



**AGREEMENT OF SALE**

THIS AGREEMENT IS MADE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_ (HEREINAFTER "EFFECTIVE DATE"), BETWEEN **POWERHOUSE EQUIPMENT & ENGINEERING, CO., INC.**, LOCATED AT **240 CREEK ROAD, DELANCO, NJ 08075** (HEREINAFTER "SELLER") AND \_\_\_\_\_, LOCATED AT \_\_\_\_\_ (HEREINAFTER "BUYER") FOR THE PURCHASE OF EQUIPMENT AS DESCRIBED HEREIN. SELLER AND BUYER ARE SOMETIMES REFERRED TO HEREINAFTER COLLECTIVELY AS THE "PARTIES." THE TERMS AND CONDITIONS CONTAINED HEREIN SUPERSEDE ANY PURCHASE ORDER TERMS AND CONDITIONS OF BUYER AND ANY ADDITIONAL TERMS WILL BE AGREED TO IN WRITING AND SIGNED BY BOTH PARTIES.

WHEREAS, Seller is in the business of renting, selling and servicing Equipment; and

WHEREAS, Buyer desires to purchase Equipment.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted by and between the Parties as follows:

**ARTICLE 1 – SALE OF EQUIPMENT**

Seller hereby sells to Buyer and Buyer hereby purchases from Seller the Equipment described in Article 2 – Description of Equipment and incorporated herein (hereinafter "Equipment").

**ARTICLE 2 – DESCRIPTION OF EQUIPMENT**

Powerhouse Unit No.:

Year:

Boiler Model and Serial Number:

Location of Unit:

**ARTICLE 3 – PURCHASE PRICE**

Buyer shall pay to Seller for the Equipment and for all obligations specified herein as full and complete consideration the sum of \$\_\_\_\_\_ (hereinafter "Purchase Price") excluding tax, plus transportation which will be invoiced to Seller at \_\_\_\_\_.

**ARTICLE 4 - TERMS OF PAYMENT**

Buyer shall pay Purchase Price to Seller **prior** to Equipment being consigned to a carrier for delivery. If Purchase Price is not received by Seller by this date, Buyer will be in Default under this Agreement.

**ARTICLE 5 – NO SET-OFF BY BUYER**

Buyer shall not withhold payment of any amounts due and payable to Seller by reason of any set-off of any claim or dispute with Seller. Buyer's obligation to pay Purchase Price is absolute and unconditional under all circumstances whatsoever and shall not be subject to any set-off or reduction for any reason whatsoever.

## **ARTICLE 6 – TITLE**

Title to the Equipment, registration documentation, complete drawings and all other proprietary materials will be transferred to Buyer upon receipt of payment of Purchase Price.

## **ARTICLE 7 – FREE FROM LIENS**

Seller warrants that Equipment is free from all claims, liens, and encumbrances.

## **ARTICLE 8 – TAXES**

Purchase Price does not include federal, state or local taxes, including, without limitation, sales, use or excise taxes now or hereafter enacted, applicable to the Equipment sold in this Agreement. Buyer shall pay any excise, sales, privilege, use or any other local, State, or federal taxes which the Seller may be required to pay arising from the sale or delivery of the Equipment or the use thereof. Seller is authorized to collect/remit sales taxes in the states of New Jersey, Pennsylvania, North Carolina and Florida. Outside of these states, any sales or use tax is the responsibility of the Buyer, as Seller has no authorization to collect/remit taxes in those states. All taxes shall be paid by Buyer unless Buyer provides Seller with the appropriate and necessary tax exemption certificate. All taxes may, in Seller's discretion, be added by Seller to the sales price or billed separately.

## **ARTICLE 9 – DELIVERY**

At Buyer's expense, Seller will cause Equipment to be delivered to Buyer. Alternatively, Buyer may designate or provide a carrier to pick up the Equipment from Seller, provided Buyer provides a certificate of insurance satisfactory to the Seller.

