

DAIKIN AMERICA, INC.
GENERAL TERMS AND CONDITIONS OF SALE

1. **APPLICABILITY.** These General Terms and Conditions of Sale (“**Terms**”) apply to all sales of goods and products (collectively, “**Products**”) by Daikin America, Inc. (“**Seller**”) either pursuant to (i) the contract with the buyer identified therein (“**Buyer**”) to which these Terms are attached (“**Contract**”) or (ii) other offer, request, quotation, proposal, bid, purchase order, communication, other document or other offer for Products (collectively, “**Order**”) from the Buyer (including Orders made pursuant to the Contract, if applicable, and all other Orders). **These Terms are incorporated into, and made a part of, the Contract and all Orders. These Terms sometimes refer to Buyer and Seller each as “Party” and collectively as “Parties.”** These Terms are incorporated into, and made a part of, the Contract and all Orders. Notwithstanding any terms or conditions in the Contract or any Order, Seller’s willingness to sell Products to Buyer is conditioned upon, and subject to, Buyer’s agreement, consent, and assent to these Terms, and Buyer agrees, consents, and assents to these Terms. Any term or condition in the Contract or any Order that is in addition to, not identical to, or conflicts with these Terms is not part of the Contract or Order, and Seller rejects such additional, non-identical, or conflicting terms or conditions, unless the Contract expressly and specifically states that the additional, non-identical, or conflicting terms or conditions will prevail over these Terms. Seller’s failure to object to any term or condition in an Order shall not be deemed an agreement, consent, or assent to such term or condition, a modification of these Terms, or a waiver of all or any portion of these Terms.
2. **ORDERS.** All Orders are subject to Seller’s acceptance or rejection, in its sole discretion. No Order shall be binding upon Seller, until an authorized Seller employee accepts the Offer. Seller may cancel accepted but unfulfilled Orders, with or without cause, and without liability to Buyer. If Buyer cancels an Order, Buyer shall pay (i) all costs Seller has incurred through the cancellation date, (ii) all costs Seller incurs after the cancellation date relating to the cancellation, and (iii) a cancellation fee equal to the completed Product percentage plus 25 percentage points but not exceeding the total Product Price.
3. **PRICE.** Buyer shall purchase Products at the prices (the “**Prices**”) listed in the Contract, if applicable, or as Seller shall otherwise quote in writing, without set-off, reduction, discount, or recoupment.
4. **DELIVERY.** Seller will use commercially reasonable efforts to deliver Products in accordance with mutually acknowledged delivery dates, but Seller does not guarantee any delivery date, even if a delivery date is indicated in the Contract or on an Order’s face. Delivery dates are estimates only and will vary depending on manufacturing, Product availability, and other conditions. Seller may specify minimum lead times for its Products (Seller’s standard delivery lead time is three (3) days after receipt and acceptance of an Order). Seller shall select the carrier to deliver Products, but such carrier shall not be deemed to be Seller’s agent, and Seller will not be liable for any delivery delay or assume any shipment liability, including risk of loss or damage to Products in transit. No shipment or delivery delay shall relieve Buyer’s obligation to accept shipment. Seller will ship all Products to Buyer F.O.B. Seller’s warehouse (regardless of the shipment method). Delivery of Products to the carrier at Seller’s warehouse shall constitute delivery to Buyer, at which time title and risk of loss or damage to Products will pass to Buyer. Buyer shall pay or reimburse Seller for all freight charges. Seller shall deliver Products to Buyer’s designated location using Seller’s standard packaging and shipping methods. Seller may, in its sole discretion, without liability or penalty, make partial Product shipments to Buyer. Each partial shipment will constitute a separate sale, and Buyer shall pay for Products shipped, whether such shipment is in whole or partial fulfillment of Product quantity purchased. If Buyer refuses Product delivery, Buyer shall pay a restocking fee equal to 25% of the refused Product Price.
