



PURCHASE TERMS & CONDITIONS

- 1) **APPLICABILITY:** The terms and conditions of this purchase order (this "Order") apply to all Goods (as defined below) sold to Daikin Applied and its affiliates (collectively and individually referred to as "Buyer") by the seller of the Goods as referenced on the front page of this Order ("Seller").
- 2) **WARRANTIES:** Seller represents, warrants and covenants that the materials, items or services supplied (the "Goods") under this Order: (a) are manufactured with new materials (not used or refurbished), are of the highest grade and quality unless otherwise specified in writing; (b) conform to the specifications; drawings, samples or other description furnished or specified; (c) are fit and sufficient for the purpose intended; (d) are merchantable, of good material and workmanship, and free from all defects; (e) suitable for use, manufactured, packaged for shipment, properly labeled in compliance with applicable laws. In addition, Seller represents, warrants and covenants: (i) that it has good title to the Goods and is transferring such good title to the Goods to Buyer, free and clear of all liens, claims, and encumbrances; and (ii) the Goods do not infringe or otherwise utilize any patent, trademark, copyright, mask work right or other intellectual property right of any third party. The warranties set forth in this paragraph: (x) are in addition to those implied by or available at law; (y) exist notwithstanding the acceptance and/or inspection by Buyer of all or a part of the Goods to which such warranties are applicable; and (z) run and inure to the benefit of Buyer, its customers, and users of products sold by Buyer (with such customers and users of products sold by Buyer being intended third party beneficiaries of such warranties). None of the remedies available to Buyer for the breach of any of these warranties may be limited except in a separate written agreement designating such limitation and signed by Buyer. Seller hereby assigns and passes through to Buyer, and Buyer shall have the benefit of, all rights it obtains under representations and warranties, and indemnities given by any third-party seller or third-party product sold or incorporated within the Goods.
- 3) **CANCELLATION:** Buyer may cancel this Order in whole or in part at any time prior to shipment by Seller or if Seller defaults or fails to comply with any of the terms of this Order. Upon such cancellation Buyer will not have any liability to Seller, and Seller will be liable to Buyer for any and all direct, incidental and consequential damages (including, without limitation, additional costs incurred by Buyer for procurement).
- 4) **CHANGES:** Buyer may, at any time prior to the delivery date of the Goods, make changes in drawings, designs, specifications, packaging, time and place of delivery and method of transportation. If the changes cause an increase or decrease in the cost, or the time required for the performance, an equitable written adjustment will be made. Any claim by Seller under this clause is waived unless asserted in writing within ten (10) days of notice of the change. Buyer may, without liability to Seller, delay delivery and/or acceptance occasioned by causes beyond its control. Seller shall not make changes to the Goods' specifications or make any changes that affect the fit, form or function of the Goods without prior written consent of Buyer for any open Orders.
- 5) **PRICES:** Seller's prices will not be higher than last quoted or charged to Buyer or higher than stated on this Order unless authorized by a change notice signed by Buyer. All taxes which Seller is required by law to collect from Buyer are included in the price. Seller warrants that the prices of the Goods covered by this Order are not in excess of Seller's lowest prices in effect for comparable quantities of similar items on either the date of this Order or the date of acceptance by Buyer of the Goods. If such prices are in excess of such other lower prices, then Buyer shall be entitled, at Buyer's option, to a credit to Buyer's account or a repayment by Seller in an amount equal to the difference between the amount paid by Buyer and such other lower price. In the event Seller experiences any shortage of materials to manufacture the Goods, or Seller cannot satisfy the demands of all of its customers from its inventory of Goods, Seller shall provide Buyer with the first priority as to the Goods that Seller has available. Seller represents that there are no agreements in place with other customers that conflict with Seller's obligations under this Section.
- 6) **SHIPMENTS:** There will be no charge for boxing, packaging or cartage. Seller will promptly notify Buyer in writing if deliveries are delayed. If Seller does not meet the specified shipping dates, any excess transportation charges to reduce delay and delivery are deductible from the price of the Goods, as are any transportation charges on partial shipments or back orders. Seller may require expedited shipping for late Orders, or cancel all or part of such late Orders at its sole discretion and without penalty. Seller shall deliver all shipments on time and free of damage. Title to and all risk of loss or damage to Goods remains with Seller until shipment of Goods from Seller's origin as designated in the applicable Order, subject to timely later rejection or return of defective, damaged, rejected or unordered Goods as set forth herein.
