



DAYTON
PHOENIX
GROUP

engineered to move

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Dayton Phoenix Group Terms and Conditions of Sale

1. **Parties and Definitions.** Dayton-Phoenix Group, Inc., an Ohio corporation, will be referred to as "Seller" and any customer indicated on the reverse side or preceding pages of this document will be referred to as "Purchaser." All materials, goods, or work described on the reverse side or preceding pages of this document, regardless of type, will be referred to as "Products." The below terms and conditions and the specific terms on the reverse side or preceding pages of this document will be referred to as the "Terms and Conditions."

2. **Terms and Conditions.** Seller's willingness to offer Products, or accept an order for Products, to or from Purchaser is expressly conditioned on Purchaser's assent to these Terms and Conditions. Seller objects to any contrary or additional terms or conditions of Purchaser's order or any other document issued by Purchaser. Purchaser, by accepting any goods covered by these terms, is conclusively deemed to accept these Terms and Conditions. Seller will not be bound by any modification or addition to these Terms and Conditions unless the modification is in a written instrument signed by two of Seller's officers. To the extent that the parties' course of dealing and/or industry practice differs from or conflicts with these Terms and Conditions, these Terms and Conditions comprise the parties' intention that they take precedence over any course of dealing or any usage of trade.

3. **Price Adjustments.** Prices stated on the reverse side or preceding pages of this document are valid for 30 days. After 30 days, Seller may change prices to reflect any increase in its costs resulting from state, federal or local legislation, price increases from its suppliers, or any change in the rate, charge, or classification of any carrier. Seller makes no representation regarding the prices quoted to Purchaser in relation to those quoted to other customers. Seller is under no obligation to reduce the prices quoted or charged to Purchaser for any reason.

4. **Taxes.** Prices do not include any sales, use, or other taxes. If Seller is required to collect taxes from Purchaser, taxes are in addition to the prices stated. If Seller does not collect any taxes and is later asked by or required to pay them, Purchaser will reimburse Seller or, if requested by Seller, pay them directly to the taxing authority.

5. **Payment.** Unless otherwise specified by Seller, all prices are F.O.B. Seller's facility, and payment is due 30 days from the date of Seller's invoice. After 30 days, Purchaser shall pay interest on any unpaid invoices at the rate of 1.5% per month or the maximum allowable rate under applicable law.

6. **Delivery Dates; Title and Risk; Shipment.** All delivery dates are approximate, and Seller shall not be responsible for any damages resulting from any delay. In the event of a delay, Purchaser shall have no right to cancel an order, nor will it be entitled to access Seller's facility to expedite a delivery or for any other reason. Regardless of the manner of shipment, title to any products and risk of loss or damage shall pass to Purchaser upon tender to the carrier at Seller's Facility (i.e., when it's on the truck, it's yours). Purchaser's acceptance of all or any part of the Products deprives Purchaser of the right to revoke acceptance and return any part of the Products. Acceptance of part of the Products binds Purchaser to accept the remainder. Unless otherwise stated on the reverse side or preceding pages, Seller may select any carrier, means of delivery, and packaging material. Seller shall have no duty to package Products to obtain the best transportation rates. Seller will not defer shipment at Purchasers' request beyond the delivery date(s) on the reverse side or preceding pages unless Purchaser agrees to indemnify, defend and save Seller harmless against all loss and additional expense, including, but not limited to demurrage, handling, storage and insurance charges. Seller reserves the right to make material commitments and production arrangements in excess of the amount or in advance of the time necessary to meet any agreed upon delivery schedule. Seller, at its discretion, may ship Products to Purchaser in advance of any delivery schedule. Seller shall be entitled to charge Purchaser reasonable packing and cartage charges.

7. **Warranty.** Seller warrants to Purchaser (the "Warranty") that, for the applicable period indicated below (commencing on the date of manufacture, as evidenced by the product serial number) (the "Warranty Period"), the Products will conform to the drawings, samples or descriptions furnished to or by Purchaser and will be merchantable, of good material and workmanship and free from material defects. The warranty does not cover brushes on direct current motors or fluids. The applicable Warranty Period is as follows for each class of Product:



<u>Type of Product</u>	<u>Warranty Period</u>
1. New rotating electrical products	24 months
2. New dynamic braking resistors	24 months
3. New heating, ventilating and air conditioning (HVAC) products	24 months
4. Remanufactured rotating electrical products	24 months
5. Remanufactured HVAC products	24 months
6. All new and remanufactured products not listed in #1-#5 above (including "mechanical products")	12 months
7. Out-of-warranty products repaired at a Seller's service center (repaired component(s) only)	12 months

Seller's sole obligation with respect to the Warranty shall be at Seller's sole option: (i) to repair or replace any part of a product covered by the Warranty that malfunctions because of defects in material or workmanship, or (ii) to refund to Purchaser the purchase price of such product. The Warranty shall continue for products repaired under the Warranty for the remainder of the original Warranty Period and shall then terminate.