## **ARTICLE 10 – USE AND MAINTENANCE OF EQUIPMENT**

Buyer warrants Equipment will be operated strictly in accordance with the manufacturer's and Seller's instructions and manuals provided to Buyer at time of delivery and standard industry practice, by competent, qualified, and licensed (as applicable) personnel and in strict compliance with all governmental requirements. Buyer shall be responsible for ascertaining that the Equipment is installed and operated in accordance with all code requirements and other applicable laws, rules, regulations and ordinances.

Buyer is fully responsible for inspecting the Equipment on a regular basis, regardless if Equipment includes BoilerLink™, and agrees to inform Seller immediately of any known or suspected problems during the Warranty period. Buyer agrees to not make any modifications to the Equipment nor the programs in BoilerLink™ without Seller's direction and consent during the Warranty period or such acts will void the Limited Equipment Warranty.

## **ARTICLE 11 – START-UP**

Start-up of unit(s) shall be provided by Seller either with Seller's direct labor or by a Seller hired subcontractor.

## **ARTICLE 12 – INSTALLATION**

Buyer, at its own cost, shall be solely responsible for the installation and interconnection of the Equipment with its existing facilities and for the supply of all utilities and permits required for installation and operation of the Equipment.

## **ARTICLE 13 – WATERSIDE SCALE AND CORROSION**

Buyer is aware that they shall maintain sufficient and adequate boiler feedwater treatment and chemical control to prevent the formation of waterside scale and corrosion on Equipment in order for it to be covered under warranty.

#### **ARTICLE 14 – EQUIPMENT WARRANTY**

Seller warrants to Buyer the Equipment will be free from defects in material and workmanship for a 12-month period per the Limited Equipment Warranty (hereinafter “Exhibit A”) as described herein only when Equipment is installed, maintained and operated under normal conditions of service in accordance with the instructions of the original Equipment manufacturer or Seller and that it will repair or replace, without charge, EX-WORKS 08075, any part it has supplied which examination shall prove to have been defective.

No warranty herein extended includes labor charges incurred in the removal, replacement or adjustment of defective parts or components nor transportation charges incurred in returning allegedly defective parts or components to Seller’s facility in Delanco, NJ USA, or in shipping replacement parts to the Equipment location.

No warranty herein extended by Seller may be assigned or transferred without the prior written permission of Seller.

#### **ARTICLE 15 – INDEMNIFICATION**

Buyer shall indemnify, defend and hold harmless Seller, its affiliates, trustees, officers, employees and agents from any claims, lawsuit, loss, damage, fines, penalties, cost, expense, and liabilities of any nature, including but not limited to negligence, bodily injury, death, tort and strict liability, including attorney’s fees and court costs, arising out of, relating to, or incurred or suffered by Seller resulting from the Buyer’s use, operation and/or transportation of Equipment by Buyer which may arise out of, or result from: (i) claims by third persons against Buyer that the Equipment has caused damage to property or bodily injury (including death); or (ii) any negligent act, negligent omission or willful misconduct of Buyer in the operation of the Equipment; (iii) Buyer’s failure to comply with federal, state or local law in the use and operation of the Equipment (iv) omissions of the Seller, its agents or employees in connection with this Agreement; (v) any defects in any Equipment supplied by the Seller or (vi) Buyer’s use of Boiler Link, if installed, and any failure thereof.

#### **ARTICLE 16 - WAIVER**

No delay or omission to exercise any right, power or remedy of Seller on any breach or default by Buyer shall impair any such right, power or remedy of Seller, nor shall it be construed to be a waiver of any such breach or default. No waiver by Seller of a single breach or default by Buyer shall be deemed to be a waiver of any other breach or default of any other provision of this Agreement. Any waiver, consent or approval of Seller of any breach or default or any waiver on the part of Seller of any term or condition of this Agreement must be in writing and shall be effective only to the extent set forth in the writing. All remedies, either under this Agreement or by law or equity, or otherwise provided to Seller, shall be cumulative and not alternative.

