



GENERAL TERMS AND CONDITIONS OF SALE

ART. 1. FIELD OF APPLICATION

- 1.1 The following terms and conditions of sale (“**T&C**”) shall apply to any quotation, offers, orders, or sales agreements (the “**Agreements**”) entered into, also electronically, by and between the supplier Daikin Applied Europe S.p.A., with registered office in Via Piani di S. Maria, 72, Ariccia, (RM), 00072 Italy, Fiscal Code 04878860586 and VAT number 01318801006 (hereinafter also referred to “**DAE**” or the “**Seller**”) and the buyer company (hereinafter also referred to the “**Customer**”) which relate to the sale and delivery (also including all the associated services) of products by DAE to the Customer (hereinafter also referred to “**Products**”).
- 1.2 Unless otherwise specified in writing, the T&C hereby are deemed as incorporated into each purchase order placed by the Customer and constitute the only terms and conditions applicable thereto. Moreover, the T&C shall prevail over any conflicting provision inserted in orders, forms or other documents unilaterally prepared by the Customer, even if their application has not been expressly contested by the Seller. Any deviation from these T&C shall be binding on the Seller only when it has been agreed upon in writing by the same Seller.
- 1.3 In case one or more of the terms and conditions hereby shall become null or ineffective for any reason during the execution of the Agreement, the other terms will continue to remain valid.
- 1.4 If between the Seller and the Customer has already occurred an Agreement based on these T&C, such T&C, unless otherwise expressly excluded, shall be therefore considered applicable also to every subsequent sale entered into by and between the Seller and the Customer, even if, at the time of the subscription of such subsequent sales, the latter T&C have not been expressly referred to or subscribed.
- 1.5 These T&C are available for consultation on the following website: www.daikinapplied.eu

ART. 2. CONCLUSION OF THE AGREEMENT

- 2.1 The Agreement shall be concluded and, therefore, considered binding for DAE only after the purchase order has been received by DAE and the relevant DAE’s order confirmation have been communicated to such Customer, also electronically, as acceptance by DAE.
- 2.2 The purchase order may not be cancelled by the Customer without the consent of DAE. In the event of cancellation of the purchase order the Customer shall pay to DAE a penalty equal to the 10% of the sale price of such part of the order as is cancelled (unless a different penalty has been provided in writing), without prejudice to the DAE cancellation policy and compensation of greater damages, in case of unauthorized cancellation.

ART. 3. PRICES

- 3.1 Prices will be those agreed in the purchase orders and are net of any charge, duty, tax, transport costs, customs duties and insurance costs, which will always for the Customer’s account. Unless otherwise agreed in writing between the parties, in no event shall the prices stated on an offer be binding for subsequent offers.
- 3.2 The Seller shall also be entitled to revise the price in the event that, at the Customer’s request, the Product has to be delivered before the initially agreed delivery term.

ART. 4. DELIVERY

- 4.1 Unless otherwise agreed in writing between the parties, the delivery and the relevant transport of the Products are always and, in any case, effected (i) according to the CMR Consignment Note and to be considered the proof of acceptance by the Customer of the delivery transport modalities and of the correct execution of the transport and (ii) free carrier (FCA-Incoterms 2010) at Seller’s factory or at different place agreed in writing between the parties.
- 4.2 DAE as seller of the Products fulfills its delivery obligations by delivering the Products to the carrier appointed by the Customer at the Seller’s factory.

DAIKIN APPLIED EUROPE S.p.A.

Società unipersonale soggetta ad attività di direzione e coordinamento di Daikin Industries Ltd

