

# Commercial terms and conditions

(Last update: March 2017)

These commercial terms and conditions (hereinafter "Terms") shall apply to all of our offers, deliveries and services to companies (B2B). Part I shall apply to deliveries of goods. Part II shall apply to services by our customer service. Any individual agreements deviating from these Terms shall be valid only if confirmed by us in writing and duly signed. Any informal statements are invalid. Any commercial terms and conditions of the ordering party shall not be applicable. Acceptance of the goods is in any event deemed to constitute acknowledgment of our Terms. Our customer services to consumers (B2C) shall be subject to separate commercial terms and conditions. Our commercial terms and conditions can be found at [www.daikin-ce.com](http://www.daikin-ce.com).

## I. COMMERCIAL TERMS AND CONDITIONS FOR DELIVERIES OF GOODS

### 1. OFFER

Our offers are without engagement and non-binding. Any representation of models and any information about dimensions, weights and technical data are non-binding and subject to production-related and model-related changes. Such changes shall not constitute a defect.

### 2. PLACING OF AN ORDER, CHANGE OF THE DELIVERABLE

- Orders must be placed in writing (by letter, fax or email or online ordering system). When Daikin confirms receipt of the order, this does not constitute an acceptance of the order. We are deemed to have accepted an order not until after we have explicitly confirmed acceptance in writing or actually executed that order. Any arrangement and agreement reached verbally and by phone must be confirmed in writing.
- We reserve the right to rescind the contract even after having accepted an order if information we have obtained about the customer's liquidity in the meantime suggests that the customer will not be able to pay for the entire or for part of the order.
- Having accepted an order, we also reserve the right to change and improve the deliverable, e.g. in respect of its type and design, to the extent the customer can be reasonably expected to accept such changes and improvements in consideration of our interests (e.g. delivery of an equivalent or more sophisticated device). Such changes and improvements are deemed approved in advance.
- The customer's cancellation or change of an entire or of part of an order requires our written consent and entitles us to charge the customer - in addition to the services already provided and costs accrued - a (cancellation) fee equal to 20 % of the order value and at least € 250. For certain product groups (e.g. multiple scroll, screw chiller), separate cancellation rules apply, which can be found at [www.daikin-ce.com](http://www.daikin-ce.com).

### 3. PRICES AND TERMS OF PAYMENT

- Prices are based on the price list, as amended from time to time, which is usually issued once a year. We reserve the right to change prices also during the year.
- Prices are understood to be net prices without any taxes, duties or charges in the quoted currency including packaging, unless otherwise indicated. We will not take back packaging and packing material.
- We will not accept any objections to invoices which are received more than two weeks after receipt of an invoice. Unless otherwise indicated, invoices are due net 30 days from the invoice date; the payment date is the date on which a payment is received by us. In case of late payment, we will charge default interest at a rate of 12% p.a. In case of default, we may also demand all costs related to the collection of our claim, including, without limitation, dunning and collection charges.
- If payment by instalments has been agreed, the maturity date will be accelerated if the customer is in default in respect of only one instalment.
- We may make deliveries dependent on advance payment.
- The customer may not withhold or offset payments in reliance on warranty or other claims.

### 4. DELIVERY TIME

- Indicated delivery times are non-binding and for reference only, although we endeavour to meet indicated deadlines. The customer has no right to insist on compliance with a certain delivery time. As a consequence, delays in delivery will not entail any claims for damages and do not entitle the customer to rescind the contract. The same holds true if delivery deadlines are not met due to force majeure, strike or other events outside our control.
- We will not accept penalty claims asserted by the customer under any circumstances.
- Partial deliveries are permitted.
- If the ordering party is in arrears on an earlier delivery, Daikin may withhold deliveries pending payment of the earlier delivery and is not required to pay to the ordering party any damages in this respect.

### 5. ACCEPTANCE OF DELIVERIES, TRANSFER OF RISK, DELAYED ACCEPTANCE

- Unless otherwise agreed, deliveries are made CIP (Incoterms 2010) to the named destination.
- In principle, delivery CIP covers only minimum transport insurance. Additional transport insurance will be purchased only if explicitly requested by customer and subject to a separate agreement and at the customer's cost and expense.
- The customer must immediately check deliverables received by him or directly by his customers for any transport damage and he must record any damage to the packaging or the device in the delivery note and shall refuse delivery towards the forwarding agent. If the customer finds out only later that goods are damaged, the customer shall report any such damage to us immediately, in no case later than three working days after delivery; otherwise, any insurance claim may expire.
- If the customer is in delay with acceptance, we - notwithstanding our other rights - may charge the goods as delivered or may otherwise dispose of them without setting a time limit. If we otherwise dispose of the goods, the delivery time will recommence on the day we receive the customer's written request calling for delivery of the goods.
- We may charge the customer for any costs incurred due to late acceptance, including, without limitation, any storage costs, waiting periods, etc..

