
ABEYATECH, LLC TERMS & CONDITIONS FOR THE SALE OF GOODS & SERVICES**I. GENERAL PROVISIONS AND CONDITIONS**

A. **NATURE OF CONTRACT AND NAMES OF PARTIES.** This agreement ("Agreement") between ABEYATECH, LLC ("ABEYATECH") and Buyer is for the sale of goods ("Goods") and related services ("Services"). ABEYATECH recognizes that Buyer may desire to use its own acknowledgement form to reflect this agreement; however, any provisions in Buyer's acknowledgement form which modify, conflict with or contradict any provisions of this Agreement, shall not be binding between the parties. An acceptance of any of the Goods or Services covered by this Agreement and ABEYATECH's Order Acknowledgement shall constitute an acceptance of these terms and conditions and shall constitute the entire understanding between ABEYATECH and Buyer.

B. **INTEGRATED AGREEMENT.** All orders are subject to approval by ABEYATECH at its offices in Springfield, Missouri. The parties agree and understand that no waiver or alteration of terms contained in this Agreement, including but not limited to any verbal alteration or agreement between Buyer and any agent of ABEYATECH, shall bind ABEYATECH unless in writing, signed by an executive officer of ABEYATECH. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any term used in this Agreement. Buyer acknowledges that it has not relied upon any sample, model, description or exact technical specifications in placing its order. The parties intend the terms of this Agreement and the ABEYATECH's Order Acknowledgement to be the final, complete and exclusive expression of their agreement.

C. **TERMINATION, CANCELLATION CHARGES.** ABEYATECH reserves the right to begin production of orders and/or to ship Goods in stock immediately unless specifically requested otherwise. Buyer may not terminate, modify, cancel, or defer shipment of the Goods under this Agreement, except with ABEYATECH's prior written consent and subject to conditions then agreed upon. Cancellation will involve cancellation charges for all work performed, including but not limited to engineering and production work, up to receipt of written cancellation provided by Buyer to ABEYATECH. Buyer agrees to pay these charges as a condition of sale. ABEYATECH will provide Services as outlined in the Order Acknowledgment and the same terms and conditions for Goods shall apply to Services to the extent applicable.

D. **GOVERNING LAW, VENUE, JURISDICTION.** The laws of the state of Ohio shall govern this Agreement, the construction of its terms, and the interpretation of all rights and duties of Buyer and ABEYATECH. Buyer and ABEYATECH agree that they are amenable to suit in Ohio, and therefore, subject themselves to the jurisdiction of the state and federal courts in Ohio by entering into this Agreement.

E. **STATUTE OF LIMITATIONS.** Pursuant to Ohio Revised Code Section 1302.98, the parties agree that an action for breach of this Agreement, or any other cause of action arising from this Agreement, must be commenced if at all within one year from when the cause of action accrued. Notwithstanding the foregoing, Buyer agrees to bring any cause of action for breach of warranty as provided in Section IV (A) of this Agreement within one (1) year from the date of shipment of the Goods or within one (1) year from the date a warranty issue occurs and ABEYATECH fails to honor the warranty.

F. **WAIVER.** Neither the parties nor any interpreting legal authority shall construe any failure of ABEYATECH to demand rigid adherence to one or more of this Agreement's provisions, on one or more occasions, as a waiver or deprive ABEYATECH of the right to insist upon strict compliance in the future.

G. **BINDING EFFECT, ASSIGNMENT.** This Agreement shall bind and inure to the benefit of the parties and their successors and assigns; provided, however, that Buyer may not assign or transfer this Agreement, in whole or in part, except with the prior written consent of ABEYATECH.

H. **LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

I. **EQUAL EMPLOYMENT OPPORTUNITY.** The parties incorporate herein by reference the Equal Opportunity clause, Section 202 of Executive Order 11246, as amended, relative to equal employment opportunities and implementing rules and regulations of the Secretary of Labor.

