



## Indirect Purchasing General Terms and Conditions

### 1. Agreement

Seller agrees to sell and deliver the goods or services specified in Behr's order in ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE ORDER, THE TERMS OF THIS FORM AND ANY SIGNED DOCUMENTS REFERENCED IN THE ORDER, all of which constitute the entire and final agreement of the parties and cancels and supersedes any prior or contemporaneous negotiation or agreements. BEHR'S ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS OF THE ORDER AND ANY ADDITIONAL OR DIFFERENT TERMS, WHETHER CONTAINED IN SELLER'S FORMS OR OTHERWISE PRESENTED BY SELLER, ARE REJECTED UNLESS EXPRESSLY AGREED IN WRITING BY BEHR AND SELLER SPECIFICALLY WAIVES ITS SIGNED ACCEPTANCE OF THIS ORDER BY BEHR. "Order" means a purchase order transmitted to Seller via Behr's Electronic Data Interchange System or delivered to Seller in a paper format.

### 2. Acceptance

This order constitutes Behr's offer to Seller and is not binding on Behr until accepted by Seller. Seller accepts the order by delivery of the goods, rendering services, or the commencement of work on goods to be specifically manufactured for Behr pursuant to this order.

### 3. Delivery

Time is of the essence. Delivery must be effected within the time specified in Behr's order, or in accordance with Behr's releases or procedures, if so indicated in the Order. If Seller fails to make deliveries or perform services at the agreed time, all damages suffered by Behr and any premium transportation or other costs required to meet the specified delivery schedule will be at the expense of Seller.

As soon as the supplier sees that he is experiencing difficulties with the procurement of materials, manufacture etc.; which could prevent him from supplying the goods within the stipulated period, he shall inform Behr of this fact immediately.

### 4. Packing, Marking and Shipment

Seller will pack and mark goods in accordance with Behr's instructions, secure the lowest transportation rates, meet carrier requirements and assure delivery free of damage and deterioration. Seller is responsible for the goods until delivery according to the delivery terms on the Purchase Order. Prices specified include all charges and expenses for containers, packing and crating, and transportation. All containers, packing and crating materials will become the property of Behr on delivery. Behr may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipment of the goods according to the delivery terms on Purchase Order. A packing slip must accompany each such shipment. If a shipment is to a consignee or agent of Behr, a copy of the packing slip shall be forwarded concurrently to Behr. If no such packing slip is sent, the count or weight by Behr or its agent or consignee is agreed to be final and binding on Seller with respect to such shipment.



## 5. Release Authorization

When deliveries are specified to be in accordance with Behr's written releases, the releases constitute a binding obligation on the Seller, and Seller will not fabricate or assemble any goods, nor procure required materials, nor ship any supplies except to the extent authorized by such written releases or provisions of this order specifying minimum fabrication or delivery quantities.

## 6. Inspections and Rejections

Behr may inspect and evaluate all goods (including all tooling and material used in their manufacture), and all services at times and places designated by Behr. Seller will perform its inspections as designated by Behr and Seller will make inspections systems, procedures and records available to Behr upon request. Notwithstanding payment or any prior inspection, Behr may reject, require correction, or return the goods to the Seller (at Seller's expense and risk of loss) any goods delivered or services rendered that do not conform to applicable requirements. Without limiting its remedies, after notice to Seller, Behr may either (i) replace or correct any nonconforming goods or services and charge Seller the cost of such replacement or correction, or (ii) cancel the order for default under Section 20 hereof.

## 7. Competitiveness

Seller shall be competitive in price, quality, capacity, delivery or timeliness. Behr may audit Seller to verify Seller's competitiveness. In the event that Behr determines in good faith that Seller fails to be competitive, Seller agrees to provide an action plan and timetable within ten (10) days of such determination to cure the deficiency. If Seller fails to provide a plan in a timely manner or the plan fails to cure the deficiency within the agreed upon timetable, Behr may at its option withdraw the non-competitive products from this Order and serve notice to terminate, according to Section 23, the obligations of the parties under this Order with respect thereto, effective upon the date specified by Behr in such notice.

## 8. Excusable Events

(a) Neither Behr nor the Seller will be liable for a delay or failure to perform directly due to an Excusable Event. An Excusable Event is a cause or event beyond reasonable control of a party that is not attributable to its fault or negligence. Excusable Events include fire, flood, earthquake, and other extreme natural events, acts of God, riots, civil disorders, and war or acts of terrorism whether or not declared as such by a Government. In every case, the failure to perform must be beyond the reasonable control, and not attributable to the fault or negligence, of the party claiming the Excusable Event. Excusable Events also include delays or nonperformance of a subcontractor, agent or supplier of a party only if and only to the extent that the cause or event would be an Excusable Event as defined in this Section 8. Excusable Events do not include the failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import, or other Government Requirement of which public notice has been given.

