

TERMS AND CONDITIONS governing all contracts for the sale, supply, rental or hire of Goods by R M Refrigeration and Air Conditioning Limited ("the Company")

1 FORMATION AND PARTIES

- (a) The Customer's order to the company is an offer to enter into a contract upon these Conditions. Acceptance occurs and the contract is formed only upon the Company issuing to the customer a despatch note, sales invoice or such other documentation as the Company may use from time to time for the acknowledgement of orders. Any terms or conditions preferred at any time by the Customer are hereby excluded. A quotation by the Company does not constitute an offer.
- (b) The Customer shall not assign the benefit of the contract without the Company's prior written consent.
- (c) The contract is not cancellable by the Customer without express written consent of a Partner or other authorised person on behalf of the Company.
- (d) The contract supersedes any arrangements, understandings, promises or agreements made or existing between the Company and the Customer prior to or simultaneously with the contract and constitutes the entire understanding between the Company and the Customer in connection with the supply, sale or hire of Goods under the contract.
- (e) These conditions do not affect the statutory rights of a person dealing as a consumer as defined by the Unfair Contract Terms Act 1997 as may be amended from time to time.

2 VARIATION

The Company reserves the right to vary the price of Goods by any amount attributable to a change in or insufficiency of the Customer's instructions or to any variation in the manufacturer's list price of such Goods after the date of order and before the date of delivery.

3 DELIVERY

- (a) Delivery dates are estimates only. Time of delivery is not of the essence of the contract. Unless otherwise stated, delivery periods commence from date of acknowledgement of order. The Company shall use its reasonable endeavours to deliver the Goods by the stated delivery date, but may suspend or delay delivery and shall not be liable for any loss whatsoever in the event of late delivery or non-delivery of Goods or any installment owing to any occurrence whatsoever beyond its control. The Customer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.
- (b) The Company may at its option deliver by installments; each installment shall constitute a separate contract on these Conditions.
- (c) If the Company has agreed to deliver the Goods to an address specified by the Customer risk shall pass at the time of delivery or deemed delivery pursuant to Condition 3(g) below. In all other circumstances delivery shall take place and risk shall pass upon receipt by the Company handing the Goods to the Customer (or its agent) at the Company's premises whichever shall be the earlier.
- (d) Unless otherwise agreed in writing all export orders will be delivered f.o.b. at a British port to be notified by the Company.
- (e) Deviations in quantity of Goods delivered of 5% or less by value from that set out in the contract shall not entitle the Customer to reject Goods delivered or to claim damages and the Customer shall be obliged to accept and pay for at the contract rate the goods delivered.
- (f) If delivery of the Goods has not been agreed between the Parties and the Customer has failed to collect Goods on the expiry of the seventh day following notification of readiness for despatch the Company shall be entitled to treat the contract as repudiated by the Customer. Until the contract is so terminated the Company may, at its option, either store the Goods itself or have them stored by third parties on such terms as it in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and form part of the contract price. If the Company elects to treat the contract as repudiated in accordance with this Condition it shall (without prejudice to its rights and remedies in respect of such repudiation) be entitled to sell the Goods and retain the proceeds of the sale.
- (g) Where the Goods are to be delivered to an address specified by the Customer, if the Customer has specified a person or persons who are authorised to take delivery of the Goods on its behalf the Company will use reasonable endeavours to deliver the goods to such person, but if the Customer has not specified such a person or despite reasonable endeavours such person or persons are not available when delivery is tendered, the Company and its carrier shall be entitled to assume that any person at such address who takes delivery of the Goods is duly authorised to do so.
- (h) If no person will accept delivery of the Goods at the delivery address pursuant to Condition (g) above the Company shall be entitled (at its option) to leave the Goods at or at the entrance to the delivery address (in which case delivery shall be deemed to have taken place at that time) or to withhold delivery of the Goods until any person is available to take delivery and charge any storage or other costs incurred to the Customer.
- (i) The Customer shall be responsible for loading and unloading the Goods at the address specified by the Customer, and at the Company's premises when returned by the Customer, and any agent of the Customer or person supplied by the Company for such purpose shall be deemed to be an employee of the Customer at such times.

4 INSPECTION

- (a) The Customer shall inspect the Goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked (not examined) subject to paragraph (b) below deemed to have accepted the Goods as delivered.
- (b) The Company shall not be liable for defects or shortages discoverable on reasonable inspection unless the Customer notifies the Company before the expiry of 3 days after receipt of any alleged defect or lack of conformity with the contract.
- (c) The Company shall make good shortages notified to it under paragraph (b) as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortages.
- (d) The Company's liability for Goods lost or damaged in transit shall in all circumstances be limited to (at the Company's option) the repair or replacement or crediting the Customer with the invoice value of the goods in question.

