



## PRICE LIST SUPPLEMENT Terms and Conditions of Sale heating/ventilating products

### TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (these "Terms and Conditions") shall govern the sale of Products (as hereinafter defined) by Modine Manufacturing Company, a Wisconsin corporation ("Seller"), to you ("Buyer"). Buyer's Order (as hereinafter defined) for Products, including but not limited to Buyer's purchase order, specifications, drawings, designs, plans and other Submittal Data (as hereinafter defined), demands and any other preprinted form or document, instrument or certificate included with Buyer's order documentation, whether in writing, electronically, by facsimile or otherwise, and whether submitted directly by Buyer or on Buyer's behalf (collectively, the "Order"), shall be subject to these Terms and Conditions and these Terms and Conditions shall govern and control over any additional and/or conflicting terms and conditions set forth in the Order as described herein. As used herein, (a) "Products" means all equipment, parts, materials, supplies, components and other products which are included in the Order; and (b) "Agreement" means these Terms and Conditions and the Order, collectively.

#### Acceptance of Orders – Seller's Terms and Conditions Control

All Orders are subject to acceptance and approval by authorized personnel of Seller, in their discretion, and Seller shall not be bound by any Order not accepted by such personnel. All price lists, quotations, proposals, acceptances of Orders, and sales of Products are hereby expressly made conditional upon and subject to these Terms and Conditions which shall be part of and are hereby incorporated into all contracts for the sale of Products. These Terms and Conditions shall take precedence over all additional and/or conflicting terms and conditions set forth in the Order, including but not limited to the Product description, warranty and indemnification provisions. Shipment by Seller shall constitute confirmation by Buyer and Seller as to the final and complete agreement between Buyer and Seller with respect to this Agreement. Any modifications, alterations, additions, or conflicting terms and conditions to these Terms and Conditions shall not be binding on Seller unless expressly accepted in writing by Seller and are hereby rejected as a material alteration of these Terms and Conditions.

#### Product Description and Submittal Data

Buyer's submission of any Approved Submittal Data (as hereinafter defined) shall constitute Buyer's complete and final specification of the Products and agreement to accept promptly after delivery all Products furnished by Seller conforming to such Submittal Data (as hereinafter defined), notwithstanding prior Submittal Data exchanged by Seller and Buyer or their representatives or any signature, approval stamp or transmittal form thereto. Seller shall not be required to fill any Order where Seller has not approved such Submittal Data, and Seller and Buyer must mutually agree upon any modifications, limitations, conditions, or exceptions to the Approved Submittal Data, including but not limited to plans, specifications, or other documents referred to therein. In the event that the Buyer requires Submittal Data and releases the Products for fabrication or shipment prior to receipt by Seller of the Approved Submittal Data, such release shall constitute Buyer's agreement to accept promptly after delivery the Products furnished in accordance with the Submittal Data last submitted to the Seller, or, if none has been submitted, in accordance with the last Product description

approved by Seller prior to fabrication. In the event that Buyer does not require on the face of its Order that Submittal Data be approved prior to fabrication of the Products, Buyer agrees to accept promptly after delivery the Products furnished in accordance with the Product description last approved by Seller prior to fabrication, or in accordance with the Submittal Data last submitted to Seller (if any Submittal Data is furnished without Buyer's request).

For purposes hereof, "Submittal Data" means the specifications, drawings, designs, plans, blueprints and other technical information for the Products; and "Approved Submittal Data" means the Submittal Data approved by or on behalf of the Buyer, including but not limited to any approval by the sales representative working with the Buyer, the general contractor for the end-user, the engineering consultant to the Buyer or such general contractor, the end-user or any of their representatives, all as reasonably determined by the Seller.

#### Authority of Sales Representatives; No Commissions

Seller's sales representatives do not have authority to make any warranties, agreements, contracts, or understandings, or to incur any obligations or liability, on behalf of Seller other than those expressly provided herein. Orders and contracts taken by sales representatives are subject to approval by Seller. If Buyer is an authorized sales representative of Seller, then no commission shall be owed with respect to Buyer's Order.