(b) The party claiming an Excusable Event will provide the other party with written notice of its occurrence and its termination as soon as practicable.

(c) In the event of an Excusable Event, Behr, at its option, may acquire possession of all finished goods, work-in-process, and raw materials produced or acquired for the work under the Order.



(d) Behr reserves the right to acquire the goods elsewhere for the duration of the Excusable Event and for a reasonable time afterwards to minimize production disruptions until the Seller's facilities are producing the goods in the quantities required by the Order or releases and to reduce accordingly any quantity of goods ordered under an outstanding release.

(e) Behr may terminate an Order, in whole or in part, upon written notice to the Seller if an Excusable Event has occurred resulting in a failure or delay to perform that has lasted for more than three (3) consecutive months after the date of the written notice from the party claiming an Excusable Event is effective (as described in Section 27). In the event of a termination by Behr, Section 22 applies.

## 9. Labor Disputes/Bankruptcy

a.) Seller will notify Behr immediately of any actual or potential labor dispute delaying or threatening to delay timely performance of this order, and will include all relevant information to Behr. Seller will notify Behr in writing six (6) months in advance of the expiration of any current labor contract(s). If requested by Behr, Seller will deliver a supply of finished goods at least thirty (30) days prior to the expiration of any such labor contract, in quantities and for storage at any place or places designated by Behr.

b.) Seller will notify Behr immediately of any foreseeable or potential bankruptcy in the sellers company or its affiliates.

## 10. General Warranty

Seller warrants that the goods or services will (i) comply with all specifications, drawings, descriptions or samples furnished and/or specified by Behr, (ii) be merchantable, and (iii) be free from defects in material and workmanship. Seller further warrants that all goods not designed by Behr will be fit and sufficient for the purpose intended. Seller further warrants that on delivery Behr will receive good title to the goods and services, free and clear of all liens and encumbrances and that all goods and services will be free from any actual or claimed patent, copyright or trademark infringement. These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Behr.

## 11. Recall or Repair Campaign

In the event it is determined that a good or service of Seller purchased hereunder creates or contributes to a vehicle repair campaign or safety recall due to a vehicle defect, or non-compliance with applicable law, Seller shall pay the cost of repair or recall and correction, including labor and administrative costs, based upon Seller's proportionate responsibility for the defect or non-compliance. This section shall not limit Seller's responsibility under other provision hereof.

## 12. Price Warranty

Seller warrants that the prices for the goods or services sold to Behr hereunder are no less favorable than Seller currently extends to any other customer for the same or similar goods or services in similar quantities. If Seller reduces its prices to others for such goods or services during the term of this order, Seller will reduce the price to Behr for such goods or services correspondingly. Seller warrants that prices shown on this order are complete, and that no additional charges of any type will be added without Behr's express written consent.



### 13. Property and Special Tooling

(a) Behr or its customer becomes the sole owner of all tools, equipment, material, drawings, manufacturing aids and replacement of the foregoing as soon as it is fabricated or acquired by Seller for use in the performance of this Order ("Special Tooling"). Behr or its customer takes title to the Special Tooling even if Seller has not yet been completely paid for the Special Tooling. Ownership of Behr or its customer will not relieve Behr or its customer of its obligation to pay for the Special Tooling nor affect any claim of Seller for payment under a production tool order.

(b) Unless otherwise provided in this Order, property of every description, including, but not limited to, all tools, equipment, material, drawings, manufacturing aids and replacements of the foregoing

furnished by Behr, either directly or indirectly, or Special Tooling, will be (i) the property of Behr or its customer, (ii) plainly marked or otherwise adequately identified by Seller as such, and (iii) safely stored separate and apart from Seller's property.

(c) Seller will adhere to the Behr procedure in effect at the time for submitting requests for reimbursements for tooling costs. All requests for reimbursements for tooling costs are subject to review, approval and audit by Behr.

(d) Seller will retain and not use or rework tooling or property of Behr except for performance of work hereunder or as authorized in writing by Behr. Seller will keep such tooling or property in its possession and/or control in good condition, fully covered by insurance, free of liens and encumbrances and will replace such tooling or property when lost, damaged or destroyed.

