# Terms and Conditions of Direct Sale of Equipment and Service

**1. Terms of the Sale:** These Terms and Conditions ("Terms") apply to all sales of Products and the provision of Services (each as defined below) offered by Daikin Applied Latin America, L.L.C., including any of its subsidiaries or entities directly or indirectly controlled by it or by its owners, operating in Florida and/or Latin America (collectively "Daikin Latam"). These Terms apply to all offers, quotations, or proposals issued by Daikin Latam entities (each a "Quote"). The term "Company" refers to the specific Daikin Latam entity identified in the corresponding Quote. The term "Buyer" refers to the customer or purchaser named therein. The Company offers a Quote to the Buyer for the sale of equipment, parts, supplies**,** and materials (jointly referred to as "Products" or "Equipment") under the brand names of McQuay, Daikin McQuay, Daikin, Clima-Flex, Comfort Flex and Goodman ("Trademarks"), or other marks, as well as services, such as installation, start-up, maintenance, turnkey and repairs, (collectively the "Services"). This document sets forth the Terms applicable to all purchases of Equipment and Services from the Company by the Buyer, unless the parties otherwise agreed in writing in the text of the Quote. Submittal of any further purchase documents by Buyer, and/or execution of this document by Buyer, and/or allowing Company to commence work, and/or ordering services and/or the production of Equipment under this document, shall be deemed an acceptance of the Quote and will be considered a "Contract." Any of the referenced events above will be considered as the commencement date of the Contract. The effective termination date shall be when both these events have occurred: Buyer completes all payments to Company due under this Contract with all funds cleared in Company's financial accounts and Company completes delivery of all Equipment and/or Services. Any additional purchases will require the negotiation of a separate and independent Contract. Any additional or differing terms and conditions contained on any documents prepared or submitted by Buyer (whether or not such terms materially alter the Quote), are hereby rejected by Company and shall not become part of the Contract between Buyer and Company unless expressly consented to in writing by Company. Buyer acknowledges that these Terms may be updated from time to time and hereby agrees with such, and to be responsible to stay apprised with said updates as these are published in Company's website. The design and technical specifications of the Equipment and/or Services will not be the responsibility of the Company. The licensed professional or professional design corporation who performed the design and technical specification services of the Equipment and/or Services will be exclusively responsible and directly liable to the Buyer for any damages, and/or the correct performance of the design and associated risks.

**2. Pricing Policy**: The Contract price set forth in the Quote ("Price") is only valid for thirty (30) days after the date of the Quote. The final Price will be stated in the executed Contract and does not include start-up of Equipment unless agreed otherwise in writing in this Contract. All prices are subject to increase upon notice, due to such events as announced increases in the Company's list prices or increases in labor or material costs. "Per Unit" prices shown are for reference only and are based upon the purchase of the totality of the listed Products, and strictly by Buyer**.** Buyer will pay in in U.S. Dollars unless otherwise stated in the Quote. No claims on pricing will be accepted once this Contract is signed. Prices for Services are based on normal business hours (M-F, 8:00 AM-5: 00 PM). Overtime and Saturday hours will be billed at a rate of 1½ x the hourly rate; Sunday, 2x the hourly rate; Holiday, 3x the hourly rate. Buyer is herein voluntarily waiving any legal claims arising from or relating in any way or nature whatsoever, to the Contract Price once Buyer signs this Contract.