5. **INSPECTION / ACCEPTANCE / REJECTION.** Buyer shall inspect Products promptly upon receipt but not later than 24 hours after receipt (“**Inspection Period**”) for (i) visible or patent damage to Products or Product containers and (ii) discrepancies from ordered quantities (“**Damage and Discrepancies**”). Buyer shall note Damage and Discrepancies on the OS&D report upon receipt and promptly notify Seller of Damage and Discrepancies within the Inspection Period. Unless Buyer notifies Seller of Damage and Discrepancies during the Inspection Period and furnishes such written evidence or other documents Seller shall require, Buyer will be deemed to have received and accepted Products as is, where is, and with all faults. If Buyer notifies Seller of Damage and Discrepancies within the Inspection Period and furnishes such written evidence or other documents Seller shall require, Buyer’s sole and exclusive remedy shall be, at Seller’s option, (i) in the case of visibly or patently damaged Products, to either replace such Products or credit or refund the Price paid for such Products and (ii) for Product discrepancies, ship the missing Products quantity to Buyer or credit or refund the Price paid for such Products.
6. **RETURNS.** Buyer shall notify Seller promptly after delivery of any mislabeled or defective Products. Buyer may return mislabeled or defective Products (“**Nonconforming Products**”) only (i) after giving such notice, (ii) with Seller’s prior written approval, and (iii) according to Seller’s shipping instructions. Buyer shall complete all Product returns on or before the 30th day after Seller’s shipment date. Buyer shall safely repackage returned Nonconforming Products in proper containers. Seller will not accept abused Product returns, even if they are Nonconforming Products, and will return them to Buyer at Buyer’s cost and expense (and Buyer shall be liable for the full purchase price of the Nonconforming Products). Seller shall fully credit Buyer for all amounts paid for returned Nonconforming Products upon Seller’s receipt and inspection of them. Buyer will be solely responsible for all risk of loss or damage while Nonconforming Products are in its possession and during return transit. If Buyer returns any conforming Products, Buyer shall pay a restocking fee equal to 25% of the returned Products Price.
7. **TAXES AND CHARGES.** All Prices exclude all sales, use, excise, and other taxes, duties, and charges any governmental agency, authority, or commission under any federal, state, or local law, rule, regulation, ordinance, requirement, or order (collectively, “**Laws**”) may impose on Product sales/purchases or any amounts payable by Buyer. Buyer shall be responsible for all such taxes and charges; provided, that, Buyer shall not be responsible for any taxes imposed upon Seller’s income, revenues, gross receipts, or personnel. Buyer shall provide to Seller all proper exemption certificates establishing that Buyer is licensed to engage in tax free transactions with respect to Products under all Laws applicable to these Terms or Products.
8. **PAYMENT TERMS.** Buyer shall pay all invoiced amounts due to Seller in full within thirty (30) days from Seller’s invoice date, without set-off, reduction, discount, or recoupment. Buyer shall make all payments in U.S. dollars. Buyer shall pay interest on late payments at the lesser of 1.5% per month or the highest rate permissible under applicable Laws, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting late payments, including, without limitation, attorneys’ fees. Seller may suspend Buyer’s credit privileges or establish and/or change payment terms at any time and for any reason (including placing Buyer’s account on a cash in advance basis if the account is more than thirty (30) days past due), including Seller’s unilateral determination that Buyer’s financial condition or prior payment history warrants such action.
9. **EXPORTS.** If Buyer intends to export or deliver any Products outside the United States to a country for which an export license would be required, Buyer shall (i) notify Seller in advance of Seller’s Product shipment to Buyer, (ii) obtain all necessary export licenses and clearances with respect to such delivery, and (iii) provide copies of such licenses and clearances to Seller upon demand.
10. **USE OF PRODUCTS.** Buyer shall use Products only for their intended purposes. Buyer shall not use or include Products in the manufacture of any medical or dental device, accessory, apparatus, appliance, implement, instrument, invention, tool, or utensil (collectively, “**Device**”) or any component, material, part, item, or piece used or useful in any medical or dental Device (collectively, “**Component**”) that has not received all applicable approvals from any federal, state, or local governmental agency, authority, or commission under applicable Laws. Buyer shall ensure that its ownership, possession, handling, storage, transportation, treatment, testing, disposal, and other use of Products at all times complies with Seller’s technical and other specifications for Products. Buyer shall not resell Products in their raw form to any third party for use in medical or dental Devices or Components.
11. **COMPLIANCE WITH LAW.** Buyer shall comply with all Laws of any governmental agency, authority, or commission having jurisdiction over Buyer, Products, or these Terms. Nothing in these Terms is intended to induce or require either Party to act in any manner that is inconsistent with, or penalized or prohibited under, any Law.

