

## Terms & Conditions of Sale.

**1. Terms of Agreement:** The term “Company” as used herein shall mean Daikin TMI Holdings, LLC or its applicable subsidiary that is the seller or service provider. Company offers to sell the materials, equipment or services indicated, only under the terms and conditions stated herein. Submittal of any further purchase documents by Buyer, or execution of this offer by Buyer, or allowing Company to commence work, shall be deemed an acceptance of this offer. Any additional or differing terms and conditions contained on any documents prepared or submitted by Buyer (whether or not such terms materially alter this offer) are hereby rejected by Company and shall not become part of the contract between Buyer and Company unless expressly consented to in writing by Company.

**2. Price Policy:** All prices are subject to increase upon notice, due to such events as announced increases in Company’s price structure, or increases in labor or material costs.

**3. Terms of Payment:** Terms of payment are subject at all times to prior approval of Company’s credit department. Terms of payment are net 30 days from date of invoice, whether or not Buyer is paid by its customer (if applicable), unless otherwise agreed to in writing by Company. If at any time the financial condition of Buyer or any other circumstance affecting the credit decision does not, in Company’s opinion, justify continuance of production of products, shipment of products or performance of services on the terms of payment specified, Company may require full or partial payment in advance, or may at its sole discretion stop or delay production or shipment of products, or the performance of services. Company reserves the right, among other remedies, either to terminate this contract or to suspend further deliveries or further performance of services under it in the event Buyer fails to make payment when such payment becomes due. In the event of any default in payment, Buyer agrees to pay all costs of collection incurred by Company, including but not limited to, collection agency fees, attorneys’ fees, legal expenses and court costs. All past due amounts shall bear interest at the highest rate allowed by law.

**4. Shipping Terms:** All shipments will be made F.O.B. Company’s or its vendor’s warehouse or factory with freight prepaid and allowed as quoted via a low cost common carrier, and charges for special carrier services requested by Buyer shall be paid by Buyer. Goods may be shipped in one or more lots; such lots may be separately invoiced and shall be paid for when due per invoice, without regard to subsequent deliveries or performance of services. Delay in delivery of any lot or in the performance of any services shall not relieve Buyer of its obligation to accept remaining deliveries.

**5. Claims:** Responsibility of Company for all shipments ceases upon delivery of the goods to the carrier; and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss or damage in transit. Any claims for damage or shortage in transit must be filed by Buyer against the carrier, and not Company. Claims for factory shortages

will not be considered unless made in writing to Company within ten (10) days after receipt of the goods and accompanied by reference to Company’s bill of lading and factory order numbers.

**6. Taxes:** The amount of any present or future taxes applicable to the product or service shall be added to the price contained herein and paid by Buyer in the same manner and with the same effects as if originally added thereto.

**7. Cancellations:** Accepted orders are not subject to cancellation without Company being (a) reimbursed for any and all expenses (including overhead), (b) paid a reasonable profit, and (c) indemnified by Buyer against any and all loss.

**8. Delays:** Shipment and performance dates are only estimates. No contract has been made to ship or to perform services in a specified time, unless set forth in a separate writing signed by an officer of Company. Any liability of Company for unreasonably delayed delivery or performance will be limited to one-tenth of one percent (0.1%) of the purchase price for each day of unreasonable delay. Further, Company shall not be liable for any damage as a result of any delay or failure to deliver or to perform services, however significant the delay, due to disapproval of Company’s credit department or any cause beyond Company’s reasonable control, including without limitation, any act of God, act of Buyer, governmental act, accident, labor unrest, riot, fire, delay in transportation, or inability to obtain necessary labor, materials, fuel, power or manufacturing facilities.

**9. Returns:** Goods may not be returned unless Buyer obtains the advance written permission of an authorized official of Company and the manufacturer of the equipment, and when so returned will be subject to handling and transportation charges. Authorized returned goods must be shipped prepaid to the location designated by the authorization.

**10. Warranties:** Company does not design or manufacture any of the goods that it sells. While Company will assign to Buyer all written warranties that Company receives from its suppliers, Company offers no warranties whatsoever on any such goods and will have no responsibility for the performance of its vendors’ warranty obligations. With respect to services provided by Company, Company will perform such services in a good and workmanlike manner, in accordance with acceptable standards in Company’s industry and, if it fails to do so, re-perform such services properly and at no additional cost to Buyer. **THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** No liability shall attach to Company until Company has been paid in full for all

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products and services purchased hereunder. No person (including any agent, sales representative, dealer or distributor) has the authority to expand Company's obligations beyond those undertaken in this Section 10, or to state that Company's performance of services meets any standard other than that set forth in this Section 10.

**11. Limitation on Liability; Indemnity:** Company's liability with respect to the products sold or the services rendered hereunder shall be limited to performance of its responsibilities specified in Section 10 hereof, and shall not exceed the cost of re-performing deficient services. For any other breach of its responsibilities to Buyer, Company's liability will be limited to the price of the associated goods or services. Company's limitation of liability hereunder shall apply to all causes of action in the aggregate, including without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentations and other torts. **IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, CONTINGENT OR CONSEQUENTIAL DAMAGES, WHETHER THE THEORY BE BREACH OF THIS OR ANY OTHER WARRANTY, NEGLIGENCE OR STRICT LIABILITY IN TORT.** In any jurisdiction in which the above limitations of liability are restricted, Company's liability shall be limited to the greatest extent permitted by law.

**12. Indemnity:** Buyer hereby agrees to indemnify and hold harmless Company and its directors, shareholders, officers, employees, agents, representatives, successors and assigns from any claim from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, claims, judgments, suits, or expenses of any kind or nature whatsoever (including reasonable attorneys' fees and court costs) which may at any time be imposed upon, incurred by or asserted against them, arising directly or indirectly from or out of the negligence or willful misconduct by Buyer or its employees, contractors, agents or representatives.

**13. NOTICE TO OWNER: FAILURE OF BUYER TO PAY COMPANY, OR OF COMPANY TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT, CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE. COMPANY DOES NOT WAIVE OR SUBORDINATE ITS STATUTORY LIEN RIGHTS, OR ITS RIGHTS TO MAKE CLAIMS ON ANY BONDS ISSUED WITH RESPECT TO ANY PROJECT.**

**14. Disputes and Choice of Law:** Except as otherwise contemplated in Section 1 above, this contract and these Terms and Conditions of Sale shall constitute the entire agreement between Company and Buyer and shall be governed by and construed according to the laws of the State of Missouri. No waiver by either Seller or Buyer with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in a writing signed by the party to be bound. All claims, disputes, and controversies arising out of or relating to this contract, or the breach thereof, shall, in lieu of court action, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The site of the arbitration shall be St. Louis, Missouri, unless another site is mutually agreed between the parties. The parties agree that any party to the arbitration shall be entitled to discovery of the other party as provided by the Federal Rules of Civil Procedure; provided, however, that any such discovery shall be completed within four (4) months from the date the Demand for Arbitration is filed with the AAA.