

NAKS, Inc. 172 Reaser Ct Elyria, OH 44035 Tel: (440) 356-4567 Fax: (440) 365-2100 www.naksinc.com FORM# NAKS - HINGE KIT STD (11/2018)

THESE TERMS AND CONDITIONS OF SALE ("TERMS") CONTAIN VERY IMPORTANT INFORMATION REGARDING YOUR PURCHASE, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT APPLY TO YOU AND YOUR PURCHASE. PLEASE READ THEM CAREFULLY. YOUR PURCHASE IS EXPRESSLY LIMITED TO AND MADE CONDITIONAL UPON THE EXCLUSIVITY OF THESE TERMS. ANY PROPOSAL FOR DIFFERENT TERMS OR ANY ATTEMPT TO VARY, IN ANY DEGREE, ANY OF THESE TERMS IS EXPRESSLY **REJECTED.** 

Acceptance. These Terms govern 1. any purchase made from North American Kitchen Solutions Incorporated ("NAKS"). These Terms, the Manual in which they are contained, installation and maintenance instructions, the applicable invoice, and any documents incorporated or referred to herein or therein, including any future paper or electronic releases issued by NAKS, constitute the "Order." The Order is the entire contract between you, the buyer, and NAKS, the seller, for products purchased from NAKS. These Terms apply to the Order unless expressly modified or waived in writing by an officer of NAKS. An Order may only be cancelled by you upon payment of reasonable cancellation charges for expenses incurred or commitments made by NAKS. Captions in these Terms are for convenience only.

2. **Pricing.** The price for NAKS' goods, material, equipment, or items ("**Products**") is complete, and no deductions, credits, or offsets may be made without NAKS's express written consent. Prices are subject to change and surcharges in the event of cost increases in materials and transportation. All complete component accessory material manufactured by others and furnished with Products such as motors, drives, vibration equipment, controls, or other completely assembled component structures, are subject to adjustment to the price at time of shipment regardless of the date of original order entry.

3. <u>Sales and Similar Taxes</u>. NAKS' prices do not include sales, use, excise, or similar taxes. Present or future sales, use, excise, or other similar tax applicable to the sale of Products shall be paid you, unless an acceptable tax exemption certificate is provided to NAKS.

4. **Payment.** NAKS reserves the right to require full or partial payment in advance of any order if, in NAKS judgment, the financial condition of buyer does not justify continuation of manufacture or shipment. NAKS may require full or partial payment in advance. Pro-rata payments are due as shipments are made. Each shipment or delivery shall constitute a separate sale, and the default of any shipment or delivery shall not vitiate the contract as to other shipments or deliveries.

Return Policy – ALL SALES ARE 5. FINAL. Because we custom manufacture hoods to each customer's our specifications, ALL SALES ARE FINAL. We may accept the return of non-custom goods at our discretion, but a restocking fee of 30% will apply and all shipping costs are the responsibility of the purchaser or end user. No merchandise may be returned without a Return Goods Authorization (RGA). Items returned for warranty replacement or exchange will not be eligible for credit if not received within 14 days of the issuance of a Return Goods Authorization.

6. <u>Delivery</u>. Shipping and delivery dates are estimates only. No delay in delivery will subject NAKS to any costs, damages or fees for late delivery. Delivery of Products is made F.O.B. point of shipment, unless otherwise stated. NAKS shall not be liable for delay due to causes beyond its reasonable control (i.e., force majeure events). In the event of such a delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

7. <u>Changes</u>. NAKS may make changes, including improvements and additions, in the technical requirements, specifications, designs, materials, packaging, and place of delivery, method of transportation, quantities, or delivery schedules of the Products by notifying you.

Safety. The Products may be 8 designed to serve multiple applications. NAKS offers a range of safety equipment, including guards and other devices, as may be required to meet customer specifications. Without exception, NAKS recommends that all orders include applicable safety devices. Use of Products ordered without applicable safety devices is your sole responsibility. You warrant that you have determined and acquired any and all safety devices required for the Products. Weather covers and guards for motor and V-belt drives, couplings, shafts and bearings, along with inlet and outlet screens, are optional accessories noted in the price list.

9. Title. Title and right of possession of Products remains with NAKS until all payments (including deferred payments whether evidenced by notes or otherwise) shall have been received to the satisfaction of NAKS and you agree to do all acts necessary to perfect and maintain such title and right in NAKS and not to subject any Products to any liens or encumbrances until such payment is made in full.

10. <u>Governing Law</u>. This Order shall be governed by and construed according to the laws of the State of Ohio (excluding the conflict of law provisions thereof). At NAKS' discretion, any action relating directly or indirectly to the Order shall be brought exclusively in the Common Pleas Court of Cuyahoga County, Ohio or the United States District Court for the Northern District of Ohio, Eastern Division, and you irrevocably waive any objection to the jurisdiction of, or venue in, either of these courts and agree that the acceptance of the Order constitutes doing business in the State of Ohio.

11. <u>Arbitration</u>. At NAKS' discretion, any dispute arising under or in connection with any Order may be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The dispute shall be resolved by one neutral arbitrator who shall have no affiliation with either you as the buyer or with NAKS and shall be selected by the American Arbitration Association office, and held in, Cleveland, Ohio.

WARNING. NAKS' Products are designed and manufactured to provide reliable performance but they are not guaranteed to be 100% free of defects. Even reliable products will experience occasional failures and this possibility should be recognized by the buyer and all end users. If Products are used in life support ventilation systems where failure could result in loss or injury, the buyer and all end users should provide adequate back-up ventilation, supplementary natural ventilation or failure alarm system, or acknowledge willingness to accept the risk of such loss or injury. DO NOT USE IN HAZARDOUS ENVIRONMENTS where a fan's electrical system could provide ignition to combustible or flammable materials unless unit is specifically built for hazardous environments. Comply with all local and national safety codes including the National Electrical Code (NEC) and National Fire Protection Act (NFPA).