12. **SAFETY.** Buyer will adopt and follow safe handling, testing, storage, transportation, treatment, disposal, and other use practices for Products, including all practices any applicable Laws may require. Buyer will review all (material) safety data sheets (“SDS”) relating to Products, and, if Buyer does not have copies of applicable SDS, will request them from Seller. Buyer shall warn and protect its employees, contractors, agents, and third parties who are, have been, or may be exposed to hazards and risks arising out of, or relating to, the possession, handling, testing, storage, transportation, treatment, testing, disposal, and other use of Products. Buyer assumes all liabilities, damages, injuries, penalties, assessments, fines, losses, relief, remedies, costs, and expenses (including attorneys’ fees and related legal fees and expenses) (collectively, “Liabilities”) to persons or properties arising out of, and relating to, its ownership, possession, testing, handling, storage, transportation, treatment, disposal, or other Product use. Buyer shall not be required to provide support services for Products.

13. **BUYER REPRESENTATIONS.** Buyer represents and warrants to Seller that: (i) Buyer has not entered into, and is not bound by, any agreement, understanding, or restriction (including any covenant restricting competition, granting exclusivity, or relating to trade secrets or confidential information), which in any way would or could limit, restrict, or prevent Buyer from agreeing to these Terms, entering into the Contract (if applicable), or submitting any Order or from the full and complete performance of, and compliance with, the Contract and these Terms, and (ii) Buyer’s execution and delivery of these Terms and the performance of its duties and obligations under these Terms will not result in, or constitute a breach of, any term or condition of any other agreement, instrument, arrangement, or understanding or constitute (or, with notice or lapse of time, or both, would constitute) a default, breach, or violation of any such agreement, instrument, arrangement, or understanding, or which would accelerate the maturity of any duty or obligation of it under such agreement, instrument, arrangement, or understanding.

14. **BUYER ACKNOWLEDGMENTS.** Buyer acknowledges, represents, and warrants that: (i) Products are not designed or manufactured for Buyer’s intended application or implantation in the human body or contact with any internal part of the human body, including blood, fluids, tissues, or organs; (ii) Seller has neither undertaken any Product research and testing to determine Product suitability or safety for Buyer’s intended application or inclusion in any medical or dental Device or Component nor sought Product certification or approval for such uses or inclusion; (iii) Seller is merely a bulk supplier of Products; (iv) Seller has not made any specific recommendations as to Products’ end use and is not in a position to control or predict how Products will be used, processed, or marketed or whether Products are suitable or fit for such uses, processes, and marketing; (v) Buyer has all technical and other capabilities and knowledge necessary and appropriate to use Products, including using Products in Buyer’s manufacturing, processing, marketing, and distribution of medical or dental Devices or Components; (vi) Buyer knows and understands the known Product handling and use hazards and risks; and (vii) Buyer has the sole responsibility and liability for Product use, including for Buyer’s intended Product applications.

15. **MEDICAL USE.** Buyer represents, warrants, and covenants to Seller that Buyer is not using and will not use, in whole or in part, Products in connection with the design, production, sale, or distribution of materials for use in medical or dental Devices or Components that are implantable in the human body or that come into contact with internal bodily fluids or tissues. Seller will not sell, deliver, or provide any Products for such use, except pursuant to a contract that expressly acknowledges such use and contains specific terms and conditions that Seller requires. Buyer shall notify Seller immediately of Buyer’s intention or decision to use Products in the design, production, sale, or distribution of materials for use in medical or dental Devices or Components and shall not make such use of Products unless and until such contract is executed between the Parties.

16. **NAME AND MARKS.** Buyer shall not use Seller’s name, copyrights, trademarks, or trade dress for any reason, including in connection with, arising out of, or relating to Product use in any medical or dental Device or any Component.

