

DAIKIN AIRCONDITIONING UK LTD.

TERMS AND CONDITIONS OF SALE (the "Conditions")

1 Definitions

"Seller" means Daikin Airconditioning UK Limited, registered in England and Wales with company number 04616794 trading as Daikin Airconditioning UK Ltd, and shall be construed where applicable to include all employees, agents and subcontractors of that company;

"Buyer" means the person, partnership or company purchasing the Goods from the Seller;

"Goods" means the plant, machinery, materials, items and labour to be supplied by the Seller subject to this contract; and

"Site" means such place to which the Buyer shall request the Seller to make delivery.

2 Governing Conditions

2.1 All orders, however made, are accepted only upon these Conditions which shall override any terms or conditions incorporated or referred to by the Buyer in writing, orally or otherwise. No variation of these Conditions shall be incorporated into the contract between the Seller and the Buyer unless expressly accepted in writing by a director of the Seller.

2.2 No failure by the Seller to object to any terms or conditions incorporated or referred to by the Buyer in writing, orally or otherwise shall be deemed a waiver of these Conditions or an acceptance of the Buyer's terms and conditions.

2.3 The Buyer acknowledges that these Conditions together with the express terms of the contract constitute and form the entire terms of this contract to the exclusion of any antecedent statement or representation whether oral, written or implied or whether contained in any advertisement particulars or other matters issued or in any correspondence entered into by the Seller. The Buyer further acknowledges that it has not entered into this contract in reliance upon any such statement or representation, other than the written specifications given by the Seller.

3 Placing Orders

3.1 Placing an order presumes knowledge and acceptance of these Conditions. Upon placing an order the Buyer shall receive a written acknowledgement of the order, which does not constitute a binding contract until the Seller accepts the Buyer's order by written confirmation.

3.2 The Seller reserves the right to reject cancellation by the Buyer of an accepted order or any portion thereof. Cancellation of an accepted order needs to be approved in writing by the Seller and the Buyer may be charged cancellation charges. Goods already delivered cannot be returned or exchanged and will be invoiced.

- 3.3 Changes to an accepted order shall be treated as a separate order, unless otherwise agreed in writing by the Seller. If any changes are made to an original order, the price, discount on or delivery date of that order are subject to change.
- 3.4 The Seller has a policy of continuous technical improvement and accordingly reserves the right to make minor modifications to the technical specification and design of the Goods. Catalogues and similar publications are only sent by way of information and any technical information provided is an approximate guide. The Seller has no liability for any deviations from or mistakes in such information or for any errors of interpretation.

4 Price and Payment

- 4.1 The Seller's quotation, unless previously withdrawn or revised in writing, is valid for 30 days from the date thereof (after which time it shall automatically expire) and is subject to the Seller's acceptance of the Buyer's order.
- 4.2 The Seller's quotation includes only such goods, accessories and work as are specified thereon and (without limitation to the foregoing) does not include the cost of lighting, power, heat and water required and/or used during the installation and testing of the Goods at the Site, or any insurance or overtime working by the Seller.
- 4.3 The price quoted for the Goods is based on the cost to the Seller at the date of quotation of materials, labour, transport and all other expenses and of conforming to any statutory regulations. The Seller reserves the right to vary the quoted price to take account of any variation (including variations caused by alterations in rates of exchange) in the aforesaid costs between the date of the quotation and the date of actual physical delivery of the Goods.
- 4.4 All amounts stated in these Conditions to be payable by the Buyer are exclusive of Value Added Tax or any similar tax properly chargeable in respect of supplies under these Conditions and any other tax or duty and Buyer will pay all such Value Added Tax and other applicable taxes together with those amounts.
- 4.5 Each payment made by the Buyer must be calculated and made without, and free and clear of any deduction for set-off or counterclaim and any withholding for or on account of any tax or any other deduction, unless required by law, in which case the Buyer shall ensure that the withholding or deduction does not exceed the minimum amount required by law and shall increase the amount payable by it so that the net amount received and retained by the Seller will equal the full amount which Seller would have received and retained if no withholding or deduction had been made.
- 4.6 Unless otherwise agreed in writing, the Buyer shall pay the invoice amount of the Goods and any other costs, charges or expenses provided for by these Conditions including Value Added Tax at the then current rate within 30 days from the date of the Seller's invoice in immediately

available funds, but the Seller reserves the right to require payment before delivery or installation.