(e) All Behr tooling or property will be transferred as Behr may direct at any time. If Seller makes any unauthorized transfer of Special Tooling, Seller will reimburse Behr for any costs incurred by Behr in returning the tooling to Behr or moving the tooling as directed by Behr.

### 14. Insurance and Indemnification

(a) Insurance. Seller will provide worker's compensation, comprehensive general liability inclusive product liability, automobile, public liability, and property damage insurance in amounts and coverage sufficient to cover all claims hereunder. Such policies will name Behr as an additional insured thereunder and shall contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for Behr. Behr may require Seller to furnish evidence of the foregoing insurance but failure to comply with these insurance requirements will not relieve Seller of its liability and obligations under this clause. Behr's action or inaction will not act as a waiver of any of Behr's rights described in this clause.

(b) Indemnification. Seller will defend, indemnify, and hold Behr harmless against all claims, liabilities, losses, damages, and settlement expenses, including Behr's attorney's fees, in connection with any breach by Seller of these general conditions or for injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of Seller or its employees, agents, or subcontractors in connection with performing this order, either on Behr's property or in the course of their employment.



## 15. Changes

Behr may, at any time, make changes in this order. Modifications to the delivery item shall not lead to price increases unless Behr approves in writing before the modification is carried out.

## 16. Claims Adjustment

Behr may at any time and with reasonable notice deduct or set-off Seller's claims for money due or to become due from Behr against any claims that Behr has or may have arising out of this or any other transaction between Behr and Seller.

## 17. CUSTOMS

(a) Seller will promptly notify Behr in writing of material or components used by Seller in filling this Order, which Seller purchases in a country other than the country in which the goods are delivered to Behr. Seller will furnish Behr with any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Behr of any material or components imported into the country of origin and any duty included in the purchase price of the goods.

(b) The rights to and benefits of any duty drawback, including rights developed by substitution and rights which may be acquired from Seller's suppliers and export credits, to the extent transferable to Behr, are the property of Behr. Seller will provide all documentation and information and take any necessary steps to drawback any duty, taxes or fees paid to, and to receive export credits from, the government of the country of origin upon exportation of the goods from such country.

(c) The responsibility for customs duty and customs brokers' fees will be determined in accordance with the transportation code stated in this Order. If Behr is responsible for customs duties, it will be responsible for normal duties only. Seller will be responsible for any special duties, including, but not limited to, marking, anti-dumping and countervailing duties, to the extent permitted under the law of the country of importation. Seller will provide to Behr or the appropriate governmental authority all documentation and information required by law or regulation or otherwise necessary to determine the proper minimum duty to be paid upon the importation of the goods into any country or to obtain any refunds or drawbacks of duties paid.

(d) Seller will advise Behr if the importation or exportation of the goods requires an import or export license. Seller will assist Behr in obtaining any such license.

(e) Seller shall ensure a customs declaration to the lowest legal tariff classification. Seller will provide to Behr and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the goods into the country in which the goods are delivered to Behr. Seller warrants that the information regarding the import or export of the goods supplied to Behr is true and correct in every respect and that all sales covered by this Order will be made at no less than fair value under the anti-dumping laws of the countries to which the goods are exported.

## 18. Use of Behr's Name

Seller will not, without the prior written consent of Behr, in any manner publish the fact that Seller has furnished or contracted to furnish Behr goods and/or services, or use the name or trademarks of



Behr, its products, or any of its associated companies in Seller's advertising or other publication. If Seller places on the goods a Behr trademark and/or identifying mark, as specified by Behr, or if goods specified in this order are peculiar to Behr's design, they will not bear the trademark or other designation of the maker or Seller and similar goods will not be sold to anyone other than Behr.

## 19. Information Disclosed

The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by Behr in connection with the performance of this order are the property of Behr and may be covered by one or more Behr patents, patent applications or copyrights. Seller will handle all of this information in such a manner to insure that it is not used for any purpose detrimental to the interests of Behr. Unless expressly provided in this order or otherwise agreed to in writing by Behr, Seller's disclosure rights regarding products or services related to this order, and information relating thereto shall be limited to any valid copyright thereon or patent Seller may hold covering the manufacture, use and sale of the products or services.

## 20. Patents

No rights are granted to Seller under any Behr patents except as may be necessary to fulfill Seller's obligations under this order. Seller agrees to defend all suits, actions, or proceedings which may be brought against Behr, any of its associated companies or its customers for alleged infringement of any proprietary interest resulting from the use or sale of the goods or services provided hereunder and to pay all expense and fees of counsel which may be incurred in defending, and all costs, damages, or other recoveries in every such suit.