17. **WARRANTIES.** Seller warrants to Buyer that Products will materially conform to Seller’s published specifications in effect on the date shipped. The preceding warranty will be void and of no force or effect if Buyer does not follow safe handling, storage, transportation, treatment, disposal, and other use practices for Products. **EXCEPT FOR THE WARRANTY SET FORTH IN THE FIRST SENTENCE OF THIS SECTION, SELLER SELLS ALL PRODUCTS “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS,” AND SELLER MAKES NO AND DISCLAIMS ALL REPRESENTATIONS, PROMISES, AND WARRANTIES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER SHALL NOT STATE OR REPRESENT TO ANY THIRD PARTY THAT SELLER PERMITS, RECOMMENDS, OR ENDORSES BUYER’S USE OF THE PRODUCTS. UNDER NO CIRCUMSTANCES WILL A FAILURE TO MATERIALLY CONFORM TO SELLER’S PUBLISHED SPECIFICATIONS BE DEEMED TO HAVE OCCURRED IF PRODUCTS HAVE A LIMITED SHELF LIFE OR SUFFER DETERIORATION DUE TO AGE OR OTHER FACTORS, INCLUDING IMPROPER STORAGE.**

18. **LIMITATION OF LIABILITY.** **NOTWITHSTANDING ANYTHING IN THESE TERMS OR OTHERWISE TO THE CONTRARY, SELLER’S ENTIRE LIABILITY, AND BUYER’S EXCLUSIVE REMEDY FOR ANY CLAIMS THAT A PRODUCT FAILS TO MEET SPECIFICATIONS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, OR OTHERWISE, SHALL BE LIMITED TO, AT SELLER’S OPTION AND SOLE DISCRETION, EITHER REPLACEMENT OF SUCH PRODUCTS OR REIMBURSEMENT OF THE PURCHASE PRICE BUYER PAID FOR THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER ARISING OUT OF, OR RELATING TO, THESE TERMS, THE CONTRACT (IF APPLICABLE), OR PRODUCT SALES (INCLUDING ANY BREACH, VIOLATION, OR DEFAULT OF THESE TERMS) OR FOR BUYER’S OWNERSHIP, POSSESSION, HANDLING, TRANSPORTATION, TREATMENT, DISPOSAL, TESTING, STORAGE, OR OTHER USE OR SALE OF ANY PRODUCTS FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, OR (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF, OR RELATED TO, THESE TERMS OR, IF APPLICABLE, THE CONTRACT, WHETHER ARISING OUT OF, OR RELATED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD UNDER THESE TERMS OR, IF APPLICABLE, THE CONTRACT. BUYER MAY NOT FILE OR PROSECUTE ANY CLAIM AGAINST, OR SEEK RELIEF OR REMEDIES FOR ANY LIABILITIES FROM, SELLER MORE THAN ONE (1) YEAR AFTER THE DATE THE CLAIM OR LIABILITY AROSE, REGARDLESS OF WHETHER BUYER HAD KNOWLEDGE OF THE CLAIM OR LIABILITY ON THE DATE THE CLAIM OR LIABILITY AROSE.**

19. **INDEMNIFICATION.** Buyer shall defend, indemnify, and hold harmless Seller and its parent and affiliate companies and all their respective officers, directors, managers, members, shareholders, employees, agents, successors, and assigns (collectively, the “Indemnified Parties”) from and against all claims, actions, suits, proceedings, demands, and disputes (collectively, “Claims”), whether at law or in equity, and all Liabilities, which are incurred by, alleged to be owed by, or assessed or alleged against, any Indemnified Party that arise out of, relate to, are caused in whole or in part by, or result from the following: (i) the management, conduct, or operation of Buyer’s business; (ii) the breach, violation, or default in the performance of these Terms (including Claims relating to a “battle of the forms” or, if applicable, the Contract); (iii) third party Claims; (iv) Buyer’s ownership, possession, handling, transportation, treatment, disposal, testing, storage, or other use of Products (including, without limitation, Buyer’s Product use or inclusion in the design, distribution, manufacture, production, or sale of any medical or dental Device or Component that is implanted or inserted into the human body or may come into contact with part of the human body or any modification of, or enhancement to, any Product); and (v) any modification or enhancement to any Product that Seller does expressly approve in writing; provided, that, Buyer will have no indemnification obligation if, but only to the extent that, Claims or Liabilities are specifically due to Seller’s gross negligence or willful misconduct. Seller will cooperate with Buyer’s defense of any Claim or Liability but, without limiting Buyer’s indemnification obligations in these Terms, Seller may participate in the defense of any Claim and Liability with counsel of its choice and at its own cost and expense. In its defense of any Claim or Liability, Buyer shall not agree or consent to any settlement that admits fault or liability on Seller’s part.

