

STANDARD TERMS AND CONDITIONS OF SALE

- (1) **GENERAL DEFINITIONS.** Unless otherwise agreed in writing by Friedrich Air Conditioning Co., Ltd. ("Friedrich"), the terms and conditions contained herein with respect to the purchase and sale of goods and services hereunder constitute the entire agreement between Friedrich and Purchaser (hereinafter defined) with respect to the subject matter hereof, and supersede all prior communications and agreements between the parties. Friedrich shall not be bound by any additional or different terms whether printed in Purchaser's purchase orders or otherwise, or in any other communications from Purchaser to Friedrich, unless specifically agreed to by Friedrich in writing. For the avoidance of doubt, any and all provisions contained in Purchaser's terms and conditions are expressly rejected, including, without limitation, any "Pay when Paid" or "Pay if Paid" or like provisions and any indemnification requirements sought to be imposed on Friedrich. Acceptance by Friedrich of any purchase order for Friedrich's goods or services, and Purchaser's acceptance of any quotation or proposal by Friedrich is expressly limited to and conditioned upon Friedrich's Standard Terms and Conditions of Sale, which may not be changed or waived except in writing signed by both parties.

As used herein: (a) "Purchaser" means the person or entity that accepts a proposal or quotation from Friedrich for the sale of Products or whose order for Products is accepted by Friedrich, or who has actually purchased Products from Friedrich; (b) "Conditions" means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between Purchaser and Friedrich; (c) "Order" means an order for Products placed by Purchaser with Friedrich and accepted by Friedrich; and (d) "Products" means the products and any related services ordered by Purchaser and furnished by Friedrich and shall include all products, equipment, parts, materials, accessories and any related services furnished to Purchaser by Friedrich.

- (2) **APPLICATION.** Purchaser is solely responsible for proper Product application and equipment selection to meet project specifications. Purchaser is solely responsible for the proper application of Products to the plans and specifications, and Friedrich has no responsibility for proper interpretation or construction of the plans and specifications.
- (3) **SHIPMENT AND DELIVERY.** Unless otherwise specifically agreed to in writing, Products shall be delivered F.O.B. point of origin. Partial shipments of Products may be made. Unless otherwise agreed to by Friedrich, all shipping dates are approximate and are contingent upon prompt receipt by Friedrich of all necessary information. Friedrich assumes no responsibility for delays, breakage or damage after having made delivery of Products to a carrier, at which time all risk of loss for any cause passes to Purchaser. Notwithstanding any language to the contrary set forth herein, upon the mutual agreement of the parties, the Purchaser may take possession of the Products directly from Friedrich's facilities and Purchaser shall retain title and risk of loss as of the date that such Products are made available by Friedrich for pick up by the Purchaser. Unless otherwise provided in the Order, once an Order has been released to manufacturing, any request by Purchaser to change the date of shipment shall constitute a change order. All change orders require Friedrich approval and may result in additional charges for storage and handling. All change orders, including those specifying a delayed shipment request, must be communicated in a Friedrich-approved change order form at least five (5) business days before the original ship date.
- (4) **CLAIMS FOR SHORTAGES AND SHIPPING DAMAGE.** Shipment should not be accepted by Purchaser if shortage or damage is recognized at time of delivery. No claim for shortages in Orders shall be considered by Friedrich unless presented to Friedrich in writing within ten (10) days after receipt of Product(s). All claims for breakage or other damage due to shipment or handling shall be made to the common carrier by Purchaser within ten (10) days after receipt of Product(s).
- (5) **PRICE.** The price for Products shall be the price expressly quoted in writing by Friedrich to Purchaser (the "Purchase Price"). Unless otherwise agreed to in writing, pricing includes standard packaging for domestic shipment, labels and raw material and production costs, but does not include the following, which shall be separately itemized and for which Purchaser shall also pay: handling charges; freight charges; special packaging; and any insurance requested by Purchaser. Foreign shipments placed with Friedrich may require additional charges for documentation and overseas packaging, which charges shall be clearly identified on Friedrich's invoices. In the event that Purchaser causes or requests changes to be made that affect delivery, installation, specifications, completion dates or otherwise, Purchaser shall reimburse Friedrich for any expense incurred by Friedrich as a result of each such change or delay upon presentation by Friedrich of an invoice.