### 6. RESERVATION OF TITLE

- We will retain title to goods delivered pending full payment of all claims arising from our business relationship with the customer, even if the purchase price for specifically designated claims was paid. If our conditional goods are processed, we will acquire title to the new item without consideration. If the goods delivered by us are mixed, processed or combined with other items, the customer hereby assigns to us in proportion of the value of our invoices an ownership or co-ownership right of the combined or new item, both in respect of the interim and the final products.
- The customer may resell goods delivered by us and the items created by processing, mixing or combining these only in the ordinary course of business. The customer hereby assigns to us any claims arising from such resale or from any other legal ground toward third parties, including, ancillary rights, in order to secure our - future - claims that may arise from our business relationship. The customer must record the assignment of these claims in his books not later than when the goods are resold.
- Before having paid the purchase price of an item, the customer may resell that item only if he simultaneously informs the second buyer (end customer) that the resale proceeds have previously been assigned.
- The customer may collect the assigned claims as long as he fulfils his payment obligations towards us according to the terms of the contract. The customer may not otherwise dispose of the conditional goods (e.g.: transfer of property by way of security, pledging).
- The customer must immediately inform us of any attachment or other impairment of the conditional goods and/or the assigned claims and explain to the third party that we have retained title to those goods. Any related cost will be borne by the customer.

### 7. WARRANTY

Unless otherwise agreed and excluding any further claims, we warrant for any defects and the absence of warranted qualities of the goods at the time of delivery as follows:

- Unless otherwise indicated below, the warranty period is 36 months of the delivery date (delivery to the forwarding agent). The customer bears the burden of proof that a defect had existed already at the time of delivery.
- The customer may assert a warranty claim only if the equipment is both installed and put into operation by Daikin or a company trained by Daikin according to the Daikin installation instructions and regularly maintained according to the Daikin service notes and/or operation instructions.
- No warranty and/or liability is accepted, unless the customer reports visible defects by giving written notice within 3 working days of delivery and any other defects are reported without delay after initial discovery.
- Unless otherwise agreed, Goods of "Daikin Applied Systems", which are manufactured on the basis of a specific order, such as chillers, heat pumps, condensing units (equipped with scroll, screw or centrifugal compressor), fan coil units (FCU) and air handling units / rooftop units under Daikin brand, generally include a 12-month warranty claim period, provided that the machine was put into operation by Daikin itself or by a person certified by Daikin. In case of products designated "J&E Hall International for Daikin" the customer may assert an 18-month warranty claim. For "Rotex" branded products generally a 24-month warranty period is valid except for following variations: 10 years for underfloor heating pipes and system plates, VA-piping and variosafe oil storage tanks. 5 years for solar panels, variosystem and highcube oil tanks and variocistern rainwater tanks. 3 years for HPSU heat pump solar unit and hot water storage tanks HYC, SCS and SC.
- In a warranty event, we undertake, at our discretion, to repair the defective goods or components or to make available faultless goods or components. There are no other warranty claims whatsoever. Labour cost, travel times, supplies, such as freezing agents and lubricants, or other costs (e.g. for installation, retrofitting) will not be reimbursed. Daikin, at its own discretion, will provide software updates from time to time. Updates may include error corrections, improvements as well as upgrades. Updates are provided to the customer in machine-readable and installable form, including installation instructions. The customer is required to install updates at his own cost and expense within a reasonable period of time. Any damage caused by a failure to install updates shall be the customer's sole responsibility, and Daikin does not accept any liability due to the failure to update a unit.
- In addition to paragraphs 2 to 3, no warranty and/or liability is accepted for defects that have been caused by inadequate or improper use or treatment, failure to observe operating conditions or maintenance instructions, excessive use or inadequate operating materials or substitute materials or spare parts not provided by Daikin. In addition, no warranty is accepted for usual wear and tear of wearing parts, including, but not limited to, filters, burner nozzles, carbon brushes of engines, couplings, electrodes, protection anodes, UV probes, grids, oil or other consumables.
- Unless we are granted the required time and opportunity to take all necessary warranty measures, we are released from any warranty claims and damages. If the customer continues to use defective goods, we warrant and/or are liable only for the original defect. We will not reimburse any cost of repairs which are carried out without our express prior consent. We disclaim any liability for the consequences of such repairs.
- The warranty period for spare parts and other improvements is 6 months of delivery (delivery to the forwarding agent).
- If a defect is remedied, the warranty period will not recommence for the replaced or repaired components.
- We may refuse to remedy defects as long as the customer is in default with his payment obligations.
- If third-party products are delivered and installed, warranty is restricted to assigning the warranty claims we may assert against the supplier of the third-party product. The customer may not assert any other warranty claims and does not qualify for any claims for a price reduction.