**3**. **Payment Terms**: Buyer and terms of payment are subject at all times to prior approval by the Company's Credit Department. The standard terms of payment, unless otherwise agreed to in writing by the Company, require a minimum deposit (standard is of 50%) of the total Contract Price when executing this Contract and the remaining balance two (2) weeks before production of the Products is completed at the factory. Payment must be made by wire transfer, credit card, or cash, as agreed between the parties in writing. At any time during the Term of this Contract or during the credit relationship between the Buyer and the Company, the Company shall have the right to determine, in its sole discretion, that the Buyer's financial and credit condition does not justify the continuation of production and/or the shipment and/or delivery of the Products and/or Service in the payment terms specified in the Contract and/or in the Buyer's terms of credit; in such case, and/or in the case of Buyer's insolvency, and/or Buyer's default in payment, the Company, in its sole discretion, may demand return of the unpaid Equipment at Buyer's full transportation and loading cost and any warehousing costs, and/or full or partial payment in advance and/or, shall have the right to cancel the Contract, stop and/or delay and/or cancel the Services and/or the production and/or shipment and/or delivery of the Products, and/or enforce any remedy Company deems necessary in order to become whole and recover its damages and financial losses, either under this Contract or under any other contract that remains unpaid. In the event of any default in payment, Buyer agrees to pay all expenses and costs incurred by Company as a result of late payments and/or collection, including but not limited to, those associated with transportation of Equipment, warehousing, collection agency fees, attorneys' fees, legal expenses, and/or court costs. All past due amounts shall bear interest at the highest rate allowed by applicable law. Additionally, the Company will charge a 5% late penalty fee on any past due amounts.

**4**. **Shipping Terms**: Unless otherwise agreed in writing all shipments of non-inventory Equipment will be shipped FCA Factory. All others will be shipped FCA Warehouse unless otherwise agreed in writing. Company may ship the Products in one or more lots; such lots may be separately invoiced and shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any lot shall not relieve Buyer of its obligation to accept remaining deliveries.

**5. Claims**: All responsibility of Company for all shipments ceases upon delivery of the Products to the carrier and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss or damage for all Equipment from that point on, while in transit and until received by Buyer. Therefore, all claims for damage or shortage in Equipment while in transit must be filed by Buyer against the carrier, not Company. Claims for factory shortages will not be considered unless made in writing to Company within ten (10) days after receipt of the Products and accompanied by reference to Company's Bill of Lading and factory order numbers. Company reserves a security interest in the Products until all funds on full payment for Products has cleared at Company's financial institutions.

**6. Tax**: The amount of any present or future taxes applicable to the Product(s) and/or Service(s), shall be added to the Contract Price contained herein and paid by Buyer in the same manner and with the same effects as if originally added thereto.

**7. Cancellation and/or Changes**: Accepted Quotes are not subject to cancellation or amendments unless Company, in its own discretion: (a) approves the cancellation and/or changes; (b) is reimbursed for any and all expenses and costs incurred (including overhead); (c) is paid the Contract Price for the Services performed and/or Equipment delivered and/or ordered to factory and/or which has already been submitted to manufacturing; and, (d) is indemnified by Buyer against any and all losses. All of the above-described conditions shall also apply in the event of Buyer's default in payment. The Company will have no responsibility if the ordered Equipment, once ordered and/or on the line of production, does not fulfill Buyer's intended purpose. Buyer shall bear full responsibility of the consequences of any changes it may make to this Contract once this is executed by Company, regardless of whether there is an error in Buyer's order, the design and/or specifications of the Equipment or Services. The Company may assign the rights and obligations arising from this Contract to any Daikin Latam entity or third parties without requiring prior authorization or notification to the Buyer.



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**8. Shipping Dates**: Buyer acknowledges and agrees that shipping and/or delivery dates are intended to be estimates only, and that delays can be expected for any reason and/or cause beyond Company's control, including but not limited to, disapproval or delays by the Credit Department of the Company based upon its evaluation of Buyer's credit, any act of God, act of Buyer, governmental act, accident, labor unrest, delay in transportation, pandemic, endemic or inability to obtain or problems with necessary labor, materials or manufacturing facilities. No Contract will be made to ship on a specified date, unless stated in a separate writing and signed by an officer of the Company. Buyer acknowledges and agrees that Company shall not be liable for any expenses, costs, penalties, and/or damages of any nature whatsoever, as a result or related in any way to any delay or failure to deliver on or around the estimated shipping and/or delivery dates. The commencement date of the Contract is not relevant in the calculation of the Delivery Terms.

**9. Returns and refunds**: Products may not be returned unless Buyer obtains the advanced written permission of an authorized Company official, and when so returned, will be subject to, including but not limited to, handling, loading, and transportation charges. Authorized returned Products must be shipped and prepaid by Buyer to the location designated by Company's authorization. Unless otherwise legally required by the contractual law governing the sale, payment for Products or Services are not refundable. No refunds whatsoever will be made for any start-ups Services which were delayed and/or cancelled by Buyer, regardless of the reason.

