

TK REFRIGERATION LTD T/A TKR REFRIGERATION AND AIR CONDITIONING
TERMS & CONDITIONS OF SALE (dated December 2012)

The following terms and conditions ('Terms') are the terms on which the above-mentioned Company ('the Company') sells to a Customer. These terms supersede all other terms and conditions used by the Company except in the case of Maintenance Contracts. Maintenance Contracts may use part or all of the Terms with additional clauses as deemed necessary. By placing any order for Goods, entering into a Maintenance Contract or requesting a Service Call from the Company the Customer shall be deemed to have agreed to & accepted these Terms.

Other definitions in these conditions.

'Customer' means the person, firm or company and their representatives or agents who purchases or agrees to purchase Goods and /or Service Calls and /or Maintenance Contracts from the Company.

'Goods' means equipment and all components (replacement or otherwise).

'Service Call' means a visit by a Company representative to a Customer's premises to attend to equipment in need of repair, inspection or maintenance.

'Maintenance Contract' means a fixed term contract for the maintenance of the Customer's own equipment.

1. Orders, price and payment.

- 1.1. No contract shall come into existence until the Company confirms the order for Goods either verbally or in writing. In the case of a Service Call attendance of a representative of the Company at the Customer's premises shall constitute the formation of a contract. The signing and returning of or payment in full or in part for a Maintenance Contract constitutes a contract.
- 1.2. The Company will refuse to progress any quotation, offer, Service Call or contract due to the Customer's credit or payment terms being unsatisfactory. The Company reserves the right to consult whomsoever it considers appropriate for the purposes of obtaining trade references for the Customer. Such trade references will be recorded by the Company & will be made available to other businesses for the continuing assessment of credit risk. The Company reserves the right to amend any accidental error or omission on quotations, order acknowledgements, invoices or credit notes.
- 1.3. Orders & requests for Service Calls are accepted only on the basis that these Terms apply to the order or Service Call. Accordingly, any terms endorsed on or contained or referred to in any Customer's order or confirmation or otherwise communicated to the Company which are inconsistent with these Terms & are not specifically agreed to in writing by the Company shall be deemed to be superseded & nullified by these Terms.
- 1.4. The price (exclusive of VAT) for the Goods or Service Calls shall be the invoiced price of the Company and payment of the price shall be made by an account holding customer within 30 days of the date of the invoice ('the due date'). For non-account Customers, payment is due immediately upon presentation of the invoice. Time for payment shall be of the essence. All prices will be subject to VAT at the rate ruling on the day of invoice of the Goods or Service Calls. No payment shall be deemed to have been made until the Company's account is credited with the relevant cleared funds. Payment must be made in GB Pounds Sterling only and is accepted by cash, cheque, BACS, Debit or Credit Card. A percentage surcharge will be applied to all Credit Card transactions.
- 1.5. If the price is not paid by the due date the Customer will be liable for an additional payment of liquidated damages. Interest shall accrue both before and after any court judgment on the unpaid portion of the price at the rate of 8% above the base rate from time to time of HSBC Bank PLC. In addition if the price is not paid 60 days after the due date, the Company reserves the right to appoint debt collectors & the Customer agrees to be liable for the fees of such collectors. If any payment is not made in full by the due date then, without affecting any other right which it may have, the Company may deduct any outstanding amounts from any monies owed to the Customer on any account whatsoever.
- 1.6. All Goods ordered and supplied by the Company to the Customer which have been incorrectly ordered by the Customer, will be subject to a minimum handling charge of £25.00 + VAT or 15 % of the total invoice price + VAT. Whichever figure is the greater will be charged to the Customer to cover all administration costs in the event of the Goods having to be returned. All Goods will be packaged and labelled correctly and any additional supplier restocking charges applicable will be met in full by the Customer.
- 1.7. The Company shall have the right to cancel all or any contracts with the Customer or withhold delivery of any Goods or provision of any Service Calls if:
 - A. the Customer fails to pay any monies owing to the Company by the due date;
 - B. the Customer commits any breach of any contract with the Company;OR
 - C. the Customer compounds with or executes an assignment for the benefit of its creditors or commits any act of bankruptcy or goes into liquidation or has a receiver, administrative receiver or administrator appointed over all or part of its assets or has a third party levy distress on their property, or suffers any similar or analogous act.In the event of delivery or provision of service being withheld, the Company shall be entitled as a condition of resuming trading to require pre-payment of, or such security as it may require for the payment of the price of any further trading.
- 1.8. Any order received verbally by the Company will be supported in writing or by e-mail within 3 working days and before any Goods are ordered.
- 1.9. Any cancellation of any order by the Customer must be in writing. In the case of any cancellation, the Customer may be released from their obligations under the contract after payment as laid down in 1.6 above.