The Warranty does not cover any defect or malfunction of a product resulting from misuse, negligence or accident, improper connections, improper assembly of the product to the driven equipment, operation of the product not within the specifications shown on the name plate, alterations to the product not approved in writing by Seller, failure to perform normal maintenance on the product, improper storage, handling or installation of the product, or performance of unauthorized service to the product. Seller shall not be liable for the cost of any labor for removal or installation of any Product.

If Seller elects to repair or replace products covered by the Warranty, Seller (or an authorized Service Center of Seller's choosing) will make such repair or provide such replacement within a reasonable time following delivery of the Product to Seller's specified place of business. Products must be delivered to Seller within the applicable Warranty Period, transportation and handling charges prepaid (including all Products sold or shipped outside of the continental United States), with a valid return authorization number. Seller shall not be required to service Products without an assigned return authorization number. Seller will return the replacement or repaired Product to Purchaser, transportation and handling charges prepaid. If a Product not covered by the Warranty is shipped to Seller, Seller may return the Product to Purchaser, "as is", transportation and handling charges collect.

THE WARRANTY IS THE ONLY WARRANTY APPLICABLE TO ANY PRODUCTS SOLD TO PURCHASER BY SELLER, IS THE SOLE REMEDY AVAILABLE TO PURCHASER WITH RESPECT TO DEFECTIVE OR NONCONFORMING PRODUCTS AND IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY NON-CONTRACTUAL LIABILITIES BASED UPON NEGLIGENCE OR STRICT LIABILITY. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH ITS PRODUCTS.

8. **Claims; Commencement of Actions.** Purchaser shall promptly inspect all Products upon delivery. No claims for shortages will be allowed unless reported to the Seller within 10 days of delivery. No other claims against Seller will be allowed unless asserted in writing within 60 days after delivery or, in the case of an alleged breach of warranty, within 30 days after the date within the warranty period on which the defect is or should have been discovered by Purchaser.

Any action based against Seller arising out of this sale (other than an action by Seller for any amount due to Seller by Purchaser) must be commenced within one year from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the warranty period on which the defect is or should have been discovered by Purchaser.

9. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S WRITTEN CONSENT, EVEN THOUGH SELLER HAS BEEN NEGLIGENT, WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY PURCHASER EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

10. **Force Majeure.** Seller shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay in transportation facilities; shortages or breakdown of or inability to obtain or non-arrival of any labor, material or equipment used in the manufacture of the Products; failure of any party to perform any contract with Seller relative to the production of the Products; and from any cause whatsoever beyond Seller's control.



11. **Inspection or Audit.** Purchaser shall not be entitled to inspect or audit Seller's facilities or any of Seller's suppliers' facilities, except with Seller's written consent and upon terms that will indemnify, defend and save Seller harmless against all direct, incidental and consequential loss or damage. If Seller grants Purchaser permission to inspect a facility, Seller shall not be responsible for any expenses or accommodations related to the inspection.

12. **Disclaimer of Representations, Warranties, Certifications.** UNLESS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS, SELLER MAKES NO REPRESENTATION, WARRANTY, OR CERTIFICATION OF ANY KIND, NOR SHALL SELLER BE REQUIRED TO MAINTAIN OR PROVIDE PROOF THEREOF TO PURCHASER. Seller shall not be required to provide any particular documentation with any shipment of Product, nor to maintain any particular document or protocol of manufacture or inspection, except those required by law. Purchaser may not withhold payment due to Seller's failure to provide or maintain documentation related to Products.

13. **Special Tooling.** A tooling charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns, acquired to manufacture items sold pursuant to this contract. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges by Purchaser. In no event will Purchaser acquire any interest in an apparatus belonging to Seller, which is utilized in the manufacture of the items sold hereunder, even if such apparatus has been specially converted or adapted for such manufacture and notwithstanding any charges paid by Purchaser. Unless otherwise agreed, Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property in its sole discretion at any time.

14. **Loss to Purchaser's Property; Patent, Trademark, or Copyright Infringement, Etc.** Seller shall not be liable for, and shall have no duty to provide insurance against, any damage or loss to any goods or materials of Purchaser, which are used by Seller in connection with this order. Any property furnished by Purchaser to Seller shall be held and used by Seller at Purchaser's risk. Seller shall incur no liability for damage to Purchaser's property and shall not be required to purchase insurance that specifically covers Purchaser's property nor indemnify Purchaser in the event of damage or loss to Purchaser's property. Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Purchaser or any other items which become Purchaser's property, may be considered obsolete and may be destroyed by Seller after two (2) consecutive years have elapsed without Purchaser placing an order for the items which are manufactured using such property.