**10. Limited Warranty**: Warranty, Services scope, and/or maintenance terms are specified in the text or attachment to this document, herein incorporated and made a part of the Contract. There is no warranty on preventive maintenance Services. All repairs will be at additional cost in accordance with the Service rates described above in this document. All Trademark Equipment Installation and maintenance must be performed by Dakin certified technicians, or the Equipment warranty will be void. The Buyer must inspect and affirmatively reject the Products within 30 days of delivery, or products will be considered accepted. If not affirmatively rejected, any error or changes in the Contract, regardless of cause, will be strictly the responsibility of the Buyer. Buyer's failure to give written notice specifying any claim within the limited warranty time shall constitute an unqualified acceptance of the Equipment and a waiver of all claims, and Company will not be liable for any damage, warranty or remedy. Subject to Sections 11 and 12 of this Contract, for those cases where Company determines, in its sole discretion, that the Products sold under this Contract and used in Latin America, or the Caribbean or the United States have a manufacturing defect in some materials or components, Company only warrants that it will send to Buyer, FCA Point of Export, those replacement parts or components it determines in its sole discretion, are covered under the warranty, as follows:

- **Unitary Products (Single and Multi-Splits, Split Cassette, Floor/Ceiling, Ducted and Packaged types) *** - Twelve (12) months from start-up or eighteen (18) months from the date of shipment, whichever expires sooner.
- **Applied Products (Chillers, Fan Coils, Blower Coils, Water Source Heat Pumps, Water Heaters, Air Handling Units, Unit Ventilators and Rooftop Systems) - Twelve (12) months from start-up or eighteen (18) months from the date of shipment, whichever expires sooner.**
- **VRV** - Twelve (12) months from start-up or eighteen (18) months from the date of shipment, whichever expires sooner, and; five (5) years just on the compressor.
- **Spare Parts:**
  - **Sold by the Company - Six (6) months from the Company invoice date.**
  - **Sold and Installed by the Company - Twelve (12) months from the Company invoice date.**

<u>Start-Ups and Commissioning</u> - Units with screw compressors, centrifugal, absorption, and magnetic, as well as VRV equipment require that start-ups be performed by Company's certified factory service technicians or by another authorized company. Buyer can perform the start-up and the commissioning for all other units such as units with scroll compressors, roof-tops, and air handlers. In all cases, the Buyer must send the start-up report no later than ten (10) days after the start-up in order to validate the warranty. Replaced parts are warranted for the duration of the original warranty period.

**THIS WARRANTY CONSTITUTES BUYER'S SOLE REMEDY. IT IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF TITLE, AGAINST LIENS, INFRINGEMENT, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

No liability shall attach to the Company until the Buyer has paid in full for all Products purchased hereunder. No person (including any agent, sales representative, dealer or distributor) has the authority to extend the obligation of the Company beyond the terms of this express warranty or state that the performance of any Product is other than is published by the Company. Company must receive a start-up Registration Form for all Products within ten (10) days of original Product start-up, or the start-up date and ship date will be deemed the same for warranty period determination, and the warranty shall expire twelve (12) months from that date.

**11. Exclusions of Warranty**: Company's warranty set forth in Section 10 does not apply to any Products which: (a) have been opened, disassembled, repaired, or altered by anyone other than Company or its authorized service representative; or (b) have been subjected to misuse, negligence, accidents, damage, or abnormal use or service, including those resulting from a fortuitous or force majeure event; or (c) start-up, operation, and/or installation, have been done in a manner contrary to Company's instructions, or (d) have been exposed to the effects of the elements such as water, dust, wind, fire, pollutants, corrosive agents, chemicals or minerals, or as a result or effect of the water supply source or power supply source, or; (e) have not been fully paid for by the Buyer, or; (f) have been damaged during transportation. Refrigerants, fluids, oils and expendable items such as filters are not covered by Company's warranty. The Company does not provide labor or repair service as part of its warranty, nor does it cover transportation costs. For additional cost, Company could provide an extended warranty on certain Products. The terms of any such extended warranty are shown on the Product limited warranty certificate or on a separate extended warranty statement. For any non-Trademark Products supplied by Seller, the warranty shall be the warranty offered by its manufacturer or provider.