2. Goods supplied.

- 2.1. In the event of the provision of Goods, the description, quantity and price of the Goods to be sold ('the Goods') shall be as set out in the quotation provided by the Company, to the Customer ('the Quotation').
- 2.2. Whilst every effort will be made to supply the Goods in accordance with samples and/or agreed specifications, the Company reserves the right to modify specifications, designs and materials where such modifications do not materially affect the quality or fitness for purpose of the Goods or to comply with any applicable standards or legal requirements.
- 2.3. The Company shall deliver the Goods to the agreed address and on the date as both are shown on the quotation. Time shall not be of the essence for delivery. The Customer shall make all necessary arrangements to take delivery of the Goods on the day notified by the Company for delivery.
- 2.4. If the Customer fails to take delivery of the Goods on the date of delivery, the Company shall, without prejudice to its other rights, be entitled to store the Goods at the Customer's risk and the Customer shall pay all storage and additional carriage costs incurred.
- 2.5. Although all delivery dates stated by the Company are given in good faith and all reasonable efforts will be made to adhere to them, the Company accepts no liability for any failure to comply with such dates by reason of any cause beyond the Company's reasonable control. The Company shall be entitled to make partial deliveries and failure to deliver part only of any order shall not entitle the Customer to reject the Goods.
- 2.6. The Company shall not be responsible for affixing any warning notices to the Goods or their packaging, this shall be the responsibility of the Customer who is deemed to have full knowledge of the Goods in relation to safety and otherwise.
- 2.7. The Customer's attention is drawn to the Company's guidelines and regulations on health and safety within the workplace. The installation of the Goods requires a qualified person. It is the responsibility of the Customer to take such steps as are necessary to ensure that appropriate information, relevant to the Goods, is made available to any person whom the Customer wishes to use the Goods.
- 2.8. The Company must be advised in writing, by recorded delivery, of any defects in the Goods as soon as they are discovered by the Customer, who shall be deemed to have accepted the Goods if they have not been rejected on or before the seventh day after delivery. The Customer shall not be entitled to reject the Goods in whole or in part thereafter. The Company will (at the Company's option) either replace or refund the price of any Goods which are shown to the Company's reasonable satisfaction to be defective at the time of delivery or to be a shortfall in the quantity delivered. The Customer is required to provide all information and assistance requested by the Company to investigate any suspected defect and, if required, permit the Company to inspect the Goods concerned at any premises where they are located.
- 2.9. Goods returned which are over 28 days old from the date of purchase may be replaced with a refurbished product.
- 2.10. The Company will only accept the cancellation of orders as follows:
 - A. Goods are not sold on a trial basis. Customers should check the specifications and suitability of the Goods before ordering. The Company does not warrant the suitability of the Goods for specific applications;
 - B. Goods which have been incorrectly ordered will only be accepted for return with the prior approval of the Company;
 - C. Returned Goods will only be accepted if they are correctly packaged in the original packaging with the manuals, returned with the necessary proof of delivery and purchase, and have not been used. Returned Goods will be subject to a minimum re-stocking charge of £25.00 + VAT or 25 % of the total invoice price + VAT. Whichever figure is the greater will be charged to the Customer on all such Goods.
 - D. If the Customer cancels the Goods whilst the Goods are in transit, an abortive delivery charge will be charged to the Customer;
 - E. Any item that is not normally held in stock or which is not easily re-saleable cannot be returned if the Customer decides that it is no longer required.

3. Provision of Services.

- 3.1 This agreement incorporates the description of work carried out and any Goods and materials supplied in the Quotation, estimate or on the Company representatives worksheet provided.
- 3.2 It is the responsibility of the Customer to obtain the consents required from any authority or any other party for the proposed work. Notwithstanding anything the Company may have said, written or done, the Customer accepts that the Company has no role or responsibility whatsoever, in this respect.
- 3.3 If in the Company's opinion it is not reasonably practicable for any reason to carry out any of the work the Company is instructed to carry out, the Company shall be entitled to refrain from carrying out or completing such work and will consult with the Customer as to what, if any, work is to be undertaken. The Company will, if requested by the Customer, provide a written explanation as to why any work is not considered to be reasonably practicable.
- 3.4 The Company will make every effort to attend within a reasonable time or at the time agreed. However, the Company cannot be held responsible for delays caused by events beyond their control, howsoever caused.
- 3.5 Time shall not be of the essence of this agreement unless the Customer notifies the Company at time of first contact and the Company accepts the same.
- 3.6 The Customer shall give the Company's representative access to the property to carry out the works at all reasonable times. The Customer will also ensure that any permits required to work are made available.
- 3.7 If the cost to the Company of carrying out the work is subsequently increased by reason of increases in the cost of Goods and/or materials and/or labour and/or any other factor outside the Company's control, then the Company shall notify the Customer before undertaking any work to which the increase will apply. If the Customer requires the Company to discontinue the work, the Customer shall only be required to pay the Company for the work already carried out.
- 3.8 If specific site health and safety inductions are necessary for the Company representatives to carry out work, these inductions will be done at the Customer's expense.
- 3.9 The Company's representative will fit Goods that they deem necessary to effect repair to the Customer's equipment. Whilst the Goods supplied will be of a reasonable quality, they may not be an exact replacement nor be a manufacturer's genuine part.
- 3.10 The Company will pass on to the Customer any out of pocket expenses that may be incurred before, during or after the supply of Goods, Maintenance Contracts or Service Calls to the Customer.
- 3.11 The Company will use Goods supplied by the Customer on the strict understanding that the Customer accepts that the Company has no responsibility with regard to advising the Customer on their quality or suitability for their purpose. Any losses or damages, which may flow from the use of such Goods, will be the sole responsibility of the Customer.
- 3.12 In the event that the works do not finish on any date anticipated and the delay is entirely due to the actions or omissions on the part of the Customer or their agent or tenants, the Customer will (whether formally demanded or not) indemnify the Company for any loss of earnings as a result of the delay (whether proved or not). The work will be completed at the Company's agreed rate at such time as is mutually agreed by the Customer and Company.
- 3.13 If the Customer requires additional work to be carried out by the Company, the parties shall negotiate the costs and time required for them to be carried out with a view to reaching an agreement. The Company shall not be obliged to carry out any additional work unless, and until, the parties have agreed the costs and time in writing.
- 3.14 If the Company determines that it is necessary to remove the Customer's Goods or any part of the Customer's Goods from the Customer's premises in order to carry out any repairs, and as a consequence the Customer's operations are affected, the Company cannot be held responsible for any loss of business that the Customer may incur or perceives to incur.
- 3.15 The Customer has 48 hours to notify the Company of any complaint with regard to works carried out and 7 days to dispute the invoice for such work provided.

