

## TERMS AND CONDITIONS OF SALE

The sale by Daikin America, Inc. ("DAI") of all Products described on the face hereof or which are shipped under subsequent orders from Buyer (collectively, the "Products") is subject to the following terms and conditions. Any additional or different terms and/or conditions proposed by Buyer will not be binding upon DAI and are hereby rejected, unless specifically consented to by an authorized officer of DAI in writing. Buyer's acceptance of delivery of the Products shall signify agreement to these terms and conditions.

1. **Orders:** All orders are subject to acceptance or rejection by DAI, in its sole discretion, at its headquarters in Orangeburg, New York and shall not be binding on DAI until accepted by DAI at such office and acknowledged in writing by an authorized employee of DAI. At any time prior to shipment, DAI may refuse shipment, or may cancel unfiled orders, with or without cause.
2. **Price:** Buyer shall pay the prices quoted in writing by DAI. DAI reserves the right to revise its prices as to unshipped goods upon notice to Buyer. In the event of a price change, Buyer may modify or cancel the order by notifying DAI in writing within five (5) days of the date DAI gave notice of the price change. All prices quoted, unless otherwise specified, are exclusive of any applicable excise, sales or other taxes, which shall be borne by Buyer.
3. **Payment:** Payment terms are net thirty (30) days or other date as specified on the face hereof. A late fee of 1.5% per month (but not to exceed the maximum rate permitted by law) shall be imposed on all overdue amounts. DAI reserves the right at any time to suspend Buyer's credit privileges. Buyer shall pay DAI's reasonable attorneys' fees and related costs incurred in collecting overdue amounts.
4. **Shipment F.O.B.:** All Products will be shipped F.O.B. DAI's warehouse, with title (unless the Products are being consigned) and risk of loss or damage to the Products passing to Buyer upon DAI's placement of the Products with the carrier at DAI's warehouse. DAI shall pay the freight charges and select the carrier.
5. **Delivery:** Any shipment date indicated on the face hereof or on any purchase order acknowledgment is not a guaranteed shipment date. Shipment dates will vary depending on manufacturing, product availability and other conditions, and are only estimates. Delay in shipment or delivery shall not relieve Buyer of its obligations to accept shipment.
6. **Acceptance:** Buyer shall inspect all shipments upon receipt. Discrepancies in quantities or visible or patent damage to the Products or to their containers shall be noted on the OS&D report with the written consent of the carrier at the time the Products are received, and Buyer shall provide DAI with prompt written notice of the same; otherwise, Buyer accepts the Products as they are, and they shall be deemed to have been received and accepted in new and undamaged condition in the quantities described on the bill of lading.
7. **Warranty:** DAI warrants solely to Buyer that the Products will materially conform to the written specifications for such Products at the time of shipment to Buyer. THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF, AND DAI HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Where Products have limited shelf life or may deteriorate through age or other factor such as improper storage, such limited shelf life or deterioration is not a defect in material or workmanship or a failure to conform to written specifications. The Products are being sold solely for commercial purposes and applications. Buyer recognizes that the Products are not specifically designed or manufactured for its particular application and that DAI has neither undertaken any research and testing of the Products specifically designed to determine suitability or safety in such use nor has it sought certification for the Products for such use. The determination of the suitability or fitness of the Products for the use contemplated by Buyer is Buyer's sole responsibility.
8. **Returns:** Within five (5) days of receipt of the Products, DAI must be notified in writing by Buyer of any Products claimed to be defective or nonconforming in any respect. Return of defective or nonconforming Products may be made only with DAI's written approval and in accordance with DAI's specific shipping instructions. Return Products must be safely repackaged in proper containers. Abused Products are subject to return by DAI. All returns must be made within thirty (30) days of DAI's authorization. In cases of return of Products by Buyer where the Products are defective or nonconforming (as determined solely by DAI), full credit for the amount paid by Buyer will be issued upon receipt and inspection of the Products by DAI. Buyer shall protect against and be responsible for any loss or damage while the Products are in its possession and shall be responsible for risk of loss or damage to the Products in return transit. In the event that Buyer refuses delivery or returns any conforming Products, Buyer shall be charged and agrees to pay a restocking fee equal to 25% of the amount of such conforming Products refused or returned.