20. **INSURANCE.** Buyer shall obtain and maintain a policy or policies of general liability insurance covering Products in an amount not less than \$5,000,000.00 per occurrence covering Buyer's ownership, possession, handling, transportation, treatment, disposal, testing, storage, sale, and other use of Products (including in connection with any medical or dental Device or Component), which shall name Seller and Daikin Industries, Ltd. as additional insureds and loss payees and waive subrogation by endorsement or otherwise. Buyer shall furnish Seller copies of such policies and liability endorsements and give Seller at least thirty (30) days prior written notice of cancellation or material change (including any reduction in the liability limits or coverage) in such insurance.
21. **NOTICE.** Any notice required or permitted to be given under these Terms must be in writing and will be validly given and delivered only: (i) if personally delivered (including by recognized overnight delivery service), when actually delivered to the Party to which notice is being given or such delivery is refused, or (ii) if deposited in the United States mail, when the Party to which notice is being given accepts or refuses delivery. Any notice delivered by United States Mail must be delivered by registered or certified mail, return receipt requested, and postage prepaid. All notices must be properly addressed to the Party to which notice is being given at the following addresses: if to Seller, 20 Olympic Drive, Orangeburg, New York 10962, Attention: Legal Department; and, if to Buyer, to the Buyer's address (i) if applicable, reflected in the Contract or (ii) otherwise on file with Seller. Either Party may change its notice address by giving notice to the other Party in the manner provided in these Terms.
22. **CAPTIONS.** The captions or headings in these Terms are for convenience and general reference only and shall not be construed to describe, define, or limit the scope or intent of these Terms.
23. **THIRD PARTY BENEFICIARIES.** There are no third-party beneficiaries of or to these Terms, except for the Indemnified Parties.
24. **INTERPRETATION.** As used in these Terms, "include" or "including" mean include or including without limiting the generality of any description or word preceding such term; "shall" and "will" are imperative in meaning and intent; and "may" is permissive in meaning and intent. Any singular word or term defined in these Terms will include the plural form of such word or term, regardless of whether these Terms specifically define the plural form of such word or term; and any plural word or term defined in these Terms will include the singular form of such word or term, regardless of whether these Terms specifically define the singular form of such word or term.
25. **WAIVER.** No course of dealing, use of trade, or course of performance will constitute a waiver of any provision of these Terms. Either Party's waiver of any requirement in, or a breach, violation or default of, any provision of these Terms will not operate as, or be construed to be, a waiver of such requirement or any subsequent breach, violation, or default of these Terms. Any waiver of any provision of these Terms must be in writing and signed by the Party against which the waiver is sought.
26. **AMENDMENT.** None of these Terms may be changed, modified, waived, discharged, or terminated orally or in any manner other than by an instrument in writing signed by both Parties.
27. **CHOICE OF LAW AND JURISDICTION / ARBITRATION.** Any Claim arising out of, or relating to, these Terms will be governed by, and construed in accordance with, the substantive and procedural laws of the State of New York (excluding any conflict or choice of law, rules, or principles that may refer or defer to the laws of another jurisdiction). Any Claim arising out of, or relating to, these Terms must be commenced, filed, and prosecuted exclusively within the state and federal courts in the State of New York. Seller, at its option and in its sole discretion, may invoke binding arbitration in Orangeburg, New York under the American Arbitration Association's Commercial Arbitration rules, and Buyer consents to any such invoked arbitration and shall dismiss any legal proceedings related to the arbitration's subject matter.
28. **SEVERABILITY.** If any provision of these Terms conflicts with the Law under which these Terms are to be construed and if an arbitrator or court of competent jurisdiction should declare such provision to be unenforceable or void as unreasonable, such provision will be deleted from these Terms and the remaining provisions of these Terms will remain in full force and effect to the extent such arbitrator or court does not declare them to be unreasonable or unenforceable.
