



**CONDITIONS OF SALE**

**1. DEFINITIONS AND SCOPE**

- 1.1. In these conditions of sale (Conditions):
  - 1.1.1. The Contract means the contract of sale between the Purchaser and the Seller formed as a consequence of the acceptance by the Seller of an order for Goods, from the Purchaser pursuant to these Conditions. This contract may include an agreement for repair and maintenance work on a "pay as you go basis". Condition 4.3; 4.5.1; and 5.7.5 herein refers. A separate repair and maintenance agreement may be entered into on a "monthly contract fee basis".
  - 1.1.2. Days mean calendar days
  - 1.1.3. The Goods means any product or item sold by the Seller including without limitation commercial vehicles, refrigeration units, tail-lifts, vehicle heaters and spare parts or accessories thereto.
  - 1.1.4. Party/ies shall mean either the Purchaser or the Seller and parties shall mean both, as the context so dictates
  - 1.1.5. The Purchaser means the buyer under the Contract.
  - 1.1.6. The Seller means Carlisle Refrigeration Limited
- 1.2. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.3. These Conditions shall apply to all orders for Goods by the Purchaser to the Seller, to the exclusion of terms implied by course of dealing or otherwise.
- 1.4. The Seller will only accept written orders for Goods from the Purchaser. No order shall be binding on the Seller until the Seller has accepted it in writing, at which point the Contract shall come into force.

**2. SPECIFICATION**

- 2.1. The Purchaser understands and accepts that the manufacturer of the Goods may alter their specification at any time. Provided that the Goods supplied substantially accord with any agreed specification for the Goods, the Purchaser shall accept them in full performance of the Seller's obligations. The altered specification shall be agreed by both Parties prior to delivery.
- 2.2. Any samples, drawings, descriptive matter or advertising issued by the Seller or manufacturer and any illustrations or descriptions of the Goods contained in the Seller's or the manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force. Subject to Condition 2.1 the Purchaser shall be provided with the Goods as described in the order form.
- 2.3. In the absence of Seller fault, should the Seller be unable to supply any Goods because the manufacturer has discontinued them or altered them or for any other reason then, unless the parties agree otherwise, the Contract shall be treated as cancelled without any further obligation on either party, save the Seller shall return to the Purchaser any deposit or advance payment paid. The Contract shall be regarded as frustrated.

**3. WARRANTIES/LIABILITY**

- 3.1. The Purchaser understands and accepts that the Seller is not agent for the manufacturer of the Goods and is unable to give any warranty or guarantee on the manufacturer's behalf. This provision shall not however affect any warranty or guarantee given to the Purchaser directly by the manufacturer. Purchasers must satisfy themselves upon the warranty provided by the manufacturer and/or the effect thereof. The Seller only services the warranty and guarantee as provided by the manufacturer directly to the Seller, within the context of this Condition.
- 3.2. All Goods are sold without a Seller guarantee or warranty whatsoever. Subject to Condition 3.1 the manufacturer may provide a warranty or guarantee directly to the Purchaser. In keeping with condition 9.9 herein the Seller shall pass on the Purchaser's details (where known) to the Manufacturer of the Goods for warranty and similar purposes
- 3.3. Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation or any other liability that may not be excluded by law.
- 3.4. Direct losses - Subject to condition 3.3, the Seller's total liability to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with a Contract, shall be limited to the price of the relevant Goods to which the liability relates.
- 3.5. Indirect losses - Subject to condition 3.3, the Seller will not be liable to the Purchaser, whether in contract, tort (including negligence), for breach of statutory duty or otherwise arising under or in connection with a Contract for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill or any indirect or consequential loss. Without limiting the foregoing, the Seller shall not be liable for damage or destruction of cargo.
- 3.6. Force Majeure - The Seller shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 3.7. The Seller shall not be liable in relation to any malicious attack or intrusion by a third party on the IT systems of the Purchaser, the Seller or any other person.
- 3.8. Unless there is negligence by the Seller in their care or use, all vehicles, accessories and other property belonging to the Purchaser or a third party remain in all respects at the owner's risk whilst in the Seller's charge.

