

HVAC DISTRIBUTORS, INC.  
STANDARD TERMS AND CONDITIONS OF SALE

1. **ACKNOWLEDGEMENT; CONTRACT FORMATION.** These Standard Terms and Conditions of Purchase (“**Terms**”) are the only terms which govern the sale of products, goods, materials, or other items (“**Products**”) and any and all services (“**Services**”) by HVAC Distributors, Inc., for the benefit of itself and/or its subsidiaries (“**Seller**”) as set forth on any purchase order issued, in a written agreement, or other order placed by a customer named on the applicable Order (“**Buyer**” and, together with Seller, each a “**Party**” and collectively, the “**Parties**”). All Orders are unconditionally subject to these Terms. Notwithstanding anything herein to the contrary, if the Parties have executed a separate written agreement governing the provision of Products and Services set forth in a particular Order, the terms of that agreement shall prevail over these Terms only to the extent they are inconsistent with these Terms. The Order, these Terms, and the Dealer Agreement between Buyer and Seller, including all Exhibits attached thereto (collectively, this “**Agreement**”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements negotiations, representations and warranties, and communications, both written and oral. The Agreement prevails over any of Buyer’s general terms and conditions of sale regardless of whether or when Buyer has submitted its sales confirmation or such terms, and any additional or different terms in Buyer’s nonconforming acceptance, acknowledgement, invoice, or other document will have no effect.
2. **ORDER.** Buyer may place an Order by completing and submitting a Standard Order Form to Seller, or by submitting an Order in another form approved by Seller. By issuing an Order, by signing the Order, or accepting the Products, Buyer thereby agrees to the Agreement and acknowledges that the person executing has the necessary authority to do so on Buyer’s behalf. If Buyer does not agree with these Terms, it should not execute the Order, sign any associated agreement, nor perform any part of the proposed transaction or this Agreement. No terms and conditions other than these Terms shall be binding upon Seller unless Seller indicates its acceptance in writing.
3. **CHANGES; CANCELLATION; TERMINATION.** No change, modification or extension of this Agreement shall be effective against Seller unless it is made in a writing making specific reference to this Agreement and is signed by an authorized representative of Seller. Acceptance of any such requested modification or cancellation shall be at Seller’s discretion, and shall be upon such terms and conditions as Seller may require. Any additional costs or delay which result from Buyer’s modification of an Order shall be borne solely by the Buyer. Seller reserves the right to make changes to this Agreement or any Order, in whole or in part, or to cancel such Agreement. In the event of termination of this Agreement, Seller shall not be liable to Buyer for any amount, and Buyer shall be liable to Seller, in addition to any other relief available under these Terms, at law or in equity, for any and all damage sustained by reason of the default that gave rise to the termination.
4. **PRODUCTS; SERVICES; RISK OF LOSS.** Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the Products. Seller makes no promise or representation that the Products or Services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller. Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the Products. Buyer is specifically prohibited from setting off any amounts due Seller in connection with this transaction.
5. **DELIVERY.** Seller will make a good faith effort to complete delivery of the Products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back-charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages,

losses, or expenses, whether or not based on Seller's negligence, arising directly or indirectly from delays or failure to give notice of delay. Seller reserves the right, at its sole discretion, to: (1) impose minimum order value thresholds for delivery via Seller's trucks; (2) divert shipment from Seller's trucks to common carrier or small package delivery service and impose charges for such shipments when Buyer's order does not meet the designated minimum order threshold; and (3) impose additional charges for delivery. Regardless of the method of delivery, however, risk of loss shall pass to Buyer upon Seller's or a manufacturer's delivery to a third party carrier or delivery to Buyer. Products which are shipped directly from a manufacturer to Buyer are F.O.B. Origin with all freight and delivery charges to be paid by Buyer. Any and all incurred freight, insurance and handling costs, charges and fees will be added to Buyer's Invoice. Any delivery dates communicated by Seller to Buyer are approximate and Seller shall have no liability for any delays in delivery, including with respect to a Force Majeure Event, as defined herein.