## 21. Assignment

This order will not be assigned or delegated, in whole or in part, without Behr's prior written consent.

## 22. Termination without cause

Behr may terminate this order at any time without cause in whole or in part by written notice, whereupon Seller will stop work on the date and to the extent specified in such notice and terminate all orders and subcontracts that relate to the terminated order. Within thirty (30) days after receipt of termination notice, Seller will submit all claims resulting from such termination. Behr will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. Behr will pay Seller not more than one (1) month of finished work accepted by Behr as well as not more than one (1) additional month for the documented cost to Seller of work in process and raw material allocable to the terminated work which is not in excess of any prior Behr authorization. Payment made under this Section 22 will constitute Behr's only liability for termination hereunder with title and right of possession to all delivered goods and services vesting in Behr immediately on Behr's tender of such payment. The provision of this Section 22 will not apply to any cancellation by Behr for default by Seller or for any other cause recognized by law or specified by this order.



### 23. Termination with cause

If Seller (i) fails to deliver goods or perform services at the time specified herein, or (ii) fails to perform any other provisions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from Behr specifying such failure, or (iii) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, or (iv) is merged into another company and/or is expropriated or nationalized, Behr may cancel the whole or any part of this order without any liability, except for payment due to goods and services delivered and accepted. Upon such termination Behr will have the right, and on notice to Seller, to take title to and possession of all or any part of such work performed by Seller under this order.

### 24. Remedies

The rights and remedies herein reserved to Behr are cumulative and in addition to any further rights and remedies available at law or in equity. No waiver of any breach of any provision of this order will constitute a waiver of any other breach or a waiver of such provision.

### 25. Required Compliance

In providing goods or services hereunder, Seller will comply with any and all applicable Federal, State and Local Laws, and regulation there under. Seller will defend, indemnify and hold Behr harmless from and against any and all claims, losses, damages, costs and expenses resulting from or arising out of any failure of Seller or Seller's employees, agents and subcontractors to comply with any applicable governmental regulations and/or statutes.

To follow ISO 14001 requirements suppliers/Contractors who provide or bring potentially hazardous materials on site shall provide Material safety data Sheets (MSDS) as applicable. All materials brought on site are to be labeled in accordance with Hazardous Communication Requirement.

MSDS shall be directed to the Location Environmental Management Representative designee for review and record retention.

### 26. Communication

Behr will prescribe the methods of communication between Seller and Behr, and Seller agrees to follow Behr's prescriptions.

### 27. Notices

All notices under this Order shall be in writing and shall be transmitted in any of the following ways: (a) mailing by certified mail, return receipt requested, with first-class postage prepaid; (b) mailing by recognized overnight service utilizing receipts, delivery charges prepaid; (c) fax where an electronic proof of transmission is generated at the time of sending; or (d) Behr's electronic system for communication with its suppliers. Notice shall be effective (a) upon five (5) days after posting; (b) upon one (1) business day following deposit in the case of overnight delivery service; or (c) and (d) on the date of transmission.



**28. Governing Law**

This order and all transaction between Behr and Seller will be governed by and construed in accordance with the laws of Michigan as if entirely performed therein. The 1980 United Nations Convention on Contracts for the International Sales of Goods, to the extent it may be deemed to apply, shall not pursuant to Article 6 thereof apply to this Order or any transaction pursuant hereto.

The jurisdiction and venue for any action brought by either party shall be solely in any state or federal court within the Eastern district of Michigan.

**29. Behr**

“Behr”, as used in these Terms and Conditions, includes Behr America, Inc., Behr Dayton Thermal Products, LLC, Behr Climate Systems, Inc., Behr Heat Transfer Systems, Inc., and Behr Service America, L.P.

**30. CONTRACT CLAUSE FOR PURCHASE ORDERS, LEASES AND CONTRACTS OF \$2,500 OR MORE.**

By acceptance of this order Seller certifies that it will comply with all applicable provisions of E.O. 11246 and E.O. 11375, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1974; E.O. 11701; the Rehabilitation Act of 1973; E.O. 11758; and the rules, regulations and other relevant orders of the Secretary of Labor.

The parties hereby incorporate by reference, as though fully set fourth herein, the requirements of 41 CFR §§ 60-1.4(a)(7), 60-250.5, and 60.741.5, if applicable.

BEHR AMERICA, INC.

*Insert Supplier's Name*

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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