The Purchase Price is firm if Product is shipped within one hundred and eighty (180) days of the Order date. Thereafter, the Purchase Price is subject to a one percent (1%) increase for each month or part thereof that shipment is delayed beyond the initial one hundred and eighty (180) day period.

No payment due Friedrich shall be withheld or subject to holdback of payment for any reason without Friedrich's prior written consent, including back-charges. Any back-charges made by Purchaser without Friedrich's written approval shall be the sole responsibility of Purchaser.

- (6) **PAYMENT AND CREDIT.** Unless otherwise provided in the Order, payment shall be due thirty (30) days from date of invoice. If partial shipments are made, payments for such partial shipments shall be due as shipments are made and invoices rendered.

Friedrich's acceptance of an Order is subject to Friedrich's credit review of Purchaser. Any delay resulting from a credit review may result in a delay in shipping, which delay shall not subject Friedrich to any liability. Friedrich reserves the right, in its sole discretion, to require Purchaser to provide letters of credit or similar guarantees of payment acceptable to Friedrich.

For Orders outside the continental United States, Canada or Puerto Rico, Friedrich requires advance payment, an irrevocable letter of credit or similar guarantee of payment acceptable to Friedrich.

Friedrich reserves the right to add a late charge of one and one-half percent (1 ½%) of the principal amount due at the end of each month, or the maximum allowable legal interest rate, if a lesser amount, to any account outstanding beyond the due date.

- (7) **TAXES.** Except as expressly stated in a quotation in writing from Friedrich to Purchaser, provided such quotation has not been withdrawn by Friedrich, the Purchase Price does not include any present or future sales, use, excise, value-added or similar taxes or any increase in such taxes. Consequently, in addition to the Purchase Price, the amount of any present or future sales, use, excise, value-added or similar taxes or increase in such taxes applicable to the sale or use of Product(s) hereunder shall be paid by Purchaser, or in lieu thereof and if acceptable to Friedrich in its sole discretion, Purchaser may provide Friedrich with the tax-exemption certificate acceptable to the taxing authorities provided that Purchaser provides such tax-exemption certificate to Friedrich at least three (3) business days prior to the date of shipment.
- (8) **CANCELLATION CHARGES.** An Order is not subject to cancellation or change except on terms acceptable and satisfactory to Friedrich. If Purchaser cancels without obtaining Friedrich's consent, such cancellation will be treated as a repudiation making Purchaser immediately liable for loss, expense and other damages, and in that case, it is understood that a cancellation charge shall also be due from Purchaser to Friedrich, as liquidated damages, and not as a penalty for such cancellation. The cancellation charge shall be, at a maximum, computed as follows: (a) if Purchaser or Friedrich cancels the Order after it is placed by Purchaser with Friedrich but prior to the date that Friedrich purchases any materials to fill the Order, Purchaser shall pay ten percent (10%) of the total Purchase Price, (b) if Purchaser or Friedrich cancels the Order after the date that Friedrich purchases materials and/or begins to produce the Product(s) ordered, Purchaser shall pay twenty-five percent (25%) of the total Purchase Price. The cancellation charge shall be due and payable at the time of receipt of Purchaser's written notice of cancellation.

- (9) **RETURNS.** Returns must be authorized in writing by Friedrich with issuance of a formal Returned Merchandise Authorization (RMA) form. Unless otherwise approved in writing by Friedrich, Purchaser will be charged a twenty percent (20%) restocking fee and Purchaser is responsible for all return freight charges. Credit will only be given for returned equipment that is deemed new, undamaged, in original packaging, and in re-sellable condition. Returns will not be authorized for merchandise that is custom or "built to order".
- (10) **WARRANTY.** Friedrich shall supply a warranty for Products (the "Warranty" or "Warranties") specific to the Product and model that is purchased. Specific Warranties are provided to Purchaser at time of purchase and can also be found by one of the following methods:
1. Writing to Warranty Repair, Friedrich Air Conditioning, 10001 Reunion Place, Ste. 500, San Antonio, TX 78216.
 2. Visit the product page on the Friedrich website (www.friedrich.com).
 3. Email to TAC@friedrich.com.