II. PACKAGING, SHIPMENT, RISK OF LOSS, DELIVERY

A. **PACKAGING.** ABEYATECH bases its prices on ABEYATECH's standard packaging. ABEYATECH shall package the Goods in standard commercial packaging that is acceptable to commercial carrier. ABEYATECH shall furnish special customer packaging only upon Buyer's written request and Buyer shall bear the cost for any special packing requirements. Buyer agrees to hold ABEYATECH harmless for any damage to the Goods caused by Buyer's special packaging requirements.

B. **SHIPMENT, RISK OF LOSS.** ABEYATECH ships all Goods F.O.B. ABEYATECH's plant, Springfield, Missouri, unless otherwise specifically set forth in this Agreement or ABEYATECH's Order Acknowledgment. The risk of loss passes to Buyer upon ABEYATECH's delivery to a common carrier for shipment to Buyer. Buyer shall make any claims for losses or damage occurring after ABEYATECH's delivery to carrier directly to carrier. ABEYATECH may treat each shipment made as a separate transaction. ABEYATECH shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense and valuation.

C. **DELIVERY.** Unless expressly specified to the contrary, ABEYATECH shall ship Goods as soon as practicable. Shipping dates represent ABEYATECH's best estimate and are approximate based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Failure to meet these dates shall not constitute default by ABEYATECH nor shall ABEYATECH be liable for any failure to perform by reason of causes beyond its control. These causes include, but are not limited to, storms, floods, fires, accidents, wars, shortages of fuel, materials, transportation facilities, labor disputes and shortages, legislative action, judicial action and acts of God. In the event of any delay or nonperformance, ABEYATECH may at its option and without liability, upon written notice to Buyer, cancel all or any portion of this Agreement and/or extend any date upon which any performance under this Agreement is due.

III. PRICE, PAYMENT TERMS, INTEREST, COLLECTION FEES & COSTS, TITLE, SECURITY INTEREST, RETURNS

A. **PRICE.** The price for the Goods and Services that are the subject matter of this Agreement are set forth on ABEYATECH's Order Acknowledgment. Prices stated are subject to change without notice in the event of: (i) alterations in specifications, quantities, designs, or delivery schedules; (ii) increases in the cost of fuel, power, material, supplies, or labor; (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the Goods purchased by Buyer, and/or (iv) increased costs related to the delivery of the Services. Buyer shall receive no discount from ABEYATECH on the Goods and Services purchased unless ABEYATECH specifically sets forth a discount on ABEYATECH's Order Acknowledgment. Prices do not include federal, state or local taxes as applicable and ABEYATECH will add these taxes to the sales price when ABEYATECH is legally obligated to collect the taxes unless Buyer provides ABEYATECH with a proper tax exemption certificate. If ABEYATECH pays any taxes on the Goods or Services, Buyer shall immediately reimburse ABEYATECH for any tax payment upon demand. All prices are subject to correction for stenographic, typographic and clerical errors. Buyer shall be assessed with all shipping, delivery, storage, warehousing, and credit card processing fees associated with the Purchase Orders or the Order Acknowledgments unless such fees are waived by ABEYATECH.

B. **PAYMENT TERMS, CREDIT.** The terms of payment are net thirty (30) days from the date of invoice, unless ABEYATECH and Buyer otherwise agree. ABEYATECH extends credit purely at its discretion. If in ABEYATECH's judgment, Buyer's financial condition does not justify the terms of payment specified, ABEYATECH may at its option (1) cancel this Agreement; or (2) refuse to perform further under this Agreement and/or ABEYATECH's Order Acknowledgment unless Buyer shall immediately pay for all Goods which ABEYATECH has delivered to Buyer. ABEYATECH is not liable for breach or nonperformance of contract, in whole or in part, as a result of its refusal to perform.