**4. PRICE/PAYMENT/INTEREST**

- 4.1. The price for the Goods shall be the price set out in the Purchaser's order as accepted in writing by the Seller. Unless otherwise specified in the order (as accepted in writing), labour will be charged in accordance with the Seller's current retail price listing, subject to any applicable discount separately agreed by the Seller.
- 4.2. Under circumstances where the British pound sterling (GBP) fluctuates and the Sellers costs increase by more than ten percent (10 %) but less than twenty percent (20%), the Seller may increase the price of Goods without the Purchaser's prior consent. Notice and evidence of such increase will be provided to the Purchaser prior to delivery.
- 4.3. The Seller reserves the right to charge for time incurred due to default by the Purchaser or other factors beyond the Seller's control (including, by way of example only and without limitation, downtime due to delay by the Purchaser in making its equipment available).
- 4.4. All prices quoted are exclusive of Value Added Tax, which tax will be added to the price at the prevailing rate. Where there are changes to brokerage charges, legislation, customs duties, taxes or levies or any other European Union regulations (where applicable) which materially increases the Sellers cost of Goods both Parties will have a right to re-negotiate or terminate the Contract.
- 4.5. Unless otherwise agreed in writing in accordance with paragraph 9.3 hereof, payment for the Goods shall be made:
  - 4.5.1. prior to despatch or, in the case of works or services, prior to commencement thereof; or
  - 4.5.2. if credit terms have been approved by the Seller, within 30 Days of invoice or date of install, whichever is later. The Seller reserves the right in all cases (notwithstanding contrary general credit terms that may have been agreed) to require before despatch a satisfactory letter of credit in respect of any Goods intended, required or apparently destined for delivery outside the United Kingdom.
- 4.6. All monies due to the Seller shall carry interest at 3% over and above Barclays Bank PLC base lending rate for the time being from the date such monies become due until actual payment has been credited to the Seller's bank.
- 4.7. All invoicing queries must be raised by the Purchaser in writing to the Seller's credit control team within 7 Days of the date of invoice. In default, the invoice shall be deemed satisfactory except where the Seller has made a material error, omission or oversight.
- 4.8. All amounts due to the Seller shall be paid in full without any set-off, counterclaim, deduction or withholding (except as may be required by law).

**5. DELIVERY/ACCEPTANCE/COMMISSIONING**

- 5.1. Unless agreed otherwise, delivery shall be made to the Purchaser's address supplied to the Seller or the address stated in the order acknowledgement for the Goods
- 5.2. The Seller may deliver by such means as it considers fit and need not consult the Purchaser about the means of delivery.
- 5.3. Risk in the Goods shall pass from the Seller to the Purchaser upon the Goods reaching the Purchaser's premises if the Purchaser is a vehicle manufacturer. If the Purchaser is the end user of the final product then risk in the Goods shall pass upon delivery to the vehicle manufacturer. The unloading risk shall be with then Purchaser.
- 5.4. If reasonably practicable, the Purchaser shall inspect the Goods upon delivery, otherwise the Purchaser shall inspect the Goods in any event within twenty-four hours of delivery. Subject to such right of inspection, and unless the Purchaser notifies the Seller of any defect immediately upon making the inspection, the Purchaser shall be deemed to have accepted the Goods as satisfactory and in full compliance of the Seller's obligations under the Contract.
- 5.5. The Purchaser shall, within 28 Days of despatch, effect commissioning of Goods where they require it. If the Purchaser fails to do so, then for the purpose of any manufacturer's or Seller's warranty such commissioning shall be deemed to have been completed upon the expiry of 28 Days after despatch, and "date in service" shall accordingly be deemed to be the date 28 Days after despatch.
- 5.6. Whilst the Seller shall make every effort to adhere to any timescale in all cases, where there is a delay the Seller will deliver the Goods within a reasonable time on a best endeavour basis subject to condition.
- 5.7. The Purchaser agrees the Seller shall not be liable for any loss or damage whatsoever caused specifically by delays in connection, with but not limited to:
  - 5.7.1. the manufacture of Goods;
  - 5.7.2. obtaining or supplying the Goods;
  - 5.7.3. delivery of the Goods;
  - 5.7.4. commissioning;
  - 5.7.5. in effecting any services or performing any works for and/or on behalf of the Purchaser.

**6. TITLE AND PURCHASER'S OBLIGATIONS**

- 6.1. Full legal and equitable title in the Goods shall remain with the Seller until payment for the Goods and any other sums from time to time owing by the Purchaser to the Seller is made in full.
- 6.2. Pending payment in full, the Purchaser shall not mix the Goods so that they become unidentifiable and neither shall the Purchaser sell or otherwise dispose of the Goods.
- 6.3. Should the Purchaser fail to make payment by the due date, or if the Purchaser becomes subject to any event as described in conditions 7.4.3, 7.4.4 or 7.4.5, then the Seller shall be entitled immediately to require return of the Goods and without notice to enter the Purchaser's premises, with or without such transport as may be required, to recover the Goods. This will not be regarded as trespassing by the Purchaser.
- 6.4. Pending payment in full for the Goods and any other sums from time to time owing by the Purchaser to the Seller, the Purchaser will maintain the Goods in satisfactory condition, keep them insured against all risk for their full price (inform the insurer of ownership details in keeping with condition 6.1), keep them stored separately from any other items and shall further keep them readily identified and marked as the property of the Seller.
- 6.5. The Purchaser shall not alter or remove from the Goods any nameplates, serial number, patent or other identifying mark made by the Seller or by the manufacturer of the Goods.