For purposes of this section (10) of these Standard Terms and Conditions of Sale, including for the purpose of defining and describing Purchaser's remedy as provided below in this section (10), the term "Products", unless otherwise stated in the specific product warranty, shall not include related services or labor. Any extended warranties, or warranties for services or labor, shall be subject to Friedrich's "Additional Terms and Conditions – Service Plans" which shall be provided by Friedrich to Purchaser if applicable.

The Warranty applies only to Products that are properly installed, maintained and operated under normal conditions with competent supervision in accordance with the instruction manual, good maintenance practices and Friedrich's recommendations, if any, made by Friedrich in writing. Without limiting the foregoing, the Warranty shall be void, and Friedrich shall have no liability for any Products that: (a) have been disassembled, repaired or tampered with in any way except when such work has been done with Friedrich's prior written approval, (b) have been damaged by use or operation in excess of any maximum pressures, temperatures or rated capacities as specified by Friedrich in writing, (c) have been damaged by corrosion, or have degradation in performance as a result of dirt, dust, or other foreign material, or (d) are considered consumable.

Friedrich's obligation, and Purchaser's sole and exclusive remedy under all Friedrich Product Warranties is limited to:

1. Repair of the unit;
2. A refund to the Purchaser for the prorated value of the unit based upon the remaining Warranty period of the unit; or
3. Providing a replacement unit of equal value.

The Warranty period shall not be extended by the performance of Warranty repairs or replacements.

The Warranty shall be voided if payment is not made in accordance with the terms set forth in section (6) of these Standard Terms and Conditions of Sale.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY OF MERCHANTABILITY AND/OR IMPLIED WARRANTY OF WORKMANLIKE QUALITY, AT LAW OR IN EQUITY, WITH RESPECT TO THE PRODUCTS, ANY RELATED SERVICES OR LABOR OR THEIR CHARACTERISTICS, QUALITY OR PERFORMANCE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, AND ANY AND ALL SUCH WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED. No agent, representative, or dealer, or any other person or entity, is authorized to give, on Friedrich's behalf, any representation or warranty as to Product(s) or to assume for Friedrich any liability pertinent to Product(s) under any circumstances.

