

TERMS & CONDITIONS OF SALE

1 Definitions

In these conditions, the '**Company**' shall mean **Flynn Refrigeration Ltd.**

The '**Buyer**' shall mean the Company, firm or person who places an order with the Company or otherwise agrees to buy from the Company of the Goods.

The '**Goods**' shall mean any of the Goods, which from time to time, the Company offers for sale and which form the subject matter of the contract.

The '**Contract**' shall mean the contract on these terms and conditions of sale by the Company to the buyer of the goods.

The '**Unit**' shall mean the aggregate of chassis assembly and spare parts, which, when assembled, will form a unit of capital goods.

The manufacturer shall mean the original supplier of the goods to the Company.

The Company Terms and Conditions

- 2 a. The Company does not sell the goods subject to any warranty condition or stipulation, either express or implied by common law or by statute, unless such warranty condition or stipulation is contained in these terms and conditions of sale.
- b. The Company shall not be liable for loss or damage other than death or personal injuries caused by the negligence of the Company or of its employees.
- c. No variations or additions to these terms and conditions of sale shall be binding upon the Company unless expressly accepted by the Company in writing under the hand of a Director of the Company and these terms and conditions of sale shall prevail over and to the exclusion of any conditions or terms of trading of the buyer.

3 Acceptance

- a. Unless previously withdrawn, quotations and tenders are open for acceptance for the period stated therein or if no period is stated within 30 days from the date thereof.
- b. All orders must be in writing and must be accompanied by sufficient information to enable the Company to proceed without delay with the execution of the order.
- c. Orders shall not be binding on the Company unless accepted by the Company in writing and made subject to these terms and conditions of sale.
- d. Orders accepted by the Company may not be cancelled under any circumstances unless agreed in writing by the Company. Cancellation of goods ordered to the buyers own specification will not be accepted.
- e. All goods are offered subject to remaining unsold.

4 Price

- a. All prices are subject to variation at any time to reflect corresponding variations in the Company's own cost of materials, fuel and labour, and the Company reserves the right to alter prices without prior notice. All goods will be invoiced at the price ruling at the time of despatch.
- b. The buyer shall be liable for any increase in price or expenses incurred by the Company arising out of any delay caused by the buyer.
- c. Because of the cost of handling small orders, the Company reserves the right to charge its minimum billing charge ruling on the date of despatch if applicable.

5. Terms of Payment

- a. Payment for all goods delivered for customers **with** a current credit account with the Company shall be made in full to the Company without any deduction **30 days after the date the invoice was issued.**
- b. **New accounts are on a prepayment basis and the order will not be actioned until payment is made.**
- c. Time for payment is of the essence of the contract. If the buyer fails to pay on the due date the Company shall be entitled;
 - i. to charge interest on any amounts overdue at the rate of 4% above the base rate of Barclays Bank Ltd from the date of invoice until payment and/or
 - ii. to suspend further deliveries until the payment has been made and/or
 - iii. to cancel the contract
- d. The Company shall have a general lien on all goods for all sums due at any time from the buyer and the Company shall be entitled to sell the goods at the expense of the buyer and to use the net proceeds thereof in or towards payment of such sums subject to fourteen days prior notice in writing to the buyer.

6. Reservation of Title

- a. Title in the goods shall not pass to the buyer until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods sold by the Company to the buyer for which payment has not been made and all other sums due to the Company from the buyer.
- b. Until such time as title in the goods passes to the buyer, the buyer shall hold the goods as the Company's fiduciary agent and bailee and shall keep the goods separate from those of the buyer and third parties, and properly stored, protected, insured and identified as the Company's property. Until that time the buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the buyer and third parties, and in the case of tangible proceeds properly stored, protected and insured.
- c. Until such time as title in the goods passes to the buyer (and provided the goods are still in existence and have not been resold), the Company shall be entitled at any time to require the buyer to deliver up the goods to the Company and if the buyer fails to do so forthwith, to enter upon any premises of the buyer or any third party where the goods are stored and repossess the goods.
- d. The buyer shall not be entitled to pledge or in any way charge by way of security for an indebtedness any of the goods which remain the Company's property, but if the buyer does so, all monies owing by the buyer to the Company shall forthwith become due and payable (without prejudice to any other right or remedy the Company may have).
- e. Title in all compressors and other plant or reconditioned items substituted for them shall only vest back in the buyer in accordance with the terms of this clause.