C. **INTEREST, COLLECTION FEES & COSTS, TITLE, SECURITY INTEREST.** Buyer agrees to pay a delinquency charge of 2% per month (24% per annum) on any outstanding balances owed by Buyer from the invoice date until Buyer renders payment in full. If ABEYATECH must pursue legal action against Buyer to collect any amounts owed by Buyer to ABEYATECH, Buyer agrees to pay ABEYATECH's expenses, including reasonable attorneys' fees, incurred as a result of the legal action and as a result of any other efforts employed to collect amounts owed to ABEYATECH. Until Buyer pays ABEYATECH the purchase price and all other sums due in full, ABEYATECH retains title to all Goods shipped by ABEYATECH to Buyer. ABEYATECH may, at its discretion, require additional security from Buyer on any amount due to ABEYATECH for Goods shipped from ABEYATECH to Buyer, and thus ABEYATECH may file a UCC financing statement, or any other document permitted by law, in any state necessary, to obtain a security interest in the Goods and in all proceeds of the Goods. Buyer irrevocably authorizes ABEYATECH to execute and file a UCC financing statement, or any other document permitted by law, in any state necessary, for this purpose.

D. **RETURNS.** ABEYATECH will not accept Goods returned for credit without ABEYATECH's permission. Buyer must contact ABEYATECH to obtain an RMA number to return any Goods and at that time ABEYATECH will issue an RMA number to Buyer. All returned Goods require an RMA number, and ABEYATECH reserves the right to reject any returned Goods without an RMA number. All returned Goods are subject to a restocking charge, which charge varies depending upon the type of Goods returned. All Goods returned for warranty issues are subject to inspection at ABEYATECH's location in Springfield, Missouri. ABEYATECH will not issue any refunds prior to ABEYATECH's receipt of the returned Goods. ABEYATECH only accepts returned Goods within 30 days from shipment date.

IV. **WARRANTY, LIMITATION OF LIABILITY, INDEMNIFICATION**

A. **LIMITED WARRANTY.** THE FOLLOWING WARRANTY IS EXPRESSED IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF ABEYATECH. ABEYATECH NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THE GOODS. ABEYATECH WARRANTS THE FOLLOWING CLASSIFICATIONS OF PRODUCTS: 1) THE COMPLETED FREEZER PRODUCT ("FREEZER PRODUCT"), 2) PARTS, AND 3) ACCESSORIES.

B. **FREEZER PRODUCTS:** ABEYATECH WARRANTS THAT FREEZER PRODUCTS ARE FREE FROM DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF THREE (3) YEARS AFTER DELIVERY. ABEYATECH WILL EITHER REPAIR OR REPLACE A FREEZER PRODUCT AT NO CHARGE TO BUYER BASED ON ABEYATECH'S DETERMINATION IN ABEYATECH'S SOLE DISCRETION. ABEYATECH FURTHER WARRANTS THE VACUUM PERFORMANCE IN THE FREEZER PRODUCT FOR SEVEN (7) YEARS AFTER DELIVERY OF THE FREEZER PRODUCT. IF THE VACUUM FAILS IN A FREEZER PRODUCT, ABEYATECH WILL REPAIR THE LEAK AND RE-EVACUATE THE FREEZER PRODUCT AT NO CHARGE TO BUYER. ABEYATECH MAKES NO GUARANTEE OR WARRANTY AS TO THE PERFORMANCE LEVEL OF THE FREEZER PRODUCT AND DOES NOT GUARANTEE THE VIABILITY, VALUE, QUALITY OR SECURITY OF ANY ITEM STORED IN THE FREEZER PRODUCT.

C. **PARTS:** ABEYATECH WARRANTS THAT PARTS ARE FREE FROM DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF NINETY (90) DAYS AFTER DELIVERY OF THE PART. PARTS INCLUDE ELECTRICAL AND MECHANICAL ITEMS. ABEYATECH WILL EITHER REPAIR OR REPLACE DEFECTIVE PARTS AT NO CHARGE TO BUYER BASED ON ABEYATECH'S DETERMINATION IN ABEYATECH'S SOLE DISCRETION.

