Products become Seller's work-in-process, whichever occurs first, except at Buyer's expense for all damages incurred by Seller due to such cancellation or modification.

### **5. WARRANTIES, LIMITATIONS OF WARRANTIES, DISCLAIMER OF WARRANTIES AND LIMITATION OF DAMAGES.**

a. Seller warrants its products to be free from defects in material and workmanship for a period of two (2) years from the date of shipment to the purchaser when properly registered with Seller. The sole remedy under this warranty is as follows. Seller shall fulfill this warranty by replacing or exchanging any component part, F.O.B. factory, that in Seller's judgment shows evidence of defects provided said component part has been paid for and is returned transportation prepaid to Seller. The warranty must at that time also specify the nature of the defect, in writing, to Seller. The limited warranty does not make any provision for an informal dispute settlement arrangement.

The limited warranty does not cover Seller products or components that have been flooded by external means or that have been subjected to external damage or damage due to altered or improper wiring or overload protection.

Recommendations for special applications will be based on the best available expertise of Seller.

Seller reserves the right to revise, change, or modify the construction and design of the Seller products or any component part or parts, without incurring any obligation to make such changes or modifications in previously sold equipment. Seller also reserves the right, in making replacements of component parts under this limited warranty, to furnish a component part, which in its judgement, is equivalent to the part replaced.

This limited warranty does not become effective until the end user completes and submits the warranty sheet found in the manual.

b. Notification of Defect and Time Limitations. Buyer must notify Seller in writing of any alleged defect in the Product within ten (10) days after discovery thereof but not later than 30 days from receipt. Buyer shall identify the defect in such manner and provide such documentation as a Seller reasonably may require. Buyer shall return any alleged defective Product to Seller, F.O.B. Seller's manufacturing plant, upon receipt of written



## Terms and Conditions of Sale

authorization from Seller. Buyer must bring any lawsuit against Seller with respect to any Product within 180 days after providing notification of defect under this subparagraph or, if no notice is provided, within 180 days after such notice was required to be provided under this subparagraph.

c. **LIMITATION OF WARRANTY.** THE LIMITED WARRANTY SET FORTH IN SUBPARAGRAPH a ABOVE SHALL NOT APPLY TO ANY PRODUCT WHICH HAS BEEN ABUSED, ALTERED, MODIFIED, USED IN A MANNER NOT ORIGINALLY INTENDED, USED AFTER THE SHELF LIFE OF THE PRODUCT, OR STORED OR APPLIED IN A MANNER CONTRARY TO SELLER'S WRITTEN INSTRUCTIONS.

d. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN SUBPARAGRAPH a ABOVE, SELLER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER, AND SELLER DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM PATENT INFRINGEMENT. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS AGREEMENT.

6. **Default.** In the event of any default by Buyer, Seller may exercise any and all rights and remedies provided by law. Buyer shall pay to Seller all reasonable costs of collection, including reasonable attorney's fees, incurred by Seller in collecting any amounts owing by Buyer hereunder.

7. **LIMITATION OF REMEDIES.** SELLER SHALL HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND. THESE LIMITATIONS ARE AGREED ALLOCATIONS OF RISK. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY WITH REGARD TO THE SALE OR USE OF THE PRODUCTS EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS.

### 8. **General Provisions.**

a. **Applicable Law.** The validity, performance and construction of this Agreement shall be governed by the laws of the State of Texas, Gregg County, USA.

b. **Exclusive Jurisdiction.** The state and federal courts of the State of Texas shall have exclusive jurisdiction over any lawsuit or other legal proceeding arising out of this Agreement or relating to the Products. Seller and Buyer hereby consent to the jurisdiction of such courts.

c. **Modification and Waiver.** No addition to or modification of this Agreement shall be binding upon Seller, and Seller shall not be deemed to have waived any provision of this Agreement, except pursuant to a written document signed by a duly authorized officer of Seller.

d. **Severability.** If any provision of this Agreement is held to be unenforceable by final order of any court of competent jurisdiction, that provision shall be severed from this Agreement, and shall not affect the interpretation or enforceability of the remaining provisions of this Agreement.

e. **Debt Disputes.** Per UCC 3-311(c)(1) all disputed debts or full payment checks remitted to settle debts must be communicated to the Director of Credit.



## Terms and Conditions of Sale

**9. Intellectual Property:** All devices, patents, trademarks, designs (including drawings, plans and specifications), software existing or to be developed, estimates, prices, notes, memos, summaries, electronic data and other documents or information prepared or disclosed by Seller shall remain the sole intellectual property of Seller. Following acceptance and final payment in full, Seller shall grant to Buyer a non-transferable, non-exclusive license for use and sale of the Goods.