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- 4.3 The Seller shall bear the costs and risks of loading the goods on the means of transport of the carrier indicated by the Customer. It is understood that the Seller shall only be obliged to load the Products on the means of transport of the carrier indicated by the Customer and that this latter shall provide to the fixing of the Products on its means of transport. Risk on the Products shall pass to Customer upon loading of the Products on the means of transport of carrier indicated by the Customer. Therefore, the Seller shall not incur in any liability for any damages of the Products that may arise during the transport or the fixing of the Product on the means of transport of the carrier indicated by the Customer.
- 4.4 Unless otherwise agreed in writing between the parties, Seller shall notice to the Customer in writing the date in which the Products will be ready for delivering. The carrier indicated by the Customer shall collect the Products within 30 days end of the month from the receipt of date indicated in the abovementioned notice by the Seller. In case of delays in the removal of the Products the Customer shall bear the costs of storage of the Products, including packaging necessary to preserve it.
- 4.5 Any delay in delivery shall not entitle the Customer to terminate the Agreement or claim damages, whether direct or indirect
- 4.6 Deliveries may be made in one or more lots. In this case, the method of payment provided for in Article 5 shall apply to any lot.
- 4.7 If the Seller is prevented from complying with the delivery terms due to:
 - (i) delays, suspensions, and interruptions not attributable to the Seller.
 - (ii) strikes, lock outs, industrial actions, fires, floods, earthquakes, severe weather conditions, decision by the Public Authority, motive power outages, missed or delayed deliveries of suppliers, disruption or suspension of transport or energy, lack of raw materials, or unforeseeable events and circumstances beyond our control, unless arisen impossibilities should hinder the Seller from fulfilling his obligations,the running of the delivery terms shall be suspended from the date of notification to the Customer of the impediment and until further notice by the Seller.

ART. 5. TERMS OF PAYMENT

- 5.1 If specific terms of payment are not established in the purchase order and confirmed by the Seller on order acknowledgement, the Customer must pay to the Seller the price within 30 days from the date indicated in the invoice and in the currency in such invoice indicated.
- 5.2 The parties hereby agree that, unless otherwise agreed in writing, the invoices shall be sent from Seller to Customer only in electronic format or by e-mail.
- 5.3 Regardless of what the means of payment that have been agreed may be, place of payment, in every respect, is always the Seller's domicile also in case of payment effected by draft, bill of exchange, bank receipt or similar instruments of credit.
- 5.4 Cheques, draft and other instruments of credit are accepted only in the case of successful issue and subject upon acceptance of the Seller.
- 5.5 In case of a total or partial delayed payment, the Customer must pay on the outstanding sum an interest at a rate provided by Italian Legislative Decree 231/2002 and the subsequent amendments.
- 5.6 In case of agreed payment in instalments, should the Customer fail to pay even one instalment, it will lose the right pursuant to article 1186 of the Italian civil code and entire credit of the Seller will immediately become as due, without prejudice to any right or remedy available to the Seller.
- 5.7 Seller's entire credit will immediately become due according to article 1186 of the Italian civil code, without prejudice to any right or remedy available to the Seller, if the Customer:
 - (i) is subject to a bankruptcy or other insolvency proceedings, as well as a debt restructuring proceedings.
 - (ii) is subject to a procedure of distress.
 - (iii) is subject to dissolution or winding up or ceases for any reason the actual business activities.
- 5.8 In case the Customer fails or delays the payment of any sum due to the Seller, although connected to different commercial relationships with the Seller, such Seller may:
 - (i) suspend the supply of Products as well as the preparation and delivery of Products subject to further orders of the Customer.
 - (ii) change the terms of payment, including the possibility to request specific guarantees.
 - (iii) cancel the Agreement for breach of the Customer pursuant to article 1456 of the Italian Civil Code.
 - (iv) claim compensation for damages suffered as a result of late or non-payment and the relevant effects.
 - (v) collect the Products already delivered and not paid in full by the Customer.
 - (vi) retain, by way of indemnification, any sums already paid, subject in each case to claim for additional damages.

- 5.9 All the expenses incurred by the Seller in order to collect the sums due from the Customer are at the Customer's expense.
- 5.10 The Seller has the right to suspend the supply of Products as well as the preparation and delivery of Products if the Customer, during the execution of the Agreement, should happen to find himself in difficulty, although temporary, of maintaining his obligations.
- 5.11 In the event of more than one settled sales contract between the Customer and the Seller, if controversies relative to goods that regard one or more sales should arise, the Customer is not entitled to suspend any payment for the controversial and the non-controversial supplies.