D. **ACCESSORIES:** ABEYATECH WARRANTS THAT ACCESSORIES ARE FREE FROM DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF ONE (1) YEAR AFTER DELIVERY OF THE ACCESSORY. ABEYATECH WILL EITHER REPAIR OR REPLACE A DEFECTIVE ACCESSORY AT NO CHARGE TO BUYER BASED ON ABEYATECH'S DETERMINATION IN ABEYATECH'S SOLE DISCRETION.

E. **SERVICES:** ABEYATECH WARRANTS THE SERVICES OFFERED IN CONNECTION WITH THE GOODS WILL BE PROVIDED IN A WORKMAN LIKE MANNER.

F. **TECHNICAL ADVICE:** THE PARTIES EXPRESSLY ACKNOWLEDGE THAT ANY TECHNICAL ADVICE THAT ABEYATECH FURNISHES TO BUYER WITH RESPECT TO THE USE OF THE GOODS, ABEYATECH PROVIDES WITHOUT CHARGE, AND ABEYATECH ASSUMES NO OBLIGATION OR LIABILITY FOR THE ADVICE GIVEN OR THE RESULTS OBTAINED, AND BUYER ACCEPTS ANY ADVICE THAT ABEYATECH PROVIDES AT BUYER'S SOLE RISK. THIS WARRANTY IS VOID IN THE EVENT THAT ANYONE OTHER THAN THE ABEYATECH MAKES REPAIRS TO THE GOODS WITHOUT PRIOR WRITTEN AUTHORIZATION FROM ABEYATECH.

G. **NON-CONFORMITY:** IF BUYER SEEKS REJECTION OF THE GOODS DELIVERED FOR NONCONFORMITY WITH ABEYATECH'S ORDER ACKNOWLEDGEMENT AND/OR PACKING LIST DISCREPANCIES, BUYER MUST SEND WRITTEN NOTIFICATION TO ABEYATECH OF THE REJECTION OF THE GOODS WITHIN TEN (10) DAYS AFTER DELIVERY OF THE GOODS TO BUYER. THIS NOTIFICATION SHALL STATE THE BASIS OF THE ALLEGED CONFORMITY AND A DESCRIPTION OF THE SHIPMENT REJECTED. BUYER'S FAILURE TO SEND WRITTEN NOTIFICATION WITHIN TEN (10) DAYS AFTER DELIVERY SHALL RESULT IN ABEYATECH DEEMING THAT NO NONCONFORMITIES OR PACKING LIST DISCREPANCIES EXISTED AT THE TIME OF DELIVERY TO BUYER.

H. **LIMITATION OF LIABILITY.** Pursuant to Ohio Revised Code Sections 1302.29 and 1302.93 ABEYATECH's liability for Buyer's damages is limited in the event of a breach or repudiation of this Agreement or ABEYATECH's Order Acknowledgement. ABEYATECH'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR ITS GOODS IS LIMITED TO REPAIRING OR REPLACING GOODS FOUND BY ABEYATECH AS DEFECTIVE, OR AT ABEYATECH'S OPTION, TO REFUNDING THE PURCHASE PRICE OF THE GOODS OR PARTS. AT ABEYATECH'S REQUEST, BUYER WILL SEND, AT BUYER'S SOLE EXPENSE, ANY ALLEGEDLY DEFECTIVE PARTS TO THE PLANT OF ABEYATECH. BUYER SHALL NOT BE ENTITLED TO RECOVER INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING THOSE ARISING OUT OF OR UPON THE RIGHTS RAISED OUT OF A CLAIMED BREACH OF WARRANTY, BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY FOR A PARTICULAR PURPOSE OR USE, OR ANY LOSSES, COSTS, EXPENSES, LIABILITIES AND DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, INCOME OR PROFITS, LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, LOSS OF OR DAMAGE TO PROPERTY, ALL LIABILITIES OF