**12. Limitation of Liability; Compensation**: Unless prohibited by the contractual law governing the sale, the Company's liability with respect to the Products sold and/or Services rendered hereunder shall be limited to the warranty provided under Section 10, and, in the sole discretion of Company, shall not exceed the lesser of: (a) the cost of repair or replacing defective Products or Services, or; (b) the original Contract Price of the Products or the Services.

**IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO BUYER OR THIRD PARTIES FOR INCIDENTAL, INDIRECT, SPECIAL, CONTINGENT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, REVENUE, PROFITS, GOODWILL, OR OTHER BUSINESS INTERRUPTION DAMAGES, FOR ANY REASON WHATSOEVER, WHETHER THE THEORY BE BREACH OF THIS OR ANY OTHER WARRANTY, NEGLIGENCE OR STRICT LIABILITY OR IN TORT, EVEN IF THE DAMAGES WERE OR SHOULD HAVE BEEN FORESEEABLE.**

**13**. **Confidentiality and Trademarks**: Buyer acknowledges that Company's confidential information such as its customers, prices, related goodwill and trade secrets as well as the Trademarks of the Products sold hereunder ("Confidential Information"), are the property of the Company. Buyer hereby agrees not to disclose Confidential Information without the written consent of the Company, and agrees to use and display the Trademarks only in such manner as previously authorized in writing by Company. Buyer shall not use the Trademarks as part of its corporate or trade name,



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or in any manner that would suggest that Buyer is associated with Company as a business partner or in a joint venture, or in any manner not authorized by Company. Buyer shall not use the Trademarks as part of a website or Internet domain name or website address, and shall not make any link to the Company website, except in accordance with authorized permission and applicable Company policies at that time for such use. Upon termination of this Contract, all Company previously authorized permissions to use the Trademarks will be rescinded. Furthermore, each party may confidentially disclose to the other proprietary technical plans and drawings ("Technical Information") related to a particular project pertaining to the Products and/or Services subject of this Contract; each party agrees that such Technical Information shall remain the property of the disclosing party, and that the receiving party shall not disclose such Technical Information to any third party (except to its affiliates in a confidential basis) without the consent of the disclosing party. The Buyer and the Company agree that there is no transfer, license or sale of intellectual property pursuant to this Contract. In the event the Company provides deliverables to Buyer, Buyer only has the right to use those deliverables for its own internal use with respect to the facility for which the deliverables were provided. If the Services or Products require the installation and/or use of any specialized software, and/or digital platform, the use and access by Buyer to the software, and/or digital platform, will be subject to acceptance of the applicable "End User License Agreement (EULA)" and platform terms of use.

**14. Disputes and Choice of Law**: This Contract and these Terms constitute the entire agreement between Company and Buyer. All claims (other than collections, in which case Company can enforce through collection agencies and/or in the local courts located wherever Buyer conducts its business and/or has assets), disputes, and controversies arising out of or relating to this Contract or the breach thereof, shall, in lieu of court action, be submitted to the International Court of Arbitration ("ICC"), according to their rules and held in Miami, Florida. Florida law shall be the governing law. In case of conflict of laws, the ICC will apply the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). Any judgment on the arbitral award rendered by the arbitrator(s) shall be final and shall be valid in any court having jurisdiction thereof. The parties agree that either party to the arbitration shall be entitled to discovery of the other party, provided, however, that such discovery shall be completed within four (4) months from the date of the request for arbitration. The ICC ruling may be recognized and executed before any competent court.