#### Payment Terms and Conditions

Payment for Products shall be due within thirty (30) days of the date set forth on Seller's invoice without setoff or deduction. Seller shall have the right to assess default interest against overdue payments, from the date such payment was due until paid in full, at the rate of one and one-half percent (1.5%) per month, but in any event not exceeding the maximum rate of interest permissible under applicable law. Buyer shall reimburse Seller for all costs of collection (including any attorneys' fees) related to any overdue payments. Buyer agrees to make timely payment of all invoices presented on or after the date of shipment, or as otherwise shown on the invoices, whether the invoices so presented comprise the entire Order or only part of such Order. Credit terms extended to Buyer, if any, are subject to revocation, to change, or withdrawal by Seller at any time upon notice to Buyer, and Seller reserves the right to demand guarantees, security, or payment prior to commencement of Seller's performance. Buyer's failure to pay for any deliveries when due shall excuse Seller from making further deliveries on the Order or on any other Order. Credit terms for one Order establish no precedent with respect to any subsequent Orders. The Buyer, any higher tier contractor, or the owner of property in which or to which the Products described herein may be placed or become affixed, will not be released from liens or claims of any kind unless and until such Products have been fully paid for.

#### Title, Delivery and Risk of Loss

Delivery of Products to Buyer shall be "Free on Board" ("F.O.B.") Seller's factory. Title and risk of loss for Products arising from any cause whatsoever shall pass to Buyer upon tender of delivery to Buyer or any common carrier for the Products at Seller's factory; provided that Seller shall retain a purchase money, first priority

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security interest in all Products delivered to Buyer, and all proceeds thereof, until such Products are paid for in full. Seller shall have the right and option, at its election and without notice to Buyer, to file any Uniform Commercial Code financing statement to document, and to provide notice to Buyer's secured creditors of, Seller's secured interest in such Products, and Buyer shall cooperate therewith at Seller's request. Loading and transportation of the Products from Seller's factory shall in all cases be at Buyer's risk and expense (including but not limited to shipping and handling, insurance, customs and duties). Unless specified by Buyer, Seller shall have the right, in its discretion, to choose the common carrier for Buyer's Order and specify the terms of shipment. If Buyer defaults in acceptance of delivery or in any other terms and conditions herein, Seller shall have the right to store any undelivered Products at Buyer's risk and expense.

## Taxes

Federal, State, and/or local taxes (except income taxes) now or hereafter imposed with respect to the production, manufacture, sale, delivery, use, transportation or proceeds of the Products, including but not limited to sales, use and value-added taxes, shall be for the Buyer's account, and if paid, or required to be paid, by Seller, the amount thereof will be added to Seller's invoice and become a part of the price payable by the Buyer. Buyer shall provide Seller with tax exemption certificates if requested by Seller, and Buyer hereby represents and warrants that such tax exemption certificates, when completed by Buyer, will be true, correct and complete in all respects.

## Prices

Prices stated verbally or on any quotation forms or price lists are subject to change without notice and are not binding on Seller until prices are approved by Seller at time of acceptance of Order. Prices specified are contingent upon the requirements of completing an individual Order, including but not limited to Product description, quantities, current costs of materials and labor, simultaneous production of other Orders for similar Products, delivery schedule, F.O.B. point, and other conditions. Therefore, prices for an individual Order will not necessarily be the same or as low as prices charged previously or prices charged during the period of performance of any Order, either to Buyer or to other customers. If an Order, or any portion thereof, which has been duly accepted by Seller remains unshipped six months after such acceptance due to no fault of Seller, prices for Products contained in such Order may, at Seller's sole discretion, be adjusted to the greater of the original Order price or prevailing prices at the time of shipment. Prices are stated F.O.B. Seller's factory.

## Infringement

If Products produced to the specifications of the Buyer, or to design furnished by Buyer, including but not limited to, any Submittal Data, infringe, misappropriate or constitute an unauthorized use of, or are claimed or alleged to infringe, misappropriate or constitute an unauthorized use of, any U.S. or foreign patents or other rights of third parties under which claims are made against either Seller or the Buyer, the Buyer assumes full responsibility for everything done by Seller in producing, marketing, selling, and distributing such Products and agrees to indemnify Seller and each of Seller's directors, officers, employees, agents, representatives and affiliates, and its and their respective heirs, successors, personal and legal representatives, and assigns, and each of them (collectively, the "Seller Indemnitees"), and to hold the Seller Indemnitees free of, and, at the Seller's demand, to defend the Seller Indemnitees (with counsel chosen by Buyer who is reasonably acceptable to Seller) from, any and all claims, actions, suits and proceedings (collectively, "Proceedings"), and all losses, damages, costs and expenses of every kind and character (including but not limited to expenditures made or incurred for judgments, settlements, attorneys' fees, litigation and negotiations) (collectively, "Damages"), directly or indirectly resulting therefrom or arising in connection therewith.