6. **TITLE; SECURITY INTEREST.** Title to materials shall pass immediately upon delivery to a carrier at the point of shipment for Products shipped directly from manufacturer, or if the Products are shipped on a vehicle owned or operated by HVAC Distributors, title to the Products shall pass immediately upon delivery. Buyer hereby grants to Seller a security interest (which shall be deemed a purchase money security interest) in all Product provided to Buyer by Seller, to secure payment by Seller for such Product. In the event of nonpayment by Buyer of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have all rights of, and all of the remedies available to, an unpaid secured creditor under the applicable state Uniform Commercial Code (UCC), and all other rights and remedies available at law or in equity. Buyer agrees, and, to the extent permitted by law, Seller is authorized to, execute and file whatever documents are necessary, including security agreements or financing statements, to evidence and perfect the security interest granted by this paragraph.
7. **INSPECTION; ACCEPTANCE.** Any material shortage or damage to Products delivered on Seller's trucks must be reported in writing to Seller within 24 hours of receipt. All claims for material delivered via common carrier or small package delivery service must be filed by Buyer directly with the freight company. Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any Products to inspect such Products for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such Products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the Products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the Products for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any Product or Service previously ordered by Buyer or its representatives, or cancel any Order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller.
8. **RETURNS.** Buyer may, subject to Distributor's approval, return a Product if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged and (iii) meets all Local, State and Federal laws governing the type of product that can be sold or put into transit in the State in which the product is being returned. Seller reserves the right, at its sole discretion, to impose fees related to: (a) inspection, (b) processing and (c) restocking of returned Products. Special order, custom or specially fabricated or ordered Products may not be canceled or returned, and no refund will be made.
9. **PRICES; PAYMENT.**
  - a. Unless otherwise noted in writing by Seller, all prices quoted by the Seller are those in effect as of the date quoted. In the event that the Seller's quotation and/or an Order submitted by Buyer provides for deliveries later than 30 days from the date of an Order, all prices quoted are subject to escalation to

Manufacturers' prices in effect at the time shipment is made, except in cases where the Seller has agreed in writing to waive such escalation. Unless otherwise specified by Seller, the standard fees for Products and Services are as set forth on the Standard Fee Schedule.

- b. Seller will periodically issue invoices setting forth the Products and Services provided during the applicable period (each an "**Invoice**"). Buyer agrees to pay all Invoices according to the payment terms set forth on the applicable Invoice. Any portion of an Invoice which is not paid in accordance with Seller's terms shall accrue carrying charges at the rate of 1.5% per month, until paid in full. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. Seller reserves complete discretion concerning all extensions of credit and shall have the right, at any time, to refuse to extend credit to Buyer. In the event Buyer's account is referred to any attorney or collection agency for collection, Buyer agrees that Seller shall be entitled to recover any and all collection costs including reasonable attorney's fees and costs.

**10. LIMITATION OF LIABILITY.** To the maximum extent permitted by applicable law, Seller's aggregate liability arising from or relating to this Agreement or the Products or Services is limited to the amount paid by Buyer for the applicable Product or Service. In no event shall Seller be liable for special, indirect, incidental or consequential damages or lost profits arising out of or related to this Agreement, whether based in tort, contract or any other theory and regardless of whether Seller was informed in advance of the possibility of such damages. Buyer's sole and exclusive remedy with respect to defective Products shall be the repair, correction or replacement of such Products; however, if repair or replacement of such Products is, in Seller's sole discretion, impracticable, then Buyer's sole and exclusive remedy shall be the refund of the purchase price of the defective Products upon the return of the Products to Seller.

**11. WARRANTIES.** SELLER PROVIDES NO EXPRESS, IMPLIED OR LIMITED WARRANTY OF ANY KIND AND BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD BY SELLER. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS." FURTHER, SELLER MAKES NO WARRANTY WHATSOEVER, EXCEPT AS TO TITLE, WITH RESPECT TO PRODUCTS MANUFACTURED AND/OR DESIGNED TO BUYER'S OWN SPECIFICATIONS AND THE BUYER SHALL, AT ITS OWN EXPENSE, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY CLAIM, SUIT, EXPENSE OR OTHERWISE WHICH SHALL BE ASSERTED OR BROUGHT AGAINST THE SELLER BY REASON OF ITS MANUFACTURE OR SALE OF SUCH PRODUCTS.

**12. TAXES.** Unless otherwise indicated in writing, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sales or delivery

of the Products sold hereunder. If any such taxes must be paid by Seller or if Seller is liable for the collection of such tax, the amount thereof shall be in addition to the amounts for the Products. Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of its Invoice.