**15. Compliance with Laws - Export, Anti-Corruption, and Anti-Money Laundering:** Buyer shall comply and herein represents that it complies with all applicable local, regional, and United States laws, relating to, among others: the conducting of its business, the regulation of importation and exportation of goods, the prevention of anti-money laundering and terrorism, and anti-corruption laws ("Anticorruption Laws"), and represents that it has not and is not engaged in any corrupt practices in contravention of any of these laws, nor has it been prosecuted nor convicted under any offenses prosecuted under these laws. Buyer further represents that it does not intend to and will not use the Products for the development or manufacture of "Weapons of Mass Destruction" (defined as nuclear, biological and/or chemical weapons and/or missiles) or for any other illegal military purposes, will never sell or transfer the Products to any party who is known to be a participant in the development and/or manufacture of Weapons of Mass Destruction and/or any military arms, and will never sell or transfer the Products for the development and/or manufacture of Weapons of Mass destruction or for any illegal military purposes. Buyer shall inform Company of any local and/or regional changes in said requirements, whether applicable laws and/or regulations that may affect its performance under this Contract and/or in its commercial relationship with Company. Buyer acknowledges and agrees that within its country and/or region there may be other buyers and/or distributors of any of the Products and/or any of Company's other products and that these, as well as Buyer, may re-sell these; that re-exporting of the purchased Products to any destination under U.S. sanction or embargo, contrary to U.S. law, and/or any other local or regional export prohibitions, are a violation of this Contract and is strictly forbidden. Buyer acknowledges and agrees the *"Foreign Corrupt Practices Act of 1977* " or "FCPA" applies to the business transaction subject of this Contract as well as any other local and regional anti-corruption anti-terrorism, and anti-bribery laws, which may apply to Buyer or the business relationship itself. Buyer grants Company all necessary access to the specific types of information, including the right to interview those needed, and to any documentation relating to their business relationship, which may be relevant to an internal investigation and/or to evaluate the integrity of Buyer's business practices. Buyer acknowledges that this could include access to expense reports, citations issued by governmental authorities, and emails related to any transaction. Company shall have the right to select its auditors who shall decide together, based on their own criteria, the scope and appropriate work plan to verify Buyer's compliance with its obligations under this Contract and applicable laws. Buyer shall deliver all documentation in its original format in an organized manner, and; maintain throughout the term of the Contract and for a further period of five (5) years after the termination thereof, accurate and complete books and records of all activities relative to the business relationship. Buyer represents that it is not currently investigated for any crime, nor has it received any administrative, civil or criminal disciplinary measure or sanction, either in the country of origin of its legal entity or abroad, for misconduct in relation to the Anticorruption Laws, export controls, money laundering and terrorist financing activities, commercial bribery, corruption, influence peddling, illegal diversion of public resources, anti-boycott, fair competition (antitrust) or violations of corporate governance laws applicable, and that it is not reported in any international or local public list of people under investigation for money laundering, terrorist financing, and asset forfeiture, including the Office of Foreign Assets Control ("OFAC") List, Specially Designated Nationals and Blocked Persons List ("SDN List"), Sector Sanctions Identification (SSI) List, Foreign Sanctions Evaders List (FSE), or any other similar list in the United States of America or any other applicable jurisdiction.-Buyer agrees that Company will consider any violation of these laws and this Section as a serious violation of its ethical obligations as well as its obligations hereunder, which will terminate this Contract immediately. Buyer shall be liable to Company, its affiliates and subsidiaries, their respective officers, directors, employees, and/or agents or representatives, for any and all damages any of the former may incur, of any kind and nature whatsoever, as a result of Buyer's violation of the requirements of this Section, including the costs of any necessary investigation.

**16**. **Services**: Buyer will carry out all the preparatory works according to the Technical Information, which will be structurally adequate for the Services of the Company. Buyer will be responsible for providing early access to the location ("Location") where Services will be performed as well as the necessary conditions for the Company to execute the Services. If Buyer supplies the transportation of the Products to the Location, Buyer shall be responsible for their arrival at the time Buyer specifies. Buyer shall ensure that the Company can begin the Services according to the agreed upon schedule. Company will not render any Services in Locations that, in its discretion, are dangerous or are health hazards. Buyer shall be solely responsible for establishing and maintaining during the Contract any legally required health and safety measures. If so agreed, the Buyer shall provide at no additional charge all cranes and lifting, transport equipment, tools, machinery, materials and supplies (including fuels, oils, fats, gas, water, electricity, steam, compressed air, heating, lighting, measurement tools, property testing). Company will specify its requirements in writing. Buyer shall provide Company at no charge secure storage capacity for any Equipment or materials requiring protection from the environment or theft. Buyer shall also provide adequate access routes for the transportation of the materials and Equipment to the Location. Any Equipment testing agreed upon prior to delivery will be carried out only at the factory and according to the technical specifications agreed upon, in accordance with the production schedule and factory policies, and only upon agreed upon prior notice to Company. In the event that Buyer had requested such testing and failed to attend, Buyer shall accept the test protocol provided by factory as accurate and final If for reasons not attributable to the Company, the start-up Service requested is not or cannot be performed within the term contractually agreed