Buyer agrees to support its indemnity obligations herein by available insurance and intends that its obligations shall be enforceable to the maximum extent permitted by applicable law.

## Specifications

In cases of ambiguity in the specifications, drawings, designs, or other requirements of an Order, including but not limited to any Submittal Data, Seller's interpretation of any such requirements shall be final. Under no circumstances will Seller make or secure installations, replacements or repairs by third parties, or be responsible for the costs thereof; or for any Proceedings or Damages caused by faulty installation, replacement or repair by third parties.

## Deliveries; Force Majeure

Times of delivery are only estimated and are not guaranteed. If Buyer has required that an authorization to ship or Approved Submittal Data must be obtained from the Buyer prior to fabrication or delivery, all estimates of delivery are conditional upon receipt by Seller of such required authorization or required Approved Submittal Data within ten (10) days of the date of quotation, or if Buyer has required that a release be obtained prior to fabrication, within ten (10) days of Seller's receipt of such release. In any event, Buyer agrees that Seller may deliver at any reasonable time before or after the date requested by Buyer.

Deliveries of goods and Seller's performance hereunder are contingent upon the non-occurrence of any cause beyond the reasonable control of Seller, whether or not foreseeable, including but not limited to strikes or other labor disruption, fires, floods, wars, terrorism, anarchy, mayhem, riot, insurrection, accidents, delays of carriers, shortages of supplies or materials, delays or default of a supplier or a contractor, government regulation, disruption due to failure of production facilities, disruption due to failure of transportation facilities and disruption due to failure of national, regional or local governments (each, a "Force Majeure Event"). In the event of any delay in delivery or performance due to any Force Majeure Event, Buyer agrees to accept delivery and performance at such time as delivery and performance can reasonably be completed by Seller, or, if the delay is unreasonable, to compensate Seller for all costs of production, including but not limited to costs of materials, labor, and overhead, incurred up to the time Seller receives written notice of Buyer's desire to have production of the Order stopped.

## Disclaimer of Certain Damages

IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR SIMILAR DAMAGES OF ANY KIND RESULTING FROM THE ORDER OR THE MANUFACTURE, MARKETING, SALE, TRANSPORTATION OR USE OF SELLER'S PRODUCTS, WHETHER ARISING FROM BREACH OF WARRANTY, NONCONFORMITY TO ORDERED SPECIFICATIONS, DELAY IN DELIVERY (REGARDLESS OF WHETHER OR NOT THE CAUSE OF SUCH DELAY IS BEYOND THE CONTROL OF SELLER OR FORESEEABLE), OR ANY LOSS SUSTAINED BY THE BUYER OR ANY END-USER, INCLUDING BUT NOT LIMITED TO ANY LABOR COSTS, LOSS OF USE, LOST REVENUES, LOST PROFITS, DAMAGE TO ASSOCIATED EQUIPMENT OR FACILITIES, COSTS OF REPLACEMENT POWER, COSTS ASSOCIATED WITH DOWNTIME, AND ANY SIMILAR DAMAGES, UNLESS SUCH DAMAGES ARE FOUND TO HAVE ARISEN DIRECTLY FROM SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

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## Limited Warranty

Seller's Products covered by the Order shall be subject to Seller's standard Commercial Warranty or Residential Warranty, as applicable, which can be found at 75-940 and are incorporated herein by this reference (the "Standard Warranties").

BUYER AGREES THAT THE STANDARD WARRANTIES AND THE REMEDIES SET FORTH THEREIN SHALL BE IN LIEU OF AND EXCLUSIVE OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, WHETHER ARISING FROM LAW, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, EACH OF WHICH THE SELLER HEREBY EXPRESSLY DISCLAIMS. SELLER NEITHER ASSUMES (NOR HAS AUTHORIZED ANY PERSON TO ASSUME) ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH ANY PRODUCTS.

## Buyer's Indemnification Obligation

Buyer agrees to indemnify the Seller Indemnitees, and to hold the Seller Indemnitees free of, and, at the Seller's demand, to defend the Seller Indemnitees (with counsel chosen by Buyer who is reasonably acceptable to Seller) from, any and all Proceedings and Damages directly or indirectly resulting from or arising in connection with Buyer's actual, claimed or alleged (a) negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (b) violation of any Federal, State or law laws or regulations; (c) unauthorized or faulty installation, replacement or repairs of Products by third parties; and/or (d) breach of this Agreement. Buyer agrees to support its indemnity obligations herein by available insurance and intends that its obligations shall be enforceable to the maximum extent permitted by applicable law.