#### **ARTICLE 17 – NO EXPRESS OR IMPLIED WARRANTIES**

Except as provided by the Powerhouse Limited Equipment Warranty, attached hereto as Exhibit A, Seller neither makes nor shall be deemed to have made any warranty or representation, express or implied, concerning the Equipment, including, without limitation, any warranty or representation as to design, quality, or condition of the Equipment, or as to the merchantability or fitness of the Equipment for any particular purpose of Lessee or to any other matter relating to the Equipment. Buyer agrees

that the Equipment is of a size, design and capacity selected by Buyer and that Buyer is satisfied for its purposes and that Seller has made no representation or warranty with respect to the suitability or durability of the Equipment for the proposed use of Buyer, or any other representation or warranty, express or implied with respect thereto. The selection of size, type, capacity and specifications of equipment being purchased by Lessee and the suitability thereof for Buyer's specific application shall be the sole responsibility of Buyer and/or Buyer's representative or consultant. Buyer hereby agrees to waive and make no claim for breach of warranty arising from any cause whatsoever.

#### **ARTICLE 18 – RISK OF LOSS**

Once Buyer has received delivery of Equipment from Seller, risk of loss of, damage to, or destruction of Equipment or any part thereof shall at all times be on Buyer unless Buyer designates or provides a carrier to pick up the Equipment from Seller, then risk of loss, damage to, or destruction of Equipment or any part thereof shall at all times be on Buyer from the time Equipment is picked up from Seller.

#### **ARTICLE 19 – BUYER'S INSURANCE**

Buyer shall, at its own expense, maintain insurance on the Equipment to replace Equipment in the event of loss or damage.

#### **ARTICLE 20 – DEFAULT**

In the event of Default by Buyer, Buyer shall pay all expenses incurred by Seller in exercising its remedies under this Agreement, including, without limitation, attorney's fees. Seller's acceptance of payment or performance after it is due shall not constitute waiver of any Default. Seller's remedies are cumulative and not alternative. No exercise or partial exercise of any remedy shall preclude exercise of any other remedy or of the remainder of any partially exercised remedy.

#### **ARTICLE 21 – REMEDIES**

Upon the occurrence of any event of Default by Buyer, Seller may, with or without cancelling this Agreement, in its sole discretion, recover all commercially reasonable costs and expenses incurred by Seller in exercising its remedies under this Agreement, including, without limitation, the storage, freight, resale or other disposition of the Equipment, including reasonable attorneys' fees and costs incurred in connection therewith or otherwise resulting or arising from Buyer's Default plus any indemnity, if then determinable, plus interest at the rate of eighteen percent (18%) per annum. Seller is further entitled to pursue any other remedy which may be available to it under any applicable law or any combination of remedies legally, or equitably, available.

#### **ARTICLE 22 – DAMAGE TO EQUIPMENT**

Upon delivery of Equipment to Buyer, if damage to the Equipment or other property or injury to persons is caused by the Buyer's use or operation of the Equipment, Buyer shall indemnify and hold Seller harmless for all liability, costs and expenses for such damage or injury.

#### **ARTICLE 23 – NON-COMPETING RENTAL EQUIPMENT**

Buyer agrees that Equipment will not, under any circumstance, in any form, be used in a capacity to generate rental income. This applies to any geographical area and is not limited by mileage. This will apply for the entire useful life of Equipment. Equipment may not be used in whole or as part of a system, of which the system is used to generate rental income, whether the system was designed primarily to be a rental unit or not. Buyer may seek a waiver for specific rental or lease of Equipment, but may only use Equipment for rental or lease purpose if given specific, written permission by Seller.

#### **ARTICLE 24 – RECALL NOTICES**

In the event Seller receives any recall notice on Equipment issued by the Manufacturer, Seller shall send such notice to Buyer.

#### **ARTICLE 25 – ASSIGNMENT**

The prior written approval of Seller shall be required to allow a delegation or assignment of duty to perform any obligation owed to Buyer by Seller.