- 4.7 Time for payment shall be of the essence of the contract. Any invoice not paid in accordance with the foregoing shall be liable to interest on the unpaid amount thereof at the rate of 3% per annum above the base rate from time to time of Barclays Bank plc calculated on a day to day basis.

5 Delivery

- 5.1 Failure by the Seller to make delivery on any particular date shall not entitle the Buyer either to cancel the order or the delivery or to repudiate this contract or to claim for any expenses, loss of profit, or any other consequential loss or damage whatsoever.
- 5.2 If the contract provides for the Seller to deliver the Goods, delivery shall be deemed to take place when the Goods arrive at the agreed destination or are ready for despatch by the Seller to the order of the Buyer and such despatch shall have been delayed by the Buyer, whichever is the sooner.
- 5.3 The Buyer undertakes that the Site will at all times be safe for the Seller and its vehicles carrying out delivery. The Buyer is responsible, at its own cost, for the provision of such labour and apparatus as is necessary for the offloading and positioning of the Goods on Site and shall give the Seller every assistance in effecting delivery.
- 5.4 If the contract provides for the Goods to be collected by or on behalf of the Buyer, the Seller shall give the Buyer reasonable notice in writing and/or orally of when and where Goods will be ready for collection. Delivery shall be deemed to take place upon the date and at the place so notified whether or not the Goods are so collected.
- 5.5 The Seller may deliver the Goods in instalments and each such instalment shall be deemed to be the subject of a separate contract and no damage, non-delivery or shortage in relation to any such instalment shall entitle the Buyer to any remedies in relation to any other instalment or contract. If payment of any instalment is not made in accordance with clause 4, the Buyer shall be liable to the Seller for any costs incurred in connection with manufactured or partly manufactured Goods acquired by the Seller for the Buyer, in addition to the other rights and remedies available to the Seller.

6 Risk

- 6.1 Risk shall pass to the Buyer on delivery of the Goods.
- 6.2 If delivery does not take place as a result of any act or omission of the Buyer or if the Buyer fails to collect the Goods as set out in clause 5, then delivery shall be deemed to have taken place and risk shall pass to the Buyer, who shall indemnify the Seller in full against any

expense, cost or loss incurred by the Seller including, without limitation, storage and transport costs.

- 6.3 The Buyer shall examine any Goods delivered upon delivery. If the Goods or any part thereof are received in a damaged condition or are not received, the Seller will accept no responsibility for such damage and or loss unless the Buyer advises the Seller in writing of the damage or loss within 3 working days from the date of actual physical delivery of the Goods or the date of installation of the Goods (save where the damage is a latent defect in the Goods). The Buyer must then afford the Seller reasonable opportunity to inspect any damage or verify any loss and shall immediately return the damaged Goods to Seller.
- 6.4 The Seller's sole responsibility upon any damage or loss is to repair or replace the Goods which prove to be lost or defective (or at the Seller's option the defective part(s)), as soon as is reasonably practicable, provided that they are returned to the Seller by the Buyer. Whether the remedy is repair or replacement shall be at the option of the Seller and such repair or replacement shall be free of charge. Subject to the provisions of clause 17 the Seller shall have no further liability to the Buyer.
- 6.5 If the Buyer shall fail to comply with clause 6.3, the Goods shall be deemed to be in accordance with the contract and the Buyer shall be bound to accept delivery and shall make payment without any deduction in accordance with these Conditions.
- 6.6 The Seller will not be liable for any claims resulting from loss or damage to the Goods occurring after delivery.

7 Force Majeure

- 7.1 If the Seller is prevented from performing the contract by any cause beyond its reasonable control, however arising, then it may by written notice to the Buyer determine the contract.
- 7.2 In such event, the Buyer shall pay to the Seller all reasonable costs incurred by the Seller at the date of such notice in relation to its partial and or attempted performance of its obligations hereunder but, subject thereto, neither the Seller nor the Buyer shall be under any liability whatsoever to the other in connection with the contract.