- (11) **DISCLAIMER OF DAMAGES AND LIMITATION OF LIABILITY.** IN NO EVENT SHALL FRIEDRICH BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONTINGENT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER ARISING FROM THE USE OF OR FAILURE TO USE THE PRODUCT(S), ARISING FROM ANY ALLEGED BREACH OF THESE STANDARD TERMS AND CONDITIONS OF SALE, ARISING FROM ANY ALLEGED BREACH OF ANY OTHER ALLEGED CONTRACTUAL OBLIGATIONS OF FRIEDRICH OR ARISING FROM ANY CLAIMS ASSERTED AGAINST FRIEDRICH OF ANY NATURE, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, CONSUMER PROTECTION ACTS OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, DELAYS, OR CLAIMS OF CUSTOMERS OF PURCHASER OR OTHER THIRD-PARTIES FOR ANY OF THE FOREGOING OR OTHER DAMAGES. ADDITIONALLY, FRIEDRICH'S LIABILITY ON ALL CLAIMS, WHETHER IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, PRODUCT LIABILITY, CONSUMER PROTECTION ACTS OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR CONNECTED WITH, AN ORDER, OR FROM THE DESIGN OR MANUFACTURE OF PRODUCTS, SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF ANY PARTICULAR PRODUCT.
- (12) **OWNERSHIP.** All sketches, drawings, designs, patterns, tools, dies, jigs, fixtures or any other special appliance relating to an Order that is prepared by Friedrich shall remain Friedrich's sole and exclusive property and all rights therein, including but not limited to, patent, copyright and trademark, are owned by Friedrich. Drawings, data and documents submitted to Purchaser by Friedrich are intended only to describe the scope of the Products and provide information for installation, use and maintenance of the Products supplied. As such, these documents are instruments of the services provided by Friedrich. They are neither intended nor represented to be suitable for any party other than the Purchaser. Any reuse of any such drawings, data and documents without specific written authorization of Friedrich will subject the user to any and all remedies and proceedings as are available by law and in equity to protect Friedrich's rights under federal, state and common law (including, but not limited to, copyright, patent, unfair competition and trade secrets and other reserved rights).
- (13) **NONCONFORMITY AND DEFECTS.** Friedrich shall not be responsible for any nonconformity or defect in or failure of a Product that: (a) occurs after such Product is delivered by Friedrich, including any nonconformity, defect or damage resulting from shipment or handling by the common carrier or from Purchaser's handling, maintenance or storage of such Product; (b) results from materials, specifications or designs provided by Purchaser; or (c) results from modifications to such Product by Purchaser or others.
- (14) **COMPLIANCE WITH TRADE SANCTION LAWS.** Purchaser shall at all times act in a manner that complies with all trade sanctions laws and regulations, export restrictions, embargoes or prohibitions, imposed from time to time by any relevant governmental authority, including under European Union and/or United States laws and regulations, and shall not directly or indirectly use, transfer or make available any Products hereunder or any software, data or technical information provided to Purchaser, in violation of such laws and regulations. Friedrich shall not be required to supply any Products hereunder if Friedrich, in its sole judgment, believes such supply might directly or indirectly constitute a violation of any trade sanctions laws or regulations applicable to Friedrich or any of their respective officers or employees.