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upon for such purpose, the Company shall no longer be responsible for performing the start-up service. In the event that Buyer later be interested in performing the start-up, Company will provide a new quote for this service only if this is rescheduled no later than twelve (12) months following the delivery of the Equipment. In any event, Buyer shall be fully responsible for any expenses associated with any necessary Equipment repairs and/or maintenance needs discovered during the process of the delayed start-up. Warranty periods shall not be extended due to delayed start-ups for any reason whatsoever, and no refunds will be issued for start-ups which are not performed due to reasons which are not attributable to Company. For installation and turnkey projects, la reception of the Services ("Reception") occurs upon start-up of the Equipment or as otherwise agreed. Minor deficiencies, lack of power or any other supply that is not responsibility of the Company, will not preclude Reception, which shall take place once Equipment and/or Services are delivered. In the absence of an agreement for Reception, Reception shall occur on the date of notification by Company. Buyer shall not be entitled to use any part of the benefits resulting from the Services prior to Reception, or else, the Company will consider the Services received and accepted as satisfactory, in which case, Company will be relieved of its obligation to perform any repairs, even if previously agreed upon. The Services will be considered finalized once Reception has been completed. Company shall not be liable for any failure or damage to any Equipment caused by power interruption, single-phase running, phase inversion, low voltage, or other deficiencies out of Company's control. Unless otherwise agreed in the Quote, absent Force Majeure or modifications, for final delivery deadline purposes, the term to perform the Services shall start running from the date of the receipt of the first installment under the terms of the Contract.

**17. Fortuitous event or Force Majeure**. The Buyer and the Company agree that there shall be no liability whatsoever to Company for delay and/or failure to perform and/or deliver the Equipment and/or Service, when such is attributable to circumstances beyond Company's control, or "Force Majeure", defined as unforeseen events of nature, acts of God, such as cyclones, hurricanes, earthquakes, floods, among others; or attributable to a "Fortuitous Event" defined as events that the obliged party could not prevent, control, or remedy and that generate a breach of its obligations, including, without limitation, wars, revolution, riots, protests, demonstrations or strikes, invasion, armed conflict, terrorism, epidemic, pandemic, infectious outbreaks, shortage of materials, workers, manufacturing or transportation facilities, government acts, accidents, labor disturbances, and similar situations, whether foreseeable or unforeseeable, and in which case, depending on the magnitude of the events, the effects of this Contract shall be partially or totally suspended, as agreed by the parties in writing.

**18. Protection of Personal Data.** The Buyer and the Company shall comply with all local and international laws and regulations relating to the protection of personal data applicable to each of them and to the performance of their obligations under this Contract. By signing this document, the Buyer: a) expressly and unequivocally **authorizes** the Company and the Daikin Latam entities, to the processing and treatment of Buyer's personal data or any personal date provided by Buyer, and b) **accepts** the Daikin Applied Latin America, L.L.C. Privacy and Personal Data Protection Policy published on the website www.daikinlatam.com.

**19. Counterparts and signature**: This document may be signed by the Company and the Buyer, in two or more copies, each of which will be considered an original and as a whole will constitute a single and same Contract. The copies signed, scanned and transmitted electronically and / or the electronic signatures will be considered original signatures for the purposes of this Contract and all matters related to it. Such signatures in fax, scanned and / or electronic will have the same legal effect as the original signatures.

Note: * The warranty for Unitary Products may vary in certain jurisdictions, in accordance with Company Policies, in which case, the Company will notify Buyer in writing**.** In the event that a provision or specific Term set forth herein be deemed prohibited or invalid under applicable law, such provision or Term shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity of the remaining Terms hereunder.



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