7 Risk

- a. In the case of goods collected or delivered by third party carriers, risk in the goods shall pass to the buyer at the moment when the goods leave the Company's premises for delivery to the buyer pursuant to the contract.
- b. In the case of goods delivered by the Company's vehicles, risk in the goods shall pass to the buyer at the moment when the goods are delivered to the place of delivery specified by the buyer.
- c. In the case of goods not normally offered for sale by the Company and ordered expressly on behalf of the buyer, the risk in the goods shall pass to the buyer at the moment when the Company notifies the buyer that they are ready for delivery or collection.

8. Delivery

The place and date of delivery are as agreed between the Company and the buyer

- a. In the case of damage in transit, notice of any damage or breakage shall be sent in writing by the buyer both to the Company and to the carrier if any, within three days of receipt and a written claim within seven days.
- b. In the case of loss in transit or delay in delivery, notice shall be sent in writing by the buyer both to the Company and to the carrier if any, within seven days of the date of the invoice and a written claim within 14 days.

- c. Any time or date specified for despatch or delivery of the goods given by the Company is an estimate only and shall not form part of the contract unless expressly made a term of the contract in writing.
- d. Carriage will be charged extra unless otherwise agreed in writing. Where the quoted price includes freight the Company shall determine the route. Special routing by the buyer will be subject to a separate charge.
- e. The Company shall have the right to despatch any portion of the goods covered by the contract and to invoice the buyer for such portion so despatched on these terms and conditions of sale unless agreed otherwise in writing.
- f. If for any reason the buyer is unable to accept delivery of the goods at the time when the goods are due and ready for delivery, the seller shall be entitled to arrange storage at its own premises or elsewhere at the buyers risk and cost.

9. Specification

- a. The goods are supplied in accordance with the specification (if any) submitted to the buyer and any additions and alterations shall be the subject of an extra charge.
- b. Any part of the goods not so specified shall be in accordance with the Company's printed catalogue or the catalogue of the Company's suppliers (subject to any modifications made since publication).
- c. The Company shall not be under any liability in respect of description of specifications or other matters in relation to the goods contained in any material such as price lists, catalogues, trade publications and advertising matter other than in the contract itself.
- d. If the Company adopts any changes in construction or design of the goods or the specification thereof, the buyer shall accept the goods so changed in fulfilment of the order unless the buyer states otherwise in the buyer's written order.
- e. Where the buyer supplies any drawings or specifications, the buyer warrants that they are accurate.

10. Suitability for Purpose

It is entirely the buyer's responsibility to ensure that the kind and/or class of the goods ordered by him are suitable for his purpose. The Company shall not be under any liability for any loss or damage however arising from or attributable to any advice statements or misrepresentations given by the Company, its employees or agents to the buyer in respect of the goods, whether regarding performance capability or suitability for any purpose. Such liability is hereby expressly excluded to the extent permitted by law.

11. Force Majeure etc.

Notwithstanding any other provision of the contract, the Company shall not be liable in any way for loss or damage resulting from the failure to supply any of the goods, for any delay or defect in the supply of any goods caused by Force Majeure or strike, lockout, industrial action, accident, fire, scarcity of materials or labour or any other cause not within the Company's direct control.

12. Indemnity

- a. The buyer will indemnify the Company against any loss or damage suffered by the Company as a result of any failure by the buyer to perform any of the covenants and conditions of the contract including payment of reasonable storage charges while any of the goods remain on the Company's premises after risk has passed to the buyer.
- b. The buyer will indemnify the Company all claims against the Company by a third party arising directly or indirectly out of the contract including where goods are made to the buyers specification any claim for the infringement of patent registered design, trade mark or any other rights affecting the goods.

13. Compliance with Instructions and Safety

The buyer must ensure that all goods are installed, maintained and used strictly in accordance with the appropriate instructions and recommendations, both for the safety of users and third parties and also to prevent damage to the goods.