5 WARRANTY

- (a) Subject to condition 1(d), the Company gives no warranty with respect of the Goods save as set out in paragraph below.
- (b) The Company shall provide such warranty with respect to material defects in the Goods as has been provided to the Company by the manufacturer of the Goods, and on such terms and for such period as set out in such warranty provided that:-
- (i) the customer notifies the Company within 7 days after discovery of the material defect giving particulars, and either at its own expense and risk returns the Goods to the Company, or (at the Company's sole option) permits the Company to inspect the same, and
- (ii) such defect has not arisen from the negligent act or omission of the Customer with respect to the operation, maintenance or storage of the Goods.
- (c) The Company's liability for defective Goods is limited in all circumstances to (at the Company's option) delivery of replacements or crediting or refunding of the invoice value to the Customer and the Customer shall accept such of the aforementioned remedies as the Company shall prefer as being fulfillment of the Company's obligations under the contract.
- (d) If the Company replaces or credits to the Customer the invoice value of any Goods claimed by the Customer to be defective, and on subsequent inspection the Company finds those Goods not to be defective or that any defect resulted from any act or omission of the Customer (including improper or negligent operation, maintenance and storage) the Customer shall reimburse to the Company any amounts credited to the Customer in respect of those Goods, pay any costs and expenses incurred by the Company in replacing or retrieving those Goods, and compensate the Company for any diminution in value of those Goods which are returned.
- (e) The Company's liability under this Condition applies only to defects appearing before the Customer makes any modification or alteration to the Goods and whilst the Goods are being properly used or stored and in particular (but without limitation) the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty handling or processing by the Customer.
- (f) Any repairs carried out by the Company shall be carried out subject to and in accordance with the Company's standard Terms of Repair in force as at the date of this contract and available upon request and the Customer hereby agrees to be bound by such terms.

6 LIMITS OF LIABILITY

- (a) The Goods are supplied strictly on the terms that the Customer has satisfied itself of their suitability for its purposes. The Customer acknowledges that all specifications and details in catalogues, quotations and acknowledgements of order or similar documents or by word of mouth and all forecasts of performances, howsoever given, are approximate only and do not form part of the contract and that in respect of such specifications details and forecasts the Company shall be under no liability nor shall the Customer be entitled to any remedy under the provisions of the Misrepresentation Act 1967.
- (b) The Company's liability under Conditions 4 & 5 shall be accepted by the Customer in lieu of any warranty or condition, whether express or implied by law, as to the quality or fitness for any particular purpose of the Goods and, save as provided in these Conditions, the Company shall not be under any liability to the Customer (whether in contract, tort or otherwise) for any defects in the Goods, materials supplied or workmanship performed by the Company or for damage, loss, death or injury resulting from such defects and the Customer shall indemnify the Company against any claims in respect thereof. For the purposes of this paragraph the Company contracts on its own behalf and on behalf of and as trustee for its sub-contractors, servants and agents.
- (c) The Company shall not be liable, whether by way of indemnity or by reason of breach of contract, tort (including without limitation claims in negligence, nuisance) and/or breach of statutory duty or in any other manner for consequential or indirect loss of whatever nature suffered by the Customer or for special damages, loss of use (whether complete or partial) of the Goods, or loss of profit or of any contract.
- (d) Nothing in these Conditions shall be construed as limiting or excluding the Company's liability under Part 1 of the Consumer Protection Act 1987 or for death or personal injury resulting from its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977).
- (e) The Company's total liability for the aggregate claims of the Customer arising out of a single act or default of the Company (whether due to the Company's negligence or otherwise) shall not exceed the Contract price.
- (f) The Customer shall indemnify and keep indemnified the Company against all actions, claims, costs, damages, demands and expenses or other loss arising out of a defect in the Goods (including, without limitation, all liabilities incurred under the Consumer Protection Act 1987) to the extent occasioned or contributed to by any act or omission of the Customer, its servants, agents or persons under its control.

7 RETENTION OF TITLE

- (a) Until such time as the Company shall have received payment in full of all sums owed to it for the Goods supplied, sold or hired under the Contract, legal title in all Goods supplied shall remain in the Company.
- (b) The Customer shall at its risk and expense insure all Goods supplied by the Company from the date of delivery for their full replacement value against all the usual risks and keep all Goods safe and in good condition stored separately and clearly identifiable as the Company's property with all identifying marks intact and legible.
- (c) The Customer shall store or otherwise denote consignments of the Goods in respect of which legal title remains with the Company in such a way that the same can be recognised as the property of the Company and where the same type of goods have previously been supplied by the Company and in which legal title has passed to the Customer the Customer shall ensure that such goods are lent, sold, hired or otherwise utilised in priority to the Goods supplied, sold or hired under this contract.
- (d) The Customer may use or sell the Goods or any of them in the ordinary course of its business on the basis that any proceeds of sale shall be held in trust by the Customer for the Company absolutely.
- (e) The Customer's power of use or sale of the Goods shall terminate immediately on notice from the Company, or on termination of the contract by the Company or automatically if any of the events referred to in Conditions 9(a) to (d) occurs in respect of the Customer.