- (15) **FORCE MAJEURE.** Friedrich shall not be liable for any damages resulting from: any delay or failure of performance arising from any cause not reasonably within Friedrich's control, accidents to, breakdowns or mechanical failure of machinery or equipment, however caused; strikes or other labor troubles; delays in transportation or shortages of labor, transportation, raw materials, materials, components, manufacturing facilities, energy sources, or failure of usual means of supply; defects or delays in the performance of its suppliers or subcontractors; epidemics; fire; flood; war, declared or undeclared; insurrection; riots; acts of God, nature or the public enemy; acts of civil or military authority; embargoes; compliance with import or export regulations or priorities; allocations or limitations or other acts required or requested by federal, state or local governments or any of their subdivisions, bureaus or agencies. Friedrich may, at its option, cancel the Purchaser's Order or Orders or delay delivery and/or performance for any period of time reasonably necessary due to any of the foregoing, during which time these Standard Terms and Conditions of Sale shall remain in full force and effect. Friedrich shall also have the further right to then allocate its available goods or resources between its own uses and those of Purchaser and its other customers in such manner as Friedrich may consider equitable.
- (16) **DEFAULT.** In the event that at any time Purchaser is in default under any terms of any Order arising out of this or any other Order, Friedrich reserves the right to withhold manufacture or delivery and to cancel and terminate any or all Orders and to hold Purchaser liable for any damages and expense incurred by Friedrich. Friedrich also reserves the right to declare all charges and accounts to be immediately due and payable.
- (17) **ARBITRATION OF DISPUTES.** Any controversy or claim arising out of, related to, or connected with these Standard Terms and Conditions of Sale or the breach thereof, and all purchase Orders or related matters arising therefrom, shall be settled by final binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules. In a matter where the amount in controversy is less than \$1 million, the matter shall be heard by a single arbitrator appointed pursuant to the AAA Rules. In a matter where the amount in controversy is more than \$1 million, the matter shall be heard by a panel of three (3) arbitrators. In such case, each party shall appoint a single arbitrator, and the two party-appointed arbitrators shall appoint the Panel Chair. The party appointments shall be made within thirty (30) days from the filing of a Demand for Arbitration with AAA. The site of the Arbitration, and all hearings conducted as a part of the Arbitration proceeding, shall be Bexar County, Texas. Any Award entered in such arbitration may be enforced pursuant to the Federal Arbitration Act and Judgment on the Award rendered by the arbitrator(s) may be entered in the courts of the State of Texas or the United States District Court for the Western District of Texas, San Antonio Division. Friedrich and Purchaser hereby consent to the jurisdiction of said courts and to the venue stated herein. All fees and charges assessed by AAA, including fees for the arbitrator(s), shall be paid equally by the parties as they become due, provided that the prevailing party shall be awarded its costs and expenses associated with any dispute concerning these Standard Terms and Conditions of Sale, including reasonable attorneys' fees and expert fees from the non-prevailing party. The arbitrator(s) shall have the power and authority to designate the prevailing and non-prevailing party for purposes of the award of costs and fees hereunder.
- (18) **GOVERNING LAW/CONSENT TO JURISDICTION/VENUE.** The laws of the State of Texas and the federal laws of the United States applicable therein shall govern these Standard Terms and Conditions of Sale and all purchase Orders or related matters arising therefrom, without regard to its conflict of laws or choice of law provisions. Subject to the provisions of section (17) above, each of Friedrich and Purchaser hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Texas or the United States District Court for the Western District of Texas, San Antonio Division, for any actions, suits or proceedings arising out of or relating to these Standard Terms and Conditions of Sale and all purchase Orders or related matters arising therefrom and agree not to commence any action, suit or proceeding relating to these Standard Terms and Conditions of Sale and/or the purchase Order, except in such courts, and further agrees that service of any process, summons, notice or document by United States registered or certified mail shall be effective service of process for any action, suit or proceeding brought in any court. Each of Friedrich and Purchaser hereby irrevocably and unconditionally waives any objection to personal jurisdiction and the laying of venue of any action, suit or proceeding arising out of these Standard Terms and Conditions of Sale and all purchase Orders or related matters arising therefrom, in the courts of the State of Texas or the United States District Court for the Western District of Texas, San Antonio Division, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.
- (19) **CLERICAL ERRORS.** Friedrich reserves the right to correct clerical, arithmetical or stenographic errors or omissions in quotations, Order acknowledgements, invoices, or other documents.
- (20) **FEES AND EXPENSES.** In the event Friedrich retains an attorney to collect any amounts due from Purchaser then Friedrich shall be entitled to recover from Purchaser Friedrich's reasonable expenses, including, without limitation, attorneys' fees, accountants' fees, consultants' fees, court costs and interest.
- (21) **SAVINGS CLAUSE.** In the event any clause contained in these Standard Terms and Conditions of Sale is declared invalid or unenforceable by any court of competent jurisdiction, all other clauses or parts contained herein shall remain in full force and effect and shall not be affected thereby.
- (22) **INSTALLATION.** Purchaser is responsible for the installation of the Products including, without limitation, all civil engineering work and foundations, unloading, unpacking and proper positioning of Products in Purchaser's equipment and the costs of the foregoing. Friedrich's Technical Support department can make a support representative available for consultation on site to assist with the Purchaser's responsibilities above, if so desired. This service will be priced at Friedrich's usual and customary daily service rates as announced from time to time plus reasonable expenses and will be subject to separate terms and conditions.
- (23) **MISCELLANEOUS.** These Standard Terms and Conditions of Sale supersede and replace any and all prior or contemporaneous agreements, understandings, arrangements or representations, whether oral or written heretofore made between the parties and relating to the subject matter hereof, and constitutes the entire understanding of the parties with respect to the sale of Products by Friedrich to Purchaser. If either party, at its option, agrees in writing to a waiver of any of the terms and conditions recited herein, such waiver shall not, for any purpose, be construed as a waiver of any succeeding breach of the same or any other terms and conditions; nor shall such a waiver be deemed as a course of conduct. Except as required to obtain necessary licenses or governmental approvals, each party shall obtain the prior written approval of the other in advance of the disclosure of any news releases, articles, brochures, advertisements, prepared speeches and other information releases, relating to the subject matter hereof or the work performed or to be performed hereunder.