29. **WAIVER OF JURY.** The Parties desire to avoid the time and expense related to a jury trial of any Claim if such Claim is not settled by arbitration or otherwise determined by a court of law or equity. Accordingly, the Parties hereby waive all rights to a trial by jury of any Claim.
30. **SURVIVAL.** The representations, warranties, and indemnification obligations of the Parties in these Terms shall not be discharged or dissolved upon, but shall survive the execution or any termination of, these Terms, the Contract, or the fulfillment of any Order and shall be unaffected by any investigation made by either Party at any time.
31. **ASSIGNMENT.** Neither Party may assign the Contract or Order or any of its rights in, or obligations under, the Contract or Order, without the prior written consent of the other Party, which consent may not be unreasonably denied, withheld, delayed, or conditioned.
32. **BINDING EFFECT.** These Terms will be binding on a Party only when signed by both Parties. Once executed by both Parties, these Terms will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
33. **INDEPENDENT CONTRACTOR.** Seller is an independent contractor of Buyer. Nothing creates between the Parties an agency, joint venture, or any relationship other than independent contractor. Neither Party will have any right to bind the other Party in any respect.
34. **FORCE MAJEURE.** Seller will have no liability to Buyer for any delay or failure to perform its obligations under these Terms (including delivery delays and failures), whether in whole or in part, due to any event, cause, or circumstance beyond Seller's reasonable control, including the following: floods, fires, explosions, extreme heat or cold, earthquake, storm, epidemic, or other acts of God; Product or raw material shortages; strikes, lockouts, or other industrial or labor difficulties or disturbances; insurrection, rebellion, or other act of civil disobedience; riots, hostilities, disorders, sabotage, civil commotions, wars (regardless whether an actual declaration of war is made), or acts of terrorists; conditions that make Seller's performance economically impractical; accident or breakage of equipment or machinery; failure or delay of suppliers to furnish supplies; the effect of any Law; or theft or vandalism. If such a force majeure event occurs, Seller may allocate its resources among its customers and for its own operational needs, and the date of delivery or performance shall be extended for a time period equal to the time loss the force majeure event shall have caused.
35. **NO SET-OFF.** Buyer shall have no right or ability of set-off, reduction, discount, or recoupment against Seller, and Buyer shall pursue any Claim that Buyer may have or could assert against Seller (whether arising before, on, or after the date of these Terms, the Contract, or any Order) independent of Buyer's requirement to pay Seller for all Products.
36. **INVALIDITY.** If any provision of these Terms is held to be invalid or unenforceable by any court of competent jurisdiction, these Terms will not, as a whole, be invalid or unenforceable, and all other provisions of these Terms will remain in full force and effect.
37. **ENTIRE AGREEMENT / INSTRUMENT PRECEDENCE.** If these Terms are attached to a Contract, they are incorporated into, and made a part of, the Contract by this reference. These Terms and, if applicable, the Contract are the sole and entire understanding and agreement of the Parties regarding their subject matter (including understandings and agreements regarding representations and warranties) and supersede all prior and contemporaneous oral and written understandings and agreements between the Parties regarding their subject matter, if any. No understandings or agreements exist between the Parties regarding the subject matter of these Terms other than those expressly set forth in these Terms (of, if applicable, the Contract). To the extent that any of these Terms are inconsistent with terms in the Contract, if applicable, or any Order, these Terms shall take precedence, and the Contract, if applicable, and any Order shall be subject to these Terms. No Order terms any shall amend, modify, vary, supersede, become a part of, or take precedence in any way over these Terms, which terms Seller rejects, and Buyer disclaims. No course of dealing, use of trade, or course of performance shall supplement, amend, modify, or explain these Terms.