(f) The Company may at any time enter the Customer's premises for the purpose of inspecting the Goods and identifying them as the Company's property and the Customer irrevocably authorises the Company to enter upon its premises for that purpose.

(g) Upon the termination of the Customer's powers of use and sale under condition 7(d) above the Company shall be entitled as its option (i) to cancel all or any part of any orders for Goods placed with it by the Customer and not yet delivered (whether or not accepted or whether or not under the contract or any other contract) and/or (ii) to deal directly with any customers of the Customer in which case any proceeds of any sale to such customers shall belong to the Company absolutely.

8 PAYMENT

- (a) Where monthly account facilities have been granted to the Customer in writing payment is to be made in full on or before the last day of the month following the month of delivery and where no such facilities have been granted and where no other terms of payment have been specifically agreed in writing payment is to be made when the order is placed. No discount or allowance will be made unless specifically stated by the Company in writing.
- (b) Interest will be charged on all sums due under or by way of damages for breach of the contract at the rate of 4% per annum above the base rate of Barclays Bank plc from time to time in force and shall be calculated and accrued on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by the Company against the Customer) and the Customer shall in addition reimburse the Company any charges, costs and expenses (including without limitation legal fees) incurred in connection or resulting from the late payment of such sums or any action arising therefrom.
- (c) Time for making payment shall be of the essence of the contract.
- (d) The Company may at any time, in its absolute discretion, appropriate any payment made by the Customer in respect of goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Customer.
- (e) The Company shall be entitled to cancel the contract or to postpone any delivery until payment has been received, in the event that the Company has reasonable doubts about the Customer's ability or willingness to pay on the due date.
- (f) The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivering the Goods or any installment of the Goods.
- (g) VAT will be charged at the rate prevailing at the time of despatch of the Goods or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).
- (h) If any item of part of an item of an invoice rendered by the Company is disputed or subject to question by the Customer, then the payment by the Customer of the invoice shall not be withheld on those grounds and interest shall be payable at the rate set out in condition 8(b) above to any about which, although disputed or questioned, remains unpaid.

9 TERMINATION

- The Company may terminate the contract immediately if:-
- (a) The Customer shall fail to pay any amounts due under this Agreement immediately as they fall due;
- (b) The Customer, being a company, becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or shall be liquidated or wound-up or have a petition for winding up presented against it or pass a resolution for winding up or if a petition for the appointment of an Administrator be presented against the Customer or if the Customer shall have any Receiver or Administrative Receiver appointed in respect of the whole or any part of its undertaking or assets or if the Customer shall convene any meeting of its creditors or made a Deed of Assignment or arrangement or otherwise compound or compromise with its creditors;
- (c) any of the Customer, being an individual, becomes unable to pay its debts (within the meaning of Section 268 of the Insolvency Act 1986) or its subject to an interim order or commits any act of bankruptcy, or makes a voluntary arrangement with his creditors;
- (d) if any step is taken to levy distress or execution or if a distress or execution is levied or threatened to be levied upon any chattels of or in the possession of the Customer.

10 FORCE MAJEURE

- (a) The Company shall not be liable to the Customer if it is unable to carry out any provision of the contract for any reason beyond its control including without limitation Act of God, Legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or any action by employees or third parties in contemplation of, furtherance of any dispute or owing to any inability to procure parts materials or goods required for the performance of the contract.
- (b) Should such contingency continue for more than three months either party may (subject to the Company repaying to the Customer any advance payments made for undelivered Goods and the Customer paying for Goods delivered) cancel the contract without further liability to the other.

11 NO WAIVER

None of the provisions of the Contract shall be considered waived by either party except when such waiver is given in writing. A waiver shall apply only to the specific circumstances in which it is given and no delay or omission of either party in exercising any right, power, privilege or remedy under the Contract or the existence of any previous waiver (even if granted in similar circumstances) shall operate to impair to such right, power, privilege or remedy, or be construed as a waiver thereof.

12 NOTICES

Any notice under these Conditions shall be properly given in writing and sent by first class post or facsimile to the address of the intended recipient as stated in the contract or to such address as the Company and the Customer from time to time notify to each other as their respective addresses for service and shall be deemed served in the case of postal notice, on the second day after the day of posting, and in the case of facsimile on receipt of the appropriate answerback.