9. **Safety Commitments:** Buyer will adopt and follow safe handling, storage, transportation, use, treatment and disposal practices with respect to the Products, including, without limitation, all such practices required by federal, state and local government statutes, rules, regulations or ordinances. Buyer acknowledges receipt of materials safety data sheets for the Products and is aware of and understands the known hazards and risks of handling and using the Products. It is the responsibility of Buyer to warn and protect its employees and others exposed to such hazards and risks in connection with Buyer's storage and use of the Products. Buyer shall hold harmless, indemnify and defend DAI from and against any liability incurred by them because such warnings were not made or for the negligent or intentional use by Buyer of the Products in a manner which causes liability. Buyer assumes all risk and liability for loss, damages or injury to persons or to property arising out of or related to the presence or use of the Products.
10. **Limitation of Liabilities:** DAI's entire liability and Buyer's exclusive remedy for any claims that a Product fails to meet specifications or any damages arising therefrom (whether based on warranty, contract, negligence, strict liability or otherwise), shall be limited to, at DAI's option, either replacement of Products shown to be nonconforming or to payment not to exceed the original purchase price of the specific Products that are the subject of the claim. No claim of any kind with respect to nondelivery of Products shall be greater than the amount paid hereunder for such Product. IN NO EVENT SHALL DAI BE LIABLE TO BUYER FOR DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO THE PRODUCTS OR THE SALE AND/OR DELIVERY THEREOF. Some states have laws that require warranty and liability rights different from those stated herein. In such states, the minimum required warranty and liability terms will apply.
11. **Limitation of Actions:** No action or claim may be brought by Buyer against DAI or its affiliates more than one (1) year after the cause of action or claim arises.
12. **Applicable Law and Forum:** The validity, performance, enforcement and all matters relating to the interpretation and effect of these terms and conditions (including, without limitation, all rights, remedies and obligations hereunder) shall be governed by the laws of the state of New York, without regard to its choice of law provisions. Any legal proceedings arising out of these terms and conditions or the sale and/or delivery of the Products shall be instituted only in the state or federal courts in the State of New York, and Buyer consents to the jurisdiction of those courts and waives any objection to venue therein.
13. **Medical Use:** Buyer warrants and represents, as a condition of this sale, that it is not using and will not use, in whole or in part, the Products delivered or provided hereunder in the design, production, sale or distribution of materials for use in medical and/or dental devices which are implanted in the human body or which come into contact with internal body fluids or tissues. Buyer also understands and agrees that DAI will not sell, deliver or provide any Products for such use except pursuant to a contract which expressly acknowledges such use and contains specific terms and conditions as required by DAI. Buyer shall immediately notify DAI of its intention or decision to use the Products delivered or provided hereunder in the design, production sale or distribution of materials for use in medical and/or dental devices and shall not make such use of said Products unless and until such contract is executed.
14. **Force Majeure:** DAI shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, factory conditions, explosions, shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the control of DAI in the reasonable conduct of its business.
15. **No Set-Off:** Any claim which Buyer may have against DAI shall be pursued independently of Buyer's obligation to DAI for the unpaid purchase price of any Products, and Buyer shall have no right of recoupment or set-off by virtue of any such claim.
16. **Waiver:** No course of dealing or failure by DAI to strictly enforce any term, right or condition of these terms and conditions shall be construed as a waiver thereof.
17. **Entire Agreement:** Except as may be set forth in any written supply, distributorship, consignment or similar agreement between DAI and Buyer, signed by an authorized officer of DAI, these terms and conditions (including terms contained on the face hereof) constitute the entire agreement and understanding between DAI and Buyer with respect to the sale and/or delivery of Products, and supersede all prior or contemporaneous verbal understandings between DAI and Buyer as well as any inconsistent course of dealing which may previously have existed, as to the subject matter hereof. If there is any inconsistency between the terms hereof and the terms of any such signed written supply, distributorship, consignment or similar agreement, the terms of such signed written supply, distributorship, consignment or similar agreement shall control. These terms and conditions may be modified or amended only by the subsequent written agreement of both DAI and Buyer.
18. **Invalidity:** If any provision of these terms and conditions is held to be invalid or unenforceable by any court of competent jurisdiction, all other provisions hereof shall continue in full force and effect.