#### **ARTICLE 26 – DELAY/FORCE MAJEURE**

Seller shall not be liable for loss or damage to Buyer from delay in delivery of Equipment resulting from causes beyond Seller's reasonable control or caused by strikes or labor difficulties, lockouts, acts or omissions of any governmental authority of Seller, insurrection or riot, terrorism or threats of terrorism, war, fires, floods, Acts of God, breakdown of essential machinery, accidents, embargoes, car and material shortages, delays in transportation or inability to obtain labor, materials or parts from usual sources. Any such delay shall be excused for the time reasonably necessary to compensate for the delay.

#### **ARTICLE 27 – INTELLECTUAL PROPERTY**

No patents, copyrights, trademarks, or other intellectual property is being sold, assigned, or otherwise transferred to Buyer. Without limiting the generality of the foregoing, Seller shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Seller or its employees, including but not limited to those developed, discovered, and/or conceived in connection with the manufacture of the ordered Equipment. It is expressly acknowledged that no drawings, designs, specifications, or anything else provided by Seller to Buyer shall be deemed to be "work made for hire" as that term is used in connection with the U.S. Copyright Act.

#### **ARTICLE 28 – LIMITATION OF LIABILITY**

In no event shall Seller be liable to Buyer, under any circumstances whatsoever, whether in contract, tort, strict liability, negligence, warranty or claim of any type whatsoever in excess of amount paid to Seller by Buyer under this Agreement and regardless of whether arising before, during or after the purchase, for punitive, consequential, liquidated, special, incidental, indirect or exemplary damages, including, without limitation, loss of use, loss of sales, loss of production, loss of profits or revenue, loss of business opportunity, interest charges, or cost of capital.

#### **ARTICLE 29– MODIFICATIONS**

This Agreement may not be modified or terminated except as provided herein or by other written agreement between the Parties and shall not be binding unless executed by authorized representative of Seller.

#### **ARTICLE 30 – SEVERABILITY**

If any term or provision of this Agreement shall be held void, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions of this Agreement shall not be affected thereby. Invalidity or unenforceability of one provision shall not affect any other provision of this Agreement.

#### **ARTICLE 31 – WAIVER OF JURY TRIAL**

The Parties expressly, voluntarily, and unequivocally waive any right they may have to a jury trial and agree that all disputes, claims, and counterclaims relating to or arising from this Agreement shall be litigated or otherwise resolved without a jury.

**ARTICLE 32 – GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of conflicts of law. Buyer expressly consents to the exclusive personal and subject matter jurisdiction of the State and/or federal courts in the State of New Jersey for all lawsuits arising out of or related to this Agreement.

**ARTICLE 33 – COMPLETE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties relating to the sale of the Equipment. Any Purchase Order terms by Buyer are hereby superseded and are null and void and not binding upon Seller and shall not apply to this Agreement. This Agreement may not be modified except by written agreement between the Parties. No amendment or modifications hereof shall be binding unless in writing and duly executed by authorized representative of Seller.

**IN WITNESS WHEREOF**, each of the Parties has caused the Agreement to be executed and signed by its duly authorized representatives to be effective as of the Effective Date.

**SELLER:**

**BUYER:**

**POWERHOUSE EQUIPMENT & ENGINEERING CO., INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: John W. Ash

Name: \_\_\_\_\_

Title: VP of Sales

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT A

## LIMITED EQUIPMENT WARRANTY

### LIMITED EQUIPMENT WARRANTY EQUIPMENT SALE



240 Creek Rd., Delanco, NJ 08075 USA  
www.powerhouse.com ☎ 800.37.STEAM

#### LIMITED WARRANTY

Seller warrants to Buyer, its successors, assigns, customers and end users that, upon delivery, and during the entire Warranty Period specified below, all Equipment delivered (including all replacement or corrected Equipment or components that Seller furnishes under this warranty) will (i) be free from defects in material, workmanship, and design, and (ii) conform to applicable drawings, designs, quality control plans, specifications and samples and other descriptions furnished or specified by Buyer, (iii) be free and clear of any and all liens, restrictions, reservations, security interests or encumbrances, (iv) not infringe any patent, published patent application, or other intellectual property rights of any third party existing as of the date of delivery, and not utilize misappropriated third-party trade secret information.