ART. 6. WARRANTY

- 6.1 The Seller warrants that Products delivered are free from defects that may make the goods unsuitable for their intended use or considerably decrease the value of the goods.
- 6.2 According to article 1495 of the Italian Civil Code, within 5 (five) working days at the latest after delivery of goods, the Customer must examine the Products delivered by the Seller, as well as the relevant working; possible apparent defects must be notified to the Seller, under penalty of cancellation, within 8 (eight) days after the expiration of the above term. Subject to the provisions set forth above, any other hidden defect of the Products must be denounced, under penalty of forfeiture, no later than 8 (eight) days from its discovery. According to article 1495 of the Italian Civil Code, the action for claims for compensation in relation to defects shall expire in any case within one year from the delivery.
- 6.3 The Products contested by the Customer must be kept available to the Seller for any inquiries, being understood that the Customer shall have the *onus probandi* of its complaints. The Products contested shall not be returned to the Seller without his permission. Within 60 working days following the receipt of the report, the Seller shall notify in writing the Customer the instructions to resolve the dispute.
- 6.4 If the Customer receives complaints from its customers due to hidden defects of the Products, the same Customer shall refrain from any acknowledgment, offer or payment and shall immediately transmit to the Seller a strictly confidential report containing a detailed description of defects found and all data necessary to identify the relevant consignment, the date and the place of delivery.
- 6.5 Excluding Seller's liability in the present T&C and without prejudice of the applicable regulations, if the existence, judicially ascertained or acknowledged by Seller, were found of shortcomings or defects of quality or otherwise of non-conformity of the goods, or any other supposition of ascertained or acknowledged nonfulfillment on the Seller's part of obligations towards the Product sold, the Customer is solely entitled to demand, within a term of two months after ascertainment or acknowledgement of shortcomings as above stated, that defective goods be rendered in conformity with what had been agreed upon. In this case the Customer is entitled to recondition or possibly replace the Products. It is understood that the repair or replacement of the Products shall be effected in a service center chosen by the Seller. The two months term granted to the Customer is decisive and considered by both parties as an expiring term in all further aspects. In case of accepted complaints by the Seller, the amount is limited to the supplied merchandise's value. In no case, without prejudice of the applicable regulations, Seller is held to reimburse damages either directly or indirectly. In particular, the Customer expressly waives any right of recourse provisions of art. 131 of Legislative Decree n. 206 of 2005 (Italian Consumer Code).
- 6.6 Replaced parts will be under warranty only for the remaining period warranty concerning the original equipment. The parts overhauled or replaced by the Seller beyond the warranty period of the original equipment are guaranteed for a 6 months period running from the delivery.
- 6.7 Transportation and insurance expenses as well as the expenses of assembling and disassembling, removal or reinstalling and all other expenses of the same nature will be for the account of the Customer.
- 6.8 Products that do not contain motor-compressors do not require start-up registration. For warranty protection of equipment with motor-compressors to be valid, the start-up must be performed by an engineer authorized by the Seller.
- 6.9 The warranty is not applicable to equipment or parts which have been damaged by accident, misuse, unauthorized interventions or modifications, abnormal use, lack of adequate maintenance and inappropriate use, inadequate installation, natural wear and tear or other cause beyond the control of the Seller.
- 6.10 The warranty is not applicable to refrigerants fluids, oil, air filters or any other expendable items.

ART. 7. RETENTION OF TITLE

- 7.1 Products shall remain solely vested in Seller until full payment by Customer of the purchase price of Products, and, in case of cheques or other negotiable instruments, until their encashment even if the shipping documents have already been delivered.

- 7.2 It is understood that, regardless of the date of transfer of ownership, the risks are still transferred to the Customer from the date of delivery of the goods. .
- 7.3 In the event of termination of the Agreement for breach of the Customer, the instalments of the price already paid will be acquired by the Seller, subject to the right to compensation for further damages.
- 7.4 The Customer is obliged to store the Products that DAE has supplied to the Customer under retention of title with the necessary care, while ensuring they are identifiable as DAE's property.
- 7.5 DAE is entitled to recover the products that it has delivered to the Customer under retention of title and that are still at the Customer's site if the Customer is in default of his payment obligations, if one of the circumstances set out in Article 6 is applicable or if the Customer is or at risk of having problems with payments. The Customer will grant DAE access at any time to his sites and/or building for the inspection of the products in order to allow DAE to exercise its rights.
- 7.6 The Seller shall include in the invoices that will be issued for the supply of the Products, the following note: "*supply subject to retention of title of property until the full payment of the purchase price pursuant to Article 1523 of the Italian Civil Code, according to Article 11, paragraph 3, Legislative Decree 231/2002*".