BUYER TO ITS CUSTOMERS OR THIRD PERSONS, AND ALL OTHER SPECIAL OR CONSEQUENTIAL DAMAGES) WHETHER DIRECT OR INDIRECT, AND WHETHER RESULTING FROM, OR CONTRIBUTED TO BY THE DEFAULT OR NEGLIGENCE OF ABEYATECH, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS, WHICH MIGHT BE CLAIMED AS THE RESULT OF THE USE, MISUSE OR FAILURE OF THE GOODS DELIVERED. Additionally, Buyer shall not be entitled to recover any costs for materials expended or used, initiated at the request of Buyer. ABEYATECH's liability on its warranty shall in no event exceed its cost of correcting the defects in the equipment sold or replacing the same with non-defective parts. If the Goods purchased by Buyer include ABEYATECH's Freezer Unit(s), then ABEYATECH expressly disclaims and liability for Buyer's loss associated with storing any item of value in the Freezer Unit(s).

I. **INDEMNIFICATION.** Buyer agrees to indemnify and hold harmless ABEYATECH and its affiliates, officers, directors, agents, and employees from and against all claims, including third party claims, for bodily injury, illness, death or property damage, liabilities, damages, losses and expenses, including attorneys' fees, arising: (1) from the purchase, use or misuse of the Goods or Services by Buyer, Buyer's customers or any other party; (2) from the infringement of any United States patent, copyright, trade secret, trademark, shop rights, moral rights or similar intellectual property rights, arising from the manufacture of the Goods or the Services provided in accordance with Buyer furnished specifications, Buyer's use of the Goods or Services, or from the sale thereof; or (3) out of the performance of this Agreement.

VIII. INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY

A. **INTELLECTUAL PROPERTY RIGHTS.** ABEYATECH shall retain all intellectual property rights to the Goods and Services that are the subject matter of this Agreement and ABEYATECH's Order Acknowledgement. Buyer's purchase of the Goods and Services does not entitle Buyer to any right, title or interest in ABEYATECH's intellectual property rights. ABEYATECH's intellectual property rights include, but are not limited to patent, trademark, trade name and copyright rights. Specifically, ABEYATECH retains the right to file for patent protection under 35 U.S.C. §1 et seq. for the Goods or Services which are the subject matter of this Agreement. ABEYATECH and Buyer shall jointly possess all intellectual property rights for any products manufactured by Buyer that incorporates the Goods or Services purchased from ABEYATECH.

B. **CONFIDENTIALITY.** Buyer shall consider confidential the Goods and Services, and all specifications, drawings, prototype articles and information furnished by ABEYATECH or prepared by ABEYATECH for Buyer in connection with this Agreement and ABEYATECH's Order Acknowledgement. Buyer shall not disclose this information to any other person or use this information itself for any purpose other than performing under this Agreement without ABEYATECH's prior written permission. Buyer shall not disclose any information relating to this Agreement without ABEYATECH's prior written permission.

IX. DISCLOSURE OF DATA COLLECTION AND USE.

One of the essential features of certain Goods and Services is the ability to collect and record raw data through a WiFi connection established by the Buyer for the sole purpose of monitoring the Good's essential functions and performance from an engineering perspective. This feature uses a web based monitor solution to collect and store raw data in a password protected private cloud data base. The raw data is not transferred or sold to any third party. This WiFi feature also enables ABEYATECH to update software located in the monitor portion of the Goods. By establishing a WiFi connection to activate this feature, Buyer consents to the described raw data collection and storage for the described purposes. Buyer also consents to ABEYATECH's use of analytics programs to further understand the functionality and performance of the Goods and Services, and for ongoing research and development of the Goods and Services and the essential functions of both. ABEYATECH has an official Privacy Policy regarding the collection and use of data at www.abeyancecryo.com.