## Cancellation – Inspection – Rejection

Orders for Products are not cancelable by Buyer, either in whole or part, nor are Products returnable for credit, without Seller's consent. Seller will repair or replace, at Seller's discretion, any Products not conforming to the Approved Submittal Data only if the Buyer notifies Seller, at the address on the Seller's invoice, of the particular details of non-conformance, either before or promptly upon (and in any event, not later than seventy-two (72) hours after) first arrival at Buyer's facility or other shipping destination, and only if such non-conforming Product is returned, sold, or otherwise disposed of in accordance with instructions of Seller. Buyer agrees to inspect all of the Products either before or promptly upon (and in any event, not later than seventy-two (72) hours after) first arrival at Buyer's facility or other shipping destination, and waives all of its rights to reject or refuse to accept any non-conforming Products unless notice is given to Seller in the aforesaid time and manner. Buyer agrees that the right of rejection of non-conforming Products, as limited herein, and the right to replacement by Seller with Products conforming to the Approved Submittal Data, are exclusive of all other remedies provided by law, in equity or otherwise. Written authorization must be issued by Seller before any Products are returned to Seller.

Seller shall have the right to cancel all or any portion of an unfilled Order if Buyer is in default of any of the terms and conditions hereof, or if (a) Buyer is or becomes insolvent; (b) Buyer admits in writing its inability to pay its debts as they become due in the ordinary course or otherwise; (c) Buyer makes an assignment for the benefit of creditors; (d) Buyer has a receiver appointed for all or any portion of Buyer's assets; (e) Buyer voluntarily or involuntarily files or has filed against it any petition under applicable bankruptcy or insolvency laws; (f) Buyer dissolves or liquidates or adopts any plan relating thereto; or (g) Seller in good faith believes that Buyer's performance or future performance under the Order is impaired, and, in any event, if Buyer fails to provide reasonable assurances of performance within five (5) days of Seller's demand therefor.

## Change Orders

Seller may accept, in its sole discretion, change order requests submitted in writing by Buyer. However, before doing so, Seller's Building HVAC Customer Service Department must first be contacted to check the status of the applicable Order. If a change order request is submitted by Buyer after Seller has commenced work on the Product that is the subject of the change order request, Buyer shall be responsible for a reasonable change order fee, which shall in no event be less than \$150.00. In addition, once an Order is released to production, Buyer shall be liable for any loss incurred by Seller resulting from such change order, including but not limited to engineering costs, cost of special tooling (either purchased or prepared), cost of special materials purchasing, and/or in process production costs. Once job specific wiring diagrams are complete, Seller will provide one wiring diagram revision at no charge. For each additional wiring diagram revision a \$100.00 minimum net change order fee will be charged to Buyer.

## Intellectual Property Rights and Tooling

Seller shall retain sole ownership of all right, title, and interest in and to all of its intellectual property embodied in or associated with the Products, including but not limited to, content and materials on its website, ideas, methods, trademarks, service marks, trade names, symbols, logos, copyrights, patents, trade secrets, and know-how (collectively, the "Intellectual Property"), and no licenses to any Intellectual Property are created hereunder.

All dies, patterns, jigs, and similar tooling produced by or at the request of Buyer, or otherwise utilized by Seller in the performance of the Order, shall remain the exclusive property of Seller unless Seller otherwise agrees in writing.

## Confidentiality

All Intellectual Property, pricing, specifications, drawings, documents, designs, data, information and other Submittal Data, computer software, technical matter, samples, and/or inventions acquired, made, conceived, or developed by Seller (including but not limited to if acquired, made, conceived, or developed in cooperation with Buyer), incident to, procuring or carrying out the transactions contemplated by this Agreement (collectively, the "Confidential Information"), is and shall be the sole property of Seller and shall be disclosed to Buyer only to assist Buyer with the Order, and such disclosure shall be made only on a confidential basis and in no way shall impair the confidential nature thereof. Without the express prior written consent of Seller, Buyer shall not at any time disclose, or cause or permit any employee, agent or affiliated, controlled, or controlling entity of Buyer to disclose, to any person, firm, corporation, or other third party any of the Confidential Information.