8 Shortages

If the Seller is unable, for any reason, to supply the total demand for Goods of the contract description, the Seller may allocate its available supply of such Goods among any and all Buyers on such basis as the Seller may deem fair and practical without liability for any failure of performance which may result. The Buyer shall not be entitled to reject such Goods for short delivery.

9 Works and Specification

- 9.1 Where existing equipment is to be used in connection with the Goods, the Buyer shall be fully and solely responsible for it.
- 9.2 Any adaptation of the standard specification of the Goods shall be made upon the full and sole liability of the Buyer. Where the standard specification of the Goods is adapted, whether by the Seller at the request of the Buyer, or by the Buyer itself, the Buyer agrees to indemnify (and shall keep so indemnified) the Seller in full against any claim resulting from any such variation (whether or not arising out of the negligence of the Seller, its servants, agents or subcontractors). In the event of any adaptation made by the Seller upon request of the Buyer, the Buyer shall make such payment in respect thereof as the Seller may reasonably demand.
- 9.3 The Buyer shall be responsible for ensuring that the Goods are sufficient and suitable for the Buyer's purposes (whether such Goods have been adapted from their standard specification or not) and the Seller shall have no liability to the Buyer in the event that the Goods are not sufficient and suitable for the Buyer's purposes.
- 9.4 The Seller shall not be responsible for any errors, omissions or defects in any goods, equipment, machines, parts, drawings, designs, specifications, test results, reports or other information supplied to the Seller by the Buyer or the Buyer's employees, agents, sub-contractors or representatives and the Buyer agrees to indemnify and keep indemnified the Seller against all claims and liabilities incurred by the Seller resulting from such errors, omissions or defects.

10 Installation

It is the responsibility of the Buyer to install and commission the Goods and to ensure its employees, agents and subcontractors or any other persons used by the Buyer to install and commission the Goods are fully trained to do so and that the terms of any instructions or manuals provided with the Goods are followed.

11 Health and Safety

The Buyer shall ensure that all Goods shall be used strictly in accordance with any relevant information, instructions or advice which the Seller or the manufacturer of the Goods may make available with or in connection with the Goods.

12 Environmental

- 12.1 The Buyer shall be responsible for all costs, charges, and expenses arising from or in connection with the decommissioning, recovery, recycling, and disposal of all or part of the Goods and shall not seek to recover such expenses or contribution from the Seller.

- 12.2 The Buyer is responsible for obtaining and complying with all relevant licenses, permissions, permits and consents from appropriate regulatory bodies and for complying with any other lawful authority in connection with the storage, installation, operation, use, maintenance, repair, transportation, decommissioning, recovery and eventual disposal of the Goods.
- 12.3 Where the Buyer sells all or part of the Goods to another party, the Buyer shall enter into a similar covenant with that party.

13 Reservation of Title

- 13.1 Notwithstanding the provisions of clause 6 and the passing of risk in the Goods to the Buyer, the Seller retains ownership of the Goods the property in which shall not pass to the Buyer and the Buyer shall keep any Goods delivered to it as the bailee for and on behalf of the Seller until the Seller has received payment of the price of all of the Goods then agreed to be sold by the Seller to the Buyer pursuant to these Conditions, and until such time the Buyer:
- (a) shall keep and retain the Goods free from any charge, lien or other encumbrance, shall insure them for their full replacement value against any loss or damage and shall keep them properly stored and protected; and
 - (b) shall store the Goods separately or in some other way ensure that they are readily identifiable as the property of the Seller and irrevocably authorises the Seller's representatives to enter upon the Buyer's premises where the Goods are or are thought by the Seller to be stored for the purpose of repossessing them and subsequently reselling them.
- 13.2 Notwithstanding the provisions of clause 13.1, provided that none of the circumstances set out in clause 16 shall apply, the Buyer shall be entitled before the Seller has received full payment of the price of the Goods to offer for sale and sell the Goods in the ordinary course of its business (but not otherwise) and the proceeds of such sale or the Buyer's claim for such proceeds shall be held by the Buyer as agent for the Seller and the Seller's property in the Goods shall be transferred to the proceeds of such resale or the claim for such proceeds and shall attach thereto until the Seller has received payment of the price of all of the Goods then agreed to be sold by the Seller to the Buyer pursuant to these Conditions.
- 13.3 Save as otherwise stated therein, the provisions of clauses 13.1 and 13.2 shall survive the termination of any contract made pursuant to these Conditions for whatever reason and in particular, but without limitation, termination by the Seller by the acceptance of repudiation of this contract by the Buyer.