Buyer agrees that the Equipment is of a size, design and capacity selected by Buyer and that Buyer is satisfied for its purposes and that Seller has made no representation or warranty with respect to the suitability or durability of the Equipment for the proposed use of Buyer, or any other representation or warranty, express or implied with respect thereto.

#### WARRANTY PERIOD

The Warranty Period will be for a period of twelve (12) months from date of initial operation but no more than (18) months from the date of shipment. These warranties will survive any delivery, inspection, acceptance or payment by Buyer for the entire Warranty Period.

#### Eligibility

- Equipment must be in the same location indicated on the Purchase Order
- Buyer must be the same as indicated on Purchase Order - warranty is nontransferable.
- **Equipment must be properly installed, started up, operated and maintained by licensed (as applicable) professionals and as indicated by instructions provided by Seller. Failure to conform to such specifications and/or instructions shall void this limited warranty. Seller may request written documentation showing the proper preventative maintenance.**

#### Seller Responsibility

Seller will furnish a replacement part for installation by Seller or by a Seller certified third-party contractor, without charge for the part only, to replace any Equipment part that fails due to a manufacturing defect under normal use and maintenance. The Buyer must pay for any and all shipping and handling charges and other costs of warranty service for the replacement part. If Seller determines equipment is beyond repair, suitable replacement Equipment will be made available in a reasonable time to the Buyer. Any replacement Equipment provided shall be at Buyer's sole cost and expense including, but not limited to, all shipping, removal, and installation costs and expenses.

#### Exclusions

- Labor costs including, but not limited to, diagnostics or the removal and reinstallation of Equipment and/or Equipment Parts
- Shipping and freight expenses required to ship any and all replacement parts
- Normal consumable items including, but not limited to, gaskets, lubricants, and other sealants
- Boiler refractory
- Failures, defects, or damage (including, but not limited to, any loss of data or property) caused by (1) any third-party product, service, or system connected or used in conjunction with the Equipment; (2) any use that is not designed or intended for the Equipment; (3) modification, alteration, abuse, misuse, negligence, or accident; (4) improper storage, installation, maintenance, servicing or operation including, but not limited to, operation of electrical equipment at voltages other than the range specified on the Equipment nameplate; (5) any use in violation of written instructions or specifications provided by Seller; (6) any acts of God
- Electricity or fuel costs, or increases in fuel costs from any reason whatsoever, including additional or unusual use of supplemental systems
- The Warranty does not cover the effects of normal wear, tear or deterioration of the Equipment; damages caused by improper treatment of feedwater and/or conditioning of boiler water, or the effects of abrasion, erosion, or corrosion; the effects of improper storage or erection; abuse of the Equipment, or operation or maintenance not in accordance with Seller's operating instructions.
- Any defects or nonconformities not corrected or replaced during the Warranty Period shall be deemed accepted by Buyer.
- Any replacement or substitution of parts not provided by the Seller, Service not performed or authorized by the Seller, or modification, tampering, or manipulation of Seller's Equipment shall void this Warranty.

**THIS LIMITED WARRANTY AND LIABILITY SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH SELLER HEREBY DISCLAIMS. SELLER DOES NOT AUTHORIZE ANY PERSON TO CREATE FOR IT ANY OBLIGATION OR LIABILITY IN CONNECTION WITH THE EQUIPMENT.**

**NOTWITHSTANDING ANYTHING IN THIS LIMITED WARRANTY TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, LIQUIDATED, EXEMPLARY AND/OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY OR NEGLIGENCE), PATENT INFRINGEMENT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

REV. Oct 2019