- 7) **INSPECTION:** Invoices are not due and payable until the Goods are received, inspected and accepted by Buyer. All Goods will be inspected by Buyer within a reasonable time after delivery to ensure that the materials satisfy Buyer's acceptable quality level (AQL) standards. Notwithstanding anything contained in this paragraph, Buyer reserves the right to inspect and reject Goods prior to shipment, at the Seller's facility, at a mutually agreed upon time schedule. Rejected materials and equipment may, at Buyer's option and at Seller's expense, be either (a) held; (b) returned to Seller for repair, replacement or credit; (c) retained by Buyer with an equitable reduction in price; or (d) repaired by Buyer. Payment for any Goods will not be deemed an acceptance thereof.
- 8) **TOOLS AND DATA:** Any and all molds, tools, dies, jigs, fixtures or other equipment ordered herein or delivered to Seller by Buyer will become and remain the exclusive property of Buyer, will be used in the manufacture of articles for Buyer exclusively and will be delivered immediately to Buyer upon Buyer's request and without additional cost to Buyer. Any drawings, specifications or technical information provided by Buyer to Seller will remain the property of Buyer and be held in strict confidence by Seller and may not be reproduced, used or disclosed to others without prior written consent of Buyer. All information or data disclosed or furnished to Buyer by Seller under this Order is sold as part of the price, is non-proprietary and is free of all restrictions whatsoever.
- 9) **HAZARDOUS CONDITIONS:** If Seller or Buyer learns of any potential safety hazard or unsafe condition relating to or involving any of the Goods hereunder, it will immediately advise the other party. The parties shall cooperate in communicating with the public and governmental agencies and will address and, if necessary, correct any such condition that is found to exist at Seller's sole cost and expense. Buyer and Seller shall consult with each other prior to making any statement to the public or to any governmental agency concerning issues related to any potential safety hazard or unsafe condition involving any of the Goods provided hereunder, except in circumstances in which a failure to do so would prevent the timely notification which may be required to be given under any applicable law or regulation. This paragraph shall survive termination or expiration of this Order.
- 10) **PRODUCT RECALL:** If (a) Seller, Buyer, or any governmental agency or court having jurisdiction determines that any Good or part thereof contains a defect or serious quality or performance deficiency, or (b) any Good is not in compliance with the specifications or Buyer's standards and requirements such that in Buyer's discretion such Good should be reworked or recalled, the parties will promptly communicate all relevant facts to each other and undertake all corrective actions, including those required to meet all obligations imposed by law, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents. Seller shall be responsible for all matters and costs associated with the recall, including but not limited to: (a) customer notification and contact; (b) all costs, expenses, liabilities, and losses incurred

by Buyer, its affiliates, distributors, or customers (“Buyer Group”) in connection with the recall (and where applicable, any product of Buyer with which the recalled Goods have been packaged or integrated), including but not limited to refunds to customers, lost profits, transportation costs, and all other costs associated therewith; and (c) initial contact and report of the recall to any government agency having jurisdiction over the affected products. If a government agency initiates any inquiry or investigation relating to the Goods or similar goods manufactured or supplied by Seller, Seller shall notify Buyer immediately thereof and take reasonable steps to resolve the matter without exposing Buyer to any liability or risk. The parties shall cooperate with and assist each other in any such filing and corrective action, provided that nothing contained in this paragraph shall preclude a party from taking such action as may be required of it under any law or regulation. Each party shall consult the other party before making any statement to the public or a governmental agency concerning issues relating to potential safety hazards affecting any Good provided hereunder, except where such consultation would prevent timely notification required to be given under any applicable law or regulation. All of the actions and obligations set forth in this paragraph shall be at Seller’s sole cost and expense. This paragraph shall survive termination or expiration of this Order.

- 11) **CATASTROPHIC DEFECT:** Seller shall, within ten (10) days of Buyer’s demand, indemnify Buyer or its designated third-party service provider for all costs and expenses of parts, labor, administrative costs, shipping costs, replacement Good costs and other expenses (including reasonable attorneys’ fees and expenses) related to or arising from a Catastrophic Defect or Goods recall or fix. “Catastrophic Defect” will be deemed to occur when: (i) the representations and warranties set forth in Section 2 above are breached with respect to (1) two percent (2%) or more of the Goods shipped within any three-month period, or (2) one half percent (.5%) of the Goods shipped within the first six months of the initial agreement between Seller and Buyer; (ii) the return and exchange rate of the Good sold by Seller to Buyer is in excess of the category average for the Good, as determined by Buyer’s records; (iii) a single or single group of defects in a Good (any manufacturing defect that affects the Good cosmetically or functionally) is determined by Buyer to impact more than ten percent (10%) of such Goods; (iv) a Good (including any service parts, replacement parts, spare parts, assemblies and tools required for servicing Goods) recall is necessary in the reasonable opinion of Buyer or Seller; or (v) the Good should be pulled from the marketplace to comply with applicable law as determined by Buyer in its sole discretion (including but not limited to, cases of a voluntary or mandatory consumer Good safety recall); provided, however, that no Catastrophic Defect will be deemed to occur if the applicable defect results solely from an act or omission of Buyer.