14 Intellectual Property Rights

- 14.1 The Buyer shall have no rights to any intellectual property owned by or licensed to the Seller. The Buyer shall not allow any trademark or instruction or warning applied to the Goods to be obliterated or obscured.
- 14.2 All designs, samples, models, experimental equipment, marketing devices, accessories and other items relating to the Goods or their development or creation shall remain the Seller's property, shall be treated as confidential and shall not be copied, reproduced or disclosed to any person without the Seller's prior written consent.

15 Confidentiality

- 15.1 All information and/or advice, whether written or oral, whether in relation to the Goods or to the Business [**not defined**], given by the Seller to the Buyer shall not be disclosed to any third party without the prior written consent of the Seller, save to the extent that such information and/or advice is in the public domain otherwise than by virtue of a breach of this condition or that the disclosure is required by law.
- 15.2 The Buyer shall promptly give notice to the Seller of any disclosure required by law and the Seller may seek an appropriate remedy to prevent such disclosure. The Buyer undertakes to fully co-operate with the Seller (at the Buyer's expense) if the Seller rejects the validity of such a requirement.

16 Early Termination

- 16.1 This clause applies if:
- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than bona fide for the purposes of amalgamation or reconstruction); or
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - (c) the Buyer ceases, or threatens to cease, to carry on business; or
 - (d) any event analogous to any of the foregoing occurs in any jurisdiction in relation to the Buyer; or
 - (e) the Buyer commits any default or breach of the terms of this contract or of any of its obligations to the Seller including, without limitation, failure to make payment when due; or

- (f) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

16.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel any contract made pursuant to these Conditions or suspend any further deliveries of the Goods without any liability on its part, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

17 Warranties and Liability

17.1 Subject to clause 17.3, the Goods are guaranteed under manufacturers' warranty for a period of 1 year upon delivery. This warranty is limited to the repair or replacement ex factory of the parts found defective. Unless otherwise agreed in writing, the Seller shall not be liable for repayment of replacement costs nor for any incidental, consequential or special damages.

17.2 To claim under the warranty, the Buyer shall submit to the Seller adequate proof that the Goods are defective, as required by the Seller. Claims with regard to the Goods will only be accepted if they are notified within 12 months after delivery of the Goods.

17.3 This warranty is given on condition that the maintenance of the Goods has been carried out in accordance with the manufacturers' instructions by an authorised Daikin dealer/installer/maintenance company.

17.4 The warranty referred to in clause 17.1 does not apply if:

- (a) the Goods have been modified by the Buyer;
- (b) the Goods have been incorrectly installed by the Buyer;
- (c) defects in the Goods have been caused by the act, neglect, omission or default of the Buyer or any third party, fair wear and tear or abnormal working conditions;
- (d) any remedial work in respect of the Goods has been carried out by third parties instructed by the Buyer without the prior written approval of the Seller including, but not limited to, servicing, alteration and repair of the Goods;
- (e) if the Seller's installation and operation instructions (if any) and any instructions issued by the manufacturer, are not followed.

17.5 The Seller only acts in its capacity as seller and not as an installer or consultant and the Seller is not responsible for advice given by its representatives concerning the installation of the Goods, save in relation to all or any part of the Goods which the Seller has installed with the written agreement of an authorised representative of the Seller (excluding any agent or subcontractor of the Seller) to the installation and to the terms of such installation for claims.