Where any Product is manufactured from patterns, plans, drawings, or specifications furnished by Purchaser, Purchaser shall indemnify, defend and save Seller harmless from all loss, damage, and expense arising out of any suit or claim against Seller for infringement of any patent, trademark, or copyright because of Seller's manufacture of such Product or because of the use or sale of such Product by any person. This indemnity shall survive cancellation, termination or expiration of the agreement or any order. Upon Seller's request, Purchaser shall appear in and assume the defense of the litigation. In the event Purchaser is enjoined from using Products not made in accordance with Purchaser's specific designs, Purchaser's options shall be limited to those stated in Paragraph 7 and its possible remedies limited in accordance with Paragraphs 7 and 8 of these Terms and Conditions. Seller reserves all rights to any invention, improvement, or discovery, which is derived or conceived of and reduced to practice in connection with Seller's fulfillment of Purchaser's order.

15. **Specifications, Technical Data, and Intellectual Property.** Seller shall at all times retain title to any specifications, drawings, plans, notes, instructions, engineering notices, technical data or other documents disclosed and/or furnished to Purchaser by Seller. Purchaser agrees to hold these documents, the information contained in the documents, and any other confidential or proprietary information provided by Seller, in confidence and not disclose them to any party other than Seller or a party duly authorized by Seller. Upon Seller's request, Purchaser shall promptly return these documents, as well as any copies, to Seller. Unless otherwise agreed to in writing by Seller and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications for or to Products or other goods or services, shall exclusively belong to Seller.

16. **Availability of Products.** Seller shall be under no obligation to make Products, including subcomponents or spare parts of Products, available to Purchaser or Purchaser's customers, except to the extent necessary to fulfill the specific order referenced on the reverse side or preceding pages of this document. Seller shall likewise not be obligated to provide technical support or service other than that specified in these Terms and Conditions or specifically referenced on the reverse side or preceding pages of this document. In the event Seller discontinues a Product, Seller shall not be obligated to ensure Purchaser or Purchaser's customers have continued access to that Product (e.g., by the provisions to Purchaser of plans or know-how) but will make a good faith effort to direct Purchaser to a similar product that might meet Purchaser's needs.

17. **Purchaser's Obligation; Rights of Seller.** To secure payment of all sums due or otherwise, Seller shall retain a security interest in the goods delivered and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Purchaser authorizes Seller as its attorney to execute and file on Purchaser's behalf all documents Seller deems necessary to perfect its security interest. In the event of non-payment, Seller and Seller's suppliers shall have the right to assert a lien against Product delivered to Purchaser. Seller shall also have a security interest in, and lien upon, any property of Purchaser in Seller's possession as security for the payment of any amounts owed to Seller by Purchaser. Under no circumstance shall Purchaser be entitled to withhold or retain monies payable to Seller for Products purchased by Purchaser, even if Purchaser believes Seller has an obligation to pay Purchaser for any reason. An assertion of a lien against Purchaser's Product shall not excuse Purchaser from paying Seller's invoices.



If Seller shall at any time doubt Purchaser's financial responsibility, Seller may demand adequate assurance of due performance or decline to make any further shipments except upon receipt of cash payment in advance or security. If Seller demands adequate assurance of due performance and the same is not forthcoming within 10 days after the date of Seller's demand, Seller may, at its option, (i) continue to defer further shipments under this order and/or any other order from Purchaser which has been accepted by Seller until adequate assurance is received, or (ii) cancel this order and/or any other orders from Purchaser which have been accepted by Seller and recover damages. If Purchaser fails in any way to fulfill the terms and conditions in this document, Seller may defer further shipments until such default is corrected or cancel this order and recover damages.

18. **Advice or Assistance and Purchaser's Responsibility.** Use of or reliance upon Seller's recommendations or advice as to use of Products shall be at Purchaser's risk. Seller assumes no liability or responsibility for any acts, misuse of product, advertising, and violations of any local, state or federal regulations or laws violated by the Purchaser. Purchaser assumes all responsibility for his/her acts and is responsible for researching local, state or federal regulations relating to the sale or use of Seller's Products.

19. **Improper use and Indemnity.** Purchaser shall indemnify, defend, and hold Seller harmless from any claim, liability, damages, lawsuits, and costs (including attorneys' fees), whether for personal injury, property damage, patent, trademark or copyright infringement or any other claim, brought by or incurred by Purchaser, Purchaser's employees, or any other person, arising out of: (a) improper selection, improper application or other misuse of Products purchased by Purchaser from Seller; (b) any act or omission, negligent or otherwise, of Purchaser; or (c) Purchaser's failure to comply with these terms and conditions. This indemnity shall survive cancellation, termination or expiration of the agreement or any order. Seller shall not indemnify Purchaser under any circumstance.

