

## O-MEGA Warranty Conditions

Model: \_\_\_\_\_ Serial #: \_\_\_\_\_ Ship Date: \_\_\_\_\_

### 1. Definitions

- 1.1. "VAPEX" means VAPEX Products, Inc.
- 1.2. "Purchaser" means the party buying the Product and who is legally obligated hereunder.
- 1.3. "Product" means the VAPEX O-MEGA Product Hydroxyl Ion Fog unit.
- 1.4. "Product" Warranty" means Operation Warranty or Extended Warranty
- 1.5. "Operation Warranty" means the original VAPEX new product warranty.
- 1.6. "Extended Warranty" means a warranty purchased by the owner of the Product from VAPEX for coverage after the Operation Warranty has expired.
- 1.7. "Purchase Order" means the original document issued from the Purchaser to VAPEX, listing all parts and/or services to be purchased and the agreed purchase price and payment terms.
- 1.8. "Warranty Transfer Notice / Product Registration" means a document to be completed for the transfer of the VAPEX Warranty from Purchaser to a subsequent owner. This document is available from VAPEX upon request.

### 2. Warranties and Limitation of Liability

- 2.1. VAPEX warrants that (subject to Section 2.6), the Product shall be free from defects in workmanship or material affecting the fitness of the Product for its usual purpose under normal conditions of use, service and maintenance.
- 2.2. VAPEX warrants that the Product shall operate and perform in the manner contemplated in connection with the usual purpose for which it is designed.
- 2.3. **WARRANTY PERIOD: The warranty set out in paragraph 2.1 shall expire at the end of the thirty-six (36) month period commencing on the date of shipment from the Vapex factory (the "Operation Warranty Period") or as specified in purchase documents for extended warranties (the "Extended Warranty Period").**
- 2.4. Subject to the limitations contained in Section 2.6, the Warranties shall apply to any defects found by the Purchaser in the operation of the Product and reported to VAPEX within the Warranty Period. If the Product is found by VAPEX, acting reasonably, to be defective, and if the defect is acknowledged by VAPEX to be the result of VAPEX's faulty material or workmanship, the Product will be repaired or adjusted to the extent found by VAPEX to be necessary or at the option of VAPEX, replaced with a new Product or parts thereof per section 2.7.
- 2.5. Claims under the Warranties shall be made by delivering written notice to VAPEX of the defect in the Product. Within a reasonable time of receipt of such notice, VAPEX shall have the Product diagnosed by its service personnel, and warranty service will be provided at no cost to the Purchaser if the Product is found by VAPEX to be defective within the meaning of this Section and in accordance with Section 2.7. If, in the reasonable opinion of VAPEX after diagnosis of the Product are not defective, the Purchaser shall pay the cost of service, which shall be the amount that VAPEX would otherwise charge for an evaluation to prepare an estimate under a non-warranty service situation.
- 2.6. The Warranties do not apply to:
  - 2.6.1. Any defects in any component of a Product where, if in the reasonable opinion of VAPEX, the Product defects, damages and non-conformances are caused by or resulting from shipping and handling, or abuse, or improper installation, installation by any person or entity that is not certified

- by VAPEX, improper use or maintenance, the failure to utilize VAPEX approved replacement parts, or the actions of third parties.
- 2.6.2. Any electrical or mechanical failures where such failure is a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural event or disaster).
  - 2.6.3. The Warranties shall not cover replacement of expendable items, including, but not limited to, fuses, relays, indicator lights, glue, cleaning materials/supplies, filters, or similar items unless specified.
  - 2.6.4. VAPEX Product that has been moved from the original installation location or subsequent location without installation approval by a Vapex Field Representative. If a system under warranty needs to be relocated, please contact Vapex prior to the relocation taking place.
  - 2.6.5. Any additional hardware associated with the system installation that did not originate from the VAPEX factory, such as blowers and valves of an air collection system or additional scrubbing system.
  - 2.6.6. The Warranties shall not cover minor preventive and corrective maintenance, including, but not limited to, replacement of fuses, filters, indicator lights, and relays, and maintenance cleaning.
  - 2.6.7. Any equipment or its components which was sold or transferred to any party other than the original Purchaser or transferee as listed on the Warranty Transfer Notice / Product Registration without the expressed written consent of VAPEX.
- 2.7. VAPEX Warranty Obligation
- 2.7.1. a) IF PRODUCT IS UNDER OPERATION/EXTENDED WARRANTY: VAPEX will, at its sole option, repair or replace the Product to make it substantially conforming, and will make a reasonable effort to take this action within five (5) business days after its receipt of the Warranty Claim Notice. VAPEX will incur the expense of the needed parts, any shipping charges, travel and service (labor) costs.
  - 2.7.2. c) IF PRODUCT IS NOT UNDER OPERATION/EXTENDED WARRANTY: The Purchaser is responsible for the cost of the service (labor), replacement part(s), travel (based on current Vapex trip fees), and all shipping charges. All charges shall be estimated by VAPEX and approved by the Purchaser prior to commencement of repairs.
- 2.8. Nothing herein contained shall be construed as obligating VAPEX to make service, parts, or repairs for any product available after the expiration of the Warranty Period.
- 2.9. Limitation of Liability
- 2.9.1. VAPEX shall not be responsible under any circumstances for special, incidental or consequential damages, including, but not limited to, injury to or death of any operator or other person, damage or loss resulting from inability to use the Product, increased operating costs, loss of production, loss of anticipated profits, damage to property, or other special, incidental or consequential damages of any nature arising from any cause whatsoever whether based in contract, tort (including negligence), or any other theory of law. VAPEX's only liability hereunder, arising from any cause whatsoever, whether based in contract, tort (including negligence) or any other theory of law, consists of the obligation to repair or replace defective components in the Product subject to the limitations set out above in this section. This disclaimer of liability for consequential damage extends to any such special, incidental or consequential damages which may be suffered by third parties, either caused directly or indirectly resulting from test results or data produced by the Product or any component thereof and the Purchaser agrees to indemnify and save VAPEX harmless from any such claims made by third parties.
- 2.10. The foregoing shall be VAPEX's sole and exclusive liability and the Purchaser's sole and exclusive remedy with respect to the Product. **THE SOLE RESPONSIBILITY OF VAPEX UNDER THE WARRANTIES IS STATED HEREIN AND VAPEX SHALL NOT BE LIABLE FOR**

CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES, WHETHER THE CLAIM IS FOR BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE. OTHER THAN THE EXPRESS WARRANTIES HEREIN STATED, VAPEX DISCLAIMS ALL WARRANTIES INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS.

- 2.11. VAPEX does not authorize any person (whether natural or corporate) to assume for VAPEX any liability in connection with or with respect to the Products. No agent or employee of VAPEX has any authority to make any representation or promise on behalf of VAPEX, except as expressly set forth herein, or to modify the terms or limitations of the Warranties. Verbal statements are not binding upon VAPEX.
- 2.12. The Warranties extend only to the Purchaser and are transferable, only under the following conditions: (A) The Product is currently under warranty, (B) New owner is, or becomes, a certified user and, (C) A VAPEX WARRANTY TRANSFER NOTICE / PRODUCT REGISTRATION form is completed, and submitted to VAPEX. All claims under the Warranties must originate with the Purchaser, or any subsequent owner, and the Purchaser will indemnify and save VAPEX harmless from any claims for breach of warranty asserted against VAPEX by any third party.
- 2.13. Oral representations of VAPEX or its sales representatives, officers, employees or agents cannot be relied upon as correctly stating the representations of VAPEX in connection with the Product. Refer to these Warranty Conditions, any exhibits hereto and any written materials supplied by VAPEX for correct representations.
- 2.14. PURCHASER ACKNOWLEDGES THAT IT HAS PURCHASED THE PRODUCT BASED UPON ITS OWN KNOWLEDGE OF THE USES TO WHICH THE PRODUCT WILL BE PUT. VAPEX SPECIFICALLY DISCLAIMS ANY WARRANTY OR LIABILITY RELATED TO THE FITNESS OF THE PRODUCT FOR ANY PARTICULAR PURPOSE OR ARISING FROM THE INABILITY OF THE PURCHASER TO USE THE PRODUCT FOR ANY PARTICULAR PURPOSE.

### 3. Design Changes

- 3.1. The Product and the Product are subject to changes in design, manufacture and programming between the date of the Purchase Order and the actual delivery date. VAPEX reserves the right to implement such changes without the Purchaser's consent, however, nothing contained herein shall be construed as obligating VAPEX to include such changes in the Product provided to the Purchaser.

### 4. Entire Agreement / Governing Law / Miscellaneous / Guarantee

- 4.1. These Warranty Conditions the entire agreement between VAPEX and the Purchaser in respect to the Product. There are no representations or warranties by VAPEX, express or implied, except for those herein contained and these conditions supersede and replace any prior agreements between VAPEX and the Purchaser.
- 4.2. No representative of VAPEX has any authority to modify, alter, delete or add to any of the terms or conditions hereof. Any such modifications shall be absolutely void unless made by instrument in writing properly executed by an actual authorized employee or agent of VAPEX.
- 4.3. The terms and conditions hereof shall be binding upon VAPEX and the Purchaser, and shall be construed in accordance with the laws of the State of Florida, United States of America.
- 4.4. VAPEX shall be entitled to recover all of its reasonable fees and costs including, but not limited to, its reasonable attorney's fees incurred by VAPEX in connection with any dispute or litigation arising there under or in connection herewith, including appeals and bankruptcy or creditor reorganization proceeds.
- 4.5. These conditions shall not be construed more strictly against one party than another as a result of one party having drafted said instrument.