### 8. LIABILITY

We are liable for damage only if we demonstrably acted with intent or gross negligence. We disclaim any liability for slight negligence. We are particularly not liable for consequential damage (e.g. idle times due to wrong deliveries) and financial loss, lost profit, unachieved savings, loss of interest and any damage suffered from third-party claims against the customer, unless the foregoing is attributable to our intent or gross negligence. If damage is attributable to the defective condition of goods delivered to us, we are liable only to the extent the producer or upstream supplier is liable to us. Our liability does in any case not exceed the invoice value of the incriminated goods.

### 9. RETURNED GOODS

- Goods can be returned and exchanged only upon our express and written consent. We accept returned goods only with a minimum net value of € 100.00 per item and a maximum net value of € 50,000.00 per item and only provided that those goods are not damaged, have not been used, are in original packaging and are fit for resale. In particular, returns of already installed units (including chillers) and returns of any made to order units as well as spare parts are not permitted.
- The customer shall complete the "Request for Goods Return" form (available at the Daikin Business Portal <https://my.daikin.eu>) and send it to us to the fax number or email address provided by us within 10 calendar days after delivery, otherwise we will not accept the return.
- Goods must be returned freight paid at the risk of customer to the destination indicated by us.
- In every case of a return, a maximum of 80% of the net price charged by us to the customer will be credited. All standard returns will be subject to a restocking / administration charge of 20 % of the net price.
- All returns will be inspected by us. If goods are returned wrongly (i.e. not in compliance with paragraph 1. above), we may refuse the returns and have them returned back to the customer at the customer's risk and costs. Alternatively, we may charge a higher restocking / administration fee than the above mentioned 20%.
- Credit notes of any nature whatsoever will exclusively be offset against future deliveries.

### 10. INSTALLATION

It is the responsibility of the customer to install and commission the goods and to ensure its employees, agents and subcontractors or any other persons used by the customer to install and commission the goods are fully trained to do so and that the terms of any instructions or manuals provided with the goods are followed.

### 11. ENVIRONMENT, LICENCES

- The customer shall be responsible for all costs, charges, and expenses arising from or in connection with the decommissioning, recovery, recycling and disposal of all or part of the goods and shall not seek to recover such expenses or contribution from us.
- The customer is responsible for obtaining and complying with all relevant licenses, permissions, permits and consents from appropriate regulatory bodies and for complying with any other lawful authority in connection with the storage, installation, operation, use, maintenance, repair, transportation, decommissioning, recovery and eventual disposal of the goods.
- Where the customer sells all or part of the goods to another party, the customer may enter into a similar covenant with that party.

## 12. CONFIDENTIALITY

1. All information and/or advice, whether written or oral, whether in relation to the goods or to our business, given by us to the customer, shall not be disclosed to any third party without our prior written consent, 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.
2. The customer shall promptly give notice to us of any disclosure required by law and we may seek an appropriate remedy to prevent such disclosure. The customer undertakes to fully cooperate with us (at the customer's own expense) if we reject the validity of such a requirement.

## 13. INTELLECTUAL PROPERTY RIGHTS

1. The customer shall have no rights to any intellectual property owned by or licensed to us.
2. The customer shall not allow any trademark or instruction or warning applied to the goods to be obliterated or obscured.
3. All designs, samples, models, experimental equipment, marketing devices, 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.

## 14. PERSONAL DATA

1. The customer's personal data, which we received on the occasion of an order, will be electronically stored and processed for the purposes of fulfilling the order, providing goods and services to the customer, managing the relationship with the customer, for our internal accounting and processes and for legal or regulatory purposes. For some of these purposes we may need to share the customer's data with third parties but we always ensure that the data are kept confidential and protected by third parties.
2. The customer agrees that we may ask credit reference agencies and/or credit insurance companies to run credit searches or checks against the customer in order to assess the customer's financial performance and that we may pass on the customer information (name, address, contact details, name of owner, order details, order history, payment behavior, customer balance) to Atradius Credit Insurance N.V., Zweigniederlassung Österreich for this purpose.
3. The customer further agrees that we and other members of our group (as mentioned at [www.daikin.com](http://www.daikin.com)) may use the customer's personal data (name, address, contact details, order details and history) also for our own marketing purposes and contact the customer by phone, e-mail or SMS or other messaging service about our products and services which may be of interest to the customer. The customer may revoke his consent at any time.

## 15. PLACE OF JURISDICTION, APPLICABLE LAW

1. All disputes arising from or in connection with this Agreement shall be exclusively referred to the courts in Vienna.
2. All contracts concluded by us and all disputes arising in connection with those contracts shall be governed by and construed in accordance with Austrian law without giving effect to its conflict of law rules and the UN Sales Convention.