4. Warranty and warranty repairs

- 4.1 Any warranty offered by the Company does not include breakdowns which have been caused by Customer misuse or incorrect installation. If, after repairing the Goods the fault is found to have been caused by Customer misuse and /or incorrect installation, a service charge plus an administration fee must be immediately paid to the Company.
- 4.2 Any warranty offered by the Company is on a "parts only" basis and does not include any labour costs, unless expressly stated otherwise.
- 4.3 Any Goods that are replaced due to fault will need to be sent back to the original supplier/manufacturer for testing and if the Goods are found not to be faulty, then costs will be applied accordingly to the Customer.
- 4.4 Where additional Goods are required to effect repair/replacement of Goods under warranty then those additional Goods used will be chargeable to the Customer at the Company's normal rates.

5. Title and risk.

- 5.1 The Goods and materials supplied shall be at the risk of the Customer following delivery and, notwithstanding delivery, title in the Goods and/or materials shall not pass to the Customer until the Customer has made payment of all sums owing to the Company, failing which, the Company shall have the right to repossess or otherwise recover the Goods and/or materials. Until title passes the Customer shall hold the Goods and/or materials as bailee for the Company and shall store or mark them so that they can at all times be identified as the Goods and/or materials of the Company.

6. Limitation of liability.

- 6.1 Save in respect of personal injury or death due to any negligence, the Company shall not be liable to the Customer in respect of any loss suffered by the Customer due to any defect in the Goods or services provided.
- 6.2 Without prejudice to condition 6.1 the Company shall not be liable to the Customer or any third party for any loss of profit, consequential or other economic loss suffered by the Customer arising in any way from this agreement.

7. Set off and counterclaim.

- 7.1 The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim, which the Customer may have or allege to have for any reason whatsoever.

8. Force majeure.

- 8.1 The Company shall not be liable for any default due to any circumstance beyond the reasonable control of the Company including, but not limited to, Acts of God, war, civil unrest, riot, strike, lock out, acts of civil or military authorities, of terrorism, of sabotage, of vandalism, accident, breakdown, fire, flood, earthquake or shortage of supply. On the occurrence of any such event, the Company may, at its discretion, perform, suspend performance of or terminate the contract.

9. Staff harassment

- 9.1 The Company's staff have the right to carry out their jobs without fear of harassment of any kind from Customers. The Customer shall be aware that in a reported case of harassment involving Customers, their staff or agents, the Company will expect the Customer to indemnify them in relation to any liability incurred.

10. General.

- 10.1 The Company reserves the right to make minor changes to this agreement from time to time. Any major changes will only be made with the Customer's agreement.
- 10.2 If any term or provision of these conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these conditions had been agreed with the invalid, illegal or unenforceable provisions eliminated.
- 10.3 The Company may without the consent of the Customer sub-licence its rights or obligations or any part of these conditions.
- 10.4 The headings in these conditions are for ease of reference only and shall not affect the interpretation of any of the conditions.

11. Data protection.

- 11.1 The Customer consents to the computer storage and processing of the Customer's personal data by the Company in connection with this agreement and to the transmission of this data across the Company and its business partners for the purposes of the Company's legitimate interests including statistical analysis, marketing of the Company's services and credit control. If the Customer breaches this agreement, the Customer's personal data may be disclosed or passed to third parties to the extent necessary to assist recovery procedures.

12. Contract.

- 12.1 Notwithstanding any other provision of this agreement, nothing herein shall confer or is intended to confer a benefit on any third party for the purpose of the Contract (Rights of Third Parties) Act 1999 or subsequent Act, or for any other purpose.

13. Entire agreement.

- 13.1 Each of the parties agrees that, save in respect of statements made fraudulently, it shall have no remedy in respect of, any untrue statement upon which it relied in entering this agreement and that its only remedy shall be for breach of contract.

14. Governing law and jurisdiction.

- 14.1 The Laws of England and Wales shall govern this agreement and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.