ART. 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Customer shall have no rights to any intellectual property owned or licensed to DAE.
- 8.2 Customer shall not allow any trademark or instructions or warning applied to the Products to be obliterated or obscured;
- 8.3 All designs, samples, models, experimental equipment, software, accessories and other items relating to the goods or their development or creation shall remain our property, shall be treated as confidential and shall not be copied, reproduced or disclosed to any person without our prior written consent.

ART. 9. LACK OF EXCLUSIVITY

- 9.1 The Seller shall not grant any exclusive rights to the sale of the Products specified in the offers and their products in general. Therefore, even in the context of an ongoing business relationship, any situation involving a situation of a *de facto* exclusivity may not cause the creation of rights or expectations on the part of the Customer.

ART. 10. FORCE MAJEURE

- 10.1 The Seller shall not be liable for any loss, damage or delay caused by strikes, lockouts, labor disputes, fires, floods, earthquakes, severe weather conditions, decisions of public authorities, motive power outages, missed or delayed deliveries of suppliers, interruption or suspension of transport or energy, unavailability or shortage of raw materials, fasteners or machine failures as well as any other event of force majeure or unforeseeable circumstances outside its reasonable control.
- 10.2 The Seller shall promptly give notice to the Customer of the cause of force majeure which wishes to invoke, identifying the details of the event called for, the consequences of the same associates and its expected duration. The Customer shall be entitled to withdraw from the Agreement concluded with the Seller if the duration of the impediment should last for more than 6 months.
- 10.3 In the event that the force majeure event should be invoked by the Customer, the Seller shall be entitled to withdraw from the Agreement entered into by and between the Customer or to suspend delivery of the Products if the duration of the hindrance should last for more than 60 days.

ART. 11. ARISEN IMPOSSIBILITIES AND OTHER PERFORMANCES

- 11.1 Supposing the occurrence, during the execution of the Agreement, of the ceasing in the manufacturing of a specific raw material or in the application of a particular technical procedure, making it, therefore, impossible for the Seller to effect delivery of the agreed product, the Seller has the right to study the possibility with the buyer of delivering a similar product, the price of which, in case of non-agreement, is to be established by a third person chosen by the parties or, in case of their disagreement, to cancel the sale.



ART. 12. LEGISLATIVE DECREE N° 231/2001

12.1 The Customer undertakes, both for itself and for its directors, auditors, employees and/or representatives and collaborators as well, pursuant to and for the purposes of Article 1381 of the Italian Civil Code, not to commit acts or omissions that may also involve the commission of just one of the significant offences pursuant to Legislative Decree N° 231/2001, to observe all the legal regulations applicable and in force in carrying out their activities, and to observe the rules provided for by Legislative Decree 231/2001 and any subsequent amendments and additions, as provided for by the Code of Conduct and by the Model adopted by the Seller (whose contents are available at the following link: www.daikinapplied.eu/it/231-2001-model/). If the Customer (and/or its directors, auditors, employees and/or representatives and collaborators) defaults on/fails to observe the provisions of this article, the Seller may cancel this Agreement automatically, pursuant to article 1456 of the Italian Civil Code.

ART. 13. CONFIDENTIALITY

13.1 All information, whether written or oral, whether in relation to the Products or to the business of Seller, given by the Seller to the Customer, 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.

13.2 The Customer 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 Customer's expense) if the Seller rejects the validity of such a requirement.

ART. 14. APPLICABLE LAW AND COMPETENT JURISDICTION

14.1 This terms and conditions shall be governed by Italian law.

14.2 Any dispute arising between the Parties shall be submitted to the exclusive jurisdiction of the Court of Rome (Italy).

14.3 Without prejudice to the above, the Seller shall have the right to make recourse to the Courts of domicile of the Customer.

14.4 The applicability of the Vienna Sales Convention (CISG) is furthermore explicitly excluded.

14.5 DAE reserves the right, at our sole discretion, to change, modify or otherwise alter these terms and conditions at any time. Such modifications shall become effective immediately.