20. **Cancellations and Changes.** Orders shall not be subject to cancellation or change by Purchaser for any reason, except with Seller's written consent and upon terms that will indemnify, defend and save Seller harmless against all direct, incidental and consequential loss or damage. An order may not be suspended by Purchaser without Seller written consent. In the event an order is suspended, Seller shall not be obligated to recommence work until the parties have agreed on the Product's price and delivery schedule.

21. **Limitation on Assignment.** Purchaser may not assign its rights or obligations under these Terms and Conditions without the prior written consent of Seller. Any purported assignment of rights or obligations without Seller's prior consent shall be void. Seller may assign or subcontract work under Purchaser's order at any time without Purchaser's consent. Purchaser shall not be entitled to any right or benefit under any assignment or subcontract made by Seller.

22. **Export.** If the Products are to be exported, this order is subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Purchaser will furnish all Consular and Custom declarations and will accept and bear all responsibility or penalties related to any errors and omissions. Purchaser shall not re-export the Products or any goods or items which incorporate the Products if the re-export would violate United States export laws.

23. **Equal Opportunity Clause.** This clause applies only in the event that the Products are to be used in whole or in part for the performance of government contracts and where dollar value of said Products exceeds, or may in any one year exceed \$10,000: "The equal employment opportunity clauses in Executive Order 11246 and VEVRRA, as well as the equal employment opportunity provisions contained in 41 C.F.R. §§ 60-1.4(a), 60-741.5(a), and 60-250.4, are hereby incorporated to the extent applicable."

24. **Insurance.** Purchaser has obtained a minimum of \$4,000,000 commercial general liability insurance coverage that provides coverage for manufacturing defects, design defects, failure to warn, and negligence involving any good or product in which Products or parts of Products are used. Upon request, Purchaser will provide Seller a certificate of insurance showing compliance. Compliance by Purchaser of this insurance requirement does not affect Purchaser's indemnification or any other liability related to these Terms and Conditions. Seller shall be under no obligation to carry insurance other than that required by law.

25. **Other Rights or Remedies.** Any rights or remedies granted to Seller in these Terms and Conditions shall be in addition to, and not in lieu of, any other rights or remedies at law or in equity.

26. **Entire Agreement.** These Terms and Conditions, and the terms on the reverse side or preceding pages of this document, contain the entire agreement between the Purchaser and Seller and constitute the final, complete and exclusive expression of the terms of any agreement. All prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter are herein merged.

27. **Waiver and Severability.** No waiver of any breach of any provision of this order shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision. In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, that provision shall be ineffective to the extent of its violation without invalidating any other provision.



28. **Legal Matters.** These Terms and Conditions and the sale and delivery of all Products hereunder shall be deemed to have taken place in and shall be governed and construed in accordance with the laws of the State of Ohio, as applicable to contracts executed and wholly performed therein and without regard to its conflicts of laws principles. Purchaser irrevocably agrees and consents to the exclusive jurisdiction and venue of courts sitting in Ohio with respect to any dispute, controversy or claim arising out of or relating to these Terms and Conditions and the purchase of Products. In the event of a dispute, the parties agree that their respective counsel and their project representatives familiar with the issue will schedule a meeting (by phone or in person) to discuss the dispute and attempt in good faith to resolve the dispute. If after such discussions, either of the parties concludes that no resolution of the dispute is possible, then the dispute shall promptly be referred to non-binding mediation in accordance with the model mediation procedure recommended by the CPR Institute for Dispute Resolution or such other mediation procedure as the parties may subsequently agree to. If the Dispute is not resolved after completion of such mediation, the parties are free to pursue any available legal remedy, action, or proceeding. Disputes between the parties shall not be settled by arbitration unless, after a dispute has arisen, both parties expressly agree in writing to arbitrate the dispute. Purchaser agrees that any breach of these Terms and Conditions by Purchaser will cause Seller to suffer irreparable harm, the extent of which would be difficult to determine, and money damages would be inadequate in the event of such breach. Accordingly, Purchaser agrees that, in the event of a breach by Purchaser, Seller will be entitled to specific performance and injunctive and other equitable relief, as a court deems appropriate. In the event Seller institutes a legal proceeding against Purchaser to collect any monies due under the terms of this transaction, or if Seller successfully defends any lawsuit instituted by Purchaser, whether based on contract, tort or any other legal theory of recovery, Seller shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from Purchaser.