- 12) **REIMBURSEMENT FOR COSTS:** In the event Buyer Group incurs costs, expenses, or other liabilities of any kind whatsoever with respect to remedying hazardous conditions, product recall, product liability, warranty, or other matters which are the responsibility of Seller under this Order, Seller shall reimburse Buyer for such costs within 20 days after receiving applicable documentation from Buyer.
- 13) **ASBESTOS; PCB; CFCs:** Seller certifies to Buyer that the Goods do not contain asbestos or PCBs nor were the Goods manufactured with CFCs. Seller shall not introduce into the Goods any asbestos or PCBs nor manufacture the Goods with CFCs.
- 14) **INDEMNIFICATION:** Seller shall defend, shall release, relinquish, and discharge, and shall indemnify, save, and hold harmless Buyer Group from and against any and all actions, claims, costs (including without limitation, costs of investigation, litigation, and court costs), damages, demands, fines, interest, judgments, liabilities, losses, penalties, proceedings, suits (including appeal), and expenses (including, without limitation, reasonable attorneys’ fees) (collectively, “Claims”) that are brought by or on behalf of any person or entity, that arise out of, relate to, or are connected with the Goods, this Order or the performance hereof, including without limitation, Claims alleging: (i) the personal injury, bodily injury, illness, or death of any person; (ii) damage to, loss of, or loss of use of any property; (iii) violation of any governmental laws, regulations, ordinances, permits, licenses, or orders; or (iv) infringement, dilution, misappropriation, or other violation of the copyright, trade secret, trademark, trade dress, service mark, patent or any other proprietary right (including without limitation, moral, termination, privacy, or personality rights) of any person or entity associated with Buyer Group’s use, possession, or sale of the Goods or use or possession of any Seller Confidential Information; or (v) the design, manufacture, sale, recall, distribution or use of the Goods. **THE DEFENSE AND INDEMNITY OBLIGATIONS CONTAINED IN THIS ARTICLE SHALL APPLY EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO THE BUYER GROUP.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer’s liability on any claim of any kind for loss or damage arising out of or in connection with or resulting from any Order or from performance or breach thereof shall in no case exceed the price allocable to the Goods and/or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any Buyer’s breach of this Order or any other breach of contract claim or any other breach on the part of Buyer as to Goods and/or services delivered hereunder must be commenced by Seller within one year after the cause of action has occurred.
- 15) **INSURANCE:** Seller shall for ten years after the delivery date of any Goods, maintain commercial general liability insurance with a reputable and financially responsible insurance company, including Goods and completed operations liability, in the form requested by Buyer, and other insurances as required by applicable law. If Seller fails to adhere to the requirements of this Section 15, Buyer may order any such insurance and charge the cost thereof to Seller, which amount shall be due and payable by Seller upon demand by Buyer. Seller’s insurance obligations are not subject to any limitation of liability.
- 16) **INTELLECTUAL PROPERTY:** Buyer or its affiliates are the sole owners of the trademarks, trade names and service marks (“Marks”) which designate, or may in the future designate, Goods. Seller shall only use the Marks and identities of Buyer or its affiliates when and as approved by Buyer in writing. Seller further agrees that it will not at any time use as part of its name any of the Marks or any other confusingly similar name, word, letter, symbol or design, either alone, or in conjunction with, any other name, word, letter, symbol or design or use or register any trademarks or service marks that are substantially similar to the Marks. Seller acknowledges that Buyer, its affiliates, and their respective licensors own exclusively throughout the world any and all specifications provided by or obtained from Buyer, including all intellectual property rights in the foregoing, that are delivered by Buyer to Seller or are found, created, discovered, generated or developed jointly by Buyer and Seller that relate to the specifications provided by Buyer.
- 17) **STATUTORY COMPLIANCE:** Seller warrants that material or work furnished hereunder complies with all laws, regulations, executive orders or ordinances of the United States or any state or any governmental authority or agency, (including, but not limited to, those issued pursuant to the Fair Labor Standards Act, State and/or Federal Civil Rights and Equal Employment Acts, the Occupational Safety and Health Act, the Consumer Products Safety Act, the Equal Opportunity clause of Executive Order 11246, the Affirmative Action Clause of Section 503 of the Rehabilitation Act of 1973, the Affirmative Action Clause of Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Resources Conservation and Recovery Act, the Comprehensive Compensation and Liability Act, and any amendments or successors to the foregoing). Seller will indemnify and hold harmless Buyer from all losses, fines, expenses, claims, demands, and actions whatsoever arising out of Seller’s non-compliance with such laws or regulations.