**DISCLAIMER.** NAKS has made a diligent effort to illustrate and describe the Products accurately in all materials; however, such illustrations and descriptions are for the sole purpose of identification and do not express or imply any warranty.

## LIMITED WARRANTY

WARRANTY AND DISCLAIMER. This limited warranty extends to you the original purchaser only with proof of purchase. NAKS warrants that Products shall be free from original defects in workmanship and materials for two years from date of shipment (except for the warranty periods noted for products listed below), provided the Products have been properly handled, stored, installed, serviced, maintained and operated. This warranty shall not apply to Products which have been altered or repaired without NAKS' written express authorization, or altered or repaired in any way so as, in NAKS' judgment, to affect performance or reliability, nor which have been improperly installed or subjected to misuse, negligence, accident, or incorrectly used in or combination with other substances. Wear items, such as V-Belts, filters, etc. are not included as covered parts under this Warranty. Reimbursement for labor for removing and/or re-installing replacement parts is included in this Warranty for a period of 30 days from field start-up or 90 days from Shipment, whichever comes first. NAKS, Inc. is responsible to determine the amount of labor reimbursement allowed, based upon the circumstances for each installation. Labor cost reimbursement must be approved by NAKS in writing prior to the work being performed. You assume all risks and liability for results of use of all Products.

Evaporative cooling pads are warranted to be free of defects in materials and workmanship for a period of two years from date of shipment provided same have been properly handled, stored, installed, serviced, maintained and operated; and further, not subjected to excessive heat, corrosive agents or chemicals, or mechanical abuse that may cause tearing, crushing or undue deterioration, nor used on a system or in a manner other than that for which it was designed as explained in the Order.

LIMITATION OF REMEDY AND DAMAGES. All claims under this warranty must be made in writing and delivered by U.S. Mail to:

North American Kitchen Solutions 172 Reaser Court Elyria, OH 44035 Attn: WARRANTY CLAIMS DEPARTMENT

All Product claims must be made within 15 days after discovery of the defect and prior to the expiration of two years from the date of shipment. Claims made beyond that period are barred. Within 30 days after receipt of a timely claim, NAKS shall have the option either to inspect the Product at its location or request its return to NAKS at your expense. NAKS shall replace, or at its option repair, free of charge, any Product it determines to be defective, and it shall ship the repaired or replacement product to you F.O.B. point of shipment; provided, however, if in NAKS' judgment circumstances are such to prohibit repair or replacement to remedy the warranted defects, your sole and exclusive remedy shall be a refund of any part of the invoice price, paid to NAKS, for the defective Product or part.

NAKS is not responsible for the cost of removal of the defective Product or part, damages due to removal, or any expenses incurred in shipping the Product, or the installation of the repaired or replaced Product or part.

The warranties set forth above do not apply to any components, accessories, parts or attachments manufactured by other manufacturers; such being subject to the manufacturer's warranty, if any. To the extent not prohibited by the manufacturer's warranty, NAKS shall pass to you such manufacturer's warranty.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND WAIVED. THIS WARRANTY CONSTITUTES NAKS SOLE AND EXCLUSIVE WARRANTY FOR DEFECTIVE GOODS AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCTS.

No employee, agent, dealer, or other person is authorized to give any warranties on behalf of NAKS or to assume for it any other liability in connection with any of its products except in writing and signed by an officer of NAKS.

LIMITATION OF LIABILITY. NAKS' cumulative liability to you and any other persons for all claims in any way relating to or arising out of the Products, including, but not limited to, any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of the purchase price paid for those Products which are the subject of any such claim. This limitation of liability is intended to apply without regard to whether other provisions of this agreement have been breached or have proven ineffective even if NAKS has been advised of the possibility of such claims or demands. In no event shall NAKS be liable to you or any other person for any loss of profits or any special, exemplary, incidental, or consequential damages for any claims or demands brought by you or such other persons. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THIS LIMITATION MAY NOT APPLY TO YOU.

NAKS' maximum liability to you and to any end user is as set forth above. NAKS makes no warranty to anyone for any products not manufactured by it and shall have no liability for any use or installation of any products (whether manufactured by NAKS or other manufacturers) not specifically authorized by this sale. You acknowledge various warnings by NAKS regarding the Products and their installation and use. If NAKS incurs any claims, lawsuits, settlements, or expenses (including attorney fees) for any loss, injury, death or property damage including, but not limited to, claims arising out of your or any end user's installation or use of the Products, you agree to indemnify and hold NAKS harmless.

**REPLACEMENT PARTS.** If replacement parts are ordered, purchaser warrants that the original components in which these replacement parts will be placed are in satisfactory working condition, and when said replacement parts are installed, the resultant installation will operate in a safe manner, at speeds and temperatures for which the original product was purchased.

TECHNICAL ADVICE AND RECOMMENDATIONS, DISCLAIMER. Notwithstanding any past practice or dealings or any custom of the trade, sales shall not include the furnishing of technical advice or assistance or system design. Any such assistance shall be at NAKS' sole option and may be subject to additional charge(s).

NAKS assumes no obligation or liability on account of any recommendations, opinions or advice as to the choice, installation or use of Products. Any such recommendations, opinions or advice are given and shall be accepted at your and the end-user's risk and shall not constitute any warranty or guarantee of such Products or their performance.

2018 © North American Kitchen Solutions · 172 Reaser Court, Elyria, OH 44035

Toll Free: (800) 715-1014

Email:

customerservice@naksinc.com