14. Warranty Conditions

In the case of goods sold by the Company where the manufacturers and/or other recommended installation and maintenance procedures have been correctly followed, the Company warrants that:

- a. If any goods sold by the Company are found not to be of merchantable quality within month from the date of sale or with such longer time within the warranty period given to the Company by the manufacturer of that unit and the buyer complies with the procedure in condition 15 of these terms and conditions of sale then a credit note will be given in respect of any replacement ordered **provided always that:**
 - i. Where part of a unit is found not to be of merchantable quality this warranty applies only to that part and not the entire unit

- ii. Items supplied under this warranty are only warranted for the remainder of the period of warranty on the goods originally sold under the contract
 - iii. The Company does not accept claims for postage, carriage or delivery of an item under this warranty. Such costs will be at the expense of the buyer
 - iv. The Company reserves the right to make site visits in order to inspect installations in the case of warranty claim
 - v. All goods returned under warranty must have gas or liquid connections sealed to prevent ingress of any foreign body or moisture
 - vi. The Company does not accept any labour charges for the replacement of warranty items unless expressly offered by the manufacturer
 - vii. The Company does not accept claims where the procedures and uses in condition 13 have been misapplied
- b. The Company will not accept any warranty liability where the goods fail to meet the specifications, if the failure results from the operation of other goods not supplied by the Company with which the Company's goods are set to work.
 - c. The warranty shall not apply to any goods which have not been paid for in full.

15. Warranty Procedure

- a.i. When an item is found to be defective within its period of warranty, a replacement should be ordered from the Company with a clear statement that the order is for a WARRANTY REPLACEMENT giving the name of the individual whom we can contact for information.
- a.ii. In the case of items such as test instruments which are normally repaired, the buyer will be notified that an advanced replacement will not be provided as the normal procedure is to repair the item. The Company will however, endeavour to supply a loan replacement until the item has been repaired and returned.
- b. The replacement item will be despatched with an invoice and a claim form will be forwarded.
- c. The completed claim form must be returned by the buyer together with the defective item, within 30 days of despatch of the claim form by the Company.
- d. Invoices for replacement items are payable according to the Company's normal terms, regardless of the state of progress of the claim.
- e. When the claim has been duly processed and liability has been accepted under the warranty in clause 14 of the Terms and Conditions of Sale by the Company a credit note will be issued to cover the cost of the replacement item or return the original item duly repaired.

16. Buyers Insolvency

If prior to delivery or despatch of the goods the buyer shall be adjudicated bankrupt or have a receiving order made against him or being a Company shall pass a resolution for winding-up or suffer a wind-up order to be made against it or have a receiver appointed of the whole or any part of its assets or enter into any form of arrangement with its creditors or suffers any other form of insolvency the Company may elect not to deliver the goods except payment in cash of the purchase price of the goods in full.

17. Returned Goods

New goods cannot be returned except when previously agreed in advance, and subject to their return in perfect and re-saleable condition, a re-handling charge of 20% of the price of the goods will be made to cover administration expenses.

18. Patents etc.

The Company gives no indemnity to the buyer in respect of any claim by a third party of actual or alleged infringement of any patent registered design trade mark or rights affecting the goods.

19. Exclusion of Statutory Terms and Consequential Loss

Save as provided herein and subject to the Sale of Goods Act 1979, The Unfair Contract Terms 1977 and the Supply of Goods and Services Act 1982, the Company shall be under no liability howsoever arising and whether in contract or tort or otherwise in respect of any defect in Goods sold or defective work services of for any loss damage or injury resulting there from including consequential loss. The exclusion of liability in these conditions extends to the negligence of the Company, its servants and agents any loss or damage resulting there from so far as permitted by law.

20. Frustration

If the Company is prevented from performing the contract by any cause beyond its reasonable control whatsoever and wheresoever arising then it may by written notice to the Buyer to determine the Contract. In such event the Buyer shall pay to the Company all reasonable costs incurred by the Company at the date of such notice in and about its partial and/or attempted performance of its obligations hereunder but subject thereto neither the Company nor the Buyer shall be under any liability whatsoever to the other in connection with this Contract.

21. Severability

The invalidity of unenforceability for any reason of any clause or sub-clause of this contract shall not prejudice or affect the validity or enforceability of the remainder.

22. Severance of any waiver by the Company

No waiver by the Company of any of the requirements hereof or of any rights hereunder shall release the buyer from full performance of its remaining obligations.

23. Governing Law

The Governing law of the contract shall be English law and the parties submit to the jurisdiction of the English Courts.

24. Interpretation

The headings of the Terms and Conditions of Sale herein shall not form part, nor be construed as forming part hereof.