- 18) **CUSTOMS:** Seller shall be responsible for obtaining any licenses or governmental permits for export and import of the Goods to the country of final destination, to or from the United States, and any other country where the Goods may be transshipped, landed or utilized. Seller warrants it will not allow Goods to be transferred at any time on either a temporary or permanent basis in any manner that would violate United States customs or export laws or regulations (“Customs Laws”), including, but not limited to, the Export Administration Act of 1979, the Arms Export Control Act of 1976, the Foreign Assets Control (“OFAC”) Regulations, the Export Administration Regulations (“EAR”), the Customs Regulations, or the International Traffic in Arms Regulations (“ITAR”), in each case as may be amended from time to time. Seller agrees that it is the U.S. Principal Party in Interest for purposes of the Foreign Trade Statistics Regulations, the importer of record for purposes of the U.S. Customs Regulations, and the exporter of record for purposes of the EAR. Seller is responsible for filling all documents required for the import into or export from the United States with the applicable governmental authority. Seller shall further defend, indemnify and hold harmless Buyer Group from and against any and all Claims brought by or on behalf of any person or entity (including without limitation any governmental authority) arising out of or in connection with breaches of this paragraph or violations of the Customs Laws by Seller or its agents.
- 19) **WAIVER:** Buyer’s failure to insist on the performance of any of the terms of this Order, or to exercise any right or privilege, or its waiver of any breaches, will not amend, modify, or waive any such terms, conditions, rights or privileges that Buyer might otherwise have.
- 20) **GOVERNING LAW:** This Order and these terms and conditions will be construed, interpreted and governed by the laws of the State of Minnesota, without reference to principles of conflicts of law. Seller irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts of the State of Minnesota. Seller waives any objection to jurisdiction or venue therein and consents to service of process by registered mail, return receipt requested.
- 21) **SEVERABILITY:** If any provision of this Order or these terms and conditions is held invalid or otherwise unenforceable under any applicable law or future legislative action, such provision will be considered severed therefrom and herefrom and all other provisions of this Order and terms and conditions will remain enforceable and be interpreted to give effect to its intended purpose.
- 22) **ASSIGNMENT:** The rights and obligations of this Order and the agreement resulting herefrom may not be assigned or subcontracted, in whole or in part, without the written consent of Buyer.
- 23) **AUDIT:** Seller shall maintain accurate books and records relating to each Order. Buyer shall have the right to examine the books and records of Seller to the extent necessary to insure Seller’s compliance and to verify the accuracy of any statement, invoice, charge, or computation. All records subject to examination hereunder shall be caused to be retained for no less than six (6) years after their creation. Any error will be corrected retroactively, with interest on such error paid at the highest legal rate from the date of the relevant invoice or statement. If the audit reveals an error of two percent (2%) or more in any invoice submitted by Seller, Seller shall pay for the costs of the audit.
- 24) **ENTIRE AGREEMENT:** This Order and any documents referred to on the face hereof constitute the entire agreement between the parties, and it may not be modified or amended except in writing, signed by Buyer. Seller acknowledges that all terms as to quantity, quality, other specifications and time of delivery are material elements of this Order and that Seller must strictly comply with these terms and conditions. All obligations of Seller hereunder shall survive delivery of Goods to Buyer and the resale of products or services incorporating Goods by Buyer.
- 25) **NO ADDITIONAL TERMS:** Unless expressly accepted by Buyer in writing prior to delivery of the Goods covered by this Order, Seller will not add any terms or conditions other than those contained herein or impose any terms or conditions which are in conflict with those contained herein in accepting or acknowledging this Order, and no such additional terms or conditions or conflicting conditions will be binding upon Buyer. Buyer’s offer to purchase is conditioned on Seller’s acceptance of all the terms and conditions set forth in this Order without alteration of any kind whatsoever.
- 26) **HEADINGS:** Headings used herein are for the convenience of reference only and will not control the construction or interpretation of any of the provisions of this Order or these terms and conditions.
- 27) **TIME OF THE ESSENCE:** Time is of the essence in the performance of Seller’s obligations hereunder and Buyer is relying upon timely performance by Seller. Buyer’s acceptance of Seller’s late performance will not be deemed a waiver of this provision.