## Export Laws

The Products may be subject to export controls and regulations of the United States, the country of manufacture, or the country of shipment, and export may require a valid export license. Seller's acceptance of the Order and delivery of the Products is conditioned on compliance with applicable export controls. Seller will have no obligation to sell or deliver any Product until all required United States and/or other export licenses have been granted, at Buyer's expense, and there are no impediments arising from any applicable export regulations. No Products sold to Buyer may be exported or re-exported unless such export or re-export complies fully with all applicable export regulations, at Buyer's expense.

## Seller's Rights and Remedies

The rights and remedies available to Seller herein shall be cumulative and in addition to any and all other rights and remedies available under applicable law, in equity or otherwise, and Seller's exercise of any such rights or remedies shall be without prejudice to Seller's other rights and remedies.

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## Order of Precedence

If Seller and Buyer are parties to any separate written supply agreement, then the terms and conditions of such supply agreement shall control over any additional or conflicting terms and conditions herein.

## Invalidity or Unenforceability

In the event that any provision in these Terms and Conditions are found invalid or unenforceable, whether in whole or in part, for any reason, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions. The invalidity or unenforceability of any such provision or part of such provision will not affect the validity or enforceability of the remaining terms and conditions hereof.

## Amendment and Waiver

Seller reserves the right to amend, modify, and supplement these Terms and Conditions at any time and from time to time, provided that any such change in this Agreement shall not be effective with respect to Orders accepted by Seller prior to the effective time of such change unless separately agreed to by Buyer. No waiver of any provision hereof shall be effective unless agreed to in writing by Seller. The failure of Seller or Buyer, at any time, to require the performance of any obligation or to assert a right contained herein will not affect either party's right to require such performance or assert such right at any time thereafter; nor shall the waiver of any right or obligation be construed in any way as a waiver of any succeeding breach of such provision or the waiver of the provision itself.

## Assignment

Buyer may not assign its rights or obligations under this Agreement, in whole or in part, without Seller's prior written consent.

## Survival

The provisions of, and respective obligations of the Seller and Buyer under, these Terms and Conditions which by their express terms or nature are intended to survive termination of the parties' obligations hereunder, including but not limited to the obligations set forth in the Sections hereof titled "Infringement", "Buyer's Indemnification Obligation", "Intellectual Property Rights and Tooling" and "Confidentiality", shall survive any termination of any of the parties' other obligations hereunder for the period of time set forth therein and, in the event no such survival period is expressly stated, indefinitely.

## Consents, Approvals and Waivers; Notices

Any consents, approvals, waivers or similar agreements or acknowledgements required from Seller or Buyer hereunder shall only be effective if in writing and signed by authorized personnel of the applicable party. For purposes of the preceding sentence, a signed writing shall include an email from the applicable personnel providing such consent, approval, waiver or similar agreement or acknowledgement. Any notices required or permitted to be given by Seller or Buyer to the other under this Agreement shall be deemed to have been given and received (a) if sent by facsimile transmission, upon the sending thereof if written confirmation of

transmission is provided by the outbound fax machine; (b) if sent by email transmission, upon the sending thereof if receipt is confirmed by a return email from the recipient; (c) if sent by reputable overnight courier, one (1) business day after being sent; and (d) if sent by regular U.S. mail, postage prepaid, return receipt requested, three (3) business days after being sent, in all cases to the attention of the individual at the facsimile number, email address or postal address made known to the sending party as the primary contact person for the recipient.

## Governing Law; Jurisdiction; Venue

This Agreement shall be governed by and is to be interpreted and enforced pursuant to the laws of the State of Wisconsin, without regard to conflict of law or other provisions that would defeat the application of Wisconsin substantive law. Buyer irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the Federal and State courts located in Milwaukee County, Wisconsin for the resolution of any dispute between the parties concerning the Products or this Agreement; (b) agrees not to commence any Proceedings except in such courts; and (c) waives any objection to the laying of venue of any such Proceedings in the Federal or State courts located in Milwaukee County, Wisconsin. For the avoidance of doubt, Seller and Buyer expressly disclaim the applicability of the United Nations Convention on Contracts for the International Sale of Goods (1980) to this Agreement.

## Integration

This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings, representations and warranties, written or oral. Without limiting the generality of the foregoing, no course of dealing, course of performance, course of conduct, prior dealings, community standards, industry standards, customary practice or interpretation, or usage of the trade shall be relevant to supplement or explain any terms or conditions used in this Agreement.