## 16. SEVERABILITY

Should any term of these commercial terms and conditions or of the contract concluded between us and the customer be invalid or ineffective, this shall not affect the remaining terms hereof or thereof. Invalid terms shall be replaced by lawful terms which closest reflect the parties' intent.

## II. COMMERCIAL TERMS AND CONDITIONS FOR SERVICES

The following conditions shall apply to services provided by our customer service, such as installation, putting into operation, inspection and troubleshooting, repair and maintenance.

### 1. SCOPE OF SERVICES

1. The precise scope of service results from our written offer or our written confirmation of order. Any additional services not expressly indicated in the offer and/or the confirmation of order and provided by us on the customer's request will be charged separately pursuant to our applicable price list. The same shall apply if an on-site inspection provides that further services are required.
2. In case of remote monitoring units, our customer service will take action only if instructed by the customer.

3. We provide services only for the equipment and unit components delivered and/or produced by us. The scope of services therefore does not include a test of third-party components, a leak test of supply pipes created by the customer, a test of electric supply and/or connection lines, a hydraulic adjustment of the unit. In case of units consisting of third components, our services do not include an inspection of the entire unit. We will in particular not check whether the unit is complete and whether its safety devices are consistent with pertinent regulations and the state of the art.
4. We are not required to check whether information provided and documents (e.g. descriptions of units, schemes) supplied by the customer are correct.

### 2. COST ESTIMATES

1. Cost estimates are non-binding and without engagement.
2. If we provided a cost estimate or a package offer, we will obtain prior consent by the customer in respect of any necessary additional work that can only be identified upon execution, is required to create operability and exceeds 10% of the sum total.

### 3. DUTIES TO COOPERATE

1. The customer shall ensure that any cooperation required for the provision of services owed by us is granted timely and free of charge.
2. The customer shall in particular grant access to the units as required. The customer shall provide at the customer's own cost and expense all necessary technical requirements (e.g. power supply), unless such requirements are to be provided by us under a special agreement. The customer shall ensure that the respective operating site is sufficiently lit. If required, the customer shall provide ladders and scaffolding to enable our employees to easily access the site safely. The operating site must be easily accessible with a customer service vehicle.
3. The customer shall ensure that remote monitoring units are linked to the telecommunications network.
4. The customer shall provide all necessary information and documents to enable a smooth provision of the agreed services. Before the provision of services commences, the customer shall in particular disclose any change made by the customer or third parties to standard settings, the control system and other parameters as well as any damage to the unit the customer is aware of.
5. When a unit is put into operation, the customer shall also provide the requirements referred to in our related conditions.
6. If the customer does not properly cooperate, we may discontinue our work. In addition, the customer shall bear all related extra costs, including idle times of our employees who cannot be used otherwise on short notice, as well as any costs for additional travel time, based on the applicable prices of our price list.

### 4. PRICES AND TERMS OF PAYMENT

1. Prices for services are based on the service price list applicable when an order is placed, unless our written offer provides otherwise.
2. Services will generally be charged based on time actually spent at the agreed hourly rates plus travel expenses based on flat fees or time actually spent (km and time).
3. Our regular service times are from Mon-Thu from 8 a.m. to 5 p.m. and on Friday from 7 a.m. to 12.30 p.m. A 50% surcharge on regular compensation will be charged outside such service times. A 100% surcharge on compensation will be charged for work provided on Sundays and public holidays and from 8 p.m. to 7 a.m.
4. Spare parts will be charged on the basis of the price list applicable on the date of replacement of a unit component. We shall retain title to spare parts pending full payment of an invoice.
5. Invoices will be issued after performance of service.
6. If an order is cancelled by the customer, the customer will be charged 50% of the order value plus travel expenses, but at least EUR 250.00.
7. Unless otherwise indicated, invoices shall be due and payable without deduction immediately after invoicing.
8. Otherwise, Section 4 (Prices and Terms of Payment) of our terms and conditions of sale shall apply mutatis mutandis.

### 5. WARRANTY

1. We warrant for the diligent, professional provision of services. All services will be provided by qualified employees.
2. No warranty is accepted, unless the customer gives written notice of visible defects within 3 working days of performance of the service and of any other defects without delay after initial discovery.
3. Otherwise, Section 8 (Warranty) of our terms and conditions of sale shall apply mutatis mutandis.

### 6. MISCELLANEOUS

Unless otherwise provided herein, the provisions of our terms and conditions of sale, especially those concerning delivery times, reservation of title, liability, environment and licenses, personal data, jurisdiction and applicable law shall apply to services mutatis mutandis.

The Daikin commercial terms and conditions are also available on the internet at [www.daikin-ce.com](http://www.daikin-ce.com)

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