13 TERMS SEPARATE

Each of these Conditions and each paragraph hereof shall be construed as a separate condition. Should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of the Company's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.

14 CONSTRUCTION AND JURISDICTION

This contract shall be governed by and construed in all respects in accordance with the law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

15 CONDITIONS FOR THE HIRING OF EQUIPMENT

(a) Where the Customer enters into an agreement with the Company for the hire of Goods the provisions of this Condition 15 shall apply and in the event of a conflict between the provisions of the Condition 15 and the remainder of these Conditions this Condition 15 shall prevail.

Basis of charging

(b) The Customer will pay the hire charges which will commence from the time of delivery (or such other time as may be stated in the Contract) and at the rates shown in the Contract and continue during the term until the goods are returned in a clean and serviceable condition, or are collected by the Company. All charges are payable on demand.

Carriage charges

(c) The charges do not include carriage and any expense incurred by the Company in delivering and recovering Goods, or attempting the same, will be paid by the Customer.

Maximum Period of Contract

(d) If the Customer is an individual or partnership (including an unincorporated body of persons) and not a limited company, then the contract will terminate not later than three months from the commencement date. In such circumstances the Customer shall on the eve of the last day of the said three months, return the goods to the Company.

Term

(e) The contract commences when the Customer accepts the Customer's order upon these Conditions and terminates when a receipt for all the Goods is obtained from the Company or when Condition (d) above is invoked, whichever is the sooner.

Responsibilities of person signing

(f) The person signing the contract warrants that he has the authority of the Customer to make this contract on the Customer's behalf and acknowledges that he has been instructed in the operation and use of the Goods. The said person and the customer jointly and severally hereby undertake to ensure that no one uses the Goods who is not properly instructed and shall not allow the goods to be misused.

Responsibility of the Customer

(g) The Customer:-

- (i) acknowledges that their responsibility commences on receipt of the Goods and ends when the Customer is in possession of the Company's receipt for all the Goods. The Customer agrees that it will not sell or otherwise part with possession and/or control for the goods unless otherwise expressly permitted by the Company; and
- (ii) will indemnify and keep indemnified the Company against any and every expense, liability, financial loss, claim or proceedings whatsoever and in respect of any death or personal injury whatsoever, or damage to or loss of property whatsoever (other than the goods themselves) arising out of the delivery, use, non-use, repossession, collection or return of the Goods or any part of them. This indemnity will be reduced in proportion to the extent that such expense, liability, financial loss, claim or proceedings or death or personal injury or damage to or loss of property is due to the proven negligence of the Company.

Electrical Equipment

(h) Where the Goods comprise electrical equipment in part or in whole, the same must be connected to the correct supply by a qualified electrician. Under no circumstances should the electrical Goods be used without it being correctly earthed unless it is of double insulated construction. The Customer is responsible for complying with the requirements of the Electricity Specification at Work Regulations 1989 during the term of this contract.

Maintenance of Goods and Breakdown Procedures

(i) The Customer shall keep themselves acquainted with the state and condition of the Goods and ensure that they remain safe, serviceable and clean. Any breakdown or unsatisfactory workings of the Goods must be immediately notified to the Company. Under no circumstances shall the Customer repair or attempt to repair the Goods unless authorised by the company. Such Goods must be returned to the Company's premises for examination unless rectification elsewhere is requested and the Customer agrees to pay carriage if at all required by the Company.

Removal of Goods

(j) Goods must not be removed without the authority of the Company from the site specified by the Customer when the Goods were collected or from any subsequently authorised site or from the address to which the Company delivered the Goods.

Lost, Stolen or Damaged Equipment

(k) The Customer shall pay to the Company the replacement cost of any Goods which are lost or stolen or damaged beyond economic repair. The customer shall hold in trust for the Company and pay to the Company on demand, all money that the Customer receives from an insurance company or any other source in settlement of any claim relating to the loss, theft or damage of any of the Goods. The Customer must not compromise or settle any claim without the prior written consent of the Company. If the Goods are reported lost or are not returned when the termination of the hire is requested by the Company, the hire will be deemed to end when the Customer pays to the Company the Manufacturer's current list price of such Goods (or such lesser amount as the Company in its sole discretion may determine) and the Customer agrees to pay to the Company the Company's costs in rectifying the condition of any Goods returned damaged or unclear, hire charges will continue until such rectification is complete.

Termination of Hire

(l) The Company shall be entitled at any time, and for any reason whatsoever, without explanation, to terminate this contract (such termination to be effective immediately) and to forthwith repossess the Goods or any part thereof.

Rights of Access

(m) The Customer hereby authorises the Company to enter upon any premises where the Company reasonably believes any Goods or any part thereof to be to inspect, test, repair, replace or repossess the same.