- 13. INDEMNIFICATION.** Buyer agrees to indemnify, defend and hold harmless Seller, its affiliates and subsidiaries, and their respective officers, directors, employees and agents from and against any and all liability, claims, suits, actions, losses, judgments, costs or expenses, including reasonable attorneys' fees, relating to or arising out of: (a) any injury, disease or death of persons (including, without limitation, Buyer's employees and agents); (b) damage to or loss of any property or the environment; (c) violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the Products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers; (d) any claim or demand for any taxes, penalties and interest paid by Seller, and any actions related thereto taken by Buyer; (e) any alleged infringement or misappropriation of any patent, trademark, copyright, trade dress, trade secret or any similar right of any third party right with respect to any Product or Services; (f) Buyer's acts, omissions, or breach of the Agreement; or (g) any claim or demand which Buyer's customers or any other person, whether or not in privity to Seller, may make against Seller based upon or arising from the purchase, sale, or use of Product or from any patent or hidden defects in the quality of Product or the dangerous condition thereof, regardless of the legal theory asserted or if brought pursuant to a class action statute. Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to Products delivered hereunder for which the designs are specified in whole or in part by Buyer, or infringements resulting from the modification, combination or use in a system of any good sold hereunder. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this Agreement.
- 14. LIMITATION OF LIABILITY.** Notwithstanding any provision of this Agreement to the contrary, in no event shall Seller be responsible for any indirect, consequential, incidental, punitive, non-compensatory or special damages (including, without limitation, damages for lost profits or revenue, loss of use, business interruption, loss of information, or for the procurement of substitute services) of Buyer or of any third party, even if it has been advised of the potential for such damages and whether such damages arise in contract, negligence, tort (including death or personal injury), under statute, in equity, at law or otherwise. Notwithstanding any provision of this Agreement to the contrary, in no event shall Seller be liable pursuant to this Agreement for any amount that exceeds, in the aggregate, the amount of fees paid under the applicable Work Order in the 12 month period immediately preceding the date of the event giving rise to the claim.
- 15. COMPLIANCE WITH LAWS.** Seller shall not be responsible for compliance with local interpretation of federal safety regulations or insurance codes, nor with any local laws, ordinances, codes and/or regulations which may at any time be in effect (collectively, "**Laws, Ordinances and Resolutions**") with respect to the Products or Services, unless such responsibility shall be expressly assumed by Seller in writing. Further, Seller shall have no responsibility whatever for compliance with such Laws, Ordinances and Resolutions by Products manufactured or designed by others.
- 16. FORCE MAJEURE.** Seller shall not be liable to Buyer for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of Seller, without Seller's fault or negligence, and which by its nature could not have been foreseen by Seller or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God, government restrictions, floods, fire, hurricanes, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes, inability to obtain materials, or industrial disturbances. Seller shall use commercially reasonable efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, and resume performance under this Agreement as soon as possible.

- 17. INCORPORATION BY REFERENCE.** All terms and conditions herein are hereby incorporated by reference into all Seller's quotes, acknowledgements, sales orders, shipping documents receipts and Invoices, and remain in full force and effect.
- 18. GOVERNING LAW.** This Agreement shall be governed in all respect by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of law principals. All actions commenced pursuant hereto shall be brought in a court of competent jurisdiction Lancaster County, Pennsylvania, or with respect to federal court actions, the Middle District of Pennsylvania. No actions arising out of the sale of the Products or this Agreement may be brought by either party more than one (1) year after the cause of action accrues and the parties agree to submit to the exclusive jurisdiction of the appropriate court in the Commonwealth of Pennsylvania for purposes of resolving any dispute or claim arising in connection with said transactions.
- 19. ASSIGNMENT.** The rights, obligations, and other interests of Buyer shall not be assigned by Buyer, in whole or in part, without the prior written consent of Seller and any purported assignment of same shall be void and ineffective.
- 20. SEVERABILITY; CONSTRUCTION.** If any section, paragraph, sentence, clause, phrase or any part of this Agreement is declared to be illegal or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect. The headings contained in these Terms are for convenience of reference only and are not intended to have any substantive significance in interpreting this document. These Terms shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party.
- 21. MISCELLANEOUS.** The rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.