- 17.6 Save for liability for death or personal injury due to the negligence of the Seller and liability under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer:
- (a) for any damage to persons or property, however arising;
 - (b) for defects, in or in any way connected with the Goods, caused by the act, neglect, omission or default of the Buyer or any third party, fair wear and tear or abnormal working conditions;
 - (c) for any remedial work in respect of the Goods, carried out by third parties instructed by the Buyer without the prior written approval of the Seller including, but not limited to, servicing, alteration and repair of the Goods;
 - (d) for claims if the Seller's installation and operation instructions (if any) and any instructions issued by the manufacturer, are not followed. The Seller reserves the right to charge for remedial works in these circumstances;
 - (e) possible defects in manufacturing the Goods or the conception of the raw materials used;
 - (f) for any other defects in the Goods not falling within paragraphs (a) to (e) of this clause, unless notified to the Seller by the earlier of 14 days of delivery of the Goods or installation of the Goods or latent defects; and
 - (g) for any special, indirect, consequential or economic loss (howsoever arising) including, but not limited to, loss of profit, loss of production, loss of business.
- 17.7 Save for liability for death or personal injury due to the negligence of the Seller and liability under the Consumer Protection Act 1987, the Seller's aggregate liability to the Buyer in respect of any occurrence or series of occurrences attributable to the same cause, whether for negligence, breach of contract, misrepresentation or otherwise, shall in no circumstances exceed the price paid by the Buyer to the Seller in respect of the Goods in question.
- 17.8 The Seller's prices are determined on the basis of the limits of liability set out in this clause 17. The Buyer may by written notice to the Seller request the Seller to agree a higher limit of liability provided insurance cover can be obtained therefor. The premiums in respect of insurance up to such higher limit will be for the account of the Buyer.
- 17.9 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute, common law, custom of the trade, course of dealing or otherwise, including, for the avoidance of doubt, all warranties implied by the Sale of Goods Act 1979, are excluded to the fullest extent permitted by law.

- 17.10 The Buyer's remedy in respect of any claim for which the Seller is liable in terms hereof shall be limited to, at the sole option of the Seller, repair or replacement of the item in question or refund of the purchase price (if paid).
- 17.11 The Buyer shall not be entitled to exercise a right of retention, or withhold payment of any amount payable under the contract to the Seller because of any disputed claim of the Buyer in respect of the Goods or any other alleged breach of the contract, or to set-off any amount payable under the contract to the Seller against any monies not then presently payable by the Seller or for which the Seller disputes liability, or to return Goods to the Seller unless authorised in writing by a director of the Seller.
- 17.12 The Seller shall not be liable to the Buyer (including, but without limitation, in negligence) or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 17.13 The Buyer shall indemnify the Seller against all claims (including the cost of any legal proceedings) for the death of or injury to any person or for the damage to or loss of any property made by any person against the Seller either under any statute or at common law which may arise out of or be in any way connected with the execution of the contracted works or the installation, operation or use of the Goods except where the same is due to the negligence, omission or default of the Seller.

18 General

- 18.1 The invalidity or unenforceability for any reason of any terms of these Conditions shall not prejudice or affect the validity or enforceability of the remainder.
- 18.2 The Buyer shall not be entitled, without the prior consent in writing of the Seller, to assign its rights under the contract.
- 18.3 Any notice required or permitted to be given under these Conditions shall be in writing and shall be sent by recorded delivery addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice. In proving service it shall be sufficient to prove that the notice was properly addressed and posted.
- 18.4 No waiver by the Seller of any of the terms of these Conditions shall release the Buyer from full performance of the remaining terms, and no waiver by the Seller of any breach of the terms of these Conditions shall be a waiver of any subsequent breach of the same or any other term of this Conditions. No failure to exercise, nor delay or omission by the Seller in exercising, any right, power or remedy conferred on it under these Conditions or provided by law shall except with the express written consent of that party affect that right, power or remedy; or operate as a waiver of it.

- 18.5 If any order is made by two or more Buyers jointly, the obligations of those Buyers under the contract shall be joint and several.
- 18.6 This Contract shall be governed by and construed in accordance with the laws of England and any dispute shall be referred to the exclusive jurisdiction of the English Courts.
- 18.7 The Seller and the Buyer do not intend that any provision of these Conditions shall be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to the contract.
- 18.8 We will make a credit search with a credit reference agency, which will keep a record of that search and will share that information with other businesses. We may also make enquiries about the principal directors with a credit reference agency.