**7. SELLER'S REMEDIES**

- 7.1. Without prejudice to any other rights or remedies of the Seller, if payment for the Goods is not made in accordance with paragraph 4 hereof, then at the absolute discretion of the Seller all credit facilities may be withdrawn, with or without notice. In addition, all sums due to the Seller and properly debited to the account of the Purchaser from time to time shall become immediately due for payment.
- 7.2. In addition to any right of lien the Seller may be entitled to by law, the Seller shall have a general lien on all Goods (not paid for in full) of the Purchaser in the Seller's possession for the unpaid price of any Goods sold to the Purchaser under these Conditions or otherwise.
- 7.3. Where the Goods are new refrigeration units, tail-lifts, vehicle heaters and spare parts or accessories, and the Purchaser has not paid the purchase price in terms of the Seller's agreement with the Purchaser or within seven (7) Days of being notified by the Seller that the Goods are ready for despatch, the Seller shall, subject to any agreed credit arrangements, be entitled to regard any order as cancelled and the Goods available for re-sale. Any deposit paid by the Purchaser in respect of the Goods shall be forfeited to the Seller.
- 7.4. The Seller reserves the right at its absolute discretion to withhold or delay despatch of any order for Goods or to cancel any order and/or credit facilities without further obligation on the part of the Seller where:
  - 7.4.1. any sums due to the Seller remain unpaid and outstanding;
  - 7.4.2. any credit limit or period agreed in accordance with paragraphs 4.5 or 9.3 hereof has been exceeded;
  - 7.4.3. any step is taken in relation to Purchaser for winding up or administration or the appointment of any receiver or the making of an arrangement with its creditors;
  - 7.4.4. any asset of the Purchaser is seized or is subject to distraint or execution of judgment;
  - 7.4.5. the Purchaser ceases or threatens to cease business; or
  - 7.4.6. the Seller has received adverse credit opinion upon the Purchaser in the period between accepting the order and delivery.
- 7.5. The Purchaser will indemnify the Seller against all loss, damage, claims, fees, costs, expenses or charges incurred as a consequence of breach of these Conditions.

**8. THE PURCHASER'S REMEDIES**

- 8.1. The Purchaser shall exercise all remedies relating to manufacturer's warranties and guarantees against the manufacturer.
- 8.2. The Purchaser's remedies specifically exercisable against the Seller are detailed in the Contract.

**9. GENERAL**

- 9.1. The Seller may amend such of the terms herein as it in its absolute discretion deems appropriate in relation to future orders, subject only to giving the Purchaser fourteen (14) Days' notice of its intention where reasonably possible so as to reflect any changes in the Contract. The Seller needs to agree to the change or request Contract termination within 7 Days of receipt of notice.
- 9.2. Any notice required to be given by the Seller herein shall be deemed to have been delivered within 3 business days if sent by ordinary first class post to the address of the Purchaser or other alternative address notified to the Seller from time to time.
- 9.3. Subject to condition 4.2 and 9.1, no variation of a Contract or these Conditions shall be effected unless agreed by both parties, made in writing and signed by both Parties.
- 9.4. The Seller may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under a Contract or these Conditions. The Seller will request the Purchaser's permission and such permission may not be unreasonably withheld. The Purchaser shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under a Contract or these Conditions.
- 9.5. If any provision of these Conditions is or becomes invalid, illegal or unenforceable, they shall be deemed modified to the minimum extent necessary to make them valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of these Conditions.
- 9.6. No waiver of any breach of any terms or conditions of a Contract shall prejudice any legal rights under the Contract in respect of any ongoing or further breach. A failure or delay by a party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.7. The Purchaser warrants that it will make all orders hereunder in the course of its business.
- 9.8. These Conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter. Each party acknowledges that in entering into a Contract and these Conditions it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions or expressly accepted in writing by the Seller.
- 9.9. It is the Seller's policy not to release the Purchaser's details to any unconnected third party without prior consent. Such details (where known) are passed to the manufacturer of the Goods for warranty and similar purposes. They may also be used to contact the Purchaser from time to time with information about the Seller or its associated companies, reminders and/or offers about products and services which the Seller believes may be of interest. This communication may be by correspondence, telephone, fax, email or other means.
- 9.10. All Contracts and these Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with a Contract or these Conditions or their subject matter or formation. Where agreed the Parties are free to